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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF UNAUTHORIZED LONG  
DISTANCE CHARGES MADE BY RADICAL TC06-190  
PERSSON, INC. D/B/A ECHURCH NETWORK  
AND ILAB TECHNOLOGIES AND FOR THEIR  
FAILURE TO OBTAIN CERTIFICATES OF  
AUTHORITY IN SOUTH DAKOTA

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Transcript of Proceedings  
March 20, 2007

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BEFORE THE PUC COMMISSION  
  
CHAIRMAN DUSTY JOHNSON  
COMMISSIONER GARY HANSON  
COMMISSIONER STEVE KOLBECK  
  
COMMISSION STAFF  
  
JOHN SMITH  
KARA BAN BOCKERN  
DEB GREGG

ORIGINAL

1 TUESDAY, MARCH 20, 2007

2 CHAIRMAN JOHNSON: Good morning. It's March 20th,  
3 2007. We are here in Room 464 of the State Capitol. My name  
4 is Dusty Johnson. With me are Commissioners Gary Hanson and  
5 Steve Kolbeck. We are here for the purpose of hearing a  
6 hearing in TC06-190, and that deals with eChurch and some  
7 concerns about the -- violations of do not call. At this  
8 time -- not do not call, sorry. Dealing with eChurch,  
9 cramming, sure, that's right. And at this time we will turn it  
10 over to staff and hear their comments.

11 MS. VAN BOCKERN: Thank you, Mr. Chairman. This is  
12 Kara Van Bockern for staff and I'm going to start by right away  
13 passing out, I've got three folders here that will contain all  
14 of the consumer bills and a spread sheet, various information  
15 that we are going to rely on today, so I'm going to pass that  
16 out.

17 I'm going to rely on the facts as stated in the motion  
18 for the most part. However, I'm going to run down a quick list  
19 of what happened and who's who in this docket. So the simple  
20 version is as follows. Lars Persson is the owner and  
21 incorporator of Radical Persson, Incorporated, a California  
22 corporation. That corporation did business as both eChurch and  
23 iLab and they were registered as fictitious names in Orange  
24 County, California. We had 10 specific consumer complaints  
25 regarding one or both of those companies and all 10 of those

1 complaints were substantiated by our Consumer Affairs Division  
2 and all of those various consumers should be included in your  
3 packet.

4 All 10 of those people were billed, people or  
5 businesses, individuals or businesses, were billed for a one-  
6 minute \$50 long distance phone call. Due to the high number of  
7 complaints, consumer affairs began an immediate investigation  
8 of these companies that appeared to be involved. As the  
9 investigation began, Radical Persson, Inc., supplied our  
10 Consumer Affairs Division with this information and the spread  
11 sheet that you will find right away in the beginning of your  
12 packet is a spread sheet that they did supply our Consumer  
13 Affairs Department and that included a list of everyone they  
14 claimed that got billed. However, as consumer affairs went  
15 down the list and tried to call these people and contact them,  
16 it appeared that a lot of the names were wrong, phone numbers  
17 were wrong, and I'm going to rely on Ms. Gregg to expand upon  
18 that at the conclusion of my outline here.

19 In any event, many of those people were billed for a  
20 \$50 Internet charge. That's a thing that we have no  
21 jurisdiction over nor something we could help them with. We,  
22 therefore, passed all of those along to the Attorney General's  
23 Office. Some of them did not wish to dig up their old bills or  
24 couldn't dig up old bills to find that \$50 charge, because we  
25 needed further information to help them. They didn't want to

1 bother. And in others, like I said, it was simply the wrong  
2 name, we couldn't get ahold of them. So in the end we were  
3 able to substantiate 10 consumer complaints.

4 Originally Mr. Persson and his lawyer articulated  
5 several defenses to the allegations and we therefore proceeded  
6 with a motion for an order to show cause and scheduled this  
7 hearing today. Since that time, Mr. Persson and his lawyer  
8 have indicated they had no intention to appear today and they  
9 were in the process of filing for bankruptcy. We have had  
10 several communications with Mr. Cisneros, the lawyer for the  
11 corporation, and he's indicated on several occasions he was  
12 going to get us a copy of their bankruptcy papers. We have yet  
13 to get it, so I can't expand upon the progress of their  
14 bankruptcy proceedings.

15 However, SDCL 49-31-89 prevents this company from  
16 adding a product or service on a consumer bill without  
17 permission from the consumer, so we are relying on that statute  
18 for this motion and request today. That did clearly occur, the  
19 bills will show that there was a \$50 one-minute long distance  
20 phone charge. SDCL 49-31-93 does indicate the subscriber is  
21 not liable and the company shall pay to the subscriber a \$1,000  
22 fine. Ms. Gregg has been in contact with all of the consumers  
23 that were affected by this. They all understand the status of  
24 this company, they understand the likelihood or lack thereof of  
25 collecting a monetary fine due to their progress in the

1 bankruptcy court, and again I'm going to let her expand further  
2 upon those communications with those consumers. But as we know  
3 it, as we understand, the 10 consumers affected did not pay  
4 that \$50 fine, they called us first, which was perfect, so they  
5 are not out, should we say, the \$50 that they were charged and  
6 understand the status of the company as far as the \$1,000 fine.

7 SDCL 49-31-94 allows the commission to fine up to  
8 \$20,000 in a penalty when this sort of thing occurs. Due to  
9 the status of the company and its apparent progress towards  
10 bankruptcy, staff is at this time asking for a \$10,000 per  
11 penalty violation to be suspended based on the condition that  
12 Mr. Persson seek permission or at least put this commission on  
13 notice if he ever intends to do business in the  
14 telecommunications industry in South Dakota. I will rely on  
15 Deb for any other factual questions you may have.

16 COMMISSIONER KOLBECK: Can I ask one question right  
17 now? 10,000 per or 1,000 per, equaling \$10,000?

18 MS. VAN BOCKERN: \$10,000 per consumer, \$10,000 times  
19 10 official complaints we had in this office, all of it  
20 suspended unless he would come back to South Dakota and fail to  
21 put the commission on notice.

22 COMMISSIONER KOLBECK: I guess I was thinking that the  
23 maximum fine was \$1,000 per --

24 MS. VAN BOCKERN: I'm sorry, I should clarify that.  
25 It's \$1,000 that goes directly to the consumer. There's two

1 different fines at issue here. The first statutory, the \$1,000  
2 is under SDCL 49-31-93 and that's \$1,000 that goes directly to  
3 the consumer. It is not something we can collect on behalf of  
4 the consumer. They need to proceed individually, and none of  
5 them chose to do so due to the status of this company, and we  
6 have tried to keep them all informed along the way as what we  
7 know of eChurch and where we are at with our proceeding and all  
8 of them decided that it wasn't worth their time or energy to  
9 come to South Dakota at a formal hearing proceeding and they  
10 really want to see the commission stop this sort of behavior  
11 and prevent this company from coming back to South Dakota  
12 simply under a different name and reincorporating somewhere  
13 else and coming back. So all of those consumers are really on  
14 board with the recommendation that we are making at this time.

15 The other fine, the \$20,000 per violation fine is  
16 something that the commission directly collects and that's SDCL  
17 49-31-94, and once a company goes into bankruptcy, we won't be  
18 able to seek the monetary fine due to the bankruptcy stay.  
19 However, a nonmonetary fine could be -- we could proceed on  
20 that due to our police powers, and I've had help from  
21 commission counsel in studying the stay from bankruptcy and all  
22 that goes along with it and this monetary -- nonmonetary fine  
23 or condition that he come back before the commission to seek  
24 permission, at least put you on notice, I believe we could  
25 enforce, because it will be considered a police power.

1           CHAIRMAN JOHNSON: So we don't have -- we don't know  
2 for certain that this company is filing for bankruptcy or that  
3 they -- and even if that's a certainty right now, they could  
4 certainly change their mind.

5           MS. VAN BOCKERN: It is. We spoke, Ms. Gregg and I  
6 spoke with Mr. Cisneros last Friday I believe it was and he  
7 said, I can guarantee we will not be at the hearing and I can  
8 guarantee we are filing for bankruptcy. And I don't know what  
9 that's worth, but those are his guarantees.

10          CHAIRMAN JOHNSON: And he is an attorney in what  
11 state?

12          MS. VAN BOCKERN: California.

13          CHAIRMAN JOHNSON: Okay. You know, I had some -- it's  
14 probably -- I have some reservations about suspending a fine  
15 for a company that has not been particularly cooperative, has  
16 not shown up today, has not provided any paperwork promise with  
17 regard to their bankruptcy proceeding. There's evidence to  
18 suggest that they were attempting to, you know, defraud  
19 consumers. Why do you think that suspension makes sense in  
20 this case?

21          MS. VAN BOCKERN: That recommendation was based solely  
22 on Mr. Cisneros's guarantee that they will be filing for  
23 bankruptcy and that it will be very difficult and costly for  
24 the commission to pursue that fine. However, we certainly  
25 could, and it was based solely on just his guarantee they are

1 filing for bankruptcy.

2 CHAIRMAN JOHNSON: So perhaps, and I don't mean to  
3 suggest that John Smith has a lot of experience with  
4 bankruptcy, but I think he might have some. Either Ms. Van  
5 Bockern or Mr. Smith, can you try to give me some idea of what  
6 costs the commission might incur if we tried to fine and carry  
7 this through the bankruptcy proceeding?

8 MR. SMITH: Yeah, I mean, maybe. You know, part of  
9 the problem here is not just that it's a potential bankruptcy.  
10 In my view, it's even possible that a fine might survive a  
11 bankruptcy, that's my own opinion. In fact I succeeded in  
12 convincing the judge here in Pierre that in the S&S fine case,  
13 that that was relieved from the discharge order automatically.  
14 Now, the stay is a little different situation. There it's -- I  
15 mean, it's tough to get relief from a stay. It costs money.  
16 We would have to hire a lawyer in California and go out there  
17 and fiddle around with it.

18 The other difficulty you get into when you are dealing  
19 with a situation like this is even if the fine ultimately were  
20 not subject to the bankruptcy court's discharge order or the  
21 stay even, the practical difficulty of it is we can enter the  
22 order here, we can go down here to circuit court, we can have  
23 it entered as a judgment, but ultimately to obtain enforcement,  
24 that means initiating litigation in California to enforce it.

25 There's nothing here in South Dakota -- they don't

1 have anything here, there's no property, nothing of that  
2 nature, so it would mean -- it would mean having to go to  
3 California and obtain execution on a fellow out there. And I  
4 think -- I mean, I think the thought behind something like a  
5 suspension is -- and you can think about it any way you want  
6 to, but sometimes having a hammer hanging over your head is  
7 more of an incentive than having already been hit by the  
8 hammer. Then it's over with. And my point is I'm not so sure  
9 that I wouldn't want that suspension to be conditioned on more  
10 than just them giving us notice. I'm not so sure I would not  
11 want it conditioned on there being no further similar type of  
12 activities occur, period, as well as them notifying us and  
13 coming in here.

14           And then I think it gets down to this, it's like -- I  
15 mean, I think the message it sends is whether you decide to go  
16 with a \$10,000 fine or a \$100,000 and it's suspended, to me it  
17 would be a pretty strong motivator to say, you know, maybe in  
18 order to avoid triggering that, I should cease doing things  
19 like this. But that's kind of up to you. I will tell you it  
20 will be a pain in the neck to attempt to obtain a judgment and  
21 execute on it in the state of California, regardless of the  
22 bankruptcy, but under that context, we will have the additional  
23 issues of litigating a lot of things.

24           I will tell you, too, and this is just based on some  
25 checking I think I did early on, and I think Ms. Van Bockern

1 could maybe fill you in on this. One of the things that I  
2 think has happened here is this fellow and his outfit, we are  
3 not the only state that's taken this guy on. He's been  
4 hammered by the state of Wisconsin. My recollection is  
5 something along the order of \$4 million in judgments that are  
6 outstanding against him there. You know, it gets down to what  
7 do you want, I think it gets down to resources and do you want  
8 to -- for something that may or may not do any good, do you  
9 want to subject the staff to what will be a very labor  
10 intensive and ultimately out-of-pocket cost endeavor?

11 CHAIRMAN JOHNSON: Yeah, go ahead.

12 COMMISSIONER HANSON: Thank you, Mr. Chairman. I'm  
13 glad you asked the questions you did. I was curious about them  
14 as well. A couple of questions. The first is, who prepared  
15 the sheet of information that we have, the spread sheet I will  
16 call it?

17 CHAIRMAN JOHNSON: Do we need to enter exhibits or  
18 offer exhibits?

19 MR. SMITH: You sure could. Shall we mark it and  
20 call -- how many -- why don't we just mark the whole packet of  
21 stuff and why don't we do that, we will call it Exhibit 1. And  
22 do you want to -- do you want to move its admission?

23 MS. VAN BOCKERN: I move that commissioners admit  
24 Exhibit 1.

25 MR. SMITH: That's the entire folder full of

1 information. We don't have a reporter here anyway, so I think  
2 we will just do that.

3 CHAIRMAN JOHNSON: I would presume there are no  
4 objections. There are no other parties to the proceeding here.

5 MR. SMITH: Keith, do you object? (Laughter) Then  
6 I'm going to recommend that it be admitted. I think the other  
7 side of that, though, is since nobody showed up, I mean, this  
8 is a default situation. You know, you have a default situation  
9 here where they didn't bother to show up or answer or do  
10 anything else, and I don't think you need any proof or  
11 anything. I think you can operate on the basis of default.

12 CHAIRMAN JOHNSON: Still good to have a record  
13 available.

14 MR. SMITH: That's correct.

15 CHAIRMAN JOHNSON: So we will say Exhibit 1 has been  
16 entered into the record and my apologies to Commissioner Hanson  
17 for interrupting.

18 EXHIBITS:

19 (Exhibit No. 1 received into evidence.)

20 COMMISSIONER HANSON: No, Mr. Chairman, I appreciate  
21 your doing that. In Exhibit 1, there is a spread sheet and  
22 three pages. I'm curious who prepared that.

23 MS. GREGG: Commissioner Hanson, this is Deb Gregg  
24 from staff. The spread sheet that you are looking at is what  
25 was received from Lars Persson or Radical Persson, Inc., when

1 we asked them to provide us with the number of consumers that  
2 they billed in South Dakota, when we first contacted them, and  
3 this is the sheet that they sent us, the information they sent  
4 us, and Ms. Van Bockern and I are the ones that called down the  
5 list and tried to find the companies and this is the list they  
6 provided us of who they billed.

7           As Ms. Van Bockern said, some of the names weren't the  
8 same, phone numbers were disconnected, and the notes on the  
9 side that are typed in are theirs. Ours are handwritten on the  
10 front and the back of trying to locate the companies. Some, in  
11 fact the one for the Fargo Realtors that have the Comfort Inn  
12 in Sioux Falls, we found them, they were just getting ready to  
13 pay the bill and they pulled it from being paid. So that was  
14 one that we tracked down. Another gentleman on the back, the  
15 Spencer Holloway Insurance, that was actually an Internet  
16 charge and he had paid for two years and I sent him to the  
17 Attorney General's Office to try to recoup those charges. He  
18 didn't even realize he was paying another 50 a month for an  
19 Internet service, he had no clue. Some people, as Ms. Van  
20 Bockern said, didn't even want to go look for the bills that we  
21 contacted. But this is the spread sheet they provided to us.

22           COMMISSIONER HANSON: In this spread sheet, then, you  
23 said that everything that's typed on here is from them and  
24 everything that's written is from the PUC, South Dakota PUC?

25           MS. GREGG: That's correct.

1           COMMISSIONER HANSON: And so they did, in a form at  
2 least, reply to our contact with them.

3           MS. GREGG: That's correct, that's about the only  
4 correspondence we received from them.

5           COMMISSIONER HANSON: This is pretty much the entirety  
6 of their correspondence with us?

7           MS. GREGG: That's correct.

8           COMMISSIONER HANSON: Were you able to engage them in  
9 any phone conversations other than discussion with apparently  
10 their attorney and finding out that they were at least claiming  
11 to file bankruptcy?

12          MS. GREGG: Well, not to the bankruptcy. We  
13 actually -- how confusing this company is, we actually had it  
14 was supposed to be their assistant, Christine Chu, contact our  
15 office for names and numbers of the businesses that we found  
16 that she didn't have, and they tried to offer settlement,  
17 giving prepaid phone cards to people, said they would be  
18 sending something, and it never happened. Kara and I happened  
19 to be one step ahead of them every step of the way calling  
20 people and telling people you are going to be called by this  
21 gentleman, this is what he's supposedly going to offer you, get  
22 something in writing. Anyone who was contacted contacted us  
23 back saying, thank you for the heads up, and we believe that  
24 this list that they had is just something, I don't know if they  
25 made up on the fly or what, like I said, nothing was consistent

1 with what we found.

2 COMMISSIONER HANSON: Is there any legitimacy in the  
3 prepaid phone card that they were offering or was it to their  
4 service?

5 MS. GREGG: We have no idea. No one received one.

6 COMMISSIONER HANSON: I'm attempting -- through the  
7 first presentation and the discussion of this, I agree with  
8 Chairman Johnson that I'm not comfortable with just simply  
9 saying, you shouldn't do that, we are going to fine you  
10 \$100,000 but we are not really going to fine you \$100,000, just  
11 don't ever do it again. It's sort of an if I get caught,  
12 nothing is going to happen to me, if I do get caught, nothing  
13 is going to happen to me, and that just concerns me a little  
14 bit. Well, more than a little bit.

15 There's just no way that a person accidentally charges  
16 \$50 for phone calls and if there's no attempt, they are not  
17 here today to discuss it, not even by phone, it just shows that  
18 there's not a genuine effort on their part to work with us or  
19 to work for themselves in trying to let us know what took  
20 place. It appears at least, Mr. Chairman, that there may have  
21 been some effort by them, although that effort also appears to  
22 have been a little bit of perhaps a smoke screen to try to make  
23 it look like they were at least attempting to do something.  
24 Unless there's -- it's hard to figure out just exactly what  
25 they were doing here other than, from your testimony, Deb, it

1 sounds like they were preparing information and trying to find  
2 out what we knew in an attempt to perhaps thwart our effort or  
3 was it to make it look like they were at least taking care of  
4 those people that we knew about?

5 MS. GREGG: Their initial -- the defense when we  
6 contacted them was that there was a computer hacker that got  
7 into their system and these bills were sent in error and to  
8 ignore them. Ms. Van Bockern asked several times, give us the  
9 name of your computer guy, let us talk to him, let us figure  
10 this out, and then why didn't you call us if you knew that  
11 there was a computer hacker? Why didn't you call and warn?  
12 There are two people you really needed to contact our offices  
13 in South Dakota if it was true that you had a computer hacker,  
14 you know, and this was taking place, the Attorney General's  
15 Office and our office. Why didn't you just make these two  
16 simple phone calls, give us a heads up? He didn't have an  
17 answer. And he just kept saying it was a computer hacker, so  
18 never could provide us with that information.

19 COMMISSIONER HANSON: Did they come up with any names  
20 such as on this list or otherwise that you -- that we did not  
21 already have, that the PUC was not already working on?

22 MS. GREGG: Most of the people, no, we sent out the  
23 press release, which did not have anybody else step forward  
24 really that we hadn't contacted or that they hadn't contacted.  
25 Most of the people that got a bill contacted our office,

1 because a 50-minute phone call kind of was a red flag to them.

2 COMMISSIONER HANSON: What I'm curious about is did  
3 they volunteer the names of any persons who we did not already  
4 have contact with?

5 MS. GREGG: No.

6 COMMISSIONER HANSON: That almost appears that they  
7 were attempting to -- well, I won't try to ascertain what they  
8 were trying to do. Just on the face of what took place, it's  
9 pretty obvious that they knew what they were doing and they  
10 knew what they were doing was wrong. So Mr. Chairman or  
11 perhaps Counsel Smith, if you could help me out a little bit,  
12 is there something that -- I like the analogy of the hammer  
13 hanging over their head as opposed to hitting them on the head.  
14 Is there a method by which we could still have that hammer over  
15 their head so that if they ever were to pursue these types of  
16 activities again, we would then be able to use that hammer,  
17 rather than just go through a suspension process? Or do we  
18 have to then, if we fine them \$40,000 or \$100,000, do we then  
19 at that juncture have to pursue?

20 MR. SMITH: No, we would not have to necessarily  
21 pursue. The statute of limitations for a fine is two years, so  
22 within two years we would have to initiate a case in civil  
23 court to collect on the fine or it would become unenforceable  
24 after that point.

25 COMMISSIONER HANSON: If we made any effort at that

1 juncture, do we have to at least start the process in court or  
2 can we renew the two years or one-year, by sending letters or  
3 things of that nature?

4 MR. SMITH: No, I don't think so. I think we have the  
5 two-year -- if you levy a fine today, at that point in time  
6 that becomes your action on this, and in my own opinion, you  
7 would have to take action in the circuit court within two  
8 years.

9 COMMISSIONER HANSON: And if we started within that  
10 two-year time frame, is there another statute of limitations or  
11 do we just go through the process at that juncture?

12 MR. SMITH: At that point, yeah, the process would be  
13 going into court. You know, there's always a potential  
14 argument you face concerning discharge with bankruptcy.

15 COMMISSIONER HANSON: Uh-huh.

16 MR. SMITH: You know, again, I've been through that  
17 and in the S&S case, of course they didn't show up either, they  
18 defaulted, so it's not like you are thoroughly airing the case  
19 or whatever, but the judge did buy the fact that this was  
20 subject to one of the exemptions from discharge.

21 COMMISSIONER HANSON: And that is very likely what  
22 would take place here. However, at least we would have some  
23 type of hammer as opposed to --

24 MR. SMITH: Right.

25 COMMISSIONER HANSON: Mr. Chairman, I'm just feeling

1 the same discomfort you are just simply saying don't do it  
2 again and if you do it again and we catch you again, then we  
3 might do something. I struggle with that.

4 CHAIRMAN JOHNSON: It's tough to -- I'm sorry, were  
5 you done?

6 COMMISSIONER HANSON: Go right ahead.

7 CHAIRMAN JOHNSON: What is the penalty for doing  
8 business as a telecommunications provider in this state without  
9 a certificate of authority?

10 MS. VAN BOCKERN: This is Kara Van Bockern for staff.  
11 I believe it is SDCL 49-31-75, a class one misdemeanor and then  
12 I believe there is -- help me out, Mr. Smith, I believe there's  
13 a \$1,000 --

14 MR. SMITH: I think that particular statute might be  
15 just for local exchange certificate. I think the one for --  
16 the other one is in section three, if it's interexchange, which  
17 this guy, his kind of activities would be. I think there's  
18 where you come up against, too, is what he's doing here, it's  
19 possible he didn't provide any telecommunications service.  
20 His --

21 CHAIRMAN JOHNSON: You get into overcharging and not  
22 providing than you do --

23 MR. SMITH: He just billed, and I think, you know,  
24 normally, I mean, with somebody operating here without a COA,  
25 you know, usually I think -- usually what's always happened is

1 just running them in and making them get one. I was going to  
2 look at section three.

3 CHAIRMAN JOHNSON: I'm just trying to -- it seems to  
4 me that if -- the reason I'm uncomfortable with suspension is  
5 that it seems as though that is what we want our hammer over  
6 their head to be in case they come to South Dakota and do this  
7 again. I just sort of feel like if they come and do it again  
8 and lack of COA isn't an issue, it would be another cramming  
9 docket, but it seems to me if they come and do it again, then  
10 they have to pay the -- if you whack somebody with a hammer  
11 once for what they did, they are unlikely to do it a second  
12 time because they know you are going to whack them with a  
13 hammer. That's the deterrent mechanism, not the -- I mean,  
14 frankly, if you hold the hammer over their head, they do it  
15 once and you don't hit them, aren't they that much more likely  
16 to think maybe the second time you also wouldn't hit them?

17 MR. SMITH: It's certainly possible. Again, I think  
18 one of the other issues, it just gets down to the  
19 commissioners. I'm not going to argue you shouldn't impose a  
20 fine today. I'm not. I will tell you there will be  
21 significant, real world practical difficulties in taking that  
22 to the point of actual money.

23 CHAIRMAN JOHNSON: Yeah -- I'm sorry to interrupt, Mr.  
24 Smith. I don't think any of us want to squander the public's  
25 resources. You know, if we get involved in some costly

1 California litigation, I suspect they don't bill out at \$50 an  
2 hour in California, I understand that's not -- I mean, eChurch  
3 isn't paying that, that's going to come from ratepayers, but  
4 it's tough for me to balance that when I don't know how much we  
5 are talking about. Does anybody even have a rough ballpark for  
6 me, like it would cost \$15,000 to do what we want to do in  
7 California court? Anybody?

8 MR. SMITH: I mean, I don't. Usually the thing that's  
9 tough about something like this is where you get into work and  
10 spending money is, first of all, if we were going to deal with  
11 the bankruptcy situation, that's expense and work, but besides  
12 that, I mean, the execution is the next thing and what's costly  
13 there is tracking down of assets, finding somebody's assets and  
14 then taking action to foreclose, to execute and foreclose on  
15 assets. It's a pain in the neck and it's a very localized type  
16 of work. You have to know how things work there.

17 There are firms out there that do that kind of thing.  
18 There's Marc Tobias, who you might have met in your life,  
19 that's what he does for a living, that's what his business is,  
20 is looking for assets for the Citibanks and the Daytons or what  
21 do they call them now, the Retailers Bank and that kind of  
22 thing. I'm not -- I'm not arguing it either way, I'm just  
23 saying there will be practical difficulties in imposing a fine  
24 on a fellow that's in California and I don't have an exact  
25 number and it could vary dramatically.

1 CHAIRMAN JOHNSON: Thanks, Mr. Smith. I have another  
2 question, but Commissioner Hanson, you were in the cue before I  
3 was, and Commissioner Kolbeck, you were in the cue as well.

4 COMMISSIONER KOLBECK: I guess my question is just a  
5 little bit different. According to the brief that was filed on  
6 November 15th of '06, Ms. Van Bockern, you referred to eChurch  
7 claims to have -- it claims to have three active customers in  
8 South Dakota. Could you elaborate? Has that been found to be  
9 not true? Because that would be obviously a blatant disregard  
10 for the COA authority. Have you found those three active  
11 customers?

12 MS. VAN BOCKERN: We have and those involved the -- we  
13 did find three. It was the Wensell Insurance Agency, Spencer  
14 Holloway Insurance and Rich Chevrolet. They were currently  
15 paying on those bills and they since have ceased paying and --

16 MS. GREGG: This is Deb Gregg from staff. Those were  
17 for Internet services that we found under iLab so they were all  
18 referred to the Attorney General's Office to try to get that  
19 money back that they have paid.

20 MS. VAN BOCKERN: And I think this was -- this is Kara  
21 Van Bockern for staff -- initially when the motion was filed,  
22 our facts were confusing and I apologize for that. There's  
23 some discrepancy in what we filed in that initial motion and  
24 what we came to find out after we obtained enough information.  
25 We simply needed to file that brief with the facts we had to

1 move forward on the motion to get the information we needed.  
2 So since that time we have found the 10 consumers that in fact  
3 were billed for telephone services, and they never received any  
4 service so they didn't receive any telecommunications service  
5 of any type, but they were billed for it.

6 COMMISSIONER KOLBECK: Thank you.

7 COMMISSIONER HANSON: I appreciate that. That's  
8 somewhat part of the question that I had for you. Ms. Van  
9 Bockern or Ms. Gregg, if you could explain to me, do we have or  
10 does this individual, rather, have any history with us, with  
11 the state, of similar challenges or problems that you are aware  
12 of?

13 MS. VAN BOCKERN: Nothing that we are aware of, no.

14 COMMISSIONER HANSON: Thank you.

15 COMMISSIONER KOLBECK: Mr. Chairman.

16 CHAIRMAN JOHNSON: Go ahead.

17 COMMISSIONER KOLBECK: I just have one more question.  
18 Has this individual ever tried to get into the state of South  
19 Dakota? Has he ever been denied? Is this something that he's  
20 tried to do, come back later, I couldn't get my COA so I'm just  
21 going to do it this way type of a deal?

22 MS. VAN BOCKERN: Not that we are aware of and it  
23 appears from the research we have done that he intended to be  
24 an Internet supplier and he intended to supply Internet  
25 services and then kind of worked his way into the phone service

1 and found that as an avenue as well, so I think originally his  
2 company was Internet.

3 CHAIRMAN JOHNSON: I understand the challenges that  
4 would come with trying to get some execution in California. I  
5 wonder, would it be possible to put together some multistate  
6 coalition? If a number of states are attempting to whack this  
7 company and these people and if they would have to go through a  
8 similar process, would there be any legal complications to  
9 that?

10 MR. SMITH: These guys can probably address that  
11 better than me. Yes, there are, those do happen, they call  
12 them multistates and they do that. We have got another case  
13 pending where I know there is one of those in progress  
14 involving one of the other companies, whose name I won't name,  
15 and yes, that happens. It wasn't totally clear from what I did  
16 just doing a little digging around on my own, I couldn't really  
17 tell whether they were targeting certain areas or whether this  
18 was a ubiquitous nationwide kind of thing. The state that I  
19 know that's been really active and it's levied very large  
20 penalties against them is Wisconsin, and maybe you guys can  
21 explain a little more about that.

22 MS. VAN BOCKERN: This is Kara Van Bockern. It  
23 appears that most states Attorney General's Offices are those  
24 that have sought the large fines and that are currently  
25 proceeding against them. We did contact our Attorney General's

1 Office and they didn't have anything pending in their office  
2 and it didn't appear, and this was back in October, that they  
3 intended to pursue anything against this company. That doesn't  
4 mean things haven't changed in their office and I have not  
5 communicated with them recently.

6 In Iowa, in 2003, the department, the utilities board  
7 did levy a civil fine and that is no longer pending. It  
8 happened back in 2003. So that's the only utilities board or  
9 utilities commission that I'm aware of that's proceeded against  
10 them. The rest have all been Attorney General's Offices.

11 CHAIRMAN JOHNSON: Certainly we could be part of a  
12 multistate coalition with Attorney General's Offices as well.

13 MS. VAN BOCKERN: I don't know how that works, I  
14 apologize.

15 CHAIRMAN JOHNSON: I guess I probably should have  
16 prefaced my question, certainly, but it seems to me a single  
17 attorney might be able to be hired in California to handle a  
18 number of these different claims. Ms. Van Bockern, if the  
19 commission were to levy a fine today and not suspend it and if  
20 down the road you, Ms. Gregg, and others were to determine that  
21 it would be too costly to pursue that, would you be able to  
22 bring forth a motion to suspend the fine at that time?

23 MS. VAN BOCKERN: Procedurally I would think that  
24 would be appropriate and that would be great and I would  
25 certainly love to investigate with Attorney General's Offices

1 from Wisconsin, South Dakota, wherever it might be, to see if  
2 we could cooperate with them in some way and make it a joint  
3 effort. I would think procedurally, Mr. Smith --

4 MR. SMITH: I think you could. I think it's pending.  
5 It's just a commission order until we take it into the court  
6 and get a judgment, and we can always do that, too, we can go  
7 get a judgment here in South Dakota. Then it's a judgment,  
8 it's got a 20-year statute of limitations once it becomes a  
9 judgment.

10 CHAIRMAN JOHNSON: I, you know, will -- I will echo  
11 the comments of Commissioner Hanson a little bit. It just  
12 seems to me that if we suspend the fine, I don't know that we  
13 are sending the right message. I don't know that that would be  
14 in the long-term public interest. It just seems like it's so  
15 easy to defraud people and it's tough to get caught and once  
16 you do get caught, maybe it's not that difficult to evade  
17 actually having to pay the fines that were assessed against  
18 you.

19 Bankruptcy is a tough thing and I know that it may be  
20 difficult for us to work through that process, but I am very  
21 reticent to suspend the fines. I also am somewhat curious as  
22 to why staff has decided to recommend a \$10,000 fine per  
23 incident as opposed to something higher. I'm not necessarily  
24 interested in getting blood out of a turnip, but it seems like  
25 when people are systematically working to defraud consumers, we

1 should probably -- we should probably have some outrage at  
2 that. Was there a reason 10 was a better number than 20?

3 MS. VAN BOCKERN: Ms. Gregg would say -- she jumped up  
4 and down when I said 10, she really wanted the whole 20. I  
5 just looked at the statute and it said prior offenses, size of  
6 the business charged, compliance history. He hasn't been  
7 before the commission before. This is the first time as we  
8 know it he's been in South Dakota, not that that excuses his  
9 behavior in any way, shape or form. I was just airing on the  
10 side of being conservative. I think definitely he knew what he  
11 was doing when he did it and he made money off South Dakota  
12 residents.

13 CHAIRMAN JOHNSON: Attorneys are always reading the  
14 statutes in an attempt to be reasonable.

15 MR. SMITH: I would say another thing, too, if I  
16 might, just on context. If you were to levy a fine that large,  
17 \$100,000, that's a huge fine, you know. You don't ever see  
18 that in the court system here. It just doesn't happen. You  
19 see jail time and other things and maybe that's -- you offset  
20 that, a few days in jail is worth a hell of a lot of money, but  
21 you know, that's a big, big, big fine.

22 COMMISSIONER KOLBECK: I just had one question. If we  
23 were to, as you say, hang the hammer over their head and then  
24 he does violate, is that something that would be prosecuted in  
25 South Dakota, then, or would we still have to go to California

1 to prosecute him?

2 MS. VAN BOCKERN: Well, he would be in violation of a  
3 commission order if he came back to South Dakota, so we would  
4 get a judgment against him here in South Dakota and then  
5 collecting that judgment would still be difficult.

6 COMMISSIONER KOLBECK: So we wouldn't be any money  
7 ahead either way, if he came back and violated or if we went  
8 after him?

9 MR. SMITH: At some point, too, I think if you began  
10 to see this -- if you saw this happen again, at some point you  
11 have to look at this and say it's criminal conduct, that it's  
12 actual larceny. Here I don't think -- the AG's office probably  
13 didn't feel that they had enough to show that and to drag him  
14 in here and getting extradition on something like this is hard,  
15 you know, but I think if you saw something like -- if this  
16 happened again with this same guy, at some point you have  
17 enough of a pattern to where I think you look at this -- if  
18 this is what we think it might be at worst, there's a word for  
19 that. That's called stealing, you know, and you go to jail for  
20 that.

21 COMMISSIONER KOLBECK: I was more after if we suspend  
22 the fine and then he violates, do we prosecute him in South  
23 Dakota? If we impose the fine, we know we have to go to  
24 California.

25 MS. VAN BOCKERN: I guess from my perspective, the

1 main goal I guess with the suspension would be that he never  
2 come back to South Dakota again, and that might not be as  
3 effective as actually fining him now. As Mr. Chairman  
4 articulated, if you violate our rules, you are going to be  
5 punished now and you will the next time, too, and maybe that's  
6 more to deter him from coming back than the suspension.

7 CHAIRMAN JOHNSON: You know, I understand, Ms. Van  
8 Bockern, when you mentioned what the statute lays out for  
9 different criteria you can use to determine what an appropriate  
10 penalty is. This kind of -- this kind of business model is  
11 among I think the most insidious. You pick an amount of money  
12 big enough to where you can make a lot of cash but small enough  
13 that hopefully some businesses will ignore it for months or  
14 years at a time. You prey upon small businesses that can't  
15 afford to have a large accounting staff to catch these things.  
16 It just seems like it's tailor made to rip people off, and  
17 could it have been worse? Yeah, I suppose, they could have  
18 milked a few more people for 50 bucks a shot. But I think it's  
19 pretty bad.

20 You mentioned that the statute also talked about prior  
21 conduct. This is a company that in 2003 the Iowa Utilities  
22 Board was taking action against and then they wait a little  
23 while and decide they are going to pop over to another prairie  
24 state and see if they can make a couple \$50 shots over here.  
25 And you know, General Counsel Smith is right, \$100,000 is a lot

1 of money, it just doesn't seem like it's anywhere near enough,  
2 and so I hope -- I hope they don't ever do this again and I  
3 hope we will be able to, without spending too much ratepayer  
4 money, be able to actually get some satisfaction in being able  
5 to have these guys pay for what they have done. With that, I  
6 would move that the commission fine \$15,000 per incident at 10  
7 incidents for \$150,000. Hearing no second --

8 COMMISSIONER KOLBECK: I second it.

9 CHAIRMAN JOHNSON: Perhaps I was not Draconian enough  
10 for my colleagues, a lot of hesitation there.

11 COMMISSIONER HANSON: I'll only make a comment and I'm  
12 not in any way intending to reflect upon my esteemed  
13 colleague's judicial abilities here. I'm just thinking that --  
14 I was thinking perhaps \$5,000, and recognizing that it's  
15 already passed, \$100,000 is a lot of money. What he did was  
16 certainly wrong and I'm just trying to weigh it within the  
17 respects of the degree of criminality. It's always difficult,  
18 that's always -- \$50,000 is a heck of a lot of money to pay.  
19 \$100,000 is -- I would probably spend, be willing to spend a  
20 couple months in jail rather than pay \$100,000. But I will,  
21 with those words, that I think we have hit him in the head with  
22 a hammer and we are holding the hammer above his head, I will  
23 actually concur with the statement, with the motion, but with  
24 the statement that I think we have leveled a pretty healthy  
25 fine. And perhaps the message here is anyone who does this in

1 the future, perhaps it's even a stronger message from that  
2 respect, that it's probably best you stay in Iowa and don't  
3 come to South Dakota.

4 CHAIRMAN JOHNSON: This is probably as good a time to  
5 bring it up as any, and I think you had some persuasive  
6 comments, Commissioner Hanson. I wonder if we shouldn't change  
7 our standard operating procedure, not to motion, second and  
8 concur, but to have someone make a motion and then be able to  
9 discuss that without a second, so that we are able to -- in  
10 typical parliamentary procedure, you can't debate a motion  
11 until it's been seconded. Well, from a practical standpoint,  
12 with a three-member board. It's passed at that point. So  
13 perhaps make a motion and after discussion we can take a quick  
14 roll call vote and somebody could make a motion for discussion  
15 purposes that they wouldn't even end up supporting three  
16 minutes later. If that is okay with you guys, on a go forward  
17 basis we could make that our standard operating procedure.

18 COMMISSIONER KOLBECK: I agree, because as Mr. Hanson  
19 said, Commissioner Hanson, he wanted to go a little bit less,  
20 and I guess my opinion on that would be, well, if you are going  
21 to go to California and sue the guy, you might as well make it  
22 worth your while. So that would be -- that is the type of  
23 dialogue that would be nice before a motion and a second, I  
24 guess, so I would agree with you, Commissioner Hanson, or  
25 Commissioner Johnson, and Commissioner Hanson, I agree.

1           COMMISSIONER HANSON: I very much appreciate that  
2 comment. Commissioner Kolbeck and I were both to an extent  
3 born and bred in that avenue and Commissioner Kolbeck having  
4 just come from the local government and I came from the local  
5 government just prior to this and very accustomed to having a  
6 motion made, having the opportunity to discuss it, and that's  
7 one of the challenges here, certainly, the three of us don't  
8 want to go off and violate any of the laws of South Dakota by  
9 discussing the issues away from the table here. And so it  
10 gives us that opportunity, I think, to at least have that  
11 discussion when a motion is made. I very much appreciate that  
12 suggestion and think it would be a welcome change here.

13           CHAIRMAN JOHNSON: Well, from a parliamentary  
14 procedure standpoint, a second is generally required to make  
15 sure that a motion is not ridiculous or unnecessary and the  
16 three of us would never make such a motion so a second would be  
17 unnecessary to begin with. All right, then, is there any -- I  
18 would like to thank -- it is evident that this was a tremendous  
19 amount of work in calling and following up, both with eChurch  
20 and with Mr. Persson and with the folks that were charged that  
21 \$50, so certainly our appreciation to staff for all of their  
22 hard work. Is there any other business to come before the  
23 commission? Hearing none, we will stand adjourned.

24           (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH DAKOTA        )  
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COUNTY OF HUGHES            )

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, did transcribe from an Internet recording the preceding pages, 1 through 32, inclusive, and the transcript is of the audible portions of the recording.

Dated this the 22nd day of March 2007.

  
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Carla A. Bachand, RMR, CRR  
Freelance Court Reporter