15 1	TC 98-148
In the Matter of _	IN THE MATTER OF THE APPLICATION OF SIOUX FALLS CABLE TELEVISION FOR A CERTIFICATE OF AUTHORITY TO PROVIDE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA
Pu	blic Utilities Commission of the State of South Dakota
DATE	MEMORANDS
8/27 98	Filed and Socketel;
9/3 98	Kiekly Filippi
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9/16/98/	Velition to Intervene by 101TC;
9/16/98/	hation for Leave to Intervine by OTB and OTI; nation for admission by Resident Practice of theory (Wim P Heaster)
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11/17 98	Supplemental Confidential Filena (Arta Service agreement);
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4/1/99	Order Gentling COA, Warket Classe.
4/1 99	Wacket Classe.

DAVID A GERDES ATTORNEY AT LAW MAY, ADAM, GERDES & THOMPSON LLP PO BOX 160 PIERRE SD 57501-0160

RICHARD D COIT
EXECUTIVE DIRECTOR/GENERAL COUNSEL
SDITC
PO BOX 57
PIERRE SD 57501-0057

BRIAN J DONAHOE ATTORNEY AT LAW CUTLER, DONAHOE & MICKELSON, LLP 100 NORTH PHILLIPS AVENUE STE 901 SIOUX FALLS SD 57104-6725

WILLIAM P HEASTON BARBARA BERKENPAS DTG PO BOX 66 IRENE SD 57037-0066

### MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIERRE STREET P.C. BOX 160 PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS 1881-1963
KARL DOLDSMITH 1885-1966
THOMAS C. ADAM
DAVIDA. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENJEL
MICHAEL F. SHAW
ROBERT K. SAHR

August: 27, 1998

HAMMEN ME MAR

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dag@megt.com

#### HAND DELIVERED

Bill Bullard, Executive Secretary South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070 RECEIVED

AUG 2 7 1998 SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

RE: SIOUX FALLS CABLE TELEVISION; APPLICATION FOR CERTIFICATE OF AUTHORITY

Our file: 2442

Dear Bill:

Enclosed are original and ten copies of an application for certificate of authority. Please file the enclosure.

I am also enclosing financial information responsive to paragraph 9 of the application as confidential exhibits. Sioux Falls Cable requests confidential treatment of this information under the Commission's rules.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw

Enclosure

cc/enc: Rod Carlson

Tom Simmons

## TC98-148 RECEIVED

AUG 97 1998

SOUTH DAKOTA PUBLIC

### BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

N THE MATTER OF THE APPLICATION ) DOCKET NO.	Constitution to the Tax
OF SIOUX FALLS CABLE TELEVISION )	
FOR A CERTIFICATE OF AUTHORITY TO	
PROVIDE CERTAIN TELECOMMUNICATIONS )	
SERVICES IN THE STATE	

#### I. INTRODUCTION

SIOUX FALLS CABLE TELEVISION files its application for a certificate of authority in the State of South Dakota pursuant to SDCL § 49-31-3.

The comprehensive, recently enacted Federal Telecommunications Act of 1996 (the "Federal Act") will enable this Commission to continue and build upon its procompetitive policies to promote the development of lower prices and high quality communications in the local market. 47 U.S.C. Section 253 (a) provides:

No State or location statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

With SIOUX FALLS CABLE'S proven technical, managerial and financial resources and abilities, it respectfully requests that the Commission, expeditiously grant SIOUX FALLS CABLE'S certificate of authority. SIOUX FALLS CABLE provides the following information in support of this application.

#### II. APPLICATION FOR A CERTIFICATE OF AUTHORITY

In support of its application for a certificate of authority, SIOUX FALLS CABLE provides the following information:

1. Name, address and telephone number.

SIOUX FALLS CABLE TELEVISION 3507 South Duluth Avenue Sioux Falls, South Dakota 57105-6452 (605)339-3339

2. State of incorporation, date of incorporation, certificate of incorporation.

SIOUX FALLS CABLE TELEVISION is a general partnership organized under the laws of South Dakota. The partnership was formed on September 1, 1977. Inasmuch as SIOUX FALLS CABLE TELEVISION is a general partnership, there is no certificate of incorporation or analogous chartering document. However, attached as Exhibit A is the certificate of incorporation of the managing general partner, MIDCO of South Dakota, Inc., which shows that the date of incorporation of MIDCO of South Dakota, Inc., is August 9, 1977.

 Location of its principal office in-state, and name and address of registered agent.

SIOUX FALLS CABLE TELEVISION Rod Carlson
3507 South Duluth Avenue
Sioux Falls, SD 57105-6452 Sioux Falls, SD 57105-6452

Inasmuch as SIOUX FALLS CABLE TELEVISION is a general partnership, it has no registered agent. The name and address of the registered agent for MIDCO of South Dakota, Inc., the managing general partner of SICUX FALLS CABLE TELEVISION, is Lloyd Wetenkamp, 24 NE 1st Avenue, Aberdeen, SD, 57401-3430.

4. Names and addresses of any corporation, etc., holding a twenty percent or greater ownership or management interest in SIOUX FALLS CABLE TELEVISION, and if so, amount and character of that interest.

SIOUX FALLS CABLE TELEVISION has two general partners, each holding a fifty percent partnership interest:

(1) Midco of South Dakota, Inc. 500 South Philips Avenue Sioux Falls, South Dakota 57104

Midco of South Dakota, Inc., is a wholly-owned subsidiary of Midcontinent Cable Co., which is in turn, a wholly-owned subsidiary of Midcontinent Media, Inc. The greater than twenty percent shareholders of Midcontinent Media, Inc., are:

N.L. Bentson (67.7%) 2105 Lower St. Dennis Rd. St. Paul, Minnesota 55116

Joseph H. Floyd (30.3%) 10569 Purdey Road Eden Prairie, Minnesota 55347

(2) Liberty of South Dakota, Inc. 8101 E. Prentice Avenue #500 Englewood, Colorado 80111-2934

Liberty of South Dakota, Inc., is a subsidiary of Telecommunications, Inc., same street address. Telecommunications, Inc., is a widely held publicly traded corporation. To the best of our knowledge, no one holds a greater than twenty percent ownership interest in the company.

5. Names and addresses of subsidiaries owned or controlled by the application.

None

6. Specific descriptions of the telecommunications services SIOUX FALLS CABLE TELEVISION intends to offer.

Subject to the Commission's restriction with respect to rural telephone companies, the Company proposes to provide telecommunications services throughout the state of South Dakota. The Company is a "cable operator" providing one-way and two-way cable communications which are not subject to regulation by the Commission. However, in conjunction with its cable operations, the Company intends to provide an increasing variety of telecommunications services. Initially, the Company's regulated service will consist of voice messaging and data transmission services through fiber optic or coaxial cables for ultimate access to the public, over both limited access and public access cable systems. Services initially will be offered in Sioux Falls, Crooks, Renner and Mitchell.

7. Means by which SIOUX FALLS CABLE TELEVISION will provide its services, including the type and quantity of equipment to be used in the operation, the capacity, and the expected use of the equipment.

Telecommunications services will be provided by the Company with existing equipment. The type equipment currently in place is set forth on Exhibit B, attached.

8. Geographic areas in which the services will be offered, including a map describing the service area.

Sioux Falls, Crooks, Renner, and Mitchell, South Dakota. See maps attached as Exhibits C and D.

9. Current financial statements.

Current financial statements are filed separately as confidential exhibits.

10. Annual report.

None.

11. Report to stockholders.

None.

12. Tariff with the terms and conditions of service.

A final tariff with terms and conditions of service will be filed upon approval of the certificate of authority. A draft tariff is attached as Exhibit E. Applicant expects to file tariffs only with respect to regulated services.

13. Names and addresses of SIOUX FALLS CABLE'S representative to whom all inquiries should be made regarding complaints and regulatory matters and description of how the applicant handles customer billings and customer service matters.

Complaints should be directed to:

Rod Carlson General Manager 3507 South Duluth Avenue Sioux Falls, South Dakota 57105-6452

SIOUX FALLS CABLE prepares its own billings and has 24-hour customer service coverage.

14. List of the states in which SIOUX FALLS CABLE is registered or certified to do business, and if applicable, the states in which SIOUX FALLS CABLE has been denied registration and the reasons for the denial.

SIOUX FALLS CABLE has a franchise to do business as a cable operator in Sioux Falls, Mapleton Township and Sverdrup Township, Minnehaha County (Renner, South Dakota), Crooks & Baltic, South Dakota. Also it has a franchise to operate as a cable operator DBA Mitchell Cable in Mitchell, South Dakota.

15. Description of how SIOUX FALLS CABLE intends to market its services, qualifications of its marketing sales personnel, its target market, whether the applicant engages in any multilevel marketing, and copies of any company brochures used to assist in the sale of services.

SIOUX FALLS CABLE will market its services through its own sales personnel. Direct sales will be conducted and marketed to both business and residential locations. The Company will not use multilevel marketing.

#### III. CONCLUSION

In conclusion, SIOUX FALLS CABLE respectfully requests that this Commission grant SIOUX FALLS CABLE an amended certificate to provide certain telecommunications services. SIOUX FALLS CABLE has proven to South Dakota customers in the past that it provides a quality product and excellent customer service. SIOUX FALLS CABLE believes the customers of South Dakota will benefit greatly from SIOUX FALLS CABLE'S local services as the consumers begin to enjoy the benefits of competition intended by the Federal Act.

SIOUX FALLS CABLE TELEVISION

Pod Carlso

General Manager

#### RECEIVED

AU6 7 / 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

## BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )	DOCKET NO.
OF SIOUX FALLS CABLE TELEVISION )	
FOR A CERTIFICATE OF AUTHORITY TO )	
PROVIDE CERTAIN TELECOMMUNICATIONS )	그 회교에게 생생하는 것
SERVICES IN THE STATE )	

#### CONFIDENTIAL

Submitted herewith are current financial statements identified in paragraph 9 of the application for which confidential treatment has been requested.

Dated this  $27^{-1}$  day of August, 1993.

MAY, ADAM, GERDES & THOMPSON LLP

DAVID A. GERDES

Attorney for Sioux Falls Cable Television

503 South Pierre Street

P.O. Box 160

Pierre, South Dakota 57501-0160

Phone: (605)224-8803 Fax: (605)224-6289

# Sioux Falls Cable Television - Sioux Falls and Mitchell Systems Statements of Income For the Years Ended June 30.



		1998		1997
Net Revenue	s	15,237,541	\$	14,291,670
Operating Expenses:				
Technical		1.325,081		1,318,673
Programming		3,391,560		3,351,135
Marketing and Promotion		540,436		423,022
Advertising Insertion		624,028		517,612
General and Administration		1.965.438		1.858,082
Total Operating Expenses		7.846.543		7,468,524
Operating Margin		7,390.998		6,823,146
Depreciation and Amortization Expense		2,341,579		2,533,501
Other Income		2,895		2,991
Net Earnings	s =	5.052.314	s <u> </u>	4,292,636



# Sioux Falls Cable Television - Sioux Falls and Mitchell Systems Balance Sheets June 30.



		1998		1997
Assets				
Cash	S		S	
Accounts Receivable		721,425		542,597
Prepaid Expenses		31,721		22,633
Property, Plant and Equipment, Net		12,855,536		9.088,618
Intangible Assets. Net		507,013		544,616
Total Assets	S	14 115.695	s <u>-</u>	10,198,464
Liabilities				
Accounts Payable	\$	1.230.139	S	1,142,909
Accrued Expenses		1.516,218		1.651.038
Due to Affiliate		14.452,849		15,540,342
Total Liabilities		17,199,206		18.334,289
Partnership Equity		(3.083,511)		(8.135,825)
Total Liabilities and Partnership Equity	s	14.115,695	s	10,198,464
눈님이 나를 나올려 하겠었다고 모양 살 시간에 들고 있다.	=		=	



## NEXT

# DOCUMENT (S)

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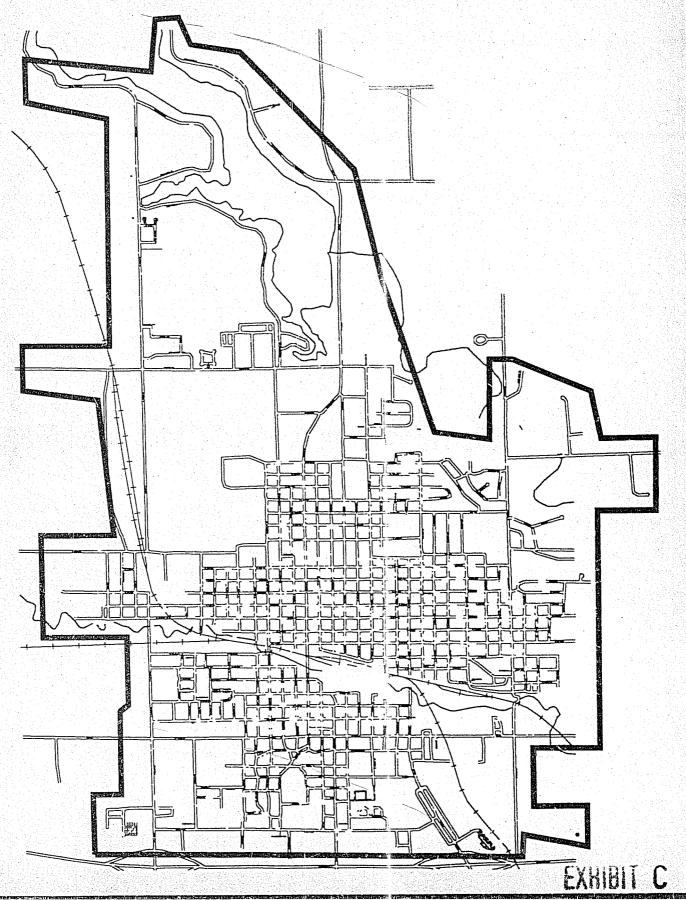
exhibit A

#### EQUIPMENT FOR EDNET" NETWORK

- 1) LCn network server
- 2) Bay Networks Lan City LCe's: Translators-dual network capability supplies 20 individual segments on 2 separate networks (10 segments per network)
- 3) LCp's: Lan City 10 met modems at the school locations
- 4) Bay Network multi-port routers in the headend for a total of 4, eventually the router number will decrease with the installation of a new router switch
- 5) Bay routers at each school for a total of 34

exhibit <u>13</u>

# Mitchell, SD



SIOUX FALLS CABLE Filed with SDPUC

### EXHIBIT E TO

#### APPLICATION OF SIOUX FALLS CABLE

SCHEDULE OF

GENERAL RULES, REGULATIONS, CHARGES, AND CONDITIONS

APPLYING TO SERVICES AND

FACILITIES OF SIOUX FALLS CABLE

INTERIM TARIFF

Issued:

Effective:

SIOUX FALLS CABLE Filed with SDPUC

> Section 1 Page 1 Release 1

#### TABLE OF CONTENTS

Section 1	Title Page, Table of Contents
Section 2	General Rules and Regulations
Section 3	Definitions
Section 4	Liability and Obligation
Section 5	Service Description
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SIOUX FALLS CABLE Filed with SDPUC

Section 2 Page 1 Release 1

#### GENERAL RULES AND REGULATIONS

#### APPLICATION

#### 1. General

a. This tariff applies to the furnishing of telecommunications services defined herein by Sioux Falls Cable (herein referred to as the "Company" or "Sioux Falls Cable").

The provision of telecommunications services associated with cable services is subject to existing regulations and terms and conditions specified in this tariff and the Company's current tariffs, and may be revised, added to or supplemented by superseding issues.

Sioux Falls Cable reserves the right to offer its customers a variety of competitive services as deemed appropriate by the Company. Service will be available as facilities, mechanized ordering, billing, provisioning, ability to purchase tariff items for resale and maintenance systems among cable systems permit.

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Section 3 Page 1 Release 1

#### DEFINITIONS

Basic Cable Service

Any service tier which includes the retransmission of local television broadcast signals.

Cable Channel or Channel

A portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission by regulation).

Cable Service

The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, with is required for the selection or use of such video programming or other programming service.

Cable System

A facility, consisting of a set of closed transmissions paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include

- (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (b) a facility that serves subscribers without using any public right-of-way;
- (c) a facility of a common carrier which is subject in whole or in part to the provisions of Title II of the Telecommunications Act of 1996, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Act) to the extent such facility is used in the transmission of video program directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) an open video system that complies with Section 653 of the Act; or

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> Section 3 Page 2 Release 1

#### DEFINITIONS (Cont'd)

(e) any facilities of any electric utility used solely for operating its electric utility systems.

Carrier Common Line
The Carrier Common Line charge provides for the use of
Company's facilities from the End User's premises to the
normal end office used to originate or terminate switched
Intrastate Telecommunications Services traffic.

Customer Premises
The customer premises is all space in the same building occupied by a Customer and all space occupied by the same Customer in different buildings on continuous property.

Exchange Area An area for which a separate local rate schedule is provided.

Exchange Service
The furnishing of equipment and facilities for telephonic communication within local service areas with provisions of this tariff.

Intermediate Transport
The Intermediate Transport charge provides for the use of Dakota's transport facilities between another company's end office, tandem office or IXC switching office and another company's end office, tandem office or IXC switching office.

Internet
The international computer network of both federal and nonfederal interoperable packet switched data networks.

Internet Access
The service of providing a portal for a customer or end user to obtain access to the Internet through an Internet service provider, consumer on-line service or other entity connecting end users to the interoperable packet switched data networks.

SIOUX FALLS CABLE Filed with SDPUC

Section 3 Page 3 Release 1

DEFINITIONS (Cont'd)

Local Exchange Service
Service which provides for exchange telephonic communication including access to emergency services (911 and0), within the local service area at rates and under regulations as provided in this tariff.

Local Service Area
That area within which a Customer for exchange service can
make telephone calls without the payment of a toll charge. A
local service area may be made up of one or more central
office areas or exchange areas.

Local Transport Facility
The Local Transport Facility charge provides the transmission
facilities between the end office switch and the access tandem
office; and from the access tandem office to the point of
interconnection with another company's facilities.

Local Transport Termination
The Local Transport Termination charge provides the End Office
Termination of the Local Transport Facilities and tandem
switching facilities. The tandem switching facilities provide
the toll switching and tandem routing facilities in a central
office used in the provision of switched Telecommunications
Service traffic. Such facilities do not include any
facilities included in exchange access tariff charges.

Local Switching
The Local Switching charge provides for the use of the end
office switching facilities used to originate or terminate
switched Telecommunications Services. Such facilities do not
include Recording or Automatic Number Identification (ANI).

Issued:

Effective:

Section 4 Page 1 Release 1

#### LIABILITY AND OBLIGATION OF SIOUX FALLS CABLE

#### 1. Liability

Sioux Falls Cable's liability, if any, for its willful misconduct is not limited by this tariff. With respect to any other claim or suit by a Customer or by any others, for damages associated with the installation, provision, termination, maintenance, repair or restoration of a service, and subject to the provisions following, the Company's liability, if any, shall not exceed an amount equal to the proportionate charge for the service for the period during which the service was affected. This liability for damages shall be in addition to any amount that may otherwise be due the customer under this tariff as a Credit Allowance for Interruptions.

The Company is not liable for any act or omission of any other communications utility which furnishes a portion of a service.

The Company is not liable for damages associated with the service which it does not furnish.

The Company shall be indemnified, defended and held harmless against any claim, loss or damage arising from the use of service offered under this tariff, involving:

Claims for libel, slander, invasion of privacy, or infringement of copyright arising from any communication;

All other claims arising out of any act or omission of others in the course of using service provided pursuant of this tariff.

Sioux Falls Cable does not guarantee or make any warranty with respect to its services when used in an explosive atmosphere. Sioux Falls Cable shall be indemnified, defended and held harmless by the Customer and authorized user from any and all claims by any person relating to the service so provided.

Sioux Falls Cable's failure to provide or maintain services under this tariff shall be excused by labor difficulties, governmental orders, civil commotions, preemption of existing services to restore service in compliance with Pat 64, Subpart D, Appendix A.

Issued: Effective:

SIOUX FALLS CABLE Filed with SDPUC

> Section 4 Page 2 Release 1

of the F.C.C.'s Rules and Regulations, acts of God and other circumstances beyond the Company's reasonable control.

Issued:

Effective:

SIOUX FALLS CABLE Filed with SDPUC

Section 4 Page 3 Release 1

#### 2. Payment for Services

- A. Sioux Falls Cable shall bill on a current basis all charges incurred by and credits due the Customer under this tariff attributable to services established or discontinued during the preceding billing period.
- B. The Customer is required to pay all charges for access services and facilities.
- C. All bills provided to the Customer by Sioux Falls Cable are due 30 days (payment due date) after the bill date or by the next bill date (i.e., same date in the following month as the bill date), whichever is the shortest interval. If such payment date falls on a Sunday or on a Holiday, the payment date shall be the first working day following such Sunday or Holiday.
- D. If any portion of the payment is received by the Company after the payment due date as set forth in (C.) preceding, a late payment charge shall be due the Company.
- E. The late payment charge shall be based on the unpaid balance at a rate of .xxxx per day, compounded daily for the number of days from the payment due date, to and including, the date the Company receives the payment.
- F. In the event a billing dispute concerning any charges billed to the Customer by Sioux Falls Cable is resolved in favor of Sioux Falls Cable, any payments withheld pending settlement of the dispute shall be subject to the late payment charge set forth in (E.) preceding.

Issued:

Effective:

- 3. Special Taxes, Fees, Charges
  - A. Insofar as practicable, any sales, use, privilege, excise, franchise or occupation tax, costs of furnishing service without charge or similar taxes or impositions levied by the Federal, State or Local government, or any political subdivision or taxing authority against the Carrier may be billed by the Carrier to its Customers on a pro rata basis.

Issued:

Effective:

Section 5 Page 1 Release 1

SERVICE DESCRIPTION

Issued: Effective:

SIOUX FALLS CABLE Filed with SDPUC

Section 6 Page 1 Release 1

Specific services are presently provided through private contract, which has been provided with the confidential filing. As other specific services are added, their prices will be detailed in the tariff.

Issued:

Effective:

LAW OFFICE OF

MAY, ADAM, GERDES & THOMPSON
WARREN W. MAY -THOMAS C. ADAM
DAVID A. GERDES -CHARLES M. THOMPSON
ROBERT B. ANDERSON BRENT A. WILBUR
PIERRE, SD 57501

114155

DATE 8/31/98

PAY TO THE ORDER OF

FOR.

Public Utilities Commission

\$ 250.00

REGISTERED 250 DULS Q CO

DOLLARS DE

Plerre; South Dakota 57501 605-224-0622

Sioux Falls Cable filing

# 114155# 1:0914005381:0063804870#

## South Dakota Public Utilities Commission WFFKLY FILINGS

For the Period of August 27, 1998 through September 3, 1998

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing. Phone: 605-773-3705. Fax: 605-773-3809.

#### MISCELLANEOUS

MS98-001 In the Matter of the Request for a Survey on Utilities' Year 2000 Readiness

The Commission voted to open this docket to determine the status of South Dakota utilities' efforts towards mitigating the potential problems posed by the Year 2000 computer problem. A survey was sent to all utility companies and other interested persons and entities on August 28, 1998. Responses to the survey are due no later than October 1, 1998

Staff Attorney: Karen Cremer Staff Analyst: Martin Bettmann

Order Opening Docket was signed on 8/26/98 Responses Due: Not later than 10/01/98

#### NATURAL GAS

NG98-007 In the Matter of the Filing by MidAmerican Energy Company for Approval of Petition for Extension of Test Period

On August 27, 1998, the Commission received a Petition for Extension of Test Period from MidAmerican Energy Company (Mid American) as it relates to its natural gas service in South Dakota. ARSD 20:10:13:44 requires the use of a test period consisting of 12 months of actual experience ending no earlier than 6 months before the date of filing unless good cause for extension is shown. MidAmerican is contemplating filing a natural gas rate case in November 1998 and respectfully requests the Commission to authorize the use of a calendar year 1997 test period for its possible general rate increase in natural gas rates.

Staff Attorney: Camron Hoseck Staff Analyst: Bob Knadle Date Filed: 08/27/98 Intervention Deadline: N/A

NG98-008 In the Matter of the Filing by Northwestern Public Service Company for Approval of Tariff Revisions

Application by Northwestern Public Service Company to update the fuel retention percentage pursuant to its Gas Transportation Tariff General Terms and Conditions Northwestern Public Service company proposes to update the Gas Transportation fuel retention percentage effective October 1, 1998 based on the actual percentage incurred for the 12 month period ended July 1, 1998

Staff Attorney: Karen Cremer Staff Analyst: Dave Jacobson Date Filed: 09/01/98 Intervention Deadline: N/A

#### **TELECOMMUNICATIONS**

TC98-147 In the Matter of the Application of FIBERCOMM, L.C. for a Certificate of Authority to Provide Telecommunications Services in South Dakota

Application by FIBERCOMM, L.C. for a Certificate of Authority to provide local exchange service, intrastate and interstate long distance interexchange telecommunications services in the state of South Dakota. FIBERCOMM, L.C. proposes to provide Internet access, resold wireless services, and other enhanced services within J.S. WEST exchanges in the state of South Dakota.

Staff Attorney: Camron Hoseol. Staff Intern Analyst: Kylie Tracy Date Fided: 05/27/38 Intervention Deadline, 09/18/38

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ation ntage TC98-148 In the Matter of the Application of Sioux Falls Cable Television for a Certificate of Authority to Provide Telecommunications Services in South Dakota

Application by Sioux Falls Cable Television for a Certificate of Authority to provide intrastate intrae change telecommunications services in the state of South Dakota Sioux Falls Cable Television proposes to initially offer voice messaging and data transmission services and thereafter an increasing variety of telecommunications services on a increexchange basis only. Initially in Sioux Falls, Crooks, Renner, and Mitchell

Staff Attorney Karen Cremer Staff Analyst, Dave Jacobson Date filed, 087, 7798 Intervention Deadline, 09/18/98

TC98-149 In the Matter of the Complaint filed by Lown House Restaurant, Spearfish, South Dakota, against AT&T Communications of the Midwest, Inc., regarding Consumer Service Issues

Complaint by Lown House Restaurant vs AT&T. Complainant raises a variety of issues regarding service from AT&T. The complainant requests the following relief: "Reimburse the Lown House Restaurant and B&B for realistic business losses in the \$8,000 to \$9,000 range for which I am requesting payment from AT&T and FIRSTEL Communications."

Staff Attorney Karen Cremer Staff Analyst Leni Healy Date Filed, 09/27/98 Intervention Deadline, NA TC98-150 In the Matter of the Joint Application of Valley Telephone Company and Park Region Mutual Telephone Company Regarding the Sale of Valley Telephone Company Stock to Park Region Mutual Telephone Company

Park Region Mutual Telephone Company proposes to purchase and Valley Telephone Company proposes to sell the stock of Valley Telephone Company in this joint application. Valley Telephone Company currently serves approximately 180 access lines in West Browns Valley, South Dakota as well as approximately 636 access lines in Browns Valley, Minnesota. Park Region Mutual Telephone Company is an independent telephone company serving six exchanges with approximately 4,100 access lines in Otter Tail County, Minnesota.

Staff Attorney: Karen Cremer Staff Analyst: Dave Jacobson

Date Filed: 09/03/98

Intervention Deadline: 09/18/98

You may receive this listing and other PUC publications via our website or via internet e-mail. You may subscribe to the PUC mailing list at http://www.state.sd.us/state/executive/puc/puc.htm

## CUTLER, DONAHOE & MICKELSON, LLP

#### ATTORNEYSATLAW

Telephone (605) 335-4950 Fax (605) 335-4961 JEAN BROCKMUELLER, CPA BUSINESS MANAGER

'Also licensed to practice in Minnesota and lowa

\*\*Also licensed to practice in Minnesota

September 11, 1998

RECEIVED

SEP 1 4 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Re: Petition to Intervene - Baltic Telecom Cooperative

Docket TC96-105 98-148 (our file no. BT-280-09)

Dear Director Bullard:

RICHARD A. CUTLER

CYNTHIA H. MICKELSON

STEVEN J. SARBACKER \*\*

KENT R.CUTLER BRIAN J. DONAHOE\*

Enclosed please find one original and ten copies of the Petition to Intervene of Baltic Telecom Cooperative for filing in the above-referenced docket. Thank you for your assistance.

Sincerely.

CUTLER, DONAHOE & MICKELSON, LLP

Brian J. Donahoe For the Firm

BJD:rk enclosure

cc: Greg Grablander

### RECEIVED

SEP 1 4 1998

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

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IN THE MATTER OF THE APPLICATION	) DOCKET TC98-148
OF SIOUX FALLS CABLE TELEVISION FOR A	
CERTIFICATE OF AUTHORITY TO PROVIDE	) BALTIC TELECOM
CERTAIN TELECOMMUNICATIONS SEVICES	) COOPERATIVE'S
IN THE STATE	PETITION TO INTERVENE

COMES NOW Baltic Telecom Cooperative ("Baltic"), P.O. Box 307, Baltic, South Dakota 57003-0307, and respectfully petitions the South Dakota Public Utilities Commission ("Commission") to allow Baltic to intervene in the above-captioned docket for the following reasons:

- 1. On August 27, 1998, Sioux Falls Cable Television, a South Dakota general partnership ("Sioux Falls Cable") filed an Application with the Commission for a Certificate of Authority to Provide Certain Telecommunications Services in the State.
- 2. In Docket TC96-105, the Commission determined that Sioux Falls Cable was providing certain telecommunications services subject to the jurisdiction and authority of the Commission, thus requiring a Certificate of Authority to Provide Telecommunications to continue such services.
- 3. Baltic is a telecommunications company serving its cooperative members with, among other services, voice, and data communications in its local exchange area as a telephone local exchange carrier.
- 4. The City of Crooks and some areas of rural Crooks and Renner, South Dakota are included in the Baltic service area.
- 5. Sioux Falls School District No. 49-5 ("District") operates a school located in Baltic's Crooks service area, known as the Renberg School, located at 47260 258 Street, Renner, South Dakota 57055.
- 6. The Renberg School is currently connected to the "EdNet" with fiber optic and coaxial cables and equipment installed and owned by Sioux Falls Cable Television pursuant to a lease agreement with the District.
- 7. The Renberg School sends and receives data transmissions to and from other buildings owned by the District through the EdNet utilizing equipment owned by Sioux Falls Cable Television.

- 8. In paragraph 6 on page 3 of Sioux Falls Cable's Application, there is an assertion that Sioux Falls Cable intends to provide regulated telecommunications services, including "voice messaging" and other telecommunications services for "ultimate access to the public." These services will initially be available in Sioux Falls, Crooks, Renner and Mitchell: the City of Crooks and some rural areas of Renner and Crooks are within the telecommunications service area of Baltic.
- 9. Sioux Falls Cable correctly acknowledges in its application that the Commission may require certain restrictions with respect to rural telephone companies when considering whether to grant Sioux Falls Cable's Application.
- 10. Baltic is a "rural telephone company" as defined by the 47 U.S.C. § 153(37), which states:

The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity--

- (A) provides common carrier service to any local exchange carrier study area that does not include either--
- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
- (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
  - (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines:
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines: or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.
- 11. Pursuant to the federal Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47 of U.S.C.), Sioux Falls Cable may be subject to certain restrictions regarding its proposed services in the areas served by Baltic and other rural telephone companies under the jurisdiction of the Commission.
- 12. Pursuant to state statutes such as SDCL 49-31-73. Sioux Falls Cable may be subject to further requirements in regard to the provision of telecommunications services in Baltic's service area.
- 13. Baltic's patrons, who are also member/owners of Baltic as a cooperative, have a direct and substantial interest in the provision of telecommunications services in Baltic's service area.

#### CONCLUSION

Based on the facts detailed above, Baltic has a direct interest in the application and should be allowed to intervene. Baltic asks that the Commission grant its Petition to Intervene in this Docket.

Respectfully submitted this 11th day of September, 1998.

CUTLER, DONAHOE & MICKELSON, LLP

Brian J. Donahae

Attorneys for Baltic Telecom Cooperative 100 North Phillips Avenue, Ste. 901

Sioux Falls, SD 57104

Telephone: (605) 335-4950

#### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served on the following by mailing the same to them by United States Post Office. First Class Mail, postage prepaid, at the addresses shown below on this 11th day of September, 1998.

David A. Gerdes Attorney at Law May, Adam, Gerdes & Thompson LLP PO Box 160 Pierre, SD 57501-0160 Karen Cremer Staff Attorney South Dakota Public Utilities Commission 500 East Capitol Sioux Falls, SD 57501

CUTLER. DONAHOE & MICKELSON, LLP

Brian J. Donahoe

# **SDITC**

# South Dakota Independent Telephone Coalition, Inc.

Richard D. Coit

Executive Director

resdite@sd.cybernex.net

September 16, 1998

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

RE: Docket TC98-148 (Sioux Falls Cable Television Application for Certificate of Authority)

RECEIVED

SEP 1 6 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Dear Bill:

Enclosed for filing with the Commission are the original and 10 copies of SDITC's Petition to Intervene in the above referenced docket.

Please distribute this Petition to the Commission and Staff as necessary.

Thank you for your assistance.

Sincerely,

Executive Director and

General Counsel

cc: David A. Gerdes
Attorney at Law
May, Adam, Gerdes & Thompson, LLP
P.O. Box 160
Pierre, SD 57501-0160

Brian J. Donahoe Attorney for Baltic Telecom Cooperative Cutler, Donahoe & Mickelson, LLP 100 N. Phillips Avenue, Suite 901 Sioux Falls. SD 57104



# BEFORE THE PUBLIC UTILITIES COMMISSION RECEIVED

# OF THE STATE OF SOUTH DAKOTA

SEP 16 1998

IN THE MATTER OF THE APPLICATION	SOUTH DAKOTA PUBLIC
OF SIOUX FALLS CABLE TELEVISION	UTILITIES COMMISSION
FOR A CERTIFICATE OF AUTHORITY	) DOCKET TC98-148
TO PROVIDE CERTAIN	
TELECOMMUNICATIONS SERVICES	
IN THE STATE	그리는 마시 하는 사람은 사람은 그리는 것은 그리고 있는 그리고 있다.

#### SDITC Petition to Intervene

The South Dakota Independent Telephone Coalition ("SDITC") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDITC states as follows:

- 1. SDITC is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.
- 2. As expressly noted in the Bylaws of SDITC, duly adopted by the Coalition, "one of the primary purposes for the formation and existence of the South Dakota Independent Telephone Coalition is representation by the Coalition before the South Dakota Public Utilities Commission." The member companies of SDITC have delegated to the SDITC Board of Directors and its President the authority to intervene on their behalf in PUC proceedings which will or might potentially impact their common interests.
- 3. On Agust 27, 1998, Sioux Falls Cable Television, a South Dakota general partnership ("Sioux Falls Cable") filed an Application with the Commission for a Certificate of Authority to Provide Certain Telecommunications Services in the State, including services which would appear to be intra-exchange or local exchange telecommunications services.
- 4. Specifically, Sioux Falls Cable in its Application, identifies Sioux Falls, Crooks Renner and Mitchell South Dakota as the geographic areas in which its services will be offered. As pointed out in the petition to intervene filed by Baltic Telecom Cooperative ("Baltic") in this matter, the communities of Crooks and Renner are located within Baltic's present service area.

5. Baltic is a "rural telephone company" for purposes the Federal Telecommunications Act of 1996 and also under the state legislation enacted this year addressing local exchange service competition (SDCL §§ 39-31-69, et. seq.). Baltic is also a member company of the SDITC.

6. SDITC seeks intervention in this proceeding based on the interests of its member company, Baltic, and also based on the interests of its other member companies which will likely be impacted by this proceeding. The Application filed requires the Commission to interpret and apply various provisions within the new state legislation including certain rural safeguard provisions that are generally intended to ensure the preservation of universal service in rural service areas as local service competition is introduced. SDCL §§ 49-31-71 and 49-31-73.

7. It appears that the Sioux Falls Cable Application brings into issue the local exchange certification provisions and rural safeguard provisions contained within the new state legislation. Since to this point the Commission has not been presented with any certification filing requiring it to apply these provisions, SDITC is concerned that any substantive or procedural decisions made herein may be precedent setting and could affect later similar cases involving other SDITC members.

8. Based on all of the foregoing, SDITC, as an authorized representative of its member companies, is an interested party to this proceeding and seeks intervening party status.

Dated this Leday of September, 1998.

Respectfully submitted:

THE SOUTH DAKOTA INDEPENDENT

TELEPHONE COALITION

Richard D. Coit

Executive Director and General Counsel

# CERTIFICATE OF SERVICE

I hereby certify that an original and 10 copies of the foregoing document were hand delivered on the 16<sup>th</sup> day of September, 1998, to:

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501

I hereby certify that a copy of the foregoing document was delivered by the United States Postal Service via First Class Mail on the 16<sup>th</sup> day of September, 1998, to the following persons:

David A. Gerdes
Attorney at Law
May, Adam, Gerdes & Thompson, LLP
P.O. Box 160
Pierre, SD\_57501-0160

Brian J. Donahoe Attorney for Baltic Telecom Cooperative Cutler, Donahoe & Mickelson, LLP 100 N. Phillips Avenue, Suite 901 Sioux Falls, SD 57104

Richard D. Coit
Executive Director

**SDITC** 

207 East Capitol Avenue, Suite 206

Pierre, SD 57501



September 16, 1998

# RECEIVED

SEP 17 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

FAX Received SEP 16 1998

Tradition

Technology:

Talenta

leamwork

HEADQUARTERS
P.O. Box 66
29705 453" AVENUE
IREAE, SOUTH DAVIDIA
57037-0066

605,263,3301 800,239,7501 Fax 605,263,3995

www.dtg.com

William J. Bullard Executive Director South Dakota Public Utilities Commission East Capitol Pierre, SD 57501

RE: TC98-148 MOTION TO INTERVENE and TC98-151 MOTION TO INTERVENE

Dear Mr. Bullard:

Enclosed for filing is the original and ten copies of the MOTION FOR LEAVE TO INTERVENE for both of the above referenced dockets. This NOTICE is being served to the parties listed on the service list this same date.

Sincerely, Barbara Berkenpas

Barbara Berkenpas

Attorney

RECEIVED

# BEFORE THE PUBLIC UTILITIES COMMISSION SOUTH DAKOTA UTILITIES COMMISSION UTILITIES COMMISSION COMMISSION

FAX Received SEF 16 1998

IN THE MATTER OF THE APPLICATION OF SIOUX FALLS CABLE TELEVISION FOR A CERTIFICATE OF AUTHORITY TO PROVIDE CERTAIN TELECOMMUNICATIONS) SERVICES IN THE STATE

DOCKET No. TC98-148

MOTION FOR LEAVE TO INTERVENE

DAKOTA TELECOMMUNICATIONS GROUP, INC. ("DTG") and its subsidiary Dakota Telecom, Inc. ("DTI) Petitions the Commission for leave to intervene in the above-entitled docket. In support thereof, DTG and DTI state the following:

- 1. DTG and DTI are telecommunications companies doing business within the State of South Dakota.
- 2. DTG and its subsidiary companies provide a broad range of telecommunications and related services to customers throughout the state of South Dakota. DTI provides competitive telecommunications services within the State of South Dakota.
- 3. DTG and DTI provide competitive services in the Sioux Falls area and may be providing similar service in the Mitchell area in the future.
- 4. Based upon the foregoing, DTG and DTI are interested parties in this proceeding and seek intervention herein.

DTG and DTI respectfully request leave to intervene and an opportunity to be heard in this matter,

Dated this 16th day of September, 1998.

Dakota Telecommunications Group, Inc. Dakota Telecom, Inc.

Barbara Berkenpas

Attorney for DTG & DTI

PO Box 269

Irene, SD 57037

(605) 263 3301 phone

(605) 263 7195 fax

#### CERTIFICATE OF SERVICE

I, Barbara Berkenpas, hereby certify that on the 16<sup>th</sup> day of September, 1998, I mailed by United States mail, first class postage prepaid, a true and correct copy of the foregoing Motion for Leave to Intervene, to the following:

William J. Bullard Executive Director South Dakota Public Utilities Commission 500 East Capitol Pierre, SD 57501

Dave Gerdes PO Box 160 Pierre, SD 57501

Dated this 16th day of September, 1998.

Barbara Berkenpas

# RECEIVED

			UDT 001071998
STATE OF SOUTH DAKOTA		IN CIRCUIT CO	SOUTH DAKOTA PL
COUNTY OF HUGHES		SIXTH JUDICIA	L CIRCUITLITIES COMMISS
	E PUBLIC UTILITIE STATE OF SOUTI		98.373
IN THE MATTER OF THE APPL OF SIOUX FALLS CABLE TELL FOR A CERTIFICATE OF AUTH PROVIDE CERTAIN TELECOM SERVICES IN THE STATE	EVISION ) IORITY TO )	RESIDENT PRAC	ADMISSION BY CTICING ATTORNEY 98-148
It is hereby			
ORDERED that the Motic	on for Admission for	William P. Heasto	on, a non-resident
attomey, to appear on behalf of	Dakota Telecommu	ınications Group, I	inc. and Dakota
Telecom, Inc., before the Public	Utilities Commissio	n and this Court r	elating to this
matter is granted.			가 있었다. 전한 글로 발표하를 했다. 그는 글로 하고 하고 하는 것을 했다.
Dated: <u>/ 1 · 5</u>	_, 1998.		
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	Crcuit Co	Steven L. Zinter urt Judge cial Circuit	STATE OF SCUTH DAKOTA CIRCUIT COURT, HUGHES CO. FILED
ATTEST:			OCT () 5 1998
Mary L. Erickson Clerk of Courts		6,	Mary J. Erickson CLER
BY: of and Mc Enter	Liste of South Do County of Hughe	s <b>s</b> i i di anti anti anti anti	
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	Dates This ( date of the control of	y of Oct. 1091.	

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

THE MATTER OF THE APPLICATION OF ) ORDER GRANTING
IOUX FALLS CABLE TELEVISION FOR A ) INTERVENTION
ERTIFICATE OF AUTHORITY TO PROVIDE
ELECOMMUNICATIONS SERVICES IN ) TC98-148
OUTH DAKOTA

On August 27, 1998, the South Dakota Public Utilities Commission (Commission) received an application for a Certificate of Authority by Sioux Falls Cable Television (SFCT) for approval to provide intrastate intraexchange telecommunications services in the state of South Dakota. SFCT proposes to initially offer voice messaging and data transmission services and thereafter an increasing variety of telecommunications services on an intraexchange basis only. Initially, services will be provided in Sioux Falls, Crooks, Renner and Mitchell.

On September 3, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 18, 1998, to interested individuals and entities. On September 14, 1998, Baltic Telecom Cooperative (Baltic) filed a Petition to Intervene. On September 16, 1998, the South Dakota Independent Telephone Coalition (SDITC) filed a Petition to Intervene. A Motion for Leave to Intervene was filed by Dakota Telecommunications Group, Inc. (DTG) and its subsidiary Dakota Telecom, Inc. (DTI) on September 16, 1998. At its regularly scheduled September 23, 1998, meeting, the Commission considered Baltic, SDITC, DTG, and DTI's requests for intervention.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31.

The Commission found that the Petitions to Intervene were timely filed and demonstrated good cause to grant intervention. It is therefore

ORDERED that Baltic, SDITC, DTG and DTI's requests for intervention are hereby granted.

Dated at Pierre, South Dakota, this 5th day of October, 1998.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.  By
Date 10/9/98
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:
( Jano III Brien
JAMES A. BURG, Chairman
tam Velson
PAM NELSON, Commissioner
Tuem Maendel
LASKA SCHOENEELDER Commissioner

# MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIERRE STREET P. O. BOX 160

#### PIERRE, SOUTH DAKOTA 57501-0160

GLENN W, MARTENS 1881-1963
KARL GOLDSMITH 1885-1966
THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
ROBERT K, SAHR

November 5, 1998

OF COUNSEL!

TELEPHONE 605 224-8803 TELECOPIER 605 224-6289

E-MAIL dag@magt.com

Karen Cremer and Bob Knadle South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: SIOUX FALLS CABLE TELEVISION

Docket TC98-148 Our file: 2442 RECEIVED

NOV U 6 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Dear Karen and Bob:

For your file, enclosed is a copy of a news release from the FCC dealing with the FCC's recent finding that a new service offered by GTE permitting ISPs to furnish customers with high speed access to the Internet through a dedicated connection is an interstate service and subject to federal jurisdiction.

That is pretty close to the contention we have made in this case. You will note from the release that the FCC intends to take up the broader question of Internet access next week. Assuming that decision takes the same direction, it may be in order to ask the Commission to reconsider its EdNet decision, since as I understand it, the EdNet conclusion was primarily based upon the addition of Internet access to EdNet.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw

Enclosure

cc/enc: Rich Coit

Brian Donahoe

Barbara Berkenpas

cc: Rod Carlson

Tom Simmons Joe H. Floyd



News made intermetion 202 / 418-0500 Fax-Da-Damund 202 / 418-2830

Imprest http://www.fcc.gov

fre.fcc.gov

Federal Communications Commission 1919 - M Street, N.W. Washington, D.C. 20554

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Report No. CC 98-41

COMMON CARRIER ACTION

October 30, 1998

FCC Says GTE's ADSL Internet Access Service is an Interstate Service

The Commission has found that a new service offered by GTE, which permits Internet Service Providers (ISPs) to furnish customers with high-speed access to the Internet through a dedicated consection, is an interstate special access service and therefore subject to federal jurisdiction. Today's decision affirms that GTE's tariff for this service was properly filed at the FCC. The Commission intends to address next week, in a separate order, the broader issue of whether conventional dial-up access to the Internet, made through calls to information service providers, including Internet Service Providers (ISPs), is local or interstate in return. That decision will address whether incumbent local telephone companies may be required to compensate their competitors for bandling calls made by the incumbents' customers to ISPs that are the competitors' customers.

Today's decision addresses only whether GTE's new "DSL Solutions-ADSL Service," which provides a dedicated, high-speed data connection to the Internet, is an interstate service by nature. GTE filed the tariff (the document that sens forth the rates, terms, and conditions of a service offering) for the ADSL service at the FCC, as opposed to state commissions. The FCC subsequently initiated a proceeding to determine whether the ADSL service is, in fact, interstate in nature and, therefore, subject to federal jurisdiction. This was the primary issue originally designated for Commission investigation in this proceeding.

Next week, the Commission intends to issue its decision on the jurisdictional nature of more traditional, dial-up access via the local telephone company's local switch. This is the type of access currently used by most consumers to reach the Internet. Accordingly, today's decision does not consider or address whether local telephone companies are entitled to receive payments, or "reciprocal compensation," when they deliver to ISPs calls from their competitors' customers made over traditional phone lines. Unlike today's ruling on GTE's ADSL taxiff, a decision on the reciprocal compensation issue involves examination of a separate body of FCC rules and precedent regarding switched access service; the applicability of any rules and policies relating to inter-carrier compensation when more than one local telephone company transmits a call from a customer to an ISP; and the applicability of interconnection agreements entered into by incumbent local telephone companies and new emissis that state commissions have found, in arbitration, to include such traffic. Because of these considerations, today's Order does not, and cannot, determine whether reciprocal compensation is owed, either for maffic handled in the past or future, pursuant to existing

in confirming the interstate nature of GTE's ADSL offering, the Commission applied its long-standing rule on dedicated "special access" lines that carry both interstate and impassate traffic. Special access lines provide a dedicated communications path between specified points. For example, businesses that make many long distance calls often use special access lines to carry calls directly to their destination. Under Commission rules and precedents, adopted in consultation with the states, special access lines that carry more than ten percent interstate traffic are properly tariffed at the federal level and those that carry less than ten percent interstate traffic are properly tariffed at the state level.

In today's decision, the Commission noted that it has traditionally determined the jurisdictional nature of communications by the end points of the communication; it consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers. Consistent with these precedents, the Commission concluded that the communications at issue in this proceeding do not terminate at the ISP's local server, as some parties argued, but commune to their ultimate destination or destinations, very often at an Internet web site in another state. Put simply, the calls made by consumers to ISPs that subscribe to GTE's ADSL service are likely to terminate at Internet web sites in other states or countries, thus making these communications interstate in nature. The fact that the facilities used to provide this service offering may be located within a single state does not affect the Commission's jurisdiction.

Action by the Commission October 30, 1998, by Memorandum Opinion and Order (FCC 98-292). Chairman Kennard, Commissioners Ness, Furchigott-Roth, Powell, and Tristani, with Commissioners Furchigott-Roth and Tristani dissenting in part and issuing a joint statement.

-FCC-

News media contact: Rochelle Cohen at (202) 418-0253. Common Carrier Bureau contact: Jane Jackson at (202) 418-1520. TTY: (202) 418-2555.

October 30, 1998

# Separate Statement of Commissioners Harold Furchtgott-Roth and Gloria Tristuni, Dissenting in Part

We support today's decision finding that GTE's DSL tariff includes an interstate service offering properly filed at the federal level. We write separately, however, to express our unwillingness to address the broader issues related to the jurisdictional nature of ISP traffic in this proceeding. That broader issue seems to be of enormous importance to many businesses, industries and consumers today, and doubtlessly many more tomorrow. The Commission faces no stanuory deadline on the broader issue of the jurisdictional nature of ISP traffic, and thus we would prefer caution.

The Commission does face a statutory deadline or the GTE tariff, but we could have allowed that tariff to go into effect as a lawful provision of a private service without addressing these broader questions. Such a result would not have reached the broader issue of whether ISP traffic over this DSL service is inherently interstate. Neither would such a decision have required the Commission to determine that "the communications at issue here do not terminate at the ISP's local server, as some CLECs and ISPs contend, but continue to Le ultimate destination or destinations, very often at a distant Internet website accessed by the end user." Nor would we need to conclude that "[1]he fact that the facilities and apparants used for GTE's DSL service offering may be located within a single state does not affect our jurisdiction. "2 Such sweeping statements about this agency's jurisdiction - and even more importantly the logical application of that framework - could have broad and even unintended implications for many state commission decisions. Despite the majority's anempt to insulate State commission decisions, we are concerned that the logical application of that framework could have broader implications, and that is why we would urge greater caution and a narrower decision. Of course, we urge all parties to exercise caution pending the Commission's decision next week

The majority's decision to address the jurisdictional nature of ISP traffic has the unfortunate consequence of necessitating a discussion of the relationship between today's decision and existing state commission decisions concerning reciprocal compensation. That analysis by the Commission could have major ramifications for incumbent LECs, CLECs, state commissions, and consumers. At this point, we are uncertain of how to characterize the impact, if any, of today's Order on state commission decisions. In our judgment, such a discussion should have been deferred until next week when we will address reciprocal compensation issues more comprehensively.

Memorandum Opinion and Order at para. 19.

ما

We think that it is important to reach a well-reasoned solution, and one that can withstand the inevitable weight of both close judicial scrutiny and market reaction. If we proceed rapidly with a solution that has not been fully vetted, we will create even greater uncertainty in the market, raising the specter of possible defeat in court, and exacerbating an already difficult market condition. Such a result will have benefitted no one but the litigation profession.

As a narrower resolution of the tariff before us is possible, we would have preferred to meet that deadline in a manner that does not precommit this agency to a scheme whose logic could dictate a resolution of some of the reciprocal compensation issues that we are not prepared to endorse.

# SDITC

# South Dakota Independent Telephone Coalition, Inc.

Richard D. Coit
Executive Director
resdite@sd.cybernex.net

November 13, 1998

RECEIVED

Bill Bullard, Executive Director South Dakota Public Utilities Commission State Capitol Building, 500 East Capitol Ave. Pierre, SD 57501 NOV 1 6 1998 SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

RE: Docket TC98-148, Application of Sioux Falls Cable

Dear Bill:

Enclosed for the PUC files is a signed copy of Exhibit A to a Confidentiality Agreement which Sioux Falls Cable has prepared for use in the above referenced Docket.

As noted in Exhibit A, SDITC has executed the Confidentiality Agreement and agrees to be bound by its terms.

I assume a copy of this is needed in your files before we can properly review any of the information labeled therein as confidential.

Sincerely,

Executive Director and General Counsel

Enclosure

cc: Dave Gerdes



#### EXHIBIT A

#### NONDISCLOSURE AGREEMENT

- 1. I certify in writing that I have read the aforesaid Confidentiality Agreement between the parties.
- 2. I agree to be bound by the terms of that Confidentiality Agreement and certify that I am not involved in any manner whatsoever in the provisioning, marketing, pricing or management of any regulated service, including switched access, long distance or local exchange service, by SDITC. I further agree that should I become so involved in the future, I will not disclose or otherwise use any information provided under the aforesaid agreement.

Dated this <u>/2/</u>	ر day of <u>العادية بين 1</u> , 1998.
	2 OA Cart
	Printed Name: Richard N. Coit
	Permanent Address: 207 E. Capital Civi.
	2: -NE, 51 57501
	Employer: <u>JAZTC</u>
	Name of the Party with whom associated: <u>SAITC</u>

# LAW OFFICES MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIERRE STREET P. O. BOX 160

PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS 1881-1963
KARL'GOLDSMITH 1885-1966
THOMAS C. ADAM
DAVID A. GEPDES
CHARLES M. THOMPSON
ROSERT B. ANDERSON
BRENT A. WILBUR
TIMCTHY M. ENGEL
MICHAEL F. SHAW

November 17, 1998

OF COUNSEL:

TELEPHONE

805 224-8803

TELECOPIER

805 224-6289

E-MAIL

dag@magt.com

RECEIVED

NOV 17 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

#### HAND DELIVERED

Bill Bullard, Executive Secretary South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: SIOUX FALLS CABLE TELEVISION

Docket TC98-148 Our file: 2442

Dear Bill:

Enclosed is an original confidential filing in response to staff's data request number 11. Please file the enclosure as a confidential filing.

With a copy of this letter, I am sending copies of the enclosure to Karen Cremer and Bob Knadle, who are members of the staff handling this matter for Commission staff.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw

Enclosure

cc/enc: Karen Cremer

Bob Knadle Rod Carlson

# RECEIVED

NOV 17 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

# BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )
OF SIOUX FALLS CABLE TELEVISION )
FOR A CERTIFICATE OF AUTHORITY TO )
PROVIDE CERTAIN TELECOMMUNICATIONS )
SERVICES IN THE STATE )

DOCKET NO. TC98-148

#### SUPPLEMENTAL CONFIDENTIAL FILING

Submitted herewith are copies of the EdNet contract and the first amendment to the EdNet Contract referred to in answer to staff's data request number 11 for which confidential treatment is requested under the Commission's rule.

Dated this <u>17</u> day of November, 1998.

MAY, ADAM, GERDES & THOMPSON LLP

DAVID A. GERDES

Attorney for Sioux Falls Cable

503 South Pierre Street

P.O. Box 160

Pierre, South Dakota 57501-0160

Telephone: (605)224-8803 Telefax: (605)224-6289

# COMFIDENTIAL

#### DATA SERVICE AGREEMENT

THIS DATA SERVICE AGREEMENT (this "Agreement") is entered into as of this 22 day of January, 1996 (the "Effective Date"), by and between Sioux Falls Cable Television ("Cable") and the Sioux Falls School District 49-5 of Minnehaha County, South Dakota, Sioux Falls, South Dakota 57105 ("Schools").

#### **RECITALS**

Cable is authorized to operate, pursuant to a franchise agreement (the "Franchise"), a franchised cable television system in Sioux Falls, South Dakota.

Schools have requested that Cable install, maintain, and operate a cable network for transmission of data signals.

Cable desires to provide and the Schools desire to have Cable provide an educational data channel linking the Schools to Cable's headend facility as described on Attachment A and B hereto.

#### AGREEMENT

In consideration of the mutual covenants, terms and conditions contained in this Agreement, the parties agree as follows:

- 1. The Service. Cable shall provide a 4 Megabits (Mbps), 2-way data channel network linking Schools, for transmission of data signals. Cable shall also provide all associated headend equipment required to transmit the data signals (the "Service"). Schools shall provide adequate, climate controlled space, electrical service, and associated equipment for the installation of the Service at each school location. Cable will be responsible for equipment from and including the Cable repeater at one school to and including the repeater at another. Schools will be responsible for servicing their network and associated equipment.
- 2. <u>Installation</u>. Schools shall provide Cable with entry rights for installation and maintenance of coaxial cables and associated equipment, as is reasonably required. See schedule on Attachment B. Cable is responsible for the installation of the coaxial cable to the wiring closet in each building. Cable is also responsible for providing ethernet cards for one server per building. Cable shall not be responsible in the event of "force maieure" (see paragraph 8).
- 3. <u>Technical Specifications</u>. The Service shall be provided over a non-redundant duplex coaxial transmission network (the "Network").



- 4. <u>Maintenance</u>. Cable shall be allowed reasonable access to Schools for maintenance and service of the Network and associated equipment on an as-needed basis.
- 5. Term. Unless sooner terminated as herein provided, the term of this Agreement shall be from the date hereof through January 31, 2001, and shall renew, only upon action of the School Board, for one year terms. Cable hereby grants Schools an option to renew this agreement on the same terms and conditions for three (3) consecutive (1) year periods. Schools shall notify Cable 30 days, in advance, in writing, if it wishes to so renew this Agreement.
- 6. Payment. In consideration of the Services to be provided to Schools, Schools agree to pay Cable monthly fees of \$185.00 per school location identified on Attachment A, for a total of \$6,845.00 per month. Any additions to Attachment A shall be at the \$185.00 site per month rate. The first such monthly payment is due 10 days after signing the Agreement and shall be prorated for the partial month. Subsequent monthly payments shall be due, on a monthly basis, on the first Thursday, after the first Board Meeting of the month for which Services shall be provided. In addition, Schools shall pay Cable a \$35,000 start up fee, due 10 days after signing the Agreement. Payments shall be mailed as follows:

Sioux Falls Cable Television 3507 S. Duluth Avenue Sioux Falls, SD 57105 Attention: Accounting Department Telephone No.: (605) 339-3339

- 7. <u>Title.</u> The parties agree that Cable shall retain ownership of all equipment supplied by Cable, up to and including the ethernet card, including coaxial cable installed by Cable for the Network. Schools agree that it shall take no action which may directly or indirectly impair Cable's title to any of Cable's equipment or expose Cable to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing, by the parties hereto. Cable shall be sclely responsible for obtaining and maintaining casualty insurance with respect to its equipment.
- 8. <u>Force Majeure</u>. Cable shall not be liable for any failure or delay in performance caused by accident, labor dispute, fire, or other casualty, weather, or natural disaster, damage to demarcation points, the conduct of third parties, or other causes beyond its reasonable control ("force majeure").
- 9. <u>Liability Disclaimer</u>. Schools shall be entitled to a credit for interruption of Services (excepting force majeure interruptions). Credit shall be a prorated portion of the monthly payment, computed as follows:

(hrs or partial hrs of interrupted services) x (total monthly fees) x (# of sites affected) = credit (hrs per month) (total sites)

In the event of force majeure interruptions, Schools shall receive an extension of the term of this Agreement equal to the aggregate force majeure interruption periods without additional cost to schools.

If an interruption of service is two hours or less, there shall be no credit.

In no event shall Cable be liable for any special, consequential, indirect or incidental damages.

- 10. <u>Technical Support</u>. Cable shall provide technical support 24 hours per day, seven days a week with two hour response time for support of the network.
- 11. <u>Network Upgrade</u>. Cable will allow the Schools one network upgrade after 36 months. This upgrade will be to the most current technology available. Parties agree to negotiate in good faith, the cost to Schools for the technology upgrade.
- 12. <u>Performance.</u> Cable will insure the performance of this network to be at a level of 2.5 Mbps.
- 13. Taxes. Cable will be responsible for paying all sales, use, property, and income taxes as well as any pole line attachments, easements, access, license, and/or franchise fees assessed in connection with the Services provided to Schools hereunder. Schools shall be responsible for any and all other taxes and other charges which are or may be imposed upon or assessed against Cable in connection with the Services provided to Schools.
- 14. <u>Default Termination</u>. Schools shall be in default if it fails to timely perform any obligation under this Agreement or becomes subject to any proceedings under any bankruptcy or insolvency laws. Upon such default, and at any time thereafter, Cable may, at its option, terminate this Agreement and pursue all other available remedies at law and in equity, all of which shall be cumulative.
- 15. <u>Notices</u>. Unless written notice of a change is given, notices and other written and oral communication shall be delivered as follows:

If to Cable:

Sioux Falls Cable Television 3507 S. Duluth Avenue Sioux Falls, SD 57105 Attention: Rod Carlson

Telephone No.: (605) 339-3339 Facsimile No.: (605) 335-1987 If to Schools:

Sioux Falls School District 49-5 201 East 38th Street Sioux Falls, SD 57105 Attention: Bob Jensen

Telephone No.: (605) 367-8432 Facsimile No.: (605) 367-8353

- 16. <u>Compliance with Laws</u>. The parties agree to comply with all federal, state, and local laws with respect to the Services and this Agreement.
- 17. Confidentiality. The parties agree to keep all proprietary information, as defined below, confidential for a period of two years from the Effective Date hereof; provided, however, that the terms of this Agreement may be disclosed by the parties to their respective attorneys, accountants, and financial institutions, which or who shall be directed by the parties to maintain the confidentiality of such information. The parties, further, agree that all proprietary information, including proprietary ideas, plans, and information, shall remain the property of the disclosing party.

"Proprietary Information", as used herein, shall mean any proprietary ideas, plans, and information, including, without limitation, information of a technological or business nature (including, without limitation, all trade secrets, technology, intellectual property, data, summaries, reports, or mailing lists, either written or oral, and if written, however produced or reproduced) received by or otherwise disclosed to the receiving party from or by the disclosing party that is marked proprietary or confidential or bears a marking of like import, or that the disclosing party states is to be considered proprietary or confidential under the circumstances of its disclosure.

Information will not be deemed to be proprietary information, and the receiving party shall have no obligation with respect thereto or to any part thereof, which (I) is approved for release by prior written authorization of the disclosing party or (ii) is disclosed in order to comply with a judicial order issued by a court of competent jurisdiction or with government laws or regulations; in which event the receiving party shall give prior written notice to the disclosing party of such disclosure as soon as practicable and the disclosing party shall cooperate with the receiving party in using all reasonable efforts to obtain an appropriate protective order or equivalent; provided, however, that the information shall continue to be proprietary information to the extent it is covered by such protective order or equivalent or (iii) is already known to the receiving party at the time of receipt or disclosure hereunder as evidenced by written records made prior to such receipt or disclosure, or subsequently becomes publicly available without any fault of the receiving party or (iv) is independently developed or formulated by the receiving party or its related companies.

18. <u>Miscellaneous</u>. This Agreement is not intended and shall not be construed to create a partnership, agency, or joint venture between the parties herein.

This Agreement constitutes the entire understanding between the parties, whether written or oral, with respect to the Service.

This Agreement shall become binding upon execution by an authorized officer of Cable, and upon approval of the School-Board and Business Manager of the School District.

The terms and provisions of this Agreement may only be waived, modified, or changed by an amendment in writing signed by both parties hereto. No failure by either party to insist upon any performance of the other party's obligation under this Agreement shall constitute a waiver of such obligations or a waiver of future obligations under this Agreement.

If legal proceedings are instituted to enforce any provision hereof by either party, in addition to any other relief awarded by a court, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs.

If any provision of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect.

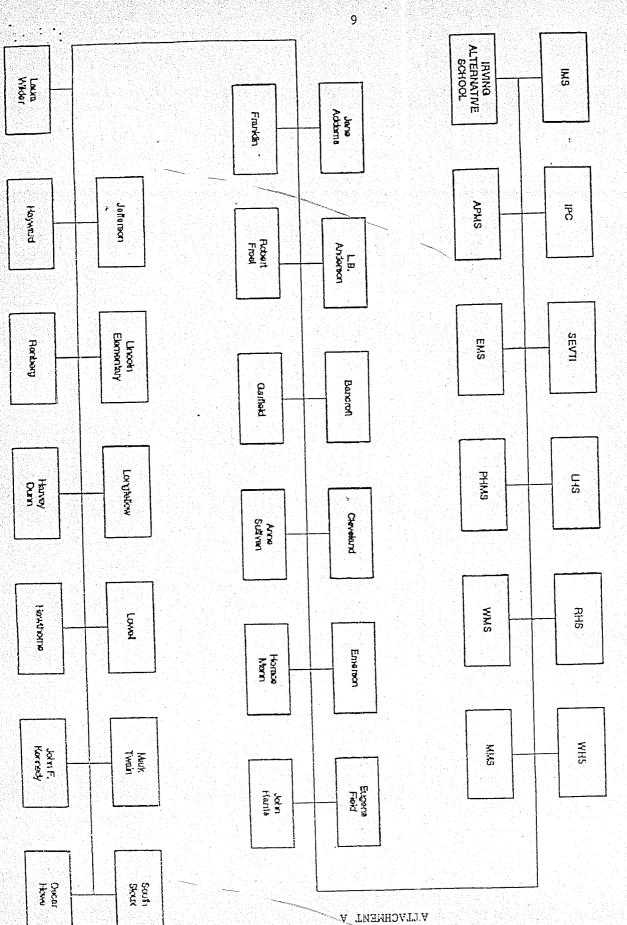
This Agreement shall be governed in all respects by the laws of the State of South Dakota. The parties subject themselves to the jurisdiction of the local, state and federal courts of South Dakota for the resolution of any dispute arising thereunder and agree that venue in any suit filed in those courts shall be proper.

IN WITNESS WHEREOF, the undersigned hereby acknowledges that they have read and fully understand the foregoing Agreement and, further, that they agree to each of the terms and conditions contained herein.

SIOUX FALLS CABLE TELEVISION	SIOUX FALLS SCHOOL DISTRICT 49-5 OF MINNEHALIA COUNTY
By: Name: 20 E 1-1, Fc oy d	By: Name: Reger R. Risty
Title Cores - no. d & S.D.	Title: President
	By: A.C. Zacof Name: Kevin C. Kadfman Title: Business Manager

# WIDE AREA NETWORK ARCHITECTURE

December 28, 1995



# ATTACHMENT B

# WIDE AREA NETWORK TIMELINE

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' DESCRIPHON	DATE	DATE
Sioux Falls Cable network install	1-08-96	1-12-96
Installation of computers and Sioux Falls Cable network		
-Central Services	1-08-96	1-12-96
-IPC	1-15-96	1-24-96
-whs	1-25-96	2-05-96
-LHS	2-06-96	2-15-96
-RHS	2-16-96	2-27-96
-APMS	2-28-96	3-08-96
EMS	3-11-96	3-20-96
-PHMS	3-21-96	4-01-96
-WMS	4-02-96	4-11-96
-MMS	4-15-96	4-17-96
Let bids for elementary school admin wiring	3-01-96	3-26-96
Receive bids for elementary school admin wiring	3-26-96	
Award bids for elementary school admin wiring	4-08-96	
Wire elementary school admin area	5-01-96	7-01-96
Let bids for high school servers	5-03-96	5-17-96
Receive bids for high school servers	5-17-96	
Award bids for high school servers	5-27-96	
Remove extra servers from HS and move to Central Serv.	5-27-96	6-17-96
Sioux Falls Cable network install for elementary schoo	i 6-03-96	7-19-96
Receive high school servers	6-17-96	
Install high school servers	6-18-96	8-12-96
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#### FIRST AMENDMENT TO DATA SERVICE AGREEMENT

THIS FIRST AMENDMENT TO DATA SERVICE AGREEMENT (the "Amendment"), dated as of October 10, 1997, is by and between SIOUX FALLS CABLE TELEVISION ("Cable") and the SIOUX FALLS SCHOOL DISTRICT 49-5 ("Schools").

#### RECITALS

- A. Cable and Schools entered into that certain Data Service Agreement dated as of January 22, 1996 (the "Agreement"). Capitalized terms used herein, unless otherwise defined, shall have the meanings set forth in the Agreement.
- B. Cable and Schools now desire to amend the Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendment to Section 1. Effective as of the date hereof, Section 1 of the Agreement is hereby amended to add the following to the end of such Section:

In addition, as part of the Service, Cable shall provide and install thirty-five (35) bay routers, together with the necessary related equipment for the operation of the bay routers, in such locations as Schools may reasonably require.

- 2. Amendment to Section 5. Effective as of the date hereof, Section 5 of the Agreement is hereby amended by replacing the date "January 31, 2001" contained in the first sentence thereof with the date "January 31, 2003."
- 3. Ratification. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Agreement and except as expressly modified and superseded by this Amendment, the terms and provisions of the Agreement are ratified and confirmed and shall continue in full force and effect.
- 4. <u>Further Assurances</u>. The parties hereto shall execute all necessary documentation and take all appropriate action to effectuate the transactions contemplated hereby.
- 5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of South Dakota.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

SIOUX FALLS CABLE TELEVISION

Title: GEN MAN

SIOUX FALLS SCHOOL DISTRICT 49-5

Name: Roger Risty

Title: President

Name: Kevin Kaufman

Title: Eusiness Manager

E ISBAISTSABILITENDEN 1 SKISSOT 27, 1997

# LAW OFFICES MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIERRE STREET P. O. BOX 160

PIERRE, SOUTH DAKOTA 57501-0160

GLENN W, MARTENS 1881-1963
MARL GOLDSWITH 1885-1966
THOMAS C. ADAM
DAVID A, GEPDES
CHARLES M. THOMPSON
ROBERT B. ANDERSON
BPENT A, WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW

November 17, 1998

OF COUNSEL!

TELEPHONE 605 224-8803 TELECOPIER 605 224-6289 E-MAIL dag@magt.com

RECEIVED

NOV 18 1998

SOUTH DAKOTA PUBLIC

UTILITIES COMMISSION

Bill Bullard, Executive Secretary South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: SIOUX FALLS CABLE TELEVISION

Docket TC98-148 Our file: 2442

Dear Bill:

Enclosed is an original confidentiality agreement between Sioux Falls Cable and SDITC, which please file. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw

Enclosure

cc/enc: Rod Carlson

Rich Coit

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NOV 18 1998

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )
OF SIOUX FALLS CABLE TELEVISION )
FOR A CERTIFICATE OF AUTHORITY TO )
PROVIDE CERTAIN TELECOMMUNICATIONS )
SERVICES IN THE STATE )

DOCKET NO. TC98-148

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made as of the <a href="Zth"/Zth"/Zth</a> day of November, 1998, by and between Sioux Falls Cable Television ("SFC") and South Dakota Independent Telephone Coalition ("SDITC").

#### RECITAL

- 1. SFC hereby states that it will, under the terms of the following Confidentiality Agreement, allow inspection and review of certain data and information claimed by SPC to be of a confidential nature to the signators of this Agreement. The information sought to be reviewed is agreements, financial information and other confidential documents filed in support of Sioux Falls Cable's application for certificate of authority.
- 2. In connection with this case SDITC desires to have access to and to review certain documents of SFC.
- 3. SFC submits that many, if not all, of the documents SDITC wishes to review contain confidential information, trade secrets, proprietary information and/or other information which, if disclosed to competitors of SFC or others, could result in irreparable damage and injury to SFC.
- 4. SFC and SDITC desire to provide a means by which the documents described in Recital No. 3 can be provided to the SDITC for review, but, at the same time, protected from disclosure which could result in irreparable damage or injury to SFC.

THEREFORE, SFC and SDITC agree as follows:

- 1. For purposes of this Agreement, the following terms shall be defined in the following manner:
- (a) "Documents" shall mean and include all documents, data, information, studies, computer programs, and other matters furnished in any or in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed to be a trade secret or confidential in nature shall be furnished under the terms of this Agreement, as constituting trade secret, confidential, commercial, and financial information (here referred to as "confidential"), and shall neither be used nor disclosed

except for the purpose of this proceeding, and solely in accordance with this Agreement. Any and all documents recorded or graphic matters of any kind of a nature whatsoever shall extend to any subsequent compilation, summary, quotation, precise, or reproduction thereof prepared at any subsequent time in any subsequent form or proceeding, in whole or in part.

To the extent there may be information which a party believes requires extraordinary protection beyond that provided for in this Agreement, the party shall file the information with the Commission, only, under seal together with a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief and advise all other parties of the request and the subject matter of the material at issue.

- (b) "Confidential Information" shall mean and include any documents and all contents thereof which are marked "CONFIDENTIAL," "PROPRIETARY" or so dentified in some similar manner by SFC.
- (c) "Use of Confidential Information and Persons Entitled to Review." All confidential information made available pursuant to this Agreement shall be given solely to the Commission or counsel for the parties and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific confidential information may be authorized by counsel, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts or advisors in this matter. For purposes of this Agreement, disclosure shall be strictly limited to persons employed by SDITC who are directly involved in this case as an attorney, expert or witness. Disclosure shall not be made to any person who is in any manner whatsoever involved in the provisioning, marketing, pricing, or management of any regulated service, including switched access, long distance, or local exchange services, by SDITC or any affiliated enterprise.
- (d) "Disclose," "make disclosure of" or "disclosure" shall mean and include the dissemination to any person, firm, corporation or other entity of the contents of a document, whether that dissemination is by means of the transmittal or transfer of the original or a copy of that document or any verbal or other dissemination of the contents of said document. No access to confidential information shall be authorized under the terms of paragraph 1(c) of this Agreement until the person and/or authorized persons, authorized by counsel to have access signs a Nondisclosure Agreement in the form that is attached and incorporated as Exhibit A. The Nondisclosure Agreement shall require the persons to whom disclosure is to be made to

certify in writing that they have read this Agreement, agree to be bound by its terms, and certify that they are not involved in any manner whatsoever in the provisioning, marketing, pricing, or management of any regulated service, including switched access, long distance, or local exchange service, by SDITC, and that if they should become involved in the future, they will not disclose or otherwise use any information provided under this Agreement. The Nondisclosure Agreement shall contain the signatory's full name, permanent address, and employer, and the name of the party with whom the signatory is associated. This Nondisclosure Agreement shall be delivered to counsel for the providing party and the Commission at the time of review of the documents, or as soon thereafter as practicable.

- 2. All confidential Information and the disclosure thereof shall be subject to the following restrictions:
- (a) SDITC shall not disclose any Confidential Information to anyone other than an Authorized Person(s) for the sole purpose of SDITC's review and analysis of the case.
- (b) Whether SFC has provided Confidential Information to SDITC in hard copy or in some other form, SDITC shall make no copies or reproductions of any kind or nature whatsoever of the Confidential Information so supplied.
- (c) The foregoing notwithstanding, SDITC may not disclose Confidential Information to an Authorized Person(s) unless, prior to the disclosure of such Confidential Information, said Authorized Person(s) has signed a Nondisclosure Agreement.
- 3. Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. In the alternative, the Confidential Information may be made available for inspection and then reviewed by counsel, experts and authorized persons, as defined in paragraph 1(c), in a place and time mutually agreed on by the parties.
- 4. In the event SDITC objects to SFC's designation of a document or its contents as Confidential Information, the materials shall be treated as Confidential Information until a contrary ruling by the Commission, or if appropriate, a Court of competent jurisdiction. Prior to the time any objection to a designation of Confidential Information is brought before the Commission or a court of competent jurisdiction for resolution, SDITC and SFC shall attempt to resolve the objection by agreement. If SDITC and SFC are unable to reach an agreement, then either of them may bring the objection before the Commission or court of competent jurisdiction in accordance with the applicable rules of that forum. The party bringing the objection before the Commission or court of competent

jurisdiction has the burden of satisfying the Commission or court of the need for protection or production.

- 5. In the event SDITC desires to disclose Confidential Information to a person, firm, corporation or entity other than an Authorized Person, SDITC shall designate the Confidential Information it wishes to disclose, identify the persons or entities to whom it wishes to make disclosure and advise SFC in writing of its desire to make such disclosure. If, after SFC's receipt of such communication from SDITC, SFC and SDITC are unable to agree on the terms and conditions of such disclosure, such disclosure may be made only on such terms and conditions as the Commission or, if appropriate, a Court of competent jurisdiction may order.
- 6. Nothing in this Agreement shall preclude SFC from using or disclosing any Confidential Information for any purpose or to any person.
- 7. Nothing in this Agreement shall preclude SFC from refusing to make any disclosure of any Confidential Information to SDITC even if SFC agrees that such disclosure shall be in accordance with the terms of this Confidentiality Agreement.
- 8. All persons who are afforded access to any confidential information by reason of this Agreement shall neither use nor disclose the confidential information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated here, and shall take all reasonable precautions to keep the confidential information secure and in accordance with the purposes and intent of this Agreement. No party receiving confidential information pursuant to this Agreement may copy, microfilm, microfiche, or otherwise reproduce such confidential information without the written consent of SFC.
- 9. The parties and nonparties further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this Agreement or a Commission issued Protective Order on the grounds of relevancy or materiality.
- 10. This Agreement shall in no way constitute a waiver of the rights of any party or person to contest any assertion or finding of trade secret, confidentiality, or privilege, or to appeal any determination of the Commission or assertion by a party.
- 11. The provisions of this Agreement are specifically intended to apply to information supplied by any party to this proceeding, and any nonparty that supplies documents, testimony, or other information pursuant to process issued by the Commission.

- 12. Within ten (10) days after the final disposition of the case, including any and all appeals therefrom, all hard copy, other originals and any reproductions of all documents containing Confidential Information subject to this Confidentiality Agreement shall be returned to SFC.
- 13. The provisions of this Confidentiality Agreement, insofar as they restrict the disclosure and use of Confidential Information governed by this Confidentiality Agreement, shall, without the written permission of SFC or further order of the Commission or, if appropriate, a court of competent jurisdiction, continue to be binding after the conclusion of the case.

WHEREFORE, the undersigned have set their hands and seals as of the first date set forth above.

SIOUX FALLS CABLE TELEVISION

BY:

SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION

BY -

#### EXHIBIT A

#### NONDISCLOSURE AGREEMENT

The undersigned executes this Nondisclosure Agreement for all purposes contemplated by Sioux Falls Cable Television and South Dakota Independent Telephone Coalition in their Confidentiality Agreement dated  $N_{\rm DM}$ , 1244, 1948, as follows:

- 1. I certify in writing that I have read the aforesaid Confidentiality Agreement between the parties.
- 2. I agree to be bound by the terms of that Confidentiality Agreement and certify that I am not involved in any manner whatsoever in the provisioning, marketing, pricing or management of any regulated service, including switched access, long distance or local exchange service, by SDITC. I further agree that should I become so involved in the future, I will not disclose or otherwise use any information provided under the aforesaid agreement.

Dated this 12th day of November, 1998.

Printed Name: Richard N. Coit
Permanent Address: 207 E. Capital Civi
Pw. 50 57501
Employer: <u>MITC</u>
Name of the Party with whom associated:

# MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIERRE STREET P. O. BOX 160 PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MAPTENS 1881-1963 KARL GOLDSMITH 1885-1966 THOMAS C. ADAM DAVID A. GEPDES CHARLES W. THOMPSON ROBERT B. ANDERSON BRENT A. WILBUR TIMOTHY M. ENGEL

MICHAEL F. SHAW

November 23, 1998

OF COUNSEL!

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BOS 224-8BO3
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BOS 224-5289
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# RECEIVED

NOV 25 1998

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Bill Bullard, Executive Secretary South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: SIOUX FALLS CABLE TELEVISION

Docket TC98-148 Our file: 2442

Dear Bill:

Enclosed is a Confidentiality Agreement signed by Brian Donahoe and me, which please file.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG:mw

Enclosure

cc/enc: Brian Donahoe

cc: Rod Carlson

# RECEIVED

NOV 25 1998

# BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )
OF SIOUX FALLS CABLE TELEVISION )
FOR A CERTIFICATE OF AUTHORITY TO )
PROVIDE CERTAIN TELECOMMUNICATIONS )
SERVICES IN THE STATE )

DOCKET NO. TC98-148

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made as of the 12 day of November, 1998, by and between Sioux Falls Cable Television ("SFC") and Baltic Telecom Cooperative ("Baltic").

#### RECITAL

- 1. SFC hereby states that it will, under the terms of the following Confidentiality Agreement, allow inspection and review of certain data and information claimed by SFC to be of a confidential nature to the signators of this Agreement. The information sought to be reviewed is agreements, financial information and other confidential documents filed in support of Sioux Falls Cable's application for certificate of authority.
- 2. In connection with this case Baltic desires to have access to and to review certain documents of SFC.
- 3. SFC submits that many, if not all, of the documents Baltic wishes to review contain confidential information, trade secrets, proprietary information and/or other information which, if disclosed to competitors of SFC or others, could result in irreparable damage and injury to SFC.
- 4. SFC and Baltic desire to provide a means by which the documents described in Recital No. 3 can be provided to the Baltic for review, but, at the same time, protected from disclosure which could result in irreparable damage or injury to SFC.

THEREFORE, SFC and Baltic agree as follows:

- 1. For purposes of this Agreement, the following terms shall be defined in the following manner:
- (a) "Documents" shall mean and include all documents, data, information, studies, computer programs, and other matters furnished in any or in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed to be a trade secret or confidential in nature shall be furnished under the terms of this Agreement, as constituting trade secret, confidential, commercial, and financial information (here referred to as "confidential"), and shall neither be used nor disclosed

except for the purpose of this proceeding, and solely in accordance with this Agreement. Any and all documents recorded or graphic matters of any kind of a nature whatsoever shall extend to any subsequent compilation, summary, quotation, precise, or reproduction thereof prepared at any subsequent time in any subsequent form or proceeding, in whole or in part.

To the extent there may be information which a party believes requires extraordinary protection beyond that provided for in this Agreement, the party shall file the information with the Commission, only, under seal together with a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief and advise all other parties of the request and the subject matter of the material at issue.

- (b) "Confidential Information" shall mean and include any documents and all contents thereof which are marked "CONFIDENTIAL," "PROPRIETARY" or so identified in some similar manner by SFC.
- "Use of Confidential Information and Persons Entitled to (c) Review." All confidential information made available pursuant to this Agreement shall be given solely to the Commission or counsel for the parties and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific confidential information may be authorized by counsel, solely for the purpose of this proceeding, to those persons indicated by the parties as being their experts or advisors in this matter. For purposes of this Agreement, disclosure shall be strictly limited to persons employed by Baltic who are directly involved in this case as an attorney, expert or witness. Disclosure shall not be made to any person who is in any manner whatsoever involved in the provisioning, marketing, pricing, or management of any regulated service, including switched access, long distance, or local exchange services, by Baltic or any affiliated enterprise.
- (d) "Disclose," "make disclosure of" or "disclosure" shall mean and include the dissemination to any person, firm, corporation or other entity of the contents of a document, whether that dissemination is by means of the transmittal or transfer of the original or a copy of that document or any verbal or other dissemination of the contents of said document. No access to confidential information shall be authorized under the terms of paragraph 1(c) of this Agreement until the person and/or authorized persons, authorized by counsel to have access signs a Nondisclosure Agreement in the form that is attached and incorporated as Exhibit A. The Nondisclosure Agreement shall require the persons to whom disclosure is to be made to

certify in writing that they have read this Agreement, agree to be bound by its terms, and certify that they are not involved in any manner whatsoever in the provisioning, marketing, pricing, or management of any regulated service, including switched access, long distance, or local exchange service, by Baltic, and that if they should become involved in the future, they will not disclose or otherwise use any information provided under this Agreement. The Nondisclosure Agreement shall contain the signatory's full name, permanent address, and employer, and the name of the party with whom the signatory is associated. This Nondisclosure Agreement shall be delivered to counsel for the providing party and the Commission at the time of review of the documents, or as soon thereafter as practicable.

- 2. All confidential Information and the disclosure thereof shall be subject to the following restrictions:
- (a) Baltic shall not disclose any Confidential Information to anyone other than an Authorized Person(s) for the sole purpose of Baltic's review and analysis of the case.
- (b) Whether SFC has provided Confidential Information to Baltic in hard copy or in some other form, Baltic shall make no copies or reproductions of any kind or nature whatsoever of the Confidential Information so supplied.
- (c) The foregoing notwithstanding, Baltic may not disclose Confidential Information to an Authorized Person(s) unless, prior to the disclosure of such Confidential Information, said Authorized Person(s) has signed a Nondisclosure Agreement.
- 3. Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. In the alternative, the Confidential Information may be made available for inspection and then reviewed by counsel, experts and authorized persons, as defined in paragraph 1(c), in a place and time mutually agreed on by the parties.
- 4. In the event Baltic objects to SFC's designation of a document or its contents as Confidential Information, the materials shall be treated as Confidential Information until a contrary ruling by the Commission, or if appropriate, a Court of competent jurisdiction. Prior to the time any objection to a designation of Confidential Information is brought before the Commission or a court of competent jurisdiction for resolution, Baltic and SFC shall attempt to resolve the objection by agreement. If Baltic and SFC are unable to reach an agreement, then either of them may bring the objection before the Commission or court of competent jurisdiction in accordance with the applicable rules of that forum. The party bringing the objection before the Commission or court of

competent jurisdiction has the burden of satisfying the Commission or court of the need for protection or production.

- 5. In the event Baltic desires to disclose Confidential Information to a person, firm, corporation or entity other than an Authorized Person, Baltic shall designate the Confidential Information it wishes to disclose, identify the persons or entities to whom it wishes to make disclosure and advise SFC in writing of its desire to make such disclosure. If, after SFC's receipt of such communication from Baltic, SFC and Baltic are unable to agree on the terms and conditions of such disclosure, such disclosure may be made only on such terms and conditions as the Commission or, if appropriate, a Court of competent jurisdiction may order.
- 6. Nothing in this Agreement shall preclude SFC from using or disclosing any Confidential Information for any purpose or to any person.
- 7. Nothing in this Agreement shall preclude SFC from refusing to make any disclosure of any Confidential Information to Baltic even if SFC agrees that such disclosure shall be in accordance with the terms of this Confidentiality Agreement.
- 8. All persons who are afforded access to any confidential information by reason of this Agreement shall neither use nor disclose the confidential information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated here, and shall take all reasonable precautions to keep the confidential information secure and in accordance with the purposes and intent of this Agreement. No party receiving confidential information pursuant to this Agreement may copy, microfilm, microfiche, or otherwise reproduce such confidential information without the written consent of SFC.
- 9. The parties and nonparties further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this Agreement or a Commission issued Protective Order on the grounds of relevancy or materiality.
- 10. This Agreement shall in no way constitute a waiver of the rights of any party or person to contest any assertion or finding of trade secret, confidentiality, or privilege, or to appeal any determination of the Commission or assertion by a party.
- 11. The provisions of this Agreement are specifically intended to apply to information supplied by any party to this proceeding, and any nonparty that supplies documents, testimony, or other information pursuant to process issued by the Commission.

- 12. Within ten (10) days after the final disposition of the case, including any and all appeals therefrom, all hard copy, other originals and any reproductions of all documents containing Confidential Information subject to this Confidentiality Agreement shall be returned to SFC.
- 13. The provisions of this Confidentiality Agreement, insofar as they restrict the disclosure and use of Confidential Information governed by this Confidentiality Agreement, shall, without the written permission of SFC or further order of the Commission or, if appropriate, a court of competent jurisdiction, continue to be binding after the conclusion of the case.

WHEREFORE, the undersigned have set their hands and seals as of the first date set forth above.

SIOUX FALLS CAPLE TELEVISION

BALTIC TELECOM COOPERATIVE

its attorney

## EXHIBIT A

### NONDISCLOSURE AGREEMENT

purposes contemplate Telecom Cooperative	d executes this Noted by Sioux Fall e in their Con , as follows:	s Cable Televis	ion and Baltic
1. I certif Confidentiality Agr	y in writing tha reement between th	t I have read ne parties.	the aforesaid
2. I agree to Agreement and cer whatsoever in the pany regulated servitocal exchange s	rovisioning, marke .ce, including swi vice, by Baltic. in the future, I	not involved eting, pricing o tched access, lo I further agree will not disclo	in any manner r management of ong distance or e that should I se or otherwise
Dated this	day of	, 1998	현기의 사실 현실에 가는 경험을 받았다. 기업을 하는 것이 되는 사용을 받았다.
	Printed Name: Permanent Addre		

Employer:

Name of the Party with whom associated:

## MAY, ADAM, GERDES & THOMPSON LLP

SO3 SOUTH PIERRE STREET P. O. BOX 160

### PIERRE, SOUTH DAKOTA 57501-0160

GLENN W, MAPTENS 188:1963
KARL GOLDSMITH 1885:1966
THOMAS C. ADAM
DAVID A. GEPDES
CHARLES M. THOMPSON
ROBERT B. ANDEPSON
BFENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW

December 2, 1998

OF COUNSEL!

TELEPHONE

505 224-8803

TELECOPIER

505 224-6289

E-MAIL

dag@magt.com

Bill Bullard, Executive Secretary South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RECEIVED

DEC 03 1998

RE: SIOUX FALLS CABLE TELEVISION

Docket TC98-148 Our file: 2442 SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Dear Bill:

Enclosed is Exhibit A to the nondisclosure agreement for Brian J. Donahoe which please file in this docket. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw <

Enclosure

cc: Brian Donahoe cc/enc: Rod Carlson

### EXHIBIT A

### NONDISCLOSURE AGREEMENT

The undersigned executes this Nondisclosure Agreement for all purposes contemplated by Sioux Falls Caple Television and Baltic Telecom Cooperative in their Confidentiality Agreement dated November 16, 1998, as follows:

- 1. I certify in writing that I have read the aforesaid Confidentiality Agreement between the parties.
- Agreement and certify that I am not involved in any manner whatscever in the provisioning, marketing, pricing or management of any regulated service, including switched access, long distance or local exchange service, by Baltic. I further agree that should I become so involved in the future, I will not disclose or otherwise use any information provided under the aforesaid agreement.

Dated this 25th day of November, 1998.

Briand Donahoe

Printed Name: Brian J. Donahoe

Permanent Address: 100 N. Phillips Avenue, Ste. 901

Sioux Falls, SD 57104

Employer: Cutler, Jonahoe & Mickelson, LLP

Name of the Party with whom

associated: Baltic Telecom Cooperative

## RECEIVED

JAN 29 1999

### SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

OF COUNSEL!

WARREN W. MAT

TELEPHONE 605 224-8803

TELECOPIER 605 224-6289 E-MAIL dag@magt.com

GLENH W. MARTENS 1881-1963 MARL GOLDSHITH 1885-1966 THOMAS C. ADAM CHAPLES M. THOMPSON ROBERT B. ANDERSON BRENT A. WILBUR TIMOTHY M. ENGEL MICHAEL F. SHAW NEIL FULTON

January 28, 1999

LAW OFFICES

MAY, ADAM, GERDES & THOMPSON LLP 503 SOUTH PIERRE STREET

P. O. BOX 160

PIERRE, SOUTH DAKOTA 57501-0160

Richard D. Coit Executive Director SDITC 207 East Capitol Avenue, Suite 206 Pierre, South Dakota 57501

Brian J. Donahoe Cutler, Donahoe & Mickelson 100 North Phillips Avenue, Suite 901 Sioux Falls, South Dakota 57104-6725

William P. Heaston Dakota Telecommunications Group P.O. Box 66 Irene, SD 57037-0066

Karen Cremer South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

Harlan Best South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: SIOUX FALLS CABLE APPLICATION Docket TC98-148 Our file: 2442

Karen and Gentlemen:

Enclosed is a proposed stipulation, based upon our meeting with Commission Staff on January 27. I believe we had a rather detailed and productive meeting, and I hope I covered most of the points in the stipulation. Nothing is cast in stone, and I am willing to talk about any part of the stipulation.

January 28, 1999 Page 2

For the benefit of those who weren't at the meeting, we went through all of Sioux Falls Cable's present services in detail and I think I have described the nature of our agreement in the stipulation. If you want further information concerning any of these services, I can certainly provide it. At the conclusion of our meeting, both Harlan and Karen concluded that there wasn't any substantial reason to have a hearing. Since this involves a relatively new subject matter, however, the Commission still may want to go to hearing. We therefore concluded that we would prepare a stipulation and present it to the Commission with the understanding that the Commission can either follow the stipulation or decide to go to hearing if it wishes.

If any of you have any questions about any of this, please let me know.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw

Enclosure

cc/enc: Joe H. Floyd

Rod Carlson

## RECEIVED

JAN 7 9 1999

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION SOUTH DATIOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )
OF SIOUX FALLS CABLE TELEVISION )
FOR A CERTIFICATE OF AUTHORITY TO )
PROVIDE CERTAIN TELECOMMUNICATIONS )
SERVICES IN THE STATE )

DOCKET NO. TC98-148

# STIPULATION ON APPLICATION FOR CERTIFICATE OF AUTHORITY

The South Dakota Independent Telephone Coalition, Inc., ("SDITC"), Baltic Telecom Cooperative ("Baltic Telecom"), Dakota Telecommunications Group, Inc., ("DTG"), including its subsidiary Dakota Telecom, Inc., ("DTI"), and Sioux Falls Cable Television ("SFC") as parties to the above-captioned proceeding, along with Commission Staff ("Staff"), hereby stitulate and agree as follows:

- of providing cable television services or "cable service" to its patrons, as defined by 47 U.S.C. § 522(6). SFC currently provides one-way cable services, and plans in the future to provide two-way cable services. One-way cable service consists of cable television signals which are part of the basic cable package sold to customers. Two-way cable services consist of program services, that is, the ability to order specific cable offerings via return cable communication. According to the current understanding of the parties and Staff as to the jurisdiction of the Commission, the Commission does not regulate these cable services as offered by SFC.
- 2. The Commission previously determined in Docket 96-105 (In The Matter of the Filing by U.S. WEST Communications, Inc., Regarding Telecommunications Company Certification) that SFC through its ownership and operation of EdNet is engaged in the provision of "telecommunications services" as defined by state statute because EdNet "transmits signs, signals, writings, images, messages and data by wire." See, Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order dated October 10, 1997. The Commission then further determined that SFC is a "telecommunications company" as defined under the state statutes and ordered that SFC file an application for a certificate of authority with the Commission. Pursuant to that order this proceeding was filed with the Commission on August 27, 1998.
- In addition to the cable service offered by SFC, it also offers the following services

- Internet access permitting two-way data transmission in Sioux Falls, Mitchell, Crooks, Renner and Baltic. This Internet service is provided to cable customers through the cable system as a continuous fiber feed service without switching or switched access of any kind available to customers. According to the current understanding of the parties and Staff as to the jurisdiction of the Commission, and based upon collateral rulings of the Federal Communications Commission, it is probable that Internet access is an interstate service subject to regulation by the FCC.
- b. Voice transport for private use, not available to the public, presently in Sioux Falls and Mitchell. This service is a special access service providing transport only through SFC's excess capacity for various telecommunications companies by private contract. The service involves no switching of any kind, nor does it involve end user access of any kind. According to the current understanding of the parties and Staff as to the jurisdiction of the Commission, and the Commission's prior rulings, this service has been deregulated and is not subject to regulation by the Commission.
- 4. SFC agrees that, should the FCC later conclude otherwise concerning the interstate character of Internet access, or should the service provided by SFC involve switching or other functions subject to regulation by the Commission, it will apply to the Commission for an amended certificate of authority.
- 5. Baltic Telecom operates as an incumbent local exchange carrier serving the exchange areas of Baltic and Crooks, South Dakota, and also exists as a "rural telephone company" as defined by 47 U.S.C. § 153(37). All of Baltic and parts of Crooks and Renner served by SFC are within Baltic Telecom's service area. Based on Baltic Telecom's status as a "rural telephone company," certain rural safeguards provided for under federal and state law are applicable to the entry of any competitive local exchange carrier into Baltic Telecom's service area.
- 6. SDITC is a state association of cooperative, municipal and independent telephone companies. Baltic Telecom is an SDITC member company.
- 7. As stated above, the telecommunications services provided SFC in Baltic Telecom's service area are not switched telecommunications services. Based upon these

representations, it does not appear that SFC at this time intends to provide "local exchange service" as defined by SDCL § 49-31-1(19) in the Baltic Telecom service area. Further, SFC has represented, and does now represent, that it has no present or planned intention to provide "local exchange service" as defined above, in any "rural telephone company" service area in the state of South Dakota. Accordingly, the parties agree that the provisions of SDCL §§ 49-31-69 through 49-31-75 do not apply to this application filed by SFC.

- 8. SFC agrees that if at any time it intends to provide local exchange services in the service area of any "rural telephone company" as defined by federal law, it will make further application to the Sommission for a certificate of authority to provide local exchange service prior to providing any such services in compliance with state and federal law on that subject.
- 9. Based upon the foregoing facts, DTC and DTI have no objection to the grant of a certificate of authority, should the Commission decide to do so without hearing. If a hearing is ordered, DTG and DTI may participate.
- 10. It is agreed between the parties and staff that the foregoing facts would be proven if this matter went to hearing before the Commission. It is further agreed that, from the perspective of the parties and staff, it would not appear that any hearing in this matter is necessary and that the Commission can, if it chooses to do so, rely on this stipulation to rule on all issues presently before it in this docket. The parties and staff therefore recommend to the Commission that the Commission act in accordance with this stipulation. If the Commission declines to do so, the parties and staff will proceed to hearing.

Date:	The South Daketa Independent
THE CONTRACT OF THE CONTRACT O	Telephone Coalition, Inc.
	BY:
	Richard Coit
	Senior Attorney
	P.O. Box 57
	Pierre SD 57501

Date:	Baltic Telecom Cooperative
발견되다. 그런 말리는 전략	BY: Brian J. Donahoe Cutler, Donahoe & Mickelson 100 N. Phillips Ave. Suite 901 Sioux Falls, SD 57104-6725
Date:	Dakota Telecommunications Group, Inc. Dakota Telecom, Inc.
	BY
	William P. Heaston Dakota Telecommunications Group P.O. Box 66 Irene, SD 57037-0066
Date:	Sioux Falls Cable Television
	BY: David A. Gerdes May, Adam, Gerdes & Thompson P.O. Box 160 Pierre, SD 57501
Date:	Commission Staff
	BY:

# MAY, ADAM, GERDES & THOMPSON LLP

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PIERRE, SOUTH DAKOTA 57501-0160

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February 22, 1999

OF COUNSEL!

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Richard D. Coit Executive Director, SDITC 207 East Capitol Avenue, Suite 206 Pierre, South Dakota 57501

Brian J. Donahoe Cutler, Donahoe & Mickelson 100 North Phillips Avenue, Suite 901 Sioux Falls, South Dakota 57104-6725 RECEIVED

FEB 25 1599 SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

William P. Heaston Dakota Telecommunications Group P.O. Box 66 Irene, SD 57037-0066

Karen Cremer South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: APPLICATION OF SIOUX FALLS CABLE FOR A CERTIFICATE OF AUTHORITY

Docket TC98-148 Our file: 2442

Dear Counsel:

Enclosed is another crack at a stipulation after having talked to Rich Coit and Bill Heaston. I believe that the enclosure comes close to meeting the requirements of Bill and Rich.

To assist you in reviewing the enclosure, here is what I have done:

- In paragraph 1 at Bill Heaston's request I attempted to incorporate the definitional language of "cable service" from 47 U.S.C. 522, § 602 of the 1996 act.
- In paragraph 3(a) I made changes suggested by both Bill and Rich.
- Bill suggested that I leave paragraph 4 out, and Rich suggested that I use "or the courts" in the first line. I

February 22, 1999 Page 2

went with the latter suggestion. Upon reflection, I didn't really see where the paragraph did anything other than state the obvious, and if that makes Rich Coit feel better, I am not sure it's that objectionable. If Bill feels strongly about it, we can revisit the subject.

- I added the last sentence to paragraph 6 at Bill's request.
- I struck the language at the beginning of paragraph 7 at Bill's request, which was probably a pretty good idea.
- I completely changed the language in paragraph 8 at Bill's request, to track the language which appears in all of the Commission's local exchange service orders.
- At Bill's suggestion, I mentioned all parties in paragraph 9.
- I changed the language in the first sentence of paragraph 10 to something with which Bill is more comfortable.

I would like to conclude this matter within the next week or so. Please give me written comments in response to this proposal, with copies to the other lawyers, if you wish to change it. I believe that would expedite our process. Thank you for your cooperation.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw

Enclosure

cc/enc: Rod Carlson

### RECEIVED

### BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC

UTILITIES GOMMISSION

IN THE MATTER OF THE APPLICATION OF SIOUX FALLS CABLE TELEVISION FOR A CERTIFICATE OF AUTHORITY TO PROVIDE CERTAIN TELECOMMUNICATIONS ) SERVICES IN THE STATE

DOCKET NO. TC98-148

### STIPULATION ON APPLICATION FOR CERTIFICATE OF AUTHORITY

The South Dakota Independent Telephone Coalition, Inc., ("SDITC"), Baltic Telecom Cooperative ("Baltic Telecom"), Dakota Telecommunications Group, Inc., ("DTG"), including its subsidiary Dakota Telecom, Inc., ("DTI"), and Sicux Falls Cable Television ("SFC") as parties to the above-captioned proceeding, along with Commission Staff ("Staff"), hereby stipulate and agree as follows:

- SFC, the applicant in this matter is in the primary business of providing cable television services or "cable service" to its patrons, as defined by 47 U.S.C. § 522(6). SFC currently provides the one-way transmission to subscribers of video programming or other programming service. SFC plans in the future to provide subscriber interaction which is required for the selection or use of such video programming or other programming service. The Commission does not regulate these cable services.
- The Commission previously determined in Docket 96-105 (In The Matter of the Filing by U S WEST Communications, Inc., Regarding Telecommunications Company Certification) that SFC through its ownership and operation of EdNet is engaged in the provision of "telecommunications services" as defined by state statute because EdNet "transmits signs, signals, writings, images, messages and data by wire." See, Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order dated October 10, 1997. The Commission then further determined that SFC is a "telecommunications company" as defined under the state statutes and ordered that SFC file an application for a certificate of authority with the Commission. Pursuant to that order this proceeding was filed with the Commission on August 27, 1998.
- In addition to the cable service offered by SFC, it also offers the following services:
  - Internet access permitting two-way data transmission in Sioux Falls, Mitchell, Crooks, Renner and Baltic. This

Internet service is provided to cable customers through the cable system as a continuous fiber feed service without circuit switching or switched access of any kind available to customers. According to the current understanding of the parties and Staff as to the jurisdiction of the Commission, and based upon collateral rulings of the Federal Communications Commission, it may be that the type of Internet access provided by SFC is an interstate service subject to regulation by the FCC.

- b. Voice transport for private use, not available to the public, presently in Sioux Falls and Mitchell. This service is a special access service providing transport only through SFC's excess capacity for various telecommunications companies by private contract. The service involves no switching of any kind, nor does it involve end user access of any kind. According to the current understanding of the parties and Staff as to the jurisdiction of the Commission, and the Commission's prior rulings, this service has been deregulated and is not subject to regulation by the Commission.
- 4. SFC agrees that, should the FCC or the courts later conclude otherwise concerning the interstate character of Internet access, or should the service provided by SFC involve switching or other functions subject to regulation by the Commission, it will apply to the Commission for an amended certificate of authority.
- 5. Baltic Telecom operates as an incumbent local exchange carrier serving the exchange areas of Baltic and Crooks, South Dakota, and also exists as a "rural telephone company" as defined by 47 U.S.C. § 153(37). All of Baltic and parts of Crooks and Renner served by SFC are within Baltic Telecom's service area. Based on Baltic Telecom's status as a "rural telephone company," certain rural safeguards provided for under federal and state law are applicable to the entry of any competitive local exchange carrier into Baltic Telecom's service area.
- 6. SDITC is a state association of cooperative, municipal and independent telephone companies. Baltic Telecom is an SDITC member company. DTI has an application pending to be an SDITC member company.
- 7. SFC does not at this time intends to provide "local exchange service" as defined by SDCL § 49-31-1(19) in the Baltic Telecom service area. Further, SFC has represented, and does now represent, that it has no present or planned intention to provide "local exchange service" as defined above, in any

"rural telephone company" service area in the state of South Dakota. Accordingly, the parties agree that the provisions of SDCL §§ 49-31-69 through 49-31-75 do not apply to this application filed by SFC.

- 8. Concerning rural telephone companies, SFC agrees to come before the Commission in another proceeding before being able to provide services in any rural service area pursuant to 47 U.S.C. § 253(f), which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements of 47 U.S.C. § 214(e)(1) for designation as an eligible selecommunications carrier.
- 9. Based upon the foregoing facts, staff, SDITC, Baltic Telecom, DTG and DTI have no objection to the grant of a certificate of authority, should the Commission decide to do so without hearing. If a hearing is ordered, all parties will have the opportunity to participate.
- 10. It is agreed between the parties and staff that the requirement of proof be waived and that the foregoing be stipulated as fact. It is further agreed that, from the perspective of the parties and staff, no hearing in this matter is necessary and the Commission can, if it chooses to do so, rely on this stipulation to rule on all issues presently before it in this docket. The parties and staff therefore recommend to the Commission that the Commission act in accordance with this stipulation. If the Commission declines to do so, the parties and staff will proceed to hearing.

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Date:	Baltic Telecom Cooperative
	BY:
Date:	Dakota Telecommunications Group, In Dakota Telecom, Inc.
	BY: William P. Heaston Dakota Telecommunications Group P.O. Box 66 Irene, SD 57037-0066
Date:	Sioux Falls Cable Television
	BY: David A. Gerdes May, Adam, Gerdes & Thompson P.O. Box 160 Pierre, SD 57501
Date:	Commission Staff
	BY: Karen Cremer SD Public Utilities Commission State Capitol Building 500 East Capitol Avenue Pierre, SD 57501-5070

# SDITC

TC98-148

South Dakota Independent Telephone Coalition, Inc.

RECEIVED

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Richard D. Coit Executive Director resdite@sd.cybernex.net

March 1, 1999

David A. Gerdes May, Adam, Gerdes Thompson P.O. Box 160 Pierre, SD 57501-0160

RE: Sioux Falls Cable Application (Proposed Stipulation)

Dear Dave:

I have reviewed the latest stipulation draft and can agree with some, but not all of the changes.

Specifically, I have some concerns regarding the new paragraph #8 proposed by Bill Heaston. The language which Bill has proposed does track that which was put in earlier certification orders, but these orders were issued before the state legislation enacted in 1998. The new state statutes dealing with local exchange service certification contemplate that decisions on rural safeguard issues are to be made during the local exchange certification process not some undefined later proceeding. Accordingly, we would like a paragraph similar to that which was contained in the previous stipulation draft which requires SFC to file an application for local exchange certification specific to the rural service areas at the time that it intends to introduce any local exchange services in such areas. The language proposed by Bill does not reflect the process as established in the new statutes and by the Commission's new administrative rules.

In dealing with any local exchange service certification, there may be other rural safeguard issues in addition to the one referenced in the paragraph proposed by Bill (47 U.S.C. § 253(f). SDCL § 49-31-71 gives the PUC general authority to impose conditions that it finds are "consistent with preserving and advancing universal service, protecting the public safety and welfare, ensuring the continued quality of service, and safeguarding the rights of consumers." Also, the new administrative rules addressing local service competition set forth certain additional requirements pertaining to local exchange applications which seek authority in rural service areas.

It is important that the stipulation state clearly that no authority to provide local exchange services in rural markets is being granted in the present process - that if and when SFC cable chooses-to enter any rural service area to provide competitive local exchange services, it will apply for the necessary authority under the established certification process.

Richard D. Coit

SDITC General Counsel

cc:

Brian J. Donahoe Karen Cremer -William P. Heaston



# OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF )	ORDER FOR AND NOTICE
SIOUX FALLS CABLE TELEVISION FOR A )	OF HEARING
CERTIFICATE OF AUTHORITY TO PROVIDE )	
TELECOMMUNICATIONS SERVICES IN )	TC98-148
SOUTH DAKOTA )	·

On August 27, 1998, the South Dakota Public Utilities Commission (Commission) received an application for a Certificate of Authority by Sioux Falls Cable Television (SFCT) for approval to provide intrastate intraexchange telecommunications services in the state of South Dakota. SFCT proposes to initially offer voice messaging and data transmission services and thereafter an increasing variety of telecommunications services on an intraexchange basis only. Initially, services will be provided in Sioux Falls, Crooks, Renner and Mitchell.

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On September 3, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 18, 1998, to interested individuals and entities. On September 14, 1998, Baltic Telecom Cooperative (Baltic) filed a Petition to Intervene. On September 16, 1998, the South Dakota Independent Telephone Coalition (SDITC) filed a Petition to Intervene. A Motion for Leave to Intervene was filed by Dakota Telecommunications Group, Inc. (DTG) and its subsidiary Dakota Telecom, Inc. (DTI) on September 16, 1998. At its regularly scheduled September 23, 1998, meeting, the Commission granted intervention to Baltic, SDITC, DTG, and DTI.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-70, 49-31-71, 49-31-72, 49-31-73, 49-31-74, and 49-31-75.

The issue at the hearing is whether SFCT shall receive a certificate of authority to provide intrastate telecommunications services in the state of South Dakota.

A hearing shall be held April 8-9, 1999, starting at 9:00 a.m. on April 8, 1999, in Room 412, State Capitol, Pierre, South Dakota. It shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact. Conclusions of Law, and a Final Decision regarding this matter. As a result of this hearing, the Commission may either grant or deny the request of SFCT to receive a certificate of authority to provide intrastate telecommunications services in the

state of South Dakota. The Commission's decision may be appealed to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED that a hearing shall be held at the time and place specified above on the issue of whether SFCT shall receive a certificate of authority to provide intrastate telecommunications services in the state of South Dakota.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 5

day of March, 1999.

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed equelopes, with charges prepaid thereon.

By Sillune Kalls

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

AMES A BURG, Chairman

PAM NELSON Commissioner

LASKA SCHOENEELDER, Commissioner

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP

503 SOUTH PIEPRE STREET
P. O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS 1881-1963
MAR GCLOSMITH-1885-1956
THOMAS C. ADAM
CAVID A. GERDES

DAVID A. GERDES CHARLES M. THOMPSON ROBERT B. ANDERSON BRENT A. WILDUR TIMOTHY M. ENGEL MICHAEL F. SHAW NEIL FULTON March 12, 1999

OF COUNSEL

TELEPHONE
SOS 224-8803
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E-MAIL
dag@magt.com

## RECEIVED

MAR 15 1999

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Richard D. Coit
Executive Director, SDITC
207 East Capitol Avenue, Suite 206
Pierre, South Dakota 57501

Brian J. Donahoe Cutler, Donahoe & Mickelson 100 North Phillips Avenue, Suite 901 Sioux Falls, South Dakota 57104-6725

William P. Heaston
Dakota Telecommunications Group
P.O. Box 66
Irene, South Dakota 57037-0066

Karen Cremer South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: APPLICATION OF SIOUX FALLS CABLE FOR A CERTIFICATE OF AUTHORITY

Docket TC98-148 Our file: 2442

Dear Counsel:

Here is yet another attempt at a stipulation.

I talked at some length with Karen Cremer. It is her view that the Commission grants only two types of certificates of authority: local service and long distance service. Thus, the only fundamental reason for a stipulation involves rural telephone company issues. It seems to me that the enclosure clearly addresses the proposition that Sioux Falls Cable does not now and does not intend to become a provider of "local exchange service" within a rural service area. Also, the Commission is unwilling to decide what services might be telecommunications services, but will address those items on a case-by-case basis.

I believe the enclosed stipulation meets Karen Cremer's objections. I have attempted to address the concerns set forth

March 12, 1999 Page 2

in Rich Coit's March 1, 1999, letter without doing violence to my prior conversation with Bill Heaston.

We are getting close to a hearing date. I would greatly appreciate it if you would take a look at the enclosure and tell me what items you really can't live with, in writing, together with your reasons. I will make every reasonable effort to accommodate any of you. However, it seems to me that what is enclosed is awfully close to a vanilla stipulation.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

dictated by Mr. Gerdes and mailed in his absence to avoid delay

BY:

DAG: mw

Enclosure

cc/enc: Rod Carlson

# BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF SIOUX FALLS CABLE TELEVISION FOR A CERTIFICATE OF AUTHORITY TO PROVIDE CERTAIN TELECOMMUNICATIONS SERVICES IN THE STATE

DCCKET NO. TC98-148

# STIPULATION ON APPLICATION FOR CERTIFICATE OF AUTHORITY

The South Dakota Independent Telephone Coalition, Inc., ("SDITC"), Baltic Telecom Cooperative ("Ealtic Telecom"), Dakota Telecommunications Group, Inc., ("DTG"), including its subsidiary Dakota Telecom, Inc., ("DTI"), and Sioux Falls Cable Television ("SFC") as parties to the above-captioned proceeding, along with Commission Staff ("Staff"), hereby stipulate and agree as follows:

- 1. SFC, the applicant in this matter is in the primary business of providing cable television services or "cable service" to its patrons, as defined by 47 U.S.C. § 522(6). SFC currently provides the one-way transmission to subscribers of video programming or other programming service. SFC plans in the future to provide subscriber interaction which is required for the selection or use of such video programming or other programming service. The Public Utilities Commission ("Commission") does not presently regulate these cable services.
- 2. The Commission previously determined in Docket 96-105 (In The Matter of the Filing by U S WEST Communications, Inc., Regarding Telecommunications Company Certification) that SFC through its ownership and operation of EdNet is engaged in the provision of "telecommunications services" as defined by state statute because EdNet "transmits signs, signals, writings, images, messages and data by wire." See, Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order dated October 10, 1997. The Commission then further determined that SFC is a "telecommunications company" as defined under the state statutes and ordered that SFC file an application for a certificate of authority with the Commission. Pursuant to that order this proceeding was filed with the Commission on August 27, 1998.
- In addition to the cable service offered by SFC, it also offers the following services:
  - a. Internet access permitting two-way data transmission in Sioux Falls, Mitchell, Crooks, Renner and Baltic. This Internet service is provided to cable customers through

the cable system as a continuous fiber feed service without circuit switching or switched access of any kind available to customers.

- b. Voice transport for private use, not available to the public, presently in Sioux Falls and Mitchell. This service is a special access service providing transport only through SFC's excess capacity for various telecommunications companies by private contract. The service involves no switching of any kind, nor does it involve end user access of any kind.
- 4. Baltic Telecom operates as an incumbent local exchange carrier serving the exchange areas of Baltic and Crooks, South Dakota, and also exists as a "rural telephone company" as defined by 47 U.S.C. § 153(37). All of Baltic and parts of Crooks and Renner served by SFC are within Baltic Telecom's service area. Based on Baltic Telecom's status as a "rural telephone company," certain rural safeguards provided for under federal and state law are applicable to the entry of any competitive local exchange carrier into Baltic Telecom's service area.
- 5. SDITC is a state association of cooperative, municipal and independent telephone companies. Ealtic Telecom is an SDITC member company. DTI has an application pending to be an SDITC member company.
- 6. SFC does not at this time intend to provide "local exchange service" as defined by SDCL § 49-31-1(19) in the Baltic Telecom service area. Further, SFC has represented, and does now represent, that it has no present or planned intention to provide "local exchange service" as defined above, in any "rural telephone company" service area in the state of South Dakota.
- 7. SFC agrees that if at any time it intends to provide local exchange services in the service area of any "rural telephone company" as defined by federal law, it will make further application to the Commission for a certificate of authority to provide local exchange service under SDCL § 49-31-71 prior to providing any such services in compliance with state and federal law on that subject, including 47 U.S.C. 214(e)(1) and 253(f).
- 8. Based upon the foregoing facts, Staff, SDITC, Baltic Telecom, DTG and DTI have no objection to the grant of a certificate of authority, should the Commission decide to do so without hearing. If a hearing is ordered, all parties will have the opportunity to participate.

D-+0:		The South Dakota Independent	
Date:	<u> </u>	Telephone Coalition, Inc.	
		BY:	
		Richard Coit	
		Senior Attorney	
		P.O. Box 57	
		Pierre, SD 57501	
		Baltic Telecom Cooperative	
Date:			
		BY:	
		Brian J. Donahoe	
		Cutler, Donahoe & Mickelson	
		100 N. Phillips Ave. Suite 901	
		Sioux Falls, SD 57104-6725	
		Sloux ralls, SD 3/104-6/23	
		Dakota Telecommunications Group,	Tnc
Date:		Dakota Telecommunications Group,	•
		Dakota Telecom, Inc.	
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		불병수를 보고 말을 하는 사람들은 얼마를 하는 것이다.	
		BY:	
		William P. Heaston	
		Dakota Telecommunications Group	
		P.O. Box 66	
		Irene, SD 57037-0066	
		n-11- Cable Welericien	
Date:		Sioux Falls Cable Television	
		교회를 보는 것이 하는 것이 없는 것이 모든 것이 없는 것이 없는 것이 없는 것이다.	
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		BY:	
		David A. Gerdes	
		May, Adam, Gerdes & Thompson	
		P.O. Box 160	
		Pierre, SD 57501	
		경기 말리 하는 사람이 가는 그 그 사람들이 많은 그렇게 되었다.	
Date:		Commission Staff	
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		Karen Cremer	
		SD Public Utilities Commission	
		State Capitol Building	
		500 East Capitol Avenue	
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# LAW OFFICES MAY, ADAM, GERDES & THOMPSON LLP

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ROBERT B. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW

March 29, 1999

OF COUNSEL!

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### HAND DELIVERED

NEIL FULTON

Bill Bullard, Executive Secretary South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: SIOUX FALLS CABLE Docket TC98-148 Our file: 2442

Dear Bill:

RECEIVED

MAR 25 1899

SOUTH DARGTA PUBLIC

Enclosed are original and 11 copies of a Stipulation on Application for Certificate of Authority signed by all counsel except Mr. Donahoe.

Attached to the stipulation is Mr. Donahoe's letter of March 18, 1999, bearing his original signature. His office advises me he is in trial and unable to forward a signed signature page at this time. I will supplement the record with his signature to the stipulation when I receive it.

Please file the enclosure. Please date stamp the extra face page of the stipulation and return it to me in the enclosed self-addressed stamped envelope. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: niw

Enclosures

cc/enc: Brian Donahoe

Richard Coit Bill Heaston Karen Cremer

## RECEIVED

MAR 2 9 1989

# BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

SOUTH DATECTA PUBLIC UTILITIES CARMISSION

IN THE MATTER OF THE APPLICATION )
OF SIOUX FALLS CABLE TELEVISION )
FOR A CERTIFICATE OF AUTHORITY TO )
PROVIDE CERTAIN TELECOMMUNICATIONS )
SERVICES IN THE STATE )

DOCKET NO. TC98-148

## STIPULATION ON APPLICATION FOR CERTIFICATE OF AUTHORITY

The South Dakota Independent Telephone Coalition, Inc., ("SDITC"), Baltic Telecom Cooperative ("Baltic Telecom"), Dakota Telecommunications Group, Inc., ("DTG"), including its subsidiary Dakota Telecom, Inc., ("DTI"), and Sioux Falls Cable Television ("SFC") as parties to the above-captioned proceeding, along with Commission Staff ("Staff"), hereby stipulate and agree as follows:

- 1. SFC, the applicant in this matter is in the primary business of providing cable television services or "cable service" to its patrons, as defined by 47 U.S.C. § 522(6). SFC currently provides the one-way transmission to subscribers of video programming or other programming service. SFC plans in the future to provide subscriber interaction which is required for the selection or use of such video programming or other programming service. The Public Utilities Commission ("Commission") does not presently regulate these cable services.
- 2. The Commission previously determined in Docket 96-105 (In The Matter of the Filing by U S WEST Communications, Inc., Regarding Telecommunications Company Certification) that SFC through its ownership and operation of EdNet is engaged in the provision of "telecommunications services" as defined by state statute because EdNet "transmits signs, signals, writings, images, messages and data by wire." See, Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order dated October 10, 1997. The Commission then further determined that SFC is a "telecommunications company" as defined under the state statutes and ordered that SFC file an application for a certificate of authority with the Commission. Pursuant to that order this proceeding was filed with the Commission on August 27, 1998.
- 3. In addition to the cable service offered by SFC, it also offers the following services:
  - a. Internet access permitting two-way data transmission in Sioux Falls, Mitchell, Crooks, Renner and Baltic. This Internet service is provided to cable customers through

the cable system as a continuous fiber feed service without circuit switching or switched access of any kind available to customers.

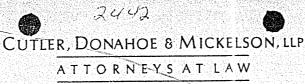
- b. Voice transport for private use, not available to the public, presently in Sioux Falls and Mitchell. This service is a special access service providing transport only through SFC's excess capacity for various telecommunications companies by private contract. The service involves no switching of any kind, nor does it involve end user access of any kind.
- 4. Baltic Telecom operates as an incumbent local exchange carrier serving the exchange areas of Baltic and Crooks, South Dakota, and also exists as a "rural telephone company" as defined by 47 U.S.C. § 153(37). All of Baltic and parts of Crooks and Renner served by SFC are within Baltic Telecom's service area. Based on Baltic Telecom's status as a "rural telephone company," certain rural safeguards provided for under federal and state law are applicable to the entry of any competitive local exchange carrier into Baltic Telecom's service area.
- 5. SDITC is a state association of cooperative, municipal and independent telephone companies. Baltic Telecom is an SDITC member company. DTI has an application pending to be an SDITC member company.
- 6. SFC does not at this time intend to provide "local exchange service" as defined by SDCL § 49-31-1(19) in the Baltic Telecom service area. Further, SFC has represented, and does now represent, that it has no present or planned intention to provide "local exchange service" as defined above, in any "rural telephone company" service area in the state of South Dakota.
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- 8. Based upon the foregoing facts, Staff, SDITC, Baltic Telecom, DTG and DTI have no objection to the grant of a certificate of authority, should the Commission decide to do so without hearing. If a hearing is ordered, all parties will have the opportunity to participate.

	용장보다 보고 있는 사이트 이번 때문에 보고 보고 있다고 있는 것을 모든 것이다.
Date: <u>Mard 18, 1999</u>	The South Dakota Independent Telephone Coalition, Inc.
	BY (1) (1)
	Richard Coit
	Senior Attorney
	P.O. Box 57
	Pierre, SD 57501
Date:	Baltic Telecom Cooperative
	BY: Brian J. Donahoe
경영(경영) 교육 (1 - 10) 수 있는 15일 (1 - 10) 전 (1 -	Cutler, Donahoe & Mickelson
	100 N. Phillips Ave. Suite 901
	Sioux Falls, SD 57104-6725
	Dakota Telecommunications Group, Inc
Date:	Dakota Telecom, Inc.
	DV.
수있다고 불로 있는 것이 있는 것이 없는 것이 없는 것이 없는 것이 없다. 불성을 경고했습니다.	BY: William P. Heaston
	Dakota Telecommunications Group
	P.O. Box 66
	Irene, SD 57037-0066
Date: 3/26/99	Sioux Falls Cable Television
Pace: 3/20/1/	
	$\Lambda \sim \Lambda \sim \Lambda$
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	P.O. Box 160
	Pierre, SD 57501
경향 수 있는데 하면 다음을 보고 있다. 그는 그 말을 받았다. 경영 경영 경영 기계를 받는 것이 되었다.	
Date:	Commission Staff
경영 - B. 다른 제 영구 왕이는 경우 그는 시간 하다. 당한 영화의 경영 당한 경이 있는 일본이 되었다.	BY: BY:
	Karen Cremer
	SD Public Utilities Commission
	State Capitol Building
	500 East Capitol Avenue Pierre, SD 57501-5070
<u> 경험적인 전쟁 발표에 경우 되고 하다가 만든다면 할 때 수입하다</u>	그는 그는 얼마 보는 모든 모든 그는 그러고 있는데 얼마를 걸어 가장 있는데 그는 그리고 있다. 그는 그는 그를 살아 없는데 없는데 그를 먹는데 걸다면 살아 없는데 없는데 없는데 없다면 없다. 그는 그를 먹는데 살아 없는데 없는데 없다면

Date:	The South Dakota Independent Telephone Coalition, Inc.
	BY: Richard Coit Senior Attorney P.O. Box 57 Pierre, SD 57501
Date: 33059	Baltic Telecom Cooperative  BY:  Brian J. Donahoe  Cutler, Donahoe & Mickelson  100 N. Phillips Ave. Suite 901
Date:	Sioux Falls, SD 57104-6725  Dakota Telecommunications Group, Inc Dakota Telecom, Inc.  BY:
Date:	William P. Heaston Dakota Telecommunications Group P.O. Box 66 Irene, SD 57037-0066 Sioux Falls Cable Television
	BY: David A. Gerdes May, Adam, Gerdes & Thompson P:O. Box 160 Pierre, SD 57501
Date:	Commission Staif
	Karen Cremer SD Public Utilities Commission State Capitol Building 500 East Capitol Avenue

Date:	The South Dakota Independent Telephone Coalition, Inc.
	BY: Richard Coit Senior Attorney P.O. Box 57 Pierre, SD 57501
Date:	Baltic Telecom Cooperative
= \_ \ \ (00	BY: Brian J. Donahoe Cutler, Donahoe & Mickelson 100 N. Phillips Ave. Suite 901 Sioux Falls, SD 57104-6725
Date: 3/22/99	Dakota Telecommunications Group, Inc. Dakota Telecom, Inc.  BY: William P. Heaston Dakota Telecommunications Group P.O. Box 66 Irene, SD 57037-0066
Date:	Sioux Falls Cable Television
	BY:
Date:	Commission Staff
	BY: Karen Cremer SD Public Utilities Commission State Capitol Building 500 East Capitol Avenue

Date:	The South Dakota Independent Telephone Coalition, Inc.
	BY:
	Richard Coit
	Senior Attorney
	P.O. Box 57
	Pierre, SD 57501
등 경기	
Date:	Baltic Telecom Cooperative
	다시 경험 경험 보다 하나 하는데 다음이 되는데 말을 하는데 되는데 이번 때문에 다른데 되었다. 보고 있는데 살아보다 하나 있는데 그렇게 되는데 보고 있는데 보다 되었다.
	BY
보면 가게 되는 것은 것이 되는 것이 되는 것이 되었다. 그 것은 것이 되었다. 물로 가게 되는 것은 것을 하는 것이 되는 것은 것을 받는 것은 것이 되었다.	Brian J. Donahoe
경영 하고 있다는 경영 사람들이 있는 그 사가 모든 것인 및 선생이 되었다. 이 아니 1일 발표 회원 10일 교육이 가는 것은 것이 되는 것으로 되었다.	Cutler, Donahoe & Mickelson
	100 N. Phillips Ave. Suite 901
	Sioux Falls, SD 57104-6725
Date:	Dakota Telecommunications Group, Inc.
	Dakota Telecom, Inc.
	BY:
	William P. Heaston
	Dakota Telecommunications Group
	P.O. Box 66
	Irene, SD 57037-0066
한 경험 등 경험 사용을 받아 보면 모임을 받아 보고 있습니다. 19 구시 보고 있는데 보고 있는데 보고 있는데 보고 있는데 보고 있다.	Sioux Falls Cable Television
Date:	
문에 돌아 전시되었다. 그는 사람이 되었다는 것이 없는 것이 되었다. 그는 것이 없는 것이 없는 것이 없는 것이다. 그런 것이 되는 것이 없는 것이다.	: 발생하는 사람들은 사람들이 되었다. 그런 사람들은 사람들이 되었다. 그런 사람들은 사람들이 되었다. 
	BY:
화장 얼마를 보고 이 그리다 하다 얼마는 걸었다고 하는데	David A. Gerdes
얼마스 회사는 경험으로 하지 않는 그 모두 가지 않는데 모양	May, Adam, Gerdes & Thompson
	P.O. Box 160
물길 중요 얼마는 일을 보고 있다면 없다.	Pierre, SD 57501
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Date: ///insk.23/1494	Commission Staff
	얼마가 그렇게 되는 그리고 하는데 뭐 그렇게 되었다. 그렇게 되었다.
전기를 받는다. 그리고 있는 것이 되었다. 그런 것이 되었다. 	BY: Alder To Idemile
	Karen/Cremer
	SD Public Utilities Commission
	State Capitol Building
	500 East Capitol Avenue
그들은 아이들은 아들은 그리고 살아가는 하고 말을 위하는 하는데 없을 때문에	'회에 그리아에 프린티를 모든 사람들 소급했다. '최근등 등에 하는 경에 달라 되어보면 되었다.



KICHARD A. CUTLER KENT R. CUTLER BRIAN J. DONAHOE CYNTHIA H. MICKELSON MARK E. SALTER" STEVEN J. SARBACKER "

Telephone (605) 335-4950 Fax (605) 335-4961

JEAN BROCKMUELLER, CPA BUSINESS MANAGER

'Also licensed to practice in Minnesota and Iowa

"Also licensed to practice

March 18, 1999

Mr. David Gerdes May, Adam, Gerdes & Thompson LLP 503 South Pierre Street SFOARIE Pierre, SD 57501

PUC Docket TC 98-148 Re:

(Our File BT-280-09)

Dear Dave:

I have been authorized to sign the last version of the Stipulation on Application for Certificate of Authority for Sioux Falls Cable. Please send me the original or have it routed here after others sign it.

Best regards.

Sincerely,

CUTLER, DONAHOE & MICKELSON, LLP

1. Joenahor

Brian J. Donahoe

For the Firm

BJD:rkk

cc: Greg Grablander

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March 29, 1999

OF COUNSEL!

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#### HAND DELIVERED

Karen Cremer South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: SIOUX FALLS CABLE Docket TC98-148 Our file: 2442

Dear Karen:

Enclosed is a revised proposed tariff based upon your letter of March 23, 1999, and the conversation that we had on January 26.

I made three changes:

- 1. At release 1, page 2, section 3 in the definition of intermediate transport, I deleted "Dakota's" and inserted in lieu thereof "Sioux Falls Cable TV's". This was a typographical error
- 2. On release 1, page 1, section 4 I revised the language concerning the liability of the company to provide that it "... shall be determined in accordance with SDCL §§ 49-13-1 and 49-13-1.1, and any other applicable law." This language was a requirement of staff, that the company's potential liability be as stated in the jurisdictional sections of the Public Utilities Commission laws.
- 3. On release 1, page 1, section 5, I added a service description, which is out of the EdNet contract with Sioux Falls Cable.

Additionally, I have submitted to my client for approval rate information. There is some concern on my part that it might

Karen Cremer March 29, 1999 Page 2

proprietary information, and we may need to discuss how it would be disclosed in the tariff.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw

Enclosure

cc: Rod Carlson

### EXHIBIT E TO

SCHEDULE OF

GENERAL RULES, REGULATIONS, CHARGES, AND CONDITIONS

APPLYING TO SERVICES AND

FACILITIES OF SIOUX FALLS CABLE

APPLICATION OF SIOUX FALLS CABLE

INTERIM TARIFF

Issued:

Effective:

Section 1 Page 1 Release 1

#### TABLE OF CONTENTS

Section 1	Title Page, Table of Contents
Section 2	General Rules and Regulations
Section 3	Definitions
Section 4	Liability and Obligation
Section 5	Service Description
Section 6	Rates

Section 2 Page 1 Release 1

#### GENERAL RULES AND REGULATIONS

#### APPLICATION

#### 1. General

a. This tariff applies to the furnishing of telecommunications services defined herein by Sioux Falls Cable (herein referred to as the "Company" or "Sioux Falls Cable").

The provision of telecommunications services associated with cable services is subject to existing regulations and terms and conditions specified in this tariff and the Company's current tariffs, and may be revised, added to or supplemented by superseding issues.

Sicux Falls Cable reserves the right to offer its customers a variety of competitive services as deemed appropriate by the Company. Service will be available as facilities, mechanized ordering, billing, provisioning, ability to purchase tariff items for resale and maintenance systems among cable systems permit.

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Effective:

> Section 3 Page 1 Release 1

#### DEFINITIONS

Basic Cable Service

Any service tier which includes the retransmission of local television broadcast signals.

Cable Channel or Channel

A portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Federal Communications Commission by regulation).

Cable Service

The one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, with is required for the selection or use of such video programming or other programming service.

Cable System

A facility, consisting of a set of closed transmissions paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include

- a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- a facility that serves subscribers without using any public right-of-way;
- a facility of a common carrier which is subject in (c; whole or in part to the provisions of Title II of the Telecommunications Act of 1996, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Act) to the extent such facility is used in the transmission of video program directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- an open video system that complies with Section 653 (d) of the Act; or

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Effective:

Section 3 Page 2 Release 1

#### DEFINITIONS (Cont'd)

(e) any facilities of any electric utility used solely for operating its electric utility systems.

Carrier Common Line

The Carrier Common Line charge provides for the use of Company's facilities from the End User's premises to the normal end office used to originate or terminate switched Intrastate Telecommunications Services traffic.

Customer Premises

The customer premises is all space in the same building occupied by a Customer and all space occupied by the same Customer in different buildings on continuous property.

Exchange Area

An area for which a separate local rate schedule is provided.

Exchange Service

The furnishing of equipment and facilities for telephonic communication within local service areas with provisions of this tariff.

Intermediate Transport

The Intermediate Transport charge provides for the use of Sioux Falls Cable TV's transport facilities between another company's end office, tandem office or IXC switching office and another company's end office, tandem office or IXC switching office.

Internet

The international computer network of both federal and nonfederal interoperable packet switched data networks.

Internet Access

The service of providing a portal for a customer or end user to obtain access to the Internet through an Internet service provider, consumer on-line service or other entity connecting end users to the interoperable packet switched data networks.

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Effective:

Section 3 Page 3 Release 1

#### DEFINITIONS (Cont'd)

Local Exchange Service

Service which provides for exchange telephonic communication including access to emergency services (911 and0), within the local service area at rates and under regulations as provided in this tariff.

Local Service Area

That area within which a Customer for exchange service can make telephone calls without the payment of a toll charge. A local service area may be made up of one or more central office areas or exchange areas.

Local Transport Facility

The Local Transport Facility charge provides the transmission facilities between the end office switch and the access tandem office; and from the access tandem office to the point of interconnection with another company's facilities.

Local Transport Termination

The Local Transport Termination charge provides the End Office Termination of the Local Transport Facilities and tandem switching facilities. The tandem switching facilities provide the toll switching and tandem routing facilities in a central office used in the provision of switched Telecommunications Service traffic. Such facilities do not include any facilities included in exchange access tariff charges.

Local Switching

The Local Switching charge provides for the use of the end office switching facilities used to originate or terminate switched Telecommunications Services. Such facilities do not include Recording or Automatic Number Identification (ANI).

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Section 4 Page 1 Release 1

#### LIABILITY AND OBLIGATION OF SIOUX FALLS CABLE

#### Liability

Sioux Falls Cable's liability, if any, for its willful misconduct is not limited by this 'ariff. With respect to any other claim or suit by a Customer or by any others, for damages associated with the installation, provision, termination, maintenance, repair or restoration of a service, and subject to the provisions following, the Company's liability, if any, shall be determined in accordance with SDCL is 49-13-1 and 49-13-1.1, and any other applicable law. This liability for damages shall be in addition to any amount that may otherwise be due the customer under this tariff as a Credit Allowance for Interruptions.

The Company is not liable for any act or omission of any other communications utility which furnishes a portion of a service.

The Company is not liable for damages associated with the service which it does not furnish.

The Company shall be indemnified, defended and held harmless against any claim, loss or damage arising from the use of service offered under this tariff, involving:

Claims for libel, slander, invasion of privacy, or infringement of copyright arising from any communication;

All other claims arising out of any act or omission of others in the course of using service provided pursuant of this tariff.

Sioux Falls Cable does not guarantee or make any warranty with respect to its services when used in an explosive atmosphere. Sioux Falls Cable shall be indemnified, defended and held harmless by the Customer and authorized user from any and all claims by any person relating to the service so provided.

Sioux Falls Cable's failure to provide or maintain services under this tariff shall be excused by labor difficulties, governmental orders, civil commotions, preemption of existing services to restore service in compliance with 2at 64, Subpart D. Appendix A.

Issued:

Effective:

Section 4 Page 2 Release 1

of the F.C.C.'s Rules and Regulations, acts of God and other circumstances beyond the Company's reasonable control.

Issued:

Effective:

Section 4 Page 3 Release 1

#### Payment for Services

- A. Sioux Falls Cable shall bill on a current basis all charges incurred by and credits due the Customer under this tariff attributable to services established or discontinued during the preceding billing period.
- B. The Customer is required to pay all charges for access services and facilities.
- C. All bills provided to the Customer by Sioux Falls Cable are due 30 days (payment due date) after the bill date or by the next bill date (i.e., same date in the following month as the bill date), whichever is the shortest interval. If such payment date falls on a Sunday or on a Holiday, the payment date shall be the first working day following such Sunday or Holiday.
- D. If any portion of the payment is received by the Company after the payment due date as set forth in (C.) preceding, a late payment charge shall be due the Company.
- E. The late payment charge shall be based on the unpaid balance at a rate of .xxxx per day, compounded daily for the number of days from the payment due date, to and including, the date the Company receives the payment.
- F. In the event a billing dispute concerning any charges billed to the Customer by Sioux Falls Cable is resolved in favor of Sioux Falls Cable, any payments withheld pending settlement of the dispute shall be subject to the late payment charge set forth in (E.) preceding.

Section 4 Page 4 Release 1

- 3. Special Taxes, Fees, Charges
  - A. Insofar as practicable, any sales, use, privilege, excise, franchise or occupation tax, costs of furnishing service without charge or similar taxes or impositions levied by the Federal. State or Local government, or any political subdivision or taxing authority against the Carrier may be billed by the Carrier to its Customers on a pro rata basis.

Issued: Effective:

Issued by: Rod Carlson, General Manager

Section 5 Page 1 Release 1

#### SERVICE DESCRIPTION

#### 1. The Service.

The Company shall provide a four megabits (Mbps), the 2-way data channel network linking schools, for transmission of data signals. The Company shall also provide all associated head end equipment required to transmit the data signals. Schools shall provide adequate, climate-controlled space, electrical service and associated equipment for the installation of the service at each school location. The Company will be responsible for equipment from and including the cable repeater at one school to and including the repeater at another. Schools will be responsible for servicing their network and associated equipment.

Issued: Effective: Issued by: Rod Carlson, General Manager

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March 29, 1999

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#### HAND DELIVERED

Bill Bullard, Executive Secretary South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

RE: SIOUX FALLS CABLE Docket TC98-148 Our file: 2442

Dear Bill:

Enclosed are original and 11 copies of a Stipulation on Application for Certificate of Authority signed by all counsel except Mr. Donahoe.

Attached to the stipulation is Mr. Donahoe's letter of March 18, 1999, bearing his original signature. His office advises me he is in trial and unable to forward a signed signature page at this time. I will supplement the record with his signature to the stipulation when I receive it.

Please file the enclosure. Please date stamp the extra face page of the stipulation and return it to me in the enclosed self-addressed stamped envelope. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

DAG: mw

Enclosures

cc/enc: Brian Donahoe Richard Coit

Bill Heaston | Karen Cremer

## OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF
SIOUX FALLS CABLE TELEVISION FOR A
CERTIFICATE OF AUTHORITY TO PROVIDE
TELECOMMUNICATIONS SERVICES.
INCLUDING LOCAL EXCHANGE SERVICES, IN
SOUTH DAKOTA

ORDER GRANTING
CERTIFICATE OF
AUTHORITY

TC98-148

On August 27, 1998, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from Sioux Falls Cable Television (SFCT)

SFCT proposes to initially offer voice messaging and data transmission services and thereafter an increasing variety of telecommunications services. Initially, services will be provided in Sioux Falls, Crooks, Renner and Mitcheli. A proposed tariff was filed by SFCT.

On September 3, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 18, 1998, to interested individuals and entities. Intervention in this docket was granted to Baltic, SDITC, DTG, and DTI. At its March 30, 1999, meeting, the Commission considered SFCT's request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to rural safeguards. A stipulation was filed with the Commission on March 29, 1999, thus the hearing scheduled for April 8 and 9, 1999, is cancelled.

The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and 49-31-69 and ARSD 20.10.24.02, 20.10.24.03 and 20:10:32:03. The Commission finds that SFCT has met the legal requirements established for the granting of a certificate of authority. SFCT has, in accordance with SDCL 49-31-3 and 49-31-71, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota.

The Commission approves SFCTs application for a certificate of authority, subject to rural safeguards. The certificate of authority for SFCT shall authorize it to offer local exchange services in those areas in South Dakota where U.S. WEST Communications, Inc. is the incumbent local exchange carrier. In the future, should SFCT choose to provide local exchange services statewide, with respect to rural telephone companies, SFCT will have to come before the Commission in another-proceeding before being able to provide local service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f). It is therefore

ORDERED, that SFCT's application for a Certificate of Authority to provide telecommunications services, including local exchange services, is granted; and it is

FURTHER ORDERED, that SFCT shall file informational copies of tariff changes with the Commission as the changes occur, and it is

FURTHER ORDERED, that the Commission shall authorize SFCT to offer its local exchange services in those areas in South Dakota where U 3 WEST Communications, Inc. is the incumbent local exchange carrier.

Dated at Pierre, South Dakota, this \_\_\_\_\_ day o April, 1999.

# CERTIFICATE OF SERVICE The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges

prepaid thereon.

11 100

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

JAMES A BURG, Chairman

PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissione

# SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

#### CERTIFICATE OF AUTHORITY

To Conduct Business As A Telecommunications Company
Within The State Of South Dakota

Authority was Granted March 30, 1999 Docket No. TC98-148

This is to certify that

#### SIOUX FALLS CABLE TELEVISION

is authorized to provide telecommunications services in South Dakota.

This certificate is issued in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, and is subject to all of the conditions and limitations contained in the rules and statutes governing its conduct of offering telecommunications services.

Dated at Pierre. South Dakota, this \_\_ist\_\_day of (i.pril\_\_, 1999.

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION:

ANDS A BURG Chairman

PAM NELSON Commissioner

LASKA SCHOENFELDER, Commissioner

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RECEIVED

Bill Bullard, Executive Secretary South Dakota Public Utilities Commission State Capitol 500 East Capitol Avenue Pierre, South Dakota 57501-5070

S HERH DAKOTA PUBLIC

TILL TIES COMMISSION

RE: SIOUX FALLS CABLE; APPLICATION FOR CERTIFICATE OF AUTHORITY

Docket TC98-148 Our file: 2442

Dear Bill:

Enclosed is the stipulation on application for certificate of authority signed on behalf of counsel for haltic Telecom. You will recall that I had filed a version of the stipulation earlier bearing Mr. Donahoe's letter indicating he had authority to sign the stipulation. Because of his unavailability, I was not able to get his actual signature on the certificate of authority in time for the Commission's meeting on March 30.

Please file the enclosure. I am not providing multiple copies of the stipulation, since the earlier version has already been filed, and since the Commission has already acted. However, I believe that the enclosure should be filed so that the record is complete.

I am sending a copy of the enclosure to coinsel of record.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:

DAG:mw Enclosure

cc/enc: Brian Donahoe

Richard Coit Bill Heaston Karen Cremer I put therefree superture properture propertures the stipulation with the stipulation containing the other supertures sk