



South Dakota Telecommunications Association  
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*Rural roots, global connections*

July 3, 2006

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Ms. Patty Van Gerpen, Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
State Capitol Building  
Pierre, South Dakota 57501

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: Dockets TC06-036 thru TC06-042, WWC License LLC "Request to Use  
Office of Hearing Examiners Pursuant to SDCL § 1-26-18.3"

Dear Ms. Van Gerpen:

The South Dakota Telecommunications Association ("SDTA") submits this letter to the Commission as its comments on the above referenced request of WWC License LLC ("WWC") filed in Dockets TC06-036 thru TC06-042 on or about June 19<sup>th</sup>.

SDTA has filed a Petition to Intervene in these docketed proceedings and although the Commission has not yet addressed that Petition, it is our understanding that the Petition will be acted upon soon, at the Commission's upcoming meeting on July 11<sup>th</sup>. These comments are submitted based on that understanding and based on at least an expectation that SDTA will ultimately be granted party status in these proceedings.

In regards to the above referenced request of WWC, SDTA files this letter to indicate its concurrence in the arguments presented by the Golden West Companies in their "Brief in Opposition to the Request" dated June 30, 2006.

Generally, SDTA believes that the Request of WWC should be denied because the provisions of SDCL § 1-26-18.3, cited by WWC in support of its Request, do not appear applicable to cases before this Commission, including the pending arbitration cases. It is our belief that the provisions of SDCL § 1-26-18.3 must not be read in a vacuum. Other state statutory provisions, specifically those found in SDCL §§ 1-16-D-4 and 1-26D-11, suggest that the provisions of SDCL § 1-26-18.3, allowing for the request of a "hearing examiner," only apply to contested cases that arise under Titles 10 and 58 of the State Code (Taxation and Insurance), or only to those situations where an agency "not covered by this chapter" [Chapter 1-26D] has "contracted with the Office of Hearing Examiners" to conduct hearings of its contested cases.

It is SDTA's understanding that the Commission does not at this time have any contract in place with the Office of Hearing Examiners to take any action on cases arising under

this Commission's established regulatory jurisdiction. This being the case, to this point, the Commission has not taken any action that would legally delegate or authorize the Office of Hearing Examiners to hold hearings on interconnection agreement disputes.

Too the contrary, this Commission adopted administrative rules in 1998 addressing "Local Exchange Service Competition" (ARSD Chapter 20:10:32). These rules include provisions addressing the resolution of local interconnection disputes through mediation and/or arbitration, and also address the interconnection agreement approval process (see ARSD §§ 20:10:32:20 thru 20:10:32:36). In the process of reviewing the rule proposals which led to the current local service competition rules, to our recollection, issues as to what entity should conduct any necessary arbitration proceedings -- whether it should be this Commission or some other separate arbitrating entity -- were specifically addressed. Rather than designating some separate entity for such matters, however, the Commission concluded that it should on its own arbitrate interconnection disputes, and that it should also act as the entity approving filed interconnection agreements pursuant to 47 U.S.C. § 252(e). The Commission, thus, has previously rejected proposals for a separate arbitrating entity and the existing administrative rules found in ARSD Chapter 20:10:32 reflect this decision. ARSD § 20:10:32:29 addressing the "Petition for Arbitration" states that "[a]ny party to negotiations requested pursuant to SDCL 49-31-81 may petition the commission to arbitrate any unresolved issues." [*Emphasis added*]. Similar language is contained in ARSD § 20:10:32:24, the rule addressing a "Request for Mediation." It states that "[a] party may request mediation by the commission at any point during negotiations held pursuant to SDCL § 49-31-81." [*Emphasis added*].

It is SDTA's view that even if the Commission at this time decided it should take a different approach and delegate the arbitration function to some other, separate entity, it would first be necessary to change the existing administrative rules. The rules, as current in effect, clearly indicate that this Commission will preside over arbitration proceedings. The Commission has consistently followed this approach on all arbitration petitions filed to date and it should continue to do so for the current arbitration cases involving the Golden West Companies.

Not only must the provisions found in SDCL Chapter 1-26D be considered in interpreting SDCL 1-26-18.3, cited in WWC's Request, there are other relevant statutes that expressly confer the authority to resolve interconnection disputes, through either mediation or arbitration, to this Commission. The federal Communications Act expressly provides that parties involved in negotiations for an interconnection agreement may ask "a State Commission" to mediate or "a State Commission" to arbitrate any open issues. (See 47 U.S.C. §§ 252(a)(2) and 252(b)(1)). "State Commission" is defined under 47 U.S.C. § 153(41) as "the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to the intrastate operations of carriers." [*Emphasis added*].

In South Dakota, this Commission, not the "Office of Hearing Examiners" is the entity that is vested with regulatory jurisdiction and authority over telecommunications carriers, including wireless and wireline carriers. The provisions of SDCL §§ 49-31-79, 49-31-80

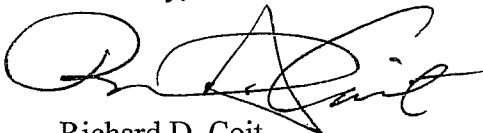
and 49-31-81, specifically address matters related to interconnection” between incumbent and competitive carriers and charge this Commission, not the “Office of Hearing Examiners,” with the responsibility to implement and comply with the “federal Telecommunications Act of 1996.”

SDTA is opposed to any decision of this Commission that would effectively dilute or divest the Commission of its ability to review and make decisions on carrier interconnection issues. This Commission is the entity charged under the federal and state statutes to make such decisions and has the regulatory experience necessary to appropriately address the complex issues that typically presented in such cases. It appears that the filing by WWC may be an attempt to circumvent the Commission’s established authority and, accordingly, SDTA opposes the request.

For all of the reasons stated in the Brief of the Golden West Companies and for all of the reasons specifically commented on herein, SDTA urges the Commission to deny WWC’s request.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Coit", written over a horizontal line.

Richard D. Coit  
Executive Director and General Counsel  
SDTA

CC: Talbot Wiczorek  
Stephen B. Rowell  
Meredith A. Moore  
Paul M. Schudel