

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

| | |
|---|------------------------------|
| IN THE MATTER OF THE COMPLAINT FILED) | ORDER GRANTING MOTION |
| BY WWC LICENSE LLC AGAINST GOLDEN) | TO STRIKE OR DISMISS |
| WEST TELECOMMUNICATIONS) | |
| COOPERATIVE, INC., VIVIAN TELEPHONE) | CT05-001 |
| COMPANY, SIOUX VALLEY TELEPHONE) | |
| COMPANY, UNION TELEPHONE COMPANY,) | |
| ARMOUR INDEPENDENT TELEPHONE) | |
| COMPANY, BRIDGEWATER-CANISTOTA) | |
| INDEPENDENT TELEPHONE COMPANY AND) | |
| KADOKA TELEPHONE COMPANY) | |
| REGARDING INTERCARRIER BILLINGS) | |

On February 16, 2005, the Public Utilities Commission (Commission) received a complaint filed by WWC License LLC (Complainant) against Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company, Sioux Valley Telephone Company, Union Telephone Company, Armour Independent Telephone Company, Bridgewater-Canistota Independent Telephone Company and Kadoka Telephone Company (Golden West Companies) regarding intercarrier billings.

On February 17, 2005, the Commission electronically transmitted notice of the filing and the intervention deadline of March 4, 2005, to interested individuals and entities. No petitions to intervene or comments were filed.

On March 8, 2005, the Commission received an Answer and Counterclaim of Golden West Companies. On March 29, 2005, the Commission received WWC's Answer to Golden West Companies' Counterclaim. On April 6, 2005, the Commission received a Motion for Partial Summary Judgment and Memorandum in Support of Motion for Partial Summary Judgment from WWC. On May 20, 2005, the Commission received a Memorandum in Response to Complainant's Motion for Partial Summary Judgment from the Golden West Companies. On May 23, 2005, the Commission received an Affidavit of Dennis Law from the Golden West Companies.

At its duly noticed May 24, 2005, meeting, the Commission considered this matter. The Commission unanimously voted to grant the Motion for Partial Summary Judgment regarding jurisdiction, determining that the Commission does have jurisdiction over this matter pursuant to SDCL Chapters 49-13 and 49-31 and 47 U.S.C. § 252, but to take the matter under advisement, and defer voting regarding WWC's request for immediate payment of undisputed overcharges and WWC's request that the Commission find interest is applicable to any overcharges.

The Commission finds that it has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-1, including 49-1-9 and 49-1-11, 49-13, including 49-13-1 through 49-13-14.1, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-11, 49-31-76 and 49-31-89, and ARSD Chapters 20:10:01 and 20:10:32.

At its duly noticed June 14, 2005, meeting, the Commission considered WWC's request for immediate payment of undisputed overcharges and WWC's request that the Commission find interest is applicable to any overcharges. The Commission unanimously voted to deny the Motion for Partial Summary Judgment regarding payment of undisputed overcharges and grant the Motion for Partial Summary Judgment regarding applicability of interest to overcharges.

On August 10, 2005, the Commission received a Notification of Question of Constitutionality of SDCL §§ 49-31-109 to 49-31-115 and Notice to Intervene from WWC. On August 15, 2005, the Commission received a Motion to Prohibit WWC from Contesting the Accuracy of Data Provided and Motion to Strike Late-Filed Claim; Motion to Compel; Motion to Permit Additional Discovery; Motion to Postpone Hearing; and, Motion to Strike or Dismiss from Golden West Companies. On August 17, 2005, the Commission received a Motion to Bifurcate Complaint and Counterclaim from WWC. On August 18, 2005, the Commission received WWC's Response to Motions filed by Golden West Companies. On August 18, 2005, the Commission received an Opposition to Motion to Bifurcate Complaint and Counterclaim from Golden West Companies.

At its duly noticed August 19, 2005, ad hoc meeting, the Commission considered the Motion to Strike or Dismiss WWC's claims for double damages and attorney fees in the complaint concluding that the double damages and attorney fees provisions in SDCL 49-13-14.1 apply only in the case of a suit brought in court and only with respect to claims of the type specified in SDCL 49-13-14.1. The Commission unanimously voted to grant the Motion to Strike or Dismiss dismissing WWC's claims for double damages and attorney fees and striking paragraphs 13 and 14 of the complaint and the associated prayers for relief 2 and 3.

The Commission unanimously voted to recess the meeting until August 22, 2005, commencing at 12:30 p.m., in order to take the remaining motions under advisement. It is therefore

ORDERED, that the Motion to Strike or Dismiss WWC's claims for double damages and attorney fees in the complaint is granted, WWC's claims for double damages and attorney fees are dismissed, and paragraphs 13 and 14 of the complaint and the associated prayers for relief 2 and 3 are stricken. It is further

ORDERED, that the meeting is recessed until August 22, 2005, commencing at 12:30 p.m.

Dated at Pierre, South Dakota, this 26th day of August, 2005.

| |
|--|
| 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>Belinda Kalbo</i></u> |
| Date: <u>8/26/05</u> |
| (OFFICIAL SEAL) |

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Robert K. Sahr
ROBERT K. SAHR, Commissioner

Dustin M. Johnson
DUSTIN M. JOHNSON, Commissioner