

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

<b>IN THE MATTER OF THE SALE BY MJD SERVICES</b>	)	<b>FINAL DECISION AND</b>
<b>CORP. OF THE STOCK OF UNION TELEPHONE</b>	)	<b>ORDER APPROVING</b>
<b>COMPANY, ARMOUR INDEPENDENT TELEPHONE</b>	)	<b>SALE OF TELEPHONE</b>
<b>COMPANY, INCLUDING ITS WHOLLY OWNED</b>	)	<b>EXCHANGES; NOTICE</b>
<b>SUBSIDIARY BRIDGEWATER-CANISTOTA</b>	)	<b>OF ENTRY OF ORDER</b>
<b>INDEPENDENT TELEPHONE COMPANY AND</b>	)	
<b>KADOKA TELEPHONE COMPANY TO GOLDEN</b>	)	<b>TC03-118</b>
<b>WEST TELEPHONE PROPERTIES, INC.</b>	)	

On July 25, 2003, MJD Services Corp. (MJD), Golden West Telecommunications Cooperative, Inc. (GW Coop) and Golden West Telephone Properties, Inc. (GW Properties), a wholly-owned subsidiary of GW Coop (together, "Applicants") filed a Joint Application (Application) requesting the South Dakota Public Utilities Commission (Commission) to approve a transaction in which all of the capital stock of Union Telephone Company of Hartford (Union), Armour Independent Telephone Co. (Armour), Bridgewater-Canistota Independent Telephone Co. (Bridgewater-Canistota) and Kadoka Telephone Co. (Kadoka) will be acquired by GW Properties. The application states that the change of ownership and control will be accomplished in accordance with the terms of the stock purchase agreement filed with the Application (Agreement). Applicants have requested confidential treatment of the complete version of the Agreement that contains the purchase price and other financial information. The Application states that MJD currently owns 100% of the stock of Union and Kadoka, that MJD and Union currently own 100% of the stock of Armour, that Armour owns 100% of the stock of Bridgewater-Canistota and that MJD accordingly controls Union, Armour, Bridgewater-Canistota and Kadoka. Applicants seek approval of the stock sale and purchase transaction pursuant to SDCL 49-31-59 because the transaction would transfer control of six local telephone exchanges in South Dakota (collectively, the "MJD Exchanges") from MJD to GW Properties.

On July 31, 2003, the Commission electronically transmitted notice of the filing and the intervention deadline of August 15, 2003, to interested individuals and entities. No petitions to intervene or comments were filed.

A hearing was scheduled for September 24, 2003, at 10:00 a.m., in Room 412 of the State Capitol Building in Pierre, South Dakota. The hearing was held as scheduled. After hearing the evidence presented by Applicants and Commission Staff, the Commission separately considered and voted on whether to approve the sale of each of the MJD Exchanges. The Commission voted unanimously in each of the separate votes to approve the sale of each of the MJD Exchanges to GW Properties through the proposed sale and purchase of stock, subject to the conditions recommended by Staff.

Having reviewed the evidence of record and being fully informed in the matter, the Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

GENERAL FINDINGS

1. MJD is an intermediate holding company within the FairPoint Communications, Inc. (FairPoint) organization. It is responsible for oversight of ten (10) of Fair-Point's local exchange subsidiaries. Exhibit 3 at 2.

2. FairPoint is a telecommunications holding company that owns and operates twenty-nine rural local exchange carriers in eighteen states, including South Dakota. Its subsidiaries presently operate 142 local telephone exchanges serving approximately 243,408 access lines. FairPoint subsidiaries provide local exchange telephone services, enhanced calling features, long distance toll services, digital subscriber line services, Internet access, advanced data services and cable television services. Exhibit 3 at 2.
3. Union is a rural local exchange carrier that provides wireline local exchange service, exchange access service, and interexchange service to residential and business customers in the Hartford and Wall Lake exchanges in South Dakota with approximately 1,889 access lines (Union Exchanges). Exhibit 3 at 2.
4. Armour is a rural local exchange carrier that provides wireline local exchange service, exchange access service, and interexchange service to residential and business customers in the Armour exchange in South Dakota with approximately 684 access lines. Exhibit 3 at 2.
5. Bridgewater-Canistota is a rural local exchange carrier that provides wireline local exchange service, exchange access service, and interexchange service to residential and business customers in the Bridgewater and Canistota exchanges in South Dakota with approximately 993 access lines (Bridgewater-Canistota Exchanges). Exhibit 3 at 2.
6. Kadoka is a rural local exchange carrier that provides wireline local exchange service, exchange access service, and interexchange service to residential and business customers in the Kadoka exchange in South Dakota with approximately 577 lines. Exhibit 3 at 2.
7. GW Coop is a rural local exchange carrier with its headquarters in Wall, South Dakota, that provides wireline local exchange service, exchange access service, and interexchange service to residential and business customers in South Dakota, Nebraska and Wyoming. Golden West Coop serves 27 exchanges in South Dakota with approximately 16,338 access lines in South Dakota, 91 access lines in Nebraska and 29 access lines in Wyoming. Golden West Coop serves a total of approximately 16,458 access lines in its exchanges. Exhibit 3 at 3; Exhibit 2 at 1.
8. GW Properties, which is 100 percent owned by GW Coop, owns 100 percent of Vivian Telephone Company (Vivian), a rural local exchange carrier that provides wireline local exchange service, exchange access service, and interexchange service to residential and business customers in South Dakota and Nebraska. Vivian serves 19 exchanges primarily in the southeastern portion of South Dakota, with 19,830 access lines in South Dakota and 17 access lines in Nebraska. Vivian serves a total of approximately 19,847 access lines in its exchanges. Exhibit 3 at 3.
9. Sioux Valley Telephone Company (Sioux Valley), a wholly owned subsidiary of GW Coop, is a rural local exchange carrier that provides wireline local exchange service, exchange access service, and interexchange service to residential and business customers in southeastern and south central part of South Dakota and in Minnesota. Sioux Valley serves approximately 5,850 access lines in South Dakota and approximately 43 access lines in Minnesota, for a total of approximately 5,893 access lines. Exhibit 3 at 3.
10. GW Coop, with its affiliates, is currently the largest independent telephone company in South Dakota. GW Coop, with its affiliates, operates approximately 53 local exchanges within the state of South Dakota, serving in excess of 42,018 access lines.
11. In South Dakota, MJD presently owns 100 percent of the stock of Union and Kadoka; MJD owns 100 percent of the common stock and Union owns 100 percent of the preferred stock of Armour, and Armour owns 100 percent of the stock of Bridgewater-Canistota. As a consequence of this tiered ownership, MJD controls the Union, Armour, Bridgewater-Canistota and Kadoka Exchanges (together, the "MJD Exchanges"). Exhibit 3 at 1-2.

of this tiered ownership, MJD controls the Union, Armour, Bridgewater-Canistota and Kadoka Exchanges (together, the "MJD Exchanges"). Exhibit 3 at 1-2.

12. The proposed transaction is a sale of all of the issued and outstanding stock of Union, Armour, Bridgewater-Canistota and Kadoka from MJD and its subsidiaries to GW Properties. Exhibit 3, Stock Purchase Agreement at 2. As a result of this transaction, control of Union, Armour, Bridgewater-Canistota and Kadoka and the Union, Armour, Bridgewater-Canistota and Kadoka Exchanges will be transferred to GW Properties. Exhibit 3 at 1.

#### ADEQUACY OF LOCAL TELEPHONE SERVICE

13. All services currently provided by the four companies will continue to be available after the sale. Some of the services currently available are: voice mail service, caller ID, last call return, call waiting, continuous redial, call forwarding, per call block, per line block, anonymous call rejection, and three way calling. A list of the current service offerings is contained on Attachment B. Exhibit 2 at 3.

14. All existing employees of the acquired companies except one will be retained to provide local repair, maintenance and customer services. Exhibit 3 at 4.

15. After the stock sale, Union, Armour, Bridgewater-Canistota and Kadoka will continue to be managed on a day-to-day basis by the current local employees and regulated local exchange and exchange access services, rates and practices for these companies will not change. Exhibit 3 at 4.

16. No facility changes are currently contemplated. The switches and outside plant are in excellent condition. Exhibit 3 at 5.

17. None of the companies has a pending request for EAS service.

#### REASONABLENESS OF RATES

18. The regulated local exchange and exchange access services, rates and practices of these companies will not change as a result of the proposed transaction. Exhibit 3 at 4.

19. The sale will not cause rates to increase, and no rate design changes are contemplated. Exhibit 2 at 2. Exhibit 2, Attachment B contains a list, by company, of all of the current services and the applicable rates. The rates set forth on Exhibit 2, Attachment B are reasonable.

20. The existing switched access rates will not change as a result of this sale. Rates will change only if the Commission orders a change pursuant to its ongoing regulation of switched access rates. The current switched access rates for all four companies are 9.73 cents originating and 11.68 cents terminating (the current LECA rates). Exhibit 2 at 2.

#### PUBLIC SAFETY ISSUES

21. Emergency services will be unaffected by the sale, and 911 services will be provided at whatever level of service the counties request. Exhibit 3 at 4. All four exchanges have E-911 emergency service. We will also provide the counties with accurate data for their databases.

#### ABILITY OF THE BUYER TO PROVIDE SERVICE

23. GW Coop has the financial strength to absorb the additional costs associated with management of the MJD Exchanges. The transaction is financially sound. Exhibit 2 at 5.

#### TAXES

24. Tax payments will be unaffected by this sale. The acquired companies are independent telephone companies and pay gross receipts taxes. The telephone operations will continue to qualify as independent telephone company operations after the stock sale and, therefore, gross receipts taxes will continue to apply. Exhibit 3 at 4.

#### PROTECTION OF THE PUBLIC INTEREST

25. The proposed transaction is a transfer of control of four small local exchange carriers in South Dakota that are currently controlled by MJD, a company headquartered in North Carolina, to GW Properties, a provider of local exchange and related telecommunications services located in South Dakota. The transaction will enable Union, Armour, Bridgewater-Canistota and Kadoka and their customers to gain the benefit of local ownership, including the benefit of the experience and knowledge of GW Properties and GW Coop regarding the provision of service to rural areas in South Dakota. Exhibit 3 at 4.

26. The Commission held three public input meetings in the areas to be affected by the proposed sale of exchanges: in Hartford on September 18, 2003, in Armour on September 22, 2003, and in Kadoka on September 23, 2003. The sign-in sheets for these meetings are set forth in Exhibits 8, 9 and 10. There was no public opposition to the transaction or acquisition by GW Properties of the MJD Exchanges. The persons commenting had very favorable things to say about their current telephone service.

27. GW Coop will work with the schools and medical facilities to provide distance learning and tele-medicine as needed. Assistance with grant and loan proposals for these services will also be available.

28. GW Coop supports local economic development efforts and will support the local economy by buying supplies and services locally whenever possible.

29. The sale will have no impact on the Universal Service Fund. As a stock purchase, the study areas are unaffected by this transaction.

30. Union, Armour, Bridgewater-Canistota, and Kadoka have received Eligible Telecommunications Carrier ("ETC") status, and will continue to qualify as ETCs after the stock transactions.

31. The sale of the MJD Exchanges to GW Properties is in the public interest.

#### CONDITIONS OF SALE

32. The Commission's approval of the proposed transaction and the resulting sale or transfer of the MJD Exchanges to GW Properties shall be subject to the following conditions:

- a. That the financing and purchase of the MJD Exchanges proceed substantially in accordance with the terms outlined in Exhibit 3.
- b. That the applicants file documentation supporting the purchase price as assigned to each operating entity.

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- b. That the applicants file documentation supporting the purchase price as assigned to each operating entity.
- c. That current local rates not be increased for 18 months from the date of the sale;
- d. That GW Properties and GW Coop shall not recover any of the acquisition adjustment through its regulated interstate or intrastate rates, through its local rates, or through federal or state universal service funds;
- e. That GW Properties and GW Coop shall honor all existing contracts, commitments, leases, licenses, and other agreements which relate to, arise from, or are used for the operation of the purchased exchange;
- f. That GW Properties continue to offer, at a minimum, all existing services currently offered by the purchased exchange; and
- g. That GW Properties not discontinue any existing extended area service without first obtaining approval from the Commission.

#### SEPARATE VOTE ON EXCHANGES

33. The Commission voted separately on the sale of each of the MJD Exchanges. The sale of each of the MJD Exchanges to GW Properties was approved by unanimous vote of the Commission.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the sale of the MJD Exchanges to GW Properties pursuant to SDCL Chapters 1-26 and 49-31, specifically 1-26-17.1, 49-31-3, 49-31-3.1, 49-31-4, 49-31-5.1, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, 49-31-21, and 49-31-59.
2. The hearing held by the Commission relative to this matter was an evidentiary hearing pursuant to SDCL Chapter 1-26.
3. The Commission has considered, among other things, the requirements of SDCL 49-31-59 in regard to the proposed sale of stock, and protection of the public interest pursuant to SDCL 49-31-7. The Commission finds that it is in the public interest to approve the transaction and sale of the MJD Exchanges because the sale will enable the customers to continue to receive high quality service and the combined entity will achieve economies of scale in its operations.
4. Applicants have satisfied their burden of proof under SDCL Chapter 49-31, specifically 49-31-59 for approval of the transaction and the sale of the MJD Exchanges to GW Properties.
5. The Commission has considered the adequacy of local telephone service in reviewing this transaction and resulting sale of local exchanges. GW Properties is required to provide all services currently offered. In addition, GW Properties must honor existing contracts and other agreements.
6. The Commission has also considered the reasonableness of local rates. Based on its findings that rates for the customers will remain at the same levels as they are presently, that such

9. GW Properties has the ability and has demonstrated the commitment to provide modern state-of-the-art telecommunications services that will facilitate economic development, tele-medicine, and distance learning in rural South Dakota after the sale.

10. The transaction and the resulting sale of the MJD Exchanges to GW Properties subject to the Conditions of Sale is in the public interest and is approved.

It is therefore

ORDERED, that the sale of stock of Union, Armour, Bridgewater-Canistota and Kadoka from MJD Services Corp. to Golden West Telephone Properties, Inc. and the resulting transfer of control over the Hartford, Wall Lake, Armour, Bridgewater, Canistota and Kadoka local telephone exchanges from MJD Services Corp. to Golden West Telephone Properties, Inc. is approved subject to the Conditions of Sale set forth herein; and it is

FURTHER ORDERED, that the applicants file documentation supporting the purchase price as assigned to each operating entity.

PLEASE TAKE NOTICE that this Decision and Order was duly entered this 29<sup>th</sup> day of September, 2003, and filed in the Commission's docket. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to SDCL 1-26-31, notice of appeal to the circuit court from this decision must be served within thirty days after the service of this Notice of Decision upon you.

Dated at Pierre, South Dakota, this 29<sup>th</sup> day of September, 2003.

<b>CERTIFICATE OF SERVICE</b>	
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>Alaine Kalbo</u>
Date:	<u>9/29/03</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