

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

IN THE MATTER OF THE COMPLAINT FILED)	ORDER FOR AND NOTICE
BY BLACK HILLS FIBERCOM, L.L.C., RAPID)	OF PROCEDURAL
CITY, SOUTH DAKOTA, AGAINST QWEST)	SCHEDULING AND
CORPORATION REGARDING INTRASTATE)	HEARING
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 (FiberCom), 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 voted to approve the Stipulated Agreement to Scheduling Order, subject to the Commission verifying the availability of the hearing dates. The Commission found no conflicts with the proposed hearing dates. On February 12, 2004, a telephonic pre-hearing conference was held among the parties and Commission Counsel regarding scheduling of additional pre-hearing matters, including any pre-hearing motions relating to the Commission's jurisdiction and the statement of issues to be included in the notice of hearing. The parties agreed that either of the parties may raise the issue of jurisdiction following the hearing, and if the issue is raised post-hearing by the parties or the Commission the issue will be decided after full hearing and briefing. The parties also agreed that the statement of issues could be general, except that jurisdiction should be specifically mentioned.

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.

Pursuant to the Order Approving Stipulated Agreement to Scheduling Order, the Commission set the following procedural schedule:

March 23-25, 2004 - Taking of Depositions;

March 31, 2004 - Deadline for Discovery; and

April 27-29, 2004 - A hearing will be held beginning at 9:30 a.m. on April 27, 2004, and continuing at 8:00 a.m. on April 28 and 29, 2004, in Room 412, State Capitol Building, Pierre, South Dakota. All persons testifying will be subject to cross-examination by the parties.

As agreed by the parties at the pre-hearing conference held on February 12, 2004, the issues at the hearing shall be the issues joined by FiberCom's Complaint, Qwest's Answer and Counterclaim, FiberCom's Reply to Qwest's Counterclaim, and any other pleadings filed subsequently, as further defined and clarified by the parties' post-hearing briefs. The post-hearing issues may include whether the Commission has jurisdiction to render a decision and award the requested relief as to any one or all of the issues raised by the Complaint and Counterclaim or whether the Commission lacks jurisdiction as to any particular issue or all issues raised by the Complaint and Counterclaim as a result of federal pre-emption or otherwise.

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 the Commission has jurisdiction to render a decision and award the requested relief as to an issue and, if so, decide the issues over which it may exercise jurisdiction and order any appropriate relief. 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 hearing shall be held at the time and place specified above on the above-stated issues and what relief, if any, would be appropriate.

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 19th day of March, 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:	<u><i>Neilson Kolbo</i></u>
Date:	<u>3/19/04</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner