

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

IN THE MATTER OF THE COMPLAINT FILED BY) JACK AND CINDY BRUNSON, EDGEMONT,) SOUTH DAKOTA, AGAINST GOLDEN WEST) TELECOMMUNICATIONS COOPERATIVE) REGARDING TELECOMMUNICATIONS) SERVICES)	ORDER FOR AND NOTICE OF HEARING ON MOTION TO DISMISS OR FOR SUMMARY JUDGMENT CT07-006
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TO: JACK AND CINDY BRUNSON AND GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE ("Golden West"):

PLEASE TAKE NOTICE that the South Dakota Public Utilities Commission (Commission) will hold a hearing at **1:30 P.M. Central Time on May 3, 2011, in Rm. 413 of the State Capitol Building, 500 E. Capitol Ave., Pierre, SD**, to consider Golden West's Motion to Dismiss or for Summary Judgment. Telephonic participation will be permitted. Please contact the Commission before 5:00 P.M. Central Time on May 2, 2011, to arrange for telephonic participation.

Complainants Jack and Cindy Brunson filed a Complaint against Golden West on December 13, 2007, alleging that Golden West had refused to extend and connect phone service to a hunting lodge under development by them as requested and asking the Commission for a determination that they are entitled to have service extended and hooked up as requested. On January 2, 2008, Golden West filed an Answer to Complaint and Motion to Dismiss. Commission Staff filed a letter to the Brunsons on July 7, 2009. On July 9, 2009, the Brunsons filed a letter responding to Staff's letter, and on October 22, 2009, the Brunson's filed a letter to Margo Northrup, counsel for Golden West, dated October 14, 2009. On April 13, 2010, Golden West filed a Motion to Dismiss or for Summary Judgment and supporting documents ("Motion"). On April 20, 2010, the Brunsons filed a letter to the Commission dated April 19, 2010.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13 and 49-31. The Commission will hold a hearing on the Motion on May 3, 2011. Prior to the hearing, the parties may file and serve on the other parties such affidavits and/or exhibits, in addition to those previously filed and served, as they deem necessary to demonstrate whether a genuine issue of material fact exists which would require this matter to proceed to a full evidentiary hearing and what the decision in this matter should be.

The issues to be decided at the hearing are (i) whether a genuine issue of material fact exists with respect to the Complaint which would require the matter to go to evidentiary hearing, (ii) whether the material facts as to which no genuine issue exists demonstrate that Golden West is entitled to judgment as a matter of law and (iii) whether Golden West's Motion to Dismiss or for Summary Judgment should be granted, denied or granted in part and denied in part. Some or all of the following questions may be germane to the determinations requested of the Commission in the Motion:

1. Is an ETC LEC generally obligated to extend service to a requesting person in its service area?

2. If so, can the LEC condition its extension of service on the customer's performance of *reasonable preconditions*?
3. If so, can one of these preconditions be the customer's execution and delivery of an easement with reasonable terms which affords reasonable and sufficient access to the premises demarcation point for both installation and maintenance?
4. Can the LEC demand an easement whose purposes go beyond providing access to the requesting person's demarcation point, such as, to provide access to a land-locked other customer or *least-cost or more efficient access to other customers' premises*?
5. Does the record demonstrate that Golden West has offered the Brunsons an easement option limited to a reasonable and necessary corridor for installing and maintaining equipment to the Brunsons' premises demarcation point? How does the Igloo subdivision fit into this situation?
6. Does the record demonstrate that this easement was reasonable in all other respects?
7. Does the record demonstrate that the Brunsons were afforded an opportunity to execute such an easement and failed to do so?
8. Can an ETC LEC condition service extension to a person within its service area on installation of a demarc facility of a certain type and location?
9. Can the LEC refuse to extend service to a person who desires to have the LEC locate the demarc at the LEC's pedestal and *take service at their own cost and risk from that point*?
10. Is this affected at all by the fact that the cable is fiber optic cable?

The hearing will 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 may be forfeited if not exercised at the hearing. If a party or their representative fails to appear at the time and place set for the hearing, the Final Decision may be entered by default or may be based on the Motion to Dismiss or for Summary Judgment filed by Golden West, and the affidavits and other documents, if any, filed by the parties. After the hearing, the Commission will consider the Motion to Dismiss or for Summary Judgment, the affidavits and other documents offered in support of or in opposition to the Motion, and arguments on the Motion presented by the parties at the hearing. The Commission may then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter or may order that the matter be scheduled for full evidentiary hearing. As a result of the hearing, the Commission will determine whether the Motion to Dismiss or for Summary Judgment should be granted or denied. 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 issues as stated above.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Commission 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 21st day of April, 2011.

<p align="center">CERTIFICATE OF SERVICE</p> <p>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.</p> <p>By: <u>Tina Douglas</u></p> <p>Date: <u>4-21-11</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Steve Kolbeck

STEVE KOLBECK, Chairman

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner