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DA 98-145

**COMMISSION SEEKS COMMENT ON CHEYENNE RIVER SIOUX TRIBE
TELEPHONE AUTHORITY'S AND U S WEST'S JOINT
PETITION FOR PREEMPTION PURSUANT TO SECTION 253**

CC DOCKET NO. 98-6

Released: January 28, 1998

On January 22, 1998, the Cheyenne River Sioux Tribe Telephone Authority (Telephone Authority) and U S West Communications, Inc. (U S West) (collectively, the Joint Petitioners) filed a joint petition pursuant to section 253 of the Communications Act seeking preemption of South Dakota Codified Laws (SDCL) § 49-31-59 as applied to Indian tribes or tribal entities. The Joint Petitioners state that SDCL § 49-31-59, which requires the South Dakota Public Utilities Commission (SDPUC) to approve any sale of a telephone exchange within the state of South Dakota, violates the terms, requirements and purposes of the Communications Act as applied to Indian tribes and tribal entities.

The Joint Petitioners argue that even though U S West desires to sell three telephone exchanges to the Telephone Authority, the SDPUC has applied state law to prevent the sales' consummation. According to the Joint Petitioners, because the SDPUC has concluded on two separate occasions that it cannot tax or regulate the Telephone Authority's activities, it has determined that the sales of the three exchanges are not in the public interest. The Joint Petitioners further argue that the SDPUC will always find that the effects of tribal sovereign immunity impair the state's exercise of regulatory jurisdiction and collection of taxes. Thus, the Joint Petitioners maintain, until the FCC preempts the SDPUC's application of SDCL § 49-31-59, no Indian tribe or Indian tribal governmental entity will be able to provide telecommunications services in South Dakota. The Joint Petitioners therefore argues that SDCL § 49-31-59, as applied by the SDPUC to Indian tribes and tribal entities, constitutes a barrier to entry into telecommunications markets in violation of the Communications Act.

Interested parties are to file an original and 12 copies of their comments on the Joint Petitioners' petition no later than **February 27, 1998**, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. An original and 12 copies of all reply comments are to be filed with the Secretary, FCC no later than **March 16, 1998**. **All pleadings are to reference CC Docket No. 98-6**. An additional copy of all pleadings must also be sent to Janice M. Myles, Common Carrier, Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication, **International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, DC 20036**. Telephone Authority and U S West petition's is available for inspection and copying during normal business hours in the FCC's Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies also can be obtained from ITS at 1231 20th Street, N.W., Washington, DC 20036, or by calling ITS at (202)-857-3800 or faxing ITS at 202-857-3805.

We will treat this proceeding as permit, but disclose for purposes of the Commission's *ex parte* rules. See generally 47 C.F.R. §§ 1.1200-1.1216. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. Interested parties are to file with the Commission Secretary, and serve Janice Myles and ITS with copies of any written *ex parte* presentations or summaries of oral *ex parte* presentations in these proceedings in the manner specified above. We also require all written *ex parte* presentations or summaries of oral *ex parte* presentations in this proceeding to be served on all parties to the proceeding.

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