

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT OF )  
WWC LICENSE LLC AGAINST GOLDEN WEST )  
TELECOMMUNICATIONS COOPERATIVE, )  
INC.; VIVIAN TELEPHONE COMPANY; ) Docket No. CT05-001  
SIOUX VALLEY TELEPHONE COMPANY; )  
UNION TELEPHONE COMPANY; ) MEMORANDUM IN SUPPORT  
ARMOUR INDEPENDENT TELEPHONE COM- ) OF GOLDEN WEST COMPANIES'  
PANY; BRIDGEWATER-CANISTOTA ) MOTION TO STRIKE OR  
INDEPENDENT TELEPHONE COMPANY; AND ) DISMISS  
KADOKA TELEPHONE COMPANY )

This Brief is submitted by Respondents, hereinafter referred to as "Golden West Companies" in support of their Motion to Strike or Dismiss, as it relates to paragraph 13 of the Complaint of WWC License LLC, hereafter referred to as "WWC".

ARGUMENT

In its Complaint, WWC includes a paragraph seeking recovery of double damages and attorney's fees. (See paragraph 13) WWC specifically relies upon SDCL 49-13-14.1 in support of its claim.

That claim of WWC is clearly outside the Commission's jurisdiction. Double damages and attorneys fees as sought are not authorized in this proceeding; rather, only if there is recovery by a "suit" does the statute suggest such authority applies. SDCL 49-13-14.1. WWC has elected under 49-13-1.1 to make complaint to this Commission and hence, it has waived its right "to bring suit . . . for the recovery of damages in any court of competent jurisdiction . . . ." Id. Hence, no jurisdiction exists for a claim of double damages and attorney's fees herein and the

paragraph should be stricken from WWC's Complaint or the claim dismissed in its entirety.

Even in the courts of our state, attorney's fees can only be awarded when they are specifically authorized by statute.

Ridley v. Lawrence County Commission, 2000 S.D. 143, 619 NW 2d 254. The only statutory authority relied upon by WWC relates to attorney's fees recovered during a suit commenced in the courts of our state. As such the relief requested in paragraph 13 is beyond the jurisdiction of this Commission and should be stricken or that portion of the Complaint be dismissed.

Respectfully submitted this 15<sup>th</sup> day of August, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Golden West's Companies' Motion to Strike or Dismiss and Memorandum in Support of Golden West Companies' Motion to Strike or Dismiss were served via the method(s) indicated below, on the 15<sup>th</sup> day of August, 2005:

Talbot J. Wieczorek (X ) First Class Mail  
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DATED this 15<sup>th</sup> day of August, 2005.

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