

IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

CERTIFICATE

I, Robert K. Sahr, hereby certify that I am a duly appointed member and the duly elected chair of the Public Utilities Commission and that the attached instruments are full, true, and correct copies of the following rules adopted by the Public Utilities Commission on June 6, 2006.

Proposed revised rules: §§ 20:10:32:42, 20:10:32:43, 20:10:32:43.01, 20:10:32:43.02, 20:10:32:43.03, 20:10:32:43.04, 20:10:32:43.05, 20:10:32:43.06, 20:10:32:43.07, 20:10:32:44, 20:10:32:45, 20:10:32:46, 20:10:32:47, 20:10:32:48, 20:10:32:49, 20:10:32:51, 20:10:32:52, 20:10:32:53, 20:10:32:54, 20:10:32:55 and 20:10:32:56.

I further certify that SDCL 1-26-4 and 1-26-6 were complied with in the adoption of these rules. These rules will become effective twenty days after filing with the Secretary of State.



Robert K. Sahr, Chairman
Public Utilities Commission

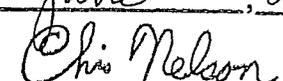
Subscribed and sworn to
before me this 17th day
of June, 2006.



Notary Public - South Dakota

(SEAL)

My Commission Expires: TINA DOUGLAS
My Commission Expires
April 14, 2011

Filed this 19th day of
June, 2006

SECRETARY OF STATE

CHAPTER 20:10:32

LOCAL EXCHANGE SERVICE COMPETITION

Section

- 20:10:32:01 Definitions.
- 20:10:32:02 Certificate of authority required to provide local exchange service.
- 20:10:32:03 Certificate of authority for local exchange service – Application requirements.
- 20:10:32:04 Notice to other local exchange carriers in proposed service area -- Intervener status.
- 20:10:32:05 Opportunity for hearing -- Burden of proof.
- 20:10:32:06 Rejection of incomplete application -- Decision criteria for granting a certificate of authority.
- 20:10:32:07 Certification subject to commission imposed terms and conditions.
- 20:10:32:08 Sale, assignment, lease, or transfer of certificate of authority.
- 20:10:32:09 Suspension or revocation of certificate of authority.
- 20:10:32:10 Service obligations of all providers.
- 20:10:32:11 Local calling scope for alternative providers.
- 20:10:32:12 Annual reporting requirements.
- 20:10:32:13 Discontinuance of service.
- 20:10:32:14 Area under threat of discontinuance of service.
- 20:10:32:15 Rural service area -- Additional service obligations.
- 20:10:32:16 Good faith offering requirement.
- 20:10:32:17 Report of progress toward meeting service obligations.
- 20:10:32:18 Waiver of eligible telecommunications carrier service requirements.

- 20:10:32:19 Failure to meet service obligations -- Grounds for revocation of certificate.
- 20:10:32:20 Request for negotiations.
- 20:10:32:21 Submission of negotiated agreement for approval.
- 20:10:32:22 Submission of written comments on negotiated agreement – Submission of response.
- 20:10:32:23 Commission decision on negotiated agreement.
- 20:10:32:24 Request for mediation.
- 20:10:32:25 Response to request for mediation.
- 20:10:32:26 Mediation conducted by commission staff.
- 20:10:32:27 Statement of issues.
- 20:10:32:28 Confidentiality of mediation -- Settlement proposals.
- 20:10:32:29 Petition for arbitration -- Response to petition.
- 20:10:32:30 Response to petition for arbitration.
- 20:10:32:31 Arbitration conducted as a contested case -- Prehearing conference.
- 20:10:32:32 Commission decision on petition for arbitration.
- 20:10:32:33 Commission approval of arbitrated agreement.
- 20:10:32:34 Submission of written comments on arbitration agreement -- Submission of response.
- 20:10:32:35 Commission decision on arbitrated agreement.
- 20:10:32:36 Commission decision on agreement containing both arbitrated and negotiated provisions – Submission of separate agreements.
- 20:10:32:37 Rural exemption from negotiation and interconnection requirements.

- 20:10:32:38 Notice to commission of request.
- 20:10:32:39 Petition for suspension or modification of interconnection requirements.
- 20:10:32:40 Copy of petition to affected local service providers.
- 20:10:32:41 Timeline for reviewing petition.
- 20:10:32:42 Designation of eligible telecommunications carriers.
- 20:10:32:43 Eligible telecommunications carrier petitions.
- 20:10:32:43.01. Demonstration of commitment to provide service.
- 20:10:32:43.02. Submission of two-year plan.
- 20:10:32:43.03. Demonstration of ability to remain functional in emergency situations.
- 20:10:32:43.04. Demonstration of ability to satisfy consumer protection and service quality standards.
- 20:10:32:43.05. Offering of comparable local usage plan.
- 20:10:32:43.06. Provisioning of equal access.
- 20:10:32:43.07. Public interest standard.
- 20:10:32:44 Existing eligible telecommunications carrier designations not affected
- 20:10:32:45 Determining the applicable service area.
- 20:10:32:46 Copy of petition to other eligible telecommunications carriers.
- 20:10:32:47 Designation of eligible telecommunications carrier for unserved areas.
- 20:10:32:48 Relinquishment of eligible telecommunications carrier status.
- 20:10:32:49 Revocation of eligible telecommunications carrier status.
- 20:10:32:50 Monitoring of competitive local exchange services.
- 20:10:32:51. Use of universal service support.

20:10:32:52. Annual certification requirements for designated eligible

telecommunications carriers.

20:10:32:53. Requirements for previously designated eligible telecommunications

carriers and pending applications.

20:10:32:54. Certification requirements.

20:10:32:55. Lifeline and link-up advertising requirements – Annual report on outreach

efforts.

20:10:32:56. Petition for waiver -- Granting of wavier.

20:10:32:42. Designation of eligible telecommunications carriers. The commission on its own motion or upon request shall designate a ~~local service provider~~ telecommunications company which meets the requirements of 47 C.F.R § 54.201 (~~September 10, 1998~~) (January 1, 2006) 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 an area served by a rural telephone company, and shall, in all other areas, designate more than one ~~local service provider~~ telecommunications company 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~~) (January 1, 2006). 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 is in the public interest. In reviewing any proposed additional eligible telecommunications carrier designation within an area served by a rural telephone company, the commission may not find it to be in the public interest if the ~~provider~~

telecommunications company requesting such designation is not offering its services coextensive with the rural telephone company's service area.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

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

20:10:32:43. Eligible telecommunications carrier petitions. A ~~local service provider~~ telecommunications company 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 name, address, and telephone number of the ~~local service provider~~ applicant and its designated contact person;
- (2) The proposed effective date of designation of eligible telecommunications carrier status;
- (3) Identification of the service area, including a detailed map, 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~~) (January 1, 2006);

(5) If the ~~provider applicant~~ is seeking a ~~waiver of any eligible telecommunications carrier service requirements~~ additional time to complete network upgrades pursuant to ~~47 C.F.R. § 54.101~~ 47 C.F.R. § 54.101(c) (~~September 10, 1998~~) (January 1, 2006), ~~the specific reasons for the waiver,~~ the applicant shall list the reasons why additional time is needed and the estimated length of time for which the waiver is requested to complete the network upgrades; 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 A statement specifying why its the applicant's proposed additional designation is in the public interest.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

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

20:10:32:43.01. Demonstration of commitment to provide service. An applicant requesting designation as an eligible telecommunications carrier shall commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(1) Provide service on a timely basis to requesting customers within the applicant's proposed designated service area where the applicant's network already passes the potential customer's premises; and

(2) If the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, provide service within a reasonable period of time, if the service does not impose excessive or unreasonable cost, by:

(a) Modifying or replacing the requesting customer's equipment;

(b) Extending facilities, such as constructing or extending an access line, deploying a roof-mounted antenna, or installing other equipment;

(c) Adjusting the nearest cell tower;

(d) Adjusting network or customer facilities;

(e) Reselling services from another carrier's facilities to provide service;

or

(f) Employing, leasing, or constructing additional network facilities such as an access line, a cell site, cell extender, repeater, or other similar equipment.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:43.02. Submission of two-year plan. An applicant requesting designation as an eligible telecommunications carrier shall submit a two-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate the following on a wire center-by-wire center basis:

(1) How service quality, signal quality, coverage, or capacity will improve due to the receipt of high-cost support;

(2) The projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support;

(3) The specific geographic areas where the improvements will be made; and

(4) The estimated population that will be served as a result of the improvements.

If an applicant believes that service improvements in a particular wire center are not needed, the applicant must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:43.03. Demonstration of ability to remain functional in emergency situations. An applicant requesting designation as an eligible telecommunications carrier shall demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged transport facilities, and is capable of managing traffic spikes resulting from emergency situations.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:43.04. Demonstration of ability to satisfy consumer protection and service quality standards. An applicant requesting designation as an eligible

telecommunications carrier shall demonstrate that it will satisfy applicable consumer protection and service quality standards.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:43.05. Offering of comparable local usage plan. An applicant requesting designation as an eligible telecommunications carrier shall demonstrate that it offers a local usage plan comparable to the one offered by the incumbent local exchange carrier in the service areas for which the applicant seeks designation.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:43.06. Provisioning of equal access. An applicant requesting designation as an eligible telecommunications carrier shall certify that it will be able to provide equal access to long distance carriers if no other eligible telecommunications carrier is providing equal access within the service area.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:43.07. Public interest standard. Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. The commission shall consider the benefits of increased consumer choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant's service offering, commitments made regarding the quality of the telephone service provided by the applicant, and the applicant's ability to provide the supported services throughout the designated service area within a reasonable time frame. In addition, the commission shall consider whether the designation of the applicant will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. If an applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. In its creamskimming analysis, the commission shall consider other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 (January 1, 2006) by the incumbent local exchange carrier.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:44. Existing eligible telecommunications carrier designations not affected. Eligible telecommunications carrier designations previously granted by the

commission ~~prior to the effective date of these rules~~ shall remain in effect unless later changed by the commission after notice and opportunity for a hearing.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

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

20:10:32:45. 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 the company's "study area" unless and until the commission and the Federal Communications Commission establish a different definition of service area for the company. If the commission proposes to define the service area served by a rural telephone company to be other than the company's study area, the commission shall, consistent with 47 C.F.R. § 54.207 (~~September 10, 1998~~) (January 1, 2006), petition the Federal Communications Commission for its approval prior to making any such change.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

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

20:10:32:46. Copy of petition to other eligible telecommunications carriers.
A ~~local service provider~~ telecommunications company 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 petition to any other ~~local service provider~~
telecommunications company that is serving as an eligible telecommunications ~~carriers~~
carrier within the relevant service area.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

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

20:10:32:47. Designation of eligible telecommunications carrier for unserved areas. If no ~~local service provider~~ telecommunications company 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~~ telecommunications company is best able to provide the service to the requesting unserved community or portion thereof and order the ~~provider~~ telecommunications company to provide service to the unserved community or portion thereof. Any ~~provider~~ telecommunications company ordered to provide service under this section shall meet the requirements of 47 C.F.R. § 54.201 (~~September 10, 1998~~) (January 1, 2006) and shall be designated an eligible telecommunications carrier for that community or portion thereof.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

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

20:10:32:48. Relinquishment of eligible telecommunications carrier status. A ~~local service provider~~ telecommunications company may relinquish its eligible

telecommunications carrier designation and accompanying universal service obligations as provided for below:

(1) A ~~local service provider~~ telecommunications company 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 carrier serving the service area. At the time of filing, a copy of the petition shall also be provided to each local service provider serving the area for which the petitioner seeks to relinquish its eligible telecommunications carrier designation;

(2) The commission may permit a ~~local service provider~~ telecommunications company 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~~ telecommunications company 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~~ telecommunications company 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 each customer served by the relinquishing carrier continues to be served, and shall require sufficient notice to permit the purchase or construction of adequate

facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed one year after the commission approves such relinquishment, within which such purchase or construction shall be completed.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

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

20:10:32:49. Revocation of eligible telecommunications carrier status. If the commission finds, after notice and opportunity for hearing, that any ~~local service provider telecommunications company~~ designated as an eligible telecommunications carrier does not qualify as an eligible telecommunications carrier under 47 C.F.R. § 54.201 ~~(September 10, 1998)~~ (January 1, 2006), and is not entitled to federal universal service support, the commission shall revoke the ~~local service provider's telecommunications company's~~ eligible telecommunications carrier designation.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

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

20:10:32:51. Use of universal service support. An eligible telecommunications carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:52. Annual certification requirements for designated eligible telecommunications carriers. Consistent with 47 C.F.R. §§ 54.313 and 54.314 (January 1, 2006), an eligible telecommunications carrier shall request the commission to file an annual certification with the Universal Service Administrative Company and the Federal Communications Commission stating that all federal high-cost support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. An eligible telecommunications carrier shall file its request for annual certification with the commission on or before August 1, 2006, and by June first of each year thereafter. Failure of an eligible telecommunications carrier to file by the deadline may result in the commission's inability to provide certification to the Universal Service Administrative Company and the Federal Communications Commission by the following October first.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:53. Requirements for previously designated eligible telecommunications carriers and pending applications. A telecommunications company that has been designated as an eligible telecommunications carrier or has submitted its application for designation before the effective date of these rules must

submit the information required by §§ 20:10:32:43.01 to 20:10:32:43.06, inclusive, by August 1, 2006.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:54. Certification requirements. In its annual certification filing, each eligible telecommunications carrier shall provide the following information, on a calendar year basis, to the commission:

(1) A progress report on its two-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;

2) Detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5 (January 1, 2006), of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes if the outage affected at least ten percent of the end users served in a designated service area, or a 911 special facility, as defined in 47 C.F.R. § 4.5(e) (January 1, 2006). Information on the outage must include:

(a) The date and time of onset of the outage;

(b) A brief description of the outage and its resolution;

(c) The particular services affected;

(d) The geographic areas affected by the outage;

(e) The steps taken to prevent a similar situation in the future; and

(f) The number of customers affected;

(3) The number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in § 20:10:32:43.01;

(4) The number of complaints the eligible telecommunications carrier's complaint department has received from consumers for the previous calendar year;

(5) Certification that it is complying with applicable service quality standards and consumer protection rules;

(6) Certification that the eligible telecommunications carrier is able to function in emergency situations as set forth in § 20:10:32:43.03;

(7) Certification that the eligible telecommunications carrier is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas; and

(8) Certification that the eligible telecommunications carrier acknowledges that it will be able to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:55. Lifeline and link-up advertising requirements – Annual report on outreach efforts. An eligible telecommunications carrier shall annually notify the availability of the federal lifeline and link-up assistance programs to each of its existing customers residing in the carrier’s designated service area by written notification provided directly to the existing customers. A new customer residing in the carrier’s designated service area shall receive written notification of lifeline and link-up assistance programs within 30 days after receiving telecommunications services. An eligible telecommunications carrier shall annually advertise the availability of lifeline and link-up services in media of general distribution throughout its service areas. An eligible telecommunications carrier shall submit a report on its outreach efforts designed to increase participation in the lifeline and link-up assistance programs to the commission. The report shall be filed by June first of each year and shall report on the eligible telecommunications carrier’s outreach activities for the previous year.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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

20:10:32:56. Petition for waiver -- Granting of wavier. Upon petition of a telecommunications company, the commission may grant a waiver, after notice and opportunity for hearing, of any certification requirement contained in §§ 20:10:32:52 to 20:10:32:54, inclusive. In determining whether to grant a waiver, the commission shall consider whether the requirement is unduly burdensome and unnecessary for the commission to certify that the carrier is using federal high cost support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Source:

General Authority: SDCL 49-31-76, 49-31-77, 49-31-81.

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