

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

IN THE MATTER OF THE SALE BY U S WEST)	FINDINGS OF FACT AND
COMMUNICATIONS, INC. OF THE SISSETON)	CONCLUSIONS OF LAW;
TELEPHONE EXCHANGE TO VENTURE)	NOTICE OF ENTRY OF
COMMUNICATIONS, INC. AND SULLY)	ORDER
BUTTES TELEPHONE COOPERATIVE, INC.)	TC99-112

On December 2, 1999, U S WEST Communications, Inc. (U S WEST) and Sully Buttes Telephone Cooperative, Inc. (SBTC) and Venture Communications, Inc. (VCI), jointly applied to the South Dakota Public Utilities Commission (Commission) for approval of the sale of U S WEST's Sisseton telephone exchange to VCI/SBTC. The joint application stated that U S WEST and VCI entered into an Agreement for Purchase and Sale of Telephone Exchanges (Purchase Agreement) on July 23, 1999. The application further states that "[p]ursuant to the terms of the Purchase Agreement and subject to the approval of this Commission, U S WEST will transfer to VCI/SBTC all of the physical assets and operations of the Sisseton Exchange. After the transfer, VCI/SBTC will own, operate and manage the Sisseton Exchange."

On December 9, 1999, the Commission electronically transmitted notice of the filing and the intervention deadline of December 23, 1999, to interested individuals and entities. No petitions to intervene or comments were filed. The Commission set a procedural schedule for the filing of testimony and set the hearing for April 10, 2000, at 12:30 P.M. (CST), in the County Commission Meeting Room of the Roberts County Courthouse, 412 E. 3rd Ave., Sisseton, South Dakota. The hearing was held as scheduled. The issue at the hearing was whether the sale by U S WEST of the Sisseton exchange to VCI/SBTC should be approved.

On May 10, 2000, the Commission received a joint application of VCI and U S WEST for waiver of switched access rate rules. In the application, the parties requested that the Commission waive its switched access rules pursuant to ARSD 20:10:27:02 and allow VCI to charge an intrastate switched access rate of \$0.07 for originating traffic and \$0.07 for terminating traffic.

At its May 17, 2000, meeting, the Commission considered this matter. SBTC presented to the Commission copies of its Assignment of Agreement for Purchase and Sale of Telephone Exchanges in which VCI assigned to SBTC all of VCI's interest in the Purchase Agreement entered into between VCI and U S WEST. The Commission voted unanimously to approve the sale of the Sisseton exchange to SBTC with conditions. The Commission further voted to allow U S WEST to retain the gain from the sale for the benefit of its stockholders. The Commission further voted that it does not object to the granting of any required study area waivers by the FCC. The Commission further voted to deny U S WEST's petition to relinquish ETC status as premature. The Commission further voted to waive the switched access rules to allow SBTC to charge an interim rate for twelve months following the sale.

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

1. U S WEST is a Colorado corporation providing local exchange and interexchange telecommunications services in South Dakota. Exhibit 1 at 1.

2. Sully Buttes is a South Dakota telephone cooperative formed in 1952. Sully Buttes currently serves 24 exchanges with 11,000 access lines in central and northeastern South Dakota. Exhibit 5 at 2.

3. VCI is a wholly-owned subsidiary of SBTC. Exhibit 1 at 1.

4. On July 23, 1999, U S WEST and VCI entered into a Purchase Agreement in which U S WEST agreed to sell the Sisseton exchange to VCI subject to Commission approval. *Id.* at 2. On May 17, 2000, VCI assigned its interests in the Purchase Agreement to SBTC. See Assignment of Agreement for Purchase and Sale of Telephone Exchanges, filed May 17, 2000.

5. Larry Toll, U S WEST's South Dakota Vice President, stated that the sale was "in the public interest because Sisseton customers will obtain improvements and new services more quickly from Sully Buttes than they would from USWC." Exhibit 2 at 4. Mr. Toll further stated that SBTC "is well positioned to provide improved service quality because they have personnel and supervision adjacent" to the Sisseton exchange. *Id.*

ADEQUACY OF LOCAL TELEPHONE SERVICE

6. SBTC will have three technicians stationed within 20 miles of Sisseton and customers will be able to use a toll free number to call for repairs or service. Tr. at 20.

7. SBTC will replace the current remote switch with a Nortel stand alone DMS-10 switch. Exhibit 5 at 5. SBTC will also install a fiber optic cable route to Britton, South Dakota to provide a diversified connection to SDN. *Id.* SBTC will provide ISDN, CLASS, ATM, Frame Relay and Voice Mail and will complete a substantial outside plant upgrade. *Id.* at 8.

8. SBTC will work with local schools and health organizations to meet all of their telecommunications needs, including distance learning and tele-medicine. *Id.* at 9.

REASONABLENESS OF RATES

9. SBTC will not change current rates for at least 18 months. Tr. at 63-64.

10. SBTC will not recover any portion of the acquisition adjustment through its regulated interstate or intrastate rates or through federal or state universal service funds. Exhibit 5. at 3.

PUBLIC SAFETY ISSUES

11. The Sisseton exchange does not currently have 911 services. Exhibit 5 at 4. However, SBTC will assist the county in provisioning 911 services if implemented by the county and will provide accurate data for the county's data base. *Id.* SBTC shall be required to provide any existing public safety services.

ABILITY OF BUYER TO PROVIDE SERVICE

12. SBTC is fit, willing, and able to purchase and operate, maintain, and upgrade to the level required by the Commission the facilities of the Sisseton exchange. Exhibit 5 at 2-8.

13. SBTC has the ability to obtain capital and the incentive to invest in the Sisseton exchange. Exhibit 5 at 7-9.

14. SBTC will provide all of the services that U S WEST currently provides, with the exception of local measured service, and will provide new state-of-the-art services. *Id.* at 9. SBTC also stated that it had reviewed each contract and had determined that it could provide the services under the contracts. *Tr.* at 102-104.

15. With respect to local measured service (LMS), SBTC does not have the necessary billing software to offer LMS. Exhibit 6 at 3. However, for current LMS customers, SBTC will continue to charge the same LMS rate but the customers will actually have full service for 18 months. *Id.*

16. SBTC intends to make the Sisseton exchange customers members of the cooperative from the day SBTC begins to operate the exchange. *Tr.* at 27. As cooperative members, the customers will have voting rights and the right to receive capital credits. *Id.*

PROTECTION OF PUBLIC INTEREST

17. SBTC's purchase of the Sisseton exchange is in the public interest of the customers within the exchange for the following reasons:

- a. Quality local service will be maintained, if not improved.
- b. Customer service in the exchange, as provided by SBTC, should be improved.
- c. The customers in the Sisseton exchange should receive better service, and the cost of maintenance and repair should be reduced.
- d. Rates will not increase as a result of the sale for at least 18 months.
- e. SBTC will assist the county in providing 911 services, when requested.
- f. Modern state-of-the-art telecommunications equipment will be used to provide service in the Sisseton exchange.

Exhibit 5 at 2-8.

PAYMENT OF TAXES

18. SBTC estimates that it will pay the same or slightly higher taxes than U S WEST currently pays. *Tr.* at 25. SBTC will pay gross receipts taxes to the school districts. SBTC estimates that it will pay \$50,000.00 to \$60,000.00 in gross receipts taxes which is comparable to the total amount of taxes U S WEST is currently paying. *Tr.* at 25; Exhibit 3 at 2.

SWITCHED ACCESS RATES

19. Following the hearing, U S WEST and VCI filed a Joint Application for Waiver of Switched Access Rate Rules. U S WEST and VCI requested that VCI be allowed to charge an interim switched access rate of \$0.07 for originating traffic and \$0.07 for terminating traffic for twelve

months. Originating switched access rates would have the following rate elements: CCL - \$0.02550; local switching - \$0.01505; local transport - \$0.02945. Terminating switched access rates would have the following rate elements: CCL - \$0.02933; local switching - \$0.01722; local transport - \$0.02345.

20. U S WEST and VCI requested a temporary waiver of the switched access rate rules pursuant to ARSD 20:10:27:02. The Commission finds that it will allow the switched access rates as stated in Finding of Fact 19 for 12 months following the closing date.

GAIN ON SALE

21. U S WEST is expected to have a gain on this sale. Such gain is the difference between the purchase price and the net book value of the sold exchange. U S WEST has required, as a condition of the sale, that the gain be booked to USOA Account 7350. Exhibit 2 at 5.

22. U S WEST requested that any gain be booked by U S WEST utilizing the Federal Communications Commission's (FCC) uniform system of accounts codified in 47 C.F.R. Part 32. Exhibit 1 at 4. Part 32 accounting requires that the loss or gain from the sale of telecommunications assets "with traffic" be booked as an account 7350 event. 47 C.F.R. § 32.2000(d)(5). This account is for nonoperating income or expense, neither of which should be included by the Commission or U S WEST in any ratemaking proceeding.

STUDY AREA WAIVERS

23. In their application, the parties requested that the Commission make a finding that it does not object to the study area waivers which will be filed with the FCC. Exhibit 1 at 3-4. The Commission finds that it has no objection to the FCC granting a study area waiver consistent with the transfer of the Sisseton exchange from U S WEST to SBTC, nor to any reconfiguration of study area boundaries required by the sale of the Sisseton exchange.

PETITION TO RELINQUISH ELIGIBLE TELECOMMUNICATIONS STATUS

24. Along with its prefiled testimony, U S WEST filed a Petition to Relinquish Eligible Telecommunications Carrier Designation. Exhibit 2, attached as Exhibit 1. At the hearing, SBTC clarified that it would file a petition for designation as an eligible telecommunications carrier (ETC) at a later time. Tr. at 66.

25. The Commission denies U S WEST's petition to relinquish ETC status, finding that U S WEST should file that petition after SBTC files for designation as an ETC for the Sisseton exchange.

CONDITIONS OF SALE

26. The Commission shall approve the sale of the Sisseton exchange to SBTC, subject to the following conditions:

- (a) That current service rates not be increased for 18 months from the date SBTC begins to operate the purchased exchange;
- (b) That SBTC shall not recover any of its acquisition adjustment through its regulated interstate or intrastate rates, through its local rates, or through federal or state universal service funds;

- (c) That SBTC shall honor all existing U S WEST contracts, commitments, leases, licenses, and other agreements which relate to, or arise from, or are used for its operation in the purchased exchange;
- (d) That SBTC offer, at a minimum, all existing services currently offered by U S WEST in the purchased exchange with the exception of LMS; and
- (e) That SBTC not discontinue any existing extended area service arrangements in the purchased exchange without first obtaining approval from the Commission.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over U S WEST and SBTC and the sale of the Sisseton exchange to SBTC pursuant to SDCL Chapters 1-26 and 49-31, specifically 1-26-17.1, 49-31-3, 49-31-3.1, 49-31-4, 49-31-5.1, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, and 49-31-59.
2. Pursuant to SDCL 49-31-59, the Commission must consider the following when evaluating the application: the protection of the public interest, the adequacy of local telephone service, the reasonableness of rates for local service, the provision of 911, Enhanced 911, and other public safety services, the payment of taxes, and the ability of the local exchange company to provide modern, state-of-the-art telecommunications services that will help promote economic development, tele-medicine, and distance learning in rural South Dakota.
3. The Commission has considered, among other things, the requirements of SDCL 49-31-59 in regard to the proposed sale and the protection of the public interest pursuant to SDCL 49-31-7. The Commission finds that it is in the public interest to approve the sale because the sale will enable the customers in the Sisseton exchange to be better served in the future.
4. U S WEST and SBTC have satisfied their burden of proof under SDCL Chapter 49-31 for approval of the sale of the Sisseton exchange.
5. In reviewing the sale, the Commission has considered the adequacy of local telephone service. SBTC is required to provide all services currently offered and may not discontinue any existing extended area service arrangements without first obtaining approval from the Commission. In addition, SBTC must honor existing contracts and other agreements.
6. The Commission has also considered the reasonableness of local rates. The Commission finds that telephone service rates for the customers in the Sisseton exchange will remain at the same rates as U S WEST currently charges for at least 18 months. Further, SBTC is prevented from recovering any of the acquisition adjustment through its regulated interstate or intrastate rates, including from federal or state universal service funds.
7. Any existing public safety services currently provided will continue to be provided by SBTC. In addition, SBTC will assist the county in provisioning 911 services if implemented by the county and will provide accurate data for the county's data base.

8. The Commission has considered the payment of taxes by SBTC. SBTC will pay gross receipts taxes to the school districts. SBTC estimates that it will pay \$50,000.00 to \$60,000.00 in gross receipts taxes which is comparable to the total amount of taxes U S WEST is currently paying.
9. The Commission has determined that SBTC has the ability to provide modern state-of-the-art telecommunications services that may facilitate economic development, tele-medicine and distance learning in the Sisseton exchange.
10. The gain from the sale that is derived by U S WEST may be booked to USOA Account 7350, and shall not be used for ratemaking purposes by either U S WEST or the Commission.
11. Pursuant to ARSD 20:10:27:02, the Commission finds that good cause has been shown to waive the application of ARSD Chapters 20:10:27 to 20:10:29, inclusive, to determine the intrastate switched access rates to be charged by SBTC for a period from one year of closing, unless the Commission otherwise orders. SBTC shall be allowed to charge the rates set forth in Finding of Fact 19.
12. The Commission finds that it does not object to the study area waivers requested with the FCC.
13. The Commission approves the sale of the Sisseton exchange by U S WEST to SBTC, subject to SBTC complying with the Conditions of Sale.
14. The Commission denies U S WEST's petition to relinquish ETC status as premature.

Pursuant to SDCL Chapter 1-26, the Commission hereby enters its final decision in this docket. It is therefore

ORDERED, that the sale of the Sisseton exchange to SBTC is approved, subject to the Conditions of Sale; and it is

FURTHER ORDERED, that the Commission finds good cause, pursuant to ARSD 20:10:27:02, to grant the request for a waiver of the Commission's switched access rules found in ARSD Chapters 20:10:27 to 20:10:29, inclusive; and it is

FURTHER ORDERED, that an interim switched access rate as set forth in Finding of Fact 19 is approved for a period from one year from closing, unless the Commission otherwise orders; and it is

FURTHER ORDERED, that U S WEST's request to retain the gain from the sale for the benefit of its stockholders is granted and such gain shall be booked to USOA Account 7350, and shall not be used for ratemaking purposes by either U S WEST or the Commission; and it is

FURTHER ORDERED, that the Commission finds that it has no objection to the FCC granting the requested study area waiver; and it is

FURTHER ORDERED, that U S WEST's petition to relinquish ETC status is denied as premature.

Pursuant to SDCL 1-26-32, this Order becomes effective 10 days after the date of receipt or failure to accept delivery of this decision by the parties.

PLEASE TAKE NOTICE that this Decision and Order in Docket TC99-112 was duly entered this 23rd day of May, 2000, and filed in the Commission's docket.

Dated at Pierre, South Dakota, this 23rd day of May, 2000.

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: *Delaine Kelbo*

Date: 5/24/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

