

IGU4-U34

K4/K5
RW/JS

TC04-034

DOCKET NO. _____

In the Matter of IN THE MATTER OF THE REQUEST
FOR A CONFIDENTIALITY
DETERMINATION IN ACCORDANCE
WITH ARSD 20:10:01:42

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
2/18 04	Filed and docketed;
2/19 04	Weekly Filings;
2/25 04	Amended Motion for Order Permitting Release of Information ^{Confidential;}
12/10 04	Order Dismissing Staff's Request for a Confidentiality Determination and ^{Closing Docket.}
12/10 04	Docket Closed.



Bob Sahr, Chair
Gary Hanson, Vice-Chair
Jim Burg, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.state.sd.us/puc

TC04-034

Capitol Office
(605) 773-3201
(605) 773-3809 fax

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(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

February 17, 2004

South Dakota Public Utilities Commission
Attn: Pamela Bonrud
500 East Capitol Ave.
Pierre, SD 57501-5070

RECEIVED

FEB 18 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

RE: Request for Confidentiality Determination in Accordance with ARSD 20:10:01:42

Dear Ms. Bonrud,

Pursuant to ARSD 20:10:01:42, I am requesting that the Commission make a determination as to the confidentiality of information filed by S&S Communications (S&S). This request pertains to any and all information possessed by the Commission which S&S claims to be confidential. ARSD 20:10:01:43(2) states that upon receipt of this request, the Commission "may establish a procedural schedule for the purpose of determining confidentiality." This permissive language, in Staff's opinion, means that the Commission is not bound to set a procedural schedule and may make a determination without a hearing. Staff would request that the Commission not delay this request by scheduling a hearing. S&S has no Certificate of Authority and hence cannot meet the burden required under ARSD 20:10:01:42. Also, S&S failed to file the information in accordance with ARSD 20:10:01:41. A Motion For Order Permitting Release of Information Filed As Confidential is attached to this request.

Thank you for your consideration of my request.

Sincerely,

Kelly D. Prazier
Staff Attorney

Cc: Tom Sannes, Attorney for S&S

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

FEB 18 2004

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF S&S
COMMUNICATIONS/ALTERNA-
CELL'S COMPLIANCE WITH
COMMISSION ORDER

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TC02-166

MOTION FOR ORDER
PERMITTING RELEASE
OF INFORMATION FILED
AS CONFIDENTIAL

Comes now Kelly D. Frazier, Staff Attorney for the South Dakota Public Utilities Commission (Commission) pursuant to ARSD 20:10:01:43 and hereby MOTIONS the Commission for an Order Permitting Release Of Information Filed as Confidential. In support of this Motion, staff states as follows:

1. Since the failure of S&S Communications (S&S), staff has been attempting to secure bond proceeds from the various bonding companies that posted bonds for S&S.
2. Bond No. 40030524, in the amount of \$75,000, was paid in full by Platte River Bonding Company and was placed in a local bank account in Pierre, South Dakota.
3. On or about September 8, 2000, S&S filed bond number 0000601311 from Allied Insurance (Allied) with the Commission in the amount of \$50,000. The bond states an effective date of September 6, 2000. The Commission received a Notice of Bond Cancellation from Allied on June 25, 2001. No money has been received under this bond.
4. On or about June 21, 2001, S&S filed bond BD 7900599886 from Allied with Commission in the amount of \$75,000. The bond states an effective date of June 20, 2001. On September 27, 2001 the Commission received a Notice of Bond Cancellation from Allied, with an effective cancellation date of October 30, 2001. No money has been received under this bond.
5. On November 13, 2001, S&S filed bond number SA3162690 from Star Insurance Company (Star) with the Commission. The bond is in the amount of \$75,000 and states an effective date of October 30, 2001. To date the Commission has received no notice canceling this bond. No money has been received under this bond.
6. S&S Communications has agreed to permit the Commission to release information filed by S&S as confidential to Allied and Star if the companies agreed to sign a confidentiality agreement limiting their release of that information. A copy of the Agreement signed by S&S is attached as Exhibit A. A copy of the Confidentiality Agreement S&S requested the bonding companies to sign is attached as Exhibit B.
7. Star and Allied have both refused to respond to staff's repeated requests that they sign the confidentiality agreement.
8. Star, through its administrator Forcon International, has submitted a copy of an Indemnity Agreement signed by Les Sumption on behalf of S&S.

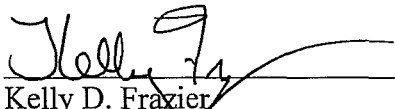
9. Paragraph five of the Indemnity Agreement states that Star, as the Surety, is permitted "to conduct such investigations of Indemnitors including the examination of assets, books, records and credit history as the SURETY deems appropriate." A copy of the Indemnity Agreement is attached as Exhibit C.
10. Allied has submitted a Continuing General Contract of Indemnity signed by Les Sumption on behalf of S&S.
11. The Sixth clause of this Agreement is a "Right To Information" clause which gives the company the right to "(at) any time...shall have the right to reasonable access to the books, records and accounts of the Indemnitors...." A copy of the Indemnity Agreement is attached as Exhibit D.
12. Until such time as the bonding companies have actual proof of the claims against the bonds, it is Staff's position that we cannot reasonably expect the bonding companies to release the bond proceeds.

WHEREFORE, Staff hereby Motions the Commission to issue an ORDER permitting the release of information filed as confidential on the following basis:

1. The information which S&S claims was filed as confidential was not filed in compliance with the provisions of ARSD 20:10:01:41.
2. The Certificate of Authority of S&S has been revoked by the Commission and the company cannot prove by a preponderance of the evidence that disclosure would result in material damage to its financial or competitive position, reveal a trade secret, or impair the public interest per ARSD 20:10:01:43.
3. S&S has entered into separate Agreements with both bonding companies granting them the right to access to the information.
4. The bonding companies cannot reasonably be expected to pay out on claims that they have not seen and release of the information is essential in our service to the public interest and the purposes for which the bonds were posted.

WHEREFORE, Staff requests the Commission issue an Order declaring that S&S has not procedurally or substantively met the burden required to secure the confidential treatment of information they seek.

Signed and dated this 17th day of February, 2004.



Kelly D. Frazier
Staff Attorney

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF S&S
COMMUNICATIONS/ALTERNA-
CELL'S COMPLIANCE WITH
COMMISSION ORDER

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
TC02-166

CONSENT TO LIMITED
RELEASE OF
CONFIDENTIAL FILINGS

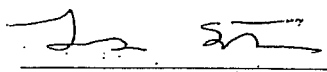
S&S Communications (S&S), by and through the undersigned, hereby consents to the limited release of confidential information filed by S&S with the South Dakota Public Utilities Commission (Commission) under the following terms and conditions:

1. The release of information shall be solely for the purpose of securing bond and letter of credit proceeds. The information released shall be limited as follows:

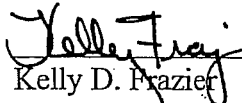
The information to be released can be found in Exhibit S22 from the revocation hearing. S22 was developed from two exhibits, also provided at the hearing: 1) Exhibit S19 and 2) approximately 50 customers from Exhibit S13.

2. The information released to each company shall relate only to the information necessary to establish claims upon the bonding or letter of credit sought and shall in no event contain information not relevant to the claims on the particular funds being sought.
3. Each company shall sign a "CONFIDENTIALITY AGREEMENT" before the receipt of confidential filings. A copy of this Agreement is attached to this CONSENT TO LIMITED RELEASE OF CONFIDENTIAL FILINGS, and is hereby incorporated by reference.

Signed and dated this 18th day of OCT, 2003.



Les Sumption
On Behalf of S&S Communications

 10/8/03

Kelly D. Frazier DATE
On Behalf of Commission Staff



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

**IN THE MATTER OF S&S
COMMUNICATIONS/ALTERNA-
CELL'S COMPLIANCE WITH
COMMISSION ORDER**

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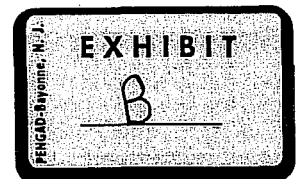
**TC02-166
CONFIDENTIALITY
AGREEMENT**

The undersigned, on behalf of **(BOND COMPANY)**, **(Recipient)** hereby agrees to the following upon the release and receipt of confidential information filed by S&S Communications with the South Dakota Public Utilities Commission:

The Recipient shall prevent any unauthorized disclosure or publication of the confidential filings of S&S Communications with the South Dakota Public Utilities Commission, to maintain the disclosed information as confidential, and shall not disclose the information obtained to any third party, or reproduce the disclosed information in whole or in part. The Recipient undertakes to make any employees, agents, advisors and family members of the recipient aware of and comply to like extent with the obligations on the part of the recipient contained in this Agreement.

Signed and dated this _____ day of _____, 2003.

NAME:
POSITION:



ALL SURETIES INCLUDING INDEMNITY AGREEMENT Connecticut Group Companies (Read Carefully)

In this agreement of the SURETY issuing a bond as requested, the INDEMNITORS, both jointly and severally agree:

1. To promptly pay the bond premiums as they become due, including renewal premiums, until proof satisfactory to the SURETY is furnished of its discharge from liability.
2. To indemnify and hold harmless the SURETY from all loss and expense of whatever kind, including but not limited to, cost of investigation, court costs and attorneys fees (Loss) resulting from the issuance by SURETY of a bond or the enforcement of this Agreement.
3. To deposit with the SURETY such funds as the SURETY, in its sole discretion, deems appropriate to discharge any claim made against the SURETY on any Bond regardless of whether the SURETY as collateral security against loss or expense on any Bond.
4. To regard the loss as proven when the SURETY provides documentation indicative of payment, including but not limited to copies of claim drafts or checks.
5. To permit the SURETY to conduct such investigations of Indemnitors including the examination of assets, books, records and credit history as the SURETY deems appropriate.
6. That the SURETY has no obligation to issue any Bonds at any time and may seek release from any Bond at any time without consequence.
7. That this Agreement shall inure to the benefit of the SURETY'S co-sureties and reinsurers.
8. That the validity of this Agreement shall not be impaired by, the SURETY shall incur no liability on account of, and the INDEMNITORS need not be notified of: (a) The SURETY issuing the Bond and any renewals thereof. (b) The SURETY'S consent or its failure to consent to changes in the terms, provisions, and/or other obligations of the Bond or the obligations secured by the Bond. (c) The taking, failing to take or releasing of security, collateral and/or assignments (d) The release by the SURETY of the INDEMNITORS or any one of them. (e) Any information which may come to the attention of the SURETY which may affect its rights and liabilities and/or those of the INDEMNITORS or any one of them.

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO FRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR BONDS CONTAINING ANY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

WE HAVE READ THIS INDEMNITY AGREEMENT CAREFULLY AND CONSULTED AN ATTORNEY TO THE EXTENT WE BELIEVED NECESSARY, THERE ARE NO SEPARATE AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY MANNER LESSEN OUR OBLIGATIONS DESCRIBED HEREIN.

WITNESS: The following signature(s) and seals(s) this 30th day of October, 2001

SIGNATURE OF APPLICANT FOR BOND

If sole proprietorship, owner should sign; if Partnership, all partners & spouses must sign, if a corporation, president must sign, with signature attested by corporate secretary under corporate seal; all individual applicants should sign.

S & S Communications
FIRM NAME

[Signature]
SIGNATURE

X hes Sumption
PRINT NAME & TITLE

X [Signature]
Attest Corp Sig

in consideration of the execution by SURETY of the bond herein applied for, the undersigned, jointly and severally, join in the foregoing indemnity agreement

PREMIUMS FULLY EARNED UPON ISSUANCE

SIGNATURE OF PERSONAL INDEMNITORS

Less Sumption
PRINT NAME OR NAMES

X [Signature]
INDEMNITORS SIGNATURE

X Brenda Sumption
SPOUSE'S SIGNATURE

Matt Swearingen
PRINT NAME OR NAMES

X [Signature]
INDEMNITORS SIGNATURE

X [Signature]
SPOUSE'S SIGNATURE

PLEASE SIGN IN BOTH PLACES ONCE FOR THE FIRM
ONCE AS INDIVIDUAL INDEMNITOR





**Allied
Insurance**

a member of Nationwide Insurance

Bond Department
Nationwide Mutual Insurance Company
Nationwide Property and Casualty Insurance Company
Amco Insurance Company
701 5th Avenue Department 2006
Des Moines, IA 50391-2006

Continuing General Contract of Indemnity

THIS GENERAL CONTRACT OF INDEMNITY, made and entered into this 20th day of June, 2001, by S & S Communications
(Insert full names and addresses of Indemnitors)

Les Sumption

(hereinafter called the "Indemnitors") and any one of or a combination of NATIONWIDE MUTUAL INSURANCE COMPANY, AMCO INSURANCE COMPANY, and/or NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY, DES MOINES, IOWA (hereinafter referred to individually or collectively as "Surety").

WITNESSETH:

WHEREAS, in the transaction of business from time to time, one or more of the Indemnitors may request the Surety to furnish instruments of suretyship (hereinafter referred to as "Bond" or "Bonds"); and

WHEREAS, each of the Indemnitors have a substantial, material, and beneficial interest in the obtaining of such Bonds or in the Surety's refraining from cancelling said Bonds.

NOW, THEREFORE, in consideration of the foregoing premises and of the covenants set forth herein, the Indemnitors for themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, hereby covenant and agree with the Surety, its successors and assigns, as follows:

PREMIUMS

FIRST: The Indemnitors will pay to the Surety in such manner as may be agreed upon all premiums and charges of the Surety for the Bonds in accordance with its rate filings, its manual of rates, or as otherwise agreed upon, until the Indemnitors shall serve evidence satisfactory to the Surety of its discharge or release from the Bonds and all liability by reason thereof.

INDEMNITY

SECOND: The Indemnitors shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interest, court costs, and attorney fees and expenses) which the Surety may sustain and incur:

- (a) by reason of having executed or procured the execution of the Bonds,
- (b) by reason of the failure of the Indemnitors to perform or comply with the covenants and conditions of this Agreement, or
- (c) in enforcing any of the covenants and conditions of this Agreement.

Payment by reason of the aforesaid causes shall be made to the Surety by the Indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefor. Such payment to the Surety by the Indemnitors shall be in an amount as determined by the Surety.

In the event of any payment by the Surety, the Indemnitors further agree that in any accounting between the Surety and the Indemnitors, the Surety shall be entitled to charge for any and all disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be prima facie evidence of the fact and amount of the liability to the Surety.

The Surety shall have the right to adjust, settle, or compromise any claim demand, suit, or judgment upon the Bonds, and any such payment or compromise shall be binding upon the Indemnitors and be included as a liability, loss, or expense covered by this Indemnity.

If the Indemnitors request the Surety to litigate such claim or demand, or to defend such suit, or to appeal from such judgment, the Indemnitors shall (a) give notice to the Surety to this effect, and (b) simultaneously deposit with the Surety cash or collateral satisfactory to the Surety in kind and amount, to be used in paying any judgment or judgments rendered, or that may be rendered, with interest, costs, expenses, and attorneys' fees and expenses, including those of Surety.

JOINT AND SEVERAL

THIRD: The obligations of the Indemnitors shall be joint and several. In addition, this Agreement shall be binding on the Indemnitors and their respective heirs, executors, administrators, successors, and assigns; and the same shall inure to the benefit of Surety, its successors and assigns.



DISCHARGE FROM SURETYSHIP

NINETEENTH: The Indemnitors will, at any time upon the request of the Surety, procure the discharge of the Surety from any Bond and from all liability by reason thereof and will furnish the Surety with satisfactory and conclusive evidence that there is no further liability under any Bond. The Surety may, at any time, take such action as it deems necessary or proper to obtain its release from any and all liability under any Bond. Upon such discharge or release, the Surety shall return to the Indemnitor named as principal on the Bond any portion of any premium paid which is unearned as a result of such discharge or release.

REPRESENTATIONS

TWENTIETH: THE UNDERSIGNED REPRESENT TO THE SURETY THAT THEY HAVE CAREFULLY READ THE ENTIRE AGREEMENT AND THAT THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH, IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

IMPORTANT: The Signature of each and every party to this Agreement must be attested to or witnessed by another individual.

S & S Communications _____
(Corporate name)

By [Signature] _____ (Seal)
Les Sumption (Print or Type Name and Title
Below Signature)

(Corporate name)

By _____ (Seal)
(Print or Type Name and Title
Below Signature)

(Corporate name)

By _____ (Seal)
(Print or Type Name and Title
Below Signature)

(Corporate name)

By _____ (Seal)
(Print or Type Name and Title
Below Signature)

(Corporate name)

By _____ (Seal)
(Print or Type Name and Title
Below Signature)

(Corporate name)

By _____ (Seal)
(Print or Type Name and Title
Below Signature)

Attest [Signature] _____
(Print or Type Name and Title
Below Signature) Secretary

Attest _____
(Print or Type Name and Title
Below Signature)

Attest _____
(Print or Type Name and Title
Below Signature)

Attest _____
(Print or Type Name and Title
Below Signature)

Attest _____
(Print or Type Name and Title
Below Signature)

Attest _____
(Print or Type Name and Title
Below Signature)

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of February 12, 2004 through February 18, 2004

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 report. Phone: 605-773-3201

ELECTRIC

EL04-005 In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions.

Application by Otter Tail Power Company (Otter Tail) for approval to revise its tariffed Summary List of Contracts with Deviations. The existing contract with the City of Milbank will expire on March 14, 2004. Otter Tail states the new agreement does not contain any deviations from Otter Tail's currently filed tariff and therefore requests that reference to a contract with the City of Milbank be removed from the Summary List of Contracts with Deviations.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Filed: 02/13/04
Intervention Deadline: 03/05/04

TELECOMMUNICATIONS

TC04-025 In the Matter of the Petition of Kennebec Telephone Company for Suspension or Modification of 47 U.S.C. Section 251(b)(2) of the Communications Act of 1934 as Amended.

On February 12, 2004, Kennebec Telephone Company (Kennebec) filed a petition seeking suspension or modification of its requirement to implement local number portability (LNP) pursuant to Section 251(b)(2) of the Telecommunications Act of 1996. According to Kennebec, it has received requests to deploy LNP from Cellco Partnership d/b/a Verizon Wireless and from Western Wireless Corporation d/b/a CellularOne. Kennebec states that it is a small telephone company that serves less than two percent of the nation's subscriber lines installed in the aggregate nationwide, therefore under Section 251(f)(2) Kennebec may petition the Commission for suspension or modification of its obligation to implement LNP within six months of a request to deploy LNP. Kennebec "requests the Commission to (1) issue an interim order that suspends any obligation that may exist for Kennebec to provide LNP until six months after entry of a final order herein; (2) issue a final order that grants a permanent suspension for Kennebec's obligation to implement LNP until conditions are met as described herein; and (3) grant Kennebec such other and further relief that may be proper."

Staff Analyst: Harlan Best
Staff Attorney: Karen Cremer
Date Filed: 02/12/04
Intervention Deadline: 03/05/04

TC04-026 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and 1-800-RECONEX, Inc.

On February 17, 2004, the Commission received a Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and 1-800-RECONEX, Inc. According to the parties, the Amendment is made in order to add UNE-P PAL language to the Agreement as outlined in the Amendment. The original Agreement was approved by the Commission in Docket

TC01-069 on July 27, 2001. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the agreement no later than March 8, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Filed: 02/17/04
Initial Comments Due: 03/08/04

TC04-027 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and Stockholm-Strandburg Telephone Company.

On February 17, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and Stockholm-Strandburg Telephone Company. According to the parties, the Agreement is a negotiated agreement between the parties for the purpose of putting in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the agreement no later than March 8, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Filed: 02/17/04
Initial Comments Due: 03/08/04

TC04-028 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and Western Telephone Company.

On February 17, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and Western Telephone Company. According to the parties, the Agreement is a negotiated agreement between the parties for the purpose of putting in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the agreement no later than March 8, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Filed: 02/17/04
Initial Comments Due: 03/08/04

TC04-029 In the Matter of the Application of Southwestern Bell Communications Services Inc. d/b/a SBC Long Distance for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

On February 18, 2004, Southwestern Bell Communications Services Inc. d/b/a SBC Long Distance filed an application for a Certificate of Authority to provide Telecommunications Services in South Dakota. Southwestern Bell Communications Services intends to provide resold and facilities-based local exchange and exchange access services throughout the area in the State of South Dakota currently served by Qwest Corporation. The applicant's services, include, but are not limited to basic local exchange service, custom calling features, CLASS services and data services. The applicant also proposes to provide exchange access services to interconnecting carriers.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Filed: 02/18/04
Intervention Deadline: 03/05/04

TC04-030 In the Matter of Qwest Corporation's Modification to Exhibit B to the Statement of Generally Available Terms and Conditions.

On February 18, 2004, Qwest Corporation filed an Updated Exhibit B, the Performance Indicator Definitions (PIDs) to the Statement of Generally Available Terms and Conditions (SGAT). Qwest modified Exhibit B for administrative changes, corrected PO-16, Timely Release Notifications, and updated certain subparts to GA-1, Gateway Availability -- IMA-GUI. Qwest requests that the Commission permit the amended Exhibit B to go into effect no longer than 60 days after submission in accordance with 47 U.S.C. Section 252(f)(3). Qwest further requests that the Commission deem this revised Exhibit B to modify the SGAT and existing interconnection agreements that currently contain the PIDs as an exhibit.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Filed: 02/18/04
Intervention Deadline: 03/05/04

TC04-031 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and West River Telecommunications Cooperative.

On February 18, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC (Western Wireless) and West River Telecommunications Cooperative. According to the parties, the Agreement is a negotiated agreement between the parties for the purpose of putting in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the agreement no later than March 9, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Filed: 02/18/04
Initial Comments Due: 03/09/04

TC04-032 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and Cheyenne River Sioux Tribe Telephone Authority.

On February 18, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and Cheyenne River Sioux Tribe Telephone Authority. According to the parties, the Agreement is a negotiated agreement between the parties for the purpose of putting in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the agreement no later than March 9, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Filed: 02/18/04
Initial Comments Due: 03/09/04

TC04-033 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and Venture Communications Cooperative.

On February 18, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License, LLC and Venture Communications Cooperative. According to the parties, the Agreement is a negotiated agreement between the parties for the purpose of putting in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the agreement no later than March 9, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Filed: 02/18/04
Initial Comments Due: 03/09/04

TC04-034 In the Matter of the Request for a Confidentiality Determination in Accordance with ARSD 20:10:01:42.

On February 18, 2004, the Commission received a request from staff for a confidentiality determination in accordance with ARSD 20:10:01:42. According to the request, staff is attempting to make claims on the bond proceeds of S&S Communications (S&S). In order to make these claims, staff must provide information to the bonding companies which has been filed as confidential. S&S refuses to permit the release of information filed as confidential to any bonding company that does not sign a confidentiality agreement. The companies have provided staff with Indemnity Agreements signed by S&S which they claim gives them a right to see the information. Neither company has signed the confidentiality agreement. Staff has requested that the Commission make a determination that the information should not be treated as confidential on the basis that the information was not filed in compliance with the provisions of ARSD 20:10:01:41, S&S cannot meet the burden established in ARSD 20:10:01:43 and that the Indemnity Agreements that S&S signed with the bonding companies constitute a waiver of confidentiality as to those companies.

Staff Attorney: Kelly Frazier
Date Filed: 02/18/04

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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FEB 25 2004

IN THE MATTER OF THE
REQUEST FOR CONFIDENTIALITY
DETERMINATION IN ACCORDANCE
WITH ARSD 20:10:01:42

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TC04-034 SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
AMENDED
MOTION FOR ORDER
PERMITTING RELEASE
OF INFORMATION FILED
AS CONFIDENTIAL

Kelly D. Frazier, Staff Attorney of the South Dakota Public Utilities Commission, hereby submits the following Amended Motion. This Amendment is made to correct two clerical errors in a Motion erroneously filed as "In The Matter of S&S Communications/Alterna-Cells's Compliance with Commission Order" under Docket TC02-166. The first amendments herein is made to state that the correct title of the action is "In the Matter of the Request for Confidentiality Determination in Accordance with ARSD 20:10:01:42." The second amendment is made to state that the correct Docket number is TC04-034. No other amendments have been made to the motion, which states as follows:

Comes now Kelly D. Frazier, Staff Attorney for the South Dakota Public Utilities Commission (Commission) pursuant to ARSD 20:10:01:43 and hereby MOTIONS the Commission for an Order Permitting Release Of Information Filed as Confidential. In support of this Motion, staff states as follows:

1. Since the failure of S&S Communications (S&S), staff has been attempting to secure bond proceeds from the various bonding companies that posted bonds for S&S.
2. Bond No. 40030524, in the amount of \$75,000, was paid in full by Platte River Bonding Company and was placed in a local bank account in Pierre, South Dakota.
3. On or about September 8, 2000, S&S filed bond number 0000601311 from Allied Insurance (Allied) with the Commission in the amount of \$50,000. The bond states an effective date of September 6, 2000. The Commission received a Notice of Bond Cancellation from Allied on June 25, 2001. No money has been received under this bond.
4. On or about June 21, 2001, S&S filed bond BD 7900599886 from Allied with Commission in the amount of \$75,000. The bond states an effective date of June 20, 2001. On September 27, 2001 the Commission received a Notice of Bond Cancellation from Allied, with an effective cancellation date of October 30, 2001. No money has been received under this bond.
5. On November 13, 2001, S&S filed bond number SA3162690 from Star Insurance Company (Star) with the Commission. The bond is in the amount of \$75,000 and states an effective date of October 30, 2001. To date the Commission has received no notice canceling this bond. No money has been received under this bond.
6. S&S Communications has agreed to permit the Commission to release information filed by S&S as confidential to Allied and Star if the companies agreed to sign a confidentiality agreement limiting their release of that information. A copy of the Agreement signed by S&S is attached as Exhibit A. A copy of the Confidentiality Agreement S&S requested the bonding companies to sign is attached as Exhibit B.

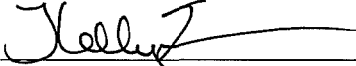
7. Star and Allied have both refused to respond to staff's repeated requests that they sign the confidentiality agreement.
8. Star, through its administrator Forcon International, has submitted a copy of an Indemnity Agreement signed by Les Sumption on behalf of S&S.
9. Paragraph five of the Indemnity Agreement states that Star, as the Surety, is permitted "to conduct such investigations of Indemnitors including the examination of assets, books, records and credit history as the SURETY deems appropriate." A copy of the Indemnity Agreement is attached as Exhibit C.
10. Allied has submitted a Continuing General Contract of Indemnity signed by Les Sumption on behalf of S&S.
11. The Sixth clause of this Agreement is a "Right To Information" clause which gives the company the right to "(at) any time...shall have the right to reasonable access to the books, records and accounts of the Indemnitors...." A copy of the Indemnity Agreement is attached as Exhibit D.
12. Until such time as the bonding companies have actual proof of the claims against the bonds, it is Staff's position that we cannot reasonably expect the bonding companies to release the bond proceeds.

WHEREFORE, Staff hereby Motions the Commission to issue an ORDER permitting the release of information filed as confidential on the following basis:

1. The information which S&S claims was filed as confidential was not filed in compliance with the provisions of ARSD 20:10:01:41.
2. The Certificate of Authority of S&S has been revoked by the Commission and the company cannot prove by a preponderance of the evidence that disclosure would result in material damage to its financial or competitive position, reveal a trade secret, or impair the public interest per ARSD 20:10:01:43.
3. S&S has entered into separate Agreements with both bonding companies granting them the right to access to the information.
4. The bonding companies cannot reasonably be expected to pay out on claims that they have not seen and release of the information is essential in our service to the public interest and the purposes for which the bonds were posted.

WHEREFORE, Staff requests the Commission issue an Order declaring that S&S has not procedurally or substantively met the burden required to secure the confidential treatment of information they seek.

Signed and dated this 17th day of February, 2004.



Kelly D. Frazier
Staff Attorney

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REPLY TO: WEBSTER OFFICE

February 27, 2004

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VIA FACSIMILE AND FIRST CLASS MAIL

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

South Dakota Public Utilities Commission
ATTN: Kelly D. Frazier, Staff Attorney
500 East Capitol Avenue
Pierre, SD 57501-5070

FAX Received FEB 27 2004

Re: TC04-034 In the Matter of the Request for Confidentiality Determination in
Accordance with ARSD 20:10:01:42

Dear Kelly:

Per our phone conversation of February 27, 2004, my clients have authorized the release of information to the bonding companies in accordance with their request. It is our understanding this information which was filed as "confidential" will only be released to the bonding companies. It is also our understanding that by our agreement to release this information, it will not be necessary to conduct the hearing before the Commission on this issue.

Thank you for your time and prompt attention. If you have any questions, please contact me immediately so that I can make the necessary arrangements to appear before the Commission on Tuesday, March 2, 2004.

Sincerely,



DELANEY, VANDER LINDEN, DELANEY,
NIELSEN & SANNES

TLS/esh

cc: S & S Communications

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

IN THE MATTER OF THE REQUEST FOR A)	ORDER DISMISSING
CONFIDENTIALITY DETERMINATION IN)	STAFF'S REQUEST FOR A
ACCORDANCE WITH ARSD 20:10:01:42)	CONFIDENTIALITY
)	DETERMINATION AND
)	CLOSING DOCKET
)	TC04-034

On February 18, 2004, the Commission received a request from staff for a confidentiality determination in accordance with ARSD 20:10:01:42. According to the request, staff is attempting to make claims on the bond proceeds of S&S Communications (S&S). In order to make these claims, staff must provide information to the bonding companies which has been filed as confidential. S&S refuses to permit the release of information filed as confidential to any bonding company that does not sign a confidentiality agreement. The companies have provided staff with Indemnity Agreements signed by S&S which they claim gives them a right to see the information. Neither company has signed the confidentiality agreement. Staff has requested that the Commission make a determination that the information should not be treated as confidential on the basis that the information was not filed in compliance with the provisions of ARSD 20:10:01:41, S&S cannot meet the burden established in ARSD 20:10:01:43 and that the Indemnity Agreements that S&S signed with the bonding companies constitute a waiver of confidentiality as to those companies.

The Commission has jurisdiction over this matter pursuant to ARSD 20:10:01:42.

At a regularly scheduled November 30, 2004, meeting, the Commission considered this matter. The Commission voted unanimously to dismiss staff's request for a confidentiality determination and to close the docket. It is therefore

ORDERED, that staff's request for a confidentiality determination is dismissed and the docket shall be closed.

Dated at Pierre, South Dakota, this 10th day of December, 2004.

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: <u>Melaine Halbo</u>
Date: <u>12/13/04</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner