

Department of Transportation

Office of Legal Counsel

700 East Broadway Avenue
Pierre, South Dakota 57501-2586 605/773-3262
FAX: 605/773-3921

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AUG - 5 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

August 5, 2002

William Bullard, Jr., Executive Director
Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Mr. Bullard:

I have enclosed for filing the original and ten (10) copies of Petition for Declaratory Relief on behalf of the South Dakota Department of Transportation. Please advise this office if you require anything further relative to this matter at this time.

Very truly yours,

OFFICE OF LEGAL COUNSEL

A handwritten signature in black ink that reads "Bill Nevin". The signature is written in a cursive, flowing style.

William J. Nevin
Assistant Attorney General

WJN/jm
Enc.

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AUG - 5 2002

State of South Dakota
Public Utilities Commission
Petition For Declaratory Ruling

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pursuant to the provision of SDCL 1-26-15, the South Dakota Department of Transportation, by and through its counsel, William J. Nevin, Assistant Attorney General, of 700 E. Broadway Avenue, Pierre, South Dakota 57501, does hereby petition the South Dakota Public Utilities Commission for its declaratory ruling in regard to the following:

- (1) The state statute in question is: SDCL 49-31-1.1 which states,

For the purposes of this chapter, "noncompetitive service" is a monopoly service for which no competition exists or the regulation of which is necessary to insure affordable local exchange service. Such services include:

- (1) Residential local exchange service;
- (2) Business local exchange service;
- (3) Agribusiness local exchange service;
- (4) Emergency services;
- (5) Public and semipublic coin telephone service; and
- (6) All services not otherwise listed in §§ 49-31-1.2 and 49-31-1.3.

- (2) The facts and circumstances which give rise to the issue to be answered by the commission are:

Petitioner has applied for and been approved by the Federal Highway Administration for its 511 Traveler Information Telephone Number Program Support Assistance Program to deploy a statewide 511 number providing travel information services.

South Dakota plans to base its 511 system on #SAFE, a multi-state, telephone-based system that provides site-specific road and weather condition reports to cellular telephone users. Although South Dakota intends to deploy its 511 system within its own borders, motorists in any #SAFE state can dial #SAFE, identify the state for which they want road and weather conditions, and receive that information seamlessly across state borders. That same functionality will exist when the access number is changed from #SAFE to 511. Minnesota and Nebraska currently operate a 511 program, and Montana will begin its 511 program in August 2002. Likewise, North Dakota plans to convert its #SAFE program to 511.

South Dakota is accomplishing its current Intelligent Transportation Systems (ITS) and Rural ITS projects such as the 511 Program with funding from several different sources, including discretionary funds from Commercial Vehicle Information Systems and Networks Program, State Planning and Research (SPR) funds, and federal-aid construction funds. For the first two years, 511 would be funded by discretionary ITS Deployment funds on a matching funds basis calculated to be 80/20. Annual operations costs are estimated to be \$243,000, based on a call volume of 750,000 calls per year.

WEEKLY FILINGS

For the Period of August 1, 2002 through August 7, 2002

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3705 Fax: 605-773-3809

ELECTRIC

EL02-015 In the Matter of the Filing by Otter Tail Power Company for Approval of a Contract With Deviations with the City of Elkton.

Application by Otter Tail Power Company for approval of a contract with deviations to serve the City of Elkton. The filing requests approval with less than 30 days notice. The existing contract expires September 1, 2002. The filing states the new contract does not include any new rates.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Filed: 08/08/02
Intervention Deadline: 08/14/02

TELECOMMUNICATIONS

TC02-099 In the Matter of the Application of 3U Telecom, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota

3U TELECOM INC. has filed an application with the South Dakota Public Utilities Commission for a Certificate of Authority to provide interexchange service in South Dakota. The applicant intends to provide resold interexchange service, including 1+ dialing, to business and residential customers throughout South Dakota.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Filed: 08/02/02
Intervention Deadline: 08/23/02

TC02-100 In the Matter of the Petition of the South Dakota Department of Transportation for a Declaratory Ruling Regarding SDCL 49-31-1.1.

On August 5, 2002, the South Dakota Department of Transportation filed a Petition for Declaratory Ruling. The question is: Is 511 a noncompetitive service as defined by SDCL 49-31-1.1, so as to give rise to commission price regulation in accordance with SDCL 49-31-4 and 49-31-1.4? The Petitioner has applied for and been approved by the Federal Highway Administration for its 511 Traveler Information Telephone Number Program Support Assistance Program to deploy a statewide 511 number providing travel information services.

Staff Analyst: Heather Forney
Staff Attorney: Karen Cremer
Date Filed: 08/05/02
Intervention Deadline: 08/14/02

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell R. Greenfield
Gary J. Pashby
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Thomas J. Welk
Terry N. Prendergast
Michael S. McKnight
Gregg S. Greenfield
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101 North Phillips Avenue, Suite 600
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P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424 Direct Dial 605-731-0208
Facsimile 605 334-0618 tjwelk@boycemurphy.com

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)
John R. McDowell (1936-1996)

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AUG - 9 2002

August 7, 2002

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Debra Elofson, Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

RE: In the Matter of the Petition of the South Dakota Department of Transportation for a
Declaratory Ruling Regarding SDCL 49-31-1.1 (TC02-100)
BMMG No. 2104.112

Dear Ms. Elofson:

Enclosed please find the original and ten (10) copies of Qwest Corporation's Petition for Leave to Intervene. By copy of this letter I am serving the same on opposing counsel.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.


Thomas J. Welk

TJW/vjj

Enclosure

cc: William J. Nevin
Colleen Sevoid

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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AUG - 9 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF
THE SOUTH DAKOTA DEPARTMENT OF
TRANSPORTATION FOR A
DECLARATORY RULING REGARDING
SDCL 49-31-1.1

TC02-100

QWEST CORPORATION'S PETITION
FOR LEAVE TO INTERVENE

Qwest Corporation formerly U S WEST Communications, Inc. ("Qwest"), by and through its undersigned counsel, and pursuant to SDCL 1-26-17.1 and ARSD 20:10:01:15.02, hereby files its Petition for Leave to Intervene in this docket. In support of its Petition for Leave to Intervene, Qwest states as follows:

1. Qwest is a Colorado corporation duly authorized to do business in South Dakota, with its general offices in Denver, Colorado. It is a telecommunications company as defined by SDCL § 49-31-1(35) authorized by the Commission to provide telecommunications services within its certified service territory in South Dakota.
2. On August 5, 2002 the South Dakota Department of Transportation filed its Petition for Declaratory ruling ("the Petition"). The Commission's decision on the Petition will directly and immediately affect Qwest's pecuniary interest as shown by the Petition.
3. Qwest will be represented in this proceeding by the counsel listed below.

WHEREFORE, Qwest respectfully requests that its Petition for Leave to Intervene be granted.

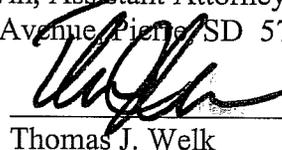
DATED this 7th day of August, 2002.



Thomas J. Welk
Boyce, Murphy, McDowell & Greenfield, L.L.P.
101 N. Phillips Ave. Suite 600
Sioux Falls, SD 571 17-50 15
Telephone: 605-336-2424

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 7th day of August, 2002, a true and correct copy of Qwest Corporation's Petition for Leave to Intervene was sent to the following by US mail postage paid, at the following address: William J. Nevin, Assistant Attorney General, South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, SD 57501.



Thomas J. Welk

Smith, John (PUC)

From: Cichos, Sue
Sent: Wednesday, August 21, 2002 2:59 PM
To: Smith, John (PUC)
Subject: FW: TC 02-100 (DOT Petition for Declaratory Ruling)

-----Original Message-----

From: tjwelk [mailto:tjwelk@boycemurphy.com]
Sent: Wednesday, August 21, 2002 2:57 PM
To: sue.cichos@state.sd.us
Subject: FW: TC 02-100 (DOT Petition for Declaratory Ruling)

Sue,
Sorry for the mix up.

Tom

>
> -----Original Message-----
> From: tjwelk
> Sent: Monday, August 19, 2002 3:26 PM
> To: 'suechicos@state.sd.us'
> Cc: 'ltoll@qwest.com'; 'csevold@qwest.com'
> Subject: TC 02-100 (DOT Petition for Declaratory Ruling)

>
> Sue,
> I have spoken with Larry Toll and Qwest will waive the ten day notice for hearing in this matter for
> August 29. Qwest has not yet determined whether it will appear but does not want to impede the
> process. Could the hearing be scheduled at 10 am in the event Qwest does want to appear so we could
> drive up and back in the same day?
>
> Tom Welk

Smith, John (PUC)

From: Cichos, Sue
Sent: Monday, August 19, 2002 3:38 PM
To: Smith, John (PUC)
Subject: FW: TC02-100

-----Original Message-----

From: Nevin, William J.
Sent: Monday, August 19, 2002 3:37 PM
To: Cremer, Karen
Cc: Cichos, Sue; Huft, Dave
Subject: RE: TC02-100

29. The DOT has no objection to waiving the 10-day notice requirement in order for this matter to be heard on August

Bill Nevin

-----Original Message-----

From: Cremer, Karen
Sent: Monday, August 19, 2002 3:12 PM
To: Nevin, William J.
Subject: TC02-100

I'm told that we are going to try to hear this on August 29th but by law the PUC has to give a 10 day notice which will not happen as the order will not go out on time. The Commission can waive it due to good cause which the "good cause" here is that it needs to be heard within 30 days. Anyway can you send a letter or email that the DOT does not have a problem with getting less than 10 days notice? Just send it to me or Sue Cichos. Thanks!

*Karen E. Cremer
Staff Attorney
Public Utilities Commission*

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

IN THE MATTER OF THE PETITION OF THE)	ORDER FOR AND NOTICE
SOUTH DAKOTA DEPARTMENT OF)	OF HEARING
TRANSPORTATION FOR A DECLARATORY)	
RULING REGARDING SDCL 49-31-1.1)	TC02-100

On August 5, 2002, the South Dakota Public Utilities Commission ("Commission") received a Petition for Declaratory Ruling from the South Dakota Department of Transportation (Petitioner) requesting the Commission to make a declaratory ruling on the following question: Is 511 a noncompetitive service as defined by SDCL 49-31-1.1, so as to give rise to Commission price regulation in accordance with SDCL 49-31-4 and 49-31-1.4? The Petition states that Petitioner has been approved by the Federal Highway Administration for its 511 Traveler Information Telephone Number Program Support Assistance Program to deploy a statewide 511 number providing travel information services.

On August 8, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 14, 2002, to interested individuals and entities. Qwest Corporation (Qwest) filed a Petition for Leave to Intervene on August 9, 2002. At its regularly scheduled meeting on August 15, 2002, the Commission granted intervention to Qwest. By electronic filings on August 19, 2002, Petitioner and Qwest agreed to waive the 10-day notice of hearing requirement of ARSD 20:10:01:22.02 in order to accommodate the Commission's schedule and enable the Commission to meet the 30-day decision requirement of ARSD 20:10:01:35. The Commission finds that there is good cause to set the matter for hearing on less than ten days notice.

The Commission has jurisdiction over this matter pursuant to SDCL 1-26-15, ARSD 20:10:01:34 and 20:10:01:35, SDCL 49-1-11 and SDCL Chapter 49-31, particularly 49-31-3, 49-31-1.1 through 49-31-1.4, inclusive, 49-31-4 and 49-31-4.1.

A hearing on the petition for declaratory ruling will accordingly be held on August 29, 2002, beginning at 1:30 p.m. CDT in Room 412 of the Capitol Building, 500 East Capitol, Pierre, South Dakota.

As a result of this hearing, the Commission will determine whether the 511 service proposed by Petitioner is a noncompetitive service as defined by SDCL 49-31-1.1, so as to give rise to Commission price regulation in accordance with SDCL 49-31-4 and 49-31-1.4. The particular statutes and rules involved include SDCL 1-26-15, ARSD 20:10:01:34 and 20:10:01:35, and SDCL Chapter 49-31, particularly 49-31-1.1 through 49-31-1.4, inclusive, 49-31-3, 49-31-3.2, 49-31-3.4, and 49-31-4.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All persons testifying will be subject to cross-examination. All parties have the right

to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider the evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing on the petition will be held at the time and place set forth above on the issue of whether the 511 service proposed by Petitioner is a noncompetitive service as defined by SDCL 49-31-1.1.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 22nd day of August, 2002.

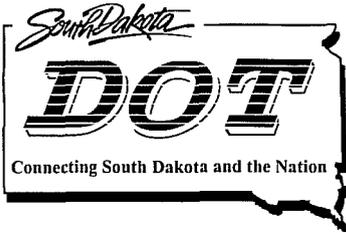
CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Delaine Kalbo</u>
Date:	<u>8/22/02</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner



Department of Transportation

Office of Legal Counsel

700 East Broadway Avenue
Pierre, South Dakota 57501-2586 605/773-3262
FAX: 605/773-3921

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AUG 28 2002

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

August 27, 2002

William Bullard, Jr., Executive Director
Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Mr. Bullard:

The South Dakota Department of Transportation has reached an agreement with Qwest Corporation concerning Qwest's charges for implementing and providing 511 service. As a result, the department wishes to withdraw its Petition for Declaratory Ruling that was filed August 5, 2002.

Very truly yours,

OFFICE OF LEGAL COUNSEL

A handwritten signature in cursive script that reads "Bill Nevin".

William J. Nevin
Assistant Attorney General

WJN/jm
Enc.

cc: Thomas J. Welk

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

IN THE MATTER OF THE PETITION OF THE)	ORDER CANCELLING
SOUTH DAKOTA DEPARTMENT OF)	HEARING
TRANSPORTATION FOR A DECLARATORY)	
RULING REGARDING SDCL 49-31-1.1)	TC02-100

On August 5, 2002, the South Dakota Public Utilities Commission ("Commission") received a Petition for Declaratory Ruling from the South Dakota Department of Transportation (Petitioner) requesting the Commission to make a declaratory ruling on the following question: Is 511 a noncompetitive service as defined by SDCL 49-31-1.1, so as to give rise to Commission price regulation in accordance with SDCL 49-31-4 and 49-31-1.4?

The Commission has jurisdiction over this matter pursuant to SDCL 1-26-15, ARSD 20:10:01:34 and 20:10:01:35, SDCL 49-1-11 and SDCL Chapter 49-31, particularly 49-31-3, 49-31-1.1 through 49-31-1.4, inclusive, 49-31-4 and 49-31-4.1.

On August 8, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of March 14, 2002, to interested individuals and entities. Qwest Corporation (Qwest) filed a Petition for Leave to Intervene on August 9, 2002. On August 15, 2002, the Commission granted intervention to Qwest. By order dated August 22, 2002, a hearing was scheduled for August 29, 2002, beginning at 1:30 P.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota.

On August 28 2002, Petitioner filed a request to withdraw the petition on the grounds that a settlement had been reached between Petitioner and Qwest. It is therefore

ORDERED, that the hearing scheduled for August 29, 2002, is cancelled.

Dated at Pierre, South Dakota, this 29nd day of August, 2002.

<p>CERTIFICATE OF SERVICE</p> <p>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.</p> <p>By: <u>Tina Douglas</u></p> <p>Date: <u>8-29-02</u></p> <p align="center">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr by
ROBERT K. SAHR, Commissioner

John Smith
by John Smith

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

IN THE MATTER OF THE PETITION OF THE)	ORDER GRANTING
SOUTH DAKOTA DEPARTMENT OF)	INTERVENTION
TRANSPORTATION FOR A DECLARATORY)	
RULING REGARDING SDCL 49-31-1.1)	TC02-100

On August 5, 2002, the South Dakota Public Utilities Commission ("Commission") received a Petition for Declaratory Ruling from the South Dakota Department of Transportation (Petitioner) requesting the Commission to make a declaratory ruling on the following question: Is 511 a noncompetitive service as defined by SDCL 49-31-1.1, so as to give rise to Commission price regulation in accordance with SDCL 49-31-4 and 49-31-1.4? The Petition states that Petitioner has been approved by the Federal Highway Administration for its 511 Traveler Information Telephone Number Program Support Assistance Program to deploy a statewide 511 number providing travel information services.

On August 8, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of August 14, 2002, to interested individuals and entities. Qwest Corporation (Qwest) filed a Petition for Leave to Intervene on August 9, 2002.

The Commission has jurisdiction over this matter pursuant to SDCL 1-26-15, ARSD 20:10:01:34 and 20:10:01:35, SDCL 49-1-11 and SDCL Chapter 49-31, particularly 49-31-3, 49-31-1.1 through 49-31-1.4, inclusive, 49-31-4 and 49-31-4.1.

At a regularly scheduled meeting of August 15, 2002, the Commission found that the Petition to Intervene was timely filed and demonstrated good cause to grant intervention. It is therefore

ORDERED, that the Petition to Intervene of Qwest is hereby granted.

Dated at Pierre, South Dakota, this 15th day of August, 2002.

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: <u><i>Thad Douglas</i></u>
Date: <u>8-29-02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner

by J. H. [Signature]

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

IN THE MATTER OF THE PETITION OF THE)	ORDER PERMITTING
SOUTH DAKOTA DEPARTMENT OF)	WITHDRAWAL OF PETITION
TRANSPORTATION FOR A DECLARATORY)	AND CLOSING DOCKET
RULING REGARDING SDCL 49-31-1.1)	TC02-100

On August 5, 2002, the South Dakota Public Utilities Commission ("Commission") received a Petition for Declaratory Ruling from the South Dakota Department of Transportation (Petitioner) requesting the Commission to make a declaratory ruling on the following question: Is 511 a noncompetitive service as defined by SDCL 49-31-1.1, so as to give rise to Commission price regulation in accordance with SDCL 49-31-4 and 49-31-1.4? The Petition states that Petitioner has been approved by the Federal Highway Administration for its 511 Traveler Information Telephone Number Program Support Assistance Program to deploy a statewide 511 number providing travel information services.

On August 8, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of August 14, 2002, to interested individuals and entities. Qwest Corporation (Qwest) filed a Petition for Leave to Intervene on August 9, 2002. At a regularly scheduled meeting of August 15, 2002, the Commission granted intervention to Qwest.

On August 28, 2002, Petitioner requested that its Petition for Declaratory Ruling be withdrawn.

At its regularly scheduled September 5, 2002, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL 1-26-15, ARSD 20:10:01:34 and 20:10:01:35, SDCL 49-1-11 and SDCL Chapter 49-31, particularly 49-31-3, 49-31-1.1 through 49-31-1.4, inclusive, 49-31-4 and 49-31-4.1. The Commission found that Petitioner's request to withdraw its Petition for Declaratory Ruling is reasonable and closed the docket. It is therefore

ORDERED, that Petitioner shall be permitted to withdraw its Petition for Declaratory Ruling, and it is further

ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 18th day of September, 2002.

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: <u>Alaine Kalbo</u>
Date: <u>9/20/02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner