

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

IN THE MATTER OF THE APPLICATION OF )	FINAL ORDER AND
PAM OIL, INC., D.B.A. PAM )	DECISION GRANTING A
COMMUNICATIONS FOR A CERTIFICATE OF )	CERTIFICATE OF
AUTHORITY TO PROVIDE LOCAL EXCHANGE )	AUTHORITY; NOTICE OF
ACCESS AND EXCHANGE ACCESS )	ENTRY OF ORDER
SERVICES )	TC96-175

On October 8, 1996, the South Dakota Public Utilities Commission (Commission) received an application from PAM Oil, Inc., d.b.a. PAM Communications (PAM) for a Certificate of Authority to provide telecommunications services within the state of South Dakota, including local exchange services, intraLATA services, and as applicable, interLATA services.

On October 10, 1996, the Commission electronically transmitted notice of the filing and the intervention deadline of October 26, 1996, to interested individuals and entities. Intervention in this docket was granted to the South Dakota Independent Telephone Coalition, Inc. (SDITC), and Dakota Cooperative Telecommunications, Inc. (DCT). SDITC later withdrew its intervention on December 3, 1996.

By Order dated October 29, 1996, the Commission set the hearing to follow the completion of the hearing in TC96-163 for December 5, 1996, in Room 423 of the State Capitol, Pierre, South Dakota. The hearing was held on that date as scheduled. At its December 9, 1996, meeting, the Commission unanimously approved PAM's request for a Certificate of Authority.

The Commission having reviewed the evidence of record and being fully informed in the matter makes the following Findings of Fact and Conclusions of Law:

## FINDINGS OF FACT

### I

On October 8, 1996, PAM applied for a Certificate of Authority to operate as a telecommunications company in South Dakota to provide telecommunications services, including local exchange services, intraLATA services, and as applicable, interLATA services. Exhibit 1 at page 1.

### II

PAM has shown that it has sufficient financial capabilities to provide telecommunications services, including local exchange services. PAM's financial information, filed as confidential, demonstrates its financial capabilities to provide telecommunications services within the state. Harlan Best, testifying on behalf of the Commission Staff, stated that the financial information provided by PAM Oil, Inc. showed that the company was operating in a positive financial position. Exhibit 3, Testimony of Harlan Best at page 4, lines 7 through 9.

### III

PAM has shown that it has sufficient management capabilities to offer telecommunications services, including local exchange services. Exhibit 2, Testimony of Scott Scofield at page 5, beginning at line 16 to page 6, line 7.

#### IV

PAM has shown that it has sufficient technical capabilities to provide telecommunications services, including local exchange services. Exhibit 2, Testimony of Scott Scofield at page 4, beginning at line 4 to page 5, line 15.

#### V

Harlan Best, testifying on behalf of the Commission Staff, recommended that PAM be granted a Certificate of Authority to provide telecommunications services. Exhibit 3, Testimony of Harlan Best at page 10, lines 4 through 8.

#### VI

Pursuant to the federal Telecommunications Act of 1996, PAM and U S WEST have reached a negotiated agreement which would allow PAM to provide local exchange service on a resale basis. Exhibit 2, Testimony of Scott Scofield at page 3, lines 4 to 11.

#### VII

The Commission finds that PAM has not fully complied with subparagraphs (7), (8), and (12) pursuant to ARSD 20:10:24:02. However, pursuant to its authority under that rule, the Commission finds good cause to waive compliance with these subparagraphs because some of the information required is dependent on the outcome of negotiations or arbitrations between PAM and incumbent local exchange carriers.

#### VIII

Commission Staff, through its witness Harlan Best, requested that the Commission establish anti-slamming requirements, with the loss of the applicant's Certificate of Authority if too many slamming complaints were received. Exhibit 3, Testimony of Harlan Best at page 9, beginning at line 9 to page 10, line 3. The Commission declines to adopt the Staff's proposed slamming restrictions. The Commission will decide the slamming issue in Docket TC96-153, In the Matter of the Investigation of Local Competition Issues. This will allow all parties that seek to provide local exchange service the opportunity to comment on the slamming issue.

### CONCLUSIONS OF LAW

#### I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31 and the federal Telecommunications Act of 1996.

#### II

Pursuant to SDCL 49-31-3, the Commission finds that PAM has met its burden of proof in showing that it has sufficient technical, financial, and managerial capabilities to provide local exchange services in the state of South Dakota.

#### III

The Commission grants PAM a statewide Certificate of Authority to provide local exchange services. However, with respect to rural telephone companies, PAM will have to come before the Commission in another proceeding before being able to provide service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for

designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f).

IV

Pursuant to ARSD 20:10:24:02, the Commission finds good cause to waive subparagraphs (7), (8), and (12) because some of the information required by these subparagraphs is dependent on the outcome of negotiations or arbitrations between PAM and incumbent local exchange carriers.

V

The Commission declines to adopt Staff's proposed slamming restrictions. The Commission will consider slamming restrictions in Docket TC96-153, In the Matter of the Investigation of Local Competition Issues.

It is therefore

ORDERED, that PAM's application for a Certificate of Authority to provide telecommunications services, including local exchange services, is granted; and it is

FURTHER ORDERED, that the Commission grants PAM statewide authority, subject to the Commission's restriction with respect to rural telephone companies; and it is

FURTHER ORDERED, that the Commission finds good cause to waive subparagraphs (7), (8), and (12) of ARSD 20:10:24:02.

PLEASE TAKE NOTICE that this Final Decision and Order in Docket TC96-175 was duly entered on the 17<sup>th</sup> day of December, 1996.

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 17<sup>th</sup> day of December, 1996.

<p align="center"><b>CERTIFICATE OF SERVICE</b></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>Alaine Kalbo</u></p> <p>Date: <u>12/19/96</u></p> <p align="center">(OFFICIAL SEAL)</p>
---

BY ORDER OF THE COMMISSION:

Kenneth Stofferahn  
KENNETH STOFFERAHN, Chairman

James A. Burg  
JAMES A. BURG, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner