

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

<b>IN THE MATTER OF THE FILING BY U S WEST )</b>	<b>FINDINGS OF FACT,</b>
<b>COMMUNICATIONS, INC. REGARDING )</b>	<b>CONCLUSIONS OF LAW,</b>
<b>TELECOMMUNICATIONS COMPANY )</b>	<b>ORDER AND NOTICE OF</b>
<b>CERTIFICATION )</b>	<b>ENTRY OF ORDER</b>
<b>)</b>	<b>TC96-105</b>

On June 20, 1996, the Public Utilities Commission (Commission) received a complaint from U S WEST Communications, Inc. (U S WEST), concerning the establishment of the EdNet by the Sioux Falls School District. Sioux Falls Cable is the provider of the EdNet. U S WEST maintains that the provision of this service constitutes a telecommunications service. SDCL 49-31-3 and Commission rules require providers of telecommunications services to be certified. U S WEST requested the Commission investigate the matter and determine if Sioux Falls Cable must acquire a Certificate of Authority. At its regularly scheduled meeting of August 13, 1996, the Commission voted to investigate this matter to determine if Sioux Falls Cable is subject to the certification requirements of the Commission.

On December 9, 1996, at its regularly scheduled meeting, the Commission directed the Executive Director to set a procedural schedule. The Commission granted Baltic Telecom Cooperative, Inc.'s (Baltic Telecom's) Petition to Intervene at its regularly scheduled April 28, 1997, meeting. The parties and Commission staff stipulated to the facts and filed two Stipulations of fact with the Commission. Further, the parties and Commission agreed to a briefing schedule wherein the parties and Commission staff submitted their arguments and authorities to the Commission for its consideration. Initial briefs were due June 9, 1997, and reply briefs were due July 3, 1997.

At its September 9, 1997, meeting, the Commission considered this matter. The Commission found that Sioux Falls Cable is operating as a telecommunications company within the state of South Dakota. (Commissioner Schoenfelder, dissenting.)

The Commission accepts the parties stipulated facts pursuant to ARSD 20:10:01:19. Thus, the Commission's Findings of Fact consist of the facts stipulated to by the parties.

**STIPULATED FINDINGS OF FACT**

1

On or about June 20, 1996, U S WEST filed a complaint with the South Dakota Public Utilities Commission alleging that Sioux Falls Cable was providing a telecommunications service and as such should have a Certificate of Authority to do so.

## II

Sioux Falls Cable Television is a cable television provider in Sioux Falls, South Dakota.

## III

Sioux Falls School District Number 49-5 ("District") solicited bids for computer equipment and a network, the bid letting for which was scheduled November 14, 1995. The computer equipment was to be used as part of an electronic data network within the District and was named EdNet.

## IV

The District awarded the bid for the equipment to Sioux Falls Cable Television.

## V

Sioux Falls Cable Television installed EdNet within the District pursuant to its bid and the contract issued in accordance with the bid.

## VI

EdNet includes a system of fiber optic or coaxial cables which link most, if not all, District buildings and facilities. The fiber optic or coaxial cable system is owned by Sioux Falls Cable but is leased to the District and is capable of transmitting voice, video and data communications on the system.

## VII

EdNet was designed to be used by the District for its internal purposes and, upon its initial installation, was not connected to a local telecommunications carrier at any point.

## VIII

Subsequent to the installation of EdNet, the District has connected EdNet to the Internet via a T1 frame relay provided by U S WEST INTERPRISE. Because of this connection, the District, at any of its buildings and facilities, will be receiving and sending electronic mail using this Internet connection.

## IX

Use of the EdNet system is limited to the members of the Sioux Falls school system and students while they are in attendance at school. The system is not open to members

of the general public who are not either members of the administration, teachers or students in school.

X

EdNet is not used by the District for voice communication.

XI

The server for Internet message communications is not a part of the EdNet system.

XII

On April 28, 1997, the Commission granted Baltic Telecom's Petition to Intervene in this docket.

XIII

All the parties, except Baltic Telecom, and the staff of the Commission entered into a stipulation as to the facts to be considered by the Commission in this docket. That stipulation is accepted and incorporated by reference herein by the parties and the staff of the Commission; this stipulation is intended to supplement those facts.

XIV

Baltic Telecom is a telecommunications company serving its cooperative members with, among other services, voice, video and data communications in its local exchange area as a telephone local exchange carrier.

XV

Parts of rural Crooks and Renner, South Dakota, are included in the Baltic Telecom service area.

XVI

The District operates a school located in Baltic Telecom's Crooks service area, known as the Renberg School, located at 47260 258 Street, Renner, South Dakota 57055. Telecommunications services are provided to this school by Baltic Telecom. These services included data transmission through a voice grade data circuit (commonly known as a dedicated line) connecting the Renberg School with computer systems of the District located outside the school.

## XVII

The Renberg School is currently connected to the EdNet with fiber optic and coaxial cables and equipment installed and owned by Sioux Falls Cable Television pursuant to a lease agreement with the District.

## XVIII

Subsequent to the connection of the Renberg School to the EdNet, the voice grade data circuit previously provisioned by Baltic Telecom for the Renberg School was ordered disconnected by the Renberg School as unnecessary.

## XIX

Renberg School sends and receives data transmissions to and from other buildings owned by the District through the EdNet utilizing equipment owned by Sioux Falls Cable Television.

## XX

Prior to the installation and use of the EdNet, data transmissions to and from Renberg School to other District buildings were accomplished through telephone lines owned by Baltic Telecom.

## CONCLUSIONS OF LAW

### I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 49-13 and 49-31.

### II

Pursuant to SDCL 49-31-1(9), a telecommunications company is defined as "any person, trustee, lessee or receiver owning, operating, managing or controlling in whole or in part, any telecommunications line, system or exchange in this state, directly or indirectly, for public use. All telecommunications companies are common carriers."

### III

Pursuant to SDCL 49-31-1(10), a telecommunications service is defined as "the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves, electromagnetic means or other similar means. It does not include the provision of terminal equipment used to originate

or terminate such service, broadcast transmissions by radio, television and satellite stations regulated by the federal communications commission and one-way cable television service[.]”

#### IV

Sioux Falls Cable installed what is referred to as the "EdNet" for the Sioux Falls School District. (Finding of Fact V.) The EdNet consists of "a system of fiber optic or coaxial cables which link most, if not all, District buildings and facilities. The fiber optic or coaxial cable system is owned by Sioux Falls Cable but is leased to the District and is capable of transmitting voice, video and data communications on the system." (Finding of Fact VI.) The Commission finds that the services provided by EdNet are telecommunications services as defined by SDCL 49-31-3(10) because the EdNet transmits signs, signals, writings, images, messages, and data by wire.

#### V

Sioux Falls Cable is not using this system for its own private purposes but is instead leasing it to the District. Contrary to the arguments made by Sioux Falls Cable, there is no statutory requirement that a telecommunications system be open to the public at large. The requirement is that it be "for public use." Use by the Sioux Falls School System, which includes members of the Sioux Falls school system and students, constitutes public use. The Commission finds that Sioux Falls Cable owns a telecommunications system which it leases for public use i.e. to the District. Thus, Sioux Falls Cable owns a telecommunications system that is used by the public, as that term is used in SDCL 49-31-1(9).

#### VI

The Commission finds that Sioux Falls Cable meets the definition of a telecommunications company as defined by SDCL 49-31-1(9).

#### VII

The fact that this system is connected to the Internet lends additional support to the Commission's finding that Sioux Falls Cable is a telecommunications company. The EdNet's connection to the Internet provides the staff and students of the Sioux Falls School District with access to anyone who is connected to the Internet.

#### VIII

As a telecommunications company, Sioux Falls Cable is required by SDCL 49-31-3 to apply for a Certificate of Authority.

It is therefore

ORDERED, that Sioux Falls Cable, as a telecommunications company, shall file an application for a Certificate of Authority with the Commission.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 10<sup>th</sup> day of October, 1997. 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 10<sup>th</sup> day of October, 1997.

<b>CERTIFICATE OF SERVICE</b>	
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>Debra K. Kelso</i></u>
Date:	<u>10/10/97</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

*James A. Burg*  
JAMES A. BURG, Chairman

*Pam Nelson*  
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner  
dissenting