

20:10:01:02.01. **Communications with commissioners.** All correspondence with the commission ~~shall~~ must be addressed to the commission's executive director at the commission's principal office or via electronic mail addressed to the commission's executive director.

~~Correspondence~~ Official correspondence with the commissioners ~~shall~~ may not be addressed to an individual commissioner unless otherwise specifically authorized or directed by the commission.

Source: 16 SDR 148, effective March 22, 1990.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL ~~49-1-11~~ 49-1-8.2.

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Commented [A1]: Use "must" for a requirement imposed upon an inanimate subject. ARSD Drafting Manual pg. 14.

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Commented [A2]: Style - Note the straight apostrophes used in the existing rule language. Straight apostrophes and quotation marks should be used throughout this document. ARSD DM, pg. 17.

Commented [A3]: "If the text is to be deleted, overstrike the single space before the deleted text. If text is to be added, underscore the single space immediately before the new text." ARSD Drafting Manual pg. 6.

Commented [A4]: Replace "shall not" with "may not." ARSD Drafting Manual pg. 24.

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Commented [A5]: Clarity - Is this word redundant? Direct correspondence with commissioners is allowed if specifically authorized or directed—isn't it unclear what circumstances are being referenced here "otherwise"?

Commented [A6]: Legality - SDCL 49-1-11(7) is the authority on point, but it only provides the subject area in which rulemaking is permitted (General Authority), it does not provide intelligible standards to guide rulemaking in that area (Law Implemented). ARSD DM, pgs. 9-10. SDCL 49-1-8.2, however, does generally describe the role of the executive director as chief officer for the Commission, which informs why this procedure would route correspondence to the ED.

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20:10:01:02.05. Filing of documents. Unless otherwise allowed, any document filed with the commission ~~shall~~ **must** be filed electronically as a .pdf file by accessing the commission's website. If the document is unable to be filed as a .pdf file, the document ~~shall~~ **must** be filed using a widely used file format. Documents larger than eight and one-half by fourteen inches or that otherwise may not be practicably filed by email attachment shall be filed by mail or hand delivery. If a person is requesting confidential treatment of any information, that information ~~shall~~ **must** be filed electronically as a separate document and the confidential designation ~~shall~~ **must** be noted in the subject line of the electronic filing. If a person is unable to file the document electronically due to technical reasons or lack of electronic filing capabilities, the person ~~shall~~ **must** file the original document with the commission by mail or hand delivery ~~and is not required to file electronically~~. If a person has the computer capability and it is technically feasible, any document that is not filed electronically shall be filed with the commission on a recordable compact disc. These filing requirements apply to all documents unless otherwise specified in this article or required by the commission.

Any document for consideration by the commission must be filed at least ~~24~~ **twenty-four** hours prior to the commission meeting or hearing ~~when during which it the document will be to~~ be considered, unless good cause is offered for the delay or unless otherwise ordered by the commission.

Source: 18 SDR 26, effective August 7, 1991; 33 SDR 107, effective December 26, 2006.

General Authority: SDCL 49-1-11(2), (4), (6).

Law Implemented: SDCL 49-1-11, (2), (4).

Commented [A7]: Clarity - Otherwise allowed by statute, rule, or the commission? Can that be specified? There is that sentence at the end of this paragraph that appears to describe what "otherwise allowed" means. Perhaps that can be consolidated into this first sentence?

Also "and as provided below" can be added here too as helpful signposting since there is a portion of this section that allows for filing via mail or hand delivery if e-filing is not feasible.

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Commented [A8]: Style - Replace "by accessing" with "via" or "on"? One cannot simply file by accessing the website.

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Commented [A9]: Clarity - "another" instead of "a"?

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Commented [A10]: Use "must" for action required as a condition of an occurrence. ARSD Drafting Manual pg. 14.

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Commented [A11]: Clarity - Is this redundant given the authorization that immediately precedes it?

Commented [A12]: Numbers should be written out. ARSD Drafting Manual pg. 18.

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Commented [A13]: Style - "will" should not generally be used in statute or rule as it connotes a prediction.

Commented [A14]: Maybe "for good cause shown"?

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Commented [A16]: No comma here. ARSD Drafting Manual pg. 11

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Commented [A17]: Legality - SDCL 49-1-11(4) con...

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Cross-References:

Contents of consumer complaint, § 20:10:01:07.01.

Requests for confidential treatment of information by a submitting party, § 20:10:01:41.

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20:10:01:32. Information provided by commission. The executive director of the commission shall, 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~~ provide a party with information regarding the proper filing of pleadings with the commission.

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Commented [A18]: Style - Strike the space prior to content to be struck, and add the underline to the space in front of added content, where possible. ARSD DM, pg. 6.

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Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-1-11(4).

Law Implemented: SDCL 49-1-11(4).

Commented [A19]: *Legality* - You might also consider adding SDCL 49-1-8.2, as the statute describes the chief officer function of the ED and how the ED can be delegated functions by the Commission (such as, presumably, through rulemaking).

CHAPTER 20:10:22

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ENERGY FACILITY SITING RULES

Section

20:10:22:01	Definitions.
20:10:22:02	Content of notification of intent.
20:10:22:03	Prefiling conference.
20:10:22:04	General format of application for permit.
20:10:22:05	Application contents.
20:10:22:06	Names of participants required.
20:10:22:07	Name of owner and manager.
20:10:22:08	Purpose of facility.
20:10:22:09	Estimated cost of facility.
20:10:22:10	Demand for facility.
20:10:22:11	General site description.
20:10:22:12	Alternative sites.
20:10:22:13	Environmental information.
20:10:22:14	Effect on physical environment.
20:10:22:15	Hydrology.
20:10:22:16	Effect on terrestrial ecosystems.
20:10:22:17	Effect on aquatic ecosystems.
20:10:22:18	Land use.
20:10:22:19	Local land use controls.
20:10:22:20	Water quality.

- 20:10:22:21 Air quality.
- 20:10:22:22 Time schedule.
- 20:10:22:23 Community impact.
- 20:10:22:24 Employment estimates.
- 20:10:22:25 Future additions and modifications.
- 20:10:22:26 Nature of proposed energy conversion facility.
- 20:10:22:27 Products to be produced.
- 20:10:22:28 Fuel type used.
- 20:10:22:29 Proposed primary and secondary fuel sources and transportation.
- 20:10:22:30 Alternate energy resources.
- 20:10:22:31 Solid or radioactive waste.
- 20:10:22:32 Estimate of expected efficiency.
- 20:10:22:33 Decommissioning.
- 20:10:22:33.01 -Decommissioning of wind energy facilities and solar energy facilities --
Funding for removal of facilities.
- 20:10:22:33.02 -Information concerning wind energy facilities and solar energy facilities.
- 20:10:22:34 Transmission facility layout and construction.
- 20:10:22:35 Information concerning transmission facilities.
- 20:10:22:36 Additional information in application.
- 20:10:22:37 Statement required describing gas or liquid transmission line standards of
construction.
- 20:10:22:38 Gas or liquid transmission line description.
- 20:10:22:39 Testimony and exhibits.

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20:10:22:40 Application for party status.

20:10:22:41 Shapefiles to be provided for transmission line route.

Declaratory Ruling: The Public Utilities Commission has filed a declaratory ruling with the Legislative Research Council in the Matter of the City of Flandreau Proposed Transmission Line. The City has asked if the proposed project is within the SDCL 49-41B-2.1 definition of a transmission line and associated facility, thereby requiring a SDPUC permit. On June 22, 1999, at its regularly scheduled meeting, the commission determined that the proposed 115kV transmission line is exempt from its siting jurisdiction because the entire line will be installed within the existing right-of-way on S.D. Highway 32 and the Industrial Park Road with the exception of the guying equipment for a corner pole. Declaratory Ruling EL99-010 dated June 25, 1999.

The Public Utilities Commission has filed a declaratory ruling with the Legislative Research Council. West River Electric Association, Inc., requested a ruling from the Commission regarding its jurisdiction over the siting of a new 115 kV transmission line near Rapid City. In the ruling, the Commission ordered that WREA's proposed transmission line is subject to the Commission's siting jurisdiction. Public Utilities Commission Declaratory Ruling EL00-030 dated December 14, 2000.

20:10:22:05. Application contents. ~~The An~~ application for a permit for a facility, ~~shall, must~~ contain the applicable information specified in §§ 20:10:22:06 to 20:10:22:25, inclusive, 20:10:22:36, and 20:10:22:39.

If the application is for a permit for an energy conversion facility, it ~~shall, must~~ also contain the information specified in §§ 20:10:22:26 to 20:10:22:33, inclusive. If the application is for a permit for a transmission facility as defined in SDCL subdivision 49-41B-2.1(1), it ~~shall, must~~ also contain the information specified in §§ 20:10:22:34, ~~and 20:10:22:35, and 20:10:22:41~~. If the application is for a permit for a transmission facility as defined in SDCL subdivision 49-41B-2.1(2), it ~~shall, must~~ also contain the information specified in §§ 20:10:22:37, ~~and 20:10:22:38, and 20:10:22:41~~. If the application is for a permit for a wind energy facility or a solar energy facility, it ~~shall, must~~ also contain the information specified in §§ 20:10:22:33.01 and 20:10:22:33.02.

The application ~~for a permit for a facility, shall, must~~ contain a list of each permit that is known to be required for the facility from any other governmental entity at the time of the filing. The list of permits ~~shall, must~~ be updated, if needed, to include any permit of which the applicant becomes aware ~~of~~ after filing the application. The list ~~shall, must~~ state when each permit application ~~will is to~~ be filed. The application ~~shall, must~~ also list each notification that is required to be made to any other governmental entity.

Source: 5 SDR 1, effective July 25, 1978; 7 SDR 41, effective November 3, 1980; 12 SDR 86, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 32 SDR 109, effective December 26, 2005; 38 SDR 116, effective January 10, 2012; 47 SDR 125, effective May 30, 2021.

General Authority: SDCL 49-41B-35(2).

Commented [A20]: Style - This is the first reference to an application in this section. Use of the indefinite article is appropriate.

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Commented [A21]: Style/Clarity - If these additional application information requirements are already plainly provided in §§ 20:10:22:26, 20:10:22:27, etc., is it redundant to restate that here? If so, perhaps everything from this point to the end of the paragraph is able to be struck? To provide clarity, the first sentence could be tweaked at the end to read: "...and 20:10:22:39, in addition to any facility-specific application information requirements in this chapter."

... [3]

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Commented [A22]: Clarity - As there is only one ... [4]

Commented [A23]: Clarity - By whom is it known? ... [5]

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Commented [A24]: Clarity - "notification associat ... [6]

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Law Implemented: SDCL 49-41B-11(1) thru (12), 49-41B-35(2).

Commented [A25]: Legality - Subdivision (2) provides the subject area for rulemaking—establishing procedures for permit applications and what information is required in the applications. The only intelligible standard I could find in SDCL 49-41B-35 is a weak one—to “implement the provisions of this chapter.”

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20:10:22:40. Application for party status. A governmental agency, ~~or person, or~~
~~nonprofit organization,~~ as specified in SDCL 49-41B-17(2) and (3), ~~shall~~ may be granted party
status in a proceeding commenced pursuant to SDCL chapter 49-41B upon applying in writing to
the commission on a form provided by the commission.

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— The application shall contain the following:

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- (1) Date;
- (2) Verified signature of the applicant; and
- (3) A statement requesting party status.

Unless otherwise ordered by the commission, the application ~~shall~~ must be filed within
60 ~~sixty~~ days from the date the ~~facility siting~~ application is filed.

Commented [A28]: "New material always follows stricken material." ARSD Drafting Manual pg. 6.

Commented [A29]: Underscore insertions. ARSD Drafting Manual pg. 6.

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Commented [A30]: Clarity - "Application" is defined in ARSD 20:10:22:01 as an "application for a permit submitted to the commission pursuant to SDCL 49-41B". Generally, the term "application" is used throughout ARSD chapter 20:10:22 without another descriptor, or as an "application for a permit." Can this be struck to not create confusion with the defined term, application?

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Source: 9 SDR 55, effective November 7, 1982; 12 SDR 151, 12 SDR 155, effective July
1, 1986; 32 SDR 109, effective December 26, 2005.

General Authority: SDCL 49-41B-35(2).

Law Implemented: SDCL 49-41B-17(1)(2)(3).

20:10:22:41. Shapefiles to be provided for transmission line route. ~~If the application is for a permit for a transmission facility, at At the time the an application for a permit for a transmission facility is filed, the applicant shall provide to the commission the shapefiles depicting the route.~~ The shapefiles must be compatible with ArcGIS and may be published for public viewing by the commission on its website.

General Authority: SDCL 49-41B-35.

Law Implemented: SDCL 49-41B-11(2).

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Commented [A31]: Proposed route?

Commented [A32R31]: Clarity - "depicting the proposed route of the facility"?

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Commented [A33]: Published by the commission or viewing by the commission? Recommend using active voice here. ARSD Drafting Manual pg. 14.

Commented [A34R33]: Clarity/Legality - "The shapefiles must be compatible with ArcGIS. The commission may publish the shapefiles on its website for public viewing."

The above presupposes that rule is needed to permit the Commission to publish the shapefiles in this fashion. If nothing prohibits the Commission from doing it currently, there is no need to specify this authority in rule.

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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.
- 20:10:32:06.01 Performance bonds.
- 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 -- Request for waiver.
- 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.

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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.

20:10:32:30 Response to petition for arbitration.

20:10:32:31 Arbitration conducted as a contested case -- Prehearing conference.

20:10:32:31.01 Participation by non-parties.

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.

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20:10:32:36 Commission decision on agreement containing both arbitrated and negotiated provisions -- Submission of separate agreements.

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20:10:32:37 Rural exemption from negotiation and interconnection requirements.

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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.

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20:10:32:43.05 Offering of comparable local usage plan, Repealed.

Commented [A35]: No overstrike here--see example in ARSD Drafting Manual pg. 30.

20:10:32:43.06 Provisioning of equal access, Repealed.

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20:10:32:43.07 Public interest standard.

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20:10:32:44 Existing eligible telecommunications carrier designations not affected.

Commented [A36]: See ARSD Drafting Manual pg. 30.

20:10:32:45 Determining the applicable service area.

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20:10:32:46 Copy of petition to other eligible telecommunications carriers.

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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. Formatted: Indent: Left: 0", Hanging: 1.13", Space Before: 0 pt, After: 0 pt
- 20:10:32:53 Requirements for previously designated eligible telecommunications carriers and pending applications.
- 20:10:32:54 Certification requirements. Formatted: Space Before: 0 pt, After: 0 pt
- 20:10:32:55 Lifeline and link-up advertising requirements -- Annual report on outreach efforts. Formatted: Indent: Left: 0", Hanging: 1.13", Space Before: 0 pt, After: 0 pt
- 20:10:32:56 Petition for waiver -- Granting of waiver. Formatted: Space Before: 0 pt, After: 0 pt

20:10:32:03. Certificate of authority for local exchange service -- Application

requirements. A telecommunications company required to apply for a certificate of authority for local exchange services from the commission shall submit a written application and provide the following information, unless the commission grants a waiver to omit a specific item of information:

(1) The applicant's name, address, telephone number, ~~faesimile number~~, web page URL, and E-mail address;

(2) A description of the legal and organizational structure of the applicant's company;

(3) The name under which ~~the~~ applicant will provide local exchange services, if different than in subdivision (1) of this section;

~~(5)~~(4) A copy of its certificate of authority to transact business in South Dakota from the Secretary of State;

(4)(5) The location of the applicant's principal office, if any, in this state and the name and address of its current registered agent, if applicable;

~~(5) A copy of its certificate of authority to transact business in South Dakota from the secretary of state;~~

Commented [A37]: Clarity - Can the authority requiring the application/certificate of authority be cited here for ease of reference?

Is it that they are required to apply, or that they are required to have a certificate of authority? If the latter, that should be clarified.

Commented [A38]: Clarity - On what basis may the Commission grant a waiver? Note the prior section that describes "good cause".

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Commented [A39]: Remove extra spaces between subdivisions.

Commented [A40]: Style - Straight apostrophe.

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Commented [A42]: Use terms consistently. ARSD Drafting Manual pg. 13.

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Commented [A43]: Use "this state" instead of South Dakota. ARSD Drafting Manual pg. 24.

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Commented [A44]: There should not be a "(5)" to strike through here. Also, if subdivision (4) contains new text, then the old text needs to be overstricken first. New text is underlined and follows deleted text. ARSD Drafting Manual pg. 6.

Commented [A45]: "New material **always** follows stricken material." ARSD Drafting Manual pg. 6.

— (6) A description of 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;

— (7) Names and addresses of applicant's affiliates, subsidiaries, and parent organizations, if any;

(8)(6) A list ~~and containing the following~~ specific ~~description of information about~~ the types of services the applicant seeks to offer and how the services will be provided, ~~including:~~

(a) ~~Information indicating the~~ The classes of customers the applicant intends to serve;

(b) ~~Information indicating the extent to and time-frame by which~~ The date the applicant ~~will is to~~ provide service, ~~and the extent to which service is to be provided~~ through the use of ~~its~~ the applicant's own facilities, the purchase of unbundled network elements, or resale;

(c) A description of all facilities that the applicant ~~will shall~~ utilize to furnish the proposed local exchange services, including any facilities of underlying carriers; and

(d) ~~Information identifying the~~ The types of services ~~it the applicant~~ seeks authority to provide ~~by~~ with reference to the general nature of ~~the each~~ service;

Commented [A46]: Clarity - Is this word necessary when the subsections specify what information is required?

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Commented [A47]: Avoid using "including" here as it implies the list is not exhaustive, and examples should not be used in rule text. ARSD Drafting Manual pg. 12.

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(7) A description of the applicant's experience providing any telecommunications ~~services~~ service in ~~South Dakota this state~~ or in other jurisdictions, ~~including the types type of services~~ service provided, and the ~~dates date~~ and nature of state or federal authorization to provide the ~~services service~~;

Commented [A49]: "Use the singular instead of the plural." ARSD Drafting Manual pg. 15.

(8) ~~Names and addresses The name and address of applicant's affiliates, subsidiaries, and parent organizations, if any affiliate, parent organization, or subsidiary of the applicant;~~

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(9) A service area map or narrative description indicating with particularity the geographic area proposed to be served by the applicant;

(10) For the most recent ~~12 twelve-month~~ period, financial statements of the applicant consisting of balance sheets, income statements, and cash flow statements. The applicant shall provide audited financial statements, if available;

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

Commented [A50]: Lowercase?

Commented [A51]: References to facsimile numbers were removed in other sections.

Commented [A52]: Consider using the singular rather than the plural here. ARSD Drafting Manual pg. 15.

Commented [A53R52]: Style - Straight apostrophe needed here, also.

Clarity - All inquiries by whom? The Commission?

"... of each of the applicant's representatives designated to receive inquiries from the commission on customer complaints and other regulatory matters;"?

(12) ~~Information concerning how the applicant plans~~ The applicant's plan to bill and collect charges from customers who subscribe to its proposed local exchange services;

(13) ~~Information concerning the~~ The applicant's policies relating to solicitation of new customers and a description of the efforts the applicant ~~shall intends to~~ use to prevent the unauthorized switching of local service customers by the applicant, its employees, or agents;

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(14) Information concerning how the applicant will make available to any person information concerning the applicant's current rates, terms, and conditions for all of its telecommunications services;

Commented [A54]: Given the lead-in, which speaks to "information" already, perhaps: "How the applicant will publish any current rate, term, or condition of its telecommunications services"?

(15) ~~Information concerning how~~ How the applicant will notify a customer of any materially adverse change to any rate, term, or condition of any telecommunications service ~~being~~ provided to the customer ~~by the applicant~~. The notification must be made at least thirty days in advance of the change;

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(16) A list of the states in which the applicant is registered or certified to provide telecommunications services, ~~together with a statement as to whether the applicant has:~~

Commented [A55]: This provision seems unnecessary as the language is already found in SDCL 49-31-12.8. Text is not to be copied from statute. ARSD Drafting Manual pg. 21.

(a) ~~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:~~

(b) ~~Is~~ in good standing with the appropriate regulatory agency in ~~the states any~~ state 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;

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(17) A description of how the applicant intends to market its local exchange services, ~~a~~ description of its target market, ~~a statement as to whether the applicant engages in multilevel marketing, and copies of any company brochures brochure that will is to be~~ used to assist in sale of the services;

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Commented [A56]: Remove extra spaces.

~~(120) Information regarding the technical competence of~~ (18) The technical competence of the applicant to provide its proposed local exchange services ~~including as shown by:~~

(a) A description of the education and experience of the applicant's management personnel who will oversee the proposed local exchange services; and

(b) ~~Information regarding policies. Any policy, personnel decision, or arrangements~~ arrangement 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 requirement;~~

~~(121) Information explaining how~~ (19) How the applicant ~~will is to~~ provide customers with access to ~~emergency services such as~~ 911 or enhanced 911, operator services, interexchange services, directory assistance, ~~and~~ telecommunications relay services, ~~and any other emergency service;~~

(12) For the most recent 12-month period, financial statements of the applicant consisting of balance sheets, income statements, and cash flow statements. The applicant shall provide audited financial statements, if available;

~~(122) Information detailing the~~ (20) The following matters associated with interconnection to provide proposed local exchange services:

Commented [A57]: Style - Content should not be overstricken and underscored.

Commented [A58]: Style - Here, too, the fact that "information" is contained in the lead-in to this list of subdivisions requires, grammatically, other language.

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(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 negotiations~~ are likely to start; and

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(c) A copy of any request for interconnection made by the applicant to any local exchange carrier;

~~(14) A description of how the applicant intends to market its local exchange services, 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;~~

~~(15)(23)(21)~~ 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 § 20:10:32:15 and ~~the applicant's plans plan~~ for meeting the service obligations;

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~~(16) 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;~~

~~(17) The names, addresses, telephone numbers, E-mail addresses, and facsimile numbers of the applicant's representatives to whom all inquiries must be made regarding customer complaints and other regulatory matters;~~

~~(18) Information concerning how the applicant plans to bill and collect charges from customers who subscribe to its proposed local exchange services;~~

~~(19) Information concerning the applicant's policies relating to solicitation of new customers and a description of the efforts the applicant shall use to prevent the unauthorized switching of local service customers by the applicant, its employees, or agents;~~

~~(20) 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;~~

~~(21) Information concerning how the applicant will make available to any person information concerning the applicant's current rates, terms, and conditions for all of its telecommunications services;~~

(22) Information concerning how the applicant will notify a customer of any materially adverse change to any rate, term, or condition of any telecommunications service being provided to the customer. The notification must be made at least thirty days in advance of the change;

~~(23,4)~~(22) A written request for waiver of ~~those rules, any rule~~ believed to be inapplicable;
and

(24) Federal tax identification number and South Dakota sales tax number; and

~~(25)~~(23) 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.

The commission may require the production of audited financial statements and additional information to supplement ~~that the information~~ contained in the application. A company shall notify the commission of any ~~changes change in information provided pursuant to~~ subdivisions (1), (3), (4), and ~~(17)~~(11) of this section as ~~they occur, the change occurs.~~

Source: 25 SDR 89, effective December 27, 1998; 26 SDR 110, effective March 7, 2000; 34 SDR 67, effective September 11, 2007.

General Authority: SDCL 49-31-76.

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Commented [A59]: Clarity - How is this last, catch-all subdivision different than the final paragraph after this subdivision? Can this be struck (and the "and" added to the end of proposed subdivision (21)) and perhaps a blending of this more specific content into the final paragraph?

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Law Implemented: SDCL 49-31-3, 49-31-12.7, 49-31-69, 49-31-76.

20:10:32:12. 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 to the commission by June ~~1~~ first of each year thereafter ~~the following~~ information:

—— (1) ~~A~~ a report of its annual revenues from the preceding year resulting from operations in ~~South Dakota;~~

—— (2) ~~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 must separately identify areas being served primarily through resale and areas served by facilities of the companies; and

—— (3) ~~The number of access lines being served, segregated between business and residential local exchange customers~~ this state.

Commented [A60]: Style - ARSD DM, pg. 15.

Commented [A61]: "If the text is to be deleted, overstrike the single space before the deleted text." ARSD Drafting Manual pg. 6.

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

General Authority: SDCL 49-31-76.

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

20:10:32:21. 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. ~~Each party~~ The parties to the negotiated agreement shall submit a complete copy of the agreement, including any attachments. ~~Each party~~ 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 any non-party carrier, ~~and an explanation of whether the agreement~~ is consistent with the public interest, convenience, and necessity.

Commented [A62]: If this is proposed language, it should be underscored. ARSD Drafting Manual pg. 6.

Commented [A63]: Underscore new text.

Commented [A64]: Perhaps "as to"?

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

General Authority: SDCL 49-31-76.

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

20:10:32:42. Designation of eligible telecommunications carriers. The commission, on its own motion or upon request, shall designate a telecommunications company, ~~which that~~ meets the requirements of 47 C.F.R. § 54.201 (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 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 (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~~ For an area served by a rural telephone company, the commission may not find ~~it the additional designation~~ to be in the public interest if the telecommunications company requesting ~~such the~~ designation is not offering its services ~~coextensive~~ with the rural telephone company's service area.

Source: 25 SDR 89, effective December 27, 1998; 32 SDR 231, effective July 10, 2006.

General Authority: SDCL 49-31-76.

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

Commented [A65]: Much of the language in this section appears to be taken directly from SDCL 49-31-78.

Commented [A66]: Use commas "to set apart phrases, clauses, or other expressions." ARSD Drafting Manual pg. 17.

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Commented [A67]: Use "that" for a phrase intended to provide information integral to the sentence. ARSD Drafting Manual pg. 25.

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Commented [A68]: Clarity - Recommend a hard return after the first sentence, since the content that follows is a distinct thought—when multiple ETCs can be designated.

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Commented [A69]: Clarity - The sentence prior requires any additional designated ETC to be "consistent with the public interest." Isn't that a finding? If so, would that make this requirement redundant?

(Later edit - Based on a review of 20:10:32:42, it would appear that this is a required finding?)

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Commented [A70]: "In an area" has been used previously throughout this section.

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Commented [A71]: Maybe "does not offer"?

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Commented [A72]: Style - Wouldn't the adverb "coextensively" be more appropriate to use here than the adjective "coextensive," since the word is modifying the verb "offering"?

In the alternative, insert "as" in front of "coextensive"?

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20:10:32:43. Eligible telecommunications carrier petitions. A telecommunications company that desires designation as an eligible telecommunications carrier shall file a petition for ~~such the~~ designation with the commission. The petition for designation ~~shall must~~ include the following information:

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(1) The name, address, e-mail, and telephone number of the 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 together with~~ a detailed map, for which the designation is sought;

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(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 (January 1, 2006);

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(5) If the applicant, other than a wireless Lifeline-only provider, is seeking additional time to complete network upgrades pursuant to 47 C.F.R. § 54.101(c) (January 1, 2006), the applicant ~~shall must~~ list the reasons why additional time is needed and the estimated length of time to complete the network upgrades; and

Commented [A74]: "Lifeline-only provider" does not appear to be defined elsewhere. Other references to the federal lifeline program are lowercase (e.g., § 20:10:32:55).

Commented [A75]: Style/Legality - This needs to have specified a title of the CFR. ARSD DM, pg. 18. I presume this is accurate?

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(6) A statement specifying why the applicant's proposed designation is in the public interest.

A company shall notify the commission of any ~~changes change to the information~~ provided in subdivision (1) of this section as ~~they occur~~ the change occurs.

A wireless telecommunications company ~~that~~ has received a designation as a wireless Lifeline-only eligible telecommunications carrier shall annually submit to the commission, by

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July ~~1~~ first of each year ~~thereafter~~, the rates and service plans of any telecommunications service
~~being provided to the~~ the company provides to its Lifeline-only customers.

Commented [A76]: Style - ARSD DM, pg. 15.

Commented [A77]: Clarity - The phrase "has received" indicates the designation has already occurred, and if this requirement is annual, as described earlier in this sentence, isn't this word redundant?

Commented [A78]: Recommend defining this term.

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Source: 25 SDR 89, effective December 27, 1998; 32 SDR 231, effective July 10, 2006.

General Authority: SDCL 49-31-76.

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

20:10:32:43.02. Submission of two-year plan. An applicant requesting designation as an eligible telecommunications carrier, ~~except for and not a wireless Lifeline only designations~~ designation, 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:

Commented [A79]: This term is hyphenated in the previous section.

Commented [A80]: Style - "details"? (more concise language).

Commented [A81]: Clarity - Demonstrate where? In the plan?

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

Commented [A82]: Clarity - Only one of these must be commented upon? Or should multiple be commented upon, if applicable? Perhaps "and capacity, as applicable, will improve..."?

(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~~ improvement is to be made; and

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(4) The estimated population that ~~will is to~~ be served as a result of the improvements. If an applicant ~~believes determines~~ 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 is to be~~ otherwise ~~be~~ used to further the provision of supported services in that area.

Commented [A83]: Recommend hard return here.

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Commented [A84]: Clarity - It is described as a determination below, which is something commonly distinct from a belief.

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Source: 32 SDR 231, effective July 10, 2006.

General Authority: SDCL ~~49-31-3~~, 49-31-76, 49-31-77, 49-31-81.

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

Commented [A85]: SDCL 49-31-3 contains the following provision:
"The commission shall, by rules promulgated pursuant to chapter 1-26, prescribe the necessary procedures to implement this section."

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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~~ Repealed.

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Source: 32 SDR 231, effective July 10, 2006.

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.~~ Repealed.

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Source: 32 SDR 231, effective July 10, 2006.

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 the~~ designation is in the public interest. ~~The commission shall consider the, based upon the following considerations:~~

- ~~(1) The~~ benefits of increased consumer choice, ~~the;~~
- ~~(2) The~~ impact of multiple designations on the universal service fund, ~~the;~~
- ~~(3) The~~ unique advantages and disadvantages of the applicant's service offering;
- ~~(4) Any~~ commitments made regarding the quality of the telephone service provided by the applicant, ~~and the~~
- ~~(5) 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;~~
- ~~and~~
- ~~(6) 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 must~~ 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. Wireless Lifeline-only eligible telecommunications applicants do not need to provide a creamskimming analysis.

Source: 32 SDR 231, effective July 10, 2006.

Commented [A86]: Style - ARSD DM, pg. 24.

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Commented [A87]: Clarity/Legality - "will" = a prognostication. That seems unreasonable. Wouldn't "is likely to" be more accurate and preferred, since the designation has not yet occurred?

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Commented [A88]: Clarity - Isn't this properly two words, not one? Perhaps it should be hyphenated as a compound modifier of "analysis"? If so, please revise throughout.

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Commented [A89]: Recommend listing all other factors to be considered.

Commented [A90R89]: Clarity/Legality - Strong agree. If only one example is given, when the universe of factors is not otherwise scoped, then what other factors beyond the one expressed is the Commission duty-bound to ... [7]

Commented [A91]: Clarity/Legality - I don't see th ... [8]

Commented [A92]: Maybe "are not required to pro ... [9]

Commented [A93R92]: Clarity - The duty to prov ... [10]

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General Authority: SDCL 49-31-3, 49-31-76, 49-31-77, 49-31-81.

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

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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. A Lifeline only wireless ~~companies~~ company that have has been designated as an eligible telecommunications ~~carriers are~~ carrier is exempt from the requirements of this section.

Source: 32 SDR 231, effective July 10, 2006.

General Authority: SDCL 49-31-3, 49-31-76, 49-31-77, 49-31-81.

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

Commented [A94]: Legality - Since ARSD 20:10:32:43.05 and 20:10:32:43.06 are slated for repeal, this range will need to be revised—unless, of course, this first sentence is no longer relevant given that it appears to have already been fully executed with an August 1, 2006 due date?

Commented [A95]: Hyphenation should be consistent.

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Commented [A96]: “Keep the number in mind when matching subjects and verbs.” ARSD Drafting Manual pg. 15.

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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 two-year service quality improvement plan as described in § 20:10:32:43.02;

(2) A progress report on its previously filed two-year service quality improvement plan,

~~including either, containing~~ a clear description ~~of and/or maps detailing its, or a detailed map of~~ the carrier's progress ~~towards, toward~~ 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. Information concerning completed or planned network improvement projects ~~should, must~~ indicate which wire center areas or local communities are benefited by the improvements and ~~shall, must~~ be submitted at the wire center level;

(3) Detailed information on any outage, ~~as, that term is~~ defined in 47 C.F.R. § 4.5 (January 1, 2006), of at least ~~30, thirty~~ minutes in duration for each service area in which ~~an eligible telecommunications, a~~ 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 ~~by the outage;~~

(D) The geographic areas affected by the outage;

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

Commented [A97]: Clarity - ARSD 20:10:32:52 describes an annual certification that must be filed with the Commission by July first. It may be assumed, but not expressed, that this is for the prior calendar year. Why not make that express?

Note that subdivision (4) uses the phrase "the past year" and subdivision (5) uses the phrase "the previous calendar year." Are those phrases necessary with the lead-in? If they are, consistency is recommended.

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Commented [A98]: Style/Legality - Guidelines are not appropriate in rule. If this is truly a "should" guideline, it should be removed.

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Commented [A99]: Recommend using active voice. ARSD Drafting Manual pg. 14.

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Commented [A100]: Clarity/Legality - "911 special facility" is not defined in that statute, but the concept of an "outage that potentially affects a 911 special facility" is described in subsection (e) of that C.F.R. section. That should be clarified. If it is, is it then accurate to write this as "outage affected . . . a 911 special facility" without the "potentially"?

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Commented [A101]: A subsection is denoted by a lowercase letter in parenthesis. ARSD Drafting Manual pg. 14.

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(F) The number of customers affected;

(4) 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, with details about any attempts by the carrier~~ to provide service to those potential customers, as set forth in § 20:10:32:43.01;

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

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Commented [A102]: During?

(6) Certification that ~~it the carrier~~ is complying with applicable service quality standards and consumer protection rules; and

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

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A Lifeline-only wireless company that ~~have~~ has been designated as an eligible telecommunications carrier ~~are is~~ exempt from the requirements of this section.

Source: 32 SDR 231, effective July 10, 2006; 34 SDR 67, effective September 11, 2007; 47 SDR 125, effective May 30, 2021.

General Authority: SDCL ~~49-31-3~~, 49-31-76, 49-31-77, 49-31-81.

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

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

outreach efforts. An eligible telecommunications carrier shall annually ~~notify, provide written notification of~~ 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 in either print or electronic form provided directly to the existing customers. ~~A carrier shall provide written notification, in either print or electronic form, of lifeline and link-up assistance programs to any~~ new customer residing in the carrier's designated service area ~~shall receive written notification in either print or electronic form, of lifeline and link-up assistance programs~~ within 30 ~~thirty~~ days after ~~receiving the customer receives~~ telecommunications services. ~~An eligible telecommunications~~ A carrier shall annually advertise the availability of lifeline and link-up services in media of general distribution throughout its service areas. As part of its annual certification filing, ~~an eligible telecommunications~~ a carrier shall submit a report to the commission on ~~its the carrier's~~ outreach efforts designed to increase participation in the lifeline and link-up assistance programs ~~to the commission~~. The ~~report carrier~~ shall ~~be filed file~~ by June July first of each year ~~and shall its~~ report on the ~~eligible telecommunications~~ carrier's outreach activities for the previous year.

A Lifeline-only wireless company that ~~have has~~ been designated as an eligible telecommunications carrier ~~are is~~ exempt from this section.

Source: 32 SDR 231, effective July 10, 2006; 34 SDR 67, effective September 11, 2007.

General Authority: SDCL ~~49-31-3~~, 49-31-76, 49-31-77, 49-31-81.

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

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Commented [A103]: Use active voice. ARSD Drafting Manual pg. 14.

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Commented [A104]: Clarity - calendar year?

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20:10:33:21. 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;

~~including the marking of and shall mark~~ facilities as required by the rules and regulations of the

One-Call Notification System. 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~~ must be given

to a residential customer who verifies in writing 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

must be given to an entity that verifies in writing to the company that telecommunications

services are needed to protect the public's health, safety, and welfare.

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

General Authority: SDCL ~~49-31-3~~, 49-31-77, 49-31-85.

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

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Commented [A105]: Clarity - By having a family member with a chronic medical condition that requires telecommunications up-time, despite that family member not necessarily living with me, I am entitled to priority? Or, is this intended to simply capture any permanent resident of or likely visitor to the premises where service is rendered?

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Commented [A106]: Clarity - Are needed where? At the entity's premises?

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20:10:33:27. Reporting requirements when 911 service is disrupted or impaired. Each local exchange company shall, immediately upon discovery of an outage on its network, provide a report to each 911 public safety answering point serving the affected local service areas area, to the local area broadcast media serving the affected local service areas area, and to the commission. The report shall contain pertinent information concerning any specific occurrence or development which that disrupts or impairs the local service area's 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 is to be completed and the 911 service restored.

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

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

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

Commented [A107]: Style - Use the singular instead of the plural. ARSD DM, pg. 15. Note also the possessive singular form of this word used at the very end of this sentence.

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Commented [A108]: Clarity - Without splitting this sentence in two, it is a very long sentence. Recommend this to help the reader.

Commented [A109]: Clarity - Is this adjective necessary?

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20:10:37:01. Definitions. Terms defined in SDCL 49-34B-1 have the same meaning when used in this chapter. In addition, terms used in this chapter mean:

(1) ~~"Inspector," a pipeline safety inspector employed by, or contracted as an agent of the commission;~~

Commented [A110]: Definitions should be alphabetized. ARSD Drafting Manual pg. 10.

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(2) "Incident," ~~is~~ any of the following events:

(a) A release of gas from a gas pipeline facility or of liquefied natural gas or gas from a liquefied natural gas facility; and

(i) A death, or personal injury necessitating in-patient hospitalization; or

(ii) Estimated property damage, ~~including or~~ cost of gas lost, of the operator or ~~others another,~~ or both, ~~in the aggregate, amount~~ of ~~\$50,000~~ \$145,000 or more;

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(b) An event that results in an emergency shutdown of a liquefied natural gas facility;

or

(c) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of subdivisions (a) and (b) above;

~~(3)(2)~~ "Incident docket," a docket opened with the commission upon the initiation of an investigation of an incident;

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~~(4)(3)~~ "Incident report," the report drafted by an inspector after an incident;

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~~(5)(4)~~ "Inspection," a review of the books, files, records, reports, supplemental data, other documents and information, ~~and an examination of the~~ plant, property, and facilities of a pipeline operator to ensure compliance with applicable pipeline safety standards;

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~~(6)(5)~~ "Inspection report," the report drafted by an inspector after an inspection of any type, except for an incident;

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(6) "Inspector," a pipeline safety inspector employed by, or contracted as, an agent of
the commission; and

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(7) "Pipeline safety program," the program administered by the commission with
regulatory jurisdiction over the safety standards and practices of all jurisdictional intrastate
natural gas and other gas pipelines within ~~South Dakota~~ this state.

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Source: 36 SDR 57, effective October 19, 2009.

General Authority: SDCL 49-34B-4, 49-34B-19.

Law Implemented: SDCL 49-34B-3, 49-34B-4, 49-34B-19, 49-34B-27.

Commented [A111]: I am not sure how this statute applies to the definitions in this rule section.

Page 2: [1] Commented [A16]**Author**

No comma here. ARSD Drafting Manual pg. 10.

Page 2: [2] Commented [A17]**Author**

Legality - SDCL 49-1-11(4) contains the following intelligible standard--"which shall conform to those used in South Dakota courts." Subdivision (2) provides no intelligible standards.

Page 8: [3] Commented [A21]**Author**

Style/Clarity - If these additional application information requirements are already plainly provided in §§ 20:10:22:26, 20:10:22:27, etc., is it redundant to restate that here? If so, perhaps everything from this point to the end of the paragraph is able to be struck? To provide clarity, the first sentence could be tweaked at the end to read: "...and 20:10:22:39, in addition to any facility-specific application information requirements in this chapter."

If the above is not the case, consider using a hard return to separate the prior, first sentence from the remaining content of the paragraph, and using subdivisions to split out the additional application requirements:

"The application must also contain the following information depending on the type of facility:

- 1) For an energy conversion facility, the information specified in §§ 20:10:22:26 . . . ;
- 2) For a transmission facility,"

Page 8: [4] Commented [A22]**Author**

Clarity - As there is only one application referenced throughout, can this phrase be removed as redundant?

Page 8: [5] Commented [A23]**Author**

Clarity - By whom is it known? "known by the applicant"?

Page 8: [6] Commented [A24]**Author**

Clarity - "notification associated with the facility that is required...."?

Page 33: [7] Commented [A90R89]**Author**

Clarity/Legality - Strong agree. If only one example is given, when the universe of factors is not otherwise scoped, then what other factors beyond the one expressed is the Commission duty-bound to consider? The Commission is given a duty to consider other, non-expressed factors, which seems problematic.

Page 33: [8] Commented [A91]**Author**

Clarity/Legality - I don't see the word "disaggregation" specifically referenced in this section.

▲
Page 33: [9] Commented [A92]

Author

Maybe "are not required to provide ..."? Alternatively, the first sentence of paragraph two could be changed to:

"If an applicant, other than an applicant requesting a lifeline-only designation, seeks to ..."

This option would eliminate the need for the last sentence in this section.

▲
Page 33: [10] Commented [A93R92]

Author

Clarity - The duty to provide a creamskimming analysis is described earlier as being with the Commission. For this particular type of applicant, it is with the applicant?