

Ztar Mobile, Inc.
Executive Offices
16 Village Lane
Suite 250
Colleyville, Texas 76034
817.427.8888 (phone)
817.605.9990 (fax)

January 26, 2010

Ms. Karen Cremer
Staff Attorney
South Dakota Public Utility Commission

Re: Docket No. TC10-007; Ztar Mobile, Inc.

Dear Ms. Cremer:

Ztar Mobile, Inc. is in possession of a show cause notice with the docket number referenced above relating to the failure of the company to file a report regarding the South Dakota gross receipts tax. Ztar believes it is not properly subject to the tax, as will be detailed below, based on the business model employed by the company.

Ztar is not a phone company or telecommunications provider in the ordinary sense of the word. The industry term for the role Ztar plays is a Mobile Virtual Network Operator. The company has a contract with an actual network telecommunications provider, such as AT&T. AT&T or another carrier agrees to connect end users who purchase prepaid mobile telephones and airtime refill cards. Ztar will arrange for these phones and cards to be delivered to retail outlets, such as 7-Eleven stores. The retailers agree to deduct and remit all applicable sales and excise taxes at the time the phones or cards are sold in a retail transaction. The retailer is responsible for remitting the correct taxes to the relevant authorities, deducting its share of the retail receipts and paying Ztar the remainder. Ztar will then periodically remit to AT&T or other network carrier the airtime charges for the airtime used by end users in the relevant period. Because the airtime is paid for by Ztar in arrears, it is not resold, but rather sold short and effectively consigned to the retailer. Thus, Ztar is a classic middleman whose essential function is neither retail nor service, but as an administrator of contracts and keeper of accounts.

We are unaware of whether the retailers should be deducting the gross receipts taxes at the register or whether the carriers' receipts are determined after the end of a year. Either way, we believe this tax is appropriately addressed and collected by either the retailer or the actual network airtime provider.

We at Ztar would like to apologize for the delay in responding to this matter. We believe it has been the result of poor communication between us and an outside contractor, Thomson's tax service, which we use to handle state and local tax issues for us. I see that there have been notices and hearings regarding the company over the past two years which occurred because we had not communicated with you. We are frustrated by this, and please believe that this was not intentional and certainly not the kind of behavior we wish to be associated with. As soon as I became aware of this situation, we took steps to address it.

If there are any questions regarding this letter or the form, please do not hesitate to call me at (817) 427-8888.

Yours truly,



Kevin Haddad
President

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

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| IN THE MATTER OF ZTAR MOBILE, INC.'S FAILURE TO PAY THE GROSS RECEIPTS TAX |)))) | ORDER FOR AND NOTICE OF SHOW CAUSE HEARING |
| | | TC10-007 |

SDCL 49-1A-1 establishes the South Dakota Public Utilities Commission (Commission) Gross Receipts Tax Fund. This fund is financed by assessing a tax of .0015 or \$250, whichever is greater, on the annual intrastate gross receipts received by a utility from the company's customers within the state of South Dakota, and requires that all telecommunications companies submit on June 1, each year, a report of the amount of such gross receipts received during the preceding calendar year and pay the tax. A penalty of 10% of the tax is imposed for each month of delinquency.

Despite reminder letters from the Commission on June 30, 2009, July 31, 2009 and September 16, 2009, Ztar Mobile, Inc. (Company) has failed to pay the gross receipts tax.

Pursuant to SDCL 49-1A-6, the Commission may collect this debt by distress and sale of any personal property of the Company within South Dakota. Further, the Commission has the authority, under SDCL 49-31-3, to suspend or revoke the certificate of authority granted to the Company; assess a civil fine against the Company from \$200 to \$1,000 under SDCL 49-31-38; proceed under SDCL 49-31-38.2 or 49-31-38.3 to stop the Company from transacting any future business in South Dakota; or take any other enforcement actions against the Company allowed by law.

Company shall appear on March 9, 2010 at 2:00 p.m. in Room 413, State Capitol Building, 500 E. Capitol, Pierre, South Dakota, to show cause why action should not be taken against Company for failure to comply with SDCL Chapter 49-1A. The hearing is being held pursuant to Commission's jurisdiction over telecommunications companies found at SDCL Chapters 1-26, 49-1, 49-1A, and 49-31, specifically, 49-1-11(4), 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, 49-31-3, and ARSD 20:10:01:45.

The issue at the hearing is whether the Commission shall suspend or revoke Company's Certificate of Authority; assess a civil fine against Company; institute collection proceedings against Company for failure to pay gross receipts tax; and/or proceed under SDCL 49-31-38.2 or 49-31-38.3 to stop the Company from transacting any future business in South Dakota; or take any other enforcement actions against the Company allowed by law.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine whether to suspend or revoke Company's Certificate of Authority; assess a civil fine against Company; institute collection proceedings against Company for failure to pay gross receipts tax; and/or proceed under SDCL 49-31-38.2 or 49-31-38.3 to stop the Company

from transacting any future business in South Dakota; or take any other enforcement actions against the Company allowed by law.

The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a show cause hearing in the matter of Company shall be held on March 9, 2010, at 2:00 p.m. in Room 413, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. And it is

FURTHER ORDERED, that, in the event Company shall pay the delinquent gross receipts tax, including the 10% penalty for each month of delinquency, the hearing and actions mentioned herein shall not be held or taken, otherwise this order shall remain in effect.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 20th day of January, 2010.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.

By: Demaris Akthelm

Date: 1-20-10

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman *DA*

Steve Kolbeck
STEVE KOLBECK, Commissioner

Gary Hanson
GARY HANSON, Commissioner

Cheryl Sepmoree

From: David Wilkie [davidtwilkie@yahoo.com]
Sent: Thursday, February 18, 2010 3:13 PM
To: Cheryl Sepmoree
Cc: Kevin Haddad
Subject: South Dakota letter e-filing
Attachments: Ztar South DAKota descrpt ltr.doc

Cheryl- I just got a call from the South Dakota Public Utilities Commission saying they never got the letter I drafted for Ztar to send which would go to prove that we don't have to pay the tax in South Dakota. She said it must be filed by E-filing on the South Dakota PUC web site.

I have attached the letter again to this email. Please put the letter together for a signature or at least get some form of it on the e-filing system on the SC PUC website. Please let me know if there are any problems with this. They say they are about to have another hearing at which they will find Ztar in violation again.
Thanks. DTW

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.435 / Virus Database: 271.1.1/2694 - Release Date: 02/18/10 07:34:00