



South Dakota Telecommunications Association  
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*Rural roots, global connections*

September 20, 2005

RECEIVED  
SEP 20 2005  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Ms. Pamela Bonrud, Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Ave.  
State Capitol Building  
Pierre, SD 57501

RE: PUC Docket CT05-001, WWC's Complaint Against Golden West Companies  
Regarding Intercarrier Billings

Dear Pam:

Attached for filing with the Commission in the above referenced docket are the original and ten (10) copies of a Petition to Intervene of the South Dakota Telecommunications Association.

This Petition is necessitated by the recent Amended Complaint filed by the Western Wireless which has raised new issues.

You will also find attached to the Petition a certificate of service verifying service of this document, by mail, on counsel for Western Wireless and counsel for the Golden West Companies.

Thank you for your assistance in filing and distributing these documents.

Sincerely,

Richard D. Coit  
Executive Director and General Counsel  
SDTA

CC: Talbot J. Wiczorek  
Darla Pollman Rogers

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

RECEIVED  
SEP 20 2005  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

**IN THE MATTER OF THE COMPLAINT OF )  
WWC LICENSE LLC AGAINST 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 )**

**DOCKET CT05-001**

**SDTA Petition to Intervene**

The South Dakota Telecommunications Association (“SDTA”), on behalf of its member companies, hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota. Its current membership includes not only each of the companies named as defendants in the above captioned proceeding, but also other similarly situated local exchange carriers (“LECs”) that have established “Reciprocal Interconnection, Transport and Termination Agreements” (“Interconnection Agreements”) with WWC License LLC (“WWC”), the complainant in the above proceeding. Furthermore, each of the SDTA member LECs is also currently receiving both reciprocal transport and termination compensation and access compensation from WWC pursuant to the established Interconnection Agreements and established switched access tariffs.

2. On or about August 10, 2005, WWC supplemented its initial complaint filing in this matter with a “Notification of Question of Constitutionality of SDCL §§ 49-31-09 to 49-31-115.” WWC’s stated intent in filing such Notification is to “as part of the pending procedure in the above matter and in any appeal of the above matter . . . , [to] raise and attack the constitutionality of SDCL §§ 49-31-109 to 49-31-115 to the extent the statutes violate federal law, including but

not limited to the 1996 Telecommunications Act and FCC Rules . . .” The initial complaint filed by WWC in this matter contained absolutely no reference to these statutes and raised no issues concerning application of the cited state statutes. The complaint, as filed initially, was limited in scope to contractual issues between the parties, based strictly on the Interconnection Agreements existing between the parties.

3. On or about September 8, 2005, WWC filed an “Amended Complaint” in this matter to not only more formally allege the constitutionality issue set forth in its earlier filed Notification, but also to raise other issues. WWC has now presented a new issue concerning the application of intrastate access charges to InterMTA traffic originated by WWC and also a new issue related to the assessment of certain “transiting charges” by Golden West Telecommunications Cooperative (“GWTC”).

4. At this time, SDTA requests intervention in this proceeding given these new issues and the resulting expanded scope of the proceeding. The new issues presented, if resolved through this proceeding, have the potential to impact other SDTA member companies. As noted above, all SDTA member LECs have similar interconnection agreements established with WWC, and all are providing reciprocal transport and termination services and terminating switched access services pursuant to these agreements and applicable access tariffs. The statutory provisions found in SDCL §§49-31-109 and 49-31-115 are of significant importance to all of the SDTA member companies given their intended purpose, which is to ensure an appropriate billing for all telecommunications traffic terminated by the companies through their local network facilities. The genuine interest of SDTA member companies in the constitutionality issues now raised by WWC is demonstrated by the fact that SDTA has already been granted intervening party status in a pending federal court proceeding addressing similar constitutional claims relative to the cited state statutes. As this Commission is aware, in August of 2004, Verizon Wireless filed a “Complaint for Declaratory and Injunctive Relief” with the United States District Court, District of South Dakota, Central Division (Civil Number 04-3014) challenging various provision contained in SDCL §§49-31-109 and 49-31-115 under the “Supremacy Clause,” Article VI of the United States Constitution. Subsequent to the filing of that complaint, SDTA sought intervention in the federal court proceeding on behalf of its member LECs and was granted such intervention by an Order of U.S. District Judge Charles B. Kornmann dated January 12, 2005. (Attached hereto as Exhibit 1 is a copy of that Order).

5. In addition to the constitutionality issues now raised in this proceeding affecting the interests of all SDTA member companies, WWC has also presented an additional issue based on its interpretation of the existing Interconnection Agreements and resolution of that issue herein will likely have industry-wide impact. Specifically, it appears that WWC is now claiming that intrastate access charges may not lawfully be applied to any InterMTA traffic terminated by the LECs. According to its Amended Complaint, WWC believes that “charging WWC intrastate charges for calls [is] in violation of the Interconnection Agreement,” and that the Golden West companies “agreed to charge lower rates under the Interconnection Agreement . . . .” All of the SDTA member companies have an interest in and dispute these claims. All of the SDTA member LECs have executed Interconnection Agreements with WWC that are identical in their terms and conditions. None of these Agreements contains language prohibiting the assessment of intrastate access charges on terminated InterMTA traffic. In fact, the language found in Section 2.1 of each of the Interconnection Agreements executed by the SDTA member LECs with WWC states as follows:

This agreement applies both to Local and to interMTA traffic originated by the End User subscribers of one Party and terminated to end-user subscribers of the other Party which is (a) delivered over facilities owned or controlled by the Parties, which directly interconnect the Parties or, (b) indirectly connected, i.e., delivered over a Third Party Provider’s transiting facilities. Local Traffic is subject to local Transport and Termination charges as described in Appendix A. InterMTA Traffic is subject to Telephone Company’s interstate or intrastate access charges. *Emphasis Added.*

6. SDTA also has an interest in a proper resolution of the issue raised by WWC concerning transit service charges. WWC contends that no separate agreement has been established related to the provisioning of transit services by GWTC and that the absence of a separate agreement relieves it of any obligation to provide compensation for the delivered transit services. SDTA also challenges this claim. In addition to GWTC, a number of other SDTA member companies are involved in the provisioning of transit services to WWC and other telecommunications carriers. SDTA is concerned that this Commission in reviewing the transit charges issue avoid any final decision that results in unjust enrichment to WWC. The transit services at issue were provided to WWC at its request and provide value to WWC’s operations. Further, the services are provided over facilities owned by GWTC and delivery of the services generate additional GWTC costs. As such, compensation for the services is owed to GWTC.

SDTA would oppose any result in this proceeding that would obligate any of its member companies to deliver any transmission services, including transiting services, without just compensation.

7. SDTA believes that granting it intervention in the proceeding would be consistent with the public interest and that it would not in any way prejudice WWC. The new issues forming the basis for this request have been presented by WWC, and, very clearly, any resolution of these issues by this Commission has the potential to affect other SDTA member companies.

8. Based on the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status.

Dated this 20<sup>th</sup> day of September, 2005.

Respectfully submitted:

THE SOUTH DAKOTA  
TELECOMMUNICATIONS ASSOCIATION

By:  \_\_\_\_\_

Richard D. Coit  
Executive Director and General Counsel

04-181

FILED  
JAN 10 2005  
*[Signature]*  
CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

\*\*\*\*\*

VERIZON WIRELESS (VAW) LLC;  
COMMNET CELLULAR LICENSE  
HOLDING LLC; MISSOURI VALLEY  
CELLULAR, INC.; SANBORN  
CELLULAR, INC.; and EASTERN  
SOUTH DAKOTA CELLULAR, INC.,  
d/b/a Verizon Wireless;

Plaintiffs,

-vs-

STATE OF SOUTH DAKOTA; SOUTH  
DAKOTA PUBLIC UTILITIES  
COMMISSION; and BOB SAHR, GARY  
HANSON, and DUSTY JOHNSON, in their  
official capacities as the Commissioners  
of the South Dakota Public Utilities  
Commission,

Defendants,

SOUTH DAKOTA  
TELECOMMUNICATIONS ASSOCIATION  
and VENTURE COMMUNICATIONS  
COOPERATIVE,

Intervenors.

CIV 04-3014

ORDER

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The five plaintiff entities all provide wireless telecommunication services in South Dakota under the "Verizon Wireless" brand name. They instituted this action against the State of South Dakota, the Public Utilities Commission, and the public utilities commissioners<sup>1</sup> in their official capacities seeking an order that the Federal Communications Act preempts Senate Bill

<sup>1</sup>Dusty Johnson is substituted for Jim Burg pursuant to Fed R. Civ. P. 25(d).

144, Chapter 284 of the 2004 Session Laws, codified at SDCL §§ 49-31-109 to 49-31-115. Chapter 284 regulates certain aspects of Verizon Wireless' relationship with state regulated landline telephone companies ("LECs").

South Dakota Telecommunications Association ("SDTA") represents the common interests of LECs operating in South Dakota, acting as a lobbyist in legislative and regulatory matters affecting LECs. Venture Communications Cooperative is a member company of SDTA. Intervenor drafted and caused Senate Bill 144 to be introduced in the 2004 legislative session. SDTA and Venture filed a motion (Doc. 18) to intervene, seeking to protect the economic interests of Venture and all other SDTA members in billing Verizon Wireless for their customers' calls to customers of LECs.

No parties object to intervention. Good cause appearing,

IT IS ORDERED that the motion (Doc. 18) to intervene is granted.

Dated this 12th day of January, 2005.

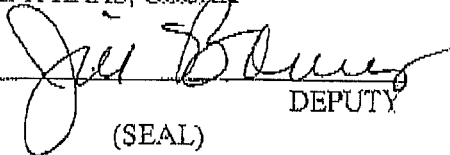
BY THE COURT:



CHARLES B. KORNMANN  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:



DEPUTY  
(SEAL)

## CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the enclosed Petition to Intervene were hand-delivered to the South Dakota PUC on September 20, 2005, directed to the attention of:

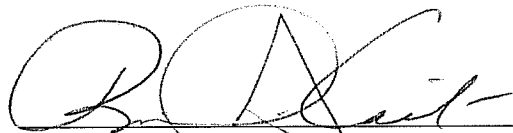
Pam Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

A copy was sent by US Postal Service First Class mail to the following individuals:

Darla Rogers  
Riter Rogers Wattier & Brown  
PO Box 280  
Pierre, SD 57501-0280

Talbot Wiczorek  
Gunderson Palmer Goodsell & Nelson LLP  
440 Mt. Rushmore Rd.  
Rapid City, SD 57701

Dated this 20<sup>th</sup> day of September, 2005.



Richard D. Coit, General Counsel  
South Dakota Telecommunications Association  
PO Box 57 – 320 East Capitol Avenue  
Pierre, SD 57501-0057