

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

IN THE MATTER OF SMARTEL)	ORDER FOR AND NOTICE
COMMUNICATIONS, INC'S FAILURE TO)	OF SHOW CAUSE HEARING
SUBMIT A REPORT AND PAY THE GROSS)	
RECEIPTS TAX)	TC98-168

SDCL 49-1A-1 establishes the South Dakota Public Utilities Commission (Commission) Gross Receipts Tax Fund. This fund is financed by assessing a tax of .0015 or \$250, whichever is greater, on the annual intrastate gross receipts received by a utility from the company's customers within the state of South Dakota, and requires that all telecommunications companies submit on June 1, each year, a report of the amount of such gross receipts received during the preceding calendar year and pay the tax. A penalty of 10% of the tax is imposed for each month of delinquency.

Despite reminder letters from the Commission on May 7, 1998, and on July 7, 1998, SmarTel Communications, Inc., has failed to file the required report and pay the gross receipts tax.

Pursuant to SDCL 49-1A-6, the Commission may collect this debt by distress and sale of any personal property of the company within South Dakota. Further, the Commission has the authority, under SDCL 49-31-3, to suspend or revoke the certificate of authority granted to the company; assess a civil fine against the company from \$200 to \$1,000 under SDCL 49-31-38; proceed under SDCL 49-31-38.2 or 49-31-38.3 to stop the company from transacting any future business in South Dakota; or take any other enforcement actions against the company allowed by law.

SmarTel Communications, Inc., shall appear on October 20, 1998, at 1:30 P.M. (CDT) in the Cactus Conference Room, State Capitol Building, Pierre, South Dakota, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A. The hearing is being held pursuant to Commission's jurisdiction over telecommunications companies found at SDCL Chapter 1-26, 49-1A, and 49-31, specifically, 49-1-11(4), 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, 49-31-3, and ARSD 20:10:01:45.

The issue at the hearing is whether the Commission shall fine, or suspend or revoke SmarTel Communications, Inc.'s Certificate of Authority or otherwise institute collection proceedings against SmarTel Communications, Inc., for failure to pay gross receipts tax.

At the hearing representatives of the company may appear in person and may be represented by legal counsel or legal assistant (paralegal) if desired. The hearing shall be an adversary proceeding and the company shall have the burden of proving that none of the above enumerated adverse actions should be taken against it. These and other due process rights shall be deemed waived if not exercised at the hearing. The decision of the

Commission may be appealed to the Circuit Court and the State Supreme Court as provided by law. It is therefore

ORDERED, that a show cause hearing in the matter of SmarTel Communications, Inc., shall be held on October 20, 1998, at 1:30 P.M. (CDT) (or as soon thereafter as the parties can be heard) in the Cactus Conference Room, State Capitol Building, Pierre, South Dakota. And it is

FURTHER ORDERED, that, in the event SmarTel Communications, Inc., shall file an appropriate report and pay the delinquent gross receipts tax, including the 10% penalty for the months of June, July, August, and September, the hearing and actions mentioned herein shall not be held or taken, otherwise this order shall remain in effect.

Dated at Pierre, South Dakota, this 21 day of September, 1998.

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><i>Melanie Kalbo</i></u>
Date:	<u>9/22/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and
Schoenfelder

William Bullard, Jr.
WILLIAM BULLARD, JR.
Executive Director