

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

IN THE MATTER OF CAPSULE))	ORDER FOR AND NOTICE
COMMUNICATIONS, INC. FAILURE TO))	OF SHOW CAUSE HEARING
SUBMIT A REPORT AND PAY THE GROSS))	
RECEIPTS TAX))	TC02-189

SDCL 49-1A-1 establishes the South Dakota Public Utilities Commission (Commission) Gross Receipts Tax Fund. This fund is financed by assessing a tax of .0015 or \$250, whichever is greater, on the annual intrastate gross receipts received by a utility from the company's customers within the state of South Dakota, and requires that all telecommunications companies submit on June 1, each year, a report of the amount of such gross receipts received during the preceding calendar year and pay the tax. A penalty of 10% of the tax is imposed for each month of delinquency.

Despite reminder letters from the Commission on May 2, 2002 and July 25, 2002, Capsule Communications, Inc. (Capsule) has failed to file the required report and pay the gross receipts tax.

Pursuant to SDCL 49-1A-6, the Commission may collect this debt by distress and sale of any personal property of the company within South Dakota. Further, the Commission has the authority, under SDCL 49-31-3, to suspend or revoke the certificate of authority granted to the company; assess a civil fine against the company from \$200 to \$1,000 under SDCL 49-31-38; proceed under SDCL 49-31-38.2 or 49-31-38.3 to stop the company from transacting any future business in South Dakota; or take any other enforcement actions against the company allowed by law.

Capsule shall appear on December 19, 2002, at 10:00 A.M. (CST) in the Cactus Conference Room, State Capitol Building, 500 E. Capitol, Pierre, South Dakota, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A. The hearing is being held pursuant to the Commission's jurisdiction over telecommunications companies found at SDCL Chapters 1-26, 49-1, 49-1A, and 49-31, specifically, 49-1-11(4), 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, 49-31-3, and ARSD 20:10:01:45.

The issue at the hearing is whether the Commission shall fine, or suspend or revoke Capsule's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against Capsule for failure to pay gross receipts tax.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail 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 all 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. As a result of the hearing, the Commission shall determine whether to fine, or suspend or revoke Capsule's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against Capsule for failure to pay gross receipts tax. 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 show cause hearing in the matter of Capsule shall be held on December 19, 2002, at 10:00 A.M. (CST) in the Cactus Conference Room, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. And it is

FURTHER ORDERED, that, in the event Capsule shall file an appropriate report and pay the delinquent gross receipts tax, including the 10% penalty for each month of delinquency, the hearing and actions mentioned herein shall not be held or taken, otherwise this order shall remain in effect.

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 15th day of November, 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> Melaine Kalbo </u>
Date:	<u> 11/18/02 </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

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

7001 2510 0004 4799 4010

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Send To
Capsule Comm., Inc.
 Street, Apt. No.,
 or PO Box No. *2 Greenwood Square, Ste 275*
 City, State, ZIP+4 *3331 Street Road Bensalem, PA 19020*

PS Form 3800, January 2001

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Capsule Comm., Inc.
2 Greenwood Square, Ste 275
3331 Street Road
Bensalem, PA
19020

2. Article Number

(Transfer from service label)

7001 2510 0004 4799 4010

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X 

- Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

11-22-02

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below No



3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of November 14, 2002 through November 20, 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

EL02-024 In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions.

Otter Tail Power Company filed a petition for approval of proposed changes to its standard Municipal Contract form. The form currently used may create deviations from Otter Tail's Outdoor Lighting Tariff. The changes proposed in this filing would create a standard form, which will be consistent among the three states in which Otter Tail provides retail electric service.

Staff Analyst: Michele Farris
Staff Attorney: Kelly Frazier
Date Docketed: 11/15/02
Intervention Deadline: 12/06/02

NATURAL GAS

NG02-009 In the Matter of the Application of Berkland Organization, Yankton, South Dakota, for a Master Metering Variance Request for an Apartment Building Located at 110 West 6th Street, Yankton, South Dakota.

Application by Berkland Organization, represented by Dennis K. Berkland, requesting a variance to Master Metering Rules pursuant to ARSD 20:10:26, for property located at 110 W. 6th St., Yankton, South Dakota. Mr. Berkland is renovating the heating system of the triplex in question and wishes it to be served by one natural gas meter instead of the existing three.

Staff Analyst: Michele Farris
Staff Attorney: Kelly Frazier
Date Docketed: 11/20/02
Intervention Deadline: 12/06/02

TELECOMMUNICATIONS

TC02-185 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and PrairieWave Telecommunications, Inc.

On November 14, 2002, the Commission received a filing of LIS Inter Local Calling Area Facility Amendment to the Interconnection Agreement between Qwest Corporation f/k/a U S WEST (Qwest) and PrairieWave Telecommunications, Inc. f/k/a McLeodUSA Telecom Development, Inc. f/k/a Dakota Telecom, Inc. According to the parties, this is an Amendment to the Interconnection Agreement approved by the Commission in Docket TC97-126, effective October 21, 1998. The Interconnection Agreement in TC97-126 was originally between U S WEST Communications, Inc.,

Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. U S WEST subsequently changed its name to Qwest. Dakota Telecom, Inc. subsequently changed its name to McLeodUSA Telecom Development, Inc. and again changed its name to PrairieWave. Dakota Telecommunications Systems, Inc. is not a party to the November 14, 2002, filing. According to the parties, the Amendment is made in order to add to the agreement the terms, conditions and rates for LIS Inter Local Calling Area (LCA) Facility as set forth in Attachment 1, attached to the Amendment. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than December 4, 2002. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier

Date Docketed: 11/14/02

Initial Comments Due: 12/04/02

- TC02-186 In the Matter of ACS Systems, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-187 In the Matter of America's Tele-Network Corp. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-188 In the Matter of Big Planet, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-189 In the Matter of Capsule Communications, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-190 In the Matter of CEO Telecommunications, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-191 In the Matter of Cybertel Communications Corp. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-192 In the Matter of EqualNet Corporation Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-193 In the Matter of Federal TransTel, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-194 In the Matter of Global TeleLink Services, Inc. d/b/a South Dakota GTS Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-195 In the Matter of IPVoice Communications, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-196 In the Matter of Maxtel USA, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**

- TC02-197 In the Matter of NeTel, Inc. d.b.a Tel3 Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-198 In the Matter of NTERA, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-199 In the Matter of Pac-West Telecomm Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-200 In the Matter of Premiere Network Services, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-201 In the Matter of RapTel Communications, LLC Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-202 In the Matter of Sterling Time Company Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-203 In the Matter of StormTel, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-204 In the Matter of TalkNow, Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-205 In the Matter of United Services Telephone, LLC Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC02-206 In the Matter of West End Communications Inc. Failure to Submit a Report and Pay the Gross Receipts Tax.**

The above companies shall appear on 12/19/02, at 10:00 a.m. in the Cactus Conference Room, State Capitol Building, Pierre, South Dakota, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Finance Officer: Terri Iverson
Staff Attorney: Karen Cremer
Date Docketed: 11/15/02
Hearing Date: 12/19/02

**You may receive this listing and other PUC publications via our website or via internet e-mail.
You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc>**

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

IN THE MATTER OF CAPSULE) COMMUNICATIONS, INC.'S FAILURE TO) SUBMIT A REPORT AND PAY THE GROSS) RECEIPTS TAX))))	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER; NOTICE OF ENTRY OF FINAL ORDER TC02-189
--	--

On November 15, 2002, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against Capsule Communications, Inc. (Capsule) for failure to submit an annual report and pay the gross receipts tax. The hearing was held as scheduled on December 19, 2002, 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 Capsule 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 Burg, Nelson and Sahr were present. Also present were Karen E. Cremer, Commission Staff Attorney and Terri Iverson, Finance Officer for the Commission. No representative of Capsule appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke Capsule's 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. Capsule is a telecommunications company holding a Certificate of Authority, issued by this Commission, to provide telecommunications services in South Dakota.
2. Sue Cichos, Deputy Executive Director for the Commission, sent letters to Capsule on May 2, 2002 and July 25, 2002, requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. Terri Iverson testified that Capsule 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 Capsule on November 18, 2002.
4. No representative of Capsule 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. Capsule 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 Capsule to pay the gross receipts tax in violation of 49-1A-5, the Commission revokes Capsule's 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 Capsule 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 23rd day of December, 2002. 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 23rd day of December, 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 Kelbo</u>
Date:	<u>12/24/02</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