



Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
John L. Brown
Margo D. Northrup

Of Counsel:
Robert D. Hofer

January 2, 2008

Ms. Patricia Van Gerpen
SD Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

Re: CT 07-006

In the Matter of the Complaint filed by Jack and Cindy
Brunson, Edgmont, South Dakota, Against Golden
West Telecommunications Cooperative Regarding
Telecommunications Services

Dear Patty:

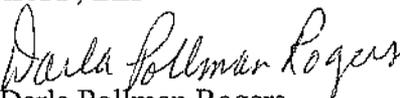
Attached for electronic filing is Answer to Complaint and Motion to Dismiss with
attached Exhibits.

If you have any questions about this matter, please contact me.

Thank you.

Sincerely yours,

RITER, ROGERS, WATTIER, BROWN &
NORTHRUP, LLP

By: 
Darla Pollman Rogers

DPR-wb
Enclosure

Law Office
Riter, Rogers, Wattier, Brown & Northrup, LLP
Phone: 605-224-5825 • Fax: 605-224-7102 • www.riterlaw.com
319 South Coteau Street • P.O. Box 280 • Pierre, South Dakota 57501-0280

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED) CT 07-006
BY JACK AND CINDY BRUNSON, EDGMONT,)
SOUTH DAKOTA, AGAINST GOLDEN WEST) ANSWER TO COMPLAINT
TELECOMMUNICATIONS COOPERATIVE) AND MOTION TO DISMISS
REGARDING TELCOMMUNICATIONS)
SERVICES.)

COMES NOW, Golden West Telecommunications Cooperative (“Golden West”), by and through its undersigned attorneys, and for its Answer, defenses to, and Motion to Dismiss the Complaint of Jack and Cindy Brunson, states and alleges as follows:

- 1) Except as expressly admitted, qualified or otherwise answered, Golden West denies each and every allegation stated in the Complaint of Jack and Cindy Brunson.
- 2) Golden West denies the facts as set forth by the Complainants and further the allegations that it engaged in any wrongdoing in this matter.
- 3) The Complaint of Jack and Cindy Brunson fails to state a claim for which relief can be granted, and the Complaint should be dismissed.
- 4) Jack and Cindy Brunson have complained to the Commission that Golden West has wrongfully refused to serve the property in Edgemont, South Dakota referred to as the “school house” or the “hunting lodge”, which Golden West expressly denies.
- 5) Golden West is ready, willing and able to serve the Brunsons as soon as a valid easement is executed and filed with the Register of Deeds, which is

consistent with Golden West's company policy concerning construction of facilities on private property.

- 6) Golden West denies that the Brunsons have previously granted an easement to Golden West, as there is no written easement on file with the Register of Deeds and no record of a prior written easement.¹ If a prior easement exists, upon information and belief, said easement would have contained a one-foot width restriction and served the limited purpose of allowing a one time only construction. Even if such easement was granted by the Brunsons to Golden West, it would be inadequate to authorize Golden West to construct the necessary facilities to provide the services currently requested by the Brunsons.
- 7) In 2006, Golden West contracted with Finley Engineering to facilitate securing the necessary easements to complete a fiber optic upgrade project for the Ardmore, South Dakota and southern portion of the Edgemont, South Dakota exchanges, which included the Brunsons' property and other customers in the surrounding area.
- 8) In April of 2006, Geoff Pagnotta of Finley Engineering contacted the Brunsons in reference to the fiber optic upgrade project. Upon information and belief, the initial discussions with the Brunsons included the need for Golden West, pursuant to company policy, to procure an easement from the Brunsons in order to enable Golden West to complete the fiber optic upgrade to the Brunsons and to other customers located on

¹ The Complaint states, "Golden West had an existing phone easement going by school house that was active."

facilities beyond the Brunsons, including the Igloo Subdivision². An easement was presented to the Brunsons to facilitate the fiber optic upgrades. The Brunsons have repeatedly refused to sign the easement.

9) In July of 2006, representatives from Golden West met with the Brunsons in an effort to resolve the Brunsons apparent concerns with the easement. The Brunsons made multiple and unreasonable demands on Golden West with reference to the easement, leaving Golden West with no choice but to change the route of the fiber optic cable by utilizing the public right of way near the Brunsons' property to facilitate the fiber optic upgrade to customers in the Ardmore and Edgemont Exchanges. Said route, however, precluded Golden West from providing upgrades to the Brunsons and to the Igloo Subdivision.

10) The Brunsons did make a request for a service drop in the fall of 2005. A serviceman of Golden West delivered wire for the wiring of the interior of the building. The drop could not be made because the equipment needed was in another area. The Brunsons informed Finley Engineering of their desire for service to the hunting lodge from Golden West during the course of the easement negotiations in July of 2006.

11) In October of 2006, the Brunsons indicated a willingness to sign an easement to facilitate the upgrades. In this round of negotiations, Mr. Brunson requested that the fiber optic cable be placed deeper in one area because the Brunsons planned to place a water line across the road

² The only way that Golden West can provide fiber optic service to the Igloo Subdivision is by placing the fiber optic cable over the Brunsons' property.

perpendicular to Golden West's line. The Brunsons also requested that Golden West's Outside Plant Contractor bore the waterline, at no cost to the Brunsons. Golden West was agreeable to placement of the line deeper so as not to interfere with the water line, but Golden West could not have the line bored at no cost. In November of 2006, the easement was changed to reflect the agreement between Golden West and the Brunsons. Golden West attempted to contact the Brunsons to sign the agreement in November, but the Brunsons would not return the calls.

- 12) In August of 2007, Cindy Brunson contacted Golden West and formally requested service to the hunting lodge. On September 14, 2007, a representative from Golden West sent a letter to Cindy Brunson and informed her that pursuant to company policy, Golden West needed a valid easement in place in order to provide service to the property. (See Exhibit A)
- 13) On September 18, 2007, Golden West received a letter from Cindy Brunson stating that she did not request "fiber optics". (See Exhibit B)
- 14) On October 3, 2007, Golden West sent another letter and an easement to the Brunsons and explained the fiber optic exchange upgrade of Golden West and again requested that the Brunsons sign an easement so that Golden West could provide the requested service. (See Exhibit C). Golden West explained that Golden West was undergoing extensive construction and maintenance of its telecommunications facilities which included an upgrade of all copper cables to fiber optic cables. The letter

explained that Golden West will no longer rely on the copper cables after the upgrade was complete and that the upgrade would allow Golden West to better serve the needs of the customers³.

15) Subsequent to that time, Cindy Brunson contacted Commission Staff and expressed concern about the two different easements that were sent in 2006 and 2007.

16) On December 3, 2007, Riter, Rogers, Wattier, Brown, and Northrup, LLP, attorneys for Golden West, sent a letter to the Brunsons on behalf of Golden West indicating that Golden West was ready, able and willing to serve the property after a valid easement was executed, pursuant to company policy. The letter also explained the difference between the easement sent in 2006 and the easement sent in 2007, and invited the Brunsons to submit proposed changes to the easement⁴. (See Exhibit D).

17) On December 10, 2007 the Brunsons filed a Complaint with the South Dakota Public Utilities Commission.

18) Golden West remains ready, willing, and able to serve the Brunsons with fiber optic facilities. In order to provision the services requested by the Brunsons, Golden West must bury cable on Brunsons' property, which requires a valid easement to be in place.

WHEREFORE, Golden West requests:

³ The copper cable located in the Brunson and the Igloo Subdivision is the only remaining copper cable in the southern part of the Edgemont exchange.

⁴ Golden West specifically denies the allegations in the Complaint that the easement as written does "nothing to protect our agricultural use".

- (1) That the Commission grant its Motion to Dismiss the Complaint and hold it for naught; or in the alternative,
- (2) That the Commission set the matter for evidentiary hearing, at which time Golden West, while not bearing the burden of proof, will defend against the Complaint;
- (3) For its costs in defending this Complaint, to the extent allowable; and
- (4) For such other and further relief as the Commission deems just.

DATED this 2nd day of January, 2008.

RITER, ROGERS, WATTIER, BROWN &
NORTHRUP, LLP

By: Darla Pollman Rogers
A member of said firm

319 S. Coteau – P. O. Box 280
Pierre, SD 57501-0280
Attorneys for Golden West Telecommunications
Cooperative

CERTIFICATE OF SERVICE

I, Darla Pollman Rogers, certify that a true and correct copy of Answer to Complaint and Motion to Dismiss was mailed to each of the following by first class mail on the 2nd day of January, 2008:

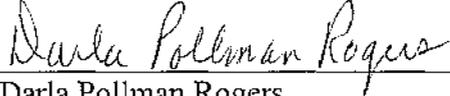
Jack and Cindy Brunson
11122 Fort Igloo Road
Edgemont, SD 57735

And true and correct copies of said document were provided electronically to the following:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol
Pierre, SD 57501
patty.vangerpen@state.sd.us

Kara Semmler
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol
Pierre, SD 5 7501
kara.semmler@state.sd.us

Deb Gregg
Consumer Affairs Director
South Dakota Public Utilities Commission
500 E. Capitol
Pierre, SD 57501
deb.gregg@state.sd.us



Darla Pollman Rogers

September 14, 2007

Jack and Cindy Brunson
11122 Fort Igloo Rd
Edgemont, SD 57735-7346

Dear Jack and Cindy:

Thank you for your recent call to Golden West in regard to providing service to your hunting lodge.

We would like to provide fiber optic service to your lodge this fall as you have requested; however, the existing easement for your area is only one foot wide. Historically some easements were written with a one foot width to limit the construction activity to a one-time use only. Therefore, the one foot restriction of the current easement makes it physically impossible for Golden West to perform the construction activities necessary to place the additional cable.

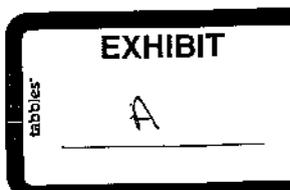
In order for us to proceed, we do need to establish a new easement. We are available to meet at your hunting lodge on September 26th at 1:00 pm or October 1st at 10:00 am. If the dates do not work, we are open to another suggested date. Please contact me via mail, phone at 279-2161, or email at jodybielmaier@goldenwest.com.

Sincerely,



Jody Bielmaier
Member Services Manager
Golden West Telecommunications

cc: Public Utilities Commission



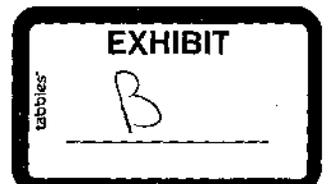
Sept 18, 2007

Golden West
attn: Jody Bielmaier

Dear Jody

To clarify things we didn't request fiber optic. We could have had phone service for several months just like your other customers are served by the line that goes by the lodge. Don Anderson had a work order to come and hook up our line which would have taken a very short time to complete and we would have phone service. Golden West cancelled the work order! When you get us hooked up like the neighbors that is all we are requesting. Please reissue the work order and allow Don Anderson to come and complete the work.

Thank you
Cindy Brunson



October 3, 2007

Jack and Cindy Brunson
11122 Fort Igloo Rd
Edgemont, SD 57735-7346

Dear Jack and Cindy Brunson,

This is in response to Cindy's letter dated September 18, 2007 wherein she stated that you "didn't request fiber optic". As you have been advised, Golden West is undergoing extensive construction and maintenance of its telecommunications facilities which includes an upgrade of all copper cables to fiber optic cables. Golden West will no longer rely on the copper cables after the upgrade is complete. This upgrade will allow us to better serve the needs of our customers. Accordingly, for Golden West to serve the hunting lodge, it will need to be done by installing a fiber optic cable.

On September 14, 2007, I advised you that in order for us to proceed, we need to establish a new easement. I have enclosed an easement for your review. Please sign this easement and return to me at your earliest convenience. I will then initiate a work order to install service to your hunting lodge. Due to the lateness in the year it is unclear if we will be able to install the permanent cable. If that is the case, we will install a temporary cable right away which will be replaced with a permanent cable next spring when our work crews arrive in your area.

Please contact me if you have any questions.

Sincerely,



Jody Bielmaier
Member Services Manager
Golden West Telecommunications

cc: Public Utilities Commission



This Instrument was drafted by:

Golden West Telecommunications
415 Crown Street
Wall, SD 57790
Phone 605-279-2161

EASEMENT

For good and valuable consideration, John H. Brunson and Cindy S. Brunson, Grantors, do hereby grant and convey to Golden West Telecommunications Cooperative, Inc., (Grantee) whose address is 415 Crown St. Wall SD 57790 its successors, assigns, lessees, licensees and agents a perpetual easement to construct, reconstruct, operate, maintain and remove such telecommunications facilities as Grantee may require upon, over, under and across the following described land which the Grantors own or in which the Grantors have any interest, to-wit:

A parcel of land 16.5 feet wide , 8.25 feet on each side of the following described center line across the South Half of the Southwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Two (2), the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Three (3), the North Half of the Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$), and the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Ten (10), all in Township Ten South (T10S), Range Two East (R2E), Black Hills Meridian, Fall River County, South Dakota: beginning at a point on the West line of the B.N.S.F. Railroad, 70 feet, more or less, perpendicular Southeasterly from the center line of Fort Igloo Road; thence Southwesterly 935 feet, more or less; thence Northwesterly perpendicular to said Fort Igloo Road to a point 70 feet, more or less, Northwesterly from said Fort Igloo Road center line; thence Southwesterly along a line varying from 70 feet to 125 feet from said center line to a point 75 feet, more or less Southerly from the center line of Bingham Road; thence Westerly 745 feet, more or less, along a line varying from 75 feet to 80 feet Southerly from said Bingham Road center line; thence Northwesterly 380 feet, more or less; thence Southwesterly 225 feet, more or less to the North line of Harney Road and there ending.

A 16.5 foot easement is also granted for any service drop the Grantors may require within said Sections 2,3 and 10.

Grantee shall have the right of ingress and egress over and across the land of the Grantor to and from the above described property and the right to clear and keep cleared all obstructions. Grantee shall be responsible for all damage caused to Grantor or others arising from Grantee's exercise of the rights and privileges herein granted.

It is hereby agreed that surface terminals and markers will be placed at fence lines and a 16.5 foot easement is granted from the above described parcel to each surface terminal as required.

Grantors reserve the right to occupy, use and cultivate said Easement for all purposes not inconsistent with, nor interfering with the rights herein granted.

The rights, conditions and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

The Grantors warrant that they are the legal owners of said property and have the right to enter into this agreement.

IN WITNESS WHEREOF, Grantors have executed this easement as of the _____ day of _____, 2006

John H. Brunson

Cindy S. Brunson

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA

COUNTY OF FALL RIVER

The foregoing instrument was acknowledged before me this _____ day of _____ 2006 by John H. Brunson and Cindy S. Brunson, husband and wife.

seal

Notary Public
My commission expires _____



Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
John L. Brown
Margo D. Northrup

December 3, 2007

Jack and Cindy Brunson
11122 Fort Igloo Rd
Edgemont, SD 57735-7346

Regular Mail and Certified Mail

Of Counsel:
Robert D. Hofer

Dar Mr. and Mrs. Brunson,

I represent Golden West Telecommunications Cooperative ("Golden West") of Wall, South Dakota. I am contacting you at the request of Karen Cremer of the South Dakota Public Utilities Commission ("Commission") in reference to your request for service by Golden West to a hunting lodge on your property.

As you are aware, in order for Golden West to provide you with this service we need to establish a new easement. It is my understanding that you were concerned because Golden West had provided you with two separate easements, the first in June of 2006 and the second in October of 2007. The easements are nearly identical with the exception of the legal description.

The first easement was prepared by a consulting firm to attempt to facilitate the upgrades that are being made to the entire service area. This easement is no longer necessary because Golden West was able to use the right of way near your property to address its needs.

The easement that you were provided in October of 2007 was drafted specifically to allow Golden West the access to your property that it needs to service the hunting lodge and to provide service to the Igloo subdivision. I have provided a copy of this easement again for your review.

In order to resolve this issue, Golden West is willing to work with you on the easement if you have specific concerns you would like to address. Golden West is ready, willing and able to serve your needs and will do so as soon as an easement is executed. Please contact me directly to discuss this matter. I look forward to hearing from you.

Very truly yours,

RITER, ROGERS, WATTIER, BROWN &
NORTHRUP, LLP

By:

Margo D. Northrup

MDN-wb
cc: Karen Cremer, South Dakota Public Utilities Commission
Client
Enclosure

Law Office
Riter, Rogers, Wattier, Brown & Northrup, LLP
Phone: 605-224-5825 • Fax: 605-224-7102 • www.riterlaw.com
319 South Coreau Street • P.O. Box 280 • Pierre, South Dakota 57501-0280

