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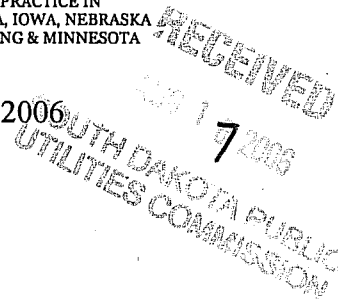
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August 16, 2006



NEXT DAY DELIVERY

Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre SD 57501-5070

RE: Alltel Communications and its wholly owned subsidiary WWC License, LLC –
Arbitration consolidation
SDPUC Docket File Numbers TC 06-036 thru TC 06-042
GPGN File No. 5925.060285

Dear Ms. Van Gerpen:

Enclosed for filing please find WWC's Resistance to Application for Reconsideration of the July 11, 2006 Decision of the Public Utilities Commission Granting the Request of WWC License, LLC to Use the Office of Hearing Examiners. I have enclosed the original plus ten copies.

By copy of same, all counsel have been served electronically and by U.S. Mail.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Talbot J. Wiczorek".

Talbot J. Wiczorek

TJW: klw
Enclosure

c: Meredith Moore via email
Paul Schudel via email
Sara Greff via email
Kara Vanbockern via email
Rich Coit via email
Clients

RECEIVED
AUG 16 2006
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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

Petition of Armour Independent Telephone Company of)	Docket Nos.
Hartford, Bridgewater-Canistota Telephone Company)	
of Hartford, Golden West Telecommunications)	TC06-036
Cooperative, Inc., Kadoka Telephone Company, Sioux)	TC06-037
Valley Telephone Company, Union Telephone)	TC06-038
Company of Hartford, and Vivian Telephone Company)	TC06-039
of Hartford (Collectively the "Golden West)	TC06-040
Companies") for arbitration to resolve issues relating to)	TC06-041
interconnection agreements with WWC License L.L.C.)	TC06-042

**RESISTANCE TO APPLICATION FOR RECONSIDERATION OF THE JULY 11, 2006
DECISION OF THE PUBLIC UTILITIES COMMISSION GRANTING THE REQUEST
OF WWC LICENSE, L.L.C. TO USE THE OFFICE OF HEARING EXAMINERS**

WWC License L.L.C., (hereinafter "WWC") by and through its attorneys of record, Talbot J. Wiczorek of Gunderson, Palmer, Goodsell & Nelson, LLP and Stephen B. Rowell of Alltel Communications, Inc., hereby file this Resistance to Application for Reconsideration of the July 11, 2006 Decision of the Public Utilities Commission Granting the Request of WWC License, L.L.C. to Use the Office of Hearing Examiners.

As a preliminary matter, WWC hereby incorporates the arguments and authorities set forth in its Response to Golden West Companies' Opposition to WWC's Request to Use The Office of Hearing Examiners.

DISCUSSION

A.R.S.D. 20:10:01:29 through 20:10:01:30.02 sets forth this Commission's rules on motions for reconsideration. The Golden West companies do not claim in their application any newly discovered evidence or facts or circumstances that warrant a reconsideration. Essentially, the Golden West companies simply regurgitate the same legal arguments previously submitted and rejected by this Commission.

Reconsideration of the Commission's decision is unnecessary because the Golden West Companies have failed to present an argument that would warrant such action. A review of the pertinent state and federal statutes demonstrates that there is no conflict between the same. Specifically, the United States Congress delegated to state utilities commissions, when they exist, the authority to, "arbitrate any open issues." 47 U.S.C. § 252(b)(1). While the United States Congress delegated this authority, it did not specify the procedural mechanisms that must be employed to perform the necessary functions.

In conformance therewith, the South Dakota Legislature delegated the responsibility to this Commission to implement and comply with the requirements of the Telecommunications Act. S.D.C.L. § 49-31-81. To that end, the legislature stated, "If the parties are unable to voluntarily negotiate an agreement for the interconnection or services requested, either party may petition the commission to mediate or arbitrate any unresolved issues as provided in 47 U.S.C. § 252." Id. Similar to the United States Congress, the South Dakota Legislature elected to not create specific unique procedural mechanisms that apply to the proceedings.

In 1998, this Commission adopted administrative rules to govern its arbitration responsibilities as set forth under § 252. *See Generally* A.R.S.D. 20:10:32:29 to 20:10:32:36. Under these administrative rules, this Commission specifically stated that arbitrations were to be handled as contested cases.

Arbitration conducted as a contested case – Prehearing conference. *A petition for arbitration shall be conducted as a contested case.* Within 30 days of receiving a petition for arbitration, the commission may hold a prehearing conference.

A.R.S.D. 20:10:32:31 (*emphasis added*). Undeniably, when this Commission adopted this rule, it was aware that the South Dakota statutory scheme contained specific statutes that set forth the proper procedures to handle contested cases. Through promulgation of this rule, the

Commission adopted the procedural mechanisms that were in place to address contested cases. These procedural mechanisms included referring matters to the Office of Hearing Examiners. S.D.C.L. § 1-26-18.3.

There is no conflict between these statutes because neither the federal nor the state governments specified the procedural mechanisms that must be employed by the Commission. Nor did either entity preclude the Commission from incorporating existing procedural mechanisms. As a result, 47 U.S.C. § 252(b)(1), S.D.C.L. § 49-31-81, A.R.S.D. 20:10:32:31, S.D.C.L. § 1-26-18.3, can and should be read in harmony to prevent repeal by implication. This result was recognized by federal law. Specifically, 47 C.F.R. § 51.5 defines the “State Commission” that is to make these determinations to “include any person or persons to whom the state commission has delegated its authority under sections 51 and 52 of the Act and this part.”

Golden West Companies have failed to provide this Commission any authority that would support a contrary result. First Golden West Companies’ argument is based upon the faulty premise that this Commission is faced with a general statute on the one hand and a conflicting more specific later enacted statute on the other. However, review of the plain language of S.D.C.L. § 49-31-81 and S.D.C.L. § 1-26-18.3, demonstrates that the former delegates authority and the latter sets forth the procedural mechanism that this Commission, under its authority as delegated by S.D.C.L. § 49-31-81, acknowledged applied to arbitration proceedings. The two do not address the same subject in a contradictory manner, and therefore do not conflict. As a result, the authority Golden West Companies rely upon, which addresses conflicting statutes that govern the same topic, is not applicable from the facts before this Commission. See Meyerink v. Northwestern Public Serv. Co., 391 N.W.2d 180, 184 (S.D.

1986)(considering the conflict between a general statute that granted the Governor the authority over state lands, and a later enacted statute that granted the South Dakota Division of Railroads the authority to manage real property used for railroad purposes); Faircloth v. Raven Indus., Inc., 620 N.W.2d 198, 202 (S.D. 2000)(determining which statute of limitations properly applied).

Not only have the Golden West Companies failed to provide any applicable legal authority to support their position, their analysis is fatally flawed. They have completely ignored the pertinent administrative rule that was adopted by this Commission. Disregarding A.R.S.D. 20:10:32:31, results in an incomplete analysis of the pertinent statutes and administrative rules that govern this issue. The analysis is incomplete because A.R.S.D. 20:10:32:31 provides a link between S.D.C.L. § 49-31-81 and S.D.C.L. § 1-26-18.3. It also reflects this Commission's intentions regarding how contested cases, like the arbitrations, are to be handled. Golden West Companies failure to consider the applicable rules and statutes in conjunction with this Commission's intentions should be deemed fatal to their request for reconsideration.

Moreover, application of the applicable canons of statutory construction requires that statutes, if at all possible, be read in harmony. The first rule of statutory construction requires that, "...the language expressed in the statute is the paramount consideration." Doe v. Quiring, 686 N.W.2d 918, 925 (S.D. 2004). Even if this Commission finds the language in the two statutes conflicts, "When two statutes are in apparent conflict with one another, the laws of statutory construction require them to be read in harmony if possible." Council of Higher Educ. V. S.D. Board of Regents, 645 N.W.2d 240, 244 (S.D. 2002)(citing Faircloth v. Raven Indus. Inc., 2000 SD 158, ¶ 7, 620 N.W.2d 198, 201). "Furthermore, the law disfavors statutory repeal by implication." Id. (citing Morton v. Mancari et al., 417 U.S. 535, 539 (1974)). Under the aforementioned canons and the analysis set forth above, it is apparent that the statutes can be

read harmoniously. Therefore, contrary to Golden West Companies' request, there is no need for repeal by implication.

Golden West Companies' apparent disagreement with the relevant statutes is properly addressed by the legislature, and not through implied repeal by this Commission. Specifically, the South Dakota Supreme Court has on various occasions addressed a party's disfavor of existing law. It has held, "We must accept what 'the legislature has said – and has not said – rather than attempt to rewrite the law to conform with what we or others think it should have said.'" S.D. v. Burdick, 2006 SD 23, *7, 712 N.W.2d 5 (*quoting MGA Insur. Co., Inc. v. Goodsell*, 2005 SD 118, ¶ 29, 707 N.W.2d 483, 488 (*quoting Petition of Famous Brands, Inc.*, 347 N.W.2d 882, 885 (S.D. 1984))).

S.D.C.L. § 1-26-18.3 is clear on its face in granting a right to WWC to request the Office of Hearing Examiners. The Golden West Companies' complaint about the statute needs to be addressed to the legislature. It is interesting to note that the Golden West Companies do not contend the other procedural statutes under Chapter 1-26 are overridden by any subsequent act of the legislature in granting this Commission powers. In fact, the Golden West Companies have used S.D.C.L. § 1-26-32 as authority to seek a stay in Circuit Court. Thus, it appears the Golden West Companies believe the procedural statute should not apply if they do not favor the result but should apply if they find the statute to their benefit.

Finally, Golden West's argument that referral to the Office of Hearing Examiners results in a bifurcated proceeding is not correct. There is no reason for this Commission to retain certain motions when referring this matter. The Office of Hearing Examiners can examine and determine all these motions. Moreover, S.D.C.L. § 1-26-18.3 does not allow selective referral to

the Office of Hearing Examiners. The statute requires the entire matter to be sent to the Office of Hearing Examiners upon request by a party.

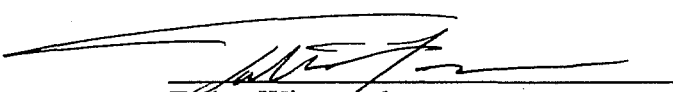
In addition, federal law supports the complete referral of this matter to the Office of Hearing Examiners. As noted above, federal law anticipates commissions using other people to decide interconnection issues. *See* 47 C.F.R. § 51.5. Clearly, the Office of Hearing Examiners can review briefs and make determinations on the motions pending or additional motions to be made by the parties. Pursuant to state law, this Commission then has the power to modify, reject or change the Office of Hearing Examiners' Findings and Conclusions. S.D.C.L. § 1-26D-8.

CONCLUSION

For the reasons set forth herein and in WWC's original Brief in Support of the Request to Use the Office of Hearing Examiners, this Commission should reject the Motion for Reconsideration and affirm its decision.

Dated this 16 day of August, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of August 2006, a true and correct copy of **RESISTANCE TO APPLICATION FOR RECONSIDERATION OF THE JULY 11, 2006 DECISION OF THE PUBLIC UTILITIES COMMISSION GRANTING THE REQUEST OF WWC LICENSE, L.L.C. TO USE THE OFFICE OF HEARING EXAMINERS** was electronically and by first-class, U.S. Mail, postage paid to:

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