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March 8, 2005

Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RECEIVED

MAR 08 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: DOCKET NO. CT05-001
COMPLAINT OF WWC AGAINST GOLDEN WEST COMPANIES
Our File Number 05-006C

Dear Pam:

Please find enclosed herein original and ten copies of the Answer and Counterclaim (with attached Exhibits) of Golden West Companies to the WWC Complaint.

By copy of this letter, I am also serving Talbot J. Wieczorek, the attorney for WWC.

Sincerely yours,



Darla Pollman Rogers
Attorney at Law

DPR/ph

CC: George Strandell (with enclosure)
Dennis Law (with enclosure)
Rich Coit (with enclosure)
Larry Thompson (with enclosure)
Talbot J. Wieczorek (with enclosure)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT
OF WWC LICENSE LLC AGAINST
GOLDEN WEST TELECOMMUNICA-
TIONS COOPERATIVE, INC.; VIVIAN
TELEPHONE COMPANY; SIOUX VAL-
LEY TELEPHONE COMPANY; UNION
TELEPHONE COMPANY; ARMOUR
INDEPENDENT TELEPHONE COM-
PANY; BRIDGEWATER-CANISTOTA
INDEPENDENT TELEPHONE COM-
PANY; AND KADOKA TELEPHONE
COMPANY

DOCKET NO. CT05-001

ANSWER AND COUNTERCLAIM OF
GOLDEN WEST COMPANIES

RECEIVED

MAR 08 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

COME NOW Golden West Telecommunications Cooperative, Inc.; Vivian Telephone Company; Sioux Valley Telephone Company; Union Telephone Company; Armour Independent Telephone Company; Bridgewater-Canistota Independent Telephone Company; and Kadoka Telephone Company (hereinafter collectively referred to as "Golden West Companies"), by and through Riter, Rogers, Wattier & Brown, LLP, of 319 South Coteau Street, Pierre, South Dakota 57501, and hereby submit this Answer to the Complaint filed by WWC License LLC (hereinafter "WWC") before the South Dakota Public Utilities Commission ("Commission"), and assert this Counterclaim against WWC, pursuant to ARSD 20:10:01:11.01 and SDCL §15-6-13(a).

JURISDICTION

1. The entire jurisdictional paragraph of the Reciprocal Interconnection, Transport and Termination Agreement ("Interconnection Agreement" or "Interconnection Agreements") provides as follows:

14.16 Governing Law – For all claims under this Agreement, that are based upon issues within the jurisdiction of the FCC or governed by federal law, the Parties agree that the remedies for such claims shall be governed by the FCC and the Act. For all claims under this agreement that are based upon issues within the jurisdiction of the Commission or governed by state law, the Parties agree that the jurisdiction for all such claims shall be with such Commission, and the remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of South Dakota without reference to conflict of law provisions.

2. This Action will require an interpretation and adjudication of the contractual rights and obligations between parties.

3. As a general rule, administrative agencies and commissions cannot consider or adjudicate contractual rights and obligations between parties, except where they have been granted power by organic or valid statutory enactment to do so. See In re Northwestern (Hub City), 560 NW 2d 925 (SD 1997), quoting from Williams Elec. Coop v. Montana-Dakota Util. Co., 79 NW 2d 508 (ND 1956).

4. Consideration and adjudication of contractual rights and obligations between parties are issues within the jurisdiction of the Circuit Courts of the State of South Dakota.

5. Accordingly, this Commission may choose to defer jurisdiction of this case to the South Dakota Circuit Courts.

ANSWER

6. Golden West Companies reallege Paragraphs 1 through 5 of this Answer.

7. The Complaint of WWC fails to state a claim upon which relief can be granted, and should therefore be dismissed.

8. Golden West Companies deny each and every matter and allegation in WWC's Complaint, unless herein specifically admitted or qualified.

9. Golden West Companies admit Paragraphs 1 and 2 of WWC's Complaint, except for the date of approval for Sioux Valley Telephone Company's Interconnection Agreement (October 20, 1994), which Golden West Companies deny.

10. Golden West Companies admit that a portion of Section 14.16 of the Interconnection Agreement is accurately set forth in Paragraph 3 of the Complaint, but deny that Paragraph 3 sets forth all of the jurisdictional provisions of the Interconnection Agreement.

11. Golden West Companies admit that the Interconnection Agreement states that the effective date of the Agreement is January 1, 2003 (Paragraph 13.1 of the Interconnection Agreement), but deny all other matters stated in Paragraph 4 of the Complaint.

12. Golden West Companies admit that the previous Interconnection Agreements terminated on December 31, 2002, but deny all other allegations in Paragraph 5 of the Complaint.

13. Golden West Companies deny Paragraph 6 of the Complaint.

14. Golden West Companies deny all allegations contained in Paragraph 7 of the Complaint, including but not limited to the amount of WWC's calculations, that any interest is due under the Interconnection Agreement, and the figures contained in Exhibit B of the Complaint.

15. Golden West Companies deny Paragraph 8 of the Complaint.

16. Golden West Companies admit to calculating credits due to WWC, as stated in Exhibit C of the Complaint, but deny all other allegations in Paragraph 9 of the Complaint.

17. Golden West Companies deny Paragraphs 10, 11, 12 and 13 of the Complaint.

18. Golden West Companies admit that portion of Paragraph 14 alleging WWC requested Golden West and its affiliates to refund the money, and admit to receipt of a letter from Ron Williams, but deny all other allegations in Paragraph 14, and specifically deny the applicability of SDCL §49-13-14.1 or that WWC is entitled to double its damages.

AFFIRMATIVE DEFENSES

19. Golden West Companies reallege Paragraphs 1 through 18 of this Answer.

20. As an affirmative defense, Golden West Companies allege that WWC's Complaint is barred by the Statute of Limitations.

A. On or about March 1, 2003, WWC and attorneys for all South Dakota Rural Telecommunications Companies (RTCs), including Golden West Companies, entered into a Settlement Agreement that set forth the basic terms of the agreed-upon settlement for interconnection between WWC and the RTCs. (See Confidential Exhibit A).

B. Said Settlement Agreement established the effective date of interconnection as January 1, 2003.

C. Said Settlement Agreement established a two-year Statute of Limitations for past due reciprocal compensation charges.

D. WWC alleges that Golden West Companies owe WWC for past due reciprocal compensation charges, but WWC failed to initiate the action within two years

of the effective date of the Interconnection Agreement, and thus WWC's claim is barred by the Statute of Limitations agreed to by the parties in the Settlement Agreement.

21. As an affirmative defense, Golden West Companies allege that WWC did not comply with the terms and conditions of the Interconnection Agreement, as hereinafter set forth, and WWC is thus estopped from filing an action against Golden West Companies.

22. The Interconnection Agreement sets forth the effective date of the Agreement, but is silent as to the method of truing up reciprocal charges back to January 1 of 2003.

23. Golden West Companies did not charge the negotiated rates until approved by the Commission and recalculated by the Companies, because of uncertainty as to whether the Commission would approve the rates set forth in the Interconnection Agreements for retroactive application.

A. Ratemaking authority delegated to State Public Utilities Commissions has generally been characterized as a legislative function; and accordingly, it has often been held that rates established in the utility ratemaking process cannot be applied retroactively. See Peoples Natural Gas Company vs. Minnesota Public Utilities Commission, 369 N.W.2d 530 (MN 1985); and Northwestern Public Service Company vs. Cities of Chamberlain, Huron, Mitchell, Redfield, Webster, and Yankton, 265 N.W.2d 867 (SD 1978).

B. Although the rates set forth in the Interconnection Agreements submitted by the Golden West Companies and WWC were proposed by terms of each of the Agreements to have an effective date of January 1, 2003, it was believed by the Golden

West Companies at the time that this Commission might not adopt the rates retroactively. The general prohibition against retroactive ratemaking referenced above and the lack of any specific statutory authority granted to this Commission to approve rates retroactively is reason to question the validity of the contracted rates back to the January 1, 2003, date in this proceeding.

24. Following Commission approval of the rate retroactive to January 1, 2003, Golden West Companies began the process of calculating the reciprocal charges back to January 1, 2003, for each Company.

25. Upon completion of those calculations and commencing with December 2004 invoices, Golden West Companies have been crediting true-up charges on WWC's monthly invoices, and will continue to do so until the total amount, as calculated by Golden West Companies, is fully credited, all in accordance with the letter of Dennis Law to WWC dated December 1, 2004, (Exhibit C of WWC's Complaint).

26. Since the Interconnection Agreement is silent as to the method of true-up reciprocal charges back to January 1 of 2003, Golden West Companies have not breached any terms and conditions of the Interconnection Agreement by crediting such reciprocal charges to accomplish the true-up.

27. Plaintiff has failed to provide sufficient allegations or any legal basis that would entitle Western Wireless to recover double damages or attorneys fees pursuant to SDCL §49-13-14.1.

COUNTERCLAIM

28. Golden West Companies reallege paragraphs 1 through 27 of the Answer.

29. For its Counterclaim against WWC, Golden West Companies allege the following.

FACTUAL BASIS

30. This Counterclaim is against WWC License LLC, a wireless carrier of 3650 131st Ave. SE, Suite 400, Bellevue, Washington, 98006 (“WWC”).

31. The Commission approved Interconnection Agreements between the parties on the following dates:

Company	Date
WWC and Golden West	May 13, 2004
WWC and Vivian Telephone Company	June 30, 2004
WWC and Sioux Valley Telephone Company	October 20, 2004
WWC and Union Telephone Company	August 26, 2004
WWC and Armour Independent Telephone Company	August 26, 2004
WWC and Bridgewater-Canistota Telephone Company	August 26, 2004
WWC and Kadoka Telephone Company	May 13, 2004

32. Contained in the Interconnection Agreements were provisions concerning InterMTA Traffic, as follows:

1.0 Definitions

“InterMTA traffic” means all wireless to wireline calls, which originate in one MTA and terminate in another MTA based on the location of the connecting cell site serving the wireless end user and the location of the end office serving the wireline end user.

7.2.3 For billing purposes, if either Party is unable to classify on an automated basis the traffic delivered by CMRS as local traffic or interMTA traffic, a Percent InterMTA Use (PIU) factor will be used, which represents the estimated portion of interMTA traffic delivered by CMRS provider.

The initial PIU factor to be applied to total minutes of use delivered by the CMRS Provider shall be 3.0%. This factor shall be adjusted three months after the executed date of this Agreement and every six months thereafter during the term of this Agreement, based on a mutually agreed to traffic study analysis. Each of the Parties to this Agreement is obligated to proceed in good faith toward the development of a method

of traffic study that will provide a reasonable measurement of terminated InterMTA traffic.

33. Larry Thompson, a professional engineer from Vantage Point Solutions (“VPS”), attempted to negotiate a traffic study analysis with WWC on behalf of Golden West Companies and all other Companies, but despite numerous requests starting as early as July 17, 2003, and continuing to date, WWC has refused to negotiate in good faith with Mr. Thompson.

34. Mr. Thompson, on behalf of Golden West Companies, is unable to finally calculate the InterMTA Factor for all of the Companies because of WWC’s failure to supply necessary data, but according to preliminary estimates, Mr. Thompson anticipates that the InterMTA Factor for Golden West Companies will be higher than 3%. For example, VPS has calculated the Golden West Telecommunications Cooperative, Inc. InterMTA Factor to be in the range of 12.64%.

35. According to the calculations for Golden West Telecommunications Cooperative, Inc., this would result in a WWC payment shortfall, on a monthly basis, of approximately \$12,869.00 for monthly billings prior to July 1, 2004, with anticipated increases in that monthly amount for billings after July 1, 2004. Golden West Companies also anticipate a payment shortfall for the other Companies.

36. WWC’s failure to negotiate in good faith, as specifically required by the Interconnection Agreement, constitutes a breach of said Agreement by Western Wireless.

37. Golden West Companies are entitled to a refund from WWC for the amounts due to Golden West Companies as a result of continued use of the default In-

terMTA factor of 3% caused by WWC's continuing refusal to negotiate a new and accurate InterMTA factor.

38. Alternatively and at a minimum, Golden West Companies are entitled to offset amounts being credited to WWC with amounts due to Golden West Companies following adjustment of the InterMTA Factor.

39. In addition to the duties imposed by the Interconnection Agreements, WWC also has the duty as the originating carrier delivering both local and non-local telecommunications traffic to separately provide the terminating carrier with accurate and verifiable information identifying traffic sent for termination, specifically including percentage measurements that enable the terminating carrier to appropriately classify the traffic as being either local or non-local, and to assess the appropriate applicable transport and termination or access charges. If this accurate and verifiable information is not provided by the originating carrier, the terminating carrier is authorized to classify all unidentified traffic terminated as non-local traffic for service billing purposes. See SDCL §49-31-110.

40. WWC, by its failure to abide by the terms of the existing Interconnection Agreements, is also acting in violation of SDCL §49-31-110, and by refusing to cooperate in appropriately identifying its terminated traffic is liable for compensation as set forth in the statute (treatment of all traffic as non-local and subject to access charges).

WHEREFORE, GOLDEN WEST COMPANIES pray:

1. That this case be transferred to Circuit Court;
2. That WWC's Complaint and all claims asserted therein be dismissed with prejudice, and that WWC recover nothing thereby or thereunder;

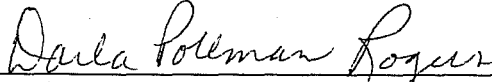
3. That judgment be entered in favor of Golden West Companies and against WWC, in an amount to be determined at hearing, which represents the amount of underpayment to Golden West Companies as a result of the improper and unadjusted InterMTA Factor.

4. Alternatively, that the amount of credits to WWC as calculated by Golden West Companies be offset by the amount due and owing to Golden West Companies as a result of application of the proper InterMTA Factor.

5. That Golden West Companies be awarded costs, disbursements, and attorneys fees incurred herein; and

6. For such other and further relief as the Commission or Court deems just and proper.

DATED this 8th day of March, 2005.



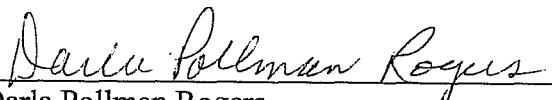
Darla Pollman Rogers
Riter, Rogers, Wattier & Brown, LLP
P. O. Box 280
Pierre, SD 57501
Telephone 605-224-7889
Attorney for Golden West Companies

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Answer and Counter-claim of Golden West Companies was served via the method(s) indicated below, on the eighth day of March, 2005, addressed to:

Talbot J. Wiczorek	(X)	First Class Mail
Gunderson, Palmer, Goodsell & Nelson, LLP	()	Hand Delivery
P. O. Box 8045	()	Facsimile
Rapid City, South Dakota 57709	()	Overnight Delivery
	()	E-Mail

Dated this eighth day of March, 2005.


Darla Pollman Rogers
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CONFIDENTIAL

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