

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

<b>IN THE MATTER OF THE CONSIDERATION OF )</b>	
<b>THE ASSESSMENT OF FINES AND OTHER )</b>	
<b>PENALTIES AGAINST WESTERN TELECOM )</b>	<b>SECOND ORDER FOR AND</b>
)	<b>NOTICE OF HEARING</b>
)	
<b>IN THE MATTER OF THE CONSIDERATION OF )</b>	
<b>THE ASSESSMENT OF FINES AND OTHER )</b>	<b>TC99-107</b>
<b>PENALTIES AGAINST TOUCHTONE )</b>	
<b>COMMUNICATIONS )</b>	

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.

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 Orders to Show Cause were issued on November 22, 1999, and set the hearing for February 1, 2000, beginning at 9:00 a.m., at the Chamber of Commerce Meeting Room, 800 W. Dakota Ave., Pierre, South Dakota. On January 25, 2000, the Commission received a Motion for Continuance from Commission Staff and a Motion for Continuance and Joinder in Staff's Motion for Continuance from Western Telecom. Staff and Western Telecom both requested an indefinite continuance. At its January 27, 2000, meeting, the Commission granted the continuance. On June 1, 2000, Commission Staff filed a Request for Notice of Proceedings to Gary Keister. In its request, Commission Staff asked that the Commission give notice of any hearing to Gary Keister whom Staff believes to be an officer of Tradex International, Inc. (Tradex). Staff stated that Western holds itself out to the public as a division of Tradex and that Western has entered into a name and copyright agreement with Touchtone. By this order, the Commission sets the Orders to Show Cause for hearing again. Pursuant to Commission Staff's request, this Order for and Notice of Hearing shall be sent to Gary Keister. The Commission also incorporates by reference its Orders to Show Cause and Orders to Produce Lists of Customers.

NOW THEREFORE, the Commission orders Western Telecom to appear before it on July 17, 2000, beginning at 1:00 p.m., in LCR 1, State Capitol Building, 500 E. Capitol, 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 July 17, 2000, beginning at 1:00 p.m., in LCR 1, State Capitol Building, 500 E. Capitol, 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 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 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. 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.

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 6<sup>th</sup> day of June, 2000.

<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>Debbie Kelbo</u>
Date: <u>6/6/00</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

