

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

IN THE MATTER OF THE COMPLAINT FILED)	ORDER DENYING MOTION
BY BLACK HILLS FIBERCOM, L.L.C., RAPID)	TO PERMIT POST-HEARING
CITY, SOUTH DAKOTA, AGAINST QWEST)	AFFIDAVIT
CORPORATION REGARDING INTRASTATE)	
SWITCHED ACCESS CHARGES APPLIED TO)	
ISP-BOUND CALLS WHICH COMPLAINANT)	CT03-154
CLAIMS ARE INTERSTATE IN NATURE)	

On October 29, 2003, the Public Utilities Commission (Commission) received a complaint filed by Black Hills FiberCom, L.L.C., Rapid City, South Dakota (Complainant), against Qwest Corporation (Qwest) regarding intrastate switched access charges applied to ISP-Bound calls which Complainant claims are interstate in nature.

On October 29, 2003, the complaint was faxed to Qwest. Pursuant to ARSD 20:10:01:09, Qwest was notified that it must satisfy the complaint or file an answer in writing with the Commission by November 18, 2003. On November 18, 2003, the Commission received an Answer and Counterclaim from Qwest. On December 9, 2003, the Commission received a Reply to Qwest's Counterclaim from FiberCom. On January 16, 2004, the Commission received a Stipulated Agreement to Scheduling Order from FiberCom. On January 20, 2004, at a regularly scheduled meeting, the Commission considered the Stipulated Agreement to Scheduling Order. The Commission voted to approve the Stipulated Agreement to Scheduling Order, subject to the Commission verifying the availability of the hearing dates. By order dated March 19, 2004, a hearing was scheduled for April 27-29, 2004. On April 19, 2004, the Commission received a Motion to Amend Complaint from FiberCom. The hearing was held as scheduled. On June 14, 2004, the Commission received a Conditional Motion to Dismiss for Lack of Subject Matter Jurisdiction from Qwest. On July 29, 2004, the Commission received a Motion to Permit Post-Hearing Affidavit from Qwest. On August 10, 2004, the Commission received a Response to Motion to Permit Post-Hearing Affidavit from FiberCom. On August 16, 2004, the Commission received a Reply in Support of Motion to Permit Post-Hearing Affidavit from Qwest.

The Commission finds that it has jurisdiction to enter this preliminary order pursuant to SDCL Chapters 1-26, 49-1, including 49-1-9 and 49-1-11, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-11, 49-31-18, 49-31-19 and 49-31-76, and ARSD Chapters 20:10:01, 20:10:24, 20:10:27, 20:10:28, 20:10:29 and 20:10:32.

On August 17, 2004, at a regularly scheduled meeting, the Commission considered the Motion to Permit Post-Hearing Affidavit. The Commission voted unanimously to deny the Motion to Permit Post-Hearing Affidavit. It is therefore

ORDERED, that the Motion to Permit Post-Hearing Affidavit is hereby denied.

Dated at Pierre, South Dakota, this 26th day of August, 2004.

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, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By:

Alaine Kolbo

Date:

8/27/04

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner