

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

<b>IN THE MATTER OF MAXCESS, INC.'S</b>	)	<b>FINDINGS OF FACT,</b>
<b>FAILURE TO SUBMIT A REPORT AND PAY</b>	)	<b>CONCLUSIONS OF LAW</b>
<b>THE GROSS RECEIPTS TAX</b>	)	<b>AND FINAL ORDER; NOTICE</b>
	)	<b>OF ENTRY OF FINAL</b>
	)	<b>ORDER</b>
	)	<b>TC03-219</b>

On December 31, 2003, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against Maxcess, Inc. (Maxcess) for failure to submit an annual report and pay the gross receipts tax. The hearing was held as scheduled on January 20, 2004, at 10:00 A.M., in the Cactus Conference Room, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The reason for the hearing was to give Maxcess an opportunity to show cause why the Commission should not revoke its Certificate of Authority, or other specified actions, for failure to submit an annual report as required by ARSD 20:10:24:04 or pay the gross receipts tax as required by SDCL 49-1A-1. Commissioners Sahr, Hanson and Burg were present. Also present were Karen E. Cremer, Commission Staff Attorney and Heather Fomey, Deputy Executive Director for the Commission. No representative of Maxcess appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke Maxcess' Certificate of Authority for failure to pay the gross receipts tax.

The Commission, having heard the testimony presented at the hearing, makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Maxcess is a telecommunications company holding a Certificate of Authority, issued by this Commission, to provide telecommunications services in South Dakota.
2. Heather Fomey, Deputy Executive Director for the Commission, sent letters to Maxcess on April 28, 2003 and September 26, 2003, requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. Heather Fomey testified that Maxcess never paid the gross receipts tax.
3. A copy of the Order for and Notice of Show Cause Hearing was sent by certified mail to Maxcess on December 31, 2003.
4. No representative of Maxcess appeared at the hearing to show cause why the Commission should not revoke its Certificate of Authority.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to SDCL 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, and 49-31-3.
2. Pursuant to 49-1A-3, the Commission assesses a tax of .0015 or \$250, whichever is greater, on the annual intrastate gross receipts received by a telecommunications company from the company's customers within the state of South Dakota. Pursuant to 49-1A-5, the tax is due on June first of each year.

3. Maxcess has failed to pay the gross receipts tax.

4. The Commission has the authority, under SDCL 49-31-3, to suspend or revoke a Certificate of Authority granted to a company for a willful violation of the laws of this state. Based on the failure of Maxcess to pay the gross receipts tax in violation of 49-1A-5, the Commission revokes Maxcess' Certificate of Authority.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that the Certificate of Authority granted to Maxcess by this Commission is hereby revoked and shall be returned to the Commission within thirty (30) days from the date of this Order.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 6<sup>th</sup> day of February, 2004. 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 6<sup>th</sup> day of February, 2004.

<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>    <i>Delaine Kalbo</i>    </u>
Date:	<u>    2/6/04    </u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

    *Robert K. Sahr*      
ROBERT K. SAHR, Chairman *RS*

    *Gary Hanson*      
GARY HANSON, Commissioner