



Dakota Telecommunications Group

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

October 30, 1998

William Bullard
Executive Secretary
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

RE: Review of Proposed Rules

Dear Mr. Bullard,

Attached are the written comments of Dakota Telecommunications Group (DTG) for the hearing scheduled on November 2, 1998. DTG made legislative changes to some rules by striking through language it suggested be deleted and by underlining new language it believed should be included. Comments are generally at the end of the rule and are all caps and bolded.

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Sincerely,

A handwritten signature in black ink, appearing to read "William P. Heaston". The signature is written in a cursive, somewhat stylized script.

William P. Heaston
General Counsel

Comments on the Future of Telecommunications in South Dakota

by Steven Stewart
October 3, 1995

Future telecommunications technology will impact people with disabilities as much as the Salk vaccine, antibiotics, special education, hearing aids, civil rights, and the Declaration of Independence have affected past generations. Telecommunications has progressed from the transmission of electricity over wires to transmitting voices, pictures, and digitalized information through glass, fiber, and air. We have established information super highways that can transmit a remarkable amount of information at remarkable speeds. However, our society must learn from the past and consider people with physical, sensory, and cognitive limitations. We must make the systems accessible to all Americans, without discrimination. In order to ensure this, people with disabilities must be involved in the development, design, and implementation of future telecommunication systems.

When future telecommunications systems are being developed, the barriers that limit the access of people with disabilities to the current systems need to be eliminated. Some of these barriers are caused by actual equipment specifications, however others are caused by the physical locations and the environment where the equipment is located. Systems are being developed without considering the needs of all of the users. The functional limitations of people with disabilities need to be considered when systems are being planned, and the disability community must be involved in the planning and design process. They need to be represented not only on state and federal boards, but also on the Federal Communications Commission (FCC), National Telecommunications And Information Administration (NTIA), and the National Institute of Standards and Technology (NIST), and other planning boards and councils. The disabled community representation on these boards and planning councils would ensure the timely development of standards and regulations to ensure universal access to telecommunications systems for all Americans.

Currently, designs are made for maximum efficiency when systems are used by non-disabled individuals. However, changes made to accommodate people with disabilities often also accommodate non-disabled users. For example, the basic relocation of the power switch on computers from the back to the front could have been done when systems were first developed in order to accommodate a person with a disability. In order to avoid similar design barriers, people with disabilities need to be involved from the onset of system designs.

Even though some systems have been designed specifically for people with disabilities, all barriers in these systems were not eliminated. One such example is the Relay services established to provide communication between people using audio telephony and those using a text telephone (TDD). However, in emergency situations the relay service is not effective because not all text telephones are connected to the 911 emergency telephone service. All standard telephones are not connected to this service. The 911 service was developed to allow quick, easy access in emergency situations, and is critical for many people with disabilities. Providing this service to all people in South Dakota should have a high priority in future plans.

Other problems with current telephone systems include not only accessing the relay service through coin-sent calls from pay phones, but also the mounting heights and locations of many public telephones. Although present accessibility standards address this problem, they are often not enforced or monitored closely enough to ensure that telephones are accessible to everyone.

Other problems with current systems include public information systems such as electronic devices in shopping malls, motels, and public buildings that often depend on a person's ability to see, interpret and select options that use pictures or icons instead of text. Many systems use touch screens that are not accessible to the blind or visually impaired. Alternative input and output should be available to access information from these systems. Alternative input and output systems must work with, and be transparent to the system's function and the systems must tolerate a wide variety of add-ons used by people with disabilities. Many public information systems rely on a person's ability to respond to verbal requests to enter data, such as entering a social security number via a touch tone phone system. However, many of these systems cannot be accessed by people who have disabilities that prevent them from using a touch-tone phone, or from entering the data in the limited amount of time allotted by the system. Alternative access methods should be made available for these systems.

New telecommunication technology utilizes multi-media terminals which can transmit data, pictures, and sound at the same time. This technology may be vital for people with disabilities who can make little use of communications with speech alone. These video capabilities could allow people who use American Sign Language to communicate via telecommunication systems.

New telecommunication systems could impact not only communication, but also the health care and social needs of people with disabilities. Systems could be used to help all Americans obtain better health care by allowing physical assessments such as pulse rates, blood pressures, and temperatures, etc. to be transmitted and monitored via computer networking. Even video images could be transmitted using this technology. This could be a vital service in rural states such as South Dakota where health care access is limited by distance and availability. Social interaction could be improved by designing accessible systems. People with disabilities could use the Internet and e-mail systems to socialize and communicate with people on a global basis. People could utilize telecommunication systems to browse electronic catalogues, and even download audiotapes and movies without leaving home.

New telecommunication systems could also impact the vocational needs of people with disabilities. Often, transportation and physical barriers deter people with disabilities from obtaining employment. Many times transportation for people with disabilities is available only in urban areas. In rural states such as South Dakota, transportation for people with disabilities is not available in most communities. For people with disabilities who live in communities where transportation is not available, home based Telework can allow individuals to work predominantly from the home. When barrier free telecommunications systems are designed, people with disabilities could utilize home based Telework to obtain employment doing work such as computer programming, data entry, desk top publishing, and computer aided design, etc. New systems must not only be barrier free, but must be compatible with the existing networks and systems.

Future advancements in the areas of global navigation could greatly improve mobility skills for the blind. This could be achieved by implanting computer chips in buildings, landmarks, intersections, etc. The blind individual could then activate a device which would tell him or her where they are, which direction he's facing, etc. These advancements in global navigation would improve the quality of life for all blind individuals.

The use of and further development of telecommunications technology can impact society as much or more as the industrial revolution did in the past. We must ensure that this technology is accessible to all people. In order to ensure accessibility, regulations to ensure access to telecommunications systems without discriminating on the basis of disability need to be implemented. These regulations need to ensure effective, competitive, and fair connection and incentives for the design and

manufacture of accessible systems. These regulations should ensure that all common carriers operate under the same rules. Programs should be developed to identify and remove barriers that prevent modern telecommunications technology break-throughs from reaching all who could benefit from the knowledge.

Regulations alone cannot ensure accessibility. Accessibility is also dependent on affordability, geographic location, and the availability of training and technical support to develop and maintain the skills necessary to use the system.

Telecommunications systems need to be available to people with disabilities, regardless of their income or residence. Training programs should be available nationwide to coincide with the implementation of new systems. The training programs and technical support should be designed in a format that is accessible for all people, regardless of their disabilities and or their geographic location.

By ensuring that telecommunications systems are accessible to all people, each and every member of society has an equal opportunity to change not only the present, but also the future of mankind. Even though telecommunications would not be developed in their lifetimes, our ancestors seemed to know that it should be accessible to all people. Could this have been what our ancestors had in mind when they wrote in the Declaration of Independence " they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of happiness"? **When telecommunications systems are accessible to all people, people with disabilities can "declare their independence".**

COMMENTS OF DAKOTA TELECOMMUNICATIONS GROUP (DTG)

CHAPTER 20:10:01

GENERAL RULES OF PRACTICE

20:10:01:01. Sessions of commission. The office of the commission shall be in the capitol at Pierre and shall be open each business day for the transaction of business. Meetings or hearings dealing with particular matters shall be held ~~at its office in the capitol in the city of Pierre on such days and at such hours as the commission may designate~~ at a place, date, and time as designated by the commission.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-4.

20:10:01:01.01. Definitions. Terms used in this chapter mean:

- (1) "Commission," the Public Utilities Commission of the state of South Dakota;
- (2) "Applicant" or "petitioner," a party seeking approval, authority, or other relief; or any person who notifies the commission of a proposed change in gas, electric, or common carrier rates;
- (3) "Complainant," a party who files a complaint;
- (4) "Party," a person by or against whom a proceeding is commenced or a person admitted by the commission or properly seeking and entitled as of right to be admitted as a party, including commission staff when representing the public interest. Commission staff is not required to intervene to be a party; and
- (5) "Respondent," a party who is complained against, or a party investigated or ordered to show cause.

Source: 2 SDR 56, effective February 2, 1976; transferred from • 20:10:14:01, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 1-26-1(5), 49-34A-4.

20:10:01:02. Appearances. Any party to a proceeding may appear before the commission and be heard either in person or by attorney. ~~A corporation or association may be represented before the commission by any bona fide officer or employee.~~

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-11.

DTG COMMENTS: THIS AMENDMENT APPEARS TO LIMIT REPRESENTATION OF CORPORATE ENTITIES TO ATTORNEYS. MANY ADMINISTRATIVE AND CUSTOMER MATTERS BEFORE THE COMMISSION DO NOT REQUIRE THE SERVICES OF AN ATTORNEY. THE EXISTING LANGUAGE SHOULD REMAIN.

20:10:01:07.01. Contents of complaint. A complaint shall be in writing and ~~an original and three copies shall be filed with the commission with as many additional copies as there are parties complained against.~~ A complaint shall contain:

- (1) The full name and address of the complainant or complainants;
- (2) The full name and address of each respondent;
- (3) A full, clear, and reasonably certain statement of the facts giving rise to the complaint, with reference where practicable to the law, statute, order, or rules of which a violation is claimed;
- (4) ~~A prayer for relief to which the complainant believes himself entitled;~~ The remedy requested by the complainant;
- (5) The signature of the complainant and the name and post office address of the complainant's attorney, if any; and
- (6) ~~A verification of the complaint before a notary public~~ An affirmation that the statement of facts are accurate to the best of the complainant's knowledge.

DTG COMMENTS: DTG ASSUMES THIS CHANGE IS TO ACCOMMODATE THOSE WHO DO NOT WISH TO SWEAR AN OATH.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:11, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11, 49-34A-4.

Law Implemented: SDCL 49-13-1, 49-13-2, 49-34A-59, 49-44-16.

20:10:01:10. Actions which satisfy complaint. The respondent shall, within the time fixed by the notice served upon it, satisfy the complaint by making reparation for the injury alleged to have been done, correcting the wrong complained of, or answering the complaint by filing the original and one copy of the answer in the office of the commission and serving a copy on each of the complainants. If a respondent satisfies a complaint before or after answering, a written acknowledgment thereof showing the character and extent of the satisfaction must be filed by the complainant, and a statement of the facts and manner of satisfaction, ~~without other matter,~~ may be filed as an answer. Upon approval of the commission, no further proceedings will be taken.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11, 49-34A-4.

Law Implemented: SDCL 49-1-11, 49-13-1, 49-13-3, 49-34A-4.

20:10:01:11.01. Defenses to complaint. The defense that the complainant does not have a good or sufficient reason for making a complaint, that the complainant is without standing to make the complaint, or that a complaint fails to show probable cause or otherwise fails to conform to this chapter, may be raised by motion to dismiss or answer, at the option of the respondent. All other defenses to the complaint shall be raised by answer. An original and ~~three ten~~ three ten copies of the motion to dismiss or answer, accompanied by proof of service of a copy thereof on the complainant, shall be filed with the commission. The answer shall specifically admit or specifically deny material allegations of the complaint and may also contain a statement of new matters constituting an affirmative defense. If the respondent has no information or belief on the subject sufficient to enable the respondent to answer an allegation of the complaint, the respondent may so state in the answer and ~~place a denial upon~~ deny the allegation on that ground.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:15, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11, 49-34A-4.

Law Implemented: SDCL 49-1-11, 49-13-1, 49-34A-4.

20:10:01:15 Investigation of complaint Opportunity for hearing. Upon receipt of the answer of the respondent or respondents or at the expiration of the time fixed for the filing of the answer, if the respondent or respondents have not satisfied the complaint or corrected the wrong complained of, the commission shall ~~investigate the matter complained of. An investigation may involve hearings~~ give the parties an opportunity for a hearing conducted in accordance with the provisions of SDCL chapter 1-26.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11, 49-34A-4.

Law Implemented: SDCL 49-1-11, 49-13-1, 49-13-3, 49-34A-4.

20:10:01:15.02. Intervention. A person who is not an original party to a proceeding before the commission and who claims an interest in a pending proceeding may petition the commission for leave to intervene. An original and ~~three ten~~ three ten copies of a petition to intervene shall be filed with the commission within the time specified in the commission's order establishing time for intervention. A petition to intervene which is not timely filed with the commission shall not be granted by the commission unless the denial of the petition is shown to be detrimental to the public interest or to be likely to result in a miscarriage of justice.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:02, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 1-26-17.1, 49-34A-13.1.

20:10:01:15.06. Individual's right to appear. Notwithstanding § 20:10:01:15.02, an individual, customer or ratepayer, or governmental representative shall be permitted to appear in person without filing a petition for leave to intervene, if the person makes a full disclosure of identity and the person's interest in the proceeding and if the contentions of the person are reasonably pertinent to the issues presented and the right to broaden the issues is disclaimed. Persons appearing pursuant to this section shall not be afforded the status of a party to the proceedings.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:06, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-11.

DTG COMMENTS: IF THE ISSUES CHANGE AS A RESULT OF THIS TYPE OF INTERVENTION, WHAT IS THE REMEDY? NEW NOTICE? DELAY? THE REASON FOR THE EXISTING LANGUAGE IS TO AVOID THE DUE PROCESS PROBLEMS ENCOUNTERED WHEN NEW ISSUES ARE RAISED BY PARTIES THAT HAVE NOT PROVIDED TIMELY NOTICE OF INTERVENOR QUALIFICATION. THE TERM "REASONABLY PERTINENT" DOES NOT COVER THE CIRCUMSTANCES CONTEMPLATED BY LIMITING THE INTERVENTION TO THE NOTICED ISSUES.

20:10:01:17. Subpoenas. Subpoenas requiring the attendance of witnesses and the production of records, books, papers, tariffs, agreements, contracts, and documents may be issued by an attorney consistent with SDCL 15-6-45(a) or any commissioner or the executive secretary on the written request of any party in any proceeding before the commission.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 1-26-19.1, 49-1-8.2, 49-1-11.

20:10:01:22.01. ~~Order for deposition, interrogatory, or discovery~~ Discovery -- Order to compel. Parties may obtain discovery from other parties without commission approval. The commission at its discretion, either upon its own motion or for good cause shown by a party to a proceeding, may issue an order to compel take a deposition, interrogatory, or other discovery proceeding. The taking and use of such deposition, interrogatory, or discovery shall be in the same manner as in the circuit courts of this state.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:24, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 1-26-19.2.

20:10:01:25. Briefs. The commission in its discretion may order the filing of written briefs and when so ordering shall fix the due dates for filing. Briefs shall contain the following matters: statement of the case; abstract of the evidence relied upon by the party filing the brief; specific citations to the record; arguments, including references to decisions of the commission, other commissions, or of the courts; and request for specific findings desired by the party filing the brief. Such requested findings should be stated separately and numbered. The original and ~~three~~ ten copies shall be filed with the commission and a copy shall be served on each party. Certification of service shall be filed with the briefs.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-11.

20:10:01:28. Compliance with orders. A party named in an order issued by the commission shall promptly notify the executive secretary director of the commission whether or not compliance has been made therewith if the party has failed to comply with the order or anticipates that the party will be unable to comply with the order. If a change in any rate, rule, practice, regulation, or classification is required, a notification to the executive secretary director must be given in addition to the filing of the proper tariffs.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-11.

20:10:01:29. Rehearings or reconsideration. Any A party to any a proceeding before the commission may apply for a rehearing or reconsideration as to any matter determined by the commission and specified in the application for the rehearing or reconsideration. The commission may grant reconsideration or ~~and hold such hearings~~ rehearing on said matters if, in its judgment, there appears to be sufficient reason for rehearing or reconsideration.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-11, 49-28-53, 49-34A-61.1.

20:10:01:30.01. Application for rehearing or reconsideration. An application for a rehearing or reconsideration shall be made only by ~~verified~~ written petition by a party to the proceeding. An original and ~~3~~ ten copies of the application shall be filed with the commission within 30 days from the issuance of the commission decision or order. An application for rehearing or reconsideration based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error. An application for rehearing or reconsideration based upon newly discovered evidence, upon facts and

circumstances arising subsequent to the hearing, or upon consequences resulting from compliance with the decision or order, shall set forth fully the matters relied upon. The application shall show service thereof on all other parties to the proceeding.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:39, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-11, 49-28-53, 49-34A-61.1.

20:10:01:30.02. Answer to application for rehearing or reconsideration. Within 20 days following service of an application for rehearing or reconsideration, any party may file with the commission an answer to the application. The answer shall show service thereof upon all parties to the proceeding.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:40, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-11, 49-28-53, 49-34A-61.1.

DTG COMMENTS: WHAT WOULD BE THE PROCEDURE IF THE COMMISSION WERE TO MOVE TO REHEAR OR RECONSIDER A DECISION IT HAS MADE? WOULD THE PARTIES IN THE ORIGINAL PROCEEDING BE ALLOWED 20 DAYS TO RESPOND TO A COMMISSION MOTION?

20:10:01:32. Information provided by commission. The executive secretary director of the commission will, upon request, advise any party as to the form of any petition, answer, or other document or paper necessary to be filed in any proceeding.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 49-1-11.

CHAPTER 20:10:24

TELECOMMUNICATIONS SERVICES INTEREXCHANGE CARRIER AND CLASSIFICATION RULES

20:10:24:01. Definitions. Terms defined in SDCL 49-31-1 have the same meaning in this chapter. In addition, terms used in this chapter and SDCL 49-31 mean:

- (1) "Access charges," the amount one local exchange telecommunications company charges an interexchange carrier for use of telecommunications facilities to originate or terminate calls within its service area;
- (2) "Alternative operator service provider (AOS)," a corporation, company, partnership, person, or any entity, other than the serving local exchange or interexchange carrier, providing a connection by contract to intrastate or interstate long distance or to local services from such places as hotels, motels, hospitals, campuses, and customer-owned pay telephones;
- (3) "Call blocking," denying the completion of a call which would allow the caller to reach a long distance telephone company from an AOS company;
- (4) "Customer," an individual, partnership, association, joint-stock company, trust, corporation, governmental entity, or any other entity which subscribes to telecommunications services, including interexchange carriers and end users;
- (5) "Deregulation," partial or total exemption from regulation by the commission of a service, rate, product, or practice;
- (6) "End user," a person or entity, except a telecommunications company, which utilizes telecommunications services for its own use;
- (7) "Extended area service (EAS)," a telecommunications service that expands a local calling area to include another adjacent local exchange area;
- (8) "Interexchange carrier," a telecommunications company which renders telecommunications service between points which are not in the same local calling area established in the tariff of a local exchange carrier;
- (9) "Interstate access," the ability of interexchange carriers to utilize the facilities of a local exchange carrier for the origination and termination of interexchange interstate interLATA calls;
- (10) "Intrastate access," the ability of a telecommunications company to utilize the facilities of the local exchange carrier for the origination and termination of intrastate interexchange calls;
- (11) "Intrastate telecommunications services," telecommunications services that are functionally intrastate, with points of origination and termination within South Dakota, regardless of the specific routing of the affected traffic;
- (12) "Local calling area," a geographical area, including extended area service (EAS) points as

defined in the telephone company's local exchange service tariff, in which an end user may complete a call without incurring long distance charges;

(13) "Local exchange area," a service territory consisting of one or more central offices together with associated facilities which are used in providing basic local exchange service;

(14) "Resale," the subscription to local or long distance telecommunications services and facilities by an entity which then offers them for sale to others with or without enhancements;

(15) "Reseller," a person or entity reselling local or long distance telecommunications services.

Source: 16 SDR 106, effective December 27, 1989.

General Authority: SDCL 49-31-3, 49-31-5

Law Implemented: SDCL 49-31-3, 49-31-5.

WIG COMMENTS: THE DEFINITION OF "LOCAL EXCHANGE AREA" IN (13) IS NOT CONSISTENT WITH THE STATUTORY DEFINITION IN SDCL 49-31-1(18A).

20:10:24:02. Certificate of authority for interexchange service -- Application requirements. Telecommunications companies required to apply for a certificate of authority with the commission pursuant to SDCL 49-31-3 for interexchange service shall provide the following information ~~for the initial certification with their application~~ unless the commission grants a waiver to omit a specific item of information:

(1) The name, address, and telephone number of the applicant;

(2) The name under which the applicant will provide these services if different than in subdivision (1) of this section;

(3) If the applicant is a corporation:

(a) The state in which it is incorporated, the date of incorporation, and a copy of its certificate of incorporation or, if it is an out-of-state corporation, a copy of its certificate of authority to transact business in South Dakota from the Secretary of State;

(b) The location of its principal office, if any, in this state and the name and address of its current registered agent;

(c) The names and addresses of any corporation, association, partnership, cooperative, or individual holding a 20 percent or greater ownership or management interest in the applicant corporation and the amount and character of the ownership or management interest; and

~~(d) The names and addresses of subsidiaries owned or controlled by the applicant;~~

(4) If the applicant is a partnership, the name, title, and business address of each partner, both general and limited;

(5) A specific description of the telecommunications services the applicant intends to offer;

(6) A detailed statement of the means by which the applicant will provide its services, including the type and quantity of equipment to be used in the operation, the capacity, and the expected use of the equipment;

(7) The geographic areas in which the services will be offered, including or a map describing the service areas;

(8) Current financial statements including a balance sheet, income statement, and cash flow statement; a copy of the applicant's latest annual report; a copy of the applicant's report to stockholders; and a copy of applicant's tariff with the terms and conditions of service;

(9) The names, and addresses, telephone number, fax number, e-mail address, and toll free number of the applicant's representatives to whom all inquiries should be made regarding complaints and regulatory matters and a description of how the applicant handles customer billings and customer service matters;

(10) A list of the states in which the applicant is registered or certified to do business and if the applicant has ever been denied registration or certification in any state and the reasons for the denial provide telecommunications services, whether the applicant has ever been denied registration or certification in any state and the reasons for any such denial, a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in the states where it is registered or certified, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable;

(11) A detailed description of how the applicant intends to market its services, the qualifications of its marketing sales personnel, its target market, whether the applicant engages in any multilevel marketing, copies of any company brochures used to assist in the sale of services, and all telemarketing scripts used by the applicant and its third party verifier; and

(12) Cost support for rates shown in the company's tariff for all noncompetitive or emerging competitive services;

(13) Federal tax identification number;

(14) The number and nature of complaints filed against the applicant with any state or federal regulatory commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered;

(15) A written request for waiver of those rules believed to be inapplicable; and

(16) Other information requested by the commission needed to demonstrate that the applicant has sufficient technical, financial, and managerial capabilities to provide the interexchange services it intends to offer consistent with the requirements of this chapter and other applicable rules and laws.

The commission may at its discretion require the production of an audited financial statement and additional information to supplement that contained in the application. The companies shall notify the commission of any changes in subdivisions (1), (2), (3b), (4), (7), (9), and (11) as they occur.

Source: 16 SDR 106, effective December 27, 1989; 21 SDR 81, effective November 3, 1994; 22 SDR 107, effective February 18, 1996.

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3.

DTU COMMENTS: WITH THE CONTINUAL INFLUX OF INTEREXCHANGE COMPETITORS, ONE WOULD ANTICIPATE THAT THESE REGULATORY RULES WOULD BE DIMINISHING, NOT INCREASING. THE RULE SHOULD BE MORE COMPETITION, LESS REGULATION. THESE PROPOSED RULE CHANGES AND THE NEW LANGUAGE PROPOSED IN RULE 20:10:24:03.01 ARE NOT CONSISTENT WITH THE NECESSARY OVERSIGHT OF THIS HIGHLY COMPETITIVE MARKET. THE COMMISSION SHOULD MOVE INTEREXCHANGE SERVICES TO THE FULLY COMPETITIVE CATEGORY AND RETIRE FROM REGULATING THESE SERVICES. THE WHOLE GENESIS OF REGULATION WAS THE EXISTENCE OF A MONOPOLY, AND THE NEED FOR CONSUMER PROTECTION WHEN THE CONSUMER HAD NO OTHER CHOICE FOR A SUPPLIER. "MANAGED COMPETITION" IS AN OXYMORON. IN A COMPETITIVE ENVIRONMENT THE CUSTOMER CAN VOTE WITH HIS/HER FEET. IF THE COMPANY CANNOT SATISFY THE CUSTOMER THEN THERE WILL BE NO MORE COMPANY, WITHOUT THE NEED FOR COMMISSION INTERVENTION. THE PROPOSED RULES MAKE IT MORE DIFFICULT FOR ANY COMPETITOR TO ENTER THE MARKET. PLACING ADDITIONAL BURDENSOME REQUIREMENTS ON NEW ENTRANTS WILL IN FACT REDUCE COMPETITION AND CUSTOMER CHOICE, WHILE PROMOTING AND EXPANDING A REGULATORY OVERSIGHT. THE EXPANSION OF THESE RULES IS DIRECTLY CONTRARY TO THE PURPOSE AND SPIRIT OF THE GOVERNOR'S TELECOM ACT AND THE FEDERAL TELECOM ACT OF 1996.

20:10:24:03 Denial of application for certificate of authority for interexchange service. If an application filed pursuant to SDCL 49-31-3 for interexchange telecommunications is incomplete, inaccurate, false, or misleading, the commission shall reject the application. If the commission finds that the applicant is not financially, technically, or managerially able to provide the contemplated service, it shall deny the application for certification.

Source: 16 SDR 106, effective December 27, 1989; 21 SDR 81, effective November 3, 1994.

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3.

20:10:24:03.01 Decision criteria for granting a certificate of authority. A certificate of authority to provide interexchange service may not be granted unless the applicant establishes sufficient technical, financial, and managerial ability to provide the interexchange services described in its application consistent with the requirements of this chapter, and other applicable laws, rules, and commission orders. In determining whether an applicant has sufficient technical,

financial, and managerial capabilities and whether a certificate of authority for interexchange services should be granted the commission shall consider:

(1) Whether the applicant has an actual intent to provide interexchange services in South Dakota;

(2) Prior experience of the applicant or the applicant's principals or employees in providing telecommunications services or related services in South Dakota or other jurisdictions, including the extent to which that experience relates to and is comparable to service plans outlined in the filed application;

(3) The applicant's personnel, staffing, equipment, and procedures, including the extent to which these are adequate to ensure compliance with the commission's rules and orders relating to service obligations, service quality, customer service, and other relevant areas;

(4) The nature and location of any proposed or existing facilities which the applicant intends to use in providing interexchange services, including the extent to which those facilities are capable of providing the services described in the application consistent with any applicable regulation;

(5) If the applicant intends to resell interexchange services or enter into facility arrangements with other telecommunications carriers, when the necessary arrangements will be in place and whether they will be adequate to deliver the services described in the application consistent with any applicable regulation;

(6) The applicant's marketing plans and its plan and resources for receiving and responding to customer inquiries and complaints;

(7) Whether the applicant has sufficient financial resources to support the provisioning of interexchange service in a manner that ensures the continued quality of telecommunications services and safeguards consumer and public interests;

(8) The applicant's cash reserves and extent to which those reserves are sufficient to meet startup expenses, working capital requirements, and other expected immediate capital expenditures;

(9) The applicant's business or owner equity;

(10) The applicant's long-term debt to capitalization ratio;

(11) The applicant's return on assets ratio;

(12) The extent to which the applicant, applicant's affiliates, or applicant's principals have been subject to any civil, criminal, or administrative action in connection with the provisioning of telecommunications services; and

(13) Any other factors relevant to determining the applicant's technical, financial and managerial capability to provide the services described in the application consistent with the requirements of this chapter, and other applicable laws, rules, and commission orders.

Source:

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3.

DTG COMMENTS: SEE COMMENTS FOR 20:10:24:02, ABOVE.

20:10:24:04. Certificate of authority—Information filed after certification. After a telecommunications company has received a certificate of authority from the commission, the company shall submit on ~~May~~ June 1 each year thereafter the following information from the preceding calendar year:

(1) A report on its revenues resulting from operations in this state, a current financial statement, and a statement of any changes in the financial position of the telecommunications company relating to operations of the company in South Dakota. The report and statements shall be verified by a corporate officer and shall identify the location where any working papers supporting the report and statements can be reviewed;

(2) A report identifying the exchanges, routes, or other geographic areas of this state where it is providing or expects to provide services. The report shall include the number and type of customers being served, if the company keeps such records.

Source: 16 SDR 106, effective December 27, 1989; 21 SDR 81, effective November 3, 1994; 22 SDR 107, effective February 18, 1996.

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3.

DTG COMMENTS: SEE COMMENTS FOR 20:10:24:02, ABOVE. THERE IS NO LEGITIMATE, PUBLIC INTEREST PURPOSE TO BE SERVED IN A COMPETITIVE MARKET BY PROVIDING THIS INFORMATION.

20:10:24:04.01. Sale, assignment, lease, or transfer of certificate of authority. In ruling on any proposed sale, assignment, lease, or transfer of a certificate of authority to provide interexchange services, the commission shall consider the criteria set forth in 20:10:24:03.01.

Source:

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3.

20:10:24:04.02. Suspension or revocation of certificate of authority. Failure of any provider of interexchange service to comply with applicable requirements set forth in this chapter, other terms and conditions imposed on its certification by the commission, or applicable rules and laws, or for other good cause may result in the suspension or revocation of the provider's certificate of authority to provide interexchange services.

Source:

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3.

DTG COMMENTS: SEE COMMENTS FOR 20:10:24:02, ABOVE. THE PURPOSE OF RULES IS PUT A PROVIDER ON NOTICE AS TO WHAT IS EXPECTED, NOT TO ALLOW THE COMMISSION TO MAKE AD HOC DETERMINATIONS ON A PROVIDER BY PROVIDER BASIS. UNDER THE RULES AS PROPOSED IT IS QUITE POSSIBLE FOR A MINOR, NON-MATERIAL BREACH TO RESULT IN REVOCATION. AGAIN, AS EXPRESSED ABOVE, THE RULES OF THE MARKETPLACE MAKE IT EXTREMELY UNLIKELY THAT AN INCOMPETENT PROVIDER WILL SURVIVE. THE CUSTOMERS WILL SIMPLY GO ELSEWHERE, ESPECIALLY FOR A SERVICE AS FUNGIBLE AS INTEREXCHANGE SERVICE.

20:10:24:04.03. Notice and hearing required for suspension or revocation of certificate of authority. No suspension or revocation of a certificate of authority is lawful unless, prior to the institution of commission proceedings, the commission gave notice by certified mail using the address on file with the commission to the named holder of the certificate of authority of the facts or conduct which warrant the intended action, and the named holder of the certificate of authority was given a reasonable opportunity to show compliance with all lawful requirements for the retention of the certificate of authority. It is the responsibility of the named holder of the certificate of authority to inform the commission of any change in address.

Source:

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3; 1-26-29.

20:10:24:04.04. Procedure for suspension or revocation hearing. Upon the filing of a notice of hearing for suspension or revocation of a certificate of authority, the commission shall issue and serve an order to show cause upon the named holder of the certificate of authority. The order shall be served at least ten days before the hearing unless otherwise ordered. The order shall include a notice of the time and place of the hearing. The order shall require the person complained of to appear at the time and place fixed in the notice and to show cause why the proposed action should not be taken. The order shall refer to an attached copy of a verified complaint or other notice, affidavit, or official document in such a way as to inform the party of the charge or violation upon which the order is based and issued. At the hearing, the commission staff or complainant shall present evidence of the alleged violation. The telecommunications company shall then be allowed an opportunity to respond to the evidence.

After the hearing the commission shall enter its decision either dismissing the complaint or entering an order directing the action specified in the order to show cause. If the commission revokes a certificate of authority, the named holder of the certificate of authority may not reapply for a certificate of authority for at least one year after the date of revocation.

Source:

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3.

DTG COMMENTS: SEE COMMENTS FOR 20:10:24:02, ABOVE. ALSO THE

COMMISSION DOES NOT HAVE "SHOW CAUSE" AUTHORITY, NOR THE ABILITY TO SHIFT THE BURDEN OF PROOF TO THE RESPONDANT IN A PROCEDURE LIKE THIS. WHEN DEALING WITH THE BASIC ABILITY OF A COMPANY TO DO BUSINESS IN THE STATE, THE BURDEN IS ON THE COMPLAINANT TO ESTABLISH THE VIOLATION WHICH WOULD WARRANT ACTION TERMINATING THAT RIGHT.

20:10:24:04.05. Performance bonds. If in the public interest, the commission may require an applicant, as a condition precedent to granting a certificate of authority, to file with the commission a bond in such sum as the commission may require and be of a duration set by the commission. Such bond shall be filed with the commission and be for the benefit of other telecommunications companies providing access to the local exchange networks for the applicant or any other customer of the applicant.

The commission may, for good cause shown, require such increases in the amount of such bond from time to time, as it may deem necessary for the protection of the public. The surety on such bond must be a corporate surety company holding a certificate with the Department of Insurance of the State of South Dakota authorizing it to execute the same.

Source:

General Authority: SDCL 49-31-3.

Law Implemented: SDCL 49-31-3.

DTG COMMENTS: SEE COMMENTS FOR 20:10:24:02, ABOVE. ALSO THERE IS NO STATUTORY AUTHORITY FOR THE COMMISSION TO REQUIRE THE POSTING OF A PERFORMANCE BOND.

CHAPTER 20:10:32

LOCAL EXCHANGE SERVICE COMPETITION

20:10:32:01. Definitions. Terms used in this chapter that are defined in SDCL 49-31-1 have the same meaning. In addition, the following terms used in this chapter mean:

(1) "~~Alternative local service provider~~ Competitive local exchange carrier," a telecommunications company which ~~seeks to provide or is providing~~ provides local exchange services in competition with an incumbent local exchange carrier;

DTG COMMENTS: THE NORMAL INDUSTRY TERM IS "COMPETITIVE LOCAL EXCHANGE CARRIER."

(2) "Incumbent local exchange carrier," a local service provider falling within the definition prescribed under 47 U.S.C. § 251(b) (September 10, 1998);

(3) "~~Local service provider~~," a telecommunications company which ~~seeks to provide or is providing~~ local exchange services in South Dakota pursuant to a certificate of authority granted by the commission, including both incumbent local exchange carriers and ~~alternative local service providers~~;

DTG COMMENTS: THIS ADDITIONAL DEFINITION IS UNNECESSARY.

(4) "Resale," the practice of purchasing local exchange services from another local service provider and reselling the services on a retail basis to end user customers;

(5) "Reseller," a local service provider that provides local exchange services to end users through resale without using its own network facilities or the unbundled network elements of a local exchange carrier.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-69, 49-31-76.

20:10:32:02. Certificate of authority required to provide local exchange service. A certificate of authority for local exchange service obtained pursuant to this chapter applies only to the service area designated in the application for certification, subject to any further limitations that may be imposed by the commission pursuant to statute or this chapter. A telecommunications company, that already has a certificate, may not provide local exchange service in an area for which it does not have a valid certificate of authority without first obtaining an amended certificate of authority from the commission applicable to the area into which the company proposes to expand. A certificate of authority to provide local exchange services may include authority to provide such services through the resale of a local exchange carrier's services, the purchase of a local exchange carrier's network elements, or the use of the applicant's own facilities.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-69, 49-31-76.

DTG COMMENTS: MAKES THE INTENT CLEARER.

20:10:32:03. Certificate of authority for local exchange service -- Application requirements. Telecommunications companies required to apply for a certificate of authority for local exchange services from the commission shall submit a written application including the following information:

- (1) The applicant's legal name, address, telephone number, facsimile number, e-mail address, and whether applicant is a sole proprietorship, partnership, corporation, limited liability corporation, or limited liability partnership;
- (2) If a sole proprietorship, the full name and business address of its owner; if a partnership, the full name and business address of each partner; if a corporation, a listing of the full names and business addresses of the corporate officers and directors; or, if a limited liability company, the full names and business addresses of each member;
- (3) The name under which applicant will provide local exchange services if different than its legal name;
- (4) If a corporation:
 - a. The location of its principal office, if any, in this state and the name and address of its current registered agent;
 - b. A list of shareholders owning twenty percent or more of the interest in the business;
 - c. The state in which the applicant is incorporated, the date of incorporation, and a copy of its certificate of incorporation, and
 - d. If it is an out-of-state corporation, a copy of its certificate of authority to transact business in South Dakota from the Secretary of State;
- (5) A description of the applicant's business history, including:
 - a. When the business was first organized, the dates of any subsequent reorganizations, the nature of the business, and the date the applicant started providing any telecommunications services; and
 - b. The applicant's experience providing any telecommunications services in South Dakota or in other jurisdictions, including the types of services provided, and the dates and nature of state or federal authorization to provide the services;
- (6) Names and addresses of applicant's affiliates, subsidiaries, and parent organizations, if any;

(7) A list and specific description of the general nature of the types of services the applicant seeks to offer and the means by which the services will be provided including:

- a. Information indicating the classes of customers the applicant intends to serve;
- b. Information indicating the extent to and time frame by which applicant will provide service through the use of its own facilities, the purchase of unbundled network elements, or resale;
- c. A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers; and
- d. Information identifying the types of services it seeks authority to provide by reference to the general nature of the service;

(8) If the applicant intends to construct facilities to provide its local exchange service, a description of the facilities, the date construction of the facilities will begin, and the anticipated completion date;

(9) A service area map and narrative description indicating with particularity the geographic area proposed to be served by the applicant and a narrative delineating specifically the areas where the applicant is prepared to provide service in the near future;

(10) Information regarding the technical competence of the applicant to provide its proposed local exchange services including:

- a. A description of the education and experience of the applicant's management personnel who will oversee the provision of the proposed local exchange services; and
- b. Information regarding policies, personnel, or arrangements made by the applicant which demonstrates the applicant's ability to respond to customer complaints and inquiries promptly and to perform facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements;

(11) Information explaining how the applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services;

(12) Financial information detailing financial resources that will support provisioning of the proposed local exchange service in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interest including:

- a. For the most recent 12 month period, financial statements consisting of balance sheets, income statements, and cash flow statements; and
- b. If a public corporation, the applicant's latest annual report and report to

stockholders;

(13) Information detailing the following matters associated with interconnection to provide proposed local exchange services:

- a. The identity of all local exchange carriers with which the applicant plans to interconnect;
- b. The likely timing of initiation of interconnection service and a statement as to when negotiations for interconnection started or when they are likely to start; and
- c. A copy of any request for interconnection made by the applicant to any local exchange carrier;

(14) A tariff or price list indicating the prices, terms, and conditions of each contemplated local service offering;

~~(15) Cost support for rates shown in the company's tariff or price list for rate or price regulated noncompetitive or emerging competitive services;~~

~~(16) A detailed description of how the applicant intends to market its local exchange services, the qualifications of its marketing personnel, its target market, whether the applicant engages in multilevel marketing, and copies of any company brochures that will be used to assist in sale of the services;~~

(17) If the applicant is seeking authority to provide local exchange service in the service area of a rural telephone company, the date by which the applicant expects to meet the service obligations imposed pursuant to ' 20:10:32:16 and applicant's plans for meeting the service obligations;

(18) A list of the states in which the applicant is registered or certified to provide telecommunications services, whether the applicant has ever been denied registration or certification in any state and the reasons for any such denial, a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in the states where it is registered or certified, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable;

(19) The names, addresses, telephone numbers, e-mail addresses, and facsimile numbers of the applicant's representatives to whom all inquiries should be made regarding customer complaints and other regulatory matters;

~~(20) Information detailing how applicant plans to bill for and collect charges from customers who subscribe to its proposed local exchange services;~~

~~(21) Information concerning the applicant's policies relating to solicitation of new customers, including all telemarketing scripts used by the applicant and its third party verifier, and a description of the efforts that will be made to prevent unauthorized switching of local service customers by the applicant, its employees, or agents;~~

(22) The number and nature of complaints filed against the applicant with any state or federal

commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered;

(23) A written request for waiver of those rules believed to be inapplicable; and

(24) Other information requested by the commission needed to demonstrate that the applicant has sufficient technical, financial, and managerial capabilities to provide the local exchange services it intends to offer consistent with the requirements of this chapter and other applicable rules and laws.

However a telecommunications company serving less than fifty thousand local exchange subscribers is not required to file cost support information. Tariffs shall be filed for informational purposes only.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-69, 49-31-76.

DTG COMMENTS: A COMPETITIVE LOCAL EXCHANGE CARRIER SHOULD NOT HAVE TO DIVULGE COMPETITIVELY SENSITIVE AND CONFIDENTIAL FINANCIAL, MARKETING AND PRICING DATA TO THE COMMISSION. FINANCIAL DATA SHOULD BE LIMITED TO THAT PUBLICLY AVAILABLE. MARKETING AND PRICING DATA HAS NOTHING TO DO WITH THE APPLICANT'S FINANCIAL, TECHNICAL AND MANAGERIAL ABILITY TO PROVIDE SERVICE. THE COMMISSION SHOULD NOT BE OVERLY PROTECTIVE OF THE CUSTOMER, NOR OVERLY CONCERNED ABOUT THE ABILITY OF AN APPLICANT TO SUCCEED IN A COMPETITIVE MARKET. THE CUSTOMER HAS A CHOICE, AND THERE WILL BE AN INCUMBENT OR OTHER COMPETITOR AVAILABLE TO PROVIDE SERVICE. THE WHOLE CONCEPT OF REGULATION CHANGES, OR SHOULD CHANGE, WHEN DEALING WITH COMPETITION. THERE IS NO NEED TO PROTECT COMPANIES FROM EACH OTHER VIA SPECIFIC REGULATION. THERE IS NO NEED TO BURDEN ENTRY INTO THE MARKET WITH EXHAUSTIVE AND DETAILED REQUIREMENTS. COMPANIES WILL CHOOSE TO COMPETE OR NOT COMPETE BASED ON THEIR PERCEPTION OF THE DIFFICULTY OF ENTRY, THE ECONOMICS OF ENTRY, AND THE POTENTIAL REWARDS.

20:10:32:04. Notice to other local exchange carriers in proposed service area -- Intervenor status. The applicant shall give notice of its application to each telecommunications company that already holds a certificate of authority to provide local exchange service in the geographic area where the applicant seeks to provide local exchange service. In addition, the commission shall, upon request, grant each of the already certified telecommunications companies intervenor status in any commission proceeding held on the application. The request for intervention submitted by any such company need not meet the requirements for petitions to intervene set forth in chapter 20:10:01.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-70, 49-31-76.

20:10:32:05. Opportunity for hearing -- Burden of proof. The applicant and other parties to the application may request a hearing on the application for a certificate of authority to provide local exchange services. In the application proceeding, the telecommunications company filing the application shall have the burden of proving that it has sufficient technical, financial, and managerial capabilities to provide the local exchange services applied for consistent with the requirements of this chapter and other applicable laws, rules, and commission orders.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

20:10:32:06. Rejection of incomplete application -- Decision criteria for granting a certificate of authority. A certificate of authority to provide local exchange service may not be granted unless the applicant establishes sufficient technical, financial, and managerial ability to provide the local exchange services described in its application consistent with the requirements of this chapter and other applicable laws, rules, and commission orders. If an application is incomplete, inaccurate, false, or misleading, the commission shall reject the application. In determining whether an applicant has sufficient technical, financial, and managerial capabilities and whether a certificate of authority for local exchange services should be granted the commission shall consider:

(1) Whether the applicant has an actual intent to provide local exchange services in South Dakota;

(2) Prior experience of the applicant or the applicant's principals or employees in providing telecommunications services or related services in South Dakota or other jurisdictions, including the extent to which that experience relates to and is comparable to service plans outlined in the filed application;

(3) The applicant's personnel, staffing, equipment, and procedures, including the extent to which these are adequate to ensure compliance with the commission's rules and orders relating to service obligations, service quality, customer service, and other relevant areas;

(4) The nature and location of any proposed or existing facilities which the applicant intends to use in providing local exchange services, including the extent to which those facilities are capable of providing the services described in the application consistent with any applicable regulation;

(5) If the applicant intends to resell local exchange services or enter into facility arrangements with other telecommunications carriers, when the necessary arrangements will be in place and whether they will be adequate to deliver the services described in the application consistent with any applicable regulation;

(6) The applicant's marketing plans and its plan and resources for receiving and responding to

customer inquiries and complaints;

(7) Whether the applicant has sufficient financial resources to support the provisioning of local exchange service in a manner that ensures the continued quality of telecommunications services and safeguards consumer and public interests;

(8) The applicant's cash reserves and extent to which those reserves are sufficient to meet startup expenses, working capital requirements, and other expected immediate capital expenditures;

(9) The applicant's business or owner equity;

(10) The applicant's long-term debt to capitalization ratio;

(11) The applicant's return on assets ratio;

(12) Whether the applicant, in providing its local exchange services, will be able to provide all customers with access to interexchange services, operator services, directory assistance, directory listings, and emergency services such as 911 and enhanced 911;

(13) If the applicant is seeking authority to provide local exchange services in the service area of a rural telephone company, whether the applicant's plans for meeting the additional service obligations imposed in rural telephone company service areas pursuant to 20:10:32:16 are adequate and demonstrate that the applicant will in fact meet such obligations;

(14) The extent to which the applicant, applicant's affiliates, or applicant's principals have been subject to any civil, criminal, or administrative action in connection with the provisioning of telecommunications services; and

(15) Any other factors relevant to determining the applicant's technical, financial, and managerial capability to provide the services described in the application consistent with the requirements of this chapter and other applicable laws, rules, and commission orders.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

DTG COMMENTS: SEE COMMENTS TO PROPOSED RULE 20:10:32:03, ABOVE.

~~20:10:32:07. Certification subject to commission imposed terms and conditions. In addition to the requirements imposed by this chapter on providers of local exchange services, the commission, in granting a certificate of authority to provide local exchange services, may impose additional terms and conditions, on a competitively neutral basis, that it finds necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of service, and safeguard the rights of consumers.~~

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

DTG COMMENTS: THE PURPOSE OF RULEMAKING IS TO PUT SOME MEAT ON THE BONE OF THE BASIC LEGISLATION; I.E., TO SET STANDARDS TO GUIDE THE APPLICANT AS TO THE IMPLEMENTATION OF THE UNDERLYING STATUTE. THIS PROVIDES NO GUIDANCE TO THE INDUSTRY OF WHAT THE STANDARDS WILL BE IN SEEKING CERTIFICATION AS A COMPETITIVE LOCAL EXCHANGE CARRIER.

20:10:32:08. Sale, assignment, lease, or transfer of certificate of authority. In ruling on any proposed sale, assignment, lease, or transfer of a certificate of authority to provide local exchange services, the commission shall consider the criteria set forth in § 20:10:32:06.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

20:10:32:09. Suspension or revocation of certificate of authority. Failure of any provider of local exchange service to comply with applicable requirements set forth in this chapter, other terms and conditions imposed on its certification by the commission, or other applicable rules or laws may result in the suspension or revocation of the provider's certificate of authority to provide local exchange services.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-75, 49-31-76.

20:10:32:10. Service obligations of all providers. All telecommunications companies providing local exchange services shall, at minimum, make the following available to each customer:

- (1) Access to the public switched network;
- (2) Access to emergency services such as 911 or enhanced 911;
- (3) Access to a local directory and directory assistance;
- (4) Access to operator services;
- (5) Telecommunications relay service capability or access necessary to comply with state and federal regulations;
- (6) Nonpublished service upon written or verbal request of the customer; and
- (7) Access to interexchange services.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-75, 49-31-76.

~~20:10:32:11. Local calling scope for alternative providers.~~ A telecommunications company that is granted authority to offer competitive local exchange services in an area where the incumbent local exchange carrier provides a certain local calling area shall provide no less than the same local calling area to its customers. An alternative provider of local exchange services may, subject to commission approval, offer a different local calling area upon showing that it would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

DTG COMMENTS: A COMPETITOR SHOULD NOT BE NECESSARILY LOCKED INTO CALLING AREAS WHICH WERE BASED ON MONOPOLY REGULATION, AND WHICH MAY NOT HAVE ANY RELATIONSHIP TO THE CURRENT TELECOMMUNICATIONS MARKETS, THE COMMUNITIES OF INTEREST, OR THE DESIRES OF INDIVIDUAL CUSTOMERS. CUSTOMERS OF A COMPETITOR MAY WANT A VERY SPECIFIC, NONTRADITIONAL CALLING AREA THAT DOES NOT CONFORM TO THE CALLING AREA OF THE INCUMBENT.

~~20:10:32:12. Prohibition of discrimination.~~ Providers of local exchange service shall provide service on a nondiscriminatory basis consistent with the provisions of SDCL 49-31-11.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

DTG COMMENTS: THERE IS NO NEED FOR THIS RULE. BY ITS TERMS THE STATUTE IS APPLICABLE TO ALL TELECOMMUNICATIONS COMPANIES.

20:10:32:13. Annual reporting requirements. After a telecommunications company has received a certificate of authority to provide local exchange services from the commission, the company shall submit by June 1 of each year thereafter the following information:

(1) A report of its annual revenues from the preceding year resulting from operations in South Dakota, as attributed to major service categories such as private line and special access, business local exchange, residential local exchange, measured interexchange, and vertical services;

(2) A current financial statement and a statement of any changes in the financial position of the telecommunications company relating to operations of the company in South Dakota;

(3) A report identifying specifically the areas within its service area in the state where the company is operational and actually providing local exchange services. The report should

separately identify areas being served primarily through resale and areas served by facilities of the company;

(4) A list of the local exchange services offered to customers;

(5) The number of access lines being served, segregated between business and residential local exchange customers;

(6) A list of current officers and responsible contact personnel; and

(7) Information relating to any significant change in organizational structure or ownership.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

DTG COMMENTS: SEE COMMENTS TO 20:10:32:03, ABOVE.

20:10:32:14. Discontinuance of service. A provider of local exchange service shall not discontinue service or abandon all or a portion of its service area unless another provider of local exchange services certified for that area will be able to provide basic local service to the abandoning provider's customers immediately upon the date such provider discontinues service. No later than 60 days prior to discontinuing its service or abandoning all or a portion of its service area, the provider proposing such action shall file a notice with the commission containing the following information:

(1) The reasons for the proposed discontinuance of service or abandonment of service area;

(2) The number of customers affected and written verification that all affected customers have been given at least 30 days notice of the proposed discontinuance or abandonment;

(3) The arrangements made for another local service provider to serve the affected customers;

(4) Where applicable, a plan for the refund of any deposits collected from affected customers; and

(5) The arrangements made for satisfying outstanding debt to local exchange carriers or other carriers prior to or after the proposed discontinuance or abandonment.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

20:10:32:15. Area under threat of discontinuance of service. In the event the commission determines that a given area of the state is likely to lose local exchange service, the commission shall conduct a hearing to determine what further steps should be taken to insure continuance of local exchange service to the affected area.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

20:10:32:16. Rural service area -- Additional service obligations. If a telecommunications company is seeking authority to provide local exchange service in the service area of a rural telephone company, the company shall satisfy the service requirements imposed on eligible telecommunications carriers pursuant to 47 U.S.C. § 214(e)(1) (September 10, 1998) and applicable federal regulations. These service requirements shall be imposed on the alternative local service provider throughout the rural telephone company's service area, unless the commission, after notice and opportunity for hearing, determines that the requirements should be imposed over a different geographic area. The local service provider seeking authority in the rural service area shall be required to meet the eligible telecommunications carrier service requirements within 12 months after the later of:

- (1) The date of the commission's order granting the provider a certificate of authority to provide local exchange services; or
- (2) The date of the commission order approving any agreements for resale, interconnection, or network elements that are necessary for the provider to provide its local exchange services. The 12 month time requirement may be extended by the commission if good cause is shown.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-73, 49-31-76.

DTG COMMENTS: THIS RULE SHOULD MEAN THAT THE COMPETITIVE ENTRANT WILL BE GIVEN ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS FOR THE SERVICE AREA AFFECTED, SO THAT IT CAN EFFECTIVELY COMPETE WITH THE INCUMBENT FOR THE HIGH COST, LOW INCOME CUSTOMER. ONLY IN THAT WAY CAN THE RULE BE TRULY COMPETITIVELY NEUTRAL. DTG ALSO BELIEVES THIS RULE IS INAPPROPRIATE DESPITE FEDERAL LAW AUTHORITY TO IMPOSE IT. SUCH A RULE VIRTUALLY GUARANTEES NO COMPETITIVE ENTRY INTO RURAL COMPANY EXCHANGES, ESPECIALLY IF THE SERVICE AREAS OF THE RURAL COMPANIES ARE NOT COMPLETELY DISAGGREGATED.

20:10:32:17. Good faith offering requirement. All services required to be provided by the alternative provider of local exchange services pursuant to 20:10:32:16 shall be provided at prices and on terms which reflect a good faith offering of the services throughout the rural telephone company's service area, or a different geographic area as determined by the commission. This includes an obligation to advertise the availability of local exchange services and prices to potential customers throughout the relevant area using media of general distribution in accord with any specific advertising requirements imposed by the commission. In addition, the alternative provider shall provide the required services in a manner that ensures continued

reliable access to quality local exchange services.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-73, 49-31-76.

DTG COMMENTS: THE LAST SENTENCE SHOULD BE DELETED. THE ESSENCE OF COMPETITION IS THE ABILITY OF THE CUSTOMER TO USE THE COMPETITIVE ALTERNATIVE IF THE OTHER PROVIDER DOES NOT PROVIDE THE QUALITY OF SERVICE THE CUSTOMER EXPECTS. THE CUSTOMER, NOT THE COMMISSION SHOULD BE THE ARBITER OF SERVICE QUALITY IN A COMPETITIVE MARKET. THE COMMISSION IS INTERFERING IN THE OPERATION OF THE COMPETITIVE MARKET.

20:10:32:18. Report of progress toward meeting service obligations. Any local service provider required to meet eligible telecommunications service requirements pursuant to 20:10:32:16 shall, six months prior to the deadline identified in that section, report to the commission regarding the extent to which it is offering its local exchange services in the relevant rural telephone company areas. The report shall include the following:

- (1) Information indicating which portions of the relevant rural telephone company areas, if any, remain non-operational and delineate the local service provider's current plans for meeting the eligible telecommunications carrier service requirements throughout such areas;
- (2) Information describing how the local service provider has advertised the availability of the services it is required to offer; and
- (3) The current prices, terms, and conditions under which the local service provider is offering the required services, if different from the prices, terms and conditions provided along with its application for a certificate of authority to provide local exchange services.

The commission may require additional information.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-73, 49-31-76.

DTG COMMENTS: SEE COMMENT TO PROPOSED RULE 20:10:32:07, ABOVE.

20:10:32:19. Waiver of eligible telecommunications carrier service requirements. A telecommunications company seeking authority to provide local exchange services in the service area of a rural telephone company may petition the commission for a waiver from having to satisfy the eligible telecommunications service requirements as set forth in 47 U.S.C. § 214(e)(1) (September 10, 1998) and applicable federal regulations. The commission may grant the waiver if, after notice and opportunity for hearing, it is determined by the commission that granting the waiver would not adversely impact universal service, that quality of service would be continued,

and that it would otherwise be in the public interest. The telecommunications company requesting the waiver shall have the burden to prove by a preponderance of the evidence that granting the waiver would be consistent with these standards.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-73, 49-31-76.

~~20:10:33:20. Failure to meet service obligations -- Grounds for revocation of certificate. The commission shall institute an inquiry into the failure of an alternative local service provider to meet eligible telecommunications carrier service requirements imposed pursuant to § 20:10:32:16. Unless the local service provider demonstrates to the satisfaction of the commission that its failure to make the required services available throughout the relevant area within the required time is the result of factors beyond the provider's control, the commission may revoke or suspend the provider's certificate of authority to provide local exchange services in the rural telephone company service area.~~

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-73, 49-31-75, 49-31-76.

DTG COMMENTS: THIS RULE IS NOT NECESSARY IN A COMPETITIVE MARKET. IF THE CUSTOMER DOES NOT LIKE THE QUALITY OF SERVICE, THE CUSTOMER SHOULD GO TO ANOTHER PROVIDER, NOT COMPLAIN TO THE COMMISSION FOR RELIEF.

20:10:32:21. Request for negotiations. An incumbent local exchange carrier that receives a request for negotiations pursuant to SDCL 49-31-81 shall notify the commission in writing of the request. The notice must identify the party requesting negotiations and the date of the request.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:22. Submission of negotiated agreement for approval. An agreement for interconnection, network elements, and other telecommunications services negotiated pursuant to SDCL 49-31-81 must be submitted to the commission for approval. The parties to the negotiated agreement shall submit a complete copy of the agreement, including any attachments. The parties shall also submit a summarization of the main provisions of the agreement, including a statement of why the agreement does not discriminate against non-party carriers and is consistent with the public interest, convenience, and necessity.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:23. Submission of written comments on negotiated agreement -- Submission of response. Any person may comment on a negotiated agreement submitted to the commission for approval by filing written comments with the commission and the parties to the agreement no later than 20 days after the agreement is submitted to the commission. Parties to the agreement may file written responses to the comments within 20 days of service of the comments.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:24. Commission decision on negotiated agreement. The commission shall enter an order approving or rejecting the negotiated agreement within 90 days from the date the commission received the agreement.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:25. Request for mediation. A party may request mediation by the commission at any point during negotiations held pursuant to SDCL 49-31-81. The parties to the negotiation may file a joint request for mediation. A mediation request shall be in writing and shall include the following information:

- (1) The identity of the parties to the negotiation, including the name, address, and telephone and facsimile numbers of the parties or their representatives;
- (2) The date on which the request for negotiation was made;
- (3) A list of the issues to be mediated; and
- (4) A proposed time schedule for the mediation, including a date by which the mediation should be terminated if an agreement is not reached.

The party requesting mediation shall serve the request on the other party or parties to the negotiation.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:26. Response to request for mediation. Any negotiating party that did not file a mediation request shall file with the commission a written response to the mediation request within ten days after being served the request. The response shall be served on the other parties

to the negotiation. The response shall indicate whether the party is willing to participate in mediation.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:27. Mediation conducted by commission staff. If a party requests mediation, the commission staff members will conduct the mediation. Any commission staff members acting as mediators will not participate in any subsequent arbitration or approval process for the same agreement unless all parties to the negotiations consent.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:28. Statement of issues. Within five business days after commission staff members are appointed as mediators, the parties shall provide to the mediators a statement of each party's position and relevant background information, including a list of all issues raised in the negotiations for which mediation is sought and a list of all issues the parties have resolved through negotiation.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:29. Confidentiality of mediation -- Settlement proposals. Commission staff mediators shall keep confidential all information and records obtained in conducting the mediation. Only the parties to the negotiation may attend the mediation session unless all parties consent to the presence of others. Commission staff mediators may not impose a settlement, but may offer proposals for settlement.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:30. Petition for arbitration -- Response to petition. Any party to negotiations requested pursuant to SDCL 49-31-81 may petition the commission to arbitrate any unresolved issues. The petition for arbitration must include the following:

- (1) The identity of the parties to the negotiation, including the name, address, and telephone and facsimile numbers of the parties or their representatives;

- (2) The date of the initial request for negotiation;
- (3) A detailed list of all the unresolved issues the party or parties want the commission to arbitrate and the position of each party on those issues;
- (4) A list of the issues resolved by the parties, including a copy of any proposed contract language that reflect the resolution of those issues;
- (5) A list of the unresolved issues, if any, that are not being submitted for arbitration;
- (6) Any proposed contract language reflecting the parties' positions; and
- (7) All documentation in the petitioner's possession or control that is relevant to the dispute.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:31. Response to petition for arbitration. A non-petitioning party may respond to the petition for arbitration and provide additional information within 25 days after the commission receives the petition.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:32. Arbitration conducted as a contested case -- Prehearing conference. A petition for arbitration shall be conducted as a contested case. Within 30 days of receiving a petition for arbitration, the commission may hold a prehearing conference.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:33. Commission decision on petition for arbitration. The commission shall issue a written decision that resolves each issue set forth in the petition for arbitration no later than nine months after the date on which the incumbent local exchange carrier received the request for negotiations.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:34. Commission approval of arbitrated agreement. An arbitrated agreement shall be

submitted to the commission for approval within 30 days after the issuance of the commission's decision on the petition for arbitration, unless good cause is shown to extend the 30 day time period. The request for approval of an arbitrated agreement must set forth each party's position as to whether the agreement should be adopted or modified and contain a separate explanation by each party of whether the agreement meets each of the specific requirements of 47 U.S.C. §§ 251 and 252 (September 10, 1998).

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:35. Submission of written comments on arbitration agreement -- Submission of response. Any person may comment on the parties' request for approval of an arbitrated agreement by filing written comments with the commission and the parties to the agreement no later than five business days after the agreement is submitted to the commission. Parties to the agreement may file written responses to the comments within five business days of service of the comments.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:36. Commission decision on arbitrated agreement. The commission shall enter an order approving or rejecting the arbitrated agreement within 30 days after submission of the agreement by the parties.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

20:10:32:37. Commission decision on agreement containing both arbitrated and negotiated provisions -- Submission of separate agreements. An agreement containing both arbitrated and negotiated provisions must clearly identify which sections were negotiated and which were arbitrated. Agreements containing both arbitrated and negotiated provisions will be treated as arbitrated agreements with respect to the comment timelines and the 30 day approval deadline. Except for the timelines, the negotiated sections shall comply with the provisions relating to the approval of negotiated agreements. The arbitrated sections shall comply with the provisions relating to the approval of arbitrated agreements, including the timelines. In the alternative, the parties may submit negotiated and arbitrated agreements separately for approval.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-81.

29:10:32:38. Rural exemption from negotiation and interconnection requirements. Pursuant

to 47 U.S.C. § 251(f)(1) (September 10, 1998), the obligations of an incumbent local exchange carrier, which include the duty to negotiate and provide interconnection, unbundled network elements, resale, notice of changes to its facilities or networks, and collocation, do not apply to a

rural telephone company, unless the company has received a bona fide request for interconnection, services, or network elements and the commissioner determines that the rural

telephone company shall fulfill the request. A provider of telecommunication services seeking interconnection, services, or network elements from a rural telephone company, subject to the

exemption established by 47 U.S.C. § 251(f)(1) (September 10, 1998), shall provide the company with a bona fide request for such interconnection, services, or network elements. The

bona fide request shall be in writing and shall detail the specifics of the request. The bona fide request shall, at a minimum, include the requesting provider's best reasonable estimate of the

following information concerning the interconnection, services, or network elements requested:

(1) A technical description of the requested interconnection, services, or network elements, the requested

points of collocation;

(2) The type of collocation (physical or virtual) requested and, if physical collocation is requested, an estimate of the amount of partitioned space required, as well as DC power and environmental conditioning requirements;

(3) A technical description of any requested interface;

(4) The requested reciprocal compensation arrangement for transport and termination of local traffic;

(5) A technical description of any required unbundled network elements;

(6) Any requested access to the poles, ducts, conduits, and rights of way owned or controlled by the providing carrier;

(7) Any requested white pages directory listings;

(8) Any requested access to 911, enhanced 911, directory assistance, operator call completion service, and any required dialing party capability;

(9) Whether telephone numbers are requested;

(10) The requested methods of interim number portability capability, until long term number portability is available;

(11) A list of the required telecommunication services to be offered for resale by the requesting provider and required operational support systems associated with the resale of these telecommunication services;

(12) If transit and the functionality is required, the requested methods of providing that functionality;

(13) The requested completion date; and

(14) A list of the requesting provider's contact person for the negotiation process.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-79.

DTG COMMENTS: THE MATTERS DETAILED IN THIS RULE ARE FOR THE PARTIES TO NEGOTIATE. THE MATTERS DO NOT GO TO THE ISSUES OF ECONOMIC BURDEN OR TECHNICAL FEASIBILITY AS VIEWED BY THE REQUESTER. ALTHOUGH SDCL 49-31-79 PUTS THE BURDEN ON THE BONA FIDE REQUESTER TO ESTABLISH ECONOMIC BURDEN AND FEASIBILITY, THE REALITY IS THAT THIS INFORMATION IS UNIQUELY KNOWN ONLY TO THE RURAL COMPANY, AND THE STATUTE PUTS NO DISCLOSURE BURDEN ON THE INCUMBENT. THE FEDERAL STATUTE, 47 U.S.C. §251(f)(1)(B), ONLY ANTICIPATES A COMMISSION INQUIRY, NOT A CONTESTED CASE SCENARIO REQUIRED BY SDCL 49-31-79 AND IMPLEMENTED BY THIS RULE. THE STATE STATUTE AND THE RULE COULD VERY WELL AMOUNT TO A BARRIER TO ENTRY AS DESCRIBED IN 47 U.S.C. § 253. THE ISSUES OF PUBLIC INTEREST AND COMPETITIVE ENTRY GET LOST IN PROTECTING THE MONOPOLY OF THE RURAL COMPANY.

20:10:32:39. Notice to commission of request. Upon making a request to a rural telephone company for interconnection, services, or network elements that are subject to the exemption established by 47 U.S.C. § 251(f)(1) (September 10, 1998), the person or entity making the request shall provide the commission notice of such request. The commission shall determine if the request is a bona fide request. If the request is found to be a bona fide request, the commission shall initiate a proceeding to determine whether the rural telephone company shall comply with the request unless the rural telephone company receiving the request waives its exemption.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-79.

DTG COMMENTS: THE RULE SETS NO STANDARDS BY WHICH THE COMMISSION WILL DETERMINE THE "BONA FIDE" NATURE OF A REQUEST, WHICH SHOULD BE THE PURPOSE OF THIS RULE.

20:10:32:40. Petition for suspension or modification of interconnection requirements. A petition for suspension or modification of the requirements set forth in 47 U.S.C. § 251(b) and 251(e) (September 10, 1998) shall include:

- (1) The legal name, address, and telephone number of the local exchange carrier and its designated contact person;
- (2) The number of subscriber lines the local exchange carrier has nationwide, at the holding

company level;

(3) A description of the obligations the local exchange carrier seeks to suspend or modify, including specific references to the relevant provisions found in 47 U.S.C. §§ 251(b) or 251(c) (September 10, 1998);

(4) A detailed description of the suspensions or modifications the local exchange carrier is seeking, including the proposed duration of each suspension or modification;

(5) The proposed effective date of each suspension or modification sought by the local exchange carrier;

(6) A statement supporting the petition indicating why the requested suspensions or modifications meet the standards for granting suspensions or modifications as set forth in SDCL 49-31-80; and

(7) A statement as to whether the local exchange carrier requests the commission to grant a temporary stay, as provided for in SDCL 49-31-80, of the obligations the carrier seeks to suspend or modify.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-80.

20:10:32:41. Copy of petition to affected local service providers. A copy of the petition for suspension or modification of interconnection requirements shall be served upon each local service provider to which the requested suspensions or modifications would likely apply.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-80.

20:10:32:42. Timeline for reviewing petition. The commission shall take final action on any petition for suspension or modification made pursuant to 47 U.S.C. § 251(f)(2) (September 10, 1998) within 180 days after the petition is filed.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-80.

20:10:32:43. Designation of eligible telecommunications carriers. The commission on its own motion or upon request shall designate a local service provider which meets the requirements of 47 C.F.R. § 54.201 (September 10, 1998) to serve as an eligible telecommunications carrier within each service area of the state. Upon request and consistent with the public interest, convenience, and necessity, the commission may, in the case of an area served by a rural

telephone company, and shall, in the case of all other areas, designate more than one local service provider as an eligible telecommunications carrier for a service area designated by the commission, so long as each additional requesting carrier meets the requirements of 47 C.F.R. § 54.201 (September 10, 1998). The commission may not, in an area served by a rural telephone company, designate more than one eligible telecommunications carrier absent a finding that the additional designation would be in the public interest. ~~In reviewing any proposed additional eligible telecommunications carrier designation within an area served by a rural telephone company, the commission shall not find it to be in the public interest if the provider requesting such designation is not offering its services coextensive with the rural telephone company's service area.~~

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-78.

DTG COMMENTS: SEE COMMENTS TO 20:10:32:16, ABOVE.

20:10:32:44. Eligible telecommunications carrier petitions. A local service provider that desires designation as an eligible telecommunications carrier shall file a petition for such designation with the commission. The petition for designation shall include the following information:

- (1) The legal name, address, and telephone number of the local service provider and its designated contact person
- (2) The proposed effective date of designation of eligible telecommunications carrier status.
- (3) Identification of the service area for which the designation is sought;
- (4) A statement supporting the petition which specifies why the requested designation satisfies the requirements for eligible telecommunications designation and receiving federal universal service support under 47 C.F.R § 54.201 (September 10, 1998);
- (5) Whether the provider is seeking a waiver of any eligible telecommunications carrier service requirements pursuant to 47 C.F.R. § 54.101 (September 10, 1998), the specific reasons for the waiver, and the length of time for which the waiver is requested; and
- (6) If the local service provider is requesting designation in an area served by a rural telephone company and the rural company has already been designated an eligible telecommunications carrier, a statement which specifies why its proposed additional designation would be in the public interest.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-78.

20:10:32:45. Existing eligible telecommunications carrier designations not affected. Eligible

telecommunications carrier designations granted by the commission prior to the effective date of these rules shall remain in full force and effect.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-78.

20:10:32:46. Determining the applicable service area. The commission decision on a request for designation as an eligible telecommunications carrier must include a determination of the applicable service area. In the case of a service area served by a rural telephone company, "service area" means such company's "study area" unless and until the commission and the Federal Communications Commission establish a different definition of service area for such company. If the commission proposes to define the service area served by a rural telephone company to be other than such company's study area, the commission shall, consistent with 47 C.F.R. § 54.207 (September 10, 1998), petition the Federal Communications Commission for its approval prior to making any such change. In the case of service areas served by other local exchange carriers, including competitive local exchange carriers, the service area will structured to conform as much as possible to the community of interest in the area, a telecommunications market that is logical and reasonably contiguous, the desires of the customer being served, and that which best encourages competitive entry into that market.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-78.

DTG COMMENTS: THIS RULE DOES NOT ADDRESS THE ISSUE OF SERVICE AREAS FOR COMPETITIVE CARRIERS. DTG RECOMMENDS THE NEW LANGUAGE, WHICH SHOULD PROVIDE THE NECESSARY STANDARDS AND GUIDANCE TO THE INDUSTRY.

20:10:32:47. Copy of petition to other eligible telecommunications carriers. A local service provider filing a petition for designation as an eligible telecommunications carrier shall, at the time of filing its petition with the commission, provide a copy of the same to any other local service providers that are serving as eligible telecommunications carriers within the relevant service area.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-78.

20:10:32:48. Designation of eligible telecommunications carrier for unserved areas. If no local service provider will provide the services that are supported by universal service to an unserved community or any portion thereof that requests such service, the commission may determine which local service provider or providers would be best able to provide such service to

the requesting unserved community or portion thereof and order such provider or providers to provide service to the unserved community or portion thereof. Any provider ordered to provide service under this section shall meet the requirements of 47 C.F.R. § 54.201 (September 10, 1998) and shall be designated an eligible telecommunications carrier for that community or portion thereof.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-78.

20-10-32:49. Relinquishment of eligible telecommunications carrier status. A local service provider may relinquish its eligible telecommunications carrier designation and accompanying universal service obligations as provided for below:

- (1) A local service provider seeking to relinquish its eligible telecommunications carrier designation shall file a petition with the commission specifying the service area for which it seeks to relinquish its designation and the identity of any other eligible telecommunications carriers serving the service area. At the time of filing, a copy of the petition shall also be provided to all other local service providers serving the area for which the petitioner seeks to relinquish its eligible telecommunications carrier designation.
- (2) The commission may permit a local service provider to relinquish its eligible telecommunications carrier designation if at least one other eligible telecommunications carrier serves the area for which the relinquishment is sought.
- (3) The petitioning local service provider shall continue to meet its eligible telecommunications carrier obligations for the entire area for which it seeks to relinquish those obligations until the date specified in the commission's order approving the relinquishment; and
- (4) Prior to permitting a local service provider designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-78.

20-10-32:50. Revocation of eligible telecommunications carrier status. Upon finding that any local service provider designated as an eligible telecommunications carrier does not qualify as an eligible telecommunications carrier under 47 C.F.R. § 54.201 (September 10, 1998) and should not be entitled to federal universal service support, the commission shall revoke, after notice and a hearing, the local service provider's eligible telecommunications carrier designation.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-76, 49-31-78.

DTG COMMENTS: IF THE COMMISSION IS GOING TO REVOKE THE ABILITY TO QUALIFY FOR UNIVERSAL SERVICE FUNDING, THEN SOME BASIC DUE PROCESS IS REQUIRED, TO INCLUDE NOTICE, HEARING, AND HAVING THE COMPLAINANT BEAR THE BURDEN OF PROOF.

20:10:32:51. Monitoring of competitive local exchange services. The commission shall monitor the effectiveness of the regulatory requirements prescribed in this chapter to ensure that local service competition occurs in a manner that is consistent with preserving and advancing universal service, protecting the public safety and welfare, ensuring the continued quality of service, and safeguarding the rights of affected consumers. The commission reserves the right to impose additional requirements by order or rulemaking that may be necessary to meet these objectives.

Source:

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

CHAPTER 20:10:33

SERVICE STANDARDS FOR TELECOMMUNICATIONS COMPANIES

20:10:33:01. Definitions. Terms defined in SDCL 49-31-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:

- (1) "Bit," the transmission of telecommunications signals or intelligence in binary form;
- (2) "Bits per second," the number of bits passing a specific point per second;
- (3) "Busy hour," the hour of the day when the number of calls carried on the telecommunications company's network is the highest;
- (4) "dBmC," a ratio expressed in decibels above reference noise;
- (5) "Decibel (dB)," a unit of measure of signal strength depicting the relation between a transmitted signal and a standard signal source;
- (6) "Hertz," a measurement of frequency in cycles per second; a hertz is one cycle per second; and
- (7) "Reference noise," a reference level of noise power.

Source:

General Authority: SDCL 49-31-77, 49-31-85

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85

20:10:33:02. Level of service provided by local exchange companies. A local exchange company shall furnish and maintain adequate and reliable plant, equipment, and facilities to provide satisfactory transmission and reception of telecommunications services among users in its service area.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:03. Level of service applicable to all subscribers within an exchange. Local exchange access line service furnished by means of line concentrators or subscriber carrier equipment in a given exchange shall be substantially equivalent in technical performance to that furnished to other subscribers in that exchange served by means of normal physical loops.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-84, 49-31-85.

DTG COMMENTS: THE ASSUMPTION IS THAT THIS RULE DOES NOT APPLY TO THE WIRELESS LOCAL LOOP, INDEED THE ASSUMPTION IS THAT NONE OF THESE RULES APPLY TO WIRELESS SERVICE BECAUSE THE COMMISSION DOES NOT REGULATE WIRELESS SERVICES.

20:10:33:04. Minimum transmission levels for local exchange service. A local exchange company's subscriber loops shall meet the following minimum transmission levels from the subscriber network interface or demarcation point:

- (1) Transmission loss from the central office to the subscriber network interface or demarcation point for existing subscriber loops may not exceed 10 dB at 1004 Hertz. All new, upgraded, or replaced subscriber loops may not exceed 8dB at 1004 Hertz;
- (2) Loop current shall be above 20 milliamperes;
- (3) Total external loop resistance, excluding customer premises equipment, may not exceed the basic range requirement of the terminating electronics. Range extension equipment shall be applied to those subscriber loops that are longer than the basic working range of the terminating electronics;
- (4) Circuit noise objective on subscriber loops measured at the subscriber network interface or demarcation point shall be equal or less than 20 dBmC;
- (5) The minimum data rate shall be 14,400 bps;
- (6) The frequency response range shall be 300 Hertz to 3,000 Hertz with an amplitude deviation not to exceed four dB;
- (7) The power influence level shall be less than 90 dBmC; and
- (8) The longitudinal balance shall be greater than 60 dB.

All subscriber loops shall meet these minimum transmission levels by January 1, 2001.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:05. Minimum requirements for new, upgraded, or replaced facilities. Outside plant, including subscriber loops, constructed, upgraded, or replaced after January 1, 1999, shall be able to provide, as built or with additional equipment, transmission and reception of data at a rate no lower than 1 Mbps. New or replacement switching systems installed after January 1, 1999, shall be capable of providing custom calling features. At a minimum, custom calling features must include call waiting, call forwarding, abbreviated dialing, caller identification, and three-way calling. New or replacement switching systems installed after January 1, 1999, shall also be capable of providing enhanced 911 service.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

DTG COMMENTS: THE ONE ISSUE NOT ADDRESSED IS THE COST. THESE STANDARDS APPEAR TO COME FROM RUS FUNDING REQUIREMENTS. SOME COMPANIES DO NOT QUALIFY FOR THAT LARGESSE, THUS COSTS ARE MORE APPARENT TO THE NONQUALIFYING COMPANIES AND TO THE CUSTOMERS OF THOSE COMPANIES. THESE RULES ALSO RESULT IN A FREEZE OF PARTICULAR TECHNICAL STANDARDS WHICH MAY OR MAY NOT BE APPROPRIATE IN A RAPIDLY CHANGING TECHNOLOGICAL ENVIRONMENT. THEY ALSO ERECT A VERY SUBSTANTIAL BARRIER TO NEW ENTRANTS INTO THE MARKET, SINCE NEW ENTRANTS WILL HAVE TO BUILD FACILITIES THAT MAY BE ORDERS OF MAGNITUDE BETTER THAN THE INCUMBENT HAS, JUST TO GET IN. THIS IS, AT THE LEAST, DISCRIMINATORY UNDER BOTH STATE AND FEDERAL LAW.

20:10:33:06. Minimum requirements for channel capacity. A local exchange company shall maintain sufficient central office and interoffice channel capacity plus other necessary facilities to meet the following minimum requirements during any busy hour:

- (1) Dial tone within three seconds for 98 percent of call attempts on the switched network;
- (2) Correct termination of 98 percent of properly dialed intraoffice or interoffice calls within an extended service area; and
- (3) Correct termination of 98 percent of properly dialed calls when the call is routed entirely over the network of the local exchange company.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:07. Minimum levels of trunking facilities provided by interexchange companies. Interexchange companies shall design, construct, and maintain sufficient trunking facilities so that at least 98 percent of telephone calls offered to the group will not encounter an all-trunks-busy condition and 98 percent of correctly dialed toll calls are correctly terminated. All interexchange companies which use both line and trunk side connections for access shall have sufficient quantities of switched access service from the local exchange company to maintain acceptable blocking probability for each type of access. A .01 blocking probability is acceptable.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

DTG COMMENTS: DO NOT UNDERSTAND WHAT "OFFERED TO THE GROUP" MEANS.

20:10:33:08. Requirements for good engineering practices. The telephone plant of each telecommunications company shall be designed, constructed, installed, maintained, and operated subject to the provisions of applicable electrical safety codes and in accordance with accepted good engineering practices of the telecommunications industry to assure continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:09. Requirement for sufficient equipment and adequate personnel. Each telecommunications company shall employ prudent management and engineering practices so that sufficient equipment and adequate personnel are available at all times, including busy hours.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:10. Required documentation to show sufficient equipment and adequate personnel. Each telecommunications company shall ~~conduct traffic studies~~ employ reasonable procedures for forecasting future service demand, and maintain records necessary to demonstrate to the commission that sufficient equipment is in use and that an adequate operating workforce is provided. ~~However, average schedule companies are not required to conduct traffic studies.~~ The records shall be available for review by the commission upon request.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

DTG COMMENTS: IF TRAFFIC STUDIES ARE REQUIRED, THEN THE AVERAGE SCHEDULE COMPANIES SHOULD BE INCLUDED. IT WOULD BE EASIER TO ELIMINATE THE SPECIFIC REFERENCE TO TRAFFIC STUDIES RATHER THAN DISCRIMINATE IN FAVOR OF ONE PARTICULAR KIND OF COMPANY. SDCL 49-31-85 REQUIRES THAT THE RULES BE NONDISCRIMINATORY. IN A COMPETITIVE MARKET, THESE RULES ALSO RESULT IN A FREEZE OF PARTICULAR TECHNICAL STANDARDS WHICH MAY OR MAY NOT BE APPROPRIATE IN A RAPIDLY CHANGING TECHNOLOGICAL ENVIRONMENT. THEY ALSO ERECT A VERY SUBSTANTIAL BARRIER TO NEW ENTRANTS INTO THE MARKET, SINCE NEW ENTRANTS WILL HAVE TO BUILD FACILITIES THAT MAY BE ORDERS OF MAGNITUDE BETTER THAN THE INCUMBENT HAS, JUST TO GET IN.

20:10:33:11. Assignment of facilities. Each telecommunications company shall employ adequate procedures for assignment of facilities. The assignment records shall be kept up-to-date and checked periodically to determine if adjustments are necessary to maintain proper balance in all trunk and equipment groups. The records shall be available for review by the commission upon request.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

DTG COMMENTS: THE ASSUMPTION IS THAT THIS RULE DEALS WITH OUTSIDE PLANT FACILITIES. DTG IS CONTINUALLY MONITORING THESE FACILITIES ON A REAL TIME BASIS AND MAKING ADJUSTMENTS ALMOST DAILY. RECORDS ARE MAINTAINED ELECTRONICALLY ON A CURRENT BASIS. THERE IS NO NEED TO KEEP HISTORICAL RECORDS.

~~20:10:33:12. Charges for construction of facilities.~~ If required as a condition of a federal Rural Utilities Service loan, a telecommunications company shall furnish telecommunications services to a customer without payment by the customer of any extra charge as a contribution to the cost of construction of facilities needed to provide the services.

Source:

General Authority: ~~SDCL 49-31-77, 49-31-85.~~

Law Implemented: ~~SDCL 49-31-3, 49-31-77, 49-31-85.~~

DTG COMMENTS: IF IT IS REQUIRED BY THE FINANCE DOCUMENTS, WHAT NEED IS THERE FOR A RULE?

~~20:10:33:13. Records of tests and inspections.~~ Records of various tests and inspections shall be kept on file in the office of the telecommunications company for a minimum of two years. These records shall show the plant or equipment tested or inspected, the reason for the test, the general result of the test, and any corrections made. The records shall be available for review by the commission upon request.

Source:

General Authority: ~~SDCL 49-31-77, 49-31-85.~~

Law Implemented: ~~SDCL 49-31-3, 49-31-77, 49-31-85.~~

DTG COMMENTS: MOST TESTING IS DONE AUTOMATICALLY AND RESULTS KEPT FOR A SHORT PERIOD OF TIME (ABOUT 30 DAYS) ELECTRONICALLY. THERE IS NO NEED TO KEEP RESULTS FOR ANY LONGER PERIOD AS THEY BECOME OUTDATED AND OF NO REAL VALUE.

20:10:33:14. Provisioning of adequate and reliable facilities. Each local exchange company shall employ prudent management planning practices, including budgeting and prioritization of

resource utilization, so that adequate and reliable facilities are in place to supply service to prospective customers in its service territory.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:15. Survivable networks. All telecommunications interexchange facility networks, with the exception of extended area service routes, must be based upon a fully integrated backbone of interconnected, switched survivable rings. Each switch must be directly connected to a diversely routed, fully protected, survivable ring. Each telecommunications company shall offer diverse routing of all of its dedicated interexchange telecommunications traffic. These requirements shall be met by July 1, 2002.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

DTG COMMENTS: THIS WILL BE VERY EXPENSIVE TO ACCOMPLISH. DOES THE COMMISSION HAVE A FUNDING MECHANISM IN MIND? SONET RINGS ARE NOT THE ONLY WAY TO PROVIDE NETWORK RELIABILITY, NOR IS THE CIRCUIT-SWITCHED NETWORK THE ONLY WAY TO NETWORK. THE ONLY TIMELINE IN STATE STATUTE IS FOR NARROWBAND DEPLOYMENT BY JULY 1, 2002. THERE IS NO AUTHORITY IN STATUTE TO ORDER THE DEPLOYMENT OF THIS TECHNOLOGY OR BY WHEN IT SHOULD BE IN SERVICE.

20:10:33:16. Program required for testing, inspecting, and maintenance. Each telecommunications company shall adopt a program of periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system to permit at all times the rendering of safe, adequate, and continuous service as recognized by general practices within the telecommunications industry. The programs shall be available for review by the commission upon request.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:17. Repair of plant and equipment. Each telecommunications company shall keep plant and equipment in a good state of repair consistent with safe and adequate service performance. Broken, damaged, or deteriorated parts which do not meet acceptable operating conditions shall be repaired or replaced. Adjustable apparatus and equipment shall be readjusted promptly when found by preventive routines or fault location tests to be in unsatisfactory operating condition. The presence of inductive interference, cut-offs, intelligible cross-talk, and excessive noise generation by communications system facilities during the provisioning of

telecommunications services by the company are symptomatic of inadequate service, and a maintenance program shall be designed to minimize or prevent those occurrences.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:18. Leakage, loop resistance, and transmission tests. Each telecommunications company shall do periodic leakage tests on all circuits by use of proper instruments to determine that sufficient insulation is being maintained and to discover any service affecting change in insulation values which might cause future service difficulties. Loop resistance and transmission tests shall be made on local circuits when transmission is found to be poor in an attempt to locate the source of trouble.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:19. Emergency planning. Each telecommunications company shall make reasonable provisions to meet emergencies such as failures of power services, damaged facilities, sudden and prolonged increases in traffic, or from fire, storm, or acts of nature.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:20. Plan required to deal with loss of switch. Each local exchange company shall develop a general contingency plan to prevent or minimize any service interruptions due to the catastrophic loss of a central office switch, toll switching office, or tandem switching office. The plan shall describe the actions and systems installed to prevent or minimize the probability of such an occurrence as well as describe the actions and systems available to minimize the extent of any incurred service interruption. The plan shall be available for review by the commission upon request.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:21. Auxiliary and battery power requirements. Each local central office, toll switching office, or tandem switching office of a local exchange company shall contain a minimum of eight hours of battery reserve rated for peak traffic load requirements. A permanent auxiliary power unit may be utilized to meet this requirement. In central offices and toll tandem switching offices, a permanent auxiliary power unit shall be installed or a mobile power source

shall be available which normally can be delivered and connected within four hours. The remote terminating electronics of a local exchange company shall contain a minimum of eight hours of battery reserve rated for peak traffic load requirements. The batteries shall be tested and reported internally on a regular basis, not to exceed once a year.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:22. Central office alarms. Each central office shall be provided with alarms on a 24 hour, seven day a week basis to indicate improper functioning of telecommunications equipment. All alarms shall be transmitted to an alarm center or to a location that will receive and respond to the alarm condition on a 24 hour, seven day a week basis. All alarms and alarm sensors must be tested and reported internally upon installation of new equipment.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:23. Prevention of access line service interruptions -- Reestablishment of service -- Priority given to customers with medical condition and certain entities. Each local exchange company shall make all reasonable efforts to prevent interruptions of access line service. When interruptions occur, the exchange carrier shall reestablish access line service with the shortest possible delay consistent with the physical conditions encountered, the available work force, and normal safety practices. Priority shall be given to a residential customer who reports to the company that telecommunications service is essential due to an existing medical condition of the customer, a member of the customer's family, or any permanent resident of the premises where service is rendered. Priority shall also be given to entities that report to the company that telecommunications services are needed to protect the public's health, safety, and welfare.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

DTG COMMENTS: WHILE THE "MEDICAL CONDITION" GOAL OF THIS RULE IS ADMIRABLE, IT LENDS ITSELF TO SERIOUS ABUSE, AND TO PUT IT IN A RULE LIKE THIS, INVITES THE ABUSE. IT IS ONLY COMMON SENSE THAT PRIORITY IS GIVEN BY A COMPANY TO VERIFIED MEDICAL AND OTHER SIMILAR SERIOUS CONDITIONS.

20:10:33:24. Maintenance service interruptions -- Notification. Local exchange service interruptions due to maintenance requirements shall be done at a time that causes minimal inconvenience to customers. To the extent possible, customers shall be notified in advance by the local exchange company of extended maintenance requirements.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:25. Records of access line service interruptions. Each local exchange company shall keep a record of all access line service interruptions or acute irregularities of access line service whenever reported to it or whenever the duration of a found access line service interruption exceeds 24 hours. The record shall include appropriate identification of the customer or access line service affected and the date, time, duration, extent, and cause of the interruption. The local exchange company shall furnish reports to the commission upon request and shall inform the commission as soon as possible of any occurrence of an unusual nature which apparently will result in over four hours of interruption of access line service to 50 or more customers.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:26. Reporting of trouble reports. Each local exchange company shall be able to receive trouble reports originated by a customer seven days a week on a 24 hour basis.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:27. Customer trouble reports. When a customer's service is found to be out of order or a customer reports trouble, the local exchange company shall promptly test its facilities to determine if the problem is with the local exchange company's facilities. If it is, the local exchange company shall correct the trouble promptly. There may be no charge to the customer for testing or correcting a problem found on the local exchange company's facilities. If the trouble is found not to be in the local exchange company's facilities, the local exchange company shall notify the customer promptly.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:28. Record of trouble reports. Each local exchange company shall keep a record of trouble reports made by its customers. This record shall include appropriate identification of the customers or access line service affected, the time, date, and nature of the report, the action taken, the date and time of trouble clearance or other disposition, and the identification of the person making final disposition. The records shall be retained by the company for a minimum of ~~two years~~ six months. The local exchange company shall furnish reports to the commission upon request.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

DIG COMMENTS: THERE IS NO NEED TO SAVE THESE RECORDS FOR TWO YEARS. GIVEN THE PACE OF CHANGE AND THE NEED TO ADDRESS TROUBLE REPORTS IMMEDIATELY, SIX MONTH RETENTION SHOULD BE MORE THAN SUFFICIENT TO ESTABLISH ANY SERVICE PROBLEM PATTERNS.

20:10:33:29. Reporting requirements when 911 service is disrupted or impaired. Each local exchange company shall, immediately upon discovery, report to each 911 public safety answering point serving the affected local service areas, to the local area news media serving the affected local service areas, and to the commission pertinent information concerning any specific occurrence or development which disrupts or impairs customer access to the 911 service within a given 911 system. In addition, each local exchange company shall provide the public safety answering point, the local area news media, and the commission with a time estimation on when the repair to the 911 system will be completed and the 911 service restored.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:30. Reporting of service disruption or impairment. Each local exchange company shall, within one hour of discovery, report to the local area news media serving the affected local serving areas and to the commission, pertinent information concerning any specific occurrence or development which disrupts or impairs the telecommunications service of a substantial number of the local service area's subscribers (the smaller of 25 percent or 2,000 of the local serving area's access lines) for a time period in excess of one hour.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

20:10:33:31. Standards applicable under normal operating conditions. The standards in this chapter establish the minimum acceptable quality of service under normal operating conditions. They do not establish a level of performance to be achieved during emergencies or catastrophes, nor do they apply to extraordinary or abnormal conditions of operation, such as those resulting from work stoppage, civil unrest, or other events. The rules do not include all criteria and they do not establish the most desirable service level for any basic element. If a specific element is not covered, the telecommunications company must meet generally accepted industry standards for that element.

Source:

DTG COMMENTS: THESE ARE DISCONNECTION RULES, NOT SERVICE QUALITY RULES, AND SHOULD BE IN ANOTHER CHAPTER.

~~Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.~~

~~General Authority: SDCL 49-31-77, 49-31-85.~~

~~Source:~~

~~2010:33:31. Exemption from providing local exchange service when toll services terminated. Any local exchange company unable to provide local exchange services while terminating toll services may request an exemption from the commission on an exchange by exchange basis by fully documenting the technical reasons for its inability to comply.~~

~~Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.~~

~~General Authority: SDCL 49-31-77, 49-31-85.~~

~~Source:~~

~~2010:33:32. Failure to pay for services other than local exchange services not grounds to terminate local exchange service. No local exchange company may terminate local exchange services to any customer on the ground that the customer has not paid for services other than local exchange services.~~

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

General Authority: SDCL 49-31-77, 49-31-85.

Source:

2010:33:32. Failure for waiver -- Granting of waiver. Upon petition of a telecommunications company, the commission may grant a waiver of any service standard contained in this chapter, in determining whether to grant a waiver, the commission may consider technical feasibility, whether the standard is unduly economically burdensome, whether the company plans to meet the standard within the near future, and other economic, technical, and public interest considerations.

Law Implemented: SDCL 49-31-3, 49-31-77, 49-31-85.

General Authority: SDCL 49-31-77, 49-31-85.

CHAPTER 20:10:34

**PROHIBITION AGAINST UNAUTHORIZED SWITCHING OF CARRIERS AND
CHARGING FOR UNAUTHORIZED SERVICES**

20:10:34:01. Definitions. Terms defined in SDCL 49-31-1 have the same meaning in this chapter. In addition, terms used in this chapter mean:

(1) "Subscriber," the person named on the billing statement or account, or any other person authorized to make changes in the providers of telephone local exchange service or telephone toll/interexchange telecommunications service.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

DTG COMMENTS: CHANGED TO BE CONSISTENT WITH STATUTORY DEFINITIONS IN SDCL 49-31-1 (19) AND (16B), RESPECTIVELY.

20:10:34:02. Requirements for independent third-party verification. When an independent third-party verification company obtains a subscriber's oral confirmation regarding a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the third-party verification shall include:

(1) A statement that the purpose of the call is to verify the subscriber's intent to switch to the newly requested telecommunications company. The newly requested interexchange or local telecommunications company must be clearly identified to the subscriber. Reference to use of another telecommunications company's network or facilities, if stated, must be secondary in nature to the prominent identification of the telecommunications company which will be providing service and setting the rates for the subscriber's service;

(2) Confirmation that the person whose authorization for a telecommunications company change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telephone account on behalf of the subscriber, whether that subscriber is an individual person or a business;

(3) Verification data unique to the subscriber such as the subscriber's date of birth; and

(4) The name and toll free telephone number of the newly requested telecommunications company.

The third-party verification company shall electronically record, in its entirety, the telephone call that confirms the subscriber's change of a designated telecommunications company. The electronic recording shall be retained by the third-party verification company for 12 months.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

20:10:34:03. Letter of agency form and content. A letter of agency obtained from a subscriber for a change of the subscriber's telecommunications company shall be a document which sole purpose is to authorize the change of a telecommunications company. It must be signed and dated by the subscriber of the telephone line requesting the change. It shall not be combined with inducements of any kind on the same document. At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

- (1) The subscriber's billing name and address and each telephone number to be covered by the change order;
- (2) The decision to change the telecommunications company from the current telecommunications company to the prospective telecommunications company;
- (3) That the subscriber designates the telecommunications company to act as the subscriber's agent for the telecommunications company change;
- (4) That the subscriber understands that only one interexchange telecommunications company may be designated as the subscriber's interstate primary interexchange telecommunications company, only one company may be designated as the subscriber's intrastate primary interexchange company, and only one company may be designated as the subscriber's local exchange company;
- (5) The telecommunications company designated as the subscriber's interexchange or local exchange company must be the company directly setting the rates for the subscriber;
- (6) That the subscriber understands that any change in a subscriber's interexchange or local exchange service company may involve charges to the subscriber. The precise amount of each charge shall be specified in the letter of agency;
- (7) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier;
- (8) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency; and
- (9) A toll-free number that the subscriber can call to verify whether the change has occurred.

Source:

General Authority: SDCL 49-31-5(2), 49-31-77, 49-31-85.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-76, 49-31-85.

20:10:34:04. Letter of agency form and content -- Exception for checks. Notwithstanding •

20:10:34:03, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in • 20:10:34:03 and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a change in its telecommunications company by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

Source:

General Authority: SDCL 49-31-5(2), 49-31-77, 49-31-85.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

20:10:34:05. Complaints of unauthorized switching of a telecommunications company.

Upon receipt of an oral or written complaint alleging an unauthorized switch in a subscriber's telecommunications company from the subscriber, the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the change shall investigate the complaint and advise the party requesting the investigation of the results. When advising the subscriber or party requesting the investigation of the results, the telecommunications company that initiated the change shall provide documentation, without cost to the commission or the subscriber and in accordance with SDCL 37-30A-9 and this chapter, that confirms the subscriber's valid authorization to switch telecommunications companies. This documentation shall be provided within 30 days from the receipt of the complaint. The burden is on the telecommunications company that initiated the change to produce documentation that valid authorization was obtained from the subscriber. If a telecommunications company fails to provide the documentation, the change in telecommunications company will be considered invalid.

Source:

General Authority: SDCL 49-31-77; 49-31-85, 49-31-5 (2).

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

20:10:34:06. Telecommunications company liability. Notwithstanding any other provision of law, a telecommunications company, its agent or employee, who initiates a change in a subscriber's telecommunications company in violation of these rules, or cannot provide documentation that the change was initiated in compliance with these rules is liable:

(1) To the subscriber for all long distance charges, local exchange service charges, monthly service charges, carrier switching fees, and other relevant charges billed by the unauthorized telecommunications company or its agent to the subscriber during the period of the unauthorized change, not to exceed six continuous months; and

(2) To the subscriber's original telecommunications company for all charges related to reinstating service to the subscriber.

Source:

General Authority: SDCL 49-31-77, 49-31-85, 49-31-5(2), (4).

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

DTG COMMENTS: THIS RULE IS REDUNDANT WITH THE FOLLOWING RULE WHICH SETS OUT THE LIABILITY VERY CLEARLY.

20:10:34:07. Refund of charges. A telecommunications company which initiates a telecommunications carrier change without authorization from the subscriber in accordance with this chapter shall issue to the subscriber a full credit or refund the entire amount of such customer's telephone charges attributable to telephone service from the telecommunications company for up to six continuous months of unauthorized service and any charges from another telecommunications company to re-establish service or to change the subscriber's pre-subscribed company. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the switch was unauthorized.

Source:

General Authority: SDCL 49-31-77, 49-31-85, 49-31-5 (4).

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

20:10:34:08. Subscriber telecommunications bills -- Charges for change of telecommunications company. A bill to a subscriber which reflects any charge to that subscriber for a change in the subscriber's telecommunications company shall prominently display the name of the new telecommunications company and all charges to the subscriber for changing a telecommunications company.

Source:

General Authority: SDCL 49-31-5(3), 49-31-77, 49-31-85.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

20:10:34:09. Billing requirements. A subscriber's bill shall contain a clear, concise description of services being billed. The bill shall contain the name of the telecommunications company requesting billing, and a toll-free telephone number where the subscriber may call with billing questions.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

20:10:34:10. Authorized products or services. Any products or services listed on a subscriber's bill must be authorized by the subscriber. Prior to changing any rate, term, or condition of service, a telecommunications company shall notify the subscriber of the change unless the subscriber has previously agreed, in writing, that no notification is necessary.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.

20:10:34:11. Refund of unauthorized charges. A telecommunications company which charges for a product or service without authorization from the subscriber shall issue to the subscriber a full credit or refund the entire amount of such unauthorized charges. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the charge was unauthorized.

Source:

General Authority: SDCL 49-31-77, 49-31-85.

Law Implemented: SDCL 37-30A-9, 49-31-3, 49-31-77, 49-31-85.