



South Dakota Telecommunications Association

South Dakota Telecommunications Association
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August 27, 2009

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

RE: Docket TC09-083, Application of WideVoice Communications, Inc.

Dear Ms. Van Gerpen:

Enclosed for filing in the above referenced docket you will find the electronic original of a "SDTA Petition to Intervene."

As is evidenced by the Certificate of Service attached to the Petition, service has been made on counsel for WideVoice Communications, Inc.

Thank you for your assistance in filing and distributing copies of this Petition.

Sincerely,

A handwritten signature in black ink, appearing to read "R. D. Coit", with a horizontal line extending to the right.

Richard D. Coit
SDTA Executive Director and General Counsel

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

**IN THE MATTER OF THE APPLICATION OF)
WIDVOICE COMMUNICATIONS, INC. FOR A)
CERTIFICATE OF AUTHORITY TO PROVIDE) Docket No. TC09-083
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES AND LOCAL EXCHANGE SERVICES)
IN SOUTH DAKOTA)**

SDTA Petition to Intervene

The South Dakota Telecommunications Association ("SDTA") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.

2. On or about August 11, 2009, WideVoice Communications, Inc. ("WideVoice") filed an Application with this Commission seeking a certificate of authority to provide facilities-based and resale local exchange and interexchange services. More specifically, concerning primarily the provisioning of local exchange services in South Dakota, the WideVoice Application includes the following statements:

- WideVoice seeks "authority to operate as a provider of facilities-based and resale local exchange telecommunications services in eligible interconnection areas in South Dakota, Qwest's incumbent local exchange areas, as well as authority to offer interexchange interLATA and intraLATA services statewide." (Application p. 1).

- "WideVoice seeks to enter the South Dakota market as a provider of local and interexchange service, as well as switched access service, long distance resale, advanced services and high speed digital service. Widevoice initially plans to offer service in all Qwest exchange areas served by incumbent local exchange carriers." (p. 1).

- “Widevoice proposes to offer business end users the opportunity to originate and terminate calls to other end users with access to the local exchange network. . . . WideVoice seeks limited facilities-based and resold authority to provide local exchange services. WideVoice proposes to offer local exchange services by purchasing unbundled network elements from incumbent local exchange carriers and may resell the services of other certificated carriers. WideVoice will collocate in incumbent local exchange carriers’ central offices and/or carrier hotels, and will order trunk access lines to access tandems to carry WideVoice’s customers’ traffic.” (p. 3).

- “Applicant will be engaged in providing basic circuit-switched telephony on a small scale basis to large business customers.” (p. 4).

- “Applicant will primarily be providing network transit and associated operations support systems to wholesale customers. Applicant will provide some traditional circuit-switched interexchange long distance and local exchange services on a wholesale and retail basis as well. Applicant’s retail services will be focused on business customers.” (p. 9).

- “Applicant will be providing services in all areas served by incumbent local exchange carriers that are required by the Telecommunications Act of 1996 to interconnect their networks with competitive local exchange carriers. WideVoice will follow the relevant incumbent exchange carriers’ tariffs descriptions of local calling areas. In South Dakota, that will include all areas serviced by incumbent Qwest.” (p. 9).

3. These statements contained in the WideVoice Application cause SDTA to be concerned regarding the request for local exchange certification for several reasons. First, it is very unclear as to which existing local exchange carriers or local exchange areas are affected by the Application. Section 20:10:32:03 of the Commission’s administrative rules sets forth in detail what information is to be supplied with any Application for local exchange services that is submitted and subsection (9) therein requires, specifically “a service area map or narrative description indicating with particularity the geographic area proposed to be served by the applicant.” (*Emphasis added*). The Application, as filed, does not comply with this requirement. While certain statements in the Application may suggest that WideVoice’s local exchange services will be limited to Qwest exchange areas, there are several contradictory statements

indicating that the Application may not be so limited, that it may extend to the service areas of other incumbent local exchange carriers in South Dakota.

4. Secondly, it is apparent from the Application that WideVoice does intend to limit or focus its provisioning of local exchange services on business customers. If this is the case, and WideVoice's local services will be provided within any rural telephone company service areas, SDTA is concerned as to whether WideVoice will comply with the rural service area protection/safeguard provided for under 47 U.S.C. § 253(f) and also SDCL § 49-31-73. Under 47 U.S.C. § 253(f), States may "require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service." The South Dakota Legislature has also imposed this protection/safeguard as a condition on the certification of competitive local exchange carriers in rural telephone company service areas through the enactment of SDCL § 49-31-73. This Commission has more specifically defined the requirements imposed on competitive carriers pursuant to these federal and state statutes through the adoption of ARSD §§ 20:10:32:15 through 20:10:32:19.

4. SDTA is particularly concerned that this Commission in its review of WideVoice's Application seek to ensure full compliance with the protection/safeguards referenced above which recognize the special circumstances faced by rural telephone companies in making local exchange service universally available in high cost rural areas. The Application, as filed, indicates that WideVoice intends to limit its provisioning of local exchange services to only certain customers, more specifically, business customers that would generally be classified as more attractive from a profit-making perspective. With respect to any rural telephone company service areas that are included within WideVoice's plans for service, it is unclear as to how

WideVoice would, in fact, meet the additional service obligations described in ARSD § 20:10:32:15.

5. Given these and related issues, all of the SDTA member companies are interested in this proceeding and stand to be affected by the Commission's decisions herein. SDTA seeks intervention in this proceeding based on the interests of all of its members that operate as incumbent local exchange carriers and "rural telephone companies" in South Dakota which may be "bound and affected favorably or adversely" by decisions made in this proceeding. (See ARSD § 20:10:01:15.05).

6. Based on all of the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status

Dated this 27th day of August, 2009.

Respectfully submitted:

SDTA

A handwritten signature in black ink, appearing to read "Richard D. Coit", is written over the printed name.

Richard D. Coit
Executive Director and General Counsel

CERTIFICATE OF SERVICE

I hereby certify that an original of the Petition to Intervention, dated August 27, 2009, filed in PUC Docket TC09-083 was served upon the PUC electronically, directed to the attention of:

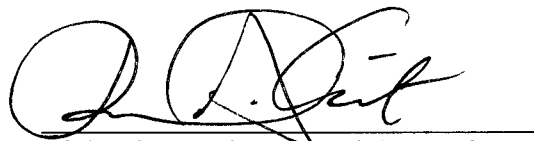
Ms. Patty Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

A copy was also sent by e-mail and/or US Postal Service First Class mail to each of the following individuals:

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