

**BEFORE THE SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION**

IN RE:)	
)	
MCI Communications Services, Inc. d/b/a/)	
Verizon Business Services,)	
)	
<i>Complainant,</i>)	DOCKET NO. _____
)	
v.)	
)	
Capital Telephone Company, Inc.,)	
)	
<i>Respondent.</i>)	
)	

COMPLAINT

Pursuant to South Dakota Codified Laws (“SDCL”) 49-13-1, 49-13-13, 49-31-3, 49-31-4 and 49-31-75 and South Dakota Administrative Rule (“ARSD”) 20:10:32:09, Complainant MCI Communications Services, Inc. d/b/a/ Verizon Business Services (“Verizon”) asks the Public Utilities Commission (“Commission”) to put a stop to a fraudulent “traffic pumping” scam being run by Capital Telephone Company, Inc. (“Capital”) by, among other remedies, revoking Capital’s Certificate of Authority.

Simply stated, Capital is not the local exchange carrier it claimed to be when it was certificated. Instead of providing South Dakota consumers a legitimate alternative to the incumbent local telephone company, Capital has dedicated itself to traffic pumping – apparently paying its “customers” to take service and generate artificially high call volumes by kicking back a portion of the access charges Capital imposes on the legitimate carriers delivering the (inflated amount of) traffic to Capital’s network.

Indeed, it appears that Capital – modeling itself after various other traffic pumping perpetrators to which it has ties – set up shop in South Dakota *solely* for the purpose of assessing

captive carriers such as Verizon fraudulent charges for traffic Capital “terminates” to one or more sham “customers.” However, those customers have no legitimate ties to South Dakota and no purpose for doing business in South Dakota other than to further Capital’s illegal scheme. This practice is unjust and unreasonable in and of itself, but is rendered all the more illegitimate by the fact that Capital was able to secure the necessary approvals to operate in South Dakota on the basis of representations about its intended business that differ wildly from the business Capital actually conducts.

The Commission is the *only* entity charged with ensuring the health and integrity of South Dakota’s telecommunications sector and has *exclusive* jurisdiction over the Certificates of Authority under which companies such as Capital operate. Putting an end to Capital’s activities is necessary not only to protect ratepayers like Verizon from paying fraudulent charges, but to preserve the integrity of the regulatory process itself. Halting Capital’s unjust and unreasonable practices will send a clear message that misrepresentations to the Commission will not be tolerated and that traffic pumping schemes have no place in South Dakota.

I. INTRODUCTION

1. While Capital represented itself to the Commission as an aspiring competitive local exchange carrier (“CLEC”) in order to obtain a Certificate of Authority and certain tariff approvals, Capital does not – and apparently never was intended to – operate as a CLEC. To the contrary, Capital appears to have been established exclusively as a vehicle for an out-of-state company to exploit the access rates South Dakota local exchange carriers may charge to long distance carriers (sometimes referred to as “interexchange carriers” or “IXCs”) such as Verizon.

2. Capital – a Las Vegas company – has partnered with one or more “free” chat line providers to artificially inflate call volumes to a limited number of South Dakota phone numbers Capital sets up solely for purposes of this scheme. When customers of Verizon and other long

distance providers dial those “free” numbers, Capital charges the long distance carriers switched access fees as if the calls are being terminated with local South Dakota residential or business customers. However, Capital does not appear to serve *any* such local South Dakota customers. Its only “customers” are the chat line providers whom Capital apparently pays to be its “customers” (in reality, business partners) – sending them a portion of the switched access fees it receives from the long distance carriers as a kick-back for generating high volumes of traffic to the South Dakota numbers.

3. Thus, despite holding itself out as a competitive local exchange carrier, Capital’s chat-line business has nothing whatsoever to do with local telephone service in South Dakota. It could be conducted in Las Vegas or anywhere else, but for Capital’s desire to improperly take advantage of South Dakota access rates that are higher than those in other states. The result is that Verizon and other carriers are being charged unreasonable fees – a problem only exacerbated by Capital’s unreasonable traffic routing practices, which are designed to maximize the per-mile elements of Capital’s charges rather than the efficiency of its service.

4. The Federal Communications Commission (“FCC”) already has taken issue with precisely the sort of traffic pumping practices engaged in by Capital – suspending the tariffs of certain local exchange carriers that attempted to inflate their interstate traffic volumes through access stimulation or traffic pumping schemes.¹ The Commission likewise should not tolerate such schemes, which pervert markets, harm legitimate business and ordinary customers, run contrary to the public interest and – in this case – come to pass only because of misrepresentations and omissions used to secure a Certificate of Authority and subsequent tariff approval from the Commission.

¹ Order, July 1, 2007 Annual Access Charge Tariff Filings, 22 FCC Rcd 11619 (June 28, 2007 WCB 2007).

5. The Commission should declare Capital's traffic pumping scam – including its traffic routing elements – to be an unjust and unreasonable practice, order Capital to cease and desist from such practice, revoke Capital's Certificate of Authority, award Verizon an account credit for all amounts Capital billed to Verizon in connection with intrastate access charges, and order such other relief as may be appropriate to put an end to Capital's scheme.

II. PARTIES AND JURISDICTION

6. Complainant MCI Communications Services, Inc. d/b/a/ Verizon Business Services ("Verizon") is a corporation organized under the laws of the state of Delaware with its principal place of business in Texas. Verizon operates as a long distance or interexchange carrier throughout the United States and is certificated as an interexchange carrier in South Dakota.

7. Defendant Capital Telephone Company, Inc. ("Capital") is a corporation organized under the laws of Nevada. Capital's principal place of business is 8635 West Sahara Avenue, Suite 498, Las Vegas, NV 89117. In January 2007, the Commission granted Capital's application for a Certificate of Authority to operate as a competitive local exchange carrier within certain areas of South Dakota.

8. The Commission has jurisdiction over this Complaint pursuant to SDCL Chapters 49-13 and 49-31, including SDCL 49-13-1², 49-13-13³, 49-31-3⁴, 49-31-4⁵, 49-31-12⁶ and 49-

² SDCL 49-13-1 provides, in pertinent part, that "[a]ny person complaining of anything done or omitted by any telecommunications company ... subject to the provisions of this title in contravention of the provisions thereof, may apply to the commission for relief."

³ SDCL 49-13-13 provides that, "[i]f ... it appears to the satisfaction of the commission that ... any individual or joint rate or charge demanded, charged, collected or received by any telecommunications company ... or practices of a telecommunications company ... are unjust [or] unreasonable ...," the Commission may "determine and prescribe the just and reasonable charge," "determine what ... practice is just, fair and reasonable," and "make an order that such telecommunications company ... shall cease and desist from the violations."

⁴ SDCL 49-31-3 provides, in pertinent part, that "[t]he commission has general supervision and control of all telecommunications companies offering common carrier services within the state ... The commission shall inquire into any complaints, unjust discrimination, neglect or violation of the laws of the state

31-75⁷, and ARSD 20:10:32:09.⁸ Pursuant to SDCL 49-31-3, the Commission has the exclusive authority and jurisdiction over Capital's Certificate of Authority.

III. BACKGROUND

A. Switched Access Charges and the Regulatory Framework.

9. Long distance or interexchange carriers ("IXCs"), like Verizon, carry traffic between local exchanges. When a long distance carrier's customer places a call, the long distance carrier transports the call across its network to a location nearer the call recipient, where it often must hand off the call to a local exchange carrier ("LEC"). The LEC then provides terminating access service by delivering the call from the long distance provider's network to the recipient of the call.

10. When a LEC originates or terminates a call that is carried by a long distance provider, the LEC typically charges the provider access fees to connect with its local network.⁹ The LECs charge the long distance carrier to link up with the residential and business customers in their respective localities.

governing such companies. The commission may exercise powers necessary to properly supervise and control such companies."

⁵ SDCL 49-31-4 requires that "[a]ny charge established for the provision of telecommunications services shall be fair and reasonable."

⁶ SDCL 49-31-12 provides the Commission with authority to "[c]hange and revise ... rates and prices" for telecommunications companies doing business in the state "as circumstances require."

⁷ SDCL 49-31-75 provides, in pertinent part, that "[a]ny certificate of authority issued by the commission may be suspended or revoked ... for a willful violation of the laws of this state, a willful failure to comply with a rule or order of the commission, or other good cause."

⁸ ARSD 20:10:32:09 provides that the "[f]ailure of any provider of local exchange service to comply with applicable requirements set forth in this chapter, other terms and conditions imposed on its certification by the commission, or other applicable rules or laws may result in the suspension or revocation of the provider's certificate of authority to provide local exchange services."

⁹ The access service at issue in this Complaint is switched access service, in which there is no specific, dedicated line used to originate or terminate calls to the LEC's customer, rather than special access service, in which such a line exists. The Complaint uses "access" and "switched access" interchangeably.

11. A long distance provider ordinarily cannot choose whom its customers call or what LEC serves the called party. Instead, the long distance carrier generally must complete any call a customer places and, therefore, cannot choose to avoid doing business with the terminating LEC. Moreover, as a result of the flat-rate plans that most long distance customers now purchase, customers ordinarily do not care about the cost or the amount of time they spend on an interexchange call.

12. Given this framework, there is considerable potential for abuse by unscrupulous firms. Accordingly, access rates are subject to approval and regulation by both the FCC and the Commission (or the Commission's counterparts in other states). The Commission, in particular, is tasked with ensuring that rates charged by South Dakota telephone companies "shall be fair and reasonable." SDCL 49-31-4.

B. Capital's Representations to the Commission to Obtain a Certificate of Authority and Certain Tariff Approvals.

13. Capital incorporated in Nevada in September 2006 and registered to do business in South Dakota the following month.

14. In November 2006, Capital applied to the Commission for a Certificate of Authority to provide competitive local exchange services in certain areas of South Dakota. Absent this Certificate, Capital could not lawfully operate as a CLEC in South Dakota.¹⁰

15. In its application for a Certificate of Authority, Capital presented itself to the Commission as a competitive alternative to the incumbent LEC (Qwest) for the provision of all

¹⁰ See SDCL 49-31-3 ("Telecommunications companies seeking to provide any local exchange service shall submit an application for certification by the commission pursuant to §§ 49-31-1 through 49-31-89 ..."); 49-31-75 ("The offering of any local exchange telecommunications service without a certificate of authority or which is inconsistent with this section is a Class 1 misdemeanor."). See also ARSD 20:10:32:02 ("A telecommunications company may not provide local exchange service in an area for which it does not have a valid certificate of authority ...").

manner of local exchange services to residential and business customers in certain parts of the state. (*See* Capital's Application for Certificate of Authority (Exhibit 1)).

16. Capital specifically represented to the Commission that it was seeking a Certificate of Authority "to provide competitive local exchange services in South Dakota exchanges served by Qwest." (*Id.* at 1). Capital went on to state that it sought "authority to provide all forms of local exchange telecommunications services, interexchange telecommunications services, and operator services which will allow customers to originate and terminate local calls to other customers served by [Capital] as well as customers served by all other authorized local and interexchange carriers." (*Id.* at 2-3). Capital added that it "intends to provide service to business and residential customers" (*id.* at 3) and that it "proposes to market local exchange services primarily to residential and business customers in the smaller to mid-size Qwest exchanges throughout the state of South Dakota." (*Id.* at 6).

17. Relying upon Capital's representations about its business, the Commission granted Capital's application for a Certificate of Authority on January 16, 2007, authorizing Capital "to offer its local exchange services in South Dakota." (Order Granting Certificate of Authority, TC06-186 (January 16, 2007) (Exhibit 2) at 2).

18. Two days later, the Commission approved Capital's proposed intrastate switched access tariff. (*See* Order Approving Tariff and Granting Petition for Waiver, TC06-196 (January 18, 2007) (Exhibit 3) at 1).¹¹ Capital represented to the Commission that it lacked the resources necessary to determine company-specific cost-based switched access rates. (*See* Exhibit 1 at 6). Capital therefore requested that it be permitted to charge the same rates that the incumbent LEC,

¹¹ Capital also previously secured approval for a General Exchange Tariff, effective December 15, 2006. (*See* Exhibit 4).

Qwest, charged for intrastate switched access. (*Id.*) Based on Capital's representations, the Commission approved that request. (*See* Exhibit 3 at 1).¹²

19. However, Capital is not, never has been, and apparently never was intended to be the company that it portrayed itself to be to the Commission.

C. The Difference between Capital's Actual Business Model and What It Represented to the Commission.

20. Capital's existence appears linked to a number of other companies that are alleged to have engaged in illegal traffic pumping schemes. Capital itself seems to be simply the latest such vehicle designed to take advantage of the switched access rates available to local exchange carriers. Indeed, Capital appears designed *solely* to take advantage of those rates – without actually providing *any* of the local exchange services Capital represented to the Commission that it would provide.

1. Capital's Link To Other Alleged Traffic Pumping Schemes.

21. Capital appears to collocate its facilities with Northern Valley Communications, LLC, another purported CLEC in South Dakota that likewise has engaged in traffic pumping schemes to inflate access charges through revenue-sharing agreements with third parties that offer “free” services.¹³ Capital's Redfield, South Dakota switch has the same V&H coordinates and address as Northern Valley's Redfield, South Dakota switch. Moreover, Capital's Frederick, South Dakota switch shares the same V&H coordinates as the switch of James Valley, which is

¹² On February 2, 2007, Capital also filed with the FCC a tariff for the provision of interstate switched access services. The FCC approved that tariff, effective February 3, 2007.

¹³ Indeed, a company doing business with Northern Valley has explained the nature of such revenue-sharing agreements. *See* Memorandum of Law of Global Conference Partners in Support of Motion to Dismiss Verizon Counterclaims, *Northern Valley Communications LLC v. MCI Communications Services Inc.*, No. 07-1016 (D.S.D. Nov. 30, 2007), at 5 (conceding that Global Conference Partners, which offers “free” conference calling, has entered a “vendor” relationship with Northern Valley under which Northern Valley “pays certain marketing fees to [Global Conference Partners] based on the amount of conference call traffic generated” by Global Conference Partners).

the parent company of Northern Valley. Northern Valley employees also perform billing and dispute resolution services for Capital.

22. Several of Capital's officers and directors are also officers and directors of (or otherwise affiliated with) All American Telephone ("All American") – which purports to be a Utah-based CLEC, but is involved in litigation with another carrier (AT&T) in which it is accused of engaging in precisely the same kind of traffic pumping at issue in this case.¹⁴ For example, David Goodale, President and Chief Executive Officer of All American, is identified in Capital's regulatory filings as Director and Manager of Support Services, as well as a substantial shareholder. (See Exhibit 1 at 2, 4). Wesley Doucet, who is identified in Capital's regulatory filings as its President, General Manager, and a substantial shareholder, appears to have an e-mail address associated with All-American. (*Id.* at 1-2, 7). And Joy Boyd is identified as a Director of both Capital and All American. (*Id.* at 1; All American Telephone Co., Inc.'s Application for a Certificate of Public Convenience and Necessity to Provide Local Exchange Services within the State of Utah (Exhibit 6) at 6).

23. All American and Capital also appear to occupy the same office. Regulatory filings for both companies provide the same address and the same telephone number as their headquarters and contact information: 8635 West Sahara Avenue, Suite 498, Las Vegas, Nevada 89117, (702) 499-9889. The same address and phone number also appear to be associated with www.freeconference.com, a website providing "free" conference services.

¹⁴ See Answer of Defendant AT&T Corp. to Plaintiff's First Amended Complaint, *All American Telephone Company, Inc. v. AT&T Corp.*, 1:07-cv-00861-WHP (S.D.N.Y.) (filed March 26, 2007) (Exhibit 5).

24. All American has not denied engaging in traffic pumping schemes, but instead specifically has urged the FCC to mandate that long distance providers be forced to continue subsidizing such access stimulation schemes.¹⁵

25. All American, in turn, was incorporated by an individual who also serves as the general counsel of Beehive Telephone Company. Beehive has a history of improper traffic pumping behavior, as well as other serious and repeated violations of FCC rules.¹⁶

26. Capital's connections to these companies strongly suggest that it, too, was set up on the same business model to do precisely the same thing – *i.e.*, artificially inflate call volumes to certain states to improperly take advantage of relatively higher switched access charges to long distance carriers. And, in fact, Verizon's analysis of Capital's call traffic confirms that – despite Capital's representations to the Commission that it “intends to provide service to business and residential customers” in South Dakota¹⁷ – Capital does not appear to serve *any* business or residential customers in South Dakota. Indeed, although Capital has been conducting business since at least July 2007, its only “customers” appear to be one or more chat line providers.

2. Capital's Chat Line Business.

27. Capital began to bill Verizon for terminating both intra- and interstate access in July 2007. Verizon took notice of the charges being billed by Capital, which were – in Verizon's experience – much larger than would be expected for a new CLEC in South Dakota. Verizon

¹⁵ See Letter from Jonathan E. Canis to Chairman Kevin J. Martin et al., *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, at 2-3, 10 (filed Aug. 15, 2007) (Exhibit 7).

¹⁶ See Memorandum Opinion and Order, *AT&T Corp. v. Beehive Tel. Co.*, 17 FCC Rcd 11641, ¶ 6 (2001); *Beehive Tel. Co.*, 14 FCC Rcd 8077 (1999); *Beehive Telephone Company, Inc.*, 13 FCC Rcd 2736 (1998); *Beehive Telephone Company, Inc.*, 13 FCC Rcd 12275, ¶¶ 15-16 (1998).

¹⁷ Capital's Application for Certificate of Authority (Exhibit 1) at 3.

analyzed the traffic Capital terminated and determined that Capital's traffic is directed *exclusively* to numbers at which "free" chat line services were offered (the "Chat Lines").

28. Verizon maintains a number of systems that record details of calls on its interexchange network, including calling telephone number, called telephone number, and call duration. To investigate the nature of the traffic delivered to Capital, Verizon queried its systems for the call records associated with all calls sent to telephone numbers assigned to Capital on three separate days: October 3, 2007, November 6, 2007 and March 19, 2008. On all three dates, every call delivered to Capital was destined for one of the "free" Chat Lines. Verizon's analysis of the call detail records that Capital subsequently provided in response to Verizon's dispute produced the same result.

29. For example, for March 19, 2008, the call records showed that the traffic Verizon sent to Capital on that date was associated with 33 telephone numbers. Verizon personnel then placed calls to each of those numbers. In every case, the calls Verizon personnel placed were answered with the announcement: "You're rockin' the chat line with rockin', talkin' guys and gals 24/7." The announcement also stated that: "There is no charge for this call, but your normal telephone toll charges do apply."

30. In the course of its investigation, Verizon has not seen any evidence that Capital has provided service to anything other than the Chat Lines, much less any business or residential customer in South Dakota.

31. On information and belief – and contrary to the representations Capital made to the Commission in its application for a Certificate of Authority – Capital has not advertised, marketed to or otherwise sought to provide service to any local customer, but exclusively has

targeted the Chat Lines as the sole source of its business. Moreover, on information and belief, Capital pays the Chat Line operator(s) to be its customers.

32. The operator (or operators) of the Chat Lines advertise and provide the chat line services to callers on a “free” basis. Therefore, the only way that the operator can profitably provide such “free” services is if it receives a net payment from Capital. That is, Capital makes (or agrees to make) direct or indirect payments to the operator(s) of the Chat Lines that exceed or will exceed any payments that the operator(s) may make to Capital, so that net payments flow or will flow from Capital to the Chat Line operator(s).

33. Capital, in turn, can profitably afford to make net payments to the operator(s) only on the basis of the access charges that it expects to be able to impose on long distance carriers such as Verizon. Thus, the exchange is: the operator generates the traffic that allows Capital to charge long distance carriers such as Verizon, and Capital then kicks back a portion of those access charges as a net payment to the operator.

34. Such an arrangement is consistent with Verizon’s experience and other similar cases involving “free” chat lines. Indeed, in a pending federal court case, Global Conference Partners, a provider of “free” conference call services, conceded that it had such a revenue-sharing relationship with Northern Valley Communications, another purported CLEC in South Dakota with whom (as noted above) Capital has collocated its facilities.¹⁸

35. However, under this arrangement, Capital does not truly provide switched access to customers in South Dakota. Capital is charging long distance providers switched access rates to connect to Capital telephone numbers set up solely for purposes of the Chat Lines. And the Chat Lines are not “free,” as advertised by the operator(s). They are paid for by the access

¹⁸ See FN 13, *supra*.

charges Capital seeks to extract from Verizon and other carriers – costs that ultimately must be passed on to those carriers' long distance customers, the majority of whom never even call the Chat Lines.

3. Capital's Traffic Routing Practices.

36. In addition to charging Verizon and other carriers access charges for Chat Line traffic as if it is terminating calls with local customers in South Dakota, Capital also has adopted routing practices that (a) utilize a switch that was not disclosed in its application for a Certificate of Authority and (b) are designed solely to maximize the per-mile component of the access charges billed by Capital.

37. Verizon must deliver its incoming interexchange traffic to Capital at a tandem switch in Sioux Falls, South Dakota, owned by SDN Communications, Inc. ("SDN," formerly known as South Dakota Network). SDN is a centralized equal access provider ("CEAP") that operates a statewide network that provides switched access transport from Sioux Falls to interconnection points with LECs throughout South Dakota at a per-minute (but not mileage-based) fee. SDN is owned by a number of South Dakota LECs, and it was created to provide a single access point in Sioux Falls to which a number of long distance carriers could connect — providing many South Dakota consumers with competitive long-distance options that they had previously lacked.

38. Information on SDN's website indicates that SDN's network passes through or near Redfield, South Dakota. Capital represented to the Commission that it maintains its own (and only) switch at Redfield. (Capital's Application for Certificate of Authority (Exhibit 1) at 3). Indeed, Capital's bills to Verizon indicate that the Capital switch serving the Chat Lines is located in Redfield.

39. There is no apparent reason why Capital could not interconnect with SDN in or near Redfield. SDN would then carry the traffic at a non-distance-sensitive, per-minute rate from Sioux Falls to Redfield as part of its centralized equal access service, for which Verizon is already paying.

40. Capital, however, does not interconnect with SDN in or near Redfield. Instead, Capital established its interconnection point with SDN at the SDN tandem in Sioux Falls, 125 miles from Redfield. By interconnecting in Sioux Falls, Capital increases the per-mile charges it can impose on interexchange carriers such as Verizon. In addition to the non-mileage-based transport charges that Verizon pays to SDN, Capital also bills Verizon a per-mile, per-minute charge for transport from Sioux Falls to the Capital switch in Redfield, which is at least 125 miles from Sioux Falls.

41. After receiving the traffic at the distant point in Sioux Falls, however, Capital still does not deliver the traffic directly to Redfield. Instead, according to the Local Exchange Routing Guide (“LERG”¹⁹), Capital classifies the Redfield switch as a “remote” switch, and classifies as its “host” a Capital switch in Frederick, South Dakota. In other words, Capital routes the traffic from Sioux Falls through Frederick, and only then to Redfield. By using this circuitous routing arrangement, Capital takes the already unnecessarily long route (125 miles) from Sioux Falls to Redfield and nearly *doubles* it to 246 miles.

42. There is no legitimate, network-based reason for Capital to route the traffic in this manner. Routing the traffic in this manner does not produce any operational benefits nor any other benefits to customers. To the contrary, routing traffic in this manner departs from standard

¹⁹ The LERG is the standard means within the industry by which service providers report numbering and routing information, and is primarily designed to be used for routing of calls by all types of service providers.

industry practices and, as such, is entirely inconsistent with Capital's own intrastate access tariff, which provides that Capital will follow "standard engineering methods" for routing traffic.²⁰

43. Instead, Capital's routing arrangement exists solely to increase the amount that Capital can bill interexchange carriers like Verizon. Indeed, the Frederick switch does not even appear to be a true "host" switch — Verizon has *never* been billed for a call that terminated at the Frederick switch. Tellingly, Capital's Application for Certificate of Authority only mentions a switch in Redfield; it does *not* reference the Frederick switch through which Capital now requires traffic to be routed. (*See* Exhibit 1 at 3).

44. Routing traffic in such a roundabout manner is inconsistent with the "standard engineering practices" required by Capital's South Dakota switched access tariff.²¹ But, even more fundamentally, Capital's traffic routing approach — which artificially raises Verizon's costs with no countervailing benefits — is manifestly unjust and unreasonable. The practice is even more unreasonable when considered in combination with Capital's underlying scheme — *i.e.*, the traffic routing increases charges that never would have been incurred in the first place if not for Capital's unreasonable practice of paying its purported "customers" to generate the traffic for which it bills Verizon and other carriers.

D. Verizon's Attempts to Resolve This Dispute.

45. Based on its analysis of the available data, Verizon concluded that Capital's sole business involves the above-described traffic pumping scheme and that the switched access charges Capital was billing to Verizon were grossly unfair and unreasonable.

²⁰ *See, e.g.*, Capital's tariff for South Dakota Switched Access Services (Exhibit 8) at § 6.7.3 (Original Page 6-73) and § 6.8.3 (Original Page 6-87).

²¹ Billing carriers for interstate traffic sent over those circuitous routes is also inconsistent with Capital's interstate access tariff, which requires mileage-based transport charges to be calculated on the basis of airline miles between points — not the winding route miles Capital uses. (*See* Exhibit 9 at Original Page 6-45.)

46. Accordingly, on October 26, 2007, Verizon sent a letter to Capital disputing Capital's charges from July 2007 to October 2007. (*See* Exhibit 10). The letter explained Verizon's concern that the unexpected rise in Capital's access charges was "associated with an unlawful scheme to artificially increase the traffic that Verizon must route to Capital." *Id.* The letter requested that Capital provide call records to support its charges, and also provide "a detailed explanation for the increase in Capital's access bills since July 2007, including a description of any financial arrangements under which Capital agreed to share switched access revenues with affiliated or unaffiliated entities, and a list of the telephone numbers that Capital has assigned to such entities." *Id.*

47. In November 2007, Capital sent an email to Verizon that provided certain of the call records Verizon had requested in the dispute letter. In addition, a representative of Capital contacted Verizon and asked whether Verizon would discuss options for resolving the dispute. Verizon's representative requested that Capital respond to Verizon's dispute letter and put any proposal for resolving the dispute in writing. Capital has not responded to this request.

48. On March 25, 2008, Verizon sent an updated dispute report to Capital via email. On April 14, 2008, Verizon followed up with a certified letter to Capital again raising Verizon's concerns, outlining the disputes that now form the basis for this Complaint, and asking for a response. (*See* Exhibit 11). No response has been received.

49. Based on Capital's failure to respond to these requests, and based on the evidence that Capital has deliberately engaged in an unlawful traffic pumping scheme, Verizon believes that any further attempts to informally resolve this dispute would be fruitless.

IV. VIOLATIONS OF LAW

A. **Capital's Traffic Pumping Scheme Is an Unjust and Unreasonable Practice, Resulting in Unjust and Unreasonable Charges to Verizon and Other Carriers.**

50. The Commission has the authority to exercise “general supervision and control [over] all telecommunications companies offering common carrier services within the state” SDCL 49-31-3. Consistent with that mandate, the Commission must ensure that “[a]ny charge established for the provision of telecommunications services shall be fair and reasonable.” SDCL 49-31-4. Moreover, “[i]f ... it appears to the satisfaction of the commission that ... any individual or joint *rate* or *charge* demanded, charged, collected or received by any telecommunications company ... or *practices* of a telecommunications company ... are unjust [or] unreasonable ...,” the Commission may “determine and prescribe the just and reasonable charge,” “determine what ... practice is just, fair and reasonable,” and “make an order that such telecommunications company ... shall cease and desist from the violations.” SDCL 49-13-13 (emphasis added).²²

51. Here, Capital's traffic pumping scheme is an unjust and unreasonable practice that not only has the *effect* of generating unjust and unreasonably high access charges, but intentionally was *designed* to do so.

52. Unlike other LECs, Capital has only one business practice: exploit the regulatory framework in ways the Commission never intended to take advantage of switched access charges in South Dakota that are higher than those in other states without actually providing service to individuals or businesses in South Dakota.

²² The Commission similarly has the authority to “[c]hange and revise ... rates and prices” for telecommunications companies doing business in the state “as circumstances require.” SDCL 49-31-12.

53. Capital's practice of paying the chat line providers to be its customers in order to increase the access charges it assesses against long distance carriers is unreasonable and contrary to the public interest. These net payments from Capital to its purported customers fuel an arbitrage scheme in which the Chat Lines are funded *not* by the individuals who actually use that service, but by long distance providers that have no choice but to deliver their own customers' calls to the Chat Lines. This arbitrage scheme makes a mockery of the regulatory process and bears no resemblance to any normal or legitimate business arrangement.

54. This arbitrage also distorts the operation of other markets. Because most interexchange customers have flat-rate plans, the consumers that actually use the chat-line services perceive those services as having essentially no cost, and consume far more of those services than they would if they had to pay for them. When, in the end, the long distance providers must account for this increased cost, that increase is borne largely by long distance customers who never call the chat service and leads to less use of interexchange services than would be economically efficient. Unless the Commission puts a stop to this unreasonable practice, all interexchange customers, including the many who are not using these "free" chat line services, will suffer significant harm. The public interest thus strongly supports Commission action.

55. Capital's actions are all the more unjust and unreasonable because it is claiming to operate as a CLEC, bringing competition to local business and residential customers in South Dakota, when it in fact does no such thing. Capital is not enhancing competition and, upon information and belief, does not incur the higher costs that true local exchange carriers like Qwest might incur in serving customers in less populous areas. Capital simply does not serve

any of those customers. Far from advancing the public interest, the only interests Capital furthers are its own.

56. Exploiting the regulatory scheme to generate inflated amounts of terminating access minutes and to pay kickbacks to Chat Lines is an unjust and unreasonable practice, counter to the public interest, and the resultant amounts charged for access themselves are unjust and unreasonable.

B. Capital's Traffic Routing Practices Are Unjust and Unreasonable and Result in Additional Unjust and Unreasonable Charges.

57. Capital is further inflating the already unjust and unreasonable charges generated by its traffic pumping scheme through its unreasonable traffic routing practices.

58. Capital's practice is to drive up the access charges that it bills to Verizon by routing the traffic it receives in a way that is designed to maximize its charges to Verizon while serving no legitimate network management purpose.

59. As set forth in more detail above, Capital chooses to receive traffic on its "network" at a distant point from the switch that it claims terminates the traffic to the chat line provider, even though it could receive that traffic at points much closer to that switch. Capital then routes that traffic in a roundabout, inefficient way that covers nearly *250 miles* and bills Verizon on a per-mile basis for that route. The purpose and effect of these unnecessary and wasteful practices is to increase dramatically the distance-sensitive portion of Capital's access charges.

60. These routing practices violate Capital's tariffs and are independently unfair and unreasonable. Capital's practices are all the more improper when employed by a carrier that exists only to engage in a scam designed to obtain the highest possible access charges.

C. There Is Good Cause to Revoke Capital’s Certificate of Authority.

61. SDCL 49-31-3 provides that “[t]elecommunications companies seeking to provide any local exchange service shall submit an application for certification by the commission pursuant to §§ 49-31-1 through 49-31-89. The commission shall have the exclusive authority to grant a certificate of authority.”²³ However, “[a]ny certificate of authority granted by the commission may be suspended or revoked ... for a willful violation of the laws of this state, a willful failure to comply with a rule or order of the commission, or other good cause.” SDCL 49-31-3, 49-31-75.²⁴

62. The unjust and unreasonable practices and charges outlined above are willful violations of state law and this Commission’s rules and orders and constitute good cause to revoke Capital’s Certificate of Authority.

63. Moreover, in applying for its Certificate of Authority, Capital made multiple representations to the Commission about how it intended to operate that stand in stark contrast to how Capital actually has operated. For example, Capital represented that it was seeking a Certificate of Authority “to provide competitive local exchange services in South Dakota exchanges served by Qwest” (Exhibit 1 at 1), when Capital in fact does *not* provide local exchange services in South Dakota. Similarly, Capital represented that it “intends to provide service to business and residential customers” (*id.* at 3) and that it “proposes to market local exchange services primarily to residential and business customers in the smaller to mid-size

²³ See also ARSD 20:10:32:07 (“in granting a certificate of authority to provide local exchange services, [the Commission] may impose additional terms and conditions ... that it finds necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of service, and safeguard the rights of consumers.”).

²⁴ See also ARSD 20:10:32:09 (“Failure of any provider of local exchange service to comply with applicable requirements set forth in this chapter, other terms and conditions imposed on its certification by the commission, or other applicable rules or laws may result in the suspension or revocation of the provider’s certificate of authority to provide local exchange services.”).

Qwest exchanges throughout the state of South Dakota” (*id.* at 6), when Capital in fact has *not* marketed to and does not provide service to *any* business or residential customers in South Dakota.²⁵

64. Along the same lines, Capital represented to the Commission that it lacked the resources necessary to determine its own company-specific cost-based switched access rates – requesting that it be permitted to simply charge the same rates as Qwest. (*See* Exhibit 1 at 6). In so doing, Capital implicitly suggested that its own costs would be comparable to (or perhaps higher) than Qwest’s – thereby rendering Qwest’s rate reasonable for Capital, as well. But Capital – which appears to have been set up to serve only high-volume chat line customers – must have anticipated that its costs would be much lower than Qwest’s. Capital’s actual business – transporting traffic to a single chat bridge – is much less costly than the sort of local telephone business that Qwest engages in and that Capital told the Commission it would be engaging in – *i.e.*, transporting traffic to a variety of local residential and business customers throughout the state.

65. Under the circumstances, it appears that Capital misrepresented its intentions to the Commission in order to obtain a Certificate of Authority and (certain tariff approvals). Had Capital disclosed its planned traffic pumping scheme, Verizon and other carriers would have filed comments opposing Capital’s application for a Certificate of Authority and the Commission likely would not have granted the application (or subsequent tariffs) – at least not in the same form Capital sought. Deception of the Commission and other interested parties in the certification process constitutes good cause to revoke Capital’s Certificate of Authority.

²⁵ Capital further represented that it would route traffic through a switch in Redfield, when it instead requires traffic to be routed through a switch in Frederick to maximize its charges.

66. Indeed, ARSD 20:10:24:04.02 specifically recognizes that “good cause” for purposes of revoking an interexchange carrier’s certificate of authority includes “[t]he furnishing or making of any misleading or false statement or report by an officer or agent of a telecommunications company, including those made by its legal counsel, to the commission.” LECs should be held to no less of a standard.

67. Alternatively, even if Capital did not intentionally mislead the Commission (and other interested parties) at the time of its application for a Certificate of Authority, Capital indisputably and knowingly has since deviated from the plans presented to the Commission and authorized in the Certificate of Authority. Yet Capital has not been candid in informing the Commission of these changes, let alone secured the necessary approval from the Commission for making them.

68. Under SDCL 49-31-74, Capital was obligated to operate in the manner it indicated it would when applying to the Commission for a certificate of authority.²⁶ “Prior to substantially altering the nature or scope of services provided under [its] certificate of authority,” Capital was required to “apply for a certificate of authority for such alterations or additions.” SDCL 49-31-74.

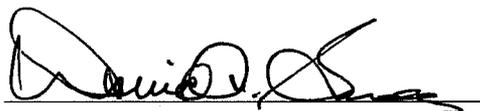
69. As detailed above, Capital substantially deviated from the nature and scope of services it indicated that it would provide. Yet Capital never applied to the Commission for a revised Certificate of Authority for such changes. That, too, constitutes good cause to revoke Capital’s Certificate of Authority.

²⁶ ARSD 20:10:32:03 similarly requires that an application for a certificate of authority for local exchange service must contain a “list and specific description of the types of services the applicant seeks to offer and how the services will be provided,” including “[i]nformation identifying the types of services [the applicant] seeks authority to provide by reference to the general nature of the service.”

V. RELIEF REQUESTED

70. Based on the foregoing, Verizon respectfully requests that the Commission:
- a. Declare Capital's traffic pumping scam to be an unjust and unreasonable practice and declare the charges asserted pursuant to that scam to be unjust and unreasonable;
 - b. Declare Capital's traffic routing practices to be unjust and unreasonable and declare the additional charges asserted as a result of those practices to be unjust and unreasonable;
 - c. Order Capital to cease and desist from its unreasonable practices;
 - d. Revoke Capital's Certificate of Authority;
 - e. Award Verizon an account credit for all amounts billed by Capital to Verizon relating to intrastate switched access service; and
 - f. Order such other relief as the Commission deems appropriate.

Respectfully submitted,



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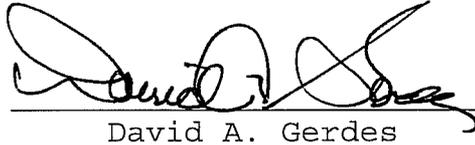
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May 28, 2008

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 28th day of May, 2008, he served electronically a true and correct copy of the foregoing Complaint in the above-captioned action to the following at its last known e-mail address, to-wit:

Capital Telephone Company, Inc.
wes@allamericantelcom.com



David A. Gerdes