

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

For US West:

Thomas J. Welk
P.O. Box 5015
Sioux Falls, South Dakota,
57117-5015

Jim Gallegos
1801 California Street, Suite 5100
Denver, CO 80202

For AT&T:

Sandy Hofstetter
901 Marquette Avenue
Minneapolis, MN 55402-3233

John S. Lovald
P.O. Box 66
Pierre, South Dakota, 57501

For Sprint:

Donald Low
8140 Ward Parkway, SE
Kansas City, MO 64114

Thomas H. Harmon
P.O. Box 626
Pierre, SD 57501

For SDITC:

Richard D. Coit
P.O. Box 57
Pierre, SD 57501

For MCI WorldCOM:

David A. Gerdes
P.O. Box 160
Pierre, SD 57501

For DTG:

William P. Heaston
P.O. Box 66
Irene, SD 57037

I N D E X

Chapter

22	20:10:01, Procedural Rules	20
	20:10:24, Certificate of Authorities	4
23	20:10:25, Construction of facilities	15
	20:10:28, Switched Access Rules to Payphones	21
24	20:10:29, Switched Access Delete Recovery Payphones	22
	20:10:32, Local Exchange Service Competition	22
25	20:10:33, Service Standards	28
	20:10:34, Refund of Charges	37
		12

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN BURG: Good morning. Good to see so many here. I hope everybody is here to endorse the able work our staff did, and we can make this real short and get out of here early. But I'm guessing that might not be the case.

We'll now begin the public hearing to consider the adoption and amendment of the proposed rules listed in the Notice of Public Hearing. This hearing is being held in Room 412, fourth floor of the State Capitol, Pierre, South Dakota. The date is November 2nd, 1998, and the time is 8:30. I am Jim Burg, Chairman of the Commission, and Commissioners Schoenfelder and Nelson are also present today.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so today by appearing in person at this hearing or by sending them to the South Dakota Public Utilities Commission, State Capitol, 500 East Capitol, Pierre, South Dakota. Materials sent by mail must reach the Public Utilities Commission by November 13th, 1998, to be considered.

The Commission will consider all written and oral comments it receives on the proposed rules. The Commission may modify or amend a proposed rule at that

1 time to include or exclude matters that were described
2 in the public notice.

3 We'll now begin to take comments on the
4 proposed rules. Rolayne Wiest, the Commission Counsel,
5 is going to conduct this hearing; and I think she's a
6 primary author of the rules as well. So I'll turn it
7 over to Rolayne at this time.

8 MS. WIEST: What we plan on doing is taking
9 comments on a chapter by chapter basis. We made
10 changes to ARSD chapter 20:10:01, procedural rules;
11 20:10:24, certificate of authorities rules; 20:10:25,
12 construction of facilities; 20:10:28 switched access
13 rules with respect to payphones; and 20:10:29, also
14 switched access to delete recovery of payphone. We
15 also have added three new chapters: 20:10:32,
16 20:10:33, and 20:10:34. So we're just going to take
17 them in order, and we will begin with Chapter 20:10:01,
18 our changes to our procedural rules. And I would ask
19 if anybody had any comments on those changes?

20 MR. WELK: Good morning, Commissioners. My
21 name is Tom Welk. I'm an attorney from Sioux Falls
22 representing U S West. And for purposes of this
23 proceeding today, I wanted to inform the Commissioners
24 that U S West intends to submit written comments, and
25 we will do so by the date Chairman Burg indicated, by

1 November 13th. And that most of our comments today
2 that are of technical nature, we will reserve for the
3 written comments.

4 I've been asked to comment on the general
5 rules of practice. One point that is not addressed in
6 the rules and we will be submitting a proposed rule has
7 to deal with how motions are heard and decided by the
8 Commission. And I just from a practitioner's
9 standpoint, I wanted to highlight this issue.

10 When a party files a motion in front of you,
11 depending on when you have scheduled your ad hoc
12 meeting, there is a lot of consternation among at least
13 the lawyers as to when we are to respond to that
14 motion. If somebody files a motion two days in front
15 of your ad hoc hearing or meeting, we don't know
16 whether we're supposed to respond by the meeting date,
17 whether we're supposed to respond according to the
18 Rules of Civil Procedure, which would allow us five
19 days. And so we're going to propose a rule that the
20 Court or that the Commission address how motions should
21 be heard by you so that we can ask you to provide a
22 procedural schedule on how these ought to be handled.
23 And obviously the Commission can decide how far it
24 wants to have the motions heard. But I think you need
25 to know that that has been a problem for everybody.

1 And I'm not trying to take sides on it, and this is
2 just how do we get these issues to you so they can be
3 heard in a logical manner?

4 Another thing that your rules do not address
5 is some of the service requirements on motions and how
6 you compute the time. Under the Applicable Rules Of
7 Civil Procedure in South Dakota, we have anything
8 that's required to be done, if it's served by mail, you
9 add three days on it. Normally a motion in a circuit
10 court is you get five days to respond to it. But if
11 you were served by a motion by mail, you add three more
12 days. And so these rules that are in the circuit
13 courts give us some concern on how we're to respond to
14 your motions. And all we're saying, let's put a
15 procedure in there. I think you could simply put in a
16 rule that says that unless otherwise ordered by the
17 Commission, that the rules in the circuit court will
18 apply to the hearing of your motions before you as well
19 as the service. If we serve a motion in circuit court
20 in South Dakota by facsimile, that is considered
21 personal service and you don't get three additional
22 days.

23 So all my point for the company, at least, is
24 let's try to make sure that when people come into the
25 state or any party has a motion before you, that we

1 have a procedure, we can look at the rule, we know when
2 we're supposed to respond to it. And you can obviously
3 change that, but I think for the rules of practice,
4 that would be something that would be beneficial to the
5 Commission. It would be beneficial to the parties and
6 the counsel involved so that we would have a consistent
7 procedural schedule on how to deal with these. That's
8 all my comment on that matter.

9 CHAIRMAN BURG: Tom, just a couple
10 questions. I think I generally agree with you. Are
11 you going to propose actual time frames with it?

12 MR. WELK: Well, the rule that I was
13 considering proposing to you, Chairman, would be that
14 you would just make -- unless otherwise ordered by the
15 Commission, that the rules of circuit court of South
16 Dakota would apply to the motions. Now, what that
17 means -- and also to the service and filing motions.
18 That would mean that parties would have five days to
19 respond to a motion when it's filed. And there would
20 need to be some provision regarding a reply because
21 normally there's a motion, there's a response, and
22 there's a reply. And I think we could write a rule
23 that would just put those time frames out unless
24 otherwise ordered by you, you get five days to respond
25 and maybe two days.

1 Now, that may affect you now if you want to
2 hear arguments on the motion, whether you want to put
3 that in ad hoc meeting or not because that may change
4 your scheduling if you put that rule for a motion that
5 says you get five days to respond, then there's a reply
6 for two or three days, business days, and then you want
7 to hear it, at times that may require you to have ad
8 hoc meetings if you want to hear oral argument on that
9 motion. Sometimes you may not want to have argument on
10 that. But that's the time frame that would be if you
11 adopted a rule applying it to circuit court, that's the
12 time frame you have to deal with.

13 CHAIRMAN BURG: Do you see us having the
14 authority to require faxes rather than mail.

15 MR. WELK: I think the way that the rules in
16 circuit court state is that anybody can serve anybody
17 by facsimile unless you object to it or you don't have
18 facilities and you can't do it after five o'clock. So
19 there's a rule of procedure that says it's already in
20 existence under our general rules of circuit court
21 procedure that talks about service of facsimile, and
22 most of the lawyers in South Dakota don't abuse it.
23 But the Supreme Court went through it. I think you can
24 already require it. When you put the rule, it just say
25 the rules of circuit court apply to the service and

1 filing of motions, I think you automatically
2 incorporate those existing rules that allow facsimile.

3 CHAIRMAN BURG: You said allow, but could we
4 require?

5 MR. WELK: I think you probably could in this
6 nowadays, I mean, unless somebody objects. The way I
7 would do it if I was writing, I would say that service
8 would be by facsimile unless there was an objection
9 filed with the Commission in that regard. I don't want
10 to see somebody who doesn't for some reason have the
11 facilities, a consumer, for example, that may not have
12 facsimile, you know. I would be concerned about that.

13 CHAIRMAN BURG: The reason I'm asking these
14 questions and I'd like to have you and anybody else
15 responding to your recommendation respond if they're
16 going to adopt it, is that we are so often tied to a
17 time frame. And if we put a time -- which the courts
18 usually are not. They usually do not have these time
19 frames that they have to do things by. And I'm saying
20 if we build in all these times, the things that we seem
21 to have the most trouble with is by all the times that
22 get built in, all of a sudden we're up against a
23 decision time with no time to make that decision. And
24 I agree with you, I think we need to have these kind of
25 procedures. But if anybody sees that those are going

1 to cause a problem or not allow us adequate time to
2 make that decision, I hope they also recommend that we
3 change the laws of the time constraints we're under in
4 some cases.

5 MR. WELK: That's a fair point. But I think
6 if I would do it, if I was writing facsimiles
7 permissible unless you object to tell the Commission
8 about it and then you can make that provision in that
9 given case because most of the sophisticated parties
10 that appear before you, obviously this is the way we
11 communicate every day. I would be concerned about
12 someone who doesn't have a lawyer or, you know, a
13 client, I mean, that you would require that and you
14 would get a consumer that says, "I don't have a fax. I
15 can't get to one." And so I would want to have the
16 opportunity for that person to say, "I just -- I can't
17 get service that way." So other than that, I think 99
18 percent of your business can be done that way. And I
19 just -- you could just order it and somebody could
20 object to it if they don't want to do it.

21 That's all I have. Any other questions?
22 Thank you.

23 MS. WIEST: Any other comments on the
24 procedural rule changes?

25 MR. HEASTON: My name is Bill Heaston. I

1 work for Dakota Telecommunications Group, DTG, in
2 Irene, South Dakota.

3 What you have in front of you is sort of a
4 legislative draft of the rules which I downloaded from
5 your web site and then did my own strikeovers and
6 additions in there in addition to your strikeovers and
7 additions. And that got a little confusing, but I was
8 so far into this, by the time I realized how confusing
9 it was, I couldn't change direction because time didn't
10 permit.

11 There are our written comments on the rules,
12 depending on what happens here today and some other
13 comments I'm expecting from some of the people in my
14 company. We probably will supplement these comments by
15 the 13th of November. But I think I will rely on the
16 written comments. And we do have comments on the
17 Administrative Rules. I didn't comment on the same one
18 that Tom Welk did, but I do think that's a good idea to
19 establish some time frames consistent with probably the
20 circuit court rules which will guide everybody in how
21 they respond to motions. And with that, if you have
22 any questions, I'm prepared to answer any questions.

23 CHAIRMAN BURG: Just for clarification,
24 underlining is new language you've inserted?

25 MR. HEASTON: It may be your language, it may

1 be mine. That's what got confusing. But any way, it's
2 language we're okay with and strike-throughs. On the
3 first Chapter 20:10:01, I didn't strike through or add
4 any language. I just have some comments. It's when we
5 get into the other chapters that it gets a little
6 confusing with the way I did it.

7 CHAIRMAN BURG: Are you planning today to
8 comment on your changes, recommended changes?

9 MR. HEASTON: I was going to just rely on the
10 written comment. That's all I was going to do.

11 CHAIRMAN BURG: I just wondered.

12 MS. WIEST: Any other comments on the
13 procedural rule changes?

14 MR. GERDES: Mr. Chairman, members of the
15 Commission, I'm Dave Gerdes, representing MCI
16 WorldCOM. Just a couple of comments. First of all, I
17 see that Mr. Heaston commented on the same rule that I
18 would have, that I had a comment on, and that's
19 20:10:01:15.06, an individual's right to appear where
20 the Commission proposes to strike the language dealing
21 with broadening of issues. This probably isn't the
22 biggest thing in the world, but the problem I see is
23 that if the intervenor seeks to broaden the issues,
24 what does that do to the existing parties, and then of
25 course do you have other people that want to

1 intervene? And it can be a snowball type thing. I
2 mean it seems to me that that's a good provision.

3 Now, if the Commission wants to on its own
4 motion broaden the issues or broaden the scope of the
5 inquiry, certainly you can do that by an order, but
6 then I think you have to give notice to everybody out
7 there that's not in the proceeding so that now that the
8 rules are changed, so to speak, that everybody get an
9 opportunity to do so again. It just seems to me that
10 that makes sense. There's probably other ways to do
11 it, but I think by striking that, the implication is
12 that all of a sudden the intervenor can broaden the
13 issues to -- and maybe that was not the intent, but in
14 any event, that's a comment.

15 Secondly, talking about time frames, there's
16 no rule on this, but I just thought I'd bring it up
17 since I had a fairly recent experience with it. Fax is
18 great and E-mail is great and the Chairman's comments
19 with Mr. Welk on whether or not you can require people
20 to communicate by fax brought it to mind. And that is
21 in this day and age of fast communications, I think
22 sometimes we lose sight of the fact that maybe we're
23 not communicating. I've had it happen, for instance,
24 where ad hoc meetings have been scheduled on a day's
25 notice and I've been out of town and you don't get the

1 notice. Now, I realize that you're up against the
2 wall, too; and I realize things have to move forward.
3 I'm just saying that there should be some element of
4 caution here that we not go so fast that we leave
5 everybody in the dust. That's all.

6 I'm not sure I'm proposing any change other
7 than that the Commission be sensitive to the fact that
8 when we're E mailing notices and faxing notices, that
9 sometimes it goes right past the people that should be
10 getting the notice.

11 CHAIRMAN BURG: And I agree, and that's part
12 of the point I make. What I guess I'm asking if it
13 looks like in the statutes that to get to a process in
14 some of these time frames are too short, we would ask
15 we get some support to maybe modify those statutes.
16 Because we're finding more and more especially with the
17 complicated way and if an issue gets broadened or if
18 somebody else files, we still have that same deadline
19 that we're not able to give due process in my
20 estimation. And I guess if what I'm asking as we're
21 looking at a whole new set of rules that if you in the
22 industry feel that that is a problem, that we all try
23 to fix it through changing some of those deadlines if
24 that's necessary.

25 MR. GERDES: Yeah. And I'm not sure exactly

1 how to approach that except that sometimes it seems
2 like to me the 24 hours is too short a notice for a
3 person -- a party to have a substantive right affected
4 by a decision of this Commission just on the theory
5 that 24 hours is too short and they may be out of town
6 or may not have gotten the notice, especially if it's
7 coming by fax.

8 CHAIRMAN BURG: You know, I agree. The point
9 I'm making, sometimes ninety days is too short a time
10 to process something as complicated as what these have
11 become.

12 MR. GERDES: And I agree with that. And I'm
13 not sure that I've got a solution. But I certainly
14 agree with the Chairman to the extent I could, I'd help
15 you on that.

16 MS. WIEST: Any other comments on the
17 procedural rules?

18 If not, are there any comments to changes
19 20:10:24?

20 CHAIRMAN BURG: Could you give pages,
21 Rolayne? Do you have pages?

22 MS. WIEST: 14, begins changes to 20:10:24 on
23 page 14.

24 MR. COIT: Good morning, Commissioners,
25 staff. My name is Richard Coit. I'm here today

1 appearing on behalf of the South Dakota Independent
 2 Telephone Coalition. With regard to the rule changes,
 3 I've just handed to you a copy of some written comment
 4 that we've prepared. I've termed these initial
 5 comments. I suspect that we will probably also
 6 supplement these comments prior to November 13th. We
 7 will be commenting orally on quite of a few of the
 8 rules today. And this, I think, will allow you to
 9 follow along better.

10 With respect to the changes to ARSD Chapter
 11 20:10:24, we would have a comment with respect to the
 12 removal of the word adjacent from the definition of
 13 extended area of service. We're concerned as far as
 14 removing it from the definition. There's not a big
 15 problem there, but we are concerned. We do believe
 16 that the adjacent criteria certainly is something
 17 that's important in considering whether there is a
 18 community of interest between the local exchange areas
 19 that are subject to any EAS petition. So, therefore,
 20 if the Commission does decide to remove the word
 21 adjacent from the definition, we believe that it should
 22 at some point or should in these proceedings clarify
 23 whether in the future it will at least consider whether
 24 exchanges are adjacent or contiguous in reviewing EAS
 25 petitions. We believe that their specified criteria in

1 reviewing EAS petitions in the adjacent or some
2 geographic element needs to be considered with respect
3 to the community of interest standard.

4 Regarding there's one other rule we'd like to
5 comment on in Chapter 20:10:24 and that is
6 20:10:24:03.01, which sets forth the criteria for
7 granting certificates of interexchange service
8 authority. First, with regard to subsection three, in
9 that section there's a reference to service
10 obligations. Interexchange service applications
11 statutes don't specifically mention that interexchange
12 carriers should have in-service obligations. Certainly
13 with local exchanges carriers the statutes do. But we
14 don't believe the word service obligations is necessary
15 in subsection three, so we would recommend deleting
16 it.

17 Also, there's other provisions in subsections
18 four and five that deal with first, facilities, and
19 then secondly, some resale or interconnection type
20 arrangements. And we also don't feel that those
21 provisions are particularly relevant to interexchange
22 service certificates, and we would suggest they be
23 deleted. That's all I have, unless there are any
24 questions?

25 MS. WIEST: Any other comments to 20:10:24

1 changes?

2 MR. HEASTON: This is Bill Heaston on behalf
3 of DTG. And the comments we have are written comments,
4 and I guess the only comment I would have to make is I
5 always thought that sort of the unwritten rule was the
6 more competition, the less regulation. And these rules
7 seem to have grown rather than gotten smaller, and
8 that's the one concern we have. Is there any
9 questions?

10 CHAIRMAN BURG: Seems like the problems have
11 grown.

12 MR. HEASTON: Well, there's going to be
13 problems, but I think you ought to let the marketplace
14 sort some of them out. I agree you have complaint
15 powers and you do have concern for the consumer, but I
16 think in many instances you ought to let the company
17 try to come in and succeed. Because there are going to
18 be failures, and you can't prevent that.

19 MR. GERDES: Mr. Chairman, members of the
20 Commission, Dave Gerdes again for MCI WorldCOM.

21 First of all, I should mention that we do
22 intend to file written comments before the 13th.
23 20:10:24:04.04, which is the next to the last section,
24 procedure for suspension or revocation hearing. If you
25 look at the second paragraph of that rule, it says

1 after the hearing the Commission shall enter its
2 decision either dismissing the complaint or entering an
3 order directing the action specified in the order to
4 show cause. It occurs to me that there might be some
5 day when you might want to do something other than
6 those two things.

7 Do you want to just -- do you want to limit
8 yourself to those two remedies? Because that's what
9 the rule says. It says you can only do one of two
10 things, either dismiss it or enter an order directing
11 the action specified in the order to show cause. You
12 might want to do something less, or you might want to
13 suspend something on a condition they do something. I
14 mean if you literally read that rule, it only gives you
15 two options, so you might want to look at that
16 language.

17 Secondly, the next section 20:10:24:04.05,
18 the last paragraph appears to have been written by
19 Mr. Welk's partner, Jeremiah Murphy, who represents
20 Western Surety Company.

21 MR. WELK: I can assure you Jeremiah Murphy
22 didn't look at these rules.

23 MR. GERDES: It's kind of a joke with --
24 Mr. Murphy does a very good job representing Western
25 Surety Company during the legislative session wanting

1 to make sure that everybody buys corporate surety
2 bonds. This rule would say that the only kind of a
3 surety bond you can accept is a corporate surety bond.
4 Now, I would submit to you that some very good property
5 bonds exist out here and are used for security, and you
6 might want to provide for such property bond as the
7 Commission might approve in its discretion. They're
8 used all the time.

9 And obviously you'd have to look at the
10 balance sheet of the company and see what kind of
11 property they do own and what kind of property that
12 they're committing as security for performance. But,
13 nonetheless, I really think that maybe you should think
14 about giving yourself and an applicant that option,
15 that -- because everybody is entitled to make money,
16 including corporate sureties, and they do a good job.
17 But you also have to pay a premium annually for that
18 bond, so it costs you money. And there may be a
19 company that would want to give you \$100,000 CD or
20 something in lieu of the corporate surety bond. That's
21 what I'm saying. So you might want to give yourself
22 that option.

23 MS. WIEST: Are you going to be recommending
24 specific changes to that in your written comments or
25 not?

1 MR. GERDES: I wasn't thinking about it. I
2 would just add another sentence that would say the
3 Commission, in its discretion, may require a property
4 bond to be approved in its discretion, something like
5 that.

6 COMMISSIONER SCHOENFELDER: Not a letter of
7 credit or anything like that?

8 MR. GERDES: To me a bond is stronger than a
9 letter of credit and it's easily done. It's not
10 something that can't be done. As a matter of fact, I
11 think when MCI WorldCOM got its local service
12 certificate of authority, I think that's what we used
13 was a property bond. I'm not sure. I would to have go
14 back and look.

15 CHAIRMAN BURG: Just a point. I think
16 Camron, on the elevator side, we allow other than just
17 surety bonds, don't we?

18 MR. HOSECK: I'm not positive. I think that
19 they do.

20 CHAIRMAN BURG: I think we do have some other
21 options.

22 MR. GERDES: Again, it leaves your options
23 open. I'm not sure you want to restrict your options.

24 MS. WIEST: Any other comments to 20:10:24?
25 If not, 20:10:25? The Commission appealed those

1 rules. Any comments on 20:10:25? Then we go to
2 20:10:28, those are switched access rules, and the
3 Commission was trying to delete the payphone recovery
4 pursuant to the FCC's directive.

5 MR. COIT: SDITC has some comments with
6 respect to the rule changes proposed on the separations
7 procedures. I have Don Lee of Martin & Associates here
8 with me today as, I guess, our allocation expert. And
9 he will be in a position to respond to any questions
10 the Commission may have with regard to our position.
11 I'm also going to ask him to supplement some comments
12 specifically that we have regarding 20:10:28:118, which
13 deals with other billing and collecting expenses.

14 MS. WIEST: Why don't we take 20:10:28 and
15 20:10:29 together since they both have to deal with the
16 same subject.

17 MR. COIT: Okay. I don't think we had any
18 changes on 20:10:29. Our changes are in Chapter 28.

19 MS. WIEST: Okay.

20 MR. COIT: Just generally, we do not support
21 revisions -- the proposed revision to 20:10:28:105,
22 which deals with telephone operator expenses. We
23 believe the rules should remain as it is currently in
24 effect. As revised, we believe the rule is
25 inconsistent with the FCC's payphone order 96-388. The

1 FCC specifically indicated in that order, quote, as
 2 follows, that its reassignment of payphone expenses did
 3 not include as payphone assets be reclassified or
 4 transferred the loops connecting the payphones to the
 5 network, the central office coin service, or operator
 6 service facilities supporting incumbent LEC payphones
 7 because these are part of the network equipment
 8 necessary to support basic telephone services,
 9 unquote.

10 The FCC has made it clear in its payphone
 11 orders that common LEC's are only required to remove
 12 the cost of payphone sets from the regulated intrastate
 13 and interstate rate structures and that this does not
 14 include the cost of network equipment or facilities.
 15 The same rationale for the FCC's refusal to reassign
 16 the cost of loop facilities connecting payphones to the
 17 network or the cost of operator service facilities, we
 18 believe, applies to the reassignment of operating
 19 expenses, including telephone operator service
 20 expenses.

21 So what we've done is we've -- we would
 22 strike the last -- or we would leave in the reference
 23 to public telephone stations in the 105 provision. And
 24 I think the FCC's position is very clear that that
 25 shouldn't be changed. Our provision shouldn't be

1 changed because if you go to the corresponding FCC
 2 rule, they left the language in that rule. And that
 3 rule is specifically 47 C.F.R. 36.374 cited in my brief
 4 there. So since there wasn't any change on the federal
 5 jurisdiction with regard to the similar rule there, we
 6 don't believe there should be a change on the state
 7 rule.

8 MR. GERDES: What was the rule number again?
 9 47 C.F.R. 36.374. It's in the written comments cited.

10 MS. WIEST: So no changes at all to 105?

11 MR. COIT: Right, no changes at all to 105.
 12 For the same reasons, we would ask the Commission not
 13 make any change to 20:10:28:117. Again, that deals
 14 with message processing expense. And basically what it
 15 boils down to is that we feel that if it's an expense
 16 associated with a service that's provided over the
 17 network, that that isn't something that appropriately
 18 should be reassigned. So the same rationale applies to
 19 20:10:28:117, and we would ask the Commission not make
 20 any changes to that section. And I would note again
 21 that the corresponding FCC rule was not changed as a
 22 result of the payphone orders.

23 CHAIRMAN BURG: By no change, you mean
 24 deleting the new language, or the underlined language?
 25 is that correct?

1 MR. COIT: Correct, correct. Finally, for
 2 the same reasons, we would ask that the Commission not
 3 include what you've included in 20:10:28:118, but we do
 4 even though, you know, the purpose of the rule changes
 5 here, we understand, is to really look at the issue of
 6 reassignment of the pay telephone costs, or pay
 7 telephone expenses, we have a suggested changed to the
 8 other billing and collection expenses section. And I
 9 realize that, you know, we're proposing something that
 10 goes a little bit further, certainly goes further than
 11 just reassign pay telephone cost. We'd like the
 12 Commission, though, to consider the provision that we
 13 propose and as set forth on pages five and six of our
 14 comments.

15 And I guess I'll turn to Don Lee to just give
 16 you an explanation as to why we propose the specific
 17 change that we propose.

18 MR. LEE: Good morning, Commissioners. The
 19 purpose behind our thought here is one of
 20 simplification, time, and cost savings to the local
 21 exchange carrier. Essentially, the federal rules
 22 mandate that other billing and collection costs shall
 23 be assigned one-third to the interstate jurisdiction
 24 and the remaining two-thirds to the end trust
 25 jurisdiction. The rules as proposed would take that

1 remaining two-thirds and go through a study to
2 determine which of the customers utilize local services
3 bills or receive local service bills only and which
4 would receive intrastate toll bills and then apply a
5 relationship of that process to determine which other
6 billing and collection costs should be assigned to the
7 toll business.

8 In our perspective, it would be much easier
9 to follow through on the interstate rules and simply
10 split the remaining two-thirds of the other billing and
11 collection costs on a 50/50 basis and allocate them 50
12 percent to local and 50 percent to intrastate. We
13 believe that, for the most part, the end user customer
14 would utilize long distance services and local services
15 on a routine monthly basis. Statistics would bear that
16 out. Consequently, we think it would be a time savings
17 and much easier to do the allocation simply splitting
18 that remaining two-thirds left after the interstate
19 split on a 50/50 basis.

20 MR. COIT: Basically what we're saying there
21 is, you know, the FCC now has gone to a flat percentage
22 type allocation. And we would suggest that with
23 respect to the two-thirds that's allocated to the
24 intrastate jurisdiction, that we also go to a flat
25 percentage. We really don't think it's going to make

1 any difference, or much difference with respect to the
 2 allocation amounts because today, as Don has noted,
 3 it's based on the relative number of users within the
 4 local service category, the toll category, which
 5 generally is going to fall in the 50/50 range any way.
 6 So rather than going through the steps of having to
 7 count, you know, the users in each category, we would,
 8 I guess, like the Commission to just kind of follow
 9 through a little bit on with what the FCC has done and
 10 look at consider adopting the 50/50 approach that we've
 11 proposed.

12 MS. WIEST: But this really doesn't have
 13 anything to do with payphones?

14 MR. COIT: Not really, no. We just felt now
 15 is probably a time to throw it out there.

16 COMMISSIONER SCHOFENFELDER: I have a question
 17 about the separations procedure. Because the 25/75
 18 separation procedure that's under Part 16 is under
 19 consideration now, I think, or, you know, is being
 20 reviewed now by the Separations Joint Board and by the
 21 FCC. I don't know where we're at in that mix, and I
 22 guess probably you're closer to that than I am. When
 23 would you expect that to change? And another thing I
 24 would like to know if you know what kind of a consumer
 25 impact the 50/50 would have?

1 MR. COIT: Don, can you respond?

2 MR. LEE: I don't know that we have -- first
3 off, in response to the consumer impact, we do not have
4 accumulated numbers to determine how many customers,
5 consumers there might be who on a monthly basis do not
6 make any intrastate telephone calls. We did look at a
7 couple companies and statistically they came out, you
8 know, three or four customers per an exchange who might
9 not have made toll calls. So the impact was down to
10 less than pennies a month as far as splitting the other
11 billing and collection costs. And that's the only
12 thing we're looking at here is the OB&C, or other
13 billing and collection costs.

14 COMMISSIONER SCHOENFELDER: And this rule
15 would apply to all companies, to U S West as well the
16 50/50 split?

17 MR. LEE: Right.

18 COMMISSIONER SCHOENFELDER: Okay. Thank
19 you.

20 MR. COIT: Thanks.

21 MS. WIEST: Any other comments on 20:10:28 or
22 20:10:29 switched access rules? If not, then we'll go
23 to 20:10:32.

24 MR. COIT: We've just generally commented on
25 the local exchange service competition rules. Just to

1 indicate our support for what the Commission has
 2 proposed, we believe what you've proposed is consistent
 3 with the language in the state statute that talks about
 4 the Commission having to adopt rules addressing local
 5 service competition that are directed to preserving and
 6 advancing local universal service, protecting the
 7 public safety and welfare, ensuring the continued
 8 public quality of service, and safeguarding the rights
 9 of affected customers. The statute also indicates that
 10 the preservation and advancement of universal service
 11 shall be a primary concern.

12 So we believe the Commission should adopt the
 13 rules they've proposed. I have had a brief opportunity
 14 to review some of the DTG comments, and they challenge
 15 some of the provisions dealing with service obligations
 16 to be imposed in the rural areas and also, I believe,
 17 challenge the requirement that we've got in there for
 18 competitors to offer at least the same local calling
 19 area as the incumbent carrier. We will respond to
 20 those in written form in our reply comments after we've
 21 had a chance to review them more thoroughly. Thank
 22 you.

23 MS. WIEST: Any other comments?

24 MR. LOW: Good morning. I'm Don Low with
 25 Sprint. We will be submitting written comments by

1 November 13th, and I just have a couple of basic or
2 major concerns with two of the segment provisions in
3 the Chapter 32.

4 One is on the 32.39. This deals with the
5 rural telephone company exemptions. And we're not
6 opposed to that rule as such. I was -- we would just
7 suggest that you might want to have more procedural
8 details set forth on a proceeding that you discuss in
9 that proposed rule to address the rural exemption. I
10 think we're looking at the Minnesota rules as a
11 possible model for setting forth time frames and
12 procedures for addressing those exemptions.

13 The other section that we're concerned with
14 is the same one that was just mentioned, and that was
15 in the DTG's comments, that's 32.43 where the
16 Commission -- or the proposed rule would say that it's
17 the Commission who determines now it's not in the
18 public interest and if the service of a competitive
19 local exchange provider is not coextensive with a rural
20 telephone company service area. We certainly
21 understand and appreciate the Commission's concerns in
22 that regard. I'm just simply suggesting that it may
23 not be appropriate for you to set out a hard and fast
24 rule at this time in your rules. There probably will
25 be circumstances in the future where you may want to

1 have a different determination. I don't know how
2 things will be in the future. I'm just suggesting
3 maybe you don't want to have this in your rules. Thank
4 you.

5 MS. WIEST: But would that really prevent the
6 Commission from deleting the service area? I mean the
7 Commission could still change the rural company service
8 area; right? It's not limited to the study area if the
9 Commission and the FCC agree to that.

10 MR. LOW: That's true. You could do that.
11 I'm just saying that you may not -- you -- there may be
12 some situations in the future where you may not
13 necessarily want to hold the competitor to have the
14 same service area as a rural telephone company. You
15 know, you may want to create a presumption in the rule,
16 but I don't know that you want an absolute hard and
17 fast rule.

18 MS. WIEST: All right.

19 MR. HEASTON: Again, Bill Heaston on behalf
20 of DTG. We did make some extensive comments on Section
21 32. I guess the comments on the first part which were
22 to some of the requirements that you have placed upon
23 an applicant for a local exchange certificate, from our
24 view, is burdensome and unnecessary. And I guess it
25 stems from some experience the company recently has in

1 Minnesota with these same type of rules which are very
2 extensive. It hasn't been the telephone companies
3 we've had the problem with. It's been the cable
4 companies that get in and muck around with all of these
5 standards that you've set in trying to get that into
6 our business plan, into the details of all our
7 financing and all of this sort of thing.

8 And then we have to expose every competitive
9 advantage we think we've got both in pricing and in
10 marketing and everything else to the whole world and to
11 the competitor under the extensive disclosure required
12 by these rules. And I know you can say, well, we can
13 sign nondisclosure agreements and we can do all this
14 sort of thing, but once it's out there, we've lost the
15 value of what we're trying to bring in many instances
16 to the competitive market.

17 So we're concerned about that. We're also
18 concerned about the calling area and being committed to
19 that calling area. And I guess I can give you a
20 reverse on that a little bit. DTG can create a calling
21 area that's quite large, quite frankly, if they want to
22 because its switch is centrally located and it can
23 serve everybody in the world off that one and all
24 through Southwest South Dakota and require a competitor
25 to come in and replicate that is going to be very

1 difficult. So you need to think about that kind of
2 rule.

3 The problem I've got here is that it makes it
4 very difficult for anybody to come in and compete and
5 do this sort of thing. As I said on the comments to
6 the earlier rule, sometimes somewhere along the line
7 here the market has got to work. You've got to let the
8 competitor in the market then sort out who's going to
9 succeed and who's going to fail. Yes, there's going to
10 be going to be consumer impacts and you've got to
11 minimize that. DTG certainly understands that. But we
12 do think though the market ought to be given the
13 opportunity to work, and that's the underlying
14 rationale for our comments. If you have any
15 questions?

16 MS. HOFSTETTER: Sandy Hofstetter, AT&T. We
17 will be providing written comments on the 13th. I just
18 would like to join in on some of Mr. Heaston's prior
19 concerns. I have had an opportunity to look through
20 some of his written comments that he provided this
21 morning, and I agree with the majority of those too.
22 AT&T does have some concerns that they'd just like to
23 point out right now.

24 One, in terms of 20:10:32:11, the local
25 calling scope for alternative providers. As

1 Mr. Heaston said, AT&T believes that the competitor
2 should be able to define the local calling scope that
3 they're going to have and not join in and pay the same
4 as the existing LEC.

5 We also have, we think, some minor concerns
6 with the annual reporting requirements under
7 20:10:32:13 to the extent they are more cumbersome than
8 what is already required. We think that's going in a
9 different direction and should be lessened for the more
10 competitive carrier.

11 20:10:32:38, the rural exemption for
12 negotiation and interconnection requirements, the
13 information that must be included in a bona fide
14 request is much more onerous than what is currently
15 required in the Act under 251(f)(1). This shouldn't
16 exceed the requirements of the Federal Act. Also, the
17 information, as Mr. Heaston said, is primarily
18 proprietary. It gives out current business plans for
19 the CLEC, and it gives competitive disadvantage to the
20 CLEC.

21 Also, 20:10:32 40, the petition for a
22 suspension or modification of interconnection
23 requirements. The way the rule is written, it's
24 unclear that the Federal Rule intended it to apply to
25 rural telecoms. It could be interpreted to apply to

1 all LEC's. The rule needs to cite back to 251(f)(2)
2 which reads suspensions and modifications for rural
3 carriers. A local exchange carrier with fewer than two
4 percent of the nation's subscriber lines installed in
5 the aggregate nationwide may petition a state
6 commission for suspension or modification of the
7 application of a requirement or requirements of
8 Subsection B or C to telephone exchange service
9 facilities specified in such petition.

10 And 20:10:32:43, designation of eligible
11 telecommunications carrier. This rule appears to
12 redefine public interest and AT&T has a concern of
13 that. The Act contends for public interest to be
14 determined on a case-by-case basis. And as Mr. Heaston
15 pointed out prior to this and as well as Mr. Low,
16 that's a concern that AT&T would have.

17 On 20:10:32:45, the existing eligible
18 telecommunications carrier designations not affected.
19 That this rule appears to be tied to the proposed
20 20:10:32:34, and we would need some clarification on
21 that as to the intent of it. Any questions?

22 MS. WIEST: Thank you.

23 MR. GERDES: Mr. Chairman, members of the
24 Commission, Dave Gerdes for MCI WorldCOM. Just a
25 couple of comments: 20:10:32:03 relates to the

1 application requirements for a local exchange service.
2 If you look at subparagraph 16 and compare it with
3 subparagraph 21, I think they both apply to the same
4 thing. At least 16 says a detailed description of how
5 the applicant intends to market its local exchange
6 services, and then 21 says information concerning the
7 applicant's policies relating to solicitation of new
8 customers.

9
10 Now, it seems to me that solicitation of new
11 customers is the same thing as marketing, and you may
12 want to see how you can combine those two topics in one
13 subparagraph so that you don't have them in two
14 different parts of the application.

15 The second thing that I'd like to comment on,
16 however, is that we feel that telemarketing scripts is
17 inappropriate for the application phase for a couple of
18 reasons, but not the least of which is that they may
19 change. They're certainly not in being forever. They
20 can be viewed as being proprietary and that it simply
21 isn't an appropriate subject. Now, I agree that the
22 applicant should be required to show efforts
23 that it will make to prevent slamming and things such
24 as that, but I think the actual script represents micro
25 managing, which we would feel is inappropriate. And so
26 for that reason we would object to that part of the

rule.

The other comment I have is essentially the same, I think, as Mr. Heaston's and that is on 20:10:32:11, the local calling area. It seems to us that competition should dictate that and it shouldn't be cast in stone that the local calling area for a competitive local exchange provider would have to be the same as the local area that it is applying for -- as that of the incumbent provider. It seems to us that competition, now, you could fashion in your order granting the application something that would prevent them from just cherry picking. But I mean as far as absolutely having a rule that says you have to be -- the areas have to be the same, we would submit does not give full credence to the concept of competition, and that's after all what the Federal Act is about.

MS. WIEST: Any other comments on 20:10:32? If not, we'll go to 20:10:33.

MR. HEASTON: Again, Bill Heaston on behalf of DTG. Our comments are in writing on this. My boss didn't want me to express the appreciation to the Commission in 20:10:33:01 where he's finally been defined, so Hertz is one cycle per second. He wasn't sure who he was or what he was until this came out.

MR. GERDES: I think that's a little slow.

1 MR. HEASTON: But we'll stand by our written
2 comments. And if there are any questions, I wanted to
3 get in here before everybody else did. Thank you.

4 MS. WIEST: Any other comment?

5 MS. HOFSTETTER: Sandy Hofstetter, again, for
6 AT&T. As written, the rules appear to equally apply to
7 ILEC's as well as CLEC's, and AT&T believes that it's
8 inappropriate to apply these rules to CLEC's. It's
9 inappropriate for two reasons: In a resale or use any
10 basis environment where the CLEC must purchase all or
11 part of the service from the ILEC, the CLEC really
12 doesn't have any control over the quality of service
13 that it's being provisioned by the ILEC. In an
14 environment where the CLEC is not dependent on the
15 ILEC, the competitive marketplace should dictate the
16 adequate standards. At most, these rules should only
17 apply to CLEC's that are facility based and then only
18 to the facilities that are in their control.

19 And in any case, we need to make clear that
20 these rules are not sufficient to identify and
21 guarantee service standards that the ILEC should
22 provide in a retail and wholesale basis to customers.
23 The South Dakota Interconnection Agreement, paragraph
24 248 regarding quality and business process standards,
25 states the Commission may open a separate docket or

1 dockets on these issues to determine what quality or
2 business standards U S West will be required to meet.
3 And these proposed rules are not to be interpreted as
4 meaning quality and business process standards
5 discussed in the Interconnection Agreement.

6 And then a concern in 20:10:33:32, failure to
7 pay for services other than local exchange services not
8 grounds to deny or terminate local exchange service.
9 AT&T's position is that this rule is inappropriate in a
10 competitive environment. Customers that run up high
11 nonlocal charges would have no risk as they would be
12 guaranteed local service. It's inappropriate to force
13 the carrier who's provisioning both service and long
14 distance service to maintain a customer that is a high
15 credit risk. A customer should be expected to pay the
16 their bills in full on the services. I'd be happy to
17 answer any questions.

18 MS. WIEST: Thank you.

19 MR. COIT: We've commented on the service
20 pages, starting on page seven on my written comments.
21 I notice that I have a typo in the heading on page
22 seven. That should be Chapter 33 and not Chapter 32.
23 Our rule -- yeah, Chapter 33 and not 32. We would kind
24 of like to go through each of the rules that we have
25 concerns with. I have Larry Thompson of Martin &

1 Associates here today who's in a position to respond to
2 some of the technical questions Commissioners or staff
3 might have, and Don Lee is available as well to respond
4 to some questions and provide supplemental comments if
5 the Commission desires it. So we would like to go
6 through each rule even though we've done it in written
7 comments.

8 The first rule that we have submitted
9 comments on is 20:10:33:03, which deals with the level
10 of service applicable to all subscribers within an
11 exchange. As indicated in our written comments, we
12 support what the rule is intended to accomplish. We
13 strongly support the requirement in state law that
14 services be reasonably comparable between rural and
15 urban customers as set forth in 49-31-84 and also
16 strongly support the provision in there that requires
17 that the comparable service be provided at comparable
18 rates.

19 However, to accomplish what's intended by
20 ARSD 20:10:33:03 in the short term and in the long
21 term, it's not enough to simply issue the rule. We
22 believe that to insure at all times access to
23 reasonably comparable service that reasonably
24 comparable prices and cost recovery issues associated
25 with deploying the state-of-art technology in the high

1 cost areas needs to be addressed. We firmly believe in
2 South Dakota we need a state universal service fund.

3 With respect to the specific language in ARSD
4 20:10:33:03, we would propose that instead of using the
5 word substantially equivalent, we would like the
6 Commission to use the reasonably comparable language
7 that's in the statute. That's what's in the statute.
8 And to make the rule consistent with the statute, we
9 think that is the language that should be used.

10 Already in ARSD 20:10:33:04, the subsequent rule, you
11 propose certain minimum technical requirements. Those
12 are already applicable to all loops, so therefore using
13 the reasonably comparable language rather than the
14 substantially equivalent language should be sufficient
15 for 20:10:33:03.

16 We've referenced in our comments the study
17 that we provided to you not all too long ago, about a
18 about month or so ago, that was prepared by Martin &
19 Associates entitled 1997 Telecom Act of South Dakota
20 Summary and Impacts, which was completed this past
21 spring by the SDITC. What that study intends to do is
22 reasonably quantify the costs that would be incurred by
23 independent local exchange companies in the state, and
24 that would include all LEC's other than U S West.

25 Assuming the deployment of the current

1 technology to meet the narrowband network requirements
2 and to some extent the wideband network goals that were
3 set forth in the 1997 state legislation, we think the
4 information in that report is relevant to analyzing or
5 evaluating 20:10:33:03 and also some of the other
6 requirements the service standard requirements that are
7 set forth in the service standard rules.

8 As I've noted on page eight of my written
9 comments, our study showed that roughly 40 percent of
10 the subscribers served by independent LEC's are located
11 more than 18,000 feet from a central office switch, and
12 this would include those rural subscribers that
13 presently are served by analog carrier systems, which
14 according to a survey we've recently done, approximates
15 approximately about 6,500 customers within the SDITC
16 membership.

17 In order to get the advanced type services
18 mentioned in the state legislation, 1997 state
19 legislation, to all subscribers to be deployed on a
20 ubiquitous basis, some certainly substantial
21 investments in loop facilities, electronics, and
22 switching equipment are going to be needed. The study
23 gives indication of those costs and also an indication
24 of what it would generally cost to upgrade the analog
25 carrier equipment that's referenced in the 33:03 rule.

1 So basically our position is that if the
2 Commission adopts 20:10:33:03, we believe the
3 Commission has a corresponding obligation to commit
4 itself to supporting any efforts in the industry to
5 establish a state universal service funding mechanism.

6 CHAIRMAN BURG: Question on that. Do you
7 think -- I mean are you indicating that somehow we
8 should put it in these rules that we're going to
9 support U.S.F. funding?

10 MR. COIT: No. I'm just clarifying for you
11 that --

12 CHAIRMAN BURG: You think it's necessary?

13 MR. COIT: We support what you're trying to
14 do. But, you know, there's obviously cost recovery
15 issues, and we -- there's an obligation as well to
16 support those efforts when the time comes.

17 Does anybody have any questions for Larry on
18 any of that stuff that that section deals with? If
19 not, going on to the next section, 20:10:33:04, we do
20 have a suggested change to subsection one. The last
21 sentence of subsection one, which talks about the
22 transmission law standard, which is 10dB at 1004 Hertz,
23 or what is it, existing loops. And then there's a
24 standard proposed of 8dB at 1004 Hertz for new or
25 upgraded or replaced subscriber loops. We believe that

1 the word upgraded is too vague. And we believe it
2 should be deleted because it could be interpreted to
3 mean that almost any type of work or equipment change
4 occurring on a loop facility would mean that you have
5 to turn around and make that consistent with the 8dB.
6 We believe it could force premature replacement of
7 existing loop facilities.

8 Larry, do you have any additional comments on
9 that?

10 MR. THOMPSON: The old requirements used to
11 be 10dB, and that's why we liked that requirement for
12 existing, although a lot of existing plant has been
13 designed over the 8dB for the last ten or fifteen
14 years. If we did do some sort of upgrade like let's
15 say replace a small section of cable in a long loop, we
16 wouldn't be able to still meet the 8dB if it was
17 designed for a 10dB because often it means replacing or
18 gauging the gauge of the cable or some substantial
19 upgrade would be required to go from the 10dB to the
20 8dB in some instances.

21 MR. COIT: We also have comments on Section
22 Subsection 05, which is the minimum data transfer
23 speed. We agree with the Commission that high speed
24 modem access, this is an increasingly important issue
25 with consumers, and we agree it is in the public

1 interest to provide the highest modem speeds possible.
2 The speed requirement that you have listed is
3 conservative. A great majority of our companies in
4 serving most of the their customers will exceed this
5 speed by a substantial margin.

6 However, there are obviously customers where
7 it is difficult to bring that speed and which could
8 result in immediate upgrade. There could result in
9 difficult -- or, you know, it could be difficult and
10 expensive for those consumers. Again, this is along
11 the lines of what we commented on in speaking to the
12 analog carrier system requirement. Again, there are
13 cost recovery issues that should be considered, and
14 specifically we've referenced on page ten the federal
15 definition of universal service. There's at least a
16 question raised, and we're just raising this as a
17 question that if the Commission adopts the data
18 transport standard that they have, at least it appears
19 that the Commission might be adopting a different
20 definition of universal service. And if that is the
21 case, then the federal law very clearly indicates that
22 the Commission again has an obligation to come up with
23 the necessary funding that might be needed to make it
24 available on a ubiquitous basis.

25 That's all the comments we'd have on that.

1 but we do support what the Commission is intending to
2 do in mandating and making sure that all customers have
3 access to a reasonable data transfer speed.

4 MS. WIEST: But, you know, going to that 300
5 to 3,000 Hertz actually supports a 14.4 data rate.

6 MR. THOMPSON: There are a lot of other
7 technical performance that could support that 300 to
8 3,000 Hertz band that could prohibit that transfer
9 speed. And even with all the other requirements, there
10 are still some anomalies in the band that could
11 prohibit that. So all your requirements are necessary
12 but not necessarily sufficient for that. But I would
13 say as a general rule, if they could meet your
14 requirements, they will likely get 14.4 with a high
15 probability.

16 COMMISSIONER NELSON: Doesn't the Governor's
17 Act require whether this rule applies or not?

18 MR. THOMPSON: Restate your question.

19 COMMISSIONER NELSON: Doesn't the Governor's
20 Act that we passed the year before require this?
21 Because it does speak to wideband. And so whether we
22 have this rule and this standard or not in this rule,
23 doesn't the Governor's Act that we already passed
24 require it any way?

25 MR. COIT: Yes, it does.

1 COMMISSIONER NELSON: And a higher standard.
2 in fact.

3 MR. COIT: It actually requires 144, but the
4 deadline is different.

5 MR. THOMPSON: It's a little bit different
6 technology as well. It's an analog technology that
7 we're specifying here. In the Governor's Act it was a
8 digital technology based on ISDN.

9 COMMISSIONER NELSON: Is that a lesser
10 standard?

11 MR. THOMPSON: The Governor's Act would be a
12 more stringent standard.

13 COMMISSIONER NELSON: That's my point.
14 Whether we adopt this rule or not, you have still a
15 more stringent standard you have to meet sometime in
16 the near future. So my question --

17 MR. COIT: We're not opposed to this
18 standard. I want to make that clear. We're not
19 opposed to this standard. Again, we just want to point
20 out the cost recovery concerns; that's it. You know,
21 we've got -- obviously it's going to be expensive.
22 We've got, we estimate, about 6,500 customers within
23 our membership that are on some sort of carrier analog
24 carrier system. Not all of those are Anaconda. As a
25 matter of fact, most of them are not. And I understand

1 that the other technology is better with respect to
2 data transfer so may not require as much.

3 Larry, am I right on that?

4 MR. THOMPSON: Yeah, that would be true. The
5 Anaconda tends to be a little bit worse than the other
6 analog subscriber carriers. With regard to the
7 Governor's Act, though, you know, either way, you know,
8 either of these standards will take a significant
9 investment to meet the Governor's -- if we went to the
10 letter of the law, would be a more significant
11 investment to meet the Governor's legislation, but both
12 would require substantial amount of investment.

13 COMMISSIONER NELSON: Do you know what the
14 I don't recall and maybe you won't either. Do you know
15 what the date certain or the deadline date for the
16 Governor's Act is? I don't remember.

17 MR. COIT: I think it's 2002.

18 COMMISSIONER NELSON: Do you believe that
19 when we implement these rules, that our standard would
20 apply immediately?

21 MR. COIT: No. I think you've already got a
22 phase-in date in your rule.

23 COMMISSIONER NELSON: Is it different than
24 the Governor's date? Not much though.

25 MR. THOMPSON: Yours is January 1st, 2001.

1 and in the Governor's Act it said, I think, the words
2 were substantial progress in three years and fully
3 complete essentially within five, which five years
4 would be the 2002 date.

5 COMMISSIONER NELSON: Okay. So there's
6 really the one-year time lane that you're concerned
7 about. Okay.

8 MR. COIT: We recognize, you know, that your
9 standard is different as well.

10 COMMISSIONER NELSON: Right, lowered.

11 MR. COIT: The next rule that we would
12 comment on is 20:10:33:05, and we've just got some
13 suggested changes to the language. And it was my
14 understanding in conversations with staff previously on
15 this particular rule that the basis for the rule was
16 the State Telecommunications Modernization Plan. I
17 have attached as Appendix A a copy of that plan. You
18 probably already got one in your office, but I felt
19 that I should attach it to these comments. And I think
20 the short-term requirements language -- and that's
21 where I think that's where the language in the rule
22 comes from. That is, I think, on page eight or nine of
23 that STMP. But just generally we looked at the
24 language that you had in the statute, and in a couple
25 of respects it was different than the language in the

1 STMP, and we would like to see the same language.

2 In the rule there was the inclusion of the
3 word upgraded facilities. And that would be, let's see
4 -- yeah, it would have been in the first sentence of
5 the proposed rule you have outside plant including
6 subscriber loops constructed, upgraded, or replaced.
7 And we would like to see the word upgraded stricken
8 because that is not consistent with the STMP. The STMP
9 clearly applies to new facilities.

10 And then we would also like the Commission to
11 where it says in the first sentence shall be able to
12 provide as built with or additional equipment, we think
13 the word suitable is a little less subject to
14 misinterpretation. And maybe that's just my reading of
15 it, but I do believe that the suitable word is a little
16 cleaner. And we would ask the Commission to consider
17 inserting that word as well. That's all we have with
18 respect to that rule.

19 COMMISSIONER SCHOENFELDER: May I ask Larry
20 -- may I ask you a question about when you're talking
21 about the STMP refers to only new equipment. But give
22 me an idea if you upgrade something that would be
23 equivalent to new, are you not by removing the word
24 upgraded, leaving -- closing a door on an opportunity
25 that may be more cost efficient?

1 MR. THOMPSON: I think our main concern is
2 for an upgrade that it would only be a partial
3 upgrade. We might replace one small part of a much
4 larger system. If the entire thing was upgraded, we
5 would consider that to be replaced.

6 COMMISSIONER SCHOENFELDER: Okay. So there's
7 no way that you could upgrade and it be cheaper than
8 replacement?

9 MR. THOMPSON: In some instances that would
10 be the case.

11 COMMISSIONER SCHOENFELDER: You're talking
12 about cost recovery on the other rule, so I want to
13 make sure we aren't leaving an opportunity here to
14 provide as good a service for less money and that we're
15 not negating that by removing that word. I mean I
16 understand we like the STMP standards and you do, too,
17 obviously, but I just -- we don't have to exactly
18 word-for-word follow them; is that correct?

19 MR. COIT: Yeah, that's certainly correct.
20 But, you know, the upgrade word is just vague. I mean,
21 you know, the problem that I have with it is that it
22 could mean almost anything, almost any work that you
23 do, whether it would be maybe replacing a repeater to a
24 loop. And that's the concern that we have about the
25 specific word upgrade.

1 COMMISSIONER SCHOENFELDER: Point well
2 taken. I was just trying to leave opportunity for
3 different approaches.

4 COMMISSIONER NELSON: So are you defining
5 upgrade as replaced?

6 MR. COIT: Well, the rule, if you take out
7 upgrade, the rule says including subscriber loops,
8 constructed or replaced. So basically then you're
9 talking about when you come in and you replace a loop
10 facility or construct a loop facility, then this
11 applies.

12 COMMISSIONER NELSON: So are you saying that
13 you believe upgrade means replace? I mean, do you want
14 -- you don't want to deal with upgrade. You just want
15 to have replaced.

16 MR. COIT: Yeah, with you -- we just want to
17 have the replaced in there because upgrade could mean
18 almost anything you do to a particular piece of plant.
19 We also have some comments with regard to 20:10:33:09,
20 which is the rule that deals with having sufficient
21 equipment and adequate personnel available. We believe
22 that the rule as proposed is awfully vague and could be
23 interpreted to mean that all telephone companies,
24 regardless of size, must at all times have an employee
25 or employees physically present in the telephone office

1 who are immediately able to fix any customer service
2 problems.

3 What we would like to see is that the
4 Commission strike the word available and keep in the
5 word accessible, and we believe that takes into account
6 the fact that quite a few of the smaller companies do
7 rely on, you know, outside vendors and other support
8 type agencies for some of the things that they do. And
9 we're afraid that the word available might not be broad
10 enough to take into account that. Accessible seems to
11 be a little bit more specific and more acceptable to
12 us.

13 CHAIRMAN BURG: Looks to me like six and a
14 half or half a dozen of the other, Rich.

15 MR. COIT: We argued amongst ourselves about
16 some of these and whether it's really necessary.
17 Available does seem to mean a little bit more immediate
18 than accessible. Maybe I'm wrong, but accessible seems
19 to mean if you've got somebody not necessarily right
20 there in house, but if you've got somebody that you can
21 make accessible within a very reasonable period of
22 time, that that works. We are nitpicking some of
23 this.

24 CHAIRMAN BURG: I guess I think if you're
25 accessible, you must be available as well.

1 MR. COIT: A word is a word. We're trying.
2 The next one, charges for construction of
3 facilities. We do have concerns about this from the
4 standpoint that we look at it and say if a physical RUS
5 loan policy is in effect, why does it have to be
6 repeated in a rule? And then, secondly, more than
7 anything, I guess, is that, you know, this rule isn't
8 -- it would just apply to RUS companies, and we don't
9 think that's necessarily right. If you're going to
10 have a rule like this, why should we have a rule that
11 specifically applies to RUS powers? That's our comment
12 on that rule.

13 Provisioning of adequate and reliable
14 facilities. Here goes another one.

15 CHAIRMAN BURG: What number is that one?

16 MR. COIT: This is on page 13 of my comments,
17 20:10:33:14. We would like the Commission to insert in
18 the last sentence the words within a reasonable period
19 of time. And, you know, again, we think it does
20 provide some clarification. Others might look at it
21 and say that it doesn't add that much. But we would
22 like -- we would at least like the Commission to
23 consider adding that language.

24 With regard to 20:10:33:15, survivable
25 networks, our position here is essentially the same as

1 our position with respect to some of the other service
2 standards. Obviously, there's great expense involved
3 in bringing the survivable ring technology on a
4 ubiquitous basis in South Dakota. We look at the time
5 line. The time line you got is very aggressive. I
6 think we could probably say even if we had some state
7 universal service funding mechanism to assist carriers
8 in making the required investments, that it would still
9 be difficult to meet that time line. We've got another
10 concern, I guess. We looked at it and said, well, you
11 just say each switch and what does that mean, each
12 switch? Do you want that to apply to any kind of
13 switch? Packet data type switching, telephone
14 switching? We thought that each switch language was
15 vague and should be filled in in some way. What we
16 propose in our revision is the referenced telephone
17 switch. I'm not sure that is exactly the best answer.
18 But we do believe there should be some clarification
19 with respect to what you mean by each switch.

20 As I mentioned, we have some concerns about
21 the deadline. We haven't proposed a specific change to
22 the deadline. But, again, we just noted the date by
23 which this happened is really going to depend on the
24 adequacy of some universal service funding mechanisms
25 to make it available on a ubiquitous basis is going to

1 require some very extensive investment. And we
2 clarified in the study that, the Martin & Associates
3 study that I mentioned earlier, basically what it would
4 take to make it available on a ubiquitous basis, so we
5 would just refer the Commission to that information.

6 MR. WEGMAN: Rich, do you have any idea how
7 many packet switches you have?

8 MR. COIT: Today?

9 MR. THOMPSON: Today?

10 MR. WEGMAN: Yeah, or the near future.

11 MR. THOMPSON: Oh, probably deployed today,
12 half a dozen. I would imagine over the course of the
13 next year or two that will at least double.

14 MR. THOMPSON: Also, just to make note on the
15 survivable networks, in that study that we did, we did
16 also assume, you know, a large amount of cooperation.
17 We took a very conservative approach in our number.
18 That number in there, although it is large, it could be
19 larger. We took what we felt was the minimum cost as
20 far as interconnecting companies and assuming everybody
21 was going to cooperate perfectly kind of thing. So
22 even though it's large, it's still a conservative
23 number.

24 We also on the comments at the bottom of page
25 14, paragraph 20:10:33:21, on the auxiliary and battery

1 power requirement section, we had a couple comments on
2 that. Our primary comment on it is with reference to
3 the eight hours. We thought at a minimum in that
4 paragraph we needed a plus and minus 15 percent or so.
5 Typically when we design a central office, we will
6 calculate what the maximum peak load is on that central
7 office. We'll go to the battery manufacturer, and then
8 we'll look and see what his typically discrete fixed
9 sizes of systems available. We'll look and we'll
10 calculate one of those systems, see if it turns out
11 seven hours and 42 minutes of the backup. We'll say
12 that's close enough. That's the one we'll take.
13 Because the next step might be ten hours and 31 minutes
14 or somewhere in there, and that would be a substantial
15 amount more for that one. So we want it to be
16 approximately eight hours if possible, and that's why
17 we put that plus and minus 15 percent.

18 COMMISSIONER SCHOENFELDER: You said it would
19 be much more for ten hours rating. You're talking
20 about money? Dollars?

21 MR. THOMPSON: Yes, correct. Going from the
22 seven hours and 42 minutes to ten hours and 31 would be
23 more money, and we didn't -- we usually don't think it
24 would be worth it. Typically the batteries are mainly
25 to hold the seal live until the generators can come on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Chair.

CHAIRMAN BURG: Let me ask a question on that. What does the experience show when you do have an outage of power or you need to use the batteries, does the usage go up or not? In other words, are we looking at -- you said based on the historic traffic, does it show the traffic actually increases in those situations and do we need to take that into consideration?

MR. THOMPSON: If it's a significant disaster, often everybody takes their phone off the hook. But, again, when we size the batteries, it's under a peak load condition, which would take that into account.

MR. WEGMAN: I have a question regarding the remote battery plant design then. Do you plan to use plus or minus percent on that?

MR. THOMPSON: Correct. So it would involve the central office and remote. In addition, you'll notice in our new verbiage there, we kind of did rewrite that paragraph. And I'm also allowing on the remotes to be locally or remotely powered because oftentimes when we deploy and you have the digital loop carrier systems in the field, we might power one from the adjacent one so that we only have the battery pack

1 in one particular one so if it's local or remotely
2 powered, I would like the flexibility there as well.

3 MR. COIT: Any other on that? We also have a
4 proposal with respect to 20:10:33:23 which deals with
5 prevention of access line service interruptions, and it
6 talks about priority given to individuals with medical
7 condition and to certain public safety type entities.
8 We felt that the word reporting that's used in there
9 now is not specific enough. We would like to see the
10 Commission, instead of just using the word report or
11 reporting, reference customers who provide the company
12 with some verifiable notice of their medical
13 condition.

14 In our view, you know it, shouldn't be enough
15 just to -- I guess, depending on the specific
16 circumstances. But we see a potential for some abuse
17 if all it is is a matter of reporting if somebody just
18 can call and say, "I've got a medical condition and I
19 want you out here right now." And I don't know, you
20 know, what essentially the verifiability would be, but
21 there needs to be something that gives us an ability to
22 kind of look at it and if it -- you know, if we have to
23 accept the call, every one of those without question, I
24 don't know whether that seems to be --

25 COMMISSIONER NELSON: It seems if you don't,

1 you leave yourself a little open for liability. I mean
2 who puts you in charge of deciding? Would you want to
3 go to court and defend that you decided this wasn't
4 important?

5 MR. COIT: If verifiable isn't sufficient,
6 then maybe something in writing. You know, just, you
7 know, a note or something at least then they sign.

8 COMMISSIONER NELSON: To me a note is a lot
9 different than verifiable.

10 MR. COIT: I agree with that, but something
11 more than just report is what I'm saying. I think
12 that's maybe not enough.

13 CHAIRMAN BURG: When we were drawing this I
14 was always thinking of a prior medical condition,
15 something you have on record, but I recognize that
16 won't cover all situations. But one of the goals for
17 safety is we are trying to get for all services to have
18 people registered with their company that there is a
19 medical condition that needs some attention. And I
20 know that there can be some temporary ones that this
21 could include too. But we may need to do something to
22 distinguish --

23 MR. COIT: If you could firm it up a little
24 bit in some way, I'm not exactly sure how.

25 COMMISSIONER NELSON: I lead to the

1 conclusion you had in mind certified or something,
2 yeah, when you got talking you want it in writing, to
3 me that was certified, and it isn't really -- I mean
4 you said a written notice would be adequate for you,
5 and I don't have necessarily a problem with written,
6 but in my mind when I read it, I thought you were
7 requiring something more.

8 MR. COIT: On the verifiable notice? You can
9 certainly interpret it that it would require more, and
10 I can understand maybe I guess why the Commission may
11 have some concerns about leaving it as vague and
12 verifiable. But there's got to be something in between
13 that would work a little bit better in that report.

14 CHAIRMAN BURG: Do you feel this is
15 potentially enough, that there should be anything to do
16 with falsifying under this?

17 MR. COIT: What was that?

18 CHAIRMAN BURG: What I'm getting at, do you
19 think this is potentially a big enough problem that
20 something should be maybe done about if you require
21 service under false pretenses? My concern is that,
22 yes, I think people would use this unfairly. And if
23 that prevented you from getting service to somebody
24 that really needed it because you had a falsifying, I'm
25 almost more concerned about that than I am that

1 occasionally one of somebody that's going to abuse it.

2 But if you ended up trying to restore service
3 to somebody who had falsely asked for service under a
4 medical condition, and at the same time somebody that
5 was not -- were not able to get to, you know, I don't
6 know if this looks like a big enough problem to be able
7 to address that or not.

8 MR. COIT: I guess you could address it in
9 either way. I guess we're just saying that just if you
10 could try to come up with something that might prevent
11 some abuse.

12 CHAIRMAN BURG: I think it might be a
13 legitimate one because I think that does occur.

14 MR. COIT: The next rule we have a comment on
15 the records of access line service interruptions. We
16 are concerned about the 50 customer threshold. That
17 seems to be awfully low to us, and we would prefer that
18 the Commission set that higher. We have referenced a
19 200 customer threshold. That seems to be much more
20 reasonable to us. But we do want to see something, I
21 guess, higher than 50.

22 COMMISSIONER SCHOENFELDER: Can you answer a
23 question for me then? And can you tell me how many
24 companies you have that would have a wire center or a
25 central office as 200 customers or less?

1 for nonpayment of 900 services at all.

2 MR. COIT: There's a rule on that.

3 COMMISSIONER NELSON: There might be now,
4 that I mention it. I think there might be a federal
5 rule. However, it's still a significant problem, and
6 they're a long ways away.

7 MR. LOW: I understand. Any other
8 questions? Thank you.

9 MS. WIEST: Any other comments on 20:10:33?

10 MR. LEHNER: I think U S West sold Hayti.

11 COMMISSIONER NELSON: My friend will kill
12 me. She was born and raised in Hayti.

13 MR. LEHNER: My name is Jon Lehner, and I'm
14 here today representing U S West. And I was
15 contemplating last night how to qualify my saying how
16 what capacity I work for U S West now. And,
17 Commissioner Burg, I just want to say that I've seen
18 your ad out at KOTA in Rapid City; and of all the
19 things I wanted to use, I knew that one thing I
20 wouldn't use was a high-priced lobbyist. Not even a
21 low-priced one.

22 I would like to make some comments on just
23 few of the rules, and we have some technical witnesses
24 from our network support center in Denver that are here
25 that will follow me, and I will let them come up. I'

1 not going to comment on all the rules. We'll have
2 written comments that will be submitted before the
3 13th.

4 But in breaking these down, as I look at the
5 33 section, it seems to me that rules two, three, four,
6 and five, all to a large degree, deal with data speed.
7 I think that's the significant issue. And I think that
8 U S West would take a position similar to what Mr. Cost
9 did for the SDITC in the sense that we laud ultimately
10 the goal of what's trying to be accomplished in two,
11 three, four, five. The issue, however, may very well
12 be an issue of how expensive this could be ultimately.
13 And even probably more significantly how the costs are
14 to be recovered.

15 Rule 04, which is the minimum transmission
16 standards that the Commission is seeking to adopt, the
17 14.4 is of concern to U S West, the 14.4, 14,400 bytes
18 per second. Because our plant, like most incumbent
19 exchange companies, was designed for voice grade
20 service. And like I think most of the independent
21 companies most of the time our customers will enjoy
22 14.4 or greater, but there are limitations in loop
23 design. And, again, I would like our technical people
24 to talk about that, but 14.4 is not an automatic, and I
25 think the Commission knows that. And there are

1 customers who, because of their location, will not get
2 14.4, period. It's -- without doing some significant
3 change in the plant, it is not going to happen.

4 Rule number five, as I am led to understand,
5 suggests that the plant placed after 1-1 of '99 should
6 be capable of -- and the thing that I'm very concerned
7 about with rule five is that there is no
8 misunderstanding on the part of the companies, the
9 public, or the Commission on what the effect of rule 05
10 is. As we understand it, what it means is that if we
11 place new plant after January 1 of 1999, that with
12 enhancements, whatever those enhancements might be,
13 that that loop would be capable of producing one meg,
14 or one million bytes per second. That happens to be
15 consistent, I think, with the wideband requirement in
16 the legislation, what we dubbed the Governor's Vision
17 Bill. In order to do that, you have to have the
18 equivalent of a T-1; and, again, I'll let our technical
19 people talk about that. But it's for virtually every
20 customer out there. It is a significant potential
21 upgrade.

22 And I wouldn't like to have any
23 misunderstanding that a customer could simply, as a
24 result of this rule, and knowing about this rule, think
25 that they could pick up the phone and say, I want to

1 order one meg today because particularly if they
2 thought they could have it for nothing, because that is
3 just not possible.

4 Paragraph rule number 15 is the last of the
5 network rules that I would just like to comment on.
6 Again, we'll have technical witnesses. This is the
7 survivable network issue, and we believe that there's a
8 significant cost associated with that. We believe that
9 if competing companies will choose to provide these
10 kind of works, it is -- DTG talks about as the
11 independents talks about, as Black Hills Corporation
12 talks about, we believe that if the government is --
13 whether it be the PUC or anybody else wants to mandate
14 survivable networks, we believe there needs to be a
15 cost recovery mechanism that goes with that as opposed
16 to somebody who does it voluntarily because they're
17 trying to gain a foothold in the marketplace.

18 Rules 9 and 14, deal -- they're somewhat
19 synonymous, although they may very well -- one might be
20 just a little bit more comprehensive than the other
21 one. But the essence of 9 and 14 are both -- both
22 suggest that the Commission would require -- I'm
23 quoting here -- sufficient equipment and personnel at
24 all times and adequate facilities in place at all times
25 to supply service to prospective customers.

1 And as Mr. Coit commented earlier, if the
2 suggestion here is literally that we have to have a
3 technician at every doorstep, if we have to have a
4 cable pair at every point where a customer may request
5 service, I don't think that's what the Commission is
6 suggesting here. But there is some ambiguity here,
7 frankly, that I think we ought to clear up because I
8 don't think it's -- I don't think it is possible,
9 particularly with cable pairs with loop, that you're
10 going to have a cable pair out there for every customer
11 at the time that they ask. It's just not possible.
12 And it would -- the cost of it would be prohibitive.

13 The last set of rules that I would like to
14 comment on are 25, 29, and 30, and those are the three
15 rules that deal with reporting of interruptions. 25
16 talks about access line interruptions. Could be we
17 could be talking about cable. We could be talking
18 about central office. Generally speaking, if a central
19 office fails, you're talking about multiple number of
20 customers, many times in the thousands. On the other
21 hand, if you're talking about cable failures, which in
22 my company we have cut cables virtually every day in
23 South Dakota somewhere. Some of them are very, very
24 small; some of them are sometimes single pair, six
25 pair, 25-pair.

1 My suggestion will be something similar to
2 what Mr. Coit suggested. We would like to see the
3 threshold raised on what's reported from the 50 because
4 50 is an awful small number. And I think you would be
5 inundated, frankly, with information and it would be a
6 burden, not only on the reporting companies, but also I
7 think provide more data than you probably would want.

8 My bigger concern, however, with 25, 29, and
9 30 deals with what I would call real time reporting.
10 And I don't think anybody else has commented on this
11 yet. But I would like very much to avoid real time
12 reporting except in the certain circumstances that I
13 would suggest be a part of rule number 30.

14 And what I mean by real time reporting, I'm
15 talking about while the occurrence is in action. I
16 think that there are times when the Commission
17 absolutely needs to know, as does the public, for
18 instance, if we have an office failure, where the
19 central office is isolated, or customers can't -- in
20 other words, they can't get to the world via toll or
21 their switching functions are down, that is what I
22 would consider to be a major failure. It's what the
23 FCC also considers to be a major failure.

24 So I would suggest that in rule number 30 we
25 identify switch failures, the isolation of switches

1 from the toll network. In other words, they can't get
2 to the world, 911 failures, failures where you can't
3 access a PSAP, major interoffice failures. And I'm
4 talking here about the fiber type cuts that we
5 experienced a couple years ago.

6 And then also I would even suggest that cable
7 failures -- and I'm talking about exchange cable
8 failures have some limit. And I would say in terms of
9 live reporting, it ought to be a number that's more
10 than -- and we'll have these in written comments,
11 Rolayne. But it should be something that's
12 significant. And I would suggest as a number of 750.
13 That's not the threshold I would suggest for
14 after-the-fact reporting, but for live reporting to you
15 folks. Which means that somebody in our office needs
16 to get ahold of somebody out at your office for real
17 time reporting. Those would be the instances.

18 The reason I feel so strongly about that is
19 because in the past we've had some instances where we
20 have reported failures to the Commission and in the
21 process we have deterred, in my opinion, the effort on
22 the part of the people who are doing the restoration
23 work, particularly managers, and sometimes that's
24 necessary. But for the most part I would really like
25 to avoid that if possible. And that's why I would like

1 to limit the real time reporting as much as possible to
2 these major events.

3 CHAIRMAN BURG: Jon, could I make a quick
4 comment on that? What I would like to most apply is
5 sort of what I call a common sense approach. Because
6 if somebody is out of service, it's getting more and
7 more likely we're going to get a call and then if we
8 already know about it, we can help explain what it is
9 and I think satisfy that customer. The problem we have
10 is when we get a call and we have no answer because we
11 don't know about it. And I don't think it's -- I don't
12 see these rules as the intent being to some way
13 penalize or supervise as much as to meet the public
14 answer when they contact us. And that seems to occur
15 more than it used to, to me.

16 MR. LEHNER: I agree, Commissioner, and I
17 guess what we need to do is strike a balance here
18 because again the thing that I am so sensitive to is
19 not necessarily call it that, I don't want to call you
20 or your office. What I'm concerned about is ultimately
21 trying to get enough information within minutes of the
22 time the disruption occurs, which means I've got to
23 talk to people who are involved in the restoration
24 process. And sometimes that's necessary in order to
25 keep you informed. Obviously if we have office

1 failures, if we have major cable cuts, interoffice
2 failures, or 911 failures, you need to know about
3 that. There's no argument. I just want to limit the
4 number of those occurrences so we're not doing it on a
5 routine basis. That's my only issue.

6 COMMISSIONER SCHOENFELDER: I have a couple
7 questions, Jon. One of them is of all the criteria you
8 listed that you think should be reportable, and I
9 didn't write them down. I'm assuming that you will
10 have them written down for us.

11 MR. LEHNER: Yes.

12 COMMISSIONER SCHOENFELDER: Would one of
13 those instances cover where you have one section -- and
14 right now I'm thinking about Sioux Falls. It could be
15 Rapid City; it could be Aberdeen, one of our major
16 cities. If there's an area in that whole town, which
17 quite often happens, is totally without services.

18 MR. LEHNER: Yes.

19 COMMISSIONER SCHOENFELDER: Then I think
20 that's reportable not only to us -- first of all to
21 your customers and then to us. And then I think that
22 real time reporting could be also considered E-mail.
23 If you reported to the Commission that there was a
24 problem, that's some suggestions.

25 MR. LEHNER: Commissioner, I agree with you,

1 way to reach the phone company because their phone is
2 out, you know. And so I don't know where that
3 threshold is, and I think you suggested it, but I think
4 some of the things you outlined, if you could in your
5 comments tell us more what they affect, I would be more
6 comfortable.

7 MR. LEHNER: Okay. That's fair.

8 CHAIRMAN BURG: Do you have any more, Jon,
9 before you go? The other comment I have, not just for
10 you, the others, we really struggle how do we meet the
11 Governor's modernization request without having what
12 I'm hearing considering onerous rules in here. And I
13 would like some comments on that. How do we meet that
14 request and still not have these requirements; and,
15 secondly, what effect does Rule 20:10:33:32 petition
16 for granting of waiver. How does that mitigate that in
17 any way? The main reason for that rule was try to
18 allow for the exceptions where it can be met, the kind
19 of things where I've heard as being presented as
20 problems. Does that adequately do that? Is that just
21 a feel good for us? You know, we need some comments on
22 it, because I, for one, felt at the time and still do
23 feel that maybe that modernization one goes too far,
24 too fast. But we didn't make that choice, and we don't
25 have that to deal with.

MR. LEHNER: First of all, Mr. Welk is going to get a shot in the sun here, and he's going to deal with 32. And I would also like to have him comment on your question about the recovery issue because it is part of the so-called Vision Bill isolated somewhere I think it's Section 60, as I recall. But, again, you know, our position is not to argue that these things shouldn't be done. We understand that you're imposed with the same difficulty, I guess, we all are. The issue is the extraordinary cost some of this is going to impose on somebody, and it just needs to be considered.

CHAIRMAN BURG: I think we recognize that, too, and, again, we feel that that's probably not that's probable somebody else's decision on the recovery of the costs. In other words, that's a legislative decision on how some of those costs are going to be recovered, and we share that concern with you. I mean, at least I do.

MR. LEHNER: Our suspicion is nobody is going to want to be associated with the recovery of significant costs, including the legislature.

CHAIRMAN BURG: Or the customer.

MR. LEHNER: Or the government.

COMMISSIONER NELSON: That's exactly why it

1 wasn't in the bill.

2 MR. LEHNER: I didn't write the bill though,
3 not that one.

4 COMMISSIONER NELSON: We didn't support it
5 either necessarily.

6 MR. MARTINEAU: Good morning, Commissioners.
7 Dean Martineau, M-a-r-t-i-n-e-a-u. Dean, D-e-a-n.

8 MR. VELA: Juan, J-u-a-n, Vela, V-e-l-a.

9 MR. ULANSKAS: John Ulankas,
10 U-l-a-n-s-k-a-s.

11 MR. MARTINEAU: We three are from a network
12 based in Denver, Colorado. We have various design
13 responsibilities. John works in special service
14 planning. Juan works in a lab. He's an electrical
15 engineer. He does proof of concept and products. All
16 of us support to some extent product deployment and the
17 market units. I work specifically on special studies
18 that are associated with regulatory requirements or
19 municipal partnering opportunities. And we're
20 delighted to be here. They'll provide more detail
21 about what they do specifically.

22 Our comments this morning are directed
23 towards Rules 20:10:33:04, which focuses on minimum
24 transmission levels for loops in local exchange. We
25 want to talk specifically to subpart five, which is

1 14.4 byte per second requirement. We're going to talk
2 on 20:10:33:05, which is minimum requirement for new
3 upgraded or replaced facilities, the one megabyte
4 requirement, and 20:10:33:15, the rule that proposes
5 survivable and diverse routes throughout all end
6 offices in South Dakota.

7 Mr. Ulanskas and Mr. Vela will provide
8 engineering insight on the 14.4 megabyte per second and
9 the one megabyte requirement. I will address cost
10 impacts, U S West network organization envisions
11 related to the 14.4 bytes per second transmission rate
12 requirement, as well as survivable and diverse routing
13 cost requirements. Mr. Ulanskas will discuss capital
14 impacts associated with one megabyte deployment. And
15 Juan will take a few minutes now to discuss concerns
16 regarding the 14.4 megabytes per second requirement
17 proposed in 20:10:33:04.

18 MR. VELA: Thank you, Dean. You've heard a
19 lot already about the 14.4 issue. I'm just here to
20 clarify a few things from the U S West standpoint.
21 There are some things that we can do to facilitate that
22 kind of connect rate across our network. However,
23 there is a cost associated with that, and Mr. Martineau
24 will address that in just a few minutes.

25 What I want to talk to you about are certain

1 scenarios I've come across in the last year with these
2 analog modems. Specifically, I want to talk to you
3 about some of the factors that we have no control over,
4 including the quality of the modems that our customers
5 purchase, and as well as the location that our
6 customers connect to at the other end. If you consider
7 how modems work, they sort of do a "hello, are you
8 there? Yes, ma'am, I'm here" handshaking between one
9 modem and another. Now, although our customer can --
10 we can guarantee our facilities across our network to
11 support these rates, based on the numbers that
12 Mr. Martineau will give you, we cannot address the fact
13 that the other end of the connection we may have no
14 control over. They may be connecting to somewhere down
15 in Florida where I'm from, and we have no control over
16 that side of the connection. So it takes two ends to
17 guarantee a connection.

18 Another thing I wanted to talk to you about
19 is the quality of the modems. I've seen some of my
20 testing in the labs how the manufacture of the modem
21 greatly depends on how greatly dictates how good a
22 modem really is. You could buy a \$50,000 car, and it
23 may not be as good as a \$10,000 car. So that's sort of
24 a crude scenario there and description of what I'm
25 trying to say, but the quality does matter. And we've

1 been able to point out and simulate various connections
2 where higher speed or a higher quality modems connect
3 at higher rates than lower speed modems that we have no
4 control over.

5 The other thing I wanted to address are some
6 of the long loops, especially here in South Dakota that
7 we have may not necessarily support these rates. And
8 I've been able to verify that in multiple tests in my
9 lab. There are ways, things we can do to support that
10 though; and, again, Mr. Martineau will address that.
11 However, if this customer does connect to a high speed,
12 that's sort of a good case scenario. Usually those
13 ISP's, or Internet Service Providers, have digital
14 providers that they connect to and support those higher
15 rates. However, if the customer wants to connect to
16 his neighbor and transfer a file between the two end
17 points, those two loops become administrative. In
18 other words, the loss on both of those loops -- I'm
19 sorry. The loss to those two loops are now sort of
20 doubled, so you have additional losses and noise
21 affects that you have to worry about.

22 In other words, what I'm trying to say is we
23 can't dictate where our customers will connect to. And
24 that also depends on -- or that also contributes to
25 these connect rates. So that's pretty much what I

1 wanted to talk to you about this morning, and if you
2 have any questions for me, I'll be happy to address
3 them.

4 CHAIRMAN BURG: Are you trying to say just
5 because there may not be adequate modems on each end,
6 you should not be required to have facilities that are
7 capable of carrying those speeds?

8 MR. VELA: I'm not saying that. I am saying
9 we can do it, however, there is a cost associated with
10 it. And, as I said before, Mr. Martineau will address
11 that. There is a cost associated with doing that, and
12 I really don't get involved with numbers like that.
13 I'm just a peon in the U S West. I just deal with
14 engineering things, so I don't really get involved with
15 the numbers, but Mr. Martineau will address that.

16 MR. ULANSKAS: I have one comment in respect
17 to the connection of a modem. Typically, like Juan was
18 saying previously, is that if you have a loop that
19 would be fairly long in length, similar somewhere in
20 the neighborhood of 1,500 ohms, and then that customer
21 would contact an ISP provider generally, and they have
22 a DS1 facility to the modem pool, you will have a
23 higher connect rate. Again, if you have that customer
24 that has a 1,500 ohm loop and they would want to
25 contact their neighbor across the street with a modem

1 connection, we have seen degradation there where before
2 they were able to support and this 14.4 modem where the
3 connector is now reduced to 90.6 kilobytes for text at
4 4.8 per second, you're seeing a degradation basically
5 on the section one customer calling another customer
6 that would be identical because they're in the same
7 neighborhood.

8 But yet if they would contact a Internet
9 service provider that would have a DSI service access,
10 we have higher connect rates and these are identical
11 modems. We've done some studies with one Internet
12 service provider and we saw connections with
13 approximately 85 percent where connecting rates higher
14 than 14.4, but then we had a value of about two percent
15 of the connections were running right at about, you
16 know, it varies from 2.4, 4.8, 9.6, maybe 12
17 kilobytes. And, again, it's a function. There's a lot
18 of older modems out there. You know, the old V.20,
19 these are ITU standards, the V.25, V.32, standards that
20 identify different types of modems, and they are
21 limited by their own technology. They can't transmit
22 any faster than 4,800 bytes per second, or 9.6. And
23 we've also have seen a lot of degradation that deals
24 with customer premise wiring.

25 They -- we've seen, you know, telephone sets

1 where they all contribute to the noise environment.
2 And so if you isolate that equipment, then all of a
3 sudden the connect rates are improved. You terminate
4 the terminal equipment and pretty soon you see a
5 degradation in connect rates.

6 COMMISSIONER NELSON: I guess I don't
7 understand the concern. The standard is supposed to be
8 what you're supposed to be able to provide access to
9 versus their equipment. If their equipment doesn't let
10 them, that's a whole different issue than whether or
11 not they have the infrastructure that allows them to do
12 it. Even if they have their own equipment out there,
13 that won't allow them to do it. You could have the
14 best equipment in the world and in your house and if
15 you don't have a network that will support that, I
16 still can't get access. So I thought our standards
17 were applying to the infrastructure that should be
18 available; then it's the people's problem on whether or
19 not they have the equipment that will allow them to
20 utilize that infrastructure that they should have
21 accessible. And all we're saying in our standards is
22 what should be accessible to them what standard that
23 is.

24 MR. ULANSKAS: Performance standards for
25 voice band services have never been characterized in

1 respect to bytes per second. They've basically been
2 characterized in respect to insertion loss, like we
3 said, loss of 8.5 attenuating distortion parameters not
4 in respect to the pay load as being transmitted from
5 one location to another location because it's a
6 function of the terminal, the customer's equipment,
7 which U S West doesn't control.

8 COMMISSIONER NELSON: Are you still going
9 back to your premise that you've had since at least the
10 passage of the Act that I'm familiar with, that
11 basically local services is voice grade? I think you
12 were one of the only companies in the country that
13 submitted written testimony before the FCC that said
14 voice grade communications was the definition of basic
15 service.

16 MR. ULANSKAS: That's correct, voice grade.
17 It does have a data capability. But the thing is --
18 the issue is what is the guarantee of the data
19 capability? We all would love to get to higher connect
20 rates. Unfortunately, there's terminal equipment and
21 also the facilities in itself that limits what the
22 practical capabilities are of that equipment.

23 COMMISSIONER NELSON: I guess in my mind
24 maybe I'm asking you to tell me if I oversimplify is
25 because when I reduced what you said, the message that

1 I got from what you were telling me, and it may not be
2 the appropriate one, so I'm trying to clarify that. I
3 that, in essence, we can talk speeds if we want to, but
4 your definition still seems to be voice grade
5 communications, and that's what I would like to stick
6 with. And our definition seems to be expanding
7 somewhat. Is that what you are saying?

8 MR. ULANSKAS: That's correct, because we
9 have the voice band characteristics and parameters. We
10 can control those values. The bytes per second is a
11 value that we really can't control because of the
12 terminal equipment issue and the connection of the
13 other end of the connection which may be in U S West
14 territory; it may not be in U S West territory.

15 I was also going to discuss paragraph
16 20:10:33:05, the minimum requirements for new upgraded
17 and replaced facilities. We did analyses for
18 approximately 50 locations in the state of South Dakota
19 trying to say, okay, if we would be required to deal
20 with this issue, to provide one megabyte capabilities
21 to those customers, what would it cost? Our analysis
22 was based on existing 4ks that we had for local
23 service, plus DS1 type of services design services.

24 We also looked and says, okay, we would take
25 a look at that existing cost value, and then we doubled

1 the DS1 forecast for those 50 locations. And just by
2 doubling that value -- and these locations were
3 different locations, some suburban, some rural, some
4 more of the metropolitan type environment -- and the
5 cost increase is basically a very hard value to come to
6 because the issue is whether we provide ubiquitous DS1
7 type service capability to every customer in this
8 particular location, or do we just do with a percentage
9 and how would that be handled?

10 This investment looked at approximately
11 increases of approximately \$10,000 dollars for DS1
12 requirement above over the initial forecast. If you
13 translate that or equate that to the impacts across the
14 entire state, you have a value that becomes somewhat
15 unbelievable. It's over a two billion dollar
16 investment. And I guess that gets back into the cost
17 recovery issues, which I'm not prepared to answer or
18 even discuss.

19 MR. LEHNER: If I could, would you clarify
20 for the Commission why you chose DS1 or T-1's in your
21 analysis?

22 MR. ULANSKAS: There's basically DS1 service
23 transport is 1.544 megabytes fully symmetrical of a
24 service that's out there. There's other technologies
25 being transported under DSL, which is still in its

98

1 infancy stage for who knows what it's for, a
2 symmetrical DSL or IDSL. And we've done some analysis
3 out there. But the transport mythology that would be
4 especially compatible and available with existing
5 equipment capabilities and second generation digital
6 carrier systems, really we decided to forecast it based
7 on the DSL requirement versus some other unknown that
8 it's hard to quantify.

9 MR. LEHNER: Basically it takes a T-1 to do
10 one meg?

11 MR. ULANSKAS: That's fully symmetrical. You
12 have different methods of DSL that says you have 256
13 512 kilobytes, 768 one meg, six meg systems, and those
14 are all dependent onto the facility length of the
15 customers, the customer's premise location, to some
16 sort of multiplexor. And those DSL technologies limit
17 you to a distance approximately for a one meg about
18 9,000 feet. You just aren't going to get any farther
19 than that. So 9,000 feet doesn't get you very far,
20 especially in South Dakota.

21 CHAIRMAN BURG: I know this isn't the
22 question for you, but at some point I would like to
23 have it asked, was this brought to the attention of the
24 legislature and the governor when that infrastructure
25 modernization bill was passed?

1 MR. ULANSKAS: I have no idea.

2 CHAIRMAN BURG: I know you don't. That's a
3 question I do have for the company because that's where
4 we figure we're up against it. We recognize everything
5 you're saying, but we don't think we have the
6 latitude.

7 MR. MARTINEAU: I was asked to put some
8 numbers to -- cost numbers to the 14.4 requirement as
9 well as to focus on the survivable rings. And so I'll
10 be discussing 20:10:33:04 and subpart five as it
11 relates to the cost of placing infrastructure.

12 Commissioner Nelson mentioned to support the
13 14.4 bytes per second across South Dakota -- and the
14 operating assumption here is that it was ubiquitous
15 deployment; that it wasn't based on a forecast. It's
16 based on the presumption that everybody has access to
17 14.4, keeping in mind, as both of these gentlemen
18 stated, we can't guarantee connect rate. And, no,
19 Commissioner, we don't guarantee baud rate over voice
20 grade access. They're mutually exclusive. And while
21 voice infrastructure is capable of carrying data, we're
22 not in a position to guarantee what happens at the
23 remote ends. We can guarantee one end, our end, but
24 what happens to it ultimately, that rate could be
25 higher than 14.4, or considerably less, based on

1 distance inside wiring modem type software
 2 configurations, the Internet service provider that the
 3 customer is going through, their transmit and receive
 4 equipment. There's so many variables, most of which w
 5 have no control over.

6 We can, as you put it, control the
 7 infrastructure in between, and that's what I priced
 8 out. The operating assumptions that we could use a
 9 narrowband infrastructure, 144 kilobyte infrastructure
 10 to accommodate 14.4, and we did a detailed analysis and
 11 priced at for 144 kilobytes to every home in South
 12 Dakota. It wasn't a 30,000-foot broad brush look.
 13 This was a look that used an engineering tool we use to
 14 deploy network for regular growth and reinforcement.
 15 And we looked at the infrastructure that would have to
 16 be deployed based on the distances from the central
 17 office that Mr. Ulanskas discussed, and we're looking
 18 at approximately 17 -- pardon, 1.7 billion dollars, or
 19 about \$6,500 per South Dakotan to guarantee that
 20 infrastructure in between those two modems. And that,
 21 again, presumes ubiquitous deployment of narrowband
 22 capability.

23 You know, from a recovery perspective, you
 24 know, beyond just giving a terrible number from a
 25 recovery perspective, the operating assumption is there

1 would be some sort of cost recovery. Our presumption,
2 at least from a planning perspective, is get it up
3 front or get it in the near term. And from a capital
4 use analysis, that's three to five years. In the olde
5 days we did fifteen- and twenty-year studies. We don'
6 do that any more. Our equipment depreciates in a
7 three- to five-year time frame. So the recovery
8 mechanism would get it at the onset or get it over a
9 period of three to five years.

10 Again, that was based on ubiquitous
11 deployment. Everybody gets it, not a forecast. And
12 some of the initial work we did in forecasting in South
13 Dakota suggests maybe that requirement isn't there for
14 basic rate level ISDN, which would use the same
15 infrastructure.

16 COMMISSIONER SCHOENFELDER: Can I interrupt
17 you and ask a question? You said \$6,500 per South
18 Dakotan in U S West territory or across the board?

19 MR. MARTINEAU: Well, if you just say there
20 are approximately 250 -- or 60,000 South Dakotans and
21 divide it into the 1.7 billion dollars, that's what it
22 works out.

23 COMMISSIONER SCHOENFELDER: You're talking
24 about loops? You're talking about per capita? You're
25 talking about loops in U S West territory or loops.

1 MR. MARTINEAU: Loops.

2 COMMISSIONER SCHOENFELDER: Or loops across
3 the state?

4 MR. MARTINEAU: Loops across the state.

5 COMMISSIONER SCHOENFELDER: I don't -- so
6 you're costing out the independent territory also?

7 MR. MARTINEAU: No.

8 COMMISSIONER SCHOENFELDER: That's what I
9 want to know whether it's U S West numbers or
10 everybody's numbers.

11 MR. MARTINEAU: This is U S West. This is
12 based on switched, which was approximately 104 million
13 interoffice facility, which was 207 or so, and I'm
14 rounding up. I don't have the figures right in front
15 of me. And 1.4 billion or so for switched.

16 COMMISSIONER SCHOENFELDER: I needed to know
17 that. Thank you.

18 MR. MARTINEAU: You're welcome. Are there
19 any more questions about subpart five?

20 MR. BULLARD: Were you talking about
21 including the SONET technology in the loops to the
22 customer?

23 MR. MARTINEAU: This is basic rate. This is
24 not primary. And in order to deploy 144 kilobytes,
25 what the tool does is it has several different screens

1 and it says, okay, in a metropolitan area, given a
2 center of mass, how many customers is there? How many
3 could we capture? Could we serve it with a carrier
4 that would serve 2,000 customers? And if it were
5 further out, is there a smaller digital carrier that
6 would do that? So what kind of infrastructure could we
7 deploy on a basic rate that would accommodate that?
8 And so what we tried to do -- because primary rate
9 would be to put a T-1 to every home would be just --
10 this was pricy, to say the least, but it would be much
11 more pricy. So we felt this was the more conservative
12 approach to pricing out 14.4 infrastructure, albeit we
13 can't guarantee connect rate. But to price out 14.4
14 infrastructure for infrastructure that would
15 accommodate 14.4.

16 MR. BULLARD: Is there a percentage of your
17 customers that are already receiving this level of
18 service?

19 MR. MARTINEAU: We believe that about 30,000
20 -- or, pardon me. We believe that about 70 percent or
21 within, you know, the 18.0 to 18 kilofoot range. But,
22 again, every single loop has to be prequalified, and
23 every loop is different. The design parameters, the
24 one -- and John talked about every loop is different
25 and you have to look at the location and the bridge tap

1 and whether what has to be done to the loop to qualify
2 it to carry those byte rates.

3 MR. BULLARD: If some of your customers are
4 already receiving this level of service and this rule
5 only applies to upgrades and new facilities, isn't your
6 \$6,500 over inflated.

7 MR. MARTINEAU: It may be. But, again, if
8 it's forecast based, we would know precisely, and it
9 could come down significantly.

10 MR. LEHNER: Bill, can I comment on that?
11 The rule that applies to upgrades is rule number five,
12 which is the one megahertz requirement. But what he's
13 talking about here is the 14.4 requirement, which he is
14 assuming in order to meet that ubiquitous, will we have
15 to do narrowband, which is what the Governor's Vision
16 Bill requires in the first phase. Narrowband is
17 essentially ISDN. And so what they priced out is
18 ISDN. And I presume, Dean, you have accounted for the
19 fact that we have a large percentage of our customers
20 that are qualified for ISDN?

21 MR. MARTINEAU: Yes.

22 MR. LEHNER: It isn't.

23 MR. MARTINEAU: More precise forecast numbers
24 we can certainly temper that, but suffice to say, it's
25 going to be -- it's a very substantial investment.

1 MR. BULLARD: But your statistics that you're
2 using and the prices you're quoting are not specific to
3 these rules. They're in combination with your
4 interpretation of the Governor's rules; is that
5 correct.

6 MR. MARTINEAU: Yes. But we believe the
7 narrowband requirement that's provided in the
8 Governor's Vision Bill, if we were to deploy that
9 narrowband network, would, in fact, accommodate an
10 infrastructure that was capable of carrying 14.4.

11 MR. BULLARD: And in fact far more than that.

12 MR. MARTINEAU: Yes, it would.

13 COMMISSIONER NELSON: So then whether we pass
14 these rules or not, that's still the law of the land.

15 MR. MARTINEAU: It may be the law of the
16 land, but it's enormously expensive.

17 COMMISSIONER NELSON: Well, but part of the
18 reason we're doing these rules is because we also --
19 when you pass the statute, then somebody writes the
20 rules to support that statute. And, you know, although
21 you avoided the debate during the legislative session,
22 the people who were elected and voted for a bill that
23 the governor submitted that requires these things of
24 you and us.

25 MR. MARTINEAU: Technologically, this

1 infrastructure can be provided at a cost. Presumably
2 recovery will be there.

3 COMMISSIONER NELSON: Presumably so. And but
4 my point, though, unless I missed it, is that whether
5 we do this or whether we don't, you still are required
6 to provide these kinds of things and in that standard
7 and a higher one, in fact, than we're asking you to
8 provide in our rules.

9 MR. MARTINEAU: We can accommodate it with
10 the right infrastructure in place.

11 COMMISSIONER NELSON: I guess all I'm saying,
12 I guess your quarrel is with the legislature and not
13 with us who are trying to enforce it.

14 MR. LEHNER: Actually, Commissioner Nelson, I
15 think the legislation you're referring to, which dealt
16 with the Governor's Vision Bill, since nobody wants to
17 claim ownership apparently, except the governor imposes
18 the requirement on state agencies and not necessarily
19 on the companies. If you look at the bill, and I've
20 read it several times looking for the imposition on the
21 companies, what it refers to is that the decisions on
22 the part of the state agencies shall be consistent with
23 the bill. So the requirement is really on state
24 agencies, which of course you are. But I would rather
25 than have these engineers talking about cost recovery,

1 I'd like to let Tom discuss the cost recovery issue
2 because we think it is part of the requirement also. I
3 would like to save it for Tom's comments if we could.

4 MR. MARTINEAU: Are there other questions?

5 MS. WIEST: This would be providing ISDN to
6 everyone?

7 MR. MARTINEAU: That basic rate ISDN
8 infrastructure would, in fact, accommodate the 14.4
9 parameter. Again, not guaranteeing connect rate, but
10 it would be a sufficient infrastructure to accommodate
11 14.4.

12 MS. WIEST: Even though I think Mr. Lehner
13 said at the beginning of his comments that most U S
14 West customers now get 14.4, so why would you be
15 putting in a cost system that upgrades everyone to
16 ISDN?

17 MR. MARTINEAU: Again, I think -- and, John,
18 maybe what you could do is talk to the study you did.
19 But the study that was done looked at a sampling, and
20 not everybody fits within that sample. I live four and
21 a half miles from a central office. I'd love to get
22 megabyte service. I can't. And I feel really lucky
23 when I can get 14.4. I'm on a line that's doesn't meet
24 the parameters. In order to -- if you want to
25 guarantee a 14.4 connect rate from point A to point B,

1 you have to have a certain infrastructure in place.
2 And that infrastructure that I described is a basic
3 rate narrowband infrastructure, the 144 kilobyte pipe
4 that we described. And that's what the costing that
5 was done is based on. And, again, that would be
6 tempered with how many are already there, how many fall
7 within 12 kilofeet of the central office, what happens
8 on an individual case basis. You just can't
9 galactically say everybody in this geographic area
10 would qualify. It takes some substantial line-by-line
11 analysis.

12 MS. WIEST: So these numbers don't take into
13 account that most U S West customers are currently
14 capable of getting 14.4 or greater?

15 MR. ULANSKAS: My analysis was basically to
16 paragraph five there, which is four -- the four one meg
17 requirement. I think Dean's analysis was basically on
18 ISDN requirement. The cost requirements for upgrading
19 all customers to support 14.4, I do not have that
20 value. I think the contention was is that we have
21 never guaranteed connect rates for voice band modems.
22 It's always been a vague value because of the impacts
23 of customer provided equipment and customer station
24 wiring and the type of connection that's being made.
25 So you would be able to identify and be able to

1 possibly guarantee the value of most loops. And I say
2 most loops because we get a study that says we saw two
3 percent that have had failures or had connect rates
4 less than 14.4. I wasn't able to determine whether
5 those values were because of impairments on the loop or
6 whether that was because of the type of customer
7 provided equipment or whether the impairment occurred
8 as a station premise wiring. I don't have that idea.
9 That becomes identifiable on an individual case-by-case
10 basis. You have analog carrier systems, some of them
11 that can, some that cannot support, you know, the voice
12 band modems. It's a measure of the environment that's
13 out there. But I don't have those cost values to say
14 what would it take to upgrade all customers to support
15 14.4.

16 MS. WIEST: But the 1.7 billion doesn't take
17 into account that most customers already get 14.4.

18 MR. MARTINEAU: I don't know that they do.

19 MR. ULANSKAS: The thing is, I think your
20 cost value is basically on an ISDN infrastructure,
21 which is completely different than a voice band
22 infrastructure because you have loading facilities.
23 That would have a loaded facility that you need the
24 loading in order to improve the attenuation and
25 distortion characteristics of the facility. Yet if you

1 have those load coils in place, they will not support
2 any type of digital service. So you have a conflict
3 between the design that's optimal for voice band
4 services versus a design that's a requirement for
5 digital services. So there is the conflict. What do
6 you bill? What's the customer's requirement? What do
7 they want? You can't duplicate that. You have to
8 build one type of a structure or another structure in
9 order to support something -- you might have to build
10 something that supports ISDN, which, in essence, is
11 overkill for voice grade type services.

12 MR. MARTINEAU: But would accommodate 14.4.
13 These are the choices we have to work with.

14 MS. WIEST: Anything else?

15 MR. WEGMAN: Installing your new loops out in
16 the field, what does the technical characteristics look
17 like?

18 MR. LOVALD: For loops that are known as
19 derived from a digital loop carrier system, we have
20 carrier serving area design characteristic
21 requirements. Those limitations are approximately nine
22 kilofeet of 26 gauge, or 12 kilofeet of a coarser
23 gauge. That equates to approximately about a 750 ohm
24 design. Typically sometimes we might be required to go
25 to a loaded design on the end of a digital loop carrier

1 system because the population density doesn't exist and
2 so you have some loops that might be extending the
3 limitations, and this is a voice band limitation.
4 ISDN, in fact, has probably a little bit better design
5 parameter because it will go out to 1,300 ohm
6 characteristics. So it's a function of the line card
7 in a digital loop carrier system that limits the
8 supervision limit of the facility on the end of that
9 digital loop carrier system.

10 For facilities that are basically originating
11 from a central office, you have two basic designs. You
12 have nonloaded design and you have a loaded design.
13 The nonloaded design limits the length to 18 kilofeet,
14 or 1,300 ohms for nonloaded facilities. Once you get
15 -- exceed that value on land loaded facilities, then
16 that circuit becomes unsuitable for any type of voice
17 band application so you have to place a H 88 (sp)
18 loading systems, which places a load coil at 3,000 foot
19 and then subsequently in 6,000-foot intervals, and that
20 improves the voice band characteristics. But, again,
21 once you place a single loop coil that -- that loop
22 does not become suitable for any type of digital data
23 service at any rates higher than 4.8 kilobytes per
24 second.

25 MR. LEHNER: Rolayne, if I could comment? At

1 one point I think there was a discussion about the
2 prospect that if the Commission adopted the FCC's
3 technical standards, that the 14.4 was a fallout. In
4 other words, it was an automatic that came with the FCC
5 standards. And I think we had some discussion in the
6 past about this. That is our -- our position is that
7 is definitely not the case. That you can meet the
8 voice -- the technical voice standards that are
9 published by the FCC or required by the FCC. That does
10 not guarantee a 14.4. And I want to make sure that the
11 record is very clear that that is not an automatic
12 fallout. The 14.4 doesn't just happen, and that's why
13 these people keep talking about the guarantee issue.
14 The independent companies are in the same boat. They
15 cannot guarantee 14.4 even though they meet all the
16 technical limitations of voice service.

17 MR. BULLARD: Are there some particular
18 carrier systems out there that cannot go above 96 bytes
19 per second?

20 MR. ULANSKAS: Digital carrier system?

21 MR. BULLARD: Regardless.

22 MR. ULANSKAS: We haven't tested all of the
23 carriers because there's a myriad of carrier systems.
24 The digital carrier systems also provide a limitation
25 whether you have a pair of analog or digital

1 conversions, whether it's integrated to a digital
2 switch so that introduces distortion. The channel
3 units themselves have a roll off characteristics that
4 would limit the throughput of a V.34 modem that would
5 want to be operating a 33.6 or something like that. So
6 they have technical limitations.

7 And with respect to carrier to systems that
8 don't support 14.4, I would to have go look to a SLC 40
9 systems, which was the first generation of the digital
10 loop carrier system. A 14.4 modem connecting through
11 that carrier system will probably experience connect
12 rates of 9.6 kilobytes per second, whereas if you take
13 a V.34 modem that is a capability. There are 3.6, we
14 seen 21.6, 24 kilobytes per second of capabilities of
15 operating through that type of carrier system. So,
16 again, it's a function of the type of modem and also a
17 function of the characteristics of the carrier system.
18 Analog carrier systems, that depends on the type of
19 vintage of analog carrier systems that are in place.
20 There's newer carrier systems, analog carrier systems,
21 that have a little bit better capability than the older
22 analog carrier systems. More difficult to maintain.

23 MR. LEHNER: But are there any analog carrier
24 systems that would support 14.4?

25 MR. ULANSKAS: Are there any?

1 MR. LEHNER: Yes.

2 MR. ULANSKAS: We haven't done any testing
3 with any of those lately. I can give you a value. I
4 don't know without testing and say does this one work.
5 And Juan doesn't have any work either, have you, Juan?

6 MR. VELA: No. In the facility that I work
7 in, we currently do not have any analog carriers mainly
8 because we don't deploy them any more. I understand we
9 may have them in use, but as far as new installs, we
10 mainly use digital loop carrier, even if rural areas
11 are using some of the smaller digital loop carriers
12 that we now use. But that's really what I've been
13 testing with is mainly the digital loop carriers.

14 MR. BULLARD: Would all those support 14.4?

15 MR. VELA: Again, it depends. If you take a
16 traditional serving area like John is saying earlier,
17 which is about 9,000 feet, or surrounding the digital
18 loop carrier remote, I have seen instances where modems
19 on one connection on identical loops to an identical
20 location at the other end will connect at 14.4 and turn
21 around and the next connection will be a 12 K or 9.6,
22 so it just depends.

23 MR. BULLARD: Do you differentiate between a
24 transmission rate and a connection rate?

25 MR. VELA: Yes, we do. Connect rate, the way

1 we interpret it here at U S West anyway, is the actual
2 modem to modem speed. So, in other words, the modem at
3 the customer and then the other modem at the other end,
4 whether it's Internet service provider or another
5 customer. That is the actual modem to modem speed, and
6 that's what we interpret as connect rate. There's also
7 another rate which is said viable software on your
8 computer or actually in the modem itself, which we
9 refer to as a computer to modem speed and that many
10 times is, you know, in the hundreds of kilobytes per
11 second. But that does not correlate to the modem to
12 modem speed which we refer to as a connect rate.

13 MR. BULLARD: Would your concerns be resolved
14 if we were to qualify this as being a transmission
15 rate?

16 MR. VELA: No, because it still applies to
17 the connect rates. The information that we have been
18 addressing today is in direct relationship to the
19 connect rates that we have been under the assumption
20 we're talking about the entire time.

21 CHAIRMAN BURG: Anything else?

22 MR. MARTINEAU: I'd like to talk about
23 survivable rings, proposed Rule 20:10:33:15. I'd like
24 to talk comments relating to survivable networks
25 excluding EAS routes. The rule proposes that

1 survivable networks must be based on a fully integrated
 2 backbone of interconnected switch survivable rings by
 3 7-1-2001. We've evaluated the cost of closing the
 4 rings that remain in South Dakota to be closed. We
 5 anticipate a new cost requirement of 17.8 million to
 6 close the remaining links on those rings. There are 14
 7 routes statewide. And, again, I just averaged that
 8 over the U S West embedded base and it looked like it
 9 was about \$135 per U S West customer in South Dakota.
 10 Again, these are administrative costs to the others
 11 that were already identified in this testimony this
 12 morning.

13 Cost recovery from a planning perspective
 14 there ought to be up front or in the near term, three
 15 to five years. Again, these are all administrative
 16 costs. The discussion we've had this morning about
 17 pricing are mutually exclusive. We might get some
 18 benefit out of the one megabyte -- If you add 2.5
 19 billion for one megabyte service to all South Dakotans,
 20 1.7 billion for ubiquitous narrowband, that's 4.2
 21 billion, and then add 17.8 million to accommodate this
 22 rule, we're looking at 4.4 billion in new capital
 23 requirements to adopt these rules. We believe that on
 24 a growth basis, that as these networks exhaust, or
 25 there's a need to reinforce them, that that might be an

1 appropriate way to do that as opposed to, you know,
2 apportion 17.8 million dollars to close the remaining
3 14. Do you have any comments or questions? Thank
4 you.

5 MR. WELK: My name is Tom Welk again. This
6 will conclude some of the remarks of U S West regarding
7 this chapter.

8 The first comment that I'd like to address is
9 Chairman Burg's inquiry about Proposed Rule 32 in this
10 chapter. And what Chairman Burg was referring to is
11 the proposed rule that allows upon a petition of a
12 telecommunications company -- the Commission to grant a
13 waiver of any service standard contained in the
14 chapter. The proposed rule says in determining whether
15 to grant a waiver, the Commission may consider
16 technical feasibility, whether the standard is unduly
17 economically burdensome, whether the company plans to
18 meet the standard within the near future and the other
19 economic technical and public interest considerations.

20 And I understand the Chairman's concern that
21 faced with this mandate, that this might give the
22 Commission an opportunity to deal with these matters on
23 a company-by-company basis. The problem you've got is
24 I don't think -- I think that would be an illegal rule
25 because you have a conflicting standard in SDCL

1 49-31-85, which provides you the rule-making authority
2 on what you're doing. And that statute simply states
3 any regulation of telecommunications service by the
4 Commission pursuant to Chapters 49-13 and 49-31 shall
5 be fair, reasonable, nondiscriminatory, and applicable
6 to all telecommunications carriers providing service in
7 this state. The Commission shall establish by rules
8 promulgated pursuant to 126, quality of service
9 standards, which you're trying to do.

10 The point I'd like to make, Chairman Burg, is
11 that although the intent may be laudable for the
12 regulation, you can't do that on a company-by-company
13 basis. Because if to do so, you would be directly in
14 conflict with Section 85. Any provisions that you
15 provide relief must be provided to all companies on a
16 nondiscriminatory basis when it's U S West or some
17 small independent, the law does not permit you to
18 discriminate between companies in providing this.

19 And so I would respectfully suggest to you
20 that if you adopt that rule, that is beyond your
21 statutory authority and is indeed in direct conflict to
22 your rule-making promulgating authority found in
23 49-31-85. So you're sort of in a dilemma. You've got
24 to treat everybody the same. Everybody has got to get
25 the break and nobody can come on an individual basis

1 and do that, otherwise you put yourself in a position
2 of violating another statute the legislature has given
3 you to operate under.

4 The other issue that has been addressed
5 several times through the course of the discussion is
6 the tremendous costs associated with providing these
7 network facilities that the Commission is trying to
8 implement. And I would respectfully suggest to the
9 Commission that one of the omissions that you have in
10 your rules is the consideration in 49-31-60, which is
11 the Governor's Bill. And in relevant part, that
12 provision says any rule, which you're doing now,
13 policy, action, or decision, or directive from a
14 regulatory agency, which you are, shall consider input
15 from common carriers, including local exchange carriers
16 and others; allow economic deployment of technology,
17 encourage maximum cooperation among facility providers
18 and consider a fair return on the investment made by
19 the facility providers to implement 49-31-60 through
20 49-31-68, inclusive. So the legislature has said to
21 you, yes, you need to follow these rules, agencies, but
22 you also have to consider a fair return on investment.

23 And I respectfully submit that nowhere in
24 your proposed rules have you addressed this. And I
25 suggest that 49-31-60 requires you to address these and

1 that you can't pass these rules without considering
2 cost recovery. We all know it's a significant amount,
3 but I believe that if you pass these rules, and you
4 don't address the requirement in 49-31-60, then you're
5 not acting consistent with that statute. Because the
6 legislature has said you're the body that should
7 consider that. The agency who's going to implement
8 this should consider that. And numbers are being
9 placed in the record today through the independents,
10 through U S West. Those numbers are squarely before
11 you.

12 So I suggest that under the provisions of
13 49-31-60, you must consider a fair rate of return on
14 that investment. That's what the legislature says.
15 And those are not addressed in your proposed rules. So
16 they must be addressed, otherwise I don't believe that
17 your rules are consistent with the applicable statutes
18 that are governing what the legislature has told to you
19 do. Do you have any questions?

20 CHAIRMAN BURG: Are you basically saying if
21 we don't allow recovery request, we can't implement
22 that law?

23 MR. WELK: I'm saying I don't think your
24 rules are legal. Until you consider that, I don't
25 think you can implement these rules and network

1 facilities without at least considering the recovery of
2 the costs.

3 CHAIRMAN BURG: Okay. And so but are you
4 saying then do you feel that the law requires us to
5 implement them and requires you to recover costs.

6 MR. WELK: Yes, you are to consider that.
7 Now, I'm not telling you go -- how to do it, but I'm
8 telling you I think legally, Chairman, the legislature
9 has said put this network into place and consider among
10 other things the fair return on investment.

11 CHAIRMAN BURG: And consider, what do you
12 mean? What's the latitude of consider?

13 MR. WELK: I didn't write the statute.

14 CHAIRMAN BURG: Neither did we.

15 MR. WELK: But it does say shall. This is
16 mandatory. It's a permissive thing for the Commission
17 to consider. The legislature says you shall consider a
18 fair return on investment. Your rules do not provide
19 for a mechanism for the companies, any of the companies
20 to do that.

21 CHAIRMAN BURG: I understand that, but does
22 that mean we didn't consider them?

23 MR. WELK: Well, it's not addressed
24 anywhere. You haven't proposed a rule. You haven't
25 made any findings that would suggest you consider

1 them. So if the record is made and all these companies
2 tell you it's billions of dollars to do this, and you
3 ignore that, then you didn't consider it. At least
4 somehow in a proposed rule or something that you did
5 something that the legislature told you to do.

6 CHAIRMAN BURG: I understand. And if -- you
7 know, I'm not arguing with you on that point. The
8 point I'm trying to get at, in your opinion, if we
9 consider them, and despite the fact it's enormous cost,
10 we already heard, does that allow us to not implement,
11 or does it say you shall implement and they shall
12 recover?

13 MR. WELK: I think, Chairman, it says you
14 shall implement and you shall recover.

15 CHAIRMAN BURG: And so, in other words, we're
16 saying the people of South Dakota will pay these
17 figures that have been thrown out here?

18 MR. WELK: Well, I don't know they'll pay
19 them. That's your judgment whether you believe the
20 figures are reasonable, how to recover. That's your
21 judgment as an agency to do. You don't have to accept
22 any of these figures these companies are giving you.

23 CHAIRMAN BURG: You're saying you don't
24 believe we have the latitude if the cost looks
25 prohibitive for the people of South Dakota to not

1 implement?

2 MR. WELK: I believe the statute says you've
3 got to implement the network. I agree with
4 Commissioner Nelson this is what the edict was. They
5 told to you do this, and these are the costs, and you
6 can consider how you're going to implement them. But
7 you've also got to give the companies a fair return and
8 it's up to you to provide that mechanism. And I think
9 you have got to do both. You've got to consider them.
10 But I don't think on this record now you have, other
11 than the testimony that's being provided.

12 And I want to say I want to compliment one
13 thing for Rolayne, and that is all of us that have ever
14 written rules, I don't think anybody appreciates how
15 difficult this is. I mean it's easy to talk about
16 this. But I want to compliment Rolayne and your
17 staff. These are very technical requirements. They
18 put a lot of time and effort in it. I think we're all
19 here for a constructive process, but this takes a lot
20 of time. And we're certainly willing to help draft
21 anything we can to help, and I think you get the pledge
22 of all the companies here. And I want to commend your
23 staff for the fine effort they've tried to do because
24 this is not easy work.

25 COMMISSIONER SCHOENFELDER: Mr. Welk, go back

1 to 32 for me, will you please?

2 MR. WELK: Sure.

3 COMMISSIONER SCHOENFELDER: I think -- just
4 tell me again what your objection to that is; not what
5 Commissioner Burg asked you, but what your objection is
6 to the way the rule is written, please.

7 MR. WELK: The objection, Commissioner
8 Schoenfelder, is that I do not believe that 49-31-85
9 allows you to consider on an individual company basis a
10 waiver of a service standard. The legislature has said
11 that your service standards must be fair, reasonable,
12 and nondiscriminatory, applicable to all
13 telecommunications carriers. If you come in and some
14 company says it's just too expensive for us to do this,
15 or we're going to do that, and you give that company a
16 waiver, I believe you're running right into 49-31-85
17 that says everybody has to be treated the same. So if
18 U S West walks in the next day and says we want the
19 same thing as XYZ over here, I think if you don't
20 provide that, you've run right into the provision of
21 49-31-85.

22 COMMISSIONER SCHOENFELDER: I think this rule
23 was written to -- well, at least the way I read it,
24 that the telecom company would petition. But I could
25 envision this rule being used if in U S West's

1 territory and somebody builds a cabin on top of the
2 mountain and it's going to cost ten million dollars to
3 run a twisted copper pair up there, that we could grant
4 a waiver for that because it would not be reasonable
5 for us or the customer to expect any company to do
6 that. And I thought that was -- or they might ask for
7 something that's not technically, reasonably
8 technically feasible. So I didn't read it the same way
9 you did. And I'm not objecting to what you're saying.
10 I'm just trying to get right where we're going here.

11 MR. WELK: I think if you did that for all
12 companies, Commissioners, I mean if XYZ Company came
13 and had the same thing on the top of the trailer and
14 you made the same provision for that. I mean, as long
15 as you're treating everybody the same, no matter of
16 their size or economic or the circumstances, that's
17 probably okay. But you may get in the arguments of
18 some company saying you allowed U S West over XYZ to do
19 that. Now you've got to let me do that. So every
20 company is going to be to avail themselves of whatever
21 you do for another company. Otherwise, I think you
22 violate 85.

23 COMMISSIONER SCHOENFELDER: I thought that's
24 the way the rule was written, that it applied to
25 everyone. You don't read it that way?

MR. WELK: No, I don't. But I don't think it's that clear.

COMMISSIONER SCHOENFELDER: Thank you.

MR. WELK: I think if you made it applicable to all companies if such petition would be, that would help that. If you would say if a waiver is granted as to a particular company, that it will be applicable to all companies, I think then that helps you meet that objection at 85.

COMMISSIONER SCHOENFELDER: Okay. So you're not totally objecting to it. You don't think it's as legal the way it's written? I need to get this straight.

MR. WELK: I think if -- it kind of depends on how you use it. And if all the companies don't benefit from its effect at the same time, then I think it violates it. So I'm sitting here saying, yes, it's there right now. It allows one to argue, Commissioner, that it is only applicable to one company, and 85 makes everything you do apply to all.

COMMISSIONER SCHOENFELDER: Thank you.

CHAIRMAN BURG: I agree with your argument the way I read it now. May grant a waiver of any entire standard to the entire company is the way I think you're saying it, and I see how that could be. I

1 think the intent I saw was for, for example, if a
2 company come in and said anything beyond a mile we will
3 grant additional time for everybody, or we will grant
4 -- we will do it in a different way for everybody, you
5 know. I see what you're saying, and I think we may be
6 able to use that in a way by changing the language
7 some.

8 MR. WELK: Anything else? Thank you.

9 MS. WIEST: Any other comments on Rule 33?

10 MR. COIT: This is Rich Coit of SDITC again.
11 I would just like to briefly comment on this waiver
12 section. We support having some sort of waiver section
13 in the rule. And I guess I would agree with
14 Commissioner Burg that I think the intent of this thing
15 was not to totally exempt a company from all of the
16 standards. The intent was to look at a particular
17 situation and say in that situation it would impose
18 some kind of extreme hardship, so therefore we've got
19 to grant a waiver. It's certainly not to exempt a
20 particular company from all of the standards, which
21 certainly would be in violation of the state statute.
22 That's not what's intended here. So if there's some
23 clarification that can be done to fix it, fine, but we
24 definitely agree there needs to be some sort of waiver
25 process in there for those extreme cases.

1 And I would also just want to clarify -- I
2 don't know if I mentioned it initially, and I have
3 mentioned it in the written comments with regard to
4 this study that I reference. We do want that
5 incorporated by reference into our comments and made
6 part of the record. Thank you.

7 MR. SIMMONS: Commissioners, I'm Tom Simmons
8 with Midco Communications, a small South Dakota based
9 CLEC.

10 We have two observations in this section.
11 One deals with the service points. The service points,
12 of course, as outlined very well by representatives of
13 U S West, talk about the extreme costs and the rate of
14 return; and we share that concern. Since our ability
15 to develop as a facilities provider in this state lies
16 with our ability to buy unbundled elements from U S
17 West. The recovery rate could have some very
18 interesting impacts on all of that. We don't know what
19 degree those lines will have to be conditioned and if
20 those conditioning elements will be separate elements.
21 All of that is in the category of to be determined.
22 And if there are other ways of recovering those costs
23 to U S West, whether it be a universal service vehicle
24 or something like that, it may have an extraordinary
25 impact on those of us who are trying to buy those

1 unbundled network elements and could have an impact on
2 the competition roll out in the state.

3 The other issue I was concerned about is in
4 Number 30, the reporting of service disruption or
5 impairment. Again, as smaller companies are beginning
6 in all of that, I was concerned about the 25 percent,
7 which could be a very, very small number. It would
8 seem to us that it would be better to have an actual
9 minimum than a percentage of the lines served.

10 Another concern after serving in the mass
11 media business for about 26 years, I know full well
12 that you must be very careful in crying wolf before
13 mass media in sending releases out for all of these
14 because news directors and program directors have a
15 tendency of turning news releases over and writing
16 other stuff on the back side and not necessarily
17 carrying the message.

18 CHAIRMAN BURG: Tom, just a quick question.
19 Do you think an either/or percent or number, whichever
20 it might be -- let's see, whichever would be -- I have
21 to think about it. Do you think that might also be a
22 solution?

23 MR. SIMMONS: The problem that I had was the
24 smaller of the 25 percent level either/or would be a
25 better solution so that there would be actually a

minimum.

CHAIRMAN BURG: Right.

MS. WIEST: Any other comments on 20:10:33?
If not, we'll go to 20:10:34.

MR. HEASTON: This is Bill Heaston on behalf
of DTG. We did provide written comments again on 34,
just a couple of them. Nothing that I want to
highlight. I do want -- there is one where you can
look at what I've provided to you without confusion.
Where I have made changes there's a straight line down
the right side of the page, which indicates the changes
that DTG suggests in the rules. So that's one help.
Anybody have any questions?

I guess if I may, Rolayne, I do want to make
one comment about the concern over the cost of what U S
West and SDITC was testifying to. And I think Rich
Coit can verify this. But it was Peter Hedman (sp)
that was informed at least by Rich and I about the
enormous cost that was associated with the Governor's
Vision Bill, and we were ignored. We warned plenty of
people during that legislative session to include the
Governor and his staff and the people working with him
that this was not very realistic, and so that we were
ignored in that regard. So there was an attempt.

CHAIRMAN BURG: And our question is what do

1 we do now.

2 MR. HEASTON: That was the question we asked
3 back then also, what do you do after you get this; and
4 I'm afraid they passed the buck.

5 CHAIRMAN BURG: I mean, would you think one
6 solution might be try to revisit it?

7 MR. HEASTON: Yes.

8 CHAIRMAN BURG: And I think we need the
9 industry in unison if we do.

10 MR. HEASTON: I agree.

11 CHAIRMAN BURG: Because we think, I feel,
12 we're somewhat caught between a rock and a hard place.

13 MR. HEASTON: They passed the buck.

14 CHAIRMAN BURG: Yeah.

15 MS. WIEST: Any other comments on 34?

16 MR. LOW: Yes. Sprint does have concerns
17 about the slamming provisions of the Section 34. First
18 of all, I want to make it clear that Sprint does not
19 condone slamming or cramming, and I hope we don't have
20 a reputation for doing so in South Dakota. I think
21 we're one of the better companies in that regard, at
22 least nationwide.

23 Our concern here is with the six months
24 potential refund for customers who are slammed. And
25 the concern again is increased cost to Sprint or other

1 long distance companies from a customer who may have
2 been slammed, or at least where the company can't
3 provide verification. But the customer gets almost six
4 months to complain about it. We've just feel like
5 there's incentive under this rule for a customer to do
6 that with the possibility of getting six months of free
7 service. And we think that if a customer is switched
8 without proper authorization, the customer should know
9 that before six months are up and complain about it.
10 So we would suggest that time period be shortened
11 considerably.

12 CHAIRMAN BURG: What's your recommendation?

13 MR. LOW: I think customers should know
14 within at least two or three months that they've been
15 slammed and complain about it and get it resolved.

16 COMMISSIONER NELSON: Not all companies even
17 bill on a monthly basis. Some of them bill on a
18 quarterly basis, so it's not always possible to notice
19 these things right up front. And the only way these
20 people would ever really recover is if they had been
21 wronged and slammed. So you kind of infer in your
22 comments that, yeah, well, if you're not astute, you
23 didn't notice it in six months, it's all right to steal
24 from you. And I don't think that's appropriate.

25 MR. LOW: Well, first of all -- and I

1 understand that concern, and I share it to some
2 extent. I think Sprint's concern is that there are
3 cases, regardless of our best intents in our system,
4 where we're not able to produce an LOA or verification
5 even though we believe the customer probably authorized
6 it. And I think those are hopefully rare situations.
7 But there could be cases where the customer, in fact,
8 did authorize a switch and then gets six months of
9 service.

10 COMMISSIONER NELSON: Well, then I think it
11 hinges on whether we have documentation in the end.
12 That's somebody's responsibility and not necessarily
13 the customer's.

14 CHAIRMAN BURG: And you insinuated or you
15 inferred that they would try to get free phone
16 service. How are they going to know whether you have
17 documentation or not if you've got documentation they
18 weren't slammed so they couldn't get free phone
19 service? So what I'm saying is the deception of trying
20 to get free phone service isn't that likely because
21 you're the one that controls whether you have
22 documentation. They're not going to know that when
23 they're trying to get free phone service.

24 The other problem is, as was brought up,
25 sometimes they don't bill regularly. We have vacation

1 issues with people. We just -- you know, I guess
2 without some more convincing, the six months doesn't
3 seem unreasonable; and I guess I would recommend more
4 data if that's what --

5 MR. LOW: Sure. Frankly, I wasn't aware some
6 companies did bill quarterly.

7 COMMISSIONER NELSON: I think to some extent
8 it's based on usage. So if you're not a real big user,
9 you probably -- if you're a huge -- I mean if you use a
10 significant amount of long distance, you probably are
11 billed on a regular basis. But if you're a real small
12 user -- several companies I'm familiar with bill on a
13 quarterly basis, and I think that's fairly common.

14 MR. LOW: Of course, in that situation it's
15 probably not that big a concern. If it's a small
16 amount of usage, they're not going to get a huge amount
17 of refund.

18 COMMISSIONER NELSON: I think, though,
19 slamming is a real big issue. And until the financial
20 incentive is removed from companies, slamming goes on.
21 Because we pay a token amount of money back, and it's
22 still more lucrative to slam. So if people notice it
23 -- you know, I think sometimes it goes on for a real
24 long time, people may or may not notice it. I think
25 companies say they're serious about clamping down on

1 slamming, but yet they're willing to do everything but
2 take away the income incentive to solve the problem. I
3 mean as long as companies still have financial
4 incentive to benefit from this stuff, I don't think
5 there's going to be a meaningful solution to the
6 slamming problem for consumers out there.

7 MR. LOW: I'll take those comments back.
8 Thank you. Any other?

9 MS. WIEST: Thank you.

10 MR. GERDES: Mr. Chairman, members of the
11 Commission, I'm Dave Gerdes for MCI WorldCOM. We have
12 some comments that we'd like to offer. And,
13 Commissioner Nelson, MCI does not condone slamming. We
14 try to do everything we can to see that it doesn't
15 happen, but unfortunately it does happen sometimes and
16 it's against what we hope are the company's best
17 efforts.

18 The first comment I would have is on section
19 two, 20:10:34:02, subparagraph 4. Generally speaking,
20 I think that the third party verification technique
21 described in this rule is acceptable but forces that
22 the name and the toll free telephone number of the
23 newly-requested telephone company has to be provided at
24 the time of the third party verification. And it's
25 MCI's experience, at least, that you're only going to

1 confuse the customer, because at the time of a third
2 party verification, they're simply they're not writing
3 things down. They're just verifying that they, in
4 fact, do want the service.

5 All carriers that we're aware of follow up
6 with a welcome customer package or something like
7 that. That has that information in it, the telephone
8 number. We feel that to do it when they're on the line
9 is simply going to confuse the customer and bog down
10 the process. And if you were to say, you know, you
11 follow it up with some kind of written verification
12 that requires a phone number, I don't know that we'd
13 have a problem with that. We don't think it works at
14 that point in the third party verification process and
15 we'd like to have you consider removing it from this
16 particular rule.

17 CHAIRMAN BURG: I think that's a legitimate
18 request; however, I would tend to disagree that all of
19 it be sent in some kind of package because most people
20 don't know that they have been slammed until they see
21 it on their bill. We've got a lot of unscrupulous
22 people that don't send anything.

23 MR. GERDES: MCI does.

24 CHAIRMAN BURG: I understand for the
25 legitimate companies that that may be a good request to

1 do it other than at that time, but what I am saying is
2 most of them do not notify that you have a new carrier
3 because then you know that's not the principle of most
4 of the slamming we hear.

5 MR. GERDES: Perhaps the way to structure the
6 rule is an either/or thing.

7 Second point is 34:03, 20:10:34:03,
8 subparagraph six, the language -- the last sentence
9 says the precise amount of each charge shall be
10 specified in the letter of agency. One of the problems
11 that MCI notes anyway, is that various local exchange
12 carriers charge different PIC change charges and that
13 it would be difficult, if not impossible, to state the
14 precise amount. Perhaps better language would be that
15 they would describe how the charge is calculated or
16 something like that. You can't put the precise amount
17 in because it depends on what that particular local
18 exchange carrier charges for a PIC change. And so when
19 you use the term precise amount, that that's not going
20 to be known necessarily. I mean, I don't think we have
21 a problem describing how it's calculated and even
22 estimating it, but when you say the precise amount,
23 it's not possible to.

24 COMMISSIONER NELSON: Does that promote
25 change for customer?

1 MR. GERDES: Depending on the local exchange
2 carrier, as I understand it. I'm told by MCI local
3 exchanges carriers have different PIC change amounts
4 that they charge, and of course that's part of the
5 change that's described in the rule. It might be \$2.00
6 one place and \$3.00 another, if you see what I'm trying
7 to say.

8 COMMISSIONER SCHOENFELDER: Mr. Gerdes, are
9 there other charges involved here also?

10 MR. GERDES: That's right.

11 COMMISSIONER SCHOENFELDER: Some companies,
12 interexchange companies, charge a base rate if you
13 don't use a certain -- over a certain number of
14 dollars. Some of them add their PICC charges and all
15 sorts of things are added on there. So I don't know
16 that's just the PIC charge that would be the only thing
17 that would be on when you changed your interexchange
18 carrier. I don't know what happens when you change
19 your local exchanges carrier. There would be other
20 charges, I believe.

21 MR. GERDES: And that may very well be. The
22 only thing we're pointing out is that you might want to
23 find a different way of describing it rather than
24 saying the precise amount because it's not universal.

25 COMMISSIONER SCHOENFELDER: Over the truth in

1 billing language is going to say the precise amount on
2 the federal level. Both in Congress and before the FCC
3 there's some truth in billing stuff coming out, and
4 you're going to have to -- if I understand where those
5 are going, you're going to have to identify exactly
6 what's involved in those charges and the precise
7 amount.

8 MR. GERDES: I'm not sure that can be put on
9 the letter of agency though.

10 COMMISSIONER SCHOENFELDER: I don't know that
11 either, but it's going to have to be.

12 MR. GERDES: You're talking about the letter
13 of agency?

14 COMMISSIONER SCHOENFELDER: I know that it's
15 going to be -- to have to be on the bill.

16 MR. GERDES: On the bill, yes.

17 COMMISSIONER SCHOENFELDER: Aren't you going
18 to have to know what the charge is before you send the
19 letter of agency out?

20 MR. GERDES: I don't think so, no, if I
21 understand the way it works.

22 COMMISSIONER NELSON: Most customers say,
23 "And how much is it going to charge me to switch?"
24 And I don't think people are going to say, "Well, we'll
25 let you know when you get your bill," that if it was

1 going to be \$2.00, \$3.00, or \$5.00, or whatever you see
2 fit. Most people, when you're on the line, I think
3 people know what that amount is. I've never had
4 anybody call and say, "I'll let you know what that's
5 going to cost you to switch." Pretty much the standard
6 has been that I've heard is \$5.00. I don't know if
7 somebody has a lesser standard or not. But I think
8 whoever is on the phone knows how much it's going to
9 cost this person to switch.

10 MR. GERDES: Commissioner Nelson, the person
11 that's on the phone, the sales agent, can say, "It's
12 going to be approximately." But as I understand it, it
13 depends on how much the local exchange carrier charges
14 as a PIC charge. We're talking a couple dollars. But
15 our only quarrel is with the term precise amount. We
16 don't have a problem with disclosing what it's going to
17 cost, in a range of, or that kind of thing. That's the
18 only point is with the term precise.

19 The next comment is 20:10:34:06, subparagraph
20 one. And this goes -- actually the comment would deal
21 with both section six and seven. MCI has a policy of
22 dealing with unauthorized switching. And it's MCI's
23 policy they will pay whatever the cost is to switch the
24 person back to their original carrier, plus they will
25 rerate any charges that were made back to the best

1 rate, whether it was the old carrier or MCI.

2 MCI's matter of philosophy, business
3 philosophy, has an objection to giving the customer
4 free service. In other words, we believe that the
5 customer should pay for the service that that customer
6 in fact used at the best rate. We're not asking them
7 to pay a larger rate, but simply that they shouldn't be
8 able to use the service and not pay for it.

9 And so we would object to the concept that an
10 entire -- or the total amount of the charges should be
11 refunded. But that it should be rerated is what we
12 would encourage you to adopt.

13 Secondly, if you read subparagraph one, in
14 section six, it says there's a question as to whether
15 or not it relates to all charges or just the toll
16 charges. Point being this MCI also has a service
17 called 800 Collect where the person receives the long
18 distance call via 800 Collect. That's a different
19 concept than the long distance charges. And so we're
20 hoping that what you mean by this rule is simply the
21 direct dial charges billed and not other charges they
22 might receive from the same customer. Not other
23 services they receive from the same company, excuse
24 me. In other words, if they're receiving a different
25 service from the company in addition to long distance

1 service, that wouldn't be affected by it. That's the
2 point I'm trying to make.

3 CHAIRMAN BURG: I can see where all other
4 relevant charges could be.

5 MR. GERDES: I wasn't saying it very well.
6 And those would be the comments we'd have with respect
7 to that chapter.

8 MS. HOFSTETTER: Sandy Hofstetter for AT&T.
9 And like the others, I'd like to express that AT&T has
10 a strong zero tolerance policy on slamming. And
11 Mr. Armstrong declared that in a speech on March 3rd,
12 1998, and he implemented three voluntarily and
13 unilaterally new policies related to community events
14 and not supporting outside sales agents and opened up a
15 slamming resolution center and charging companies,
16 resellers of AT&T service, for any slamming complaints
17 that come through.

18 There's just a couple of things that I'd like
19 to point out and then we'll be making our written
20 comments related to this. But one of the things that
21 we were talking about was that the proposed rules
22 should somehow mirror or be formed the same way as the
23 FCC slamming rules. And we notice that some of the
24 informations that are involved in the FCC rules are not
25 included in these rules.

1 And if I can, the federal rules provide
 2 several methods to verify customer selections obtained
 3 through telemarketing, while these rules propose just
 4 the third party verification as method of
 5 verification. And AT&T doesn't, in particularly, care
 6 for the audio recording part for the third party
 7 verification. And proposed rules do not specify if the
 8 verification applies to both inbound and outbound
 9 telemarketing calls. And the FCC rules relate to
 10 outbound telemarketing calls.

11 We also share concerns related to the refunds
 12 of charges. And under the proposed rules, if slammed,
 13 the subscriber would be credited or refunded the entire
 14 amount to their telephone charges for up to six
 15 months. And AT&T's position is that a customer's bill
 16 should be rerated similar to the FCC rules at the cost
 17 of the customer would normally have paid to the carrier
 18 that they are PIC'd to versus the company that
 19 subsequently slammed them, and that the customer should
 20 pay for the amount of charges that they normally would
 21 have paid with their current carrier. And I suppose
 22 that incorporates something into the rule that the
 23 original carrier that would have been that customer's
 24 PIC would have somehow recovered the charges for the
 25 calls. And that's really all I have to say relating to

1 that.

2 MS. CREMER: I just had a question. You talk
3 about the re-rating that the FCC has done. How long
4 has that been in effect, do you know?

5 MS. HOFSTETTER: I can't tell you exactly how
6 long it's been in effect, but I know that's something
7 we've been doing for over a year.

8 MS. CREMER: Has slamming gone down then?

9 MS. HOFSTETTER: I can't say.

10 MS. CREMER: Probably not, huh?

11 MS. HOFSTETTER: I can't say whether or not
12 it has.

13 MS. CREMER: Okay.

14 MS. WIEST: Thank you. Any other comments on
15 chapter 34? If not, does anybody have any other
16 comments in any of the rules at this time? If not, I
17 will just tell you that LRC did get back with their
18 suggested corrections and changes. We have a letter
19 from LRC that kind of goes in a couple substantive
20 areas they want to change. And I also have a copy of
21 all the changes they made, some of which are not at all
22 substantive, or I should say most of them are not. If
23 you want to have a copy of that, just let us know. We
24 do intend to have a final version of the rules done, I
25 believe, by November 30th. That's our intent.

1 Any other questions or comments?

2 MR. HEASTON: Rolayne, will the LRC revisions
3 be on the web site?

4 MS. WIEST: I don't think they are. I just
5 have one copy where he wrote in his suggested changes.

6 MR. HEASTON: Just hand-wrote stuff, is that
7 it?

8 MS. WIEST: If you guys want a copy, you can
9 come down and get one.

10 MR. HARMON: You're not willing to say none
11 of them are substantive?

12 MS. WIEST: The letter says substantive. If
13 you want a copy of it, you can have every word changes
14 or something that aren't substantive.

15 MR. GERDES: Would it make sense to put the
16 letter on the web site?

17 MS. WIEST: I assume we could do that.

18 MR. GERDES: That would make it easier. Then
19 we could tell our people to get it off the web site.

20 MS. WIEST: If you want a copy, let us know.

21 (THE HEARING CONCLUDED AT 12:15 P.M.)
22
23
24
25

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF HUGHES)
3

4 I, Lori J. Grode, RMR, Notary Public, in and
5 for the State of South Dakota, do hereby certify that
6 the above hearing, pages 1 through 142, inclusive, was
7 recorded stenographically by me and reduced to
8 typewriting.

9 I FURTHER CERTIFY that the foregoing
10 transcript of the said hearing is a true and correct
11 transcript of the stenographic notes at the time and
12 place specified hereinbefore.

13 I FURTHER CERTIFY that I am not a relative or
14 employee or attorney or counsel of any of the parties,
15 nor a relative or employee of such attorney or counsel,
16 or financially interested directly or indirectly in
17 this action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal of office at Pierre, South Dakota, this
20 3rd day of October 1998.

21
22
23 Lori J. Grode
24 Lori J. Grode, RMR, RPR
25