

PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION
OF SANCOM, INC. FOR EXTENSION OF
TIME OF EXEMPTION FROM
DEVELOPING COMPANY SPECIFIC
COST-BASED SWITCHED ACCESS
RATES

TC 07-128

MOTION TO QUASH SUBPOENA,
INTERROGATORIES AND
DATA REQUESTS

COMES NOW Sancom, Inc. and by and through their attorney, Jeffrey D. Larson of Larson and Nipe request that South Dakota Public Utilities Commission issue their order quashing the subpoena, Interrogatories and Data Requests issued by Thomas J. Welk and Christopher W. Madsen of Boyce, Greenfield, Pashby and Welk, attorneys for the Intervener, Qwest Communication Corporation; the subpoena directed to Karen Cremer, staff attorney for the South Dakota Public Utilities Commission commanding her to deliver copies of three (3) e-mail messages; and Qwest's first set of interrogatories and data requests commanding Doug Eidahl to respond and provide certain information.

This motion is made for the reason that the information sought is irrelevant to the issue before the Public Utilities Commission (SDCL 19-12-2). Further, the Commission should impose sanctions, expenses and attorney fees against the Intervener, Qwest, for their legally unfounded subpoena and discovery requests. Qwest is attempting to use the forum of the South Dakota Public Utilities Commission to obtain information irrelevant to the issues before it, but for use in federal litigation with Sancom, Inc.

Qwest alleges that Sancom's conference bridging defrauds Qwest by generating "unreasonably high terminating switched access charges" for "telephone calls that Sancom does not terminate" and collecting revenue from Qwest that Sancom shares with "free calling service companies". Sancom's request is made for the reason that Qwest has acknowledged in meetings and presentations with each of the commissioners of the Federal Communications Commission that the calls made by Qwest's end users to Sancom's free calling service company customers, are in fact, terminated by Sancom and that it is legal under existing law for Sancom to share revenue with its free calling service company customers. These actions by Qwest come just days after Sancom had issued a notice to Qwest indicating that Sancom intends to seek Rule 11 sanctions against them in their pending Federal litigation, for the reasons stated above. Pursuant to SDCL 15-6-26(c) the Commission can determine that the discovery not be allowed if it finds that such discovery is oppressive and/or annoying to the other party.

As indicated above not only is Qwest being disingenuous but also those matters involve interstate issues irrelevant to this docket (ARSD 20:10:29:01)(2).

Lastly, the subpoena and discovery requests were served with demands for response in less than a week, with an oral commitment to allow five more days. Sancom, Inc. and Karen Cremer and Sancom's consulting engineer, Doug Eidahl have, pursuant to SDCL (15-6-34B), 30 days after service to comply with such requests. Therefore, Sancom requests that the commission grant this motion quashing these requests and in the event that the commission requires compliance that we have 30 days from the date of service, to respond or until the commission rules on this motion and establishes a date to respond.

Dated this _____ day of June, 2008.

LARSON AND NIPE

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