

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

**IN THE MATTER OF THE CONSIDERATION OF THE
ASSESSMENT OF FINES AND OTHER PENALTIES
AGAINST WESTERN TELECOM**

**ORDERS TO SHOW CAUSE AND
ORDERS TO PRODUCE LISTS OF
CUSTOMERS**

**IN THE MATTER OF THE CONSIDERATION OF THE
ASSESSMENT OF FINES AND OTHER PENALTIES
AGAINST TOUCHTONE COMMUNICATIONS**

TC99-107

At its November 15, 1999, meeting, the Public Utilities Commission (Commission) unanimously voted to issue Orders to Show Cause against Western Telecom and Touchtone Communications as to why Western Telecom and Touchtone Communications should not be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 or assessed civil fines of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive and ARSD Chapter 20:10:34 pursuant to SDCL 49-31-94. The Commission also unanimously voted to order Western Telecom and Touchtone Communications to provide the Commission with a complete list of their current South Dakota subscribers, including the subscribers' billing addresses pursuant to SDCL 49-31-95. Since January 1, 1999, the Commission has received 29 formal and informal complaints against Touchtone Communications and 11 formal and informal complaints against Western Telecom alleging unauthorized billing of services or products.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 49-13 and 49-31, specifically 49-13-1 to 49-13-16, inclusive, 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-38 to 49-31-38.3, inclusive, 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34.

The Commission recites the following in support of its Orders to Show Cause:

1. The Commission has received 11 formal and informal complaints against Western Telecom since January 1, 1999.
2. The formal complaints filed against Western Telecom are as follows:
 - a. *In the Matter of the Complaint filed by Rosella Lee, Arlington, South Dakota, Against Western Telecom Regarding Unauthorized Billing for Services, Docket CT99- 034 (attached as Exhibit 1).* Ms. Lee stated that she was billed for services she did not authorize. This complaint was dismissed and closed when Western Telecom sent Ms. Lee a check to cover the charges billed by Western Telecom;
 - b. *In the Matter of the Complaint Filed by Bryan and Natalie Parks, Rapid City, South Dakota, Against Western Telecom Regarding Unauthorized Billing for Services, Docket CT99-021 (attached as Exhibit 2).* Ms. Parks stated that she had received a call from Western Telecom in May of 1999, concerning long distance services. She stated she was not interested but nonetheless was billed \$39.99 by Western Telecom for a phone card she never received or requested. This complaint was dismissed and closed when Western Telecom sent the Parks a check for the charges placed on their telephone bill;
 - c. *In the Matter of the Complaint filed by Ernst Hamann for Evelyn Weaver, Pierre, South Dakota, Against Western Telecom Regarding Unauthorized Billing for Services, Docket CT99-024 (attached as Exhibit 3).* Mr. Hamann stated that he did not authorize any services from Western Telecom. A hearing was held on this complaint on September 23, 1999. No representatives of Western Telecom appeared. By order dated November 15, 1999, the Commission found Western Telecom had billed Mr. Hamann for unauthorized services and ordered Western Telecom to pay \$153.00 in damages and \$1000.00 pursuant to SDCL 49-31-93.
3. Eight informal complaints have been filed against Western Telecom (attached as Exhibit 4). The complainants

alleged Western Telecom had switched their service without authorization or that they were billed for unauthorized services.

4. The Commission has received 29 formal and informal complaints against Touchtone Communications since January 1, 1999.

5. The formal complaints filed against Touchtone Communications are as follows:

a. *In the Matter of the Complaint Filed by Harry and Margaret Putnam, Rapid City, South Dakota, Against Touchtone Communications Regarding Unauthorized Billing for Services*, Docket CT99-030 (attached as Exhibit 5). The Putnams stated that they did not order any services from Touchtone Communications but received a charge for services on their U S WEST bill. The docket was dismissed and closed after the Putnams were credited for the unauthorized charges by Western Telecom;

b. *In the Matter of the Complaint Filed by Thelma "Sally" Fox, Huron, South Dakota, Against Touchtone Communications Regarding Unauthorized Billing for Services and Lack of a Certificate of Authority*, Docket CT99-009 (attached as Exhibit 6). Ms. Fox stated she was billed for services she did not authorize. The docket was dismissed and closed after Ms. Fox was sent a check for the charges from Western Telecom.

6. Twenty-seven informal complaints have been filed against Touchtone Communications (attached as Exhibit 7). The complainants stated that they had received charges from Touchtone Communications that they did not authorize.

7. Based on information received in the dockets on file with the Commission, there appears to be a close business relationship between Western Telecom and Touchtone Communications. On one bill received by a complainant the following statement is made: "Our Name Has Changed! Touchtone has been purchased by Western Telecom, a division of Tradex International, Inc. Soon you will notice a change in the logo, but the great service and great long distance rates that you expect from Touchtone will remain the same." (Attached as Exhibit 8.) In a letter from Western Telecom received in Docket CT99-021, Western Telecom states that Touchtone Communications is a "product" of Western Telecom. (Attached as Exhibit 9.) In Docket CT99-009, a complaint filed against Touchtone Communications, a copy of a check sent to the complainant states that acceptance of the check will be considered "as full payment for all claims against Western Telecom." (Attached as Exhibit 10.) A letter from Western Telecom states that Western Telecom and Touchtone Communications had a contract relationship that began June 19, 1998, and terminated April 18, 1999. (Attached as Exhibit 11.) In Docket CT99-021, the complainants' June, 1999, telephone bill listed a charge from Western Telecom but a subsequent billing had the logo of Touchtone Communications. (Attached as Exhibit 12.) Given this close relationship between the two companies, the Commission is consolidating these orders to show cause in one docket.

8. The Commission is unaware of any certificate of authorities issued to either Touchtone Communications or Western Telecom.

9. Pursuant to SDCL 49-31-3, the offering of telecommunications services without a certificate of authority is a Class 1 misdemeanor.

10. Pursuant to SDCL 49-31-89, products or services may not be listed on a subscriber's bill unless authorized by the subscriber and the telecommunications company of a subscriber may not be changed without the subscriber's authorization.

11. Pursuant to SDCL 49-31-93, a company that initiates the unauthorized change of a subscriber's telecommunications company or bills for unauthorized products or services shall pay the subscriber \$1000.00.

12. Pursuant to SDCL 49-31-94, the Commission may impose a civil fine of not more than \$20,000.00 for a violation of SDCL 49-31-89 to 49-31-97, inclusive, or any rules promulgated pursuant to those statutes. SDCL 49-31-94 states that "[i]n determining the amount of the penalty upon finding a violation, or the amount of the compromise settlement, the commission shall consider the appropriateness of the penalty to the size of the business of the person charged, prior offenses and compliance history, the good faith of the person charged in attempting to achieve compliance, and such other matters as justice may require."

13. Pursuant to SDCL 49-31-38, the Commission may impose a civil fine of \$200.00 to \$1000.00 for violation of statutes or lawful orders or rules.

14. Pursuant to SDCL 49-31-38.1, the Commission may impose a civil fine of \$500.00 to \$5000.00 for intentional violation of a statute.

15. Pursuant to SDCL 49-31-38.2, a corporation may forfeit all rights and privileges to transact its business within this state if the corporation willfully continues to neglect or refuse to comply with statutes, orders, or rules of the Commission.

16. Pursuant to SDCL 49-31-95, the Commission may require a company to provide the Commission with a complete list of its current subscribers, including the subscribers' billing addresses if the Commission receives more than two complaints within thirty days regarding violations of SDCL 49-31-89. The Commission has received more than two complaints within thirty days against Western Telecom for violations of SDCL 49-31-89. (See attached Exhibit 4.) The Commission has received more than two complaints within thirty days against Touchtone Communications for violations of SDCL 49-31-89. (See attached Exhibit 7.)

NOW THEREFORE, the Commission orders Western Telecom to appear before it on February 1, 2000, beginning at 9:00 a.m., at the Chamber of Commerce Meeting Room, 800 W. Dakota Ave., Pierre, South Dakota, and show cause why Western Telecom shall not be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34 or other penalties.

NOW THEREFORE, the Commission orders Touchtone Communications to appear before it on February 1, 2000, beginning at 9:00 a.m., at the Chamber of Commerce Meeting Room, 800 W. Dakota Ave., Pierre, South Dakota, and show cause why Touchtone Communications shall not be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34 or other penalties.

The Commission also orders Western Telecom and Touchtone Communications to provide the Commission with a complete list of their current South Dakota subscribers, including the subscribers' billing addresses pursuant to SDCL 49-31-95 on or before December 7, 1999.

The issues at the hearing are: a) whether Western Telecom shall be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34 or other penalties; b) whether Touchtone Communications shall be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34 or other penalties. All persons testifying shall be subject to cross examination.

The show cause hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail 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 shall determine: a) whether Western Telecom shall be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34 or other penalties; b) whether Touchtone Communications shall be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34 or other penalties. 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 of a) whether

Western Telecom shall be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34 or other penalties; b) whether Touchtone Communications shall be assessed civil fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 to 49-31-97, inclusive, and ARSD Chapter 20:10:34 or other penalties; and it is

FURTHER ORDERED, that Western Telecom and Touchtone Communications shall provide the Commission with a complete list of their current South Dakota subscribers, including the subscribers' billing addresses pursuant to SDCL 49-31-95 on or before December 7, 1999.

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 _____ day of November, 1999.

<p style="text-align: center;">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: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>	<p>BY ORDER OF THE COMMISSION:</p> <p style="text-align: center;">_____ JAMES A. BURG, Chairman</p> <p style="text-align: center;">_____ PAM NELSON, Commissioner</p> <p style="text-align: center;">_____ LASKA SCHOENFELDER, Commissioner</p>
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