

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

IN THE MATTER OF THE COMPLAINT FILED)	<u>AMENDED</u> ORDER FOR
BY WWC LICENSE LLC AGAINST GOLDEN)	AND NOTICE OF HEARING
WEST TELECOMMUNICATIONS)	
COOPERATIVE, INC., VIVIAN TELEPHONE)	CT05-001
COMPANY, SIOUX VALLEY TELEPHONE)	
COMPANY, UNION TELEPHONE COMPANY,)	
ARMOUR INDEPENDENT TELEPHONE)	
COMPANY, BRIDGEWATER-CANISTOTA)	
INDEPENDENT TELEPHONE COMPANY AND)	
KADOKA TELEPHONE COMPANY)	
REGARDING INTERCARRIER BILLINGS)	

On February 16, 2005, the Public Utilities Commission (Commission) received a complaint filed by WWC License LLC (WWC) against Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company, Sioux Valley Telephone Company, Union Telephone Company, Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Kadoka Telephone Company (Golden West Companies) regarding intercarrier billings.

On February 16, 2005, the complaint was faxed to the Golden West Companies. Pursuant to ARSD 20:10:01:09, the Golden West Companies were notified that they must satisfy the complaint or file an answer in writing with the Commission by March 8, 2005. On March 8, 2005, the Commission received an Answer and Counterclaim of Golden West Companies. On March 29, 2005, the Commission received WWC's Answer to Golden West Companies' Counterclaim. On April 6, 2005, the Commission received a Motion for Partial Summary Judgment and Memorandum in Support of Motion for Partial Summary Judgment from WWC. On May 20, 2005, the Commission received a Memorandum in Response to WWC's Motion for Partial Summary Judgment from the Golden West Companies. On May 23, 2005, the Commission received an Affidavit of Dennis Law from the Golden West Companies.

At its duly noticed May 24, 2005, meeting, the Commission unanimously voted to grant the Motion for Partial Summary Judgment regarding jurisdiction, determining that the Commission does have jurisdiction over this matter pursuant to SDCL Chapters 49-13 and 49-31 and 47 U.S.C. § 252, but to take the matter under advisement, and defer voting regarding WWC's request for immediate payment of undisputed overcharges and WWC's request that the Commission find interest is applicable to any overcharges. At its duly noticed June 14, 2005, meeting, the Commission unanimously voted to deny the Motion for Partial Summary Judgment regarding payment of undisputed overcharges and grant the Motion for Partial Summary Judgment regarding applicability of interest to overcharges. Orders reflecting these rulings were entered on May 26, 2005 and June 28, 2005.

On August 9, 2005, WWC filed a Notification of Question of Constitutionality of SDCL §§ 49-31-109 to 49-31-115 and Notice to Intervene. On August 15, 2005, the Commission received a Motion to Prohibit WWC from Contesting the Accuracy of Data Provided and Motion to Strike Late-Filed Claim; Motion to Compel; Motion to Permit Additional Discovery; Motion to Postpone Hearing; and, Motion to Strike or Dismiss from Golden West Companies. On August 17, 2005, the Commission received a Motion to Bifurcate Complaint and Counterclaim from WWC. On August 18, 2005, the Commission received WWC's Response to the Motions filed by Golden West Companies. On August 18, 2005, the Commission received an Opposition to Motion to Bifurcate Complaint and Counterclaim from Golden West Companies.

At its August 19, 2005, ad hoc meeting, the Commission unanimously voted to grant Golden West's Motion to Strike or Dismiss WWC's claims for double damages and attorney fees concluding that the double damages and attorney fees provisions in SDCL 49-13-14.1 apply only in the case of a suit brought in court and only with respect to claims of the type specified in SDCL 49-13-14.1. This action is reflected in the Order Granting Motion to Strike or Dismiss dated August 26, 2005, striking paragraphs 13 and 14 of the Complaint and the associated prayers for relief 2 and 3.

At its duly noticed August 22, 2005, ad hoc meeting, the Commission considered the remaining motions and voted unanimously (i) to deny Golden West's Motion to Prohibit WWC from Contesting the Accuracy of Data Provided and to Strike Late-Filed Claim and Motion to Compel and WWC's Motion to Bifurcate Complaint and Counterclaim, (ii) to grant Golden West's Motion to Postpone Hearing to permit additional discovery, (iii) to grant Golden West's Motion to Permit Additional Discovery, (iv) to continue the hearing, (v) to order the parties to file amendments to their pleadings to conform them to the evidence disclosed through discovery and to reflect any additional claims or defenses related to the intercarrier billings at issue, and (vi) to require the parties technical experts to confer to attempt to resolve billing data issues. The Order Denying Motions to Prohibit WWC from Contesting the Accuracy of Data Provided, to Strike Late-Filed Claim, to Compel and to Bifurcate Complaint and Counterclaim and Granting Motions to Permit Additional Discovery and to Postpone Hearing was entered on August 26, 2005.

On September 7, 2005, the Commission received an Amended Complaint from WWC. On September 15, 2005, the Commission received an Amended Answer and Amended Counterclaim from Golden West Companies. On September 20, 2005, the Commission received a Petition to Intervene from South Dakota Telecommunications Association (SDTA). On September 23, 2005, the Commission received WWC's Answer to Golden West Companies' Amended Counterclaim. At its regularly scheduled meeting of October 4, 2005, the Commission granted intervention to SDTA.

On January 6, 2006, the Commission received a Joint Motion in Limine from Golden West Companies and SDTA, and a Motion for Partial Summary Judgment from WWC. On January 9, 2006, the Commission received WWC's Motion to Compel Production of Discovery Responses. On January 12, 2006, the Commission received WWC's Brief in Response to Joint Motion in Limine. On January 13, 2006, the Commission received Golden West Companies' Brief in Opposition to WWC's Motion for Partial Summary Judgment. On January 27, 2006, the Commission received a Joint Motion for Continuance of Hearing from Golden West Companies and SDTA.

At its ad hoc meeting of January 27, 2006, the Commission considered the Motion to Continue, Motion to Compel, Motion in Limine and Motion for Partial Summary Judgment. At the hearing, WWC stated that the Motion to Compel had been resolved, and the Commission accordingly took no action on the Motion to Compel. The Commission unanimously voted to grant the Motion to Continue and Motion in Limine and voted two to one to deny the Motion for Partial Summary Judgment, with Chairman Sahr dissenting.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including §§ 49-13-1 through 49-13-14.1, inclusive, and 49-31, including §§ 49-31-3, 49-31-15, 49-31-18, 49-31-19, 49-31-81, 49-31-89 and 49-31-109 through 49-31-114, inclusive, and 47 U.S.C. §§ 251 and 252.

A hearing will be held on the unresolved issues raised by the Amended Complaint, Amended Counterclaim and the answers, motions and notices of the parties beginning at 9:30 A.M. on March 8, 2006, and continuing at 8:30 A.M. on March 9 -10, 2006, in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The parties are requested to arrive at the hearing room approximately one-half hour early to mark exhibits and make exhibit handling arrangements with the reporter.

The issues to be addressed at the hearing are those issues raised by the Amended Complaint, the Amended Answer and Counterclaim, the Answer to Amended Counterclaim, the Petition to Intervene and the other pleadings filed by the parties that have not been ruled on previously by the Commission. As a general proposition, this proceeding will address and resolve all intercarrier billing issues between WWC and the Golden West Companies over the period of the ICA, i.e. January 1, 2003 through December 31, 2005. The

following is a recitation of specific issues that the Commission believes have been raised and not yet resolved in this matter, but such recitation may not be exhaustive, particularly since the Commission has not been privy to discovery among the parties. The parties shall have the right at the hearing to address such issues as may be demonstrated to be within the scope of this proceeding as defined by the pleadings, the prior rulings of the Commission and admissible evidence as disclosed by discovery. The issues to be addressed at the hearing include:

Amended Complaint

1. Whether the Reciprocal Interconnection, Transport and Termination Agreement (ICA) between WWC and the Golden West Companies established the price that Golden West Companies could charge WWC for call termination from and after January 1, 2003, the agreed effective date of the ICA?
2. Did the Golden West Companies charge WWC for call termination in excess of what the ICA allowed, and if so, what is the amount of the overcharges?
 - a. Were some or all of the overcharges otherwise due to WWC remedied through credits against subsequent billings by the Golden West Companies, and if so, what is the amount that has been so remedied?
3. Did the Golden West Companies charge WWC intrastate access charges?
 - a. Were such intrastate access charges in violation of the ICA or state or federal law?
4. May the Commission rule on the constitutionality of SDCL §§ 49-31-109 through 49-31-115?
 - a. If so, are these statutes unconstitutional?
5. Did Golden West Telecommunications collect transiting charges from WWC?
 - a. If so, were such charges in violation of the ICA or applicable law?
6. Does the applicable statute of limitations or the two-year limitation on claims in Section 10 of the ICA either bar WWC's claims or limit their reach?
 - a. What is "the date of occurrence which gives rise to the dispute" or disputes under Section 10 of the ICA?
 - b. Is this "an action brought to recover a balance due upon a mutual, open and current account where there have been reciprocal demands between the parties" within the meaning of SDCL 15-2-4?
7. Did WWC commit such breaches of the ICA that it should be "estopped" from bringing its Complaint against the Golden West Companies?
8. Do the circumstances of the ICA negotiation and/or the Commission's approval process provide a basis for the Commission to not apply the ICA's termination rates back to January 1, 2003?
9. What is the interest due on the damages, if any, ~~determined to be~~ due to WWC?
10. Whether the Commission should order that the damages due to WWC, if any, and interest thereon be immediately paid to WWC?
 - a. May the Commission lawfully order that the award be satisfied by an alternative mechanism such as credits against future billings?

- b. If the Commission determines that it may legally do so, should the Commission, as a matter of policy as applied to the facts of this case, permit the Golden West Companies to satisfy the damages awarded to WWC through an alternative mechanism such as credits against future billings?

Amended Counterclaim

1. What is the approval date of Sioux Valley Telephone Company's ICA?
2. Is the parties' covenant in Section 7.2.3 of the ICA to "proceed in good faith toward the development of a method of traffic study that will provide a reasonable measurement of terminated InterMTA traffic" an enforceable contract term or is it an unenforceable agreement to agree.

~~a. If the covenant in Section 7.2.3 of the ICA to "proceed in good faith toward the development of a method of traffic study that will provide a reasonable measurement of terminated InterMTA traffic" is enforceable, did WWC breach such covenant?~~

~~b. If so, when did this breach occur?~~

~~c. If so, were the Golden West Companies damaged by such breach and in what amount?~~

~~d. If not, is the applicable interMTA factor the "initial" three percent factor set forth in Section 7.2.3?~~

~~e. If not, what is the appropriate method for computing interMTA minutes?~~

a. If the covenant in Section 7.2.3 of the ICA is enforceable, did WWC breach such covenant?

(1) If so, when did this breach occur?

(2) If so, were the Golden West Companies damaged by such breach and in what amount?

b. If the covenant in Section 7.2.3 is not enforceable, is the applicable interMTA factor for the entire contract term the "initial" three percent factor set forth in Section 7.2.3?

(1) If not, what is the appropriate method for computing interMTA minutes?

c. If the covenant to proceed in good faith in Section 7.2.3 is not enforceable, is the entire section unenforceable?

(1) If so, may Golden West Companies nevertheless bill for interMTA minutes?

(2) If so, how should interMTA minutes be computed?

3. Do the specific terms of the ICA regarding establishing the percent interMTA traffic as between WWC and the Golden West Companies affect the requirement of SDCL 49-31-110 that an originating carrier must provide accurate and verifiable information sufficient to permit the terminating carrier to determine the percentage of local and nonlocal traffic?

a. Is this determination affected by whether Section 7.2.3 is an enforceable covenant?

b. If the ICA does not preempt SDCL 49-31-110 et seq., did WWC provide accurate and verifiable information sufficient to permit the Golden West Companies to determine the percentage of local and nonlocal traffic?

- c. If not, when did such omission(s) occur?
 - d. If not, are the Golden West Companies entitled to damages under SDCL 49-31-110 et seq. as a consequence of such violation(s) and in what amounts?
4. If damages are awarded to the Golden West Companies, what interest is due on such damages?
5. Does the Commission have authority to award costs and/or disbursements to the Golden West Companies? If so, what are these amounts?

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All persons testifying will be subject to cross-examination by the parties. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights may be forfeited if not exercised at the hearing. If a party or its representative fails 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 will determine the issues raised by the parties' pleadings in the case and order any appropriate relief. 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 hearing shall be held at the time and place specified above on the issues as stated above.

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 7th day of March, 2006.

<p>CERTIFICATE OF SERVICE</p> <p>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.</p> <p>By: <u><i>Almaire Kalbo</i></u></p> <p>Date: <u>3/7/06</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

/S/ ROBERT K. SAHR

ROBERT K. SAHR, Chairman

/S/ DUSTIN M. JOHNSON

DUSTIN M. JOHNSON, Commissioner

/S/ GARY HANSON

GARY HANSON, Commissioner