

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

IN THE MATTER OF THE COMPLAINT FILED	)	ORDER GRANTING MOTION
BY BLACK HILLS FIBERCOM, L.L.C., RAPID	)	TO DISMISS; ORDER
CITY, SOUTH DAKOTA, AGAINST QWEST	)	DISMISSING BLACK HILLS'
CORPORATION REGARDING INTRASTATE	)	AMENDED COMPLAINT AND
SWITCHED ACCESS CHARGES APPLIED TO	)	QWEST'S COUNTERCLAIM;
ISP-BOUND CALLS WHICH COMPLAINANT	)	ORDER REVOKING THE
CLAIMS ARE INTERSTATE IN NATURE	)	COMMISSION'S AMENDED
	)	INTERIM FINAL DECISION
	)	AND ORDER AND CLOSING
	)	DOCKET
	)	CT03-154

On October 29, 2003, the Public Utilities Commission (Commission) received a complaint filed by Black Hills FiberCom, L.L.C., Rapid City, South Dakota (FiberCom), against Qwest Corporation (Qwest) regarding intrastate switched access charges applied to ISP-Bound calls which Complainant claims are interstate in nature. On November 18, 2003, the Commission received an Answer and Counterclaim from Qwest. On December 9, 2003, the Commission received a Reply to Qwest's Counterclaim from FiberCom. On January 16, 2004, the Commission received a Stipulated Agreement to Scheduling Order from the parties. On January 20, 2004, the Commission voted to approve the Stipulated Agreement to Scheduling Order subject to Staff confirmation of the availability of hearing dates. On February 12, 2004, a telephonic pre-hearing conference was held among the parties and the Commission's Counsel. On March 19, 2004, the Commission issued an Order for and Notice of Procedural Scheduling and Hearing. On April 19, 2004, the Commission received a Motion to Amend Complaint from FiberCom. The hearing was held as scheduled on April 27, 2004.

On June 14, 2004, the Commission received a Conditional Motion to Dismiss for Lack of Subject Matter Jurisdiction from Qwest. FiberCom responded to Qwest's Conditional Motion to Dismiss in its Initial Appellate Brief filed on June 29, 2004. On July 29, 2004, the Commission received a Motion to Permit Post-Hearing Affidavit from Qwest and Proposed Findings of Fact and Conclusions of Law from both parties. On August 10, 2004, the Commission received a Response to Motion to Permit Post-Hearing Affidavit from FiberCom. On August 16, 2004, the Commission received a Reply in Support of Motion to Permit Post-Hearing Affidavit from Qwest. On August 17, 2004, at its regular meeting, the Commission voted to deny Qwest's Motion to Permit Post-Hearing Affidavit. Post-Hearing Briefs were submitted by both parties, and on August 31, 2004, the Commission heard oral argument. The Commission deferred rendering a decision to enable the parties to address an additional case not cited by the parties. Following oral argument, additional supplemental briefs were submitted by the parties to address the U.S. District Court's decision in *Global NAPS v. Verizon New England Inc.*, 2004 WL 1682973 (D.Vt.), the Texas Public Utility Commission's decision in *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company*, Docket No. 24015 (Rel. Aug. 16, 2004), and the FCC's decision in *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. §160(c) from Application of the ISP Remand Order*, Order, WC Docket 03-171, FCC 04-241 (Rel. Oct. 18, 2004).

The Conditional Motion to Dismiss, Complaint and Counterclaim were scheduled for decision on December 14, 2004, but were deferred for decision until December 28, 2004, at the Commission's regular meeting. On December 28, 2004, the Commission voted unanimously to deny Qwest's Conditional Motion to Dismiss, to find for Qwest in part and for FiberCom in part on FiberCom's Amended Complaint and to deny Qwest's Counterclaim. On February 24, 2005, the Commission issued a Final Decision and Order, Notice of Entry. On March 14, 2005, the Commission issued an Amended Interim Decision and Order and an Order Clarifying and Amending Order.

On May 26, 2005, the Commission received a Joint Notice of Settlement and Motion to Dismiss signed by the parties.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-11, 49-31-18, 49-31-19 and 49-31-76, and ARSD Chapters 20:10:01, 20:10:24, 20:10:27, 20:10:28, 20:10:29 and 20:10:32.

At its regularly scheduled meeting on June 14, 2005, the Commission considered this matter. The Commission voted unanimously to grant the Motion to Dismiss, to dismiss Black Hills' Amended Complaint and Qwest's Counterclaim with prejudice, to revoke the Commission's Amended Interim Decision and Order issued March 14, 2005, and to close the docket. It is therefore

ORDERED, that the Motion to Dismiss is granted, Black Hills' Amended Complaint and Qwest's Counterclaim are dismissed with prejudice, the Commission's Amended Interim Decision and Order is revoked and the docket is closed.

Dated at Pierre, South Dakota, this 28th day of June, 2005.

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>Belaine Kalbo</u>
Date:	<u>6/29/05</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Robert K. Sahr
ROBERT K. SAHR, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner