

TC000-167

KC/SC

TC00-167

DOCKET NO.

In the Matter of — IN THE MATTER OF USBG, INC.'S
FAILURE TO SUBMIT A REPORT AND
PAY THE GROSS RECEIPTS TAX

Public Utilities Commission of the State of South Dakota

| DATE | MEMORANDA |
|----------|--|
| 10/5 00 | <i>Order and Notice of Show Cause Hearing.</i> |
| 10/12 00 | <i>Weekly Filing;</i> |
| 11/9 00 | <i>Find. of Fact, Con. of Law and Final Order; Notice of Entry of Final Order.</i> |
| 11/9 00 | <i>Docket Closed.</i> |
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TC00-167

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

**IN THE MATTER OF USBG, INC.'S FAILURE)
TO SUBMIT A REPORT AND PAY THE GROSS) ORDER FOR AND NOTICE
RECEIPTS TAX) OF SHOW CAUSE HEARING
)
)
) TC00-167**

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 5, 2000, and July 18, 2000, USBG, Inc. (USBG) 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.

USBG shall appear on November 1, 2000, at 9:00 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 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 USBG's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against USBG 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 USBG's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against USBG 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 USBG shall be held on November 1, 2000, at 9:00 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 USBG 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 5th day of October, 2000.

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| 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 Kalks</u> |
| Date: | <u>10/5/00</u> |
| (OFFICIAL SEAL) | |

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Lasia Schoenfelder
LASIA SCHOENFELDER, Commissioner

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

7099 3220 0004 0025 1025 5366

Article Sent To:
 USBY, Inc.

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

Name (Please Print Clearly) (To be completed by addressee)
 USBY, Inc.
 Street, Apt. No., or PO Box No.
 5601 West 120th St.
 City, State, ZIP+4
 Aliso Viejo, CA 92603-3444
 PS Form 3800, July 1999 See Reverse for Instructions

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of October 5, 2000 through October 11, 2000

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 filing.

Phone: 605-773-3705 Fax: 605-773-3809

ELECTRIC

EL00-029 In the Matter of the Application of Xcel Energy, Inc. for Approval to Extend Expected Merger Benefits to its South Dakota Service Territory and Customers.

An application by Xcel Energy, Inc. for approval of a memorandum of understanding which would provide benefits to its customers and service territory was filed with the Commission. Xcel Energy, Inc. proposes to provide an additional contribution to its annual economic development investment within its service territory for a limited time and also agrees to a conditional rate moratorium until May 1, 2004. The agreement is being offered to provide rate payers expected benefits of the recent merger between Northern States Power Company and New Century Energies Company.

Staff Analyst: Dave Jacobson

Staff Attorney: Karen Cremer

Date Docketed: 10/10/00

Intervention Deadline: NA

TELECOMMUNICATIONS

TC00-146 In the Matter of ACC National Long Distance Corporation d/b/a Vista International Communications' Failure to Submit a Report and Pay the Gross Receipts Tax.

TC00-147 In the Matter of Accutel Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC00-148 In the Matter of ACOMM, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC00-149 In the Matter of Atlantic Telephone Company, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC00-150 In the Matter of ClearPoint Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC00-151 In the Matter of Columbia Telecommunications, Inc. d/b/a aXessa's Failure to Submit a Report and Pay the Gross Receipts Tax.

TC00-152 In the Matter of ConnectAmerica, Inc. d/b/a Connect US' Failure to Submit a Report and Pay the Gross Receipts Tax.

TC00-153 In the Matter of ConQuest Operator Services Corp.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

- TC00-154 In the Matter of Federal TransTel, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-155 In the Matter of Home Owners Long Distance, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-156 In the Matter of IdealDial Corporation's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-157 In the Matter of Inacom Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-158 In the Matter of Inmark, Inc. d/b/a Preferred Billing's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-159 In the Matter of International Telecommunications Corp. d/b/a Discount Direct Dialing's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-160 In the Matter of Legends Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-161 In the Matter of Long Distance America, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-162 In the Matter of NeTel, Inc. d/b/a TEL3's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-163 In the Matter of Nor Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-164 In the Matter of Qcc Incorporated's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-165 In the Matter of Quest Telecommunications, Inc. d/b/a QTI's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-166 In the Matter of SBR, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-167 In the Matter of USBG, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

The above companies shall appear on November 1, 2000, at 9:00 a.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Deputy Executive Director: Sue Cichos
 Staff Attorney: Karen Cremer
 Date Docketed: 10/05/00
 Hearing Date: 11/01/00

- TC00-168 In the Matter of the Application of IDT America, Corp. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

IDT America, Corp. is seeking a Certificate of Authority to provide interexchange telecommunication services in South Dakota. The applicant is a reseller that intends to offer 1-800-MTS, 101XXXX, prepaid calling card, toll free, and rechargeable calling card services to and from all points within South Dakota.

Staff Analyst: Keith Senger
Date Docketed: 10/05/00
Intervention Deadline: 10/27/00

TC00-169 In the Matter of the Filing for Approval of a Resale Agreement between Qwest Corporation and Flatel, Inc.

A Resale Interconnection Agreement between Qwest Corporation (Qwest) and Flatel, Inc., was filed with the Commission for approval. The agreement is a negotiated agreement which sets forth the terms, conditions and prices under which Qwest will provide the Unbundled Network Element Platform and/or services for resale to Flatel for the provision of local exchange services. 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 October 26, 2000. 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: Karen Cremer
Date Docketed: 10/06/00
Initial Comments Due: 10/26/00

TC00-170 In the Matter of the Application of 360Networks (USA) Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

360networks (USA) inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange service in South Dakota. Initially, the applicant will provide non-switched dedicated and private line, high capacity fiber optic transmission capacity and access services and will eventually expect to offer a broad range of voice and data local exchange services to business and residential customers throughout the state.

Staff Analyst: Heather Forney
Date Docketed: 10/10/00
Intervention Deadline: 10/27/00

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

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| IN THE MATTER OF USBG, 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 TC00-167 |
|---|--------------------------------------|--|

On October 5, 2000, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against USBG, Inc. (USBG) for failure to submit an annual report and pay the gross receipts tax. The hearing was held as scheduled on November 1, 2000 at 9:00 A.M. in the Cactus Conference Room, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The reason for the hearing was to give USBG 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 Schoenfelder were present. Also present were Karen E. Cremer, Commission Staff Attorney and Sue Cichos, Deputy Executive Director for the Commission. No representative of USBG appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke USBG'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. USBG 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 USBG on May 5, 2000, and July 18, 2000, requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. She testified that USBG 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 USBG on October 5, 2000.
4. No representative of USBG 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.

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: William K. Kohn

Date: 11/14/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burq
JAMES A. BURQ, CHAIRMAN

Pam Nelson
PAM NELSON, COMMISSIONER

Laska Schoenfelder
LASKA SCHOENFELDER, COMMISSIONER

3. USBG 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 USBG to pay the gross receipts tax in violation of 49-1A-5, the Commission revokes USBG'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 USBG 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 14th day of November, 2000. 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 14th day of November, 2000.