

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

BRIEF IN SUPPORT OF PETITIONER'S
MOTION TO COMPEL PRODUCTION
OF DISCOVERY RESPONSES

WWC License LLC, of 3650 131st Avenue SE, Suite 400, Bellevue, Washington 98006, a subsidiary of Alltel (hereinafter "WWC"), by and through its attorney, Talbot J. Wieczorek, of Gunderson, Palmer, Goodsell & Nelson, LLP, hereby submits this Brief in Support of WWC's Motion to Compel Production of Discovery Responses.

On September 30, 2005, WWC served upon all respondents (collectively referred to herein as "Golden West Companies") Discovery Requests. On October 28, 2005, respondents answered the requests; however, respondents have not adequately responded to Requests for Production Number 35 and Number 37.

Golden West Companies were requested to provide the following and responded in the following manner:

35. Describe the methodology each company used for determining Interstate access rate applicable to WWC InterMTA traffic. How does this methodology differ from that methodology used by WWC (See Exhibit B to WWC's Amended Complaint dated 9/7/05) in calculating the appropriate Interstate access rate for InterMTA traffic?

Response. See Golden West Companies' Response to Commission Staff's Third Information Requests and Document Production Requests to Golden West Companies, Question #1.

37. Identify the passwords necessary to unprotect the spreadsheets provided in response to WWC's Second Request for Discovery, responses to Request for Production #2 and #3.

Response. All information requested by WWC has been provided and is accessible to WWC in the spreadsheets, including input values, formulas, and analysis results.

Under Public Utilities Commission Administrative Rule 20:10:01:22.01, an order to compel may be granted by the Commission upon the showing of good cause by a party to the proceeding. Additionally, this rule sets forth that discovery is to proceed "in the same manner as in the circuit courts of this state." Admin. R. S.D. 20:10:01:22.01 (1998).

SDCL §15-6-26(a) permits a party to seek discovery by written interrogatories under SDCL §15-6-33, and request for production of documents under SDCL §15-6-34. SDCL § 15-6-26(b) sets forth the general scope of discovery. Unless otherwise limited by order of the court, a party may seek disclosure of "any matter, not privileged, which is relevant to the subject matter in the pending action," whether admissible or not. Id.

Moreover, the scope of discovery is to be broadly construed. Kaarup v. St. Paul Fire and Marine Ins. Co., 436 N.W.2d 17, 19 (S.D. 1989). "A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery: (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial." Id., *citing* 8 C. Wright and A. Miller, Federal Practice and Procedure, § 2001 (1970).

. . . the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of "fishing expedition" serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. But discovery, like all matters of procedure, has ultimate and necessary boundaries.

Kaarup, 436 N.W.2d at 20. Under this broad discovery purview, unless privileged, all relevant matters are discoverable. Id. Western Wireless, LLC, submits that the information requested both through interrogatories and requests for production of documents is properly subject to discovery.

In its response to Request for Production 35, Golden West has simply stated that they have used “approximate average rates” but failed to explain how the averages were derived, or why an average rate would be applied by all of the Golden West Companies. The average is significantly higher than the number WWC has calculated, and Golden West needs to provide the calculations used to produce the average used in determining interstate charges. In the alternative, Golden West should provide explanation as to why WWC’s number is incorrect. Therefore, good cause exists for the Commission to compel Golden West to provide a complete answer as to how interstate charges were calculated.

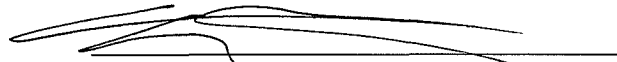
Request for Production 37 requests a password in order for WWC to complete a full analysis of the amounts in controversy using numbers that differ from that of Golden West. The spreadsheet that has been provided by Golden West is complex and contains complicated equations that would require days to recreate. However, with the password, WWC would be better able to determine and complete a full analysis of the final amounts. Additionally, WWC has not right-protected any of the spreadsheets it has provided to Golden West during discovery.

The production of the above information is well within the broad scope of discovery and should be produced by Golden West. This information is clearly within the scope of discoverable material and does not contain any items that would be considered privileged. Furthermore, the acquisition of this information would narrow the issues before the Commission. Good cause exists for the Commission to compel Golden West to provide an explanation of its

calculations of interstate rates and to provide the spreadsheets' passwords so WWC can fully understand the spreadsheets and can cross examine on the spreadsheets.

Dated this 6 day of January, 2006.

GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP



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

In the Matter of the Complaint)
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)

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CERTIFICATE OF SERVICE


I hereby certify that on the 6 day of January, 2006, a true and correct copy of **WWC's Motion to Compel and Brief in Support of Motion to Compel Production of Discovery Responses** was sent by first-class, U.S. Mail, postage paid to:

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