



South Dakota Telecommunications Association

South Dakota Telecommunications Association

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January 28, 2010

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

RE: Docket TC10-003, In the Matter of the Application of Broadview Networks Inc. for a Certificate of Authority to Provide Inter-exchange Telecommunications Services and Local Exchange Services in South Dakota

Dear Patty:

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 to a representative of Broadview Networks, Inc.

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

Sincerely,

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

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)	
BROADVIEW NETWORKS INC. FOR A)	
CERTIFICATE OF AUTHORITY TO PROVIDE)	Docket No. TC10-003
INTEREXCHANGE 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 January 13, 2010, Broadview Networks, Inc., hereinafter referred to as "Broadview," filed an "Application for a Certificate of Authority" with the Commission seeking authorization to provide "competitive local exchange services on a facilities-based, UNE-based and/or resold basis" and also authorization to provide interexchange telecommunications services within South Dakota.

3. In regards to Broadview's request for local exchange service authority, the Application does not indicate clearly the geographic scope of the authorization requested. It is stated in paragraph 9 of the Application that "Broadview requests authorization to provide service throughout South Dakota, although the Company will initially offer services in areas currently served by Qwest." (*Emphasis added*). Paragraph 15 of the Application reads

differently stating that Broadview “is not seeking authority at this time to provide local exchange service in the area of a rural telephone company in South Dakota.”

4. This latter statement suggests that the Application does not seek authorization for local exchange services outside Qwest exchange areas, but if this is not the case and Broadview is seeking statewide certification for local telecommunications services, the provisions of SDCL § 49-31-70 and ARSD § 20:10:32:04 are applicable and require that notice of the application be provided to other, already certified local exchange carriers. No indication is given by the Application as to whether Broadview has given this notice.

5. The Application also raises questions as to whether Broadview understands correctly which companies in South Dakota are “rural telephone companies” for purposes of applying the provisions in federal and state law applicable to competitive LEC provisioning in the less densely populated, higher cost rural service areas. Broadview also states in paragraph 9 of its Application that “[b]efore offering service in any small incumbent Local Exchange Carrier exchange area (an area served by an ILEC with less than 10,000 access lines), Broadview will seek to negotiate an interconnection agreement. At that time, the small ILEC may assert rural telephone status under Section 251(f) of the Telecommunications Act. The Commission then may determine whether the assertion is correct, and if so, whether an under what terms and conditions interconnection would be provided.” (*Emphasis added*). This general reference to ILECs “with less than 10,000 access lines” is not consistent with the definition of “rural telephone company” as set forth in federal and state law (47 U.S.C. § 153(3) and SDCL § 49-31-1(22)).

6. All of the SDTA member companies operate as “rural telephone companies” for purposes of the Federal Telecommunications Act of 1996 and also the state laws enacted in 1998 addressing local exchange competition (SDCL § 39-31-69, et. seq.).

7. If the Application filed by Broadview seeks a statewide certificate of authority for local exchange services, clearly all of the SDTA member local exchange carriers (LECs) have an interest in and stand to be impacted by this proceeding. SDTA seeks intervention herein based on the individual interests of each of its member LECs and based on their common interests to ensure that the rural safeguard provisions contained in the state statutes and within the Commission’s administrative rules are properly applied. With respect to the Application of Broadview, SDTA has a number of concerns.

8. SDTA first believes that the Application, insofar as it relates to certification for local exchange services, is deficient for failing to provide all of the information required by the Commission’s administrative rules. Most importantly, there is nothing in the application related to the additional service obligations imposed on local service providers in rural service areas pursuant to SDCL § 49-31-73 and ARSD §§ 20:10:32:15 thru 20:10:32:17. Before granting Broadview a certificate of authority for local exchange services extending to any rural service area, the Commission must insist on compliance with these additional service obligations, or in the alternative, Broadview must follow the waiver process prescribed under both the state statutes and in the Commission’s rules. This waiver process requires a finding by the Commission that the waiver would not “adversely impact universal service, that quality of services would be continued, and that it would otherwise be in the public interest.” SDCL § 49-31-73. Under § 20:10:32:18 of the Commission’s administrative rules, Broadview as the applicant company, has the burden to prove that granting it a waiver of the ETC service obligations would be consistent with these standards.

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

Dated this 28th day of January, 2010.

Respectfully submitted:

SDTA

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

Richard D. Coit

Executive Director and General Counsel

CERTIFICATE OF SERVICE

I hereby certify that an original of the Petition to Intervention, dated January 28th, 2010, filed in PUC Docket TC08-089 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

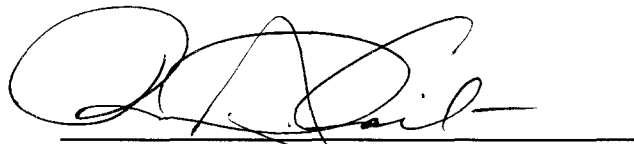
A copy was also sent by e-mail and US Postal Service First Class mail to each of the following individuals:

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Dated this 28th day of January, 2010



Richard D. Coit, General Counsel
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