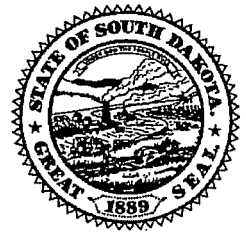




**BUREAU OF ADMINISTRATION
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September 26, 2006

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A motion hearing was held in the above entitled matter on September 19, 2006. Paul Schudel and James Overcash appeared on behalf of the independent telephone companies hereinafter referred to as "Golden West". Talbot Wiczorek and Stephen Rowell appeared on behalf of Western Wireless License, LLC (hereinafter sometimes referred to as "Western Wireless"). Richard Coit appeared on behalf of the South Dakota Telecommunications Association (hereinafter sometimes referred to as "SDTA"). At that time argument was heard on numerous motions and response motions. These will be addressed as follows:

Post-it® Fax Note	7671	Date	9/26/06	# of pages	5
To	Rolayne Ailts	From	Hillary Brady		
Co./Dept	Kara Van Bockern	Co.	OHE		
Phone #		Phone #			
Fax #		Fax #			

1. Motion to Seek Order Requiring Payment for Interim Compensation brought by Golden West.

The parties agreed the motion would be settled by way of stipulation and the matter was not discussed at the hearing. The Stipulation is being prepared by counsel for Golden West and will be filed at a later date.

2. Motion Seeking Immediate Order Admitting Evidence from CT05-001 Proceeding brought on by Golden West.

This motion was withdrawn by Golden West and was not discussed at the hearing.

3. Motion to Dismiss Certain Issues Raised by Western Wireless brought on by Golden West.

Granted.

Golden West alleges that certain sub issues set forth in Western Wireless' Response to Petition were not the subject of negotiation between the parties and as such they cannot be considered open issues which are appropriate for arbitration. Those issues as stated in their Motion to Dismiss Certain Issues Raised by Western Wireless were as follows: New Sub-issue to Issue 1, New sub-issue to Issue 2, Issue 6, Issue 13, Issue 14 and Issue 15 and the attachment of a draft interconnection agreement provided by Western Wireless in their Response. Several of the issues were resolved between or at the discretion of the parties as follows:

Issue 15 is moot and has been withdrawn as Golden West neither owns nor operates any selective routers.

Western Wireless withdrew its Issue sub 1 with respect to establishing its own cost based rate.

Western Wireless withdrew its Issue 14 with respect to requiring Petitioners to provide resale of their resale service.

Therefore for purposes of the motion we are only dealing with New Sub-issue to Issue 2, Issue 6 and Issue 13 and the draft interconnection agreement.

Western Wireless notified Golden West Companies of their intent to terminate the existing interconnection agreements with the Golden West Companies effective December 31, 2005. Western Wireless requested that Golden West enter into negotiations with Western Wireless to establish a new interconnection agreement for the transport and termination of telecommunications traffic between the Golden West Companies and Western Wireless.

Golden West argues that the parties engaged in negotiations until May 3, 2006 when each of the Golden West Companies filed a separate Petition for Arbitration before the South Dakota Public Utilities Commission (hereinafter sometimes referred to as the "Commission"). These Petitions were filed in accordance with 47 U.S.C. § 252(b). Western Wireless, however, argues that there was no serious negotiation on anything as the parties were involved in other litigation and busy. Mr. Rowell indicated there was what he termed general discussions.

47 U.S.C. § 252(b)(1) allows parties to petition to "arbitrate any open issues". If an issue regarding an interconnection agreement was not raised during open negotiations then the issue is not an "open issue" and cannot be included in the arbitration proceeding. The statutory language is confirmed in the cases of *U.S. West Communications v. Minnesota Public Utilities Commission*, 55 F. Supp.2d 698 (D. Minn. 1999) and *Conserv Ltd. Liability Corp. v. Southwestern Bell Telephone Co.*, 350 F.3d 482 (5th Cir. 2003). Western Wireless presented no caselaw to the contrary.

Western Wireless cancelled the existing interconnection agreement with the intent of negotiating a new agreement for transport and termination of telecommunications traffic between Golden West Companies and Western Wireless. A proposed interconnection agreement (copy attached to Petitions) was transmitted to Western Wireless on February 23, 2006. Furthermore, the e-mail exhibits attached to Golden West's Memorandum in Opposition to Western Wireless Motion to Dismiss would indicate that there was on-going negotiation and what the scope of that was. Finally, Western Wireless admits in their Admission 2 (Ex.D) that the draft Interconnection and Reciprocal Compensation Agreement attached to their response was first provided to the Golden West Companies or any representative thereof on May 30, 2006 as an attachment to their Response.

Based on the above, this examiner grants the motion and dismisses New Sub-Issue to Issue 2, Issue 6, Issue 13 and the interconnection agreement attached to the Response as Ex. 1 for the reason that each is not an open issue to submitted pursuant to 47 U.S.C. § 252(b).

4. Motion to Dismiss Arbitration Petition brought on by Western Wireless.

Denied (see discussion in number 3 above)

5. Motion to Compel Discovery brought on by Western Wireless.

Denied (see discussion in number 6 below)

6. Motion to Strike Motion to Compel brought on by Golden West.

Granted

While this examiner has only been assigned this matter since August 28, 2006, the Petitions for Arbitration have been in place since May 3, 2006. The matter was scheduled for hearing and then was transferred to the Office of Hearing Examiners. The Commission granted a Motion by Golden West to suspend the procedural calendar but refused to extend the final deadline. In their order of August 24 2006, the Commission provided an admonishment of sorts and warned the parties as follows:

At its August 8, 2006, meeting, the Commission considered the Motion to Suspend Procedural Schedule. WWC did not object to the motion but stated that it was not agreeing to suspend the deadline for the final decision. The Commission voted to grant the motion but noted that given the deadline for the final decision, the timelines for filing testimony and briefing would most likely need to be shortened giving the parties less time to file their testimony and less time to brief the issues following the hearing..

Clearly the parties were on notice that the matter would be resolved by the years end and that the ultimate end date of the case continued to approach whether the procedural schedule was in effect or not.

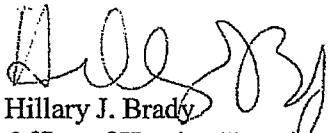
Western Wireless presented no complaints regarding discovery at that time. The Motion to Compel from Western Wireless was filed approximately four weeks after testimony in the original hearing

would have been heard, six weeks after the last exchange of discovery responses and five months since the FLEC study was provided. Furthermore, it would appear from the exhibits attached to Golden West's Memorandum in Support of Motion to Strike WWC License L.L.C.'s Motion to Compel that Golden West has been providing assistance with these discovery questions as recently as September 8, 2006.

The discovery concerns should have been addressed earlier in light of the instruction set forth by the Commission. The Motion to Strike the Motion to Compel is granted.

Counsel for Golden West is hereby ordered to prepare the Order and to prepare a final list of the issues which are to be presented at the hearing. Thank you in advance.

Sincerely,



Hillary J. Brady
Office of Hearing Examiners