

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

<b>IN THE MATTER OF THE FILING BY GCC</b>	)	<b>FINDINGS OF FACT AND</b>
<b>LICENSE CORPORATION FOR DESIGNATION</b>	)	<b>CONCLUSIONS OF LAW;</b>
<b>AS AN ELIGIBLE TELECOMMUNICATIONS</b>	)	<b>NOTICE OF ENTRY OF</b>
<b>CARRIER</b>	)	<b>ORDER</b>
	)	<b>TC98-146</b>

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

GCC appealed the Commission's decision to Circuit Court. The Circuit Court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest;

On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue; and

On or before July 6, 2001, GCC may file a Reply Memorandum.

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list did not include all of South Dakota's rural telephone companies. This amended GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission voted to approve the Stipulation for Procedure on Remand. Briefs were filed pursuant to the Stipulation. The Commission listened to oral arguments on July 26, 2001.

At its September 7, 2001, meeting, the Commission considered this matter. The Commission voted to find that it was in the public interest to designate GCC as an ETC in the rural telephone exchanges listed in the Stipulation, subject to the following conditions: 1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. On August 25, 1998, the Commission received a request from GCC requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.
2. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an eligible telecommunications carrier (ETC) for a service area designated by the Commission. The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). However, before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. 47 U.S.C. § 214(e)(2).
3. Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.
4. The Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST). Following the hearing and briefing by the parties, the Commission unanimously voted to deny the application.

5. The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

6. GCC appealed the Commission's decision to the Circuit Court. The Circuit Court reversed the Commission's decision. See Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235. For areas served by rural telephone companies, the court found that GCC meets all applicable criteria for ETC designation except the public interest factor, which was not addressed by the Commission. The court remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision. The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, 2001 SD 32, 623 N.W.2d 474.

7. Consistent with the court's decision, the matter came back to the Commission on remand, on the record, for the purpose of deciding whether it was in the public interest to designate GCC as an ETC in areas served by rural telephone areas. On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC.

8. The Stipulation listed the specific rural telephone companies in which GCC is seeking ETC status. The list does not include all of South Dakota's rural telephone companies. This amends GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies. See Attachment A. The Commission approved the Stipulation for Procedure on Remand. GCC and SDITC then provided supplemental briefing and the Commission heard oral arguments on July 26, 2001.

9. The question of whether it is in the public interest to designate an additional ETC in an area served by a rural telephone company necessarily requires a two-part analysis. The first part of the analysis is whether consumers will realize benefits from increased competition. The fact that the area in question involves a rural area leads to the second part of the public interest analysis: whether the rural area is capable of supporting competition. Or, in other words, will the introduction of competition in rural telephone company areas have detrimental effects on the provisioning of universal service by the incumbent carriers. As evidenced by 47 U.S.C. § 254(b)(3), Congress was concerned with the advancement and preservation of universal service in rural areas.

10. One of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. An expanded local calling area will allow consumers to make more local calls, thus avoiding some toll charges. Id. In addition, GCC has pledged to offer unlimited local usage as part of one its universal service offerings. GCC Exhibit 4 at 9. For a monthly charge, GCC will offer consumers the supported services "with unlimited local usage, an expanded local calling area larger than offered by the incumbent LEC, a per minute charge for long distance calls, and optional features and services, such as voice mail, caller-ID, call waiting, call forwarding, and conference calling." GCC Exhibit 4 at 13. Further, GCC will offer local service at a rate similar to the incumbent telephone company. GCC testified that "if the incumbent is offering

service at \$15 a month, we'll offer service at a similarly \$15 a month." TR. at 117. The Commission finds that GCC's ability to offer an expanded local calling area along with its other offerings will benefit the public.

11. GCC also cites as a benefit a mobility component to its universal service offering that it intends to offer in the future. According to its testimony, GCC would not introduce a mobility component right away but intended to, over time, "expand its universal service offering to introduce a mobility component." GCC Exhibit 4 at 8. The Commission finds that a mobility component to local telephone service is also a benefit to the public.

12. GCC claimed that another benefit would be to bring "universal service to some consumers who currently do not have telephone service." GCC Supplemental Brief at 11. However, GCC failed to show that consumers located in areas served by the rural telephone companies were unable to receive service from the rural telephone companies. Thus, the Commission declines to find that the provision of service by GCC will result in universal service being provided to more consumers.

13. As stated above, the second part of the public interest analysis is whether the introduction of competition in these rural areas will ultimately prove detrimental to universal service. SDITC's witness' testimony as to whether designation was in the public interest focused on the uncertainties with respect to the level of universal support for rural telephone companies. Exhibit 6 at 10-11. He did not offer evidence that the rural telephone companies would be unable to continue to provide universal service to its customers if another carrier were granted ETC designation.

14. Since the Commission's hearing held on December 17, 1998, the FCC has issued new rulings related to universal service funding. As SDITC noted in its supplemental brief, the FCC has recently found that universal service support should be disaggregated and targeted below the study area level for rural telephone companies in order to ensure that the per-line level of support is more closely related to the cost of providing the service. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, and Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256 (rel. May 23, 2001) at ¶¶ 144-45. Pursuant to the FCC's order, rural companies are not required to select a disaggregation option until next year. *Id.* at ¶ 147. SDITC states that "[i]t would not be in the public interest to designate GCC as an-ETC in rural service areas and allow it to receive portable universal service support before the disaggregation process has been completed and support is more closely targeted to the actual cost of serving each line." SDITC Supplemental Rebuttal Brief at 30. However, the Commission does not believe it would be in the public interest to delay the designation of additional ETCs until such time as the deadline for filing a plan has passed. If a rural telephone company is concerned about the possibility of GCC attempting to serve only the lower cost lines contained in a high cost area, the rural telephone company should select a disaggregation option as soon as possible. The Commission further notes that an ETC, if it intends to retain its ETC designation, is obligated to offer its services throughout the service area and may not discriminate in favor of serving only the lowest cost lines.

15. In a similar argument, SDITC points out that the FCC is currently addressing the issues of interstate access reform for rate-of return carriers and is considering further changes in the universal service support for rural telephone companies. SDITC states that the outcome of these proceedings will have a "significant impact on whether designating GCC as an additional ETC would be in the public interest." SDITC Supplemental Rebuttal Brief at 32. Again, the Commission does not believe that it can delay, or indefinitely postpone, the designation of additional ETCs due to the lack of finality or the fact that future changes could affect universal service funding.

16. The Commission further finds that the fact that GCC will be providing a wireless service will likely lessen the loss of the incumbent carriers' universal service support. Wireless or cellular telephone service is often used as an additional, as opposed to a substitute, telephone service. Significantly, the FCC has decided that federal universal support will be extended to all lines served by ETCs in high-cost areas. Thus, if consumers subscribe to GCC's service but retain their landline service from the incumbent carrier, the incumbent carrier will still receive the same amount of universal service support for that line. See In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order, CC Docket No. 96-45, (rel. October 5, 2001) at ¶ 15.

17. Based on the record presented at the December 17, 1998, hearing, the Commission is unable to find that the addition of GCC as a second ETC will detrimentally affect the incumbent carriers' ability to provide universal service to their customers.

18. Another concern raised by SDITC related to the Commission's ability to regulate GCC. SDITC stated that it did not believe that it was in the public interest to designate GCC as an ETC if the Commission "has no ability after such designation to ensure that the service actually offered by GCC is consistent with the Commission's service quality rules and no ability to address consumer complaints concerning the service." SDITC Supplemental Rebuttal Brief at 24. However, the Commission finds that GCC is a telecommunications company as defined by SDCL 49-31-1(26), and thus is subject to the Commission's statutes and rules.

19. Based on these findings, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, subject to the conditions listed in findings of fact 20-24. The Commission finds that GCC's provisioning of a basic universal service throughout the study areas will be beneficial to the public. Further, the Commission finds that the evidence presented at the hearing does not support a finding that the incumbent rural telephone companies will be unable to continue to provide the supported services to their customers.

20. With respect to the advertising of its universal service offering, GCC states that it "currently advertises its wireless services through several different media, including newspaper, television, radio, and billboard advertising. GCC also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. GCC's current advertising is not limited to advertising in business publications alone, but rather includes publications targeted to the general residential market. GCC will use the same media of general distribution that it currently employs throughout the areas served to advertise its universal service offerings." Exhibit 3 at 9. Consistent with these commitments, GCC shall file its plan for advertising its universal service offering throughout its service areas.

21. As stated earlier, one of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. At the time of the hearing, GCC did not have a list of local calling areas. Therefore, once GCC determines its local calling areas, it shall file a list of areas with the Commission.

22. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link-Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411. In order to inform customers of these services, GCC's service agreement shall advise customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply.

23. In addition, GCC has agreed to file with the Commission its service agreement it intends to offer to universal service customers. The Commission finds that this service agreement must be consistent with the Commission's service quality rules. The Commission further notes that as a telecommunications company, GCC is subject to SDCL chapter 49-13 which allows consumers to file complaints with the Commission. Thus, the Commission finds that the service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction

24. At the time of the hearing, GCC had not yet finalized a universal service offering. Thus, GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, and 47 U.S.C. § 214(e)(1) through (5).

2. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission. The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). However, before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. 47 U.S.C. § 214(e)(2).

3. Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.

4. The FCC has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).

5. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411.

6. Pursuant to the Circuit Court's Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235, decision, GCC meets all applicable criteria for ETC designation. Based on the evidence presented at the December 17, 1998, hearing, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24.

It is therefore

ORDERED, that the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 18<sup>th</sup> day of October, 2001. Pursuant to SDCL 1-26-32, this Order will take effect ten days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 18<sup>th</sup> day of October, 2001.

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 Kalbs

Date:

10/19/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

## ATTACHMENT A

Armour Independent Telephone Company  
Baltic Telecom Cooperative  
Beresford Municipal Telephone Company  
Bridgewater-Canistota Independent Telephone  
Brookings Municipal Telephone/Swiftel Communications  
Dakota Cooperative Telecommunications, Inc.  
East Plains Telecom, Inc.  
Fort Randall Telephone Company  
Interstate Telecommunications Cooperative, Inc.  
Jefferson Telephone Company  
Kadoka Telephone Company  
Kennebec Telephone Company  
McCook Cooperative Telephone Company  
Midstate Communications, Inc.  
Mount Rushmore Telephone Company  
RC Communications, Inc.  
Roberts County Telephone Cooperative Assn.  
Sanborn Telephone Cooperative  
Sancom, Inc.  
Sioux Valley Telephone Company  
Splitrock Telecom Cooperative, Inc.  
Stockholm-Strandburg Telephone Co.  
Union Telephone Company  
Valley Telecommunications Cooperative  
Western Telephone Company  
West River Cooperative Telephone Company