

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

In the Matter of the Application of Wide
Voice, L.L.C. for a Certificate of Authority
to Provide Local Exchange Services in
South Dakota

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Docket No. TC11-088

**CENTURYLINK'S OBJECTION TO WIDE VOICE'S APPLICATION FOR
CERTIFICATE, REQUEST FOR INVESTIGATION AND HEARING, AND REQUEST
FOR INTERVENTION**

Qwest Communications Company LLC, a Delaware Limited Liability Company, doing business as "CenturyLink" ("CenturyLink"), through counsel, hereby registers its objection to the Application for a Certificate of Authority submitted by Wide Voice. CenturyLink also requests that the Commission conduct an investigation into the intended practices and services of Wide Voice and to conduct hearings on the matter. Further, CenturyLink requests that it be granted intervention for all matters in this docket.

BACKGROUND ON WIDE VOICE

Based upon public information, including information available from the Nevada Secretary of State and Wide Voice's public website, CenturyLink believes that Wide Voice's business model is aligned with the practice of "traffic pumping" or "access stimulation." On its web site, at <http://www.widevoice.com/latestoffers.html>, Wide Voice identifies carriers to whom it delivers traffic, and they include some of the best known traffic pumping LECs in the nation, such as Tekstar of Minnesota, Northern Valley of South Dakota, and Great Lakes in Iowa. And, Wide Voice has common ownership and management with entities that provide free calling

services,¹ and apparently has entered the business of being the carrier that delivers traffic to either local exchange carriers that service the free service calling companies, or to the free service calling companies themselves.

The FCC has defined a traffic pumping arrangement as "**an 'arbitrage scheme'** by which a telecommunications carrier 'enters into an arrangement with a provider of high volume operations such as chat lines, adult entertainment calls, and free conference calls' in order to generate elevated traffic volumes and maximize access charge revenues."² After a thorough investigation into traffic pumping activities, the Iowa Utilities Board characterized this practice as an "abuse."³ As the entities being billed purported switched access charges for calls delivered by the traffic pumping LECs to free service calling companies, interexchange carriers such as CenturyLink are the intended targets of these schemes.

WIDE VOICE'S APPLICATION FOR A CERTIFICATE OF AUTHORITY

The Application for a Certificate of Authority states that Wide Voice "proposes to offer competitive local exchange service, including exchange access service, within the state of South Dakota using its own facilities," and that Wide Voice "may also utilize resold services available from the underlying ILEC or other facilities-based carriers." Application, ¶ 5. Wide Voice says that it "will provide local telephone exchange service and interexchange long distance service to both residential and business customers," and that it "proposes to provide local service

¹ Registrations with the Nevada Secretary of State identify David Erickson as a director and officer of both Wide Voice and a major free service calling company known as FreeConferenceCall.com.

² In the Matter of Qwest Communications Company, LLC, v. Northern Valley Communications, LLC; File No. EB - 11-MD-001; Memorandum Opinion and Order; Released June 7, 2011, at footnote 1, citing Connect America Fund; Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4758, ¶ 636 (2011) (emphasis added).

³ In re: Qwest Communications Corporation v. Superior Telephone Cooperative, et al., Docket No. FCU-07-2, Final Order, issued September 21, 2009, recon. denied (Feb . 4, 2011), at p. 2.

immediately upon certification using its own facilities.” Application, ¶¶ 7 (b), (d). Further, “Wide Voice does not have any affiliates, subsidiaries or parent organizations.” Application, ¶ 6.

Wide Voice addresses its technical competence to provide its proposed local exchange services by identifying Mr. Patrick Chicas, the President and CEO of Wide Voice, who lists his experience largely with data or wireless enterprises. Application, ¶ 9. As to Wide Voice’s “ability to respond to customer complaints and inquiries promptly and to perform facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements,” Wide Voice again identifies Mr. Chicas, and at an address and telephone number in Las Vegas, Nevada. Id.

Interestingly, when asked in paragraph 13 of the Application for the “tariff or price list indicating the prices, terms and conditions of each contemplated local service offering,” Wide Voice responds by referencing an access tariff, not a local exchange tariff: “The Company will provide an Access Tariff before offering services within the State, but the tariff is not being filed jointly with this application.” Application, ¶ 13.

WIDE VOICE’S PROPOSED IOWA TARIFFS

In its South Dakota Application, Wide Voice references Iowa as a state in which it is certified to “operate as a facilities-based and resale provider of competitive local exchange services and interexchange services,” which parallels the authority it seeks South Dakota. Yet, a review of the tariffs Wide Voice filed in Iowa suggests that it is implementing a business model premised upon traffic pumping, not local exchange services.

The services being offered to Wide Voice’s purported Iowa local customers are “Inbound Calling Services.” This service “allows Business End Users to designate an area in the Company’s Central Office as the Business End User’s Designated Premises....” See Wide

Voice Local Exchange Products and Services Price List, Docket No. TF-2011-0077, at § 3.1 (Emphasis added). Usage charges for Inbound Calling Services range from \$0.0010 down to \$0.0002 per MOU if volumes reach 50 million MOUs. Id. In contrast, Wide Voice's proposed Access Services tariff would charge interexchange carriers a switched access rate of 4.85 cents per minute. See Access Service Tariff, Docket No. TF-2011-0077, at § 3.7.2.A.

The scenario presented in Wide Voice's proposed Iowa tariff appears to be yet another traffic pumping scheme. First, the ability of a purported "customer" to have his or her "premises" in the central office indicates that free service calling companies will be placing their routers or other equipment in rack space within a central office. Second, the service offered will be an "inbound" calling service, which is the type of functionality used by free service calling companies – calls are only delivered to free service calling companies; there are no outbound calls. Third, a comparison of the rates for the inbound calling service and for switched access likely evidences a traffic pumping scheme. That is, Wide Voice would be charging free service calling companies a rate of \$.0002 MOU for traffic reaching 50 million minutes, which translates into a monthly total of \$10,000. In contrast, at a switched access rate of 4.85 cents per minute, interexchange carriers will be charged \$2.4 million for delivery of 50 million minutes that traverses largely the same facilities. CenturyLink has filed an objection to Wide Voice's Iowa tariffs.

AUTHORITY OF THE COMMISSION TO INVESTIGATE WIDE VOICE

The South Dakota statutes grant this Commission the authority to conduct an investigation and hold hearings regarding the business practices of telecommunications carriers seeking a certificate or otherwise operating in the state. This authority is derived from the Commission's ability to review an application for a certificate of authority, as well as the

Commission's general authority to monitor telecommunications carriers to ensure that they are operating consistent with the public interest.

Under SDCL 49-31-3, a telecommunications company intending to provide local or interexchange services within the state must seek a certificate of authority. The applicant has "the burden to prove in its application that it has sufficient technical, financial and managerial capabilities to offer the telecommunications services described in its application before the commission may grant a certificate of authority." SDCL 49-31-3. This section also grants the Commission general supervisory authority over telecommunications companies in the state:

The commission has general supervision and control of all telecommunications companies offering common carrier services within the state to the extent such business is not otherwise regulated by federal law or regulation. The commission shall inquire into any complaints, unjust discrimination, neglect, or violation of the laws of the state governing such companies. The commission may exercise powers necessary to properly supervise and control such companies.

As stated by the South Dakota Supreme Court, the purpose of the general statutory authority given to the South Dakota Public Utilities Commission to supervise and control telecommunications companies under SDCL 49-31-3 is to protect the public interest and welfare.

US West Communications, Inc. v. AT&T Communications of the Midwest, Inc. 618 N.W.2d 847, 852 (S.D. 2000).

SDCL 49-31-7.1 also delineates general powers and duties of the Commission. This statute states that the Commission may:

(3) Inquire into the management of the business of all telecommunications companies subject to the provisions of this chapter, and the commission shall keep informed as to the manner and method in which the same is conducted, and may obtain from such telecommunications companies full and complete information necessary to enable it to perform the duties and carry out the objects for which it was created.

Finally, the Commission has the power to conduct “any investigations that are necessary to protect the public interest.” SDCL 49-31-7.

REQUEST FOR INVESTIGATION

Given Wide Voice’s established practices in other states of doing business with traffic pumping carriers, common ownership and management of a free service calling company, proposed Iowa tariffs that portend a traffic pumping scheme, and an application that raises questions as to Wide Voice’s managerial capabilities, and given the Commission’s statutory authority to investigate these matters to ensure protection of the public interest, CenturyLink requests the Commission to initiate an investigation into the business practices and operations of Wide Voice. Subject to further analysis and discovery, CenturyLink identifies the following issues for investigation:

1. Whether Wide Voice is planning or intending to deliver traffic to free service calling companies or to local exchange carriers that in turn deliver traffic to free service calling companies.
2. Whether Wide Voice’s intended business practices are to engage in a traffic pumping scheme or a similar arbitrage scheme in the state of South Dakota.
3. Whether Wide Voice will offer or provide legitimate local exchange services to residential and business customers located in South Dakota.
4. Whether Wide Voice will deliver traffic to free service calling companies that provide adult content, without providing adequate parental controls to block access to such content from their children.
5. Whether Wide Voice has sufficient technical, financial and managerial capabilities to offer telecommunications services to residential and business customers in South Dakota.

6. Whether Wide Voice's provision of services in South Dakota will be consistent with the public interest.

REQUEST FOR INTERVENTION

CenturyLink is an interexchange carrier, and as such is the targeted victim of local exchange carriers engaging in traffic pumping. Thus, Wide Voice may attempt to charge CenturyLink switched access for interexchange calls that it delivers to free calling companies. Accordingly, to the extent Wide Voice is facilitating or promoting the practice of traffic pumping through its Application for a Certificate of Authority, CenturyLink "will be bound and affected ... adversely with respect to an interest peculiar to the petitioner as distinguished from an interest common to the public or to the taxpayers in general," as provided in ARSD 20:10:01:15:05. Furthermore, CenturyLink's pecuniary interests would be directly and immediately affected by the Commission's order made upon the hearing in this matter under SDCL 1-26-17.1.

ARSD 20:10:01:15:05 obligates a petitioner for intervention to state its position in the proceeding. As set forth above in detail, CenturyLink states it ardently opposes the practice of traffic pumping, that traffic pumping is not in the public interest, and that traffic pumping is an unfair and fraudulent extraction of switched access monies from interexchange carriers such as CenturyLink in contradiction of the state and federal switched access regulatory structures.

For the reasons set forth, CenturyLink respectfully requests the Commission to grant Qwest's petition to intervene as a party in this docket.

Dated November 18, 2011.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Christopher W. Madsen, hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P. and that on the 18th day of November, 2011, I electronically filed **CenturyLink's Objection to Wide Voice's Application for Certificate, Request for Investigation and Hearing, and Request for Intervention** and emailed a true and correct copy of the foregoing to the following persons:

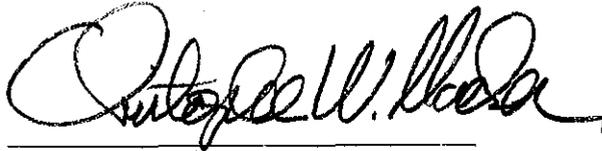
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