

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

PUBLIC HEARING TO
ADOPT RULES

Transcript of Proceedings
May 24, 2006

BEFORE THE PUC COMMISSION

Chairman Robert Sahr
Vice-Chair Dusty Johnson
Commissioner Gary Hanson

ORIGINAL

COMMISSION STAFF

Rolayne Wiest
Harlan Best

TESTIMONY RECEIVED FROM

Richard Coit, South Dakota Telecommunications Association
Rae Ann Kelsch, Alltel Communications
Colleen Sevold, Qwest Corporation
David Gerdes, Midcontinent Communications

Reported by Carla A. Bachand, RMR, CRR, Capital Reporting
Services, P.O. Box 903, Pierre, SD 57501 (605) 224-7611

1 WEDNESDAY, MAY 24, 2006

2 CHAIRMAN SAHR: We will now begin the public hearing
3 to consider the adoption and amendment of the proposed rules as
4 listed in the Notice of Public Hearing. This hearing is being
5 held in Room 412, fourth floor, State Capitol, Pierre South
6 Dakota. The date is May 24, 2006, and the time is 2:00 p.m.
7 Persons interested in presenting data, opinions and arguments
8 for or against the proposed rules may do so today by appearing
9 in person at this hearing or by sending them to the South
10 Dakota Public Utilities Commission, State Capitol, 500 East
11 Capitol, Pierre, South Dakota. Materials sent by mail must
12 reach the Public Utilities Commission by June 5th, 2006, to be
13 considered.

14 The commission will consider all written and oral
15 comments it receives on the proposed rules. The commission may
16 modify or amend a proposed rule at that time to include or
17 exclude matters that were described in the public notice. We
18 will now begin to take comments on the proposed rules. Rolayne
19 Wiest, commission attorney, will conduct this hearing. And I
20 should note that I am Bob Sahr, chairman of the commission, and
21 with me are my fellow Commissioners Dusty Johnson and Gary
22 Hanson. Thank you. Ms. Wiest.

23 MS. WIEST: I won't go through each of the rules.
24 What I think we will do is I would just prefer to have each
25 person come up, make all their comments on any rule they want

1 to comment on rather than going rule by rule, if that's okay
2 with everybody. It's just usually faster and easier. Mr.
3 Coit.

4 MR. COIT: Mr. Chairman, Commissioners, commission
5 staff, looks like I have been drafted to go first, which is
6 probably fair because we have not yet submitted any written
7 comments. Some may want to reply to some of the comments that
8 we make today. So it's probably the right approach. We do
9 intend to submit some comments for SDTA before the deadline,
10 which is it June 2nd?

11 VICE-CHAIRMAN JOHNSON: Yeah.

12 MR. COIT: June 2nd.

13 CHAIRMAN SAHR: 5th.

14 MS. WIEST: The deadline is June 3rd.

15 MR. COIT: 3rd. Okay. With respect to the rules, I
16 just have a couple of general comments, and I don't necessarily
17 have a real clear answer to one of the concerns, but you know,
18 looking at the rules, you have rules that address designation,
19 then you have rules that address certification, the annual
20 certification process after designation. It seems that, you
21 know, there are pretty much the same requirements because of I
22 think kind of a catch all rule that makes the annual
23 certification filing include the same information that would be
24 submitted as part of a designation petition. It seems that
25 pretty much the same information is required for designation as

1 for certification, and I'm not sure that that, in our view,
2 gives probably enough flexibility to the process. In the
3 designation process, you are dealing with -- certainly we all
4 had to get designated.

5 All of the carriers, though, were in different
6 positions with respect to where they were with network
7 deployment. Certainly newer CLEC entities, wireless entities,
8 in providing universal service, weren't as far along as those
9 carriers that are members of SDTA that have been in the
10 business for years and have been serving as carriers of last
11 resort for years. So we would like to see at least a little
12 bit more flexibility in some way with the rules, recognizing
13 that you may not need the same level of information from all
14 carriers, that you should be able to look at whether a carrier
15 is truly a carrier of last resort and whether that carrier has
16 already built out its network at least for the purpose of
17 providing the services that are supported by universal service
18 and the basic telephone services that are part of the
19 definition.

20 And why I say that is there's no question that all of
21 the carriers, there are a lot of reporting requirements, and
22 certainly now days, even though we are supposed to be in a
23 deregulatory mode, we certainly file more reports and more
24 information now than we ever have. And I would at least like
25 the commission to consider incorporating a little bit more

1 flexibility into the rules so they don't necessarily have to
2 get the same level of information from each company,
3 recognizing the fact that some carriers have already built out
4 their networks and are providing all those basic services
5 throughout the entirety of their service area.

6 I don't think there's any question that we have
7 carriers of last resort today and we have carriers that are
8 ETCs that are not really carriers of last resort as of yet.
9 And I would like to see, we would like to see a little bit more
10 flexibility, and I don't know if that amounts to looking at the
11 certification rules and rather than just incorporating some
12 sort of a catch all that references back to the designation
13 requirements, maybe just putting in those requirements
14 separately and having some variance in there, depending on the
15 status of the carrier. Maybe an easier way to do it is at
16 least consider putting something in there that allows for some
17 sort of a waiver upon application or whatever. And so that's
18 the general concern we have with the rules, and as I said, I'm
19 not sure exactly what the best way of addressing that is.

20 The concern that I've heard from a few of our
21 companies is that, you know, this seems like an awful lot of
22 information. They are very concerned about whether they are
23 going to be able to meet the time lines the first year, and so
24 we would ask the commission to maybe look at allowing for some
25 sort of a transition. If you look at a company the size of

1 Golden West and we are looking at the information that's
2 supposed to be submitted on a wire center by wire center basis,
3 they are very concerned about having to meet that time line,
4 especially given all of the things that happen in summer with
5 construction and so forth. So we would also ask the commission
6 to look at trying to incorporate some sort of a transition to
7 the annual, the new annual certification requirements.

8 Finally, this is maybe more of a question and still in
9 the area of a general topic. I think today when the
10 information, some of the information is submitted, it's
11 submitted under confidential cover and I would hope that that
12 option is still available with respect to some of the new
13 information that would be required, especially as that relates
14 to network planning. We are in a much more competitive world
15 than we were and some of the companies are concerned about too
16 much of their network planning information being available for
17 perusal by competitors. I believe that's kind of the way it
18 works today, at least I think some of the information is
19 submitted under confidentiality, and I would hope that that
20 option remains available.

21 Going to a few of the rules specifically, I have got a
22 comment on several of them. First, the 20:10:32 -- oh, yeah,
23 20:10:32:43.01 on page six and looking at subparagraph two,
24 which is actually at the top of page seven, if you recall some
25 of the previous ETC proceedings, there was actually quite a bit

1 of debate about what's a reasonable amount of time to provide
2 service, and first I would say that certainly I recognize that
3 throughout these rules, for the most part you are mirroring
4 what the federal, what the FCC has adopted as a follow-up to
5 the Federal State Joint Board recommendations. So I do
6 understand that a lot of these are just mirroring of the
7 federal requirements.

8 But with respect to the reasonable cost language in
9 particular, that seems to me to give way too much of an out.
10 Reasonable cost seems awfully vague and I know that that's in
11 the federal rule, but with the provide service within a
12 reasonable period of time and then in conjunction with that,
13 referencing this provisioning at a reasonable cost, I'm not
14 sure if you have any requirement there. And as we have kind of
15 argued in previous proceedings, you have to set the bar at a
16 level that makes sense in order to incent people to build out
17 the network, and I'm not sure that that bar is high enough. So
18 I would ask the commission to maybe consider altering that,
19 that provision, to raise the bar a little bit.

20 The 20:10:32:43.02, we had a question and this is more
21 of a question than a comment, I guess, or a position. With
22 respect to the wire center by wire center basis language, we
23 are concerned that that not be interpreted to mean that each
24 company would have to invest in new facilities in each wire
25 center or exchange area on an annual basis. Looking at what

1 the companies do today, I mean, they kind of go from area to
2 area and it doesn't -- it's not like they are going to
3 necessarily do something in every exchange annually. They are
4 upgrading their network hopefully over some planned period and
5 some progression that makes sense, but just arbitrarily making
6 some -- indicating in a rule that it should occur on a wire
7 center by wire center basis doesn't really match reality. So
8 if it can be interpreted or it would be interpreted in that
9 way, we would like to see some change. The other question
10 is -- I do have another comment with respect to wire center by
11 wire center. It doesn't really seem technology neutral. I'm
12 not sure if that is the right wording, given the fact that
13 wireless companies don't really have wire centers.

14 Going to page eight, 20:10:32:43.03, there's a
15 reference to able to reroute traffic around damaged facilities
16 in about the fourth line of that section. You may want to
17 consider being a little bit more specific as to what you mean
18 by damaged facilities. Are you talking about damaged loop or
19 are you talking about damaged transport? Because if you are
20 talking about damaged loop, we are probably not going to have
21 redundant loops to every customer. So when you talk about
22 facilities, you may want to be more specific, reference
23 backbone facilities, transport facilities.

24 The 20:10:32:43.04, and don't interpret this as that
25 I'm going to go through every single rule until we are done,

1 but the reference to the consumer protection and service
2 quality standards at the top of page nine, we would like the
3 commission to reference the actual service quality standards
4 that it has included in ARSD Chapter 20:10:33. You have
5 service quality standards in there. They are somewhat limited
6 in their application because of some reference to locally
7 exchanged carriers, but certainly you have service quality
8 standard in there and we wonder how those service quality
9 standards fit into this section or these rules in general.

10 I would have a question, too, with respect to the CTIA
11 consumer code. I have not read that code, but based on I guess
12 proceedings that we have had previously, I guess it was my
13 understanding that that maybe deals more with consumer
14 protection than it does service quality from a network
15 perspective or technical perspective. I may be wrong on that.
16 If you have got two standards or two areas that you are
17 interested in, consumer protection and service quality
18 standards, then I think, you know, you need something to
19 address both of those with respect to wireless and not just one
20 of them.

21 CHAIRMAN SAHR: Mr. Coit, please accept my apologies
22 for interrupting you. I have a flight that I'm going to have
23 to catch and I should note we do have a court reporter in the
24 room and two commissioners present so we can keep going on. I
25 am going to read the transcript, so I will have an opportunity

1 to do that. I checked -- I was invited to testify before the
2 U.S. Senate Energy Committee and when I found out about the
3 invitation, I checked on moving this a little bit earlier in
4 the day and because of the previously scheduled things and
5 travel commitment from other folks, we couldn't do that, and
6 obviously even a half hour less probably would have done the
7 trick for me, but unfortunately I am going to have to leave, I
8 apologize, and I apologize to the other folks who intend to
9 give comments, but I will read the transcript. So thank you.
10 I should note for the record that I'm leaving. Thank you,
11 Carla.

12 MR. COIT: Another section, 20:10:32:48,
13 relinquishment of ETC status, we would like the commission to
14 consider adding at the bottom of page 13 some of the additional
15 language that's in 47 USC Section 214(e)(4) that deals with I
16 guess the requirements that are applicable to a carrier that --
17 let me see here.

18 VICE-CHAIRMAN JOHNSON: Could you start over about
19 where you are referencing and what you would like inserted?

20 MR. COIT: Actually page 13, you have got paragraph
21 four in this section deals with relinquishment of this whole --
22 this whole section deals with relinquishment of ETC status and
23 if you go to the federal law and you go to Section 214(e)(4),
24 there is some requirements in there that talk about what is
25 required on the part of the company that is seeking to

1 relinquish and also what is required in terms of the notice
2 period. There is -- I am going to read it here. It's in
3 214(e)(4). Prior to permitting a telecommunications carrier
4 designated as an ETC to cease providing universal service in an
5 area served by more than one eligible telecommunications
6 carrier, the state commission shall require the remaining
7 eligible telecommunications carrier or carriers to insure that
8 all customers served by the relinquishing carrier will continue
9 to be served and shall require sufficient notice to permit the
10 purchase or construction of adequate facilities by any
11 remaining eligible telecommunications carrier. The state
12 commission shall establish a time not to exceed one year after
13 the state commission approves such relinquishment under this
14 paragraph within which such purchase or construction shall be
15 completed. It seems to me that those provisions would make
16 sense in this section.

17 Again talking about the transition issue, and if you
18 go to 20:10:32:53, we are talking about submitting all of the
19 information that's required in sections 20:10:32:43.01 through
20 20:10:32:43.06 by August 1st, and I understand why you have to
21 get a filing in to the FCC or correspondence to the FCC, but
22 that date is going to be difficult looking at the amount of
23 information that you are looking at getting. For some carriers
24 it won't be, but for some it's certainly going to impose some
25 hardship. So whatever you can do to try to lessen that burden

1 would be appreciated.

2 Then the next section, 20:10:32:54, subsection two,
3 there's a sentence that says just about the middle of the page,
4 a little lower, the outage must potentially affect. The use of
5 the word "potentially," I know that's used in the FCC rules,
6 but the use of the word "potentially" really makes that vague
7 in terms of when things are applicable. So if you could find
8 another way to reference or take out "potentially," it might
9 help. That's all I have. Any questions?

10 MS. WIEST: This is Rolayne. I had a question on your
11 confidentiality concern. Would our current confidentiality
12 rules be sufficient to cover that concern, just filing it as
13 confidential under those rules?

14 MR. COIT: Yeah, I think it would. I just I guess
15 wanted some up front, some up front indication that that was
16 going to be appropriate.

17 MS. WIEST: I think Qwest actually proposed a new
18 confidentiality rule and I'm just wondering if you think that
19 we need something new or if our current rules are good.

20 MR. COIT: I think the current rule would be fine as
21 long as there's an understand being that the companies are
22 going to be able to do that with the information.

23 MS. WIEST: You were talking about in 43.02 wire
24 center by wire center, oh, the term wire center may not be
25 technologically neutral. Would you think that you could put in

1 wire center or cell site?

2 MR. COIT: Yeah, I think that would be better.

3 MS. WIEST: Commissioners.

4 VICE-CHAIRMAN JOHNSON: Mr. Coit, on page 15,
5 20:10:32:53, you made mention of the fact that the August 1,
6 2006 date could provide a hardship. Did you have any
7 suggestions as to what might be more appropriate?

8 MR. COIT: You know, just looking at where we are at
9 in this process, you know, again I go back to at least having
10 some hope that maybe you would provide some ability to look at
11 carriers of last resort and those carriers that have already
12 built out their networks a little bit differently and provide
13 some flexibility in terms of the amount of information that
14 they are going to have to provide. Certainly that's one
15 approach. I'm not exactly sure how you might incorporate that
16 into this -- into these rules. I guess the other approach
17 would be just doing something special with respect to the first
18 year maybe in terms of the amount of information that you are
19 going to get. Because certainly for some of these companies,
20 it's going to be a lot of information.

21 VICE-CHAIRMAN JOHNSON: And you did -- you made
22 reference to maybe wanting to differentiate between real
23 providers of last resort and those that perhaps have not built
24 out their network fully. Any ideas on how you do that in rule?

25 MR. COIT: Well, I think what you could possibly do is

1 at least incorporate some sort of a waiver of process that
2 would be based on that sort of consideration or criteria. You
3 know, every --

4 VICE-CHAIRMAN JOHNSON: Would that require a finding
5 of the commission as to who's done fully building out their
6 network?

7 MR. COIT: I think what it would require is at least
8 it would require some application on the part of the company
9 that didn't want to necessarily submit all of the same
10 information that somebody is submitting that, you know, is far
11 from at that point where they have built out their network. I
12 mean, the fact of the matter is you have got companies today,
13 other than dealing with some line extensions for new customers,
14 I think there is a difference. Let's not ignore the fact that
15 there is a difference between where the landline networks are
16 at, especially incumbents are at, versus where some of the
17 nonincumbents and the CLECs are at, or the wireless companies
18 are at.

19 And these rules don't recognize any difference, and I
20 know that any time you are looking at applying rules, you have
21 got issues with respect to discrimination and so forth, but
22 discrimination is an issue when you are dealing with similarly
23 situated entities, and it's not really fair to look at the
24 incumbents I think in terms of -- especially when you look at
25 how universal service is defined today. It's defined as those

1 basic services. It is not yet defined to include broad band.
2 We are all pushing for a -- or at least some of us are pushing
3 for an expanded definition to include broad band, but it's not
4 there today. That's where we want to be and we want to
5 continue to upgrade our network so we have ubiquitous access
6 for broad band, but if you look at the definition of universal
7 service today and you look at where the incumbents are at
8 today, they are carriers of last resort, they have built out
9 their networks, they are providing those services everywhere.
10 What's your true purpose of these rules? If your purpose is to
11 insure that they are using universal service for those basic
12 services, I'm not sure that you need all of the same amount of
13 information from those carriers that have been there for 40, 50
14 years.

15 VICE-CHAIRMAN JOHNSON: Well, Mr. Coit, certainly I'll
16 acknowledge there is a very true difference in the way that
17 different technologies and companies have built out their
18 network. I'm just sort of curious how you put that -- how do
19 you craft words to try to get at what you are getting to and
20 how do you do it in such a way that it makes sure it's
21 technology neutral, it's not unduly discriminatory?

22 MR. COIT: It's not easy. I'm not going to sit here
23 and say that's easy, but I do think that finding some way to
24 offer some flexibility and not necessarily requiring the same
25 amount and giving you the ability to look at the differences

1 that are there instead of just saying, well, we are worried
2 about discrimination so we are going to impose the same
3 reporting requirements on absolutely everybody, regardless of
4 what their network status is, that doesn't seem real fair
5 either if you look at it from the perspective of carriers that
6 are regulated and have to deal with all of the burdens
7 associated with this stuff.

8 VICE-CHAIRMAN JOHNSON: On page seven, top of the
9 page, that deals with 20:10:32:43.01, you mentioned sort of the
10 second -- the potential concerns raised by the second
11 reasonable, specifically reasonable cost. Are the objections
12 largely assuaged if we sort of flip that so the burden would be
13 on a company to prove that they weren't unreasonable rather
14 than --

15 MR. COIT: That would probably be better, yeah. I
16 just think, look at it right now, it's reasonable period of
17 time and reasonable cost. What does that mean? It's pretty
18 vague and it's pretty wide open. And we are going to file some
19 written comments, so if I have any thoughts there, I'll put
20 those in the written comments.

21 VICE-CHAIRMAN JOHNSON: Those are the only questions I
22 had, Ms. Wiest.

23 MR. COIT: Thanks for your time. Sorry for going on
24 so long.

25 MS. WIEST: Thank you.

1 VICE-CHAIRMAN JOHNSON: I was the one asking the
2 questions, don't feel bad.

3 MS. KELSCH: Commissioners, Ms. Wiest, Mr. Best, I'll
4 just take a couple of minutes to offer a few comments. First
5 of all, let me say that we were -- Alltel was happy to see that
6 the commission had looked at adopting -- Rae Ann Kelsch, Alltel
7 Communications -- that you were looking at the FCC rules for
8 the designation and certification of ETCs in South Dakota.
9 There was a couple of minor deviations and those were the ones
10 that we basically addressed in our comments and that's what
11 I'll quickly address for you now.

12 In the proposed rule 20:10:32:43.02, this would
13 require that an applicant requesting ETC status would submit a
14 two-year plan. We are very happy to see that. With an
15 industry that changes as quickly as the wireless industry, it's
16 difficult to look at a five-year plan, especially when you look
17 at some communities and the way that they are expanding. Sioux
18 Falls is a good example. If you put a five-year plan out and
19 you all of a sudden need to put a couple more cell sites in
20 Sioux Falls, for example, because of the urban sprawl, how do
21 you make those adjustments in a five-year plan? We are very
22 pleased to see that you had opted for a two-year plan and feel
23 that's definitely workable.

24 In proposed rule 20:10:32:43.04, this would require
25 that an applicant for ETC designation demonstrate that it will

1 comply with the consumer protection and service quality
2 standards. The proposed rule basically says that the wireless
3 applicant may by complying with the CTIA consumer code, they
4 may satisfy this requirement. So the word "may" in the
5 proposed rule just kind of adds a little bit of uncertainty and
6 we are not exactly sure if that means that the commission would
7 actually accept it as compliance and it would satisfy the
8 requirement for the wireless carriers or not. So we would ask
9 that the commission confirm, perhaps using the word "would"
10 instead of "may," would satisfy, and that would basically
11 confirm that wireless ETCs would be in compliance with the CTIA
12 consumer code and that that would be adequate to insure
13 compliance with service quality and consumer protection
14 standards of South Dakota. Contrary to what Mr. Coit said, the
15 difference between his company and our company is that we offer
16 service in 35 different states and if we have to have different
17 consumer codes to comply with, it makes it very difficult for
18 us. So we would prefer to have one consumer code that we would
19 comply with across the 35 states.

20 In proposed rule 20:10:32:43.05, we support the
21 commission's adoption of the FCC's requirement regarding the
22 offering of local usage, but would request that the commission
23 clarify that comparable local usage does not mean requiring
24 identical local usage or rates for an incumbent LEC and
25 wireless ETCs, because there are so many variables to be

1 considered in determining comparable value of local usage
2 plans. And there again comes in the competitiveness of our
3 wireless companies.

4 And proposed rule 20:10:32:43.06, this would require
5 that an applicant certify that the commission would -- may be
6 required to provide equal access to long distance carriers. In
7 order for us to comply with federal law or in order for the
8 order to comply with federal law, we believe the proposed
9 language for this rule should be modified to read "certify that
10 the applicant acknowledges that it may be required by the FCC
11 to provide equal access to long distance carriers if no other
12 eligible telecommunications carrier is providing equal access
13 in the service area." So basically this will change the --
14 this change would resolve the jurisdictional conflict while
15 still maintaining the recognition wireless ETC may be required
16 to provide equal access at some point in the future, if it
17 becomes the sole ETC serving that certain service area.

18 20:10:32:54, subparagraph two, this would require all
19 carriers providing voice communications now would be subject to
20 federal outage reporting requirements. We are asking the
21 commission to require designated ETCs to file with the
22 commission for informational purposes only a copy of the FCC
23 mandated outage reports pursuant to 47 CFR 41, with respect
24 to -- and that's due to the fact that we are already filing
25 these reports with the FCC and they are very highly sensitive

1 information and also very confidential and so we would ask that
2 they be protected from public dissemination under the Freedom
3 of Information Act. And we would again, if you ask for those
4 reports to be filed, that they would be afforded the strict
5 confidential treatment.

6 I guess one comment also, Mr. Coit suggested that wire
7 center was antiquated language. I think that maybe wire center
8 is antiquated language. However, I don't think cell site is
9 probably the proper verbiage. It seems as though study area
10 would probably be the more -- a better word because of the fact
11 that all support must be used in provision of maintenance and
12 upgrade in facilities and services in the ETC study area, so I
13 think that might be better verbiage.

14 So with that, Commissioners, as I said, if the
15 commission follows the national ETC model, it will serve to
16 insure consistency with the FCC designation process and with
17 the designation processes in many states and provide for a more
18 predictable and efficient process for ETCs. So again we are
19 very happy with the fact that you had followed the FCC's rules
20 as much as possible and would just ask for some consideration
21 in those few areas that we felt should be looked at.

22 MS. WIEST: Thank you. Rae Ann, do you have time for
23 a few questions or do you need to go?

24 MS. KELSCH: Yep, I have a couple minutes.

25 MS. WIEST: I'll try to make it fast. Anyway, I was

1 going to bring up on that first one you talked about, 43.04,
2 Rich mentioned that the CTIA, in his opinion, applied to
3 consumer protection as opposed to service quality. Would you
4 agree that that would be the case and that maybe it could apply
5 to consumer protection, CTIA, but we should have something in
6 there where wireless would have to comply with service quality
7 standards? Which I think is what you guys agreed to in the ETC
8 proceeding.

9 MS. KELSCH: That would be true, I think that as you
10 look at the CTIA consumer code, although there are some
11 possible changes that are going to be coming out in the
12 consumer code, so I'm not positive if they will address any
13 service quality issues in there or not. But that would be
14 true.

15 MS. WIEST: That brings me up to the reason why I used
16 "may" instead of "would." The reason I used that is because I
17 don't know what the CTIA was going to say in the future, so my
18 point is if it gets watered down or something, I didn't want
19 the commission to be bound by some future CTIA we didn't think
20 was maybe particularly strong enough to protect consumer
21 protection. But that gives you some background why that word
22 was changed.

23 MS. KELSCH: Thank you.

24 VICE-CHAIRMAN JOHNSON: Am I right in presuming the
25 way the rules were drafted there isn't the concern with an

1 unconstitutional delegation of powers with our agency there
2 would be with the legislature?

3 MS. WIEST: You mean to comply with the CTIA?

4 VICE-CHAIRMAN JOHNSON: Yeah, nonspecific version.
5 Normally in the legislature you have to say a particular
6 version as of this date.

7 MS. WIEST: Yeah, LRC didn't actually make us put in a
8 date. A lot of time they would because that's probably because
9 it's not a code cite. But yeah, that's something to consider,
10 too. On the equal access, I wanted to ask you on that 43.06, I
11 understand your point about the FCC and the equal access
12 provision, their authority over it, so I looked up some other
13 states, how they handled it, and like Iowa said that the
14 applicant, it will be able to provide equal access, and my
15 point is leaving out reference to either the commission or the
16 FCC, would something like that work?

17 MS. KELSCH: I think something like that would work,
18 yes.

19 MS. WIEST: Leave it open?

20 MS. KELSCH: Right.

21 MS. WIEST: The other thing I have, if you have time.
22 On the 54 on the outages, the only thing I would note is that
23 a number of people stated that they wanted just to file what
24 they filed with the FCC under their order outage report. My
25 only concern is I went back to the FCC order regarding the ETC

1 and they pretty much said they were similar to that, but they
2 actually wanted to go beyond that because they didn't think
3 that the outage report, I'm paraphrasing here, was maybe
4 sufficient for these purposes, and that's because of they used
5 like so many minutes, I believe, as opposed to the number of
6 end users. Do you have any comment on that?

7 MS. KELSCH: I don't. This is typically what we --
8 because it's a report that we are already filing and feel as
9 though it is an adequate report, we would stand behind that
10 report and feel that that's probably the best report to be
11 filed with the commission.

12 MS. WIEST: That's all I have. Commissioners have any
13 questions? Thank you.

14 MS. KELSCH: Thank you.

15 MS. SEVOLD: Thank you, Commissioners. This is
16 Colleen Sevold from Qwest Corporation, and I just have some
17 very brief comments that we would like to make. First of all,
18 I would agree with Rich on the certification rules for
19 incumbents versus nondesignated ETCs, except for excess
20 construction cases. Sometimes we do serve everyone in all of
21 our exchanges. So the only times we would not is if there were
22 excess construction charges that the customer did not want to
23 pay. So we would propose that there be different criteria for
24 the incumbents.

25 If you look at rule 20:10:32:43.02, I realize that the

1 commission has gone down from a five-year plan to a two-year
2 plan. Qwest would just like to see a one-year plan, if
3 possible. I know we are the only ones, but, you know, we just
4 feel that it would be easier to -- first of all, we don't know
5 how much USF funding we are going to get each year, and also it
6 would be just easier to submit a one-year plan that we knew was
7 going to be more viable than a two-year plan. I think,
8 Rolayne, Rae Ann talked about growth in Sioux Falls. I don't
9 think two years ago we would have realized that we were going
10 to be almost out to Harrisburg when you looked down Louise
11 Avenue, so there's been changes. And then also we would like
12 to see it not be by wire center. We would rather see it
13 encompass a bigger area than wire center by wire center because
14 we do not do something in every single wire center every year.

15 Then rule 20:10:32:52, we just were proposing rather
16 than a June 1 date for certification, that everything be
17 submitted by August 1. It's a little bit easier to get further
18 down in the year before you start looking at what you are going
19 to be doing the next year, where June 1 we are just beginning
20 our construction season. So we are just proposing that that be
21 moved to August 1.

22 Then 20:10:32:54, two things there. The outage
23 reporting, we were suggesting that we already report all of
24 that to the FCC, and in addition, we, whenever we have outages,
25 we call the commission and let them know and we keep you very

1 informed about it. So we believe that both of those are
2 already covered. And as far as customer complaints, actually
3 the commission has that number already because you do get the
4 customer complaints, so it would be kind of just submitting
5 back to you what you already have. I believe that's all.

6 Then we also wanted to be sure that everything was
7 confidential, but I do believe that the confidentiality rules
8 in place today, I think we used those in the past for that, so
9 that would suffice. That's all we have.

10 MS. WIEST: And I guess this would be the same
11 question I asked Rae Ann, but a number of parties want us to
12 just accept the FCC outage report, but the FCC changed their
13 outage criteria in this order, so I'm just wondering for ETCs,
14 I'm wondering why shouldn't we follow what the FCC found to be
15 good for ETCs as opposed to what they obviously didn't adopt
16 when they adopted their outage report?

17 MS. SEVOLD: Well, and then again, as far as Qwest is
18 concerned, we always do report right away when it happens to
19 the commission, so it would be collecting the information that
20 we have already given you and submitting it back to you once a
21 year.

22 MS. WIEST: And would that -- the way it's written
23 here, would that be how you would -- these would be the types
24 of outages you would be reporting to the commission currently?

25 MS. SEVOLD: Yes.

1 MS. WIEST: That affect 10 percent of the end users;
2 is that correct?

3 MS. SEVOLD: Right.

4 MS. WIEST: Did anyone else have any questions?

5 VICE-CHAIRMAN JOHNSON: I have nothing.

6 COMMISSIONER HANSON: Thank you.

7 MS. SEVOLD: You're welcome. Thank you.

8 MR. GERDES: Commissioners, Ms. Wiest, my name is Dave
9 Gerdes, I'm a lawyer in Pierre and I represent Midcontinent
10 Communications. The first thing I have is a question as much
11 as anything else. And I think I may have answered it while I
12 was sitting there rereading this section, but -- I lost my
13 place. If you look at 20:10:32:43.07, it talks about the
14 public interest standard, and the first sentence says that the
15 commission shall determine that such designation is in the
16 public interest and then it goes on to say the commission shall
17 consider, and when I first read that, I was wondering if the
18 commission was abandoning the public interest standard that it
19 established in the Western Wireless case in response to the
20 Supreme Court's mandate or if that later -- that's TC 98-146 --
21 or if the verbiage after that first sentence is simply
22 something else you are doing in addition to considering public
23 interest as it's defined in your order. Do you understand what
24 I'm --

25 MS. WIEST: No, I guess I'm lost.

1 MR. GERDES: Well, in the Western Wireless case, the
2 Supreme Court said the commission should establish a public
3 interest standard.

4 MS. WIEST: Uh-huh.

5 MR. GERDES: The commission did that in Docket 98-146,
6 and I read it as being in section nine of that order, and
7 basically it says -- it's a two-part analysis, the first part
8 being whether consumers will realize benefits from increased
9 competition and the second part is whether the rural area is
10 capable of supporting competition, and then there's some
11 embellishing words there.

12 I read -- and I'm wondering, is that still part of the
13 public interest analysis or is what is in your proposed rule to
14 replace that? Because I think you are talking two different
15 standards here, and if you are, I mean, I guess we all ought to
16 know that.

17 MS. WIEST: I think that this was based on the FCC
18 rules and to that extent we would be adopting that standard
19 that's written in there.

20 MR. GERDES: You would be abandoning the standard you
21 established in this --

22 MS. WIEST: Right, I think to keep that standard we
23 would need to add it into .07.

24 MR. GERDES: I'm going to file written comments, but I
25 wanted to ask a couple questions before I filed them, and I

1 would advocate that you keep this standard because to me I
2 think it's important and I don't think that it conflicts with
3 the language you have got here.

4 MS. WIEST: Okay. We should add in that language you
5 would suggest?

6 MR. GERDES: I think you ought to look at it really,
7 because I think that it -- I thought it was good when I read it
8 the first time and then I read this and I was a little bit
9 nonplussed because it seemed like you were changing, and
10 apparently you are. I think the commission needs to take a
11 look at that and see if they really want to change what they
12 decided back in 2001, October 2001. So I raise that and I'll
13 mention it in my comments, too.

14 Secondly, and these are -- these are a couple of
15 things that are more of a clarification for people that are on
16 the ground and filling out these reports. Looking at section
17 20:10:32:54, subparagraph four talks about the number of
18 complaints per thousand hand sets or line, and my people at
19 Midcontinent said, what's a complaint? Every time we get a
20 customer service call, there's probably some kind of a
21 complaint in there, even though they might be asking about
22 something else. And they were wanting -- they were wondering
23 whether or not the commission shouldn't consider perhaps
24 defining what you mean by a complaint. In other words, are we
25 complaining about the equipment, about billing, about specific

1 things, rather than just a complaint, because somebody might
2 call and complain about the way they were treated over the
3 phone or whatever it might be. And so the question being how
4 far do you go in quantifying what is a complaint, and they
5 thought that it might be beneficial for all carriers because
6 then everybody would be on the same page if they all had the
7 same definition of a, quote, complaint, unquote, in mind. That
8 may be something you would want to consider.

9 MS. WIEST: Yeah, I think we probably will need to
10 consider that. And the other thing that I was thinking of
11 adding in there is putting in the time period for the
12 complaints.

13 MR. GERDES: Yes.

14 MS. WIEST: I think we would say the prior calendar
15 year, it would be that time frame for those complaints.

16 MR. GERDES: Yeah, so that's the second one. Then the
17 third one probably is answered, but the lead in line in that
18 same section, 20:10:32:54 talks about annual certification, and
19 their question was, are we talking about the calendar year in
20 all cases? I mean, even if we are on a different fiscal year,
21 things like that, everybody is reporting for a calendar year,
22 is that correct and is that what you mean? Now, an annual
23 certification isn't -- doesn't necessarily to me mean calendar
24 year.

25 MS. WIEST: Right, so we could clarify the time period

1 for that, too.

2 MR. GERDES: Right, and there might be a need for a
3 clarification there. That's it.

4 MS. WIEST: Sure. Any questions?

5 COMMISSIONER HANSON: No.

6 MR. COIT: I have one comment on the public interest
7 rule.

8 MS. WIEST: Go ahead.

9 MR. COIT: Actually we have an agreement. I would
10 agree with Mr. Gerdes's comments, I guess, on 20:10:32:43.07 on
11 page 10. I guess I probably didn't read it close enough, I
12 didn't necessarily think that that was an exclusive
13 consideration when you are looking at the public interest, and
14 it seems to me that that second sentence, if that's -- I know
15 that this is coming out of the FCC rules, but certainly you
16 have had your own public interest standard in the past. I
17 think that where you ultimately got to on the public interest
18 standard is something that we wouldn't like to see abandoned.
19 You use in the recent RCC cases and the Western Wireless cases,
20 you looked at the Federal State Joint Board recommendations.
21 You kind of came up with your own public interest standard, I
22 think, and we wouldn't like to see that abandoned. It's
23 certainly more encompassing than that. There is at least some
24 need to consider the impact on the Universal Service Fund if we
25 are all concerned about sustainability of the fund and so

1 forth. So we would certainly not like to see this as just
2 exclusively indicating that that's the only consideration.
3 Thank you.

4 MR. GERDES: Could we mark the calendar? I think this
5 is the first time that Mr. Coit and I have agreed to anything.

6 MS. WIEST: Might be.

7 MS. SEVOLD: This is Colleen Sevold from Qwest again
8 and I would like to follow up on Mr. Gerdes's comments about
9 complaints. We took that to mean reporting commission
10 complaints because we have thousands of service reps taking
11 calls every day. There is no way that we could -- you know,
12 it's like he said, probably somebody has a complaint about
13 something but then they go on and put in an order or whatever,
14 but there is no way we could compile anything more than
15 commission complaints.

16 MS. WIEST: Don't you track complaints for other
17 states?

18 MS. SEVOLD: What comes in through the commission, but
19 like just say I am taking an order from you and you want to
20 complain about several things. I'm going to try to help you
21 and try to make you feel better about those, but I'm not going
22 to report that so and so complained.

23 MS. WIEST: Sure.

24 MS. SEVOLD: So you know, when it goes to our
25 complaint group, then we do, but that's somebody that is not

1 calling in for something else, they are simply calling in for
2 complaints. And those have usually come from the commission
3 staff.

4 MS. WIEST: But you would keep track of complaints
5 that go to your complaint group?

6 MS. SEVOLD: To the complaint group, right. But
7 that's certainly --

8 MS. WIEST: I'm sorry.

9 MS. SEVOLD: -- that certainly wouldn't encompass
10 everything that comes into our business office that have
11 complained about other things.

12 MS. WIEST: But that also would be more than what the
13 commission would ever see.

14 MS. SEVOLD: It could be. It could be.

15 MS. WIEST: Okay. Thank you.

16 MR. GERDES: If I may just follow up on Colleen. I
17 believe that points up what I was saying, I mean, Qwest was
18 operating under a different standard than Midcontinent, and
19 it's not the fault of anybody. I think it just points out that
20 probably we need some definition.

21 VICE-CHAIRMAN JOHNSON: Mr. Coit, you brought up an
22 issue about in the RCC case that the commission not taking into
23 consideration the sustainability of the Universal Service Fund.
24 I really --

25 MR. COIT: I think you did and that's what I think if

1 you look at the current rule, the current rule doesn't appear
2 to allow for that. I think that's the problem. So I think
3 that the orders that were issued in the RCC case and the
4 Western Wireless case, I mean, you all were involved, there was
5 a lot to those cases. There was a lot of evidence, there were
6 a lot of legal arguments, and I would find it unfortunate if we
7 decide that none of that really matters any more and we are
8 going to abandon all that and this is all we are going to look
9 at, because when you look at the public interest, I personally
10 think on these things you need to be able to look at a broad
11 scope.

12 MS. WIEST: Thank you. Any other comments from
13 anyone? If not, I believe that will close the rule making
14 hearing, and parties have until June 3rd to file written
15 comments.

16 (Whereupon, the proceedings were concluded at 3:00
17 p.m.)
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C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, Freelance Court Reporter
for the State of South Dakota, residing in Pierre, South
Dakota, do hereby certify:

That I was duly authorized to and did report the
testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this
transcript represents a true and accurate transcription of my
stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on
this the 25th day of May 2006.



Carla A. Bachand, RMR, CRR
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2006.