

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

IN THE MATTER OF THE FILING BY DAKOTA)	ORDER DENYING REQUEST
TELECOM, INC. FOR DESIGNATION AS AN)	FOR ETC DESIGNATION;
ELIGIBLE TELECOMMUNICATIONS CARRIER)	NOTICE OF ENTRY OF
)	ORDER
)	TC98-111

On June 4, 1998, the South Dakota Public Utilities Commission (Commission) received a filing from Dakota Telecom, Inc. (DTI) requesting designation as an eligible telecommunications carrier for the Centerville and Viborg exchanges in South Dakota.

The Commission electronically transmitted notice of the filing and the intervention deadline to interested individuals and entities on June 4, 1998, with an intervention deadline of June 19, 1998. Petitions to Intervene were received from Fort Randall Telephone Company (Fort Randall) and South Dakota Independent Telephone Coalition, Inc. (SDITC). Fort Randall and SDITC were granted intervention by Order dated August 5, 1998.

On August 7, 1998, the Commission issued an Order for and Notice of Hearing setting the hearing for September 14, 1998, commencing at 1:30 p.m., in Room 412 of the State Capitol, Pierre, South Dakota. The hearing was held as scheduled. The parties filed post-hearing briefs.

At its November 25, 1998, meeting, the Commission considered this matter. The Commission voted to deny DTI's request for designation as an eligible telecommunications carrier for the Centerville and Viborg exchanges (Commissioner Schoenfelder, dissenting).

Based on the evidence of record, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On June 4, 1998, the Commission received a request from DTI requesting designation as an eligible telecommunications carrier (ETC) for the Centerville and Viborg exchanges in South Dakota.
2. Fort Randall serves the exchanges of Centerville, Viborg, Tabor, Tyndall, Wagner, Lake Andes, and Hermosa. Exhibit 3 at 3. As designated by the Federal Communications Commission (FCC), Fort Randall's study area consists of those seven exchanges and the one exchange served by Fort Randall's affiliate Mount Rushmore. Id. at 2.

3. Fort Randall is a rural telephone company as defined by 47 U.S.C. § 153(37). Consistent with 47 U.S.C. § 214(e)(5), the Commission designated Fort Randall's study area as its service area in Docket TC97-075.

4. Thomas Hertz, Chief Executive Officer of Dakota Telecommunications Group and its subsidiary DTI, stated that DTI offers the services supported by the federal universal service fund support mechanisms in the Centerville and Viborg exchanges using its own facilities. Exhibit 2 at 2. DTI provides telecommunications service through the use of fiber optic cable to the neighborhood node and coaxial cable to the premises. *Id.* DTI uses a fixed wireless system for telephone service outside the city limits of Centerville and Viborg. *Id.* at 3.

5. Mr. Hertz stated that the Commission could designate the Viborg and Centerville exchanges as DTI's service area. *Id.* at 4. DTI was not asking the Commission to change Fort Randall's service area. Tr. at 53.

6. DTI provides service in the Centerville and Viborg exchanges but offers no service in Fort Randall's Tabor, Tyndall, Wagner, Lake Andes, or Hermosa exchanges or in Mt. Rushmore's exchange. Exhibit 3 at 3.

7. The Commission finds that when designating a second ETC in a rural telephone company's service area, the second ETC must serve the entire service area of the rural telephone company. The Commission finds that this position is consistent with the Federal-State Joint Board on Universal Service's (Joint Board) and the FCC's interpretations of section 214(e).

8. The Joint Board recommended that current study areas of rural telephone companies be retained as the service areas in order to minimize "cream-skimming." FCC 96J-3, CC Docket No. 96-45, *Recommended Decision (In the Matter of Federal-State Joint Board on Universal Service)*, released November 8, 1996, ¶ 172. If service areas were the same as study areas, the Joint Board recognized that competitors must then provide services throughout a rural telephone company's study area. *Id.* The FCC accepted the Joint Board's recommendation on this issue. FCC 97-157, *Report and Order, (In the Matter of Federal-State Joint Board on Universal Service)* released May 8, 1997, ¶ 189. The FCC noted that if required to provide services throughout a rural telephone company's study area, "the competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the ILEC's [incumbent local exchange carrier] ability to provide service throughout the area." *Id.* The FCC found that this would be consistent with its decision "to use a rural ILEC's embedded costs to determine, at least initially, that company's costs of providing universal service because rural telephone companies currently average such costs at the study-area level." *Id.*

9. The Commission finds that it would not be in the public interest to allow a competitive telephone company to be designated as a second ETC for a lesser service area than that

served by the rural telephone company. Designating a lesser service area for a competitive local exchange company may serve to undercut the incumbent rural telephone company's ability to provide services throughout its service area.

10. Since DTI does not currently serve Fort Randall's entire service area, the Commission denies DTI's request to designate DTI as an ETC for the Centerville and Viborg exchanges.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, and 49-31-78 and the federal Telecommunications Act of 1996, specifically 47 U.S.C. § 214(e).

2. Pursuant to SDCL 49-31-78, the Commission "shall designate a common carrier as an eligible telecommunications carrier for a service area designated by the Commission consistent with 47 U.S.C. § 214(e). . . ."

3. Fort Randall is a rural telephone company as defined by 47 U.S.C. § 153(37). Consistent with section 214(e)(5), the Commission designated Fort Randall's study area as its service area in Docket TC97-075.

4. For an area served by a rural telephone company, the Commission may not designate more than one ETC without finding that the additional designation is in the public interest. SDCL 49-31-78.

5. The Commission finds that it would not be in the public interest to allow a competitive telephone company to be designated as a second ETC for a lesser service area than that served by the rural telephone company. Since DTI does not currently serve Fort Randall's entire service area, the Commission denies DTI's request to designate DTI as an ETC for the Centerville and Viborg exchanges.

It is therefore

ORDERED, that DTI's request for designation as an ETC for the Centerville and Viborg exchanges is denied.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 11th day of December, 1998. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 11th day of December, 1998.

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: Altaene Kelso

Date: 12/11/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner
dissenting