GREENE MEYER AND MCELROY

ORIGINAL

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ELIZABETH MEYER
SCOTT B. MCELROY
M. CATHERINE CONDON
ALICE E. WALKER
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OF COUNSEL
PHOEBE ANNE GREYSON

RECEIVED

JUL - 8 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 8, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

VIA HAND DELIVERY

Re: **EX PARTE** -- *In the Matter of the Cheyenne River Sioux Tribe Telephone Authority's and U S WEST COMMUNICATIONS, INC.'s Joint Petition for Expedited Ruling Preempting South Dakota Law*, CC Docket No. 98-6.

Dear Secretary Roman Salas:

On Thursday, July 2, 1998, I spoke with William Kehoe regarding *In the Matter of the Cheyenne River Sioux Tribe Telephone Authority's and U S WEST COMMUNICATIONS, INC.'s Joint Petition for Expedited Ruling Preempting South Dakota Law*, CC Docket No. 98-6 (FCC Jan. 22, 1998) ("Petition"). Mr. Kehoe asked me to provide additional materials related to the Petition, and to provide a brief description of the significance of those materials to the Petition. I have attached the materials Mr. Kehoe requested to this letter, and I describe below their significance to the Petition.

1. Telephone Authority's Dispute Resolution Procedure.

On May 28, 1997, the Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority") adopted a dispute resolution procedure that provides a forum in which subscribers to the telephone exchanges the Telephone Authority owns and operates may voice and seek redress for complaints regarding service, rates, and other matters related to telecommunications services. The Telephone Authority's and U S WEST's *Motion to Take Judicial Notice*, In the Matter of the Sale of Certain Telephone Exchanges by U S WEST COMMUNICATIONS, INC. to Certain Telecommunications Companies in S.D., Nos. TC94-122-Morristown, McIntosh and Timber Lake (S.D. Pub. Util. Comm'n June 3, 1997) (Attachment 1 hereto), includes a copy of the dispute resolution procedure. The South Dakota Public Utilities Commission ("SDPUC") denied the motion and did not take judicial notice of the dispute resolution procedure because, in its view, taking judicial notice would contravene the South Dakota Circuit Court's order of remand on the record. E.g. *Amended Decision and Order Regarding Sale of the McIntosh Exchange; Notice of Entry of Order* at 4, In the Matter of the Sale of Certain Telephone Exchanges by U S WEST COMMUNICATIONS, INC. to Certain Telecommunications Companies in S.D., No. TC94-122-

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1007 PEARL STREET, SUITE 220 BOULDER, COLORADO 80302 303 442 2021 FAX 303 444 3490
A PROFESSIONAL CORPORATION

McIntosh (S.D. Pub. Util. Comm'n Aug. 22, 1997), Petition Attachment 3.

2. Proposed Gross Receipts Tax Collection Agreement.

In order to address the problem of the SDPUC's inability to enforce the collection of gross receipts taxes from the Telephone Authority resulting from the Telephone Authority's sovereign immunity, the Telephone Authority proposed to enter into a gross receipts tax collection agreement with the SDPUC. The agreement would have addressed the issue of loss of gross receipts taxes as a result of U S WEST's sales of the three telephone exchanges to the Telephone Authority. Pursuant to Mr. Kehoe's request, I have enclosed transcript excerpts describing the Telephone Authority's efforts to negotiate an agreement with the SDPUC. *Heard Before the Public Utilities Comm'n* at 1-2, 117-18, 123-27, 132, 134-36, 138-39, 156-58, 173, In the Matter of the Sale of Certain Telephone Exchanges by U S WEST COMMUNICATIONS, INC. to Certain Telecommunications Companies in S.D. (S.D. Pub. Util. Comm'n Apr. 17, 1995) (Attachment 2 hereto); *Hearing* at 420-26, 525, 552-64, 668-71, 679-87, 694-98, 705-07, In the Matter of the Sale of Certain Telephone Exchanges by U S WEST COMMUNICATIONS, INC. to Certain Telecommunications Companies in S.D. (S.D. Pub. Util. Comm'n June 2, 1995) (Attachment 3 hereto). This testimony demonstrates the Telephone Authority's willingness to negotiate an arrangement whereby the Telephone Authority would pay gross receipts taxes to the State.

The Telephone Authority in fact submitted a proposed agreement to the SDPUC for its consideration. The SDPUC noted the Telephone Authority's offer to negotiate a gross receipts tax collection agreement, but also stated its refusal to enter into such negotiations: "The [SDPUC] lacks the authority to enter into a tax agreement with a tribal entity. No tax agreement was reached with the state of South Dakota by the close of the record on June 19, 1995." *Amended Decision and Order Regarding Sale of the McIntosh Exchange; Notice of Entry of Order* ¶ 15 at 6, In the Matter of the Sale of Certain Telephone Exchanges by U S WEST COMMUNICATIONS, INC. to Certain Telecommunications Companies in S.D., No. TC94-122-McIntosh (S.D. Pub. Util. Comm'n Aug. 22, 1997), Petition Attachment 3. The SDPUC did not refer the Telephone Authority's proposed agreement to the State.

Also pursuant to Mr. Kehoe's request, I have attached a copy of the sales tax collection agreement between the State of South Dakota and the Cheyenne River Sioux Tribe (Attachment 4 hereto). The sales tax collection agreement is also discussed page 698 of Attachment 3 hereto.

3. Typical SDPUC Orders Approving Telephone Exchange Sales.

I have enclosed two orders issued by the SDPUC approving the sales of telephone exchanges by U S WEST: *Decision and Order Regarding Sale of the Bonesteel Exchange*, In the Matter of the Sale of Certain Telephone Exchanges by U S WEST COMMUNICATIONS, INC. to Certain Telecommunications Companies in S.D., No. TC94-122-Bonesteel (S.D. Pub. Util.

Comm'n July 31, 1995) (Attachment 5 hereto); *Decision and Order Regarding Sale of the Bowdle Exchange*, In the Matter of the Sale of Certain Telephone Exchanges by U S WEST COMMUNICATIONS, INC. to Certain Telecommunications Companies in S.D., No. TC94-122-Bowdle (S.D. Pub. Util. Comm'n July 31, 1995) (Attachment 6 hereto). These orders are typical of all the SDPUC orders approving sales of telephone exchanges by U S WEST.

4. Status of Appeals in South Dakota State Court and Federal District Court.

After partial remand from the South Dakota Circuit Court, the Telephone Authority and U S WEST jointly appealed the issues not remanded to the South Dakota Supreme Court. *Notice of Appeal*, Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm'n of S.D., No. 95-288 (S.D. Cir. Ct. May 9, 1997) (Attachment 7 hereto). The parties subsequently stipulated to stay that appeal pending remand proceedings, and the Supreme Court entered an order approving the stipulation. *Stipulation for Stay of Briefing Schedule*, Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm'n of S.D., No. 20062 (S.D. May 9, 1997) (Attachment 8 hereto); *Order Approving Stipulation for Stay of Briefing Schedule*, Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm'n of S.D., No. 20062 (S.D. June 17, 1997) (Attachment 9 hereto). After the Circuit Court issued its decision following remand proceedings before the SDPUC on February 18, 1998, the Telephone Authority and U S WEST jointly appealed that decision. *Joint Notice of Appeal*, Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm'n of S.D., No. 97-348 (S.D. Cir. Ct. Mar. 25, 1998) (Attachment 10 hereto). The parties then stipulated to consolidate both appeals. *Stipulation Consolidating Appeals for Purposes of Briefing and Submission*, Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm'n of S.D., Nos. 20062 & 20464 (S.D. Apr. 16, 1998) (Attachment 11 hereto).

The joint appeal filed by the Telephone Authority and U S WEST is presently pending before the South Dakota Supreme Court. The Telephone Authority and U S WEST filed their opening brief on May 26, 1998. *Joint Brief of Appellants*, Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm'n of S.D., Nos. 20062 & 20464 (S.D. May 26, 1998) (Attachment 12 hereto). The SDPUC and the interveners, Doug Scott and Corson County, et al., must file their responses by July 27, 1998, and the Telephone Authority and U S WEST must file their reply by August 11, 1998.

The federal district court proceedings are presently stayed pending the outcome of the South Dakota state court proceedings. *Stipulation to Stay Proceedings*, Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm'n of S.D., No. CIV 95-3035 (C.D.S.D. Aug. 26, 1996) (Attachment 13 hereto); *Order Approving Stipulation to Stay Proceedings*, Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm'n of S.D., No. CIV 95-3035 (C.D.S.D. Sept. 16, 1996) (Attachment 14 hereto); Letter to the Honorable Charles B. Kornmann from Tamara A. Wilka (Aug. 1, 1997) (Attachment 15 hereto).

5. Portion of the Isabel Exchange Lying Outside the Cheyenne River Indian Reservation.

Mr. Kehoe asked me to expand on the statement made by counsel for the SDPUC that the Telephone Authority does not pay gross receipts taxes to the State for that portion of the Isabel Exchange, which it owns and operates, lying outside the boundaries of the Cheyenne River Indian Reservation. *Transcript of Oral Argument* at 44, Cheyenne River Sioux Tribe Telephone Authority v. Public Utilities Comm'n of S.D., No. 97-348 (S.D. Cir. Ct. Feb. 23 1998). The Telephone Authority does not pay gross receipts to the State in any of the telephone exchanges it owns and operates because it is not subject to taxation. See *Amended Decision and Order Regarding Sale of the McIntosh Exchange; Notice of Entry of Order* ¶¶ 13-14 at 6, In the Matter of the Sale of Certain Telephone Exchanges by U S WEST COMMUNICATIONS, INC. to Certain Telecommunications Companies in S.D., No. TC94-122-McIntosh (S.D. Pub. Util. Comm'n Aug. 22, 1997), Petition Attachment 3. The State cannot enforce the collection of gross receipts taxes on income generated from sales to non-member customers in the exchanges the Telephone Authority owns and operates because the Telephone Authority is immune from suit, and there is no agreement in place between the Telephone Authority and the SDPUC or the South Dakota Department of Revenue regarding collection and payment of gross receipts taxes on such income. The question of the allocation of tax revenues relative to activities affecting tribal members and tribal entities is complex, and the Telephone Authority is not willing to voluntarily collect funds for the benefit of the State when the State is unwilling to cooperate with the Tribe on a gross receipts tax collection agreement. Finally, the Telephone Authority serves a very small number of customers in the off-Reservation portion of the Isabel Exchange, and the gross receipts tax would be minimal in any event.

Pursuant to 47 C.F.R. § 1.1206(b)(1), the original and two copies of this letter and the attached materials have been served on the Secretary of the Federal Communications Commission for inclusion in the public record for *In the Matter of the Cheyenne River Sioux Tribe Telephone Authority's and U S WEST COMMUNICATIONS, INC.'s Joint Petition for Expedited Ruling Preempting South Dakota Law*, CC Docket No 98-6

Thank you for your attention to this matter. Please do not hesitate to contact me if you need additional information.

Sincerely,

Alice E. Walker
Attorney for the Cheyenne River Sioux Tribe Telephone Authority

cc: William Kehoe; International Transcription Service

RECEIVED
JUN 1997
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE SALE OF CERTAIN TELEPHONE EXCHANGES BY U S WEST COMMUNICATIONS, INC. TO CERTAIN TELECOMMUNICATIONS COMPANIES IN SOUTH DAKOTA	MOTION TO TAKE JUDICIAL NOTICE TC94-122 - McIntosh TC94-122 - Morristown TC94-122 - Timber Lake

COME NOW the Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority") and U S WEST Communications, Inc., and hereby move the Commission pursuant to SDCL §§ 1-26-19, 19-8-1, 19-10-2 and 19-10-4 to take judicial notice of the attached:

(1) Dispute resolution mechanism adopted by the Telephone Authority by which subscribers to all telephone exchanges owned and operated by the Telephone Authority may seek redress for their complaints (Attachment 1); and

(2) Provisional certificate of convenience and necessity issued by the Standing Rock Sioux Tribe on April 2, 1997 advocating the Telephone Authority's operation of a telecommunications system on the Standing Rock Sioux Reservation (Attachment 2).

Dated this 2nd day of June, 1997.

Tamara A. Wilka

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Attorneys for Cheyenne River Sioux Tribe Telephone Authority

ATTACHMENT 1

Owl River Telephone, Inc.
Board of Directors Resolution No. 97-05-28-07

PROCEDURES FOR RESOLUTION OF DISPUTES

The Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority") adopts this Resolution to establish procedures for resolution of disputes regarding the Telephone Authority's provision of telecommunications services to all subscribers of telephone exchanges owned and operated by the Telephone Authority.

SEC. 1. AUTHORIZATION.

(a) The Telephone Authority is chartered by Cheyenne River Sioux Tribal Ordinance No. 24, and is authorized under that tribal ordinance to own and operate telephone exchanges within and without the exterior boundaries of the Cheyenne River Indian Reservation

(b) The Telephone Authority is also authorized by Cheyenne River Sioux Tribal Ordinance No. 24 to sue and be sued in its corporate name upon any contract, claim or obligation arising out of its activities relating to the provision of telecommunications services.

(c) The Telephone Authority is also authorized by Cheyenne River Sioux Tribal Ordinance No. 24 to take such further actions as are commonly engaged in by corporate bodies of similar character as the Board of Directors of the Telephone Authority, and which the Board of Directors of the Telephone Authority deems necessary and appropriate.

SEC. 2. PURPOSE.

(a) Consistent with its authority under Cheyenne River Sioux Tribal Ordinance No. 24,

EXHIBIT
/

the Telephone Authority adopts these dispute resolution procedures in order to provide a forum in which all subscribers to telephone exchanges owned and operated by the Telephone Authority, whether within or without the exterior boundaries of the Cheyenne River Indian Reservation, may present their disputes and seek redress thereof.

(b) Consistent with its authority under Cheyenne River Sioux Tribal Ordinance No. 24, the Telephone Authority waives its immunity from suit in the Cheyenne River Sioux Tribal Court for the limited purpose of providing all subscribers to telephone exchanges owned and operated by the Telephone Authority with a means of redress for disputes regarding the provision of telecommunications services by the Telephone Authority. Such redress shall not include money damages apart from the reimbursement of funds previously paid to the Telephone Authority by an aggrieved subscriber.

(c) The procedures for hearing and resolving disputes set forth herein are intended to provide all subscribers to telephone exchanges owned and operated by the Telephone Authority with due process of law.

SEC. 3. INDEPENDENT HEARING EXAMINER.

(a) The Telephone Authority shall hire an Independent Hearing Examiner to hear disputes brought by subscribers to telephone exchanges owned and operated by the Telephone Authority relative to the provision of telecommunications services by the Telephone Authority.

(1) The Independent Hearing Examiner shall not be a member of the Cheyenne River Sioux Tribe, but shall have experience in and be familiar with dispute resolution processes.

Draft May 8, 1997

(2) The Board of Directors of the Telephone Authority shall determine in its sole discretion whether to hire an Independent Hearing Examiner for a specific time period to hear various disputes, or to hire an Independent Hearing Examiner for each specific dispute. The Board of Directors of the Telephone Authority shall also determine in its sole discretion the manner and amount of compensation the Telephone Authority shall pay the Independent Hearing Examiner.

(b) The Independent Hearing Examiner shall first consider any dispute regarding the provision of telecommunications services by the Telephone Authority. Such first hearing shall be in the nature of an administrative proceeding.

(c) The subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority seeking resolution of a dispute regarding the provision of telecommunications services by the Telephone Authority may present evidence and testimony supporting his, her or their position in any dispute with the Telephone Authority, and may be represented by counsel before the Independent Hearing Examiner.

(d) The Telephone Authority may present evidence and testimony in its defense and may be represented by counsel before the Independent Hearing Examiner.

(e) After due consideration of the facts underlying a dispute, and the testimony and evidence presented by the parties to dispute, the Independent Hearing Examiner shall render a decision.

(1) All decisions rendered by the Independent Hearing Examiner shall be binding

upon the subscriber or subscribers bringing the dispute and upon the Telephone Authority, unless the subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority, or the Telephone Authority seeks review of the decision of the Independent Hearing Examiner in the Cheyenne River Sioux Tribal Court pursuant to Section 4 of this Resolution.

(2) All decisions rendered by the Independent Hearing Examiner shall be in writing and shall be served by U.S. Mail upon all parties to disputes before the Independent Hearing Examiner, and upon the Telephone Authority. The Independent Hearing Examiner shall also post all written decisions for a reasonable time in a conspicuous place in the offices of the Telephone Authority for public inspection.

(e) All evidence and testimony presented to the Independent Hearing Examiner shall become part of the administrative record underlying the dispute.

SEC. 4. JUDICIAL REVIEW OF INDEPENDENT HEARING EXAMINER DECISIONS.

(a) If, after having exhausted administrative remedies as provided by Section 3 of this Resolution, the subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority, or the Telephone Authority is or are dissatisfied with the decision of the Independent Hearing Examiner, the subscriber or subscribers, or the Telephone Authority may bring an action for review of the Independent Hearing Examiner's decision in the Cheyenne River Sioux Tribal Court within 30 days of the issuance of the Independent Hearing Examiner's decision.

(1) The party seeking review of a decision of the Independent Hearing Examiner

must file a petition for review of such decision with the Independent Hearing Examiner and the Cheyenne River Sioux Tribal Court, and must notify all parties to the dispute regarding which the Independent Hearing Examiner issued such decision of the petition for review by sending all parties a copy of the petition for review by U.S. Mail.

(2) Failure to seek review within 30 days of the issuance of the Independent Hearing Examiner's decision shall result in the finality of the decision.

(b) A party may seek review of a decision of the Independent Hearing Examiner where the party asserts that the decision was:

(1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) Contrary to the laws, regulations and ordinances of the Cheyenne River Sioux Tribe, and any applicable laws of the United States; or

(3) Unsupported by substantial evidence and/or testimony presented to the Independent Hearing Examiner.

(c) Upon receiving a petition for review of a decision of the Independent Hearing Examiner, the Independent Hearing Examiner shall forward the administrative record to the Cheyenne River Sioux Tribal Court.

(d) Any review by the Cheyenne River Sioux Tribal Court of a decision of the Independent Hearing Examiner shall be appellate in nature upon the standards set forth in subsection (b) of this section 4, shall defer to the Independent Hearing Examiner's factual

determinations, and shall not be de novo.

SEC. 5. SUBSCRIBER ADVISORY COMMITTEE.

(a) There is hereby established a Subscriber Advisory Committee.

(1) The Subscriber Advisory Committee shall be comprised of three subscribers, at least of whom shall not be members of the Cheyenne River Sioux Tribe, of each telephone exchange owned and operated by the Telephone Authority.

(2) The Board of Directors of the Telephone Authority shall appoint the Subscriber Advisory Committee members for a period of one year. At the end of one year, the Board of Directors may appoint three new Subscriber Advisory Committee members, or may elect to extend the current members' terms for an additional year, not to exceed three consecutive years of service.

(b) The Board of Directors of the Telephone Authority shall consult with the Subscriber Advisory Committee on all matters related to:

(1) Proposed increases in the rates charged by the Telephone Authority for the provision of telecommunications services; and

(2) Proposed reductions in the telecommunications services provided by the Telephone Authority.

(c) The Board of Directors of the Telephone Authority shall consult with the Subscriber Advisory Committee prior to taking any of the actions described subsection (b) of this section 5.

Adopted: May 28, 1997

SEAL

Board of Directors-Secretary

Board of Directors-President

RESOLUTION NO 154-97

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

WHEREAS, the Standing Rock Sioux Tribal Council pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(a), 1(c), 1(g) and 1(j) is authorized to negotiate with Federal, State and local governments and others on behalf of the Tribe; is empowered to promote and protect the health, education and general welfare of the member of the Tribe and to administer such services as may contribute to the social and economic advancement of the Tribe and its members; and is further authorized to encourage and foster the arts and traditions of the Sioux Indians; and is further empowered to manage, protect and preserve the natural resources of the Standing Rock Reservation; and

WHEREAS, the Standing Rock Sioux Tribal Council has considered the request of the Cheyenne River Sioux Tribe located adjacent to the Standing Rock Sioux Indian Reservation in South Dakota for a "Certificate of Convenience and Necessity to own, construct, maintain, and operate a Telecommunications Systems" on the Cheyenne River Sioux Reservation and within areas of the Standing Rock Sioux Indian Reservation as well; and

WHEREAS, it is the intent of the Standing Rock Sioux Tribe to proceed with planning, and developing of its own utilities to include a telephone company serving the Standing Rock Sioux Indian Reservation in a timely basis; and

WHEREAS, although the Tribal Code of Justice of the Standing Rock Sioux Tribe does not now provide for the authority for the issuance of "Certificates of Convenience and Necessity", the Standing Rock Sioux Tribal Council does realize the need of the Cheyenne River Sioux Tribe for a Standing Rock Sioux Tribal Certificate of Convenience and Necessity to operate a telecommunications system on the Standing Rock Sioux Indian Reservation; and

NOW THEREFORE BE IT RESOLVED, that the Standing Rock Sioux Tribal Council does hereby authorize, by this resolution, for issuance of a provisional Certificate of Convenience and Necessity to the Cheyenne River Sioux Tribe to operate a telecommunications system on the Standing Rock Sioux Indian Reservation; and

BE IT FURTHER RESOLVED, this provisional Certificate is issued with the understanding that the Standing rock Sioux Tribe shall be consulted by the Cheyenne River Sioux Tribe on all aspects of the telecommunications systems being operated within the Standing Rock Sioux Indian Reservation to the appropriate Tribal representative(s); and

EXHIBIT

2

RESOLUTION NO. 154-97
Page 2

BE IT FURTHER RESOLVED, that the Chairman and the Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribal Council does hereby certify that the Tribal Council is composed of 17 members of whom 13 were present constituting a quorum at a meeting thereof, duly and regularly called, noticed, convened, and held on the 2nd day of APRIL, 1997, and that the foregoing resolution was duly adopted by the affirmative vote of 9 members, with 3 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 2nd DAY OF APRIL, 1997.

Jesse Taken Alive, Chairman
Standing Rock Sioux Tribal Council

ATTEST:

Elaine McLaughlin, Secretary
Standing Rock Sioux Tribal Council

(OFFICIAL TRIBAL SEAL)

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

RECEIVED
AUG 2 9 1995
By

IN THE MATTER OF THE SALE OF CERTAIN TELEPHONE EXCHANGES BY U.S. WEST COMMUNICATIONS, INC., TO CERTAIN TELECOMMUNICATIONS COMPANIES IN SOUTH DAKOTA.

VOLUME I

HEARD BEFORE THE PUBLIC UTIILITIES COMMISSION

PROCEEDINGS: Monday, April 17, 1995
8:00 P.M.
Mobridge, South Dakota

PUC COMMISSION:
Mr. Ken Stofferahn, Chairman
Mr. Jim Burg
Ms. Laska Schoenfelder
Mr. Bob Knadle
Ms. Rolayne Ailts Wiest

ALSO PRESENT:
Mr. Harlan Best
Mr. Charlie Bolle
Ms. Paulette Gates

APPEARANCES:

Mr. Thomas Welk, U.S. West
Mr. Camron Hoseck, Staff Attorney
Mr. Steve Aberlee, Intervenor D. Scott
Mr. Brian Meyer, Selby and West River
Mr. Thomas Hertz, Baltic Telecom and Dakota Cooperative
Mr. C. Edward Watson and Mr. Loren Hiatt, ATT
Mr. Dan Todd, Intervenor Walworth County
Mr. Randall L. Macy, Bison and West River
Mr. Andrew Fergel, Intervenor Corson County
Ms. Rochelle Ducheneaux, CRST

MCSR LASER REPOR PAPER & MFG CO 800-626-6313

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THE CHAIRMAN: Thank you. Miss Ducheneaux, do you have any questions?

MS. DUCHENEAUX: No.

THE CHAIRMAN: Mr. Hoshek?

MR. HOSHEK: No.

THE CHAIRMAN: Commissioners?

MS. SCHOENFELDER: Mr. Henderson, I just would reiterate that you furnish to the jurisdiction what -- how much gross receipts tax you will be paying as soon as you possibly could and, obviously, before the hearing, if that's possible, please.

THE WITNESS: Yes.

THE CHAIRMAN: Do any of the intervenors have any witnesses that they would like to sponsor involving the exchanges of the McIntosh? Is there now anyone from the public that wishes -- from the McIntosh Exchange that wishes to make a statement? Anyone from the Lemmon Exchange wish to make a statement for the record? If not, we'll go on. Next on the list.

Next we'll take the Cheyenne River Sioux Tribe Telephone Authority.

J.D. WILLIAMS,

called as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

ACSR LASER REPORTING PER & MFG CO 800 628 6313

1 BY MS. DUCHENEAUX:

2 Q Would you please state your name for the record.

3 A My name is J. D. Williams.

4 Q What is your place of employment?

5 A I work as general manager with CRST Telephone

6 Authority in Eagle Butte, South Dakota.

7 Q That is your position, general manager?

8 A Correct. I've worked as general manager for CRST

9 Telephone since 1986 and previously worked as an employee

10 there since 1982.

11 Q And what is your background?

12 A My background is bachelor of science degree in

13 business administration in Black Hills State College. I've

14 taught high school for a year, four years of employment with

15 the Cheyenne River Sioux Tribe and became employed prior to

16 the telephone authority in 1982.

17 Q What is the purpose of your testimony here tonight?

18 A The purpose of my testimony here is to provide facts

19 to PUC with background information on Owl River Telephone

20 that should assist the PUC in reaching a decision concerning

21 the purchase of three exchanges, and those exchanges are

22 Nisland, Morristown, and Timber Lake; and, hopefully, that

23 factual information will assist the PUC to reach a federal

24 decision on the sale of the exchanges to CRST Telephone

25 Authority.

CSR · LASER REPORTER & MFG CO. 800-626-6313

RECEIVED
AUG 29 1995
By

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE SALE OF CERTAIN TELEPHONE EXCHANGES BY U.S. WEST COMMUNICATIONS, INC., TO CERTAIN TELECOMMUNICATIONS COMPANIES IN SOUTH DAKOTA.

VOLUME II

HEARD BEFORE THE PUBLIC UTIILITIES COMMISSION

PROCEEDINGS: Monday, April 17, 1995
8:00 P.M.
Mobridge, South Dakota

PUC COMMISSION:
Mr. Ken Stofferahn, Chairman
Mr. Jim Burg
Ms. Laska Schoenfelder
Mr. Bob Knadle
Ms. Rolayne Ailts Wiest

ALSO PRESENT:
Mr. Harlan Best
Mr. Charlie Bolle
Ms. Paulette Gates

APPEARANCES:

Mr. Thomas Welk, U.S. West
Mr. Camron Hoseck, Staff Attorney
Mr. Steve Aberlee, Intervenor D. Scott
Mr. Brian Meyer, Selby and West River
Mr. Thomas Hertz, Baltic Telecom and Dakota Cooperative
Mr. C. Edward Watson and Mr. Loren Hiatt, ATT
Mr. Dan Todd, Intervenor Walworth County
Mr. Randall L. Macy, Bison and West River
Mr. Andrew Fergel, Intervenor Corson County
Ms. Rochelle Ducheneaux, CRST

MCSR LASER REPORT PAPER & MFG CO 800 626-6313

of board experience, for example, in education and church boards. Of the current board of directors have actively participated in formulating telecommunications for the company. The board sets policy which in turn is implemented by company staff.

Q As a tribally-owned company, did the telephone company come under the jurisdiction of the South Dakota Public utilities Commission?

A The PUC has no jurisdiction over the telephone authority because it is a tribally-owned entity located within the boundaries of the Cheyenne River Sue Reservation. The PUC's jurisdiction ends at the reservation boundary.

Q Does the telephone authority pay gross receipts sales tax on its gross sales as other telephone cooperatives do?

A As a tribal business, the telephone authority did not pay gross receipts sales tax. The state has no jurisdiction to impose taxes on tribal businesses located within the exterior boundaries of the reservation.

Q Since the PUC has no authority to regulate the telephone authority, how does a subscriber service in your area resolve service or rate problems?

A PUC records will verify that the telephone authority has satisfactorily resolved all complaints which have been

ACSR LASER REPORT PEH & MFG CO 800 626-6313

1 made to the PUC concerning the service and rate
2 problems in our service rate. The telephone authority
3 provides a public utility service and acknowledges and
4 addresses all customer problems.
5 With respect to rate regulation, the PUC did
6 not regulate the telephone authority rates. As discussed
7 above, the PUC has no jurisdiction over the telephone
8 authority because the tribal business is located within the
9 exterior boundaries of the reservation.
10 The telephone authority is proud of the fact
11 that over the last 20 years it has implementedis only
12 one rate increase for local service. Because we are located
13 in a sparsely populated rural area, and because of the
14 majority of the people in our area are among the poorest and
15 the highest employed in the country, we have worked hard to
16 maintain a telephone service to as many people as possible
17 while still remaining competitive and profit-making. We
18 have done so by keeping our rates down and our service up to
19 date.
20 Q Does the telephone authority have the capability for
21 providing public safety services?
22 A The telephone authority offers free firebar service
23 to all its service communities. We estimate we have
24 invested over $20,000 of firebar equipment in the central
25 office. We realize the importance of all volunteer fire

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1 departments in small communities.

2 We have attempted to bring 911 services to our

3 service area. However, the Ziebach and Dewey county board

4 of commissioners have not taken action to collect 911 taxes.

5 We have also spent approximately $6,000 for an independent

6 E911 study for our service area and have held public

7 meetings in an attempt to generate interest in this area.

8 Q Telephone companies are involved in an industry that

9 is considered high tech and dynamic. Does the telephone

10 authority have qualified staff to serve the public's

11 telecommunication needs?

12 A The telephone authority has 22 employees and the

13 company's success is largely due to the commitment to the

14 business. Most of the employees have been with the company

15 for over fifteen years. We have an annual training benefit

16 that exceeds $25,000 annual for employees' improvement

17 programs through which staff may operate technology in

18 billing, outside plants, and central office departments.

19 Q Does your telephone company foresee future -- Does

20 your telephone companies foresee future development of

21 services to enhance the lives of your subscribers and

22 customers?

23 A Yes, we do. The telephone authority believes that

24 in the future interactive video services and telemedicine

25 will play an important and crucial role in the lives of our

1 subscribers. The Lakota Nursing College located in Eagle
2 Butte is researching the possibility of conducting classes
3 through interactive video technology.
4 In March 1995 we held a public demonstration
5 featuring an interactive video services vendor. Many
6 community leaders who attended were exited about the
7 potential uses in a community and in the surrounding areas.
8 We have also been researching the costs of 56 kilobyte
9 equipment and which is required as part of the support of
10 the video services, and we will need this in our central
11 office.
12 We are mindful of the future whenever we
13 upgrade our plant. To provide a better communications
14 system, we plan to install adequate fiberoptic cable between
15 all five exchanges within the next five years. More and
16 more of our customers are purchasing computers and the
17 demand for data transmission continues to increase.
18 By joining the South Dakota network fiber
19 system, the company will have access to many current future
20 technology developments such as Internet, a data bank to
21 which many of our local customers are demanding access. The
22 fiber cable network will be in place to link up our schools
23 in our service area whenever interactive video education is
24 requested by them.
25 Q Many small telephone companies throughout the United

1 States play an active role in the development. What has the
2 telephone authority done in this area?
3 A The telephone authority has been fairly active in
4 development of projects. In 1983 the company started a
5 retail office supply and commercial print shop called CRST
6 Telephone Sales and Service. In 1987 the tribal purchased a
7 local propane business. The Cheyenne River Gas Company
8 put it under our management. Also in 1987 we became
9 involved in cable television business and currently provide
10 cable services to over 900 subscribes on four reservation
11 communities.
12 Due to our success in this venture, we were
13 able to build a new building to house the business and to
14 offer direct broadcast satellite service to the
15 reservation population. We are strong advocates of building
16 the local economy from within and our commitment in this
17 area is not only increased employment, but has also added
18 many new services as well.
19 Q Many telephone exchanges have to deal with extended
20 area service. Does the telephone authority have any
21 experience with the EAS concept?
22 A Yes, we do. The telephone authority has always
23 offered extended area service. EAS is offered to four of
24 the five exchanges that we serve. Many of our customers
25 live 70 to 80 miles from Eagle Butte, the tribal

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1 laws of the Standing Rock Sioux Tribe and possibly those of
2 North Dakota. The Timber Lake Exchange is located entirely
3 within the exterior boundaries of the reservation and will
4 be subject to the jurisdiction of the Cheyenne River Sioux
5 Tribe.
6 Q Will Owl River pay gross receipts sales tax on the
7 gross income generated by the Nisland, Morristown, and
8 Timber Lake Exchanges?
9 A Owl River will pay gross receipts sales tax on gross
10 income generated by the Nisland Exchange and the South
11 Dakota portion of the Morristown Exchange. The Timber Lake
12 Exchange system is located within the exterior boundaries of
13 the Cheyenne River Sioux Reservation. South Dakota may
14 impose its gross receipts tax on income generated from sales
15 to the non-Indian and non-members of the area. However, it
16 has no mechanism whereby to force a tribe to collect the
17 tax. The tribe has a sales tax agreement with the state and
18 a similar arrangement may be possible with respect to
19 collecting a gross receipts tax.
20 Q Will Owl River put any of the lands included in the
21 Nisland, Morristown, and Timber Lake Exchange purchases in
22 trust status under the rules and federal rules of regulation
23 for that purpose?
24 A Owl River has not as of yet made a decision whether
25 or not to put the hands in trust pending approval of the

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1 later this week to the PUC for review and possible
2 negotiations on it.
3 Pursuant to this MOU, Owl River has agreed to
4 follow certain procedures for service and rate changes. And
5 under the MOU, customers in the nearest exchanges can follow
6 procedures for resolution of problems and concerns over
7 service and rates.
8 Q Many customers in the three exchanges are concerned
9 about the loss of tax revenue that U.S. West has paid in the
10 past. How does Owl River continue to address those
11 concerns?
12 A Owl River will have to pay gross receipt sales tax
13 in the Nisland Exchange, which we feel will nearly equal the
14 tax that U.S. West has paid in the past. Thus, people in
15 this area shouldn't be adversely affected.
16 As stated in the earlier testimony, whether the
17 gross receipts taxes will be collected in Morristown and
18 Timber Lake Exchanges and how much will be collected depends
19 on a number of factors. The number of nonIndian and
20 non-members subscribers in each exchange, who has
21 jurisdiction over the exchange areas, and whether or not tax
22 collection agreements can be reached among the several
23 governmental entities. Unquestionably, the amount of tax
24 dollars generated at these exchanges will be affected by Owl
25 River's ownership.