

TC00-068

5600 Headquarters Drive
P.O. Box 251209
Plano, TX 75025-1209

TC00-068



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APR 10 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

April 5, 2000

Public Utilities Commission of the State of South Dakota
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: Request of U S WEST Communications, Inc. ("U S WEST") and Citizens Utilities Company ("Citizens") Regarding the Sale of 14 U S WEST Nebraska Exchanges and 43 U S WEST Minnesota exchanges to Citizens.

Dear Commissioners:

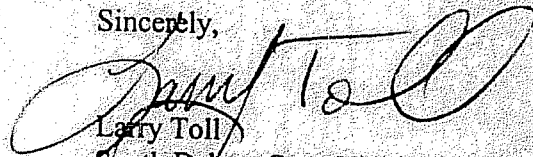
U S WEST and Citizens (collectively, the "Parties") have entered into transactions whereby Citizens will purchase 14 U S WEST exchanges in Nebraska and 43 exchanges in Minnesota. Several South Dakota customers are served out of one of the Nebraska exchanges and one of the Minnesota exchanges are included in these transactions. In particular, approximately 95 South Dakota customers are served out of the Valentine, Nebraska exchange and approximately 520 South Dakota customers are served out of the Ortonville-Big Stone, Minnesota exchange. In order to allow the Parties to timely file their petitions for Part 36 study area waivers with the Federal Communications Commission ("FCC"), the Parties request that the Public Utilities Commission of the State of South Dakota ("Commission") issue statements that it does not object to changes in any study area boundaries that will result based on the transfer of property contemplated by these transactions.

The transfer of these areas is conditioned on the receipt of necessary approval and authority from the FCC. The Parties will file with the FCC petitions for study area waivers allowing U S WEST to delete the South Dakota portions of the Valentine and Ortonville-Big Stone areas from its South Dakota study area, and allowing Citizens to reflect these areas as part of its study area. In a June 21, 1995 Order the FCC indicated that such a petition will not be accepted unless the "affected" state authority has stated that it does not object to the proposed reconfiguration of study area boundaries. The "affected" state authorities in this transaction are primarily the Nebraska Public Service Commission and the State of Minnesota Public Utilities Commission. Based on previous exchange sales, however, the Parties believe that the FCC will also consider this Commission to be an "affected" state authority, due to the fact that approximately 600 South Dakota residents are served out of the Valentine and Ortonville-Big Stone exchanges.

For this reason, the Parties respectfully request that the Commission, as expeditiously as possible, issue two separate statements that: 1) contingent on the Nebraska Public Service Commission's approval of the Nebraska sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Valentine, Nebraska exchange and; 2) contingent on the State of Minnesota Public Utilities Commission's approval of the Minnesota sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Ortonville-Big Stone, Minnesota exchange.

Thank you for your attention to this matter. Please contact the undersigned if you need further information regarding the requests set forth herein.

Sincerely,



Larry Toll
South Dakota State Vice President
U S WEST
605-339-5022



Aloa Stevens
VP Regulatory and Government Affairs
Citizens Communications
469-365-3528

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of April 6, 2000 through April 12, 2000

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this filing.
Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT00-060 In the Matter of the Complaint filed by Don and Judy Blindauer, Mitchell, South Dakota, against Sprint Communications Company L.P. Regarding Unauthorized Switching of Long Distance Provider.

The complainants allege that they received charges for long distance out of state phone service from Sprint on their December phone bill. They never authorized Sprint to be a carrier and they had a "freeze" on their phone service to prevent being slammed. The charges from Sprint were high, ranging from .57 cents per minute to \$3.09 per minute. They received another bill from Sprint in February and they continue to get bills from their chosen carrier I-Link. The complainants are requesting that the Sprint rates be re-rated to the charges they would have received with I-Link and that they be paid \$1000.00 for the inconvenience. The complainants would like to see Sprint heavily fined in order to put a stop to this type of thing. The complainants want to be sure that Sprint is off of their phone service and if they have to attend a hearing in Pierre, they feel that Sprint should have to pay their expenses.

Staff Analyst: Charlene Lund
Staff Attorney: Karen Cremer
Date Docketed: 04/06/00
Intervention Deadline: NA

ELECTRIC

EL00-010 In the Matter of the Application of Black Hills Corporation for Authority to Issue Common Stock and Preferred Stock.

On April 10, 2000, Black Hills Corporation submitted an application for authority to issue common stock and preferred stock related to the agreement and plan of merger between Black Hills Corporation and Indeck Capital, Inc.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 04/10/00
Intervention Deadline: 04/28/00

EL00-011 In the Matter of the Application of Black Hills Corporation to Authorize Gerald R. Forsythe to Acquire Control, Directly or Indirectly, of more than 10% of the Total Capital Stock of Black Hills Corporation.

On April 10, 2000, Black Hills Corporation submitted an application to authorize Gerald R. Forsythe to acquire control, directly or indirectly, of more than 10% of the total capital stock of Black Hills Corporation. This application pertains to the proposed merger between Black Hills Corporation and Indeck Capital, Inc.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 04/10/00
Intervention Deadline: 04/28/00

TELECOMMUNICATIONS

TC98-203 In the Matter of the Filing for Approval of a Second Amendment to the Interconnection Agreement between FirsTel, Inc. and U S WEST Communications, Inc.

An amendment, termed a "second" amendment to an interconnection agreement between FirstTel, Inc. and U S WEST Communications, Inc., has been filed with the Commission for approval pursuant to 47 U.S.C. Section 252(e). The interconnection agreement amends a prior agreement approved by the Commission on September 14, 1999 in docket TC98-203. The amendment purports to allow FirsTel to access certain preexisting combinations of unbundled network elements in accordance with the FCC's November 5, 1999 Order and related federal regulations. It will add terms, conditions and rates with regard to unbundled network elements. Pending at this time is a first amendment of the same interconnection agreement.

Staff Attorney: Camron Hoseck
Date Docketed: 04/12/00
Intervention Deadline: 04/28/00

TC99-086 In the Matter of the Filing for Approval of a Second Amendment to the Interconnection Agreement between DSLnet Communications, LLC and U S WEST Communications, Inc.

An amendment, termed a "second" amendment to an interconnection agreement between DSLnet Communications, LLC and U S WEST Communications, Inc., has been filed with the Commission for approval pursuant to 47 U.S.C. Section 252(e). The interconnection agreement amends a prior agreement approved by the Commission on September 23, 1999 in docket TC99-086. The amendment purports to allow DSLnet to access certain preexisting combinations of unbundled network elements in accordance with the FCC's November 5, 1999 Order and related federal regulations. It will add terms, conditions and rates with regard to unbundled network elements.

Staff Attorney: Camron Hoseck
Date Docketed: 04/12/00
Intervention Deadline: 04/28/00

- TC00-065** In the Matter of the Filing by South Dakota Independent Telephone Coalition for Approval of Reciprocal Transport and Termination Agreement between G.C.C. License L.L.C. and Brookings Municipal Telephone Company.
- TC00-066** In the Matter of the Filing by South Dakota Independent Telephone Coalition for Approval of Reciprocal Transport and Termination Agreement between G.C.C. License L.L.C. and Cheyenne River Sioux Tribe Telephone Authority.
- TC00-067** In the Matter of the Filing by South Dakota Independent Telephone Coalition for Approval of Reciprocal Transport and Termination Agreement between G.C.C. License L.L.C. and Tri County Telcom, Inc.

The above companies (TC00-065, TC00-066, TC00-067) have each filed a reciprocal transport and termination agreement which was negotiated and entered into between them and G.C.C. License L.L.C. which is an affiliate of Western Wireless Corporation. Commission approval is sought pursuant to 46 U.S.C. Section 252(e).

Staff Attorney: Camron Hoseck
Date Docketed: 04/07/00
Intervention Deadline: 04/28/00

- TC00-068** In the Matter of the Filing by U S WEST Communications, Inc. Regarding the Sale of Exchanges in Nebraska and Minnesota.

"U S WEST Communications and Citizens [Communications] have entered into transactions whereby Citizens will purchase 14 U S WEST exchanges in Nebraska and 43 [U S WEST] exchanges in Minnesota....Approximately 95 South Dakota customers are served out of the Valentine, Nebraska exchange and approximately 520 South Dakota customers are served out of the Ortonville-Big Stone, Minnesota exchange....[U S WEST and Citizens] respectfully request that the Commission, as expeditiously as possible, issue two separate statements that: 1) contingent on the Nebraska Public Service Commission's approval of the Nebraska sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Valentine, Nebraska exchange and; 2) contingent on the State of Minnesota Public Utilities Commission's approval of the Minnesota sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Ortonville-Big Stone, Minnesota exchange."

Staff Analyst: Harlan Best
Staff Attorney: Camron Hoseck
Date Docketed: 04/10/00
Intervention Deadline: 04/28/00

- TC00-069** In the Matter of the Application of Natel, LLC for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Natel, LLC submitted an application to provide resold interexchange telecommunications services in South Dakota. The applicant proposes to offer 1+ and 101XXXX direct outbound dialing, 800/888 toll-free inbound dialing, travel card service, and prepaid calling card services.

Staff Analyst: Heather Forney

Staff Attorney: Karen Cremer

Date Docketed: 04/11/00

Intervention Deadline: 04/28/00

TC00-070 In the Matter of the Application of Enhanced Communications Group, L.L.C. d/b/a ECG, L.L.C. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Enhanced Communications Group, L.L.C. d/b/a ECG, L.L.C. has filed a request for a Certificate of Authority to offer resold interexchange services, including message toll service incoming 800/888, and travel card services throughout South Dakota.

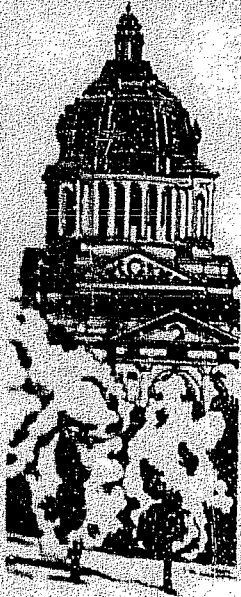
Staff Analyst: Michele Farris

Staff Attorney: Karen Cremer

Date Docketed: 04/12/00

Intervention Deadline: 04/28/00

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South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

April 27, 2000

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South Dakota State Vice President
U S WEST Communications, Inc.
125 South Dakota Avenue
Sioux Falls, SD 57194

Mr. Aloa Stevens
Vice President
Regulatory and Government Affairs
Citizens Communications
P. O. Box 251209
Plano, TX 75025-1209

Mr. Thomas J. Welk
Attorney at Law
Boyce, Murphy, McDowell & Greenfield
P. O. Box 5015
Sioux Falls, SD 57117-5015

Ms. JoAnn Klein
HC 14, Box 37A
Valentine, NE 69201

Ms. Sheryl L. Klein
HC 14, Box 37
Valentine, NE 69201

Ms. Margaret Figert
P. O. Box 229
Mission, SD 57555

Mr. Lawrence Klein
HC 14, Box 37B
Valentine, NE 69201

Re: In the Matter of the Filing by U S WEST
Communications, Inc. Regarding the Sale
of Exchanges in Nebraska and Minnesota

Dear Folks:

Enclosed you will each find a copy of Staff Motion for Hearing and Notice of Motion
in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
FAX (605)773-3225

Consumer Hotline
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TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
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Lewis Hammond
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Mary Healy
Camron Hoseck
Lisa Hull
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Deanne Kolbo
Charlene Lund
Gregory A. Rislav
Keith Senger
Rebecca Ails-Wien

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

**IN THE MATTER OF THE FILING BY U S WEST)
COMMUNICATIONS, INC. REGARDING THE)
SALE OF EXCHANGES IN NEBRASKA AND)
MINNESOTA)**

**STAFF MOTION FOR
HEARING AND NOTICE OF
MOTION
TC00-068**

Comes now the Staff of the South Dakota Public Utilities Commission (Staff) and respectfully moves the South Dakota Public Utilities Commission (Commission) to schedule a hearing on this request, more particularly, with regard to the Valentine exchange in Todd County, South Dakota. The grounds for this motion are as follows:

1. SDCL 49-31-59 requires a separate vote on the sale of each exchange in South Dakota.

2. The history of the Valentine exchange in Todd County, South Dakota, before this Commission is one of inadequate and recurring service problems. The Commission has pending before it four dockets, namely TC98-183, TC98-184, TC98-199 and TC98-212, said dockets are still open. A significant record has been made with regard to these problems. In Commission proceedings of March 14, 2000, the Commission heard of the continued problems being experienced on the Valentine exchange in South Dakota.

3. Given the history of service on this exchange and the record developed relative to it, there are ample questions raised about the service which the patrons of this exchange might expect should the sale be denied or approved. Among those questions as specified by SDCL 49-31-59 are:

- a. Is the local service adequate?
- b. Are the rates for this service reasonable?
- c. What provisions are made for the provision of 911, Enhanced 911 and other public safety services?
- d. How will a sale of exchanges affect the payment of taxes?
- e. What is Citizens Utilities Company's ability to provide modern, state-of-the-art telecommunications services that will help promote:
 1. economic development
 2. tele-medicine, and
 3. distance learning, especially for rural schools that may lie within the exchange?

4. The Commission should be fully apprised of what commitment a purchaser will make to good service for voice and data, to the patrons of this rural exchange.

5. The patrons should have the right to express their opinions and offer evidence as to the desirability of this sale and what levels of service they expect from a telecommunications company.

WHEREFORE, Staff moves the Commission to set a hearing or hearings on this proposed sale.

Dated this 27th day of April, 2000.



Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201

NOTICE OF MOTION

PLEASE TAKE NOTICE that the herein attached Motion will be heard before the South Dakota Public Utilities Commission, Room 468, State Capitol Building, Pierre, South Dakota, on Tuesday, May 16, 2000, at 1:30 P.M.



Camron Hoseck
Staff Attorney
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that copies of the above Staff Motion for Hearing and Notice of Motion were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 27th day of April, 2000.

Mr. Larry Toll
South Dakota State Vice President
U S WEST Communications, Inc.
125 South Dakota Avenue
Sioux Falls, SD 57194

Mr. Thomas J. Welk
Attorney at Law
Boyce, Murphy, McDowell & Greenfield
P. O. Box 5015
Sioux Falls, SD 57117-5015

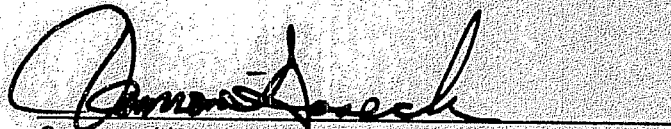
Ms. Sheryl L. Klein
HC 14, Box 37
Valentine, NE 69201

Mr. Lawrence Klein
HC 14, Box 37B
Valentine, NE 69201

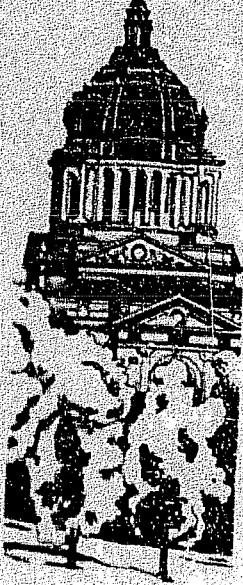
Mr. Aloa Stevens
Vice President
Regulatory and Government Affairs
Citizens Communications
P. O. Box 251209
Plano, TX 75025-1209

Ms. JoAnn Klein
HC 14, Box 37A
Valentine, NE 69201

Ms. Margaret Figert
P. O. Box 229
Mission, SD 57555



Camron Hoseck
Staff Attorney



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



May 5, 2000

Mr. Larry Toll
South Dakota State Vice President
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Ms. Sheryl L. Klein
HC 14, Box 37
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Ms. Margaret Figert
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Mission, SD 57555

Mr. Lawrence Klein
HC 14, Box 37B
Valentine, NE 69201

Re: In the Matter of the Filing by U S WEST
Communications, Inc. Regarding the Sale
of Exchanges in Nebraska and Minnesota
Docket TC00-068

Dear Folks:

Enclosed you will each find a copy of Amended Notice of Motion in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck
Staff Attorney

CH:dk
Enc.

Capitol Office
Telephone (605)773-3201
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Mr. Lawrence Klein
HC 14, Box 37B
Valentine, NE 69201



Cameron Hoseck
Staff Attorney

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John R. McDowell

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Writer's Direct Dial Number: 605-731-0208
tjwelk@boycemurphy.com

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

May 15, 2000

VIA FACSIMILE - 605-773-3809

Mr. William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

1 of 2

Re: In the Matter of the Filing by U S WEST Communications, Inc. Regarding the Sale of
Exchanges in Nebraska and Minnesota (TC 00-068)
Our File No. 2104.052

Dear Mr. Bullard:

Enclosed please find for filing U S WEST Communications, Inc.'s Response to Staff's Motion for
Hearing and Certificate of Service. The original and ten (10) copies are being mailed to you today.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Thomas J. Welk

TJW/vjj
Enclosures

cc: Camron Hoseck
Aloa Stevens
Milton & Sheryl Klein
Clifford & JoAnn Klein
Lawrence Klein
Margaret Figert
Colleen Sevold
Phillip Roselli

FAX Received MAY 15 2000

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MAY 16 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

May 15, 2000

VIA FACSIMILE

✓ Camron Hoseck 605-773-3809
SD Public Utilities Commission
500 E. Capitol Avenue
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VIA US FIRST CLASS MAIL

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VIA US FIRST CLASS MAIL

Aloa Stevens, Vice President
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HC 14, Box 37A
Valentine, NE 69201

Lawrence Klein
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Valentine, NE 69201

Margaret Figert
P.O. Box 229
Mission, SD 57555

Re: In the Matter of the Filing by US WEST Communications, Inc. Regarding the Sale of Exchanges in
Nebraska and Minnesota (TC 00-068)
Our File No. 2104.052

Dear Counsel and Complainants:

Enclosed please find a copy of U S WEST Communications, Inc.'s Response to Staff's Motion for Hearing
and Certificate of Service. This is intended as personal service via facsimile on Mr. Hoseck, and by US First
Class mail on Ms. Stevens, the Kleins and Ms. Figert.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.

Thomas J. Walk

FAX Received MAY 15 2000

TJW/vjj
Enclosure

cc: Colleen Sevoid
Phillip Roselli

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MAY 16 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

MAY 16 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TC00-068

IN THE MATTER OF THE FILING BY U S
WEST COMMUNICATIONS, INC.
REGARDING THE SALE OF
EXCHANGES IN NEBRASKA AND
MINNESOTA

U S WEST COMMUNICATIONS, INC.'S
RESPONSE TO STAFF'S MOTION FOR
HEARING

FAX Received MAY 15 2000

On April 5, 2000, U S WEST Communications ("U S WEST") and Citizens Utilities Company ("Citizens") transmitted to the South Dakota Public Utilities Commission ("Commission") a letter concerning U S WEST's proposed sale of 14 of its Nebraska exchanges and 43 of its Minnesota exchanges to Citizens. The letter, attached hereto as Exhibit A, explains that approximately 95 South Dakota residents are currently served out of one of the Nebraska exchanges being sold to Citizens—in particular, the Valentine, Nebraska exchange ("the Valentine Exchange"). Similarly, approximately 520 South Dakota customers are served out of one of the Minnesota exchanges being sold to Citizens—in particular, the Ortonville-Big Stone, Minnesota ("the Ortonville Exchange").

The purpose of the letter was to request this Commission's non-objection to the adjustment of U S WEST's and Citizens' respective study area boundaries to reflect the sale of the Nebraska and Minnesota exchanges. U S WEST and Citizens requested this non-objection letter from this Commission because the Federal Communications Commission ("the FCC") will not consider Part 36 study area waiver applications unless all affected state authorities have indicated that they do not object to the proposed reconfiguration of study area boundaries. Based on previous experience, U S WEST and Citizens believe that the FCC will deem this Commission an "affected" state authority with regard to the Nebraska and Minnesota

transactions, due to the fact that a small number of South Dakota residents are served out of the Valentine and Ortonville Exchanges.

On April 27, 2000 the Staff of the Commission ("Staff") filed a motion in this matter requesting the Commission to schedule a hearing on the requested non-objection letter with regard to what Staff describes as "the Valentine exchange in Todd County, South Dakota". Staff's Motion does not request a hearing with regard to the Ortonville Exchange cross-boundary issue.

Staff's motion for a hearing should be denied for several reasons. First, the Commission does not have jurisdiction under SDCL 49-31-59, as alleged by Staff, to require a vote by this Commission on the sale of exchanges outside of South Dakota. Second, the Staff misconstrues the legal effect of the Commission granting the requested waiver of study area boundaries. Third, to U S WEST's knowledge, the Commission historically has never required a hearing on any waiver of a study boundary area.

I. The Commission Does Not Have Jurisdiction Under SDCL 49-31-59 in Regard to the Valentine Exchange.

Staff's Motion refers to "the Valentine exchange in Todd County, South Dakota." No such exchange exists. SDCL 49-31-1(12) defines a "local exchange area" as:

a geographic area established by a local exchange carrier as filed with or approved by the commission for the administration of local telecommunications service which may consist of one or more central offices or wire centers together with associated facilities used in furnishing telecommunications service in that area.

While U S WEST does provide service to a small number of South Dakota citizens from the Valentine Exchange, there is no "Valentine, SD" exchange, because the serving wire center serving these customers is located in Nebraska. Staff's statement that "SDCL 49-31-59 requires

a separate vote on the sale of each exchange in South Dakota" is correct, but fails to recognize that the sale of the Valentine, Nebraska Exchange is **not** the sale of a South Dakota exchange. By definition, under SDCL 49-31-59, the Commission does not have jurisdiction over the Valentine sale.

The Commission receives its jurisdiction and powers from statutes that have been enacted by the Legislature. These statutes from which the powers are derived serve to mark the boundary of those powers. U S WEST Communications, Inc. v. Public Utilities Commission, 505 NW2d 115, 123 (SD 1993). Staff has invoked the jurisdiction of the Commission under SDCL 49-31-59. The Legislature was very careful to delineate the jurisdiction of the Commission in regard to exchange sales to be confined to **only** sales that occur **in** South Dakota. SDCL 49-31-59 provides, in pertinent part:

The Legislature recognizes that the sale of telephone exchanges has a profound impact upon South Dakota, especially during a time when the world is undergoing a revolution in telecommunications technology. Because the sale of any exchange in our state directly affects the continued vitality and viability of rural South Dakota during that revolution, it is the Legislature's intent that the sale of each exchange be held to a high degree of scrutiny. Any sale of a telecommunications exchange shall be approved by a vote of the Public Utilities Commission. A separate vote is required on the sale of each exchange. . . (Emphasis added)

The statute that the Staff quotes clearly states that the Legislature in authorizing approval by the Commission of exchange sales was referring to sales of exchanges "in our state". The exchange being sold here is indisputably a Nebraska exchange, not a South Dakota exchange. Thus, the Commission has no jurisdiction to approve or disapprove the sale of the Valentine Exchange.

It is settled South Dakota law that it is improper to enlarge a statute beyond its face where it is clear and unambiguous. Kreager v. Bloomstrom Oil, Co., 298 NW2d 519, 521 (SD 1980).

If the language of a statute is clear, certain and unambiguous there is no reason for construction and the Commission (and a Court's) only function is to declare the meaning of the statute as clearly expressed. Northwestern Bell Telephone Co. v. Public Utilities Commission, 467 NW 2d 468, 472 (SD 1991).

The meaning of SDCL 49-31-59 is clear and unambiguous that the Commission's only authority in regard to the approval of an exchange sale relates to exchange sales that occur in South Dakota.

II. Staff's Request for an "Approval Hearing" Misapprehends the Nature of the Non-Objection Request

Staff seems to believe that U S WEST and Citizens are requesting (or should be requesting) that this Commission approve the sale of the Valentine Exchange. That is not the case. Again, this transaction involves the sale of 14 Nebraska exchanges. The parties are not asking this Commission to approve that transaction, as this Commission does not have jurisdiction over that transaction. The Nebraska Public Service Commission has already reviewed and approved this transaction, finding it to be in the public interest. See May 10, 2000 Findings, Conclusions and Order of Nebraska Public Service Commission, attached hereto as Exhibit B.

The parties are seeking nothing more than this Commission's indication that it does not object to the adjustment of U S WEST's and Citizens' respective study area boundaries to reflect this transaction. The Commission has historically granted these requests without recourse to any formal proceeding, and to U S WEST's knowledge the Commission has never rejected such a request (see further discussion in Part IV, below). Staff's request for a hearing seeks to address service quality issues that have nothing to do with the parties' request concerning study area boundaries. In fact, were the Commission to object to the transfer of the Valentine Exchange

from U S WEST's to Citizens' study area, this decision could adversely impact the South Dakota residents served out of the Valentine Exchange. To explain, it is necessary to clarify why the parties will be requesting a Part 36 study area waiver from the FCC, and what that means.

Part 36 of the FCC's Rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984. This "freeze" was due, in part, to the FCC's concern over the level of interstate cost recovery by local exchange carriers ("LECs") from the Universal Service Fund ("USF"): "[t]he Commission took that action, in part, to ensure that LECs do not set up high cost exchanges within their existing service territories as separate study areas to maximize high cost support."¹ At the same time, the FCC recognized that its rules were not aimed at discouraging "the acquisition of high cost exchanges or the expansion of service to cover high cost areas."² Indeed, the FCC's Common Carrier Bureau ("Bureau") has implemented this policy decision by holding that changes in study areas that "result from the purchase or sale of exchanges in arms-length transactions" "do not conflict" with the concerns prompting the study area freeze.³

¹ In the Matter of U S WEST Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd. 1771, 1773 ¶ 10 (1995) ("Eagle Decision"), citing In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Rules, and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 939 (Jan. 8, 1985).

² In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 ¶ 65 (Dec. 12, 1984).

³ In the Matter of Contel of the West Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules, Oregon-Idaho Utilities, Inc., Petition for Waiver of the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules, Memorandum Opinion and Order, 5 FCC Rcd. 4570, 4571 ¶ 9 (1990) (emphasis added).

The FCC has recognized that refusing to allow adjustments of frozen carrier study areas after a sale of exchanges would produce "anomalous and burdensome results."⁴ Refusal to lift the freeze to adjust the seller's and buyer's study areas to reflect a sales transaction would mean that the seller's study area would include costs for an exchange it no longer owns and the buyer's study area would not include costs for an exchange it does own.

In this case, without this Commission's indication that it does not object to the common sense study area adjustments that should flow from this transaction, it is possible that the Valentine Exchange would remain a part of U S WEST's study area, while being served by Citizens. This result, beyond being "anomalous" and "burdensome," could actually be detrimental to the customers served out of the Valentine Exchange—including the South Dakota customers served from that Exchange.

Currently, U S WEST draws no federal high cost fund support in Nebraska. In the short term after this transaction is consummated, Citizens will also draw no federal high cost support, because carriers purchasing high cost exchanges can only receive the same level of support per line as the seller received prior to the sale.⁵ Given the current revamping of the federal high cost fund, however, it may well be that in the future Citizens would be eligible for high cost fund support for its Nebraska exchanges, including the Valentine Exchange. Citizens is certainly more likely to qualify for such funding in the future than is U S WEST, given Citizen's comparative size, and its focus on serving small and medium size markets. If the costs

⁴ In the Matter of Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, 5 FCC Rcd No. 21, ¶17 (October 10, 1990).

⁵ In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 8942-943 ¶ 308 (1997); aff'd, rev'd and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999); pets. for reh'g. and reh'g. en banc denied, Sep. 28, 1999, mandate issued Nov. 2, 1999; pets. for cert. pending, S. Ct. Nos. 99-1244, 99-1072, 99-1249.

associated with the Valentine Exchange remain in U S WEST's study area, however, it seems unlikely that Citizens could ever qualify for federal high cost fund support for those particular customers.

No one can foretell what the federal high cost fund may look like in five (5) years, but it does appear likely that customers in the Valentine Exchange could effectively be stranded if Citizens is not permitted to add that exchange, and its costs, to its study area. That would be an unfortunate result for those customers.

In short, if Staff is truly concerned about the quality of service provided to the South Dakota customers served out of the Valentine Exchange, those concerns are better addressed (and in fact, they already have been addressed) elsewhere. See Argument III below. Impeding the logical study area boundary adjustments that flow from this transaction will do nothing to address these service quality issues, and could lead to this transaction closing with the Valentine Exchange remaining in U S WEST's study area. This result would benefit no one.

III. There Are Not Unresolved Questions as to the Voice Grade Service Being Provided to the Patrons Located in South Dakota Served by the Valentine Exchange.

Although the Commission does not have jurisdiction over the sale of the Valentine Exchange, the Staff has indicated that Dockets TC98-183, TC98-184, TC98-199 and TC 98-212, (collectively referred to as the "Klein Complaints") are still open by the Commission and demonstrate inadequate and recurring service problems by U S WEST. Although Staff is correct that a significant record has been made in regard to the service in these areas, the record as it now exists demonstrates there are no voice grade service problems being experienced by the complainants. Indeed, the last communication from the complainants to Colleen Sevoid, U S WEST's manager of regulatory affairs, indicates that voice grade service are satisfactory. See

Affidavit of Colleen Sevoid attached as Exhibit C, with attached Exhibit 1. Complainants' only remaining issue to its Internet service, which U S WEST is not required to provide. As U S WEST has maintained in previous proceedings, this Commission has no authority to order U S WEST to provide any service in excess of voice grade service, and to do so would violate applicable federal law. U S WEST asks the Commission to incorporate by reference the Petition for Reconsideration filed in Docket TC98-155 (In the Matter of the Complaint Filed by Loretta Spear, Hill City, South Dakota, Against U S West Communications, Inc. Regarding Telephone Service Outages and Inadequate Service) attached as Exhibit D which sets forth U S WEST's argument regarding the violation of federal law to provide service in excess of voice grade service.

IV. Other Study Waiver Requests.

The Commission is required, pursuant to SDCL 49-31-85, to regulate all telecommunications companies in a fair, reasonable and nondiscriminatory manner. Such statute provides:

Any regulation of telecommunications service by the commission pursuant to chapters 49-13 and 49-31 shall be fair, reasonable, nondiscriminatory and applicable to all telecommunications carriers providing service in the State. The commission shall establish, by rules promulgated pursuant to chapter 1-26, quality of service standards.

The request to obtain study boundary waivers, to the knowledge of U S WEST, has not been denied U S WEST or any other company by the Commission. Indeed, attached are copies of letters provided by the Commission to U S WEST as to the exchanges sold in other states in which some customers have been served in South Dakota. See attached Exhibits 2, 3 and 4 to Exhibit C which is the Affidavit of Colleen Sevoid. U S WEST requests that the Commission take judicial notice of these letters that have been issued to U S WEST and to any other

companies. Finally, to the knowledge of U S WEST, the Commission has never held a hearing on any of the requests for study waiver boundaries.

WHEREFORE, U S WEST respectfully requests that, for all the reasons stated above, the Staff's motion for hearing be denied and the Commission issue its letter to the FCC stating it has no objections to the waiver of study area boundaries as requested by U S WEST and Citizens in their April 5, 2000 joint letter to this Commission.

DATED this 15th day of May, 2000.



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CITIZENS
communications



April 5, 2000

Public Utilities Commission of the State of South Dakota
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: Request of U S WEST Communications, Inc. ("U S WEST") and Citizens Utilities Company ("Citizens") Regarding the Sale of 14 U S WEST Nebraska Exchanges and 43 U S WEST Minnesota exchanges to Citizens.

Dear Commissioners:

U S WEST and Citizens (collectively, the "Parties") have entered into transactions whereby Citizens will purchase 14 U S WEST exchanges in Nebraska and 43 exchanges in Minnesota. Several South Dakota customers are served out of one of the Nebraska exchanges and one of the Minnesota exchanges are included in these transactions. In particular, approximately 95 South Dakota customers are served out of the Valentine, Nebraska exchange and approximately 520 South Dakota customers are served out of the Ortonville-Big Stone, Minnesota exchange. In order to allow the Parties to timely file their petitions for Part 36 study area waivers with the Federal Communications Commission ("FCC"), the Parties request that the Public Utilities Commission of the State of South Dakota ("Commission") issue statements that it does not object to changes in any study area boundaries that will result based on the transfer of property contemplated by these transactions.

The transfer of these areas is conditioned on the receipt of necessary approval and authority from the FCC. The Parties will file with the FCC petitions for study area waivers allowing U S WEST to delete the South Dakota portions of the Valentine and Ortonville-Big Stone areas from its South Dakota study area, and allowing Citizens to reflect these areas as part of its study area. In a June 21, 1995 Order the FCC indicated that such a petition will not be accepted unless the "affected" state authority has stated that it does not object to the proposed reconfiguration of study area boundaries. The "affected" state authorities in this transaction are primarily the Nebraska Public Service Commission and the State of Minnesota Public Utilities Commission. Based on previous exchange sales, however, the Parties believe that the FCC will also consider this Commission to be an "affected" state authority, due to the fact that approximately 600 South Dakota residents are served out of the Valentine and Ortonville-Big Stone exchanges.

EXHIBIT


A

For this reason, the Parties respectfully request that the Commission, as expeditiously as possible, issue two separate statements that: 1) contingent on the Nebraska Public Service Commission's approval of the Nebraska sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Valentine, Nebraska exchange and; 2) contingent on the State of Minnesota Public Utilities Commission's approval of the Minnesota sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Ortonville-Big Stone, Minnesota exchange.

Thank you for your attention to this matter. Please contact the undersigned if you need further information regarding the requests set forth herein.

Sincerely,

Larry Toll
South Dakota State Vice President
U S WEST
605-339-5022


Ajoa Stevens
VP Regulatory and Government Affairs
Citizens Communications
469-365-3528

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the amended application of US West Communications, Inc., Denver, Colorado, and Citizens Telecommunications Company of Nebraska, Stamford, Connecticut, seeking authority for approval of the sale of and for the issuance of the required Certificate of Public Convenience and Necessity to operate Ainsworth, Atlanta, Emerson, Farwell, Howells, Humphrey-Creston, Oxford, Pilger, Randolph, Silver Creek, St. Libory and Valentine exchanges to also include the Atkinson and O'Neill exchanges.

Application No. C-2124

FINDINGS AND CONCLUSIONS

Entered: May 10, 2000

APPEARANCES:

Citizens Telecommunications Company of Nebraska:
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 Woods & Aitken
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Commission Staff:
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US West Communications, Inc.:
 Phil Roselli
 US West Law Department
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Danver, CO 80202
 And
 Paul Hybel
 Freeborn & Peters
 311 S. Wacker Drive, Suite 300
 Chicago, IL 60606-6677

BY THE COMMISSION:

By joint application filed September 21, 1999, and an amended joint application filed February 28, 2000, US West Communications, Inc. (US West) and Citizens Telecommunications Company of Nebraska (Citizens) seek approval of the purchase by Citizens from US West of 14 of US West's Nebraska telephone exchanges, as identified in the caption of this application, and assets associated therewith (the Exchanges), issuance of a certificate of convenience and necessity to Citizens to provide basic local exchange service and IntraLATA interexchange service to customers located in the exchanges, issuance of a statement of non-objection by the Commission to the grant of study area waivers by the Federal Communications Commission (FCC) and grant to Citizens of eligible telecommunications carrier (ETC) status pursuant to 47 U.S.C. section 214(c).

Notice of the filing of the joint application was published in the The Daily Record on September 23, 1999, and notice of the filing of the amended joint application was similarly published on March 1, 2000, both pursuant to the Rules of the Commission, and a letter of notification was provided to interested parties on April 12, 2000.

A protest of the joint application was filed by AT&T



Communications of the Midwest, Inc. and AT&T Local Services (together AT&T) on October 25, 1999. A prehearing conference order was entered in this matter on March 28, 2000, which addressed a number of procedural matters relating to this docket and also approved a stipulation entered among AT&T, Citizens, the Nebraska Universal Service Fund and the Communications Department of the Commission. Based upon the terms of the stipulation, AT&T filed a motion to withdraw its protest on April 4, 2000.

A public hearing on the amended joint application was held on April 11, 2000 in Lincoln, Nebraska. Appearances were as shown above.

O P I N I O N A N D F I N D I N G S

1. The Commission finds that US West is a common carrier currently engaged in the provision of telecommunications services in Nebraska and is subject to the jurisdiction of this Commission. Citizens is not now engaged in the provision of telecommunications services in Nebraska. However, this Commission granted Citizens a certificate of public convenience and necessity to operate as an incumbent local exchange carrier in this state in Application No. C-2148 on April 5, 2000. Citizens seeks certification to expand the provision of such services under the jurisdiction of this Commission upon the closing of the purchase of the Exchanges from US West.
2. On June 16, 1999, US West and Citizens Utilities Company (CUC) entered into an agreement for the purchase and sale of telephone assets pertai exchanges (the Agreement). On February 4, 2000, US West and CUC entered into a letter agreement amending the terms of the agreement. True and correct copies of the agreement and the letter agreement have been provided to the Commission on a proprietary and confidential basis for review by the Commission and its staff. Pursuant to the terms of the agreement, as amended, CUC will assign its rights thereunder to Citizens prior to closing the purchase of the exchanges.
3. In accordance with the terms of the agreement, as amended, US West proposes to sell and transfer control of the exchanges to CUC. The transaction described in the agreement, as amended, has received the necessary corporate approvals of US West and CUC.
4. Mr. Robert G. Lanphier, Director-State Market Strategies, Nebraska of US West, appeared before the Commission and testified in this matter. Mr. Lanphier identified the exchanges that were identified for sale after evaluation of several factors, and the number of access lines in each of the exchanges as of December 31, 1999. He stated that US West's decision to sell the exchanges was caused by technology and regulatory changes and competition in all areas of US West's business. Sale of the exchanges is intended to allow US West to focus its resources on its remaining Nebraska customers. Mr. Lanphier described the process used by US West to select a buyer for the exchanges. CUC was selected based upon its financial, managerial and operational resources, its ability to deliver quality service to customers, its experience in integrating purchased properties into its operations and the purchase price and terms and conditions of the agreement, as amended. Mr. Lanphier offered his opinion that the sale of the exchanges is of advantage to the persons served in the exchanges and is in the public interest. He testified that Citizens has committed to maintain US West's intrastate rates for at least six months following closing, that 911 or E-911 services will be unchanged and that existing EAS routes will be maintained. US West has appointed a manager to coordinate the transition of facilities and customers to Citizens and has, and will continue to keep customers informed concerning

the transition.

5. Mr. Wayne G. Culp, Director-State Finance for US West, also appeared and testified. Mr. Culp stated that Citizens is purchasing not only the assets comprising the exchanges, but also is purchasing the exchanges as a going concern. As such, the transaction will be accounted for by US West in accordance with 47 CFR Part 32 as a sale of plant with traffic. Mr. Culp testified that in accordance with the requirements of 47 CFR Part 32 and Commission Rule 002.24(b), any gain from the sale will be treated as non-operating income by US West.

6. Mr. F. Wayne Lafferty, Vice President, Regulatory and Government Affairs of CUC, and Vice President, Regulatory and Government Affairs of Citizens also appeared before the Commission to testify in this matter. Mr. Lafferty stated that CUC, through its subsidiaries, has provided telephone service since 1935, currently operates as an incumbent local exchange carrier in 13 states, and owns 83 percent of Electric Lightwave, Inc., a full-service, facilities-competitive local exchange carrier. Mr. Lafferty confirmed the accuracy of the contents of the joint application and the amended joint application. Approximately 14,600 access lines are included in the exchanges proposed to be acquired from US West. Mr. Lafferty explained that the decision of CUC to purchase the exchanges is a part of the revised strategic vision of CUC to increase its telecommunications operations, and to concentrate its operations in small and medium-sized cities.

7. Mr. Lafferty described CUC's and Citizens' technical, managerial and financial qualifications. Citizens will have access to management resources of its affiliated companies for planning, marketing, network, service development, provisioning and delivery, and legal and regulatory assistance. CUC's, and thus, Citizens' initial funding of the acquisition of the exchanges will be provided from cash and portfolio or from short-term borrowing. The financial condition of CUC is presented in its 1999 annual report presented with Mr. Lafferty's prepared testimony as Exhibit PWL-1. Citizens' technical capabilities are derived from CUC's operation of existing telecommunications properties by its affiliated companies for the past 65 years and currently in 13 states.

8. Mr. Lafferty also described the impact of the proposed transaction on current US West customers. No changes in local service are proposed. Citizens intends to adopt US West's transition plan approved by this Commission in Application No. C-1628, subject to the provisions of the stipulation approved by the Commission in this docket on March 28, 2000. As a part of such plan, residential rates will remain unchanged and business rates will decrease by \$3.35 per month commencing September 1, 2000. Citizens will adopt US West's tariffs pertaining to local exchange and intraLATA interexchange service. Customers have received information concerning the transaction, and will receive additional information concerning the transition from US West and Citizens. Also, Mr. Lafferty testified that Citizens intends to negotiate interconnection agreements with all telecommunications service providers that currently have agreements with US West. If such agreements cannot be negotiated prior to closing of the transaction, the existing US agreement with the provider will continue until a new agreement has been negotiated and submitted to the Commission for approval.

9. Mr. Lafferty testified that for the purposes of jurisdictional separations universal service funding, a study area waiver by the FCC is required by Citizens in connection with the acquisition of the exchanges. As a condition to the grant of such a waiver, the FCC requires that this Commission issue a statement of non-objection to the waiver request. The Commission finds that a study area waiver should be granted in connection with

Citizens' acquisition of the exchanges, and this order should be regarded by the FCC as a statement of non-objection to the grant of study area waiver by the FCC.

10. Citizens seeks designation by this Commission as an ETC. US West has been so designated in the exchanges. The Commission finds that Citizens meets all requirements for designation as an ETC and shall, upon closing of the purchase of the exchanges, be so designated in the exchanges.

11. Mr. John J. Lass, Vice President and General Manager, Central Region, of Citizens, offered testimony concerning Citizens' customer service and the planned transition of service from US West to Citizens in the exchanges. Operations offices will be located in Columbus, Kearney and O'Neill to serve the exchanges. Mr. Lass outlined procedures for customers to obtain assistance with service orders, billing inquiries and other customer inquiries. US West employees currently working in Nebraska, primarily in connection with the exchanges, will be hired by Citizens at closing if the employee chooses to accept Citizens' offer of employment. Transition plans and procedures outlined by Mr. Lass. Evaluations are currently in process by Citizens to formulate plans for modernization and updating of network and switching facilities.

12. Upon questioning by the Commission, Mr. Lafferty indicated that Citizens intends to continue to collect the \$0.43 per residential line local number portability (LNP) charge and other associated LNP charges on business lines and trunks currently assessed by US West. US West was granted authority by the FCC to assess and collect these charges to recover costs to implement hardware and software improvements required to ensure permanent number portability. Mr. Lafferty told the Commission that these charges will be assessed to Citizens by US West on lines accessed through the switches which Citizens will lease from US West on an interim basis. The Commission finds that Citizens should be allowed to continue to assess and collect these LNP charges, but only on those lines associated with the switch or switches which are leased by Citizens from US West. Citizens shall notify the Commission thirty days prior to the termination of any such lease and discontinue the LNP charges for its customers once the switch has been replaced and a lease is no longer in place. Should Citizens subsequently incur costs associated with LNP and obtain the necessary approval from the FCC to recover such costs through an LNP charge to customers, Citizens may reinstate the charge based on their own costs.

13. Based upon the evidence in the record, the Commission finds that the sale by US West, and the purchase by Citizens, of the exchanges is of advantage to the persons to whom service is currently being rendered by US West, that the terms of such purchase and sale as described in the agreement are fair and reasonable, that the proposed transaction is in the public interest and should be approved by the Commission.

14. The Commission finds that US West has already provided notification to customers in the exchanges of US West's plan to sell the exchanges to Citizens. In addition, Mr. Lanphier has advised the Commission that US West will provide a further notice to these customers at least 30 days prior to the closing of the sales of the exchanges to Citizens. Based upon the evidence offered, the Commission finds that US West has satisfied, or will satisfy the requirements of Neb. Rev. Stat. § 86-806 (Reissue 1999) relating to discontinuation of service.

15. The Commission is mindful of the existence of the Telephone Consumer Slamming Prevention Act, Neb. Rev. Stat. §§ 86-1901-1911 (1999 Supp.) (the Anti-Slamming Act), and that the closing of the sale of the exchanges by US West to Citizens will, strictly

speaking, result in a change of local service and intraLATA interexchange service provider to the customers located in the exchanges. However, the Commission finds that the Anti Slamming Act is not applicable to this transaction, nor would the policy considerations that underlie the Anti-Slamming Act be served by its application to this transaction for the following reasons: (a) This transaction is subject to the comprehensive regulatory procedures set forth in Rule 002.26, Chapter 5, Title 291 as described above, and to the specific statutory requirements of Neb. Rev. Stat. § 75-604 (1999 Supp.) relating to the issuance of a certificate of public convenience and necessity to exchanges, such procedures designed to insure that this Commission finds that this transaction is of advantage to customers served and in the public interest prior to granting approval; (b) This transaction is also subject to 47 U.S.C. § 214 and Neb. Rev. Stat. § 86-806 (Reissue 1999), both of which require that notice be given to customers in the exchanges advising of the discontinuation of service by US West and the continuation of service to the customers by Citizens (the record demonstrates that US West and Citizens either have complied with or are committed to comply with the requirements of these sections); and (c) As purchaser and successor in interest to the US West facilities and personnel serving the customers in the exchanges, Citizens will not represent any change in service to the customers except with respect to the legal entity that provides such service.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Amended Joint Application No. C-2124 be and it is hereby granted, and that US West is authorized to sell and transfer, and Citizens is authorized to acquire the exchanges, and the operating assets and properties associated therewith in accordance with the terms of the agreement, as amended.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's official Certificate of Public Convenience and Necessity granted to Citizens to provide telecommunications services, including basic local exchange service and intraLATA interexchange service to customers located in the exchanges, and to the service areas comprising each of the exchanges.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's statement of non-opposition to the grant of study area waiver from the FCC relating to Citizens' acquisition of the exchanges, which waiver will be requested from the FCC.

IT IS FURTHER ORDERED that Citizens meets all requirements for designation as an ETC and shall, upon closing of the purchase of the exchanges, be so designated in the exchanges.

IT IS FURTHER ORDERED that upon completion of written notification by US West to the customers in the exchanges, provided at least 30 days prior to the closing of the sale of the exchanges to Citizens, US West shall have complied with the requirements of Neb. Rev. Stat. § 86-806 (Reissue 1999), and the Commission thereupon approves the discontinuation of service by US West to customers in the exchanges.

IT IS FURTHER ORDERED that the Anti-Slamming Act is not applicable to this transaction, nor would the policy considerations that underlie the passage of the Anti-Slamming Act be served by its application to this transaction.

IT IS FURTHER ORDERED that any gain realized by US West in this transaction be treated as non-operating income in accordance with 47 CFR Part 32 pertaining to sale of plant with traffic, and Commission Rule 002.24(B), and shall be returned to the general operating fund of US West.

IT IS FURTHER ORDERED that Citizens shall notify the Commission thirty days prior to the termination of any lease of a switch from US West.

IT IS FURTHER ORDERED that Citizens discontinue any local number portability charges to its customers upon the termination of a lease from US West of any switch or switches and/or the replacement of switches leased by US West, provided that Citizens may re-institute a local number portability charge at a future date in accordance with FCC requirements.

IT IS FURTHER ORDERED that Citizens is obligated to abide by the same laws, rules and regulations, both federal and state (including any laws, rules or regulations regarding universal service and quality of service) applicable to any other local exchange carrier.

IT IS FURTHER ORDERED that, to the extent Citizens provides access line service as referenced in the Telecommunications Relay System Act, Neb. Rev. Stat. § 86-1302 to 86-1306 (Relay Act) and defined in Neb. Admin. R. & Reg. Title 291, ch. 5, section 001.01B, Citizens shall collect from its subscribers a surcharge (Relay surcharge) pursuant to the Relay Act and the Commission's annual orders establishing the amount of the surcharge, and shall remit to the Commission the proceeds from the Relay Surcharge as provided by the Relay Act.

IT IS FURTHER ORDERED that Citizens comply with all necessary statutes and Commission Rules and Regulations as they pertain to the Nebraska Universal Service Fund.

IT IS FURTHER ORDERED that Citizens shall file, in accordance with the applicable statutes, on or before April 30 of each year, an annual report with the Commission consisting of: (a) a copy of any report filed with the FCC; (b) a copy of any annual report to stockholders; and (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission. If such reports are unavailable, Citizens shall file a balance sheet and income statement for the previous year of operation, and for the State of Nebraska on a combined interstate-intrastate basis, the investment in the telephone plant and equipment located within the State, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that upon completion of the acquisition of the exchanges by Citizens, that Citizens shall file with the Commission a tariff, boundary map and price list for each of the exchanges.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of May, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

TC00-068

IN THE MATTER OF THE FILING BY U S
WEST COMMUNICATIONS, INC.
REGARDING THE SALE OF
EXCHANGES IN NEBRASKA AND
MINNESOTA

AFFIDAVIT OF COLLEEN SEVOLD IN
SUPPORT OF U S WEST
COMMUNICATIONS, INC.'S
RESPONSE TO STAFF'S MOTION FOR
HEARING

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

I, Colleen Sevold, being first duly sworn, state:

1. I am employed by U S WEST Communications, Inc. ("U S WEST") as Manager of Regulatory Affairs for South Dakota, and my business address is 125 S. Dakota Avenue, Eighth Floor, Sioux Falls, South Dakota 57194.

2. I make this affidavit in response to the Motion filed by the Staff of the Public Utilities Commission dated April 26, 2000 in this docket and in support of U S WEST Communications, Inc.'s Response to Staff's Motion for Hearing ("U S WEST Response").

3. Attached as Exhibit 1 is an e-mail that I received on or about May 1, 2000 from Sheryl Klein as to the status of the Kleins' voice grade service that was the subject of the Klein complaints as defined in U S WEST's Response.

4. Attached as Exhibit 2 is a letter dated June 25, 1996 from the South Dakota Public Utilities Commission ("the Commission") in Docket TC96-089 regarding study area waivers as to U S WEST's exchange sales of Haywarden and Akron, Iowa.

5. Attached as Exhibit 3 is a letter dated March 12, 1996 to the Federal Communications Commission by the Commission regarding study area waivers as to three North

EXHIBIT

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Dakota telephone exchanges which provide service within the state of South Dakota which were sold by U S WEST.

6. Exhibit 4 is a letter dated June 25, 1996 to Mr. William Heaston, who was at that time U S WEST's corporate counsel, regarding the Commission's action as to certain Nebraska telephone exchanges that were being sold by U S WEST and the waiver of study areas.

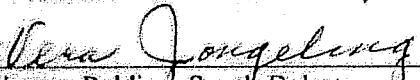
7. Exhibits 2, 3 and 4 were received by U S WEST during the regular course of business.

Dated this 12th day of May, 2000.



Colleen Sevold

Subscribed and sworn to before me
this 12th day of May, 2000.



Notary Public - South Dakota

My commission expires: 8/16/04

colleen sevold105/01/200008:06:49 AM08:06:49 AM



"Milton & Sheryl Klein" <kleinms@inetnebr.com> on 04/30/2000 04:57:11 PM

To: "Colleen Sevold" <csevold@uswest.com>
cc:

Subject: Re: Service

Colleen:

Voice grade services have been okay. No noticeable problems.

Data grade services (though I know USWest denies obligations to provide such a service) continue to be troublesome. Slow connections, drop-offs, etc.

-Sheryl L. Klein

EXHIBIT

Sub-Box

/

South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



June 25, 1996

U S WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202

Attention: Mr. William P. Heaston
Senior Attorney

Re: South Dakota Docket TC96-089

Dear Mr. Heaston:

On June 5, 1996, the South Dakota Public Utilities Commission (Commission) received an application from your company for an indication that it has no objection to the action of the State of Iowa, Department of Commerce, Utility Board, regarding the sale of certain Iowa telephone exchanges which provide service within the State of South Dakota.

The application reflects that these South Dakota customers are in the Iowa LATA and are in the Hawarden and Akron exchanges in Iowa. Further, the purchasers and exchanges being purchased are as follows:

Hickory Tech Corporation:
Hawarden
Akron

Commission staff reviewed this proposal and recommended that there be no objection to the action of the State of Iowa, Department of Commerce, Utility Board. Upon considering the impact of the sale of the above exchanges from U S WEST Communications, Inc., upon those telephone consumers residing within the boundaries of the State of South Dakota, and no one intervening or objecting to this proposed sale, the Commission does not object to these sales as described above or to study area waivers being requested by U S WEST, and the purchasing company. Further, the Commission understands that this expression

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Warehouses (Airline)
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FAX (605) 773-3225

Consumer Hotline
1-800-323-1782

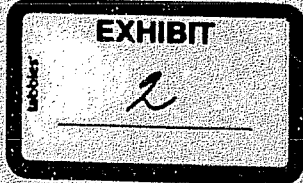
TUY Tawana
Baby South Dakota
1-800-477-1112

Internet
http://www.puc.state.sd.us

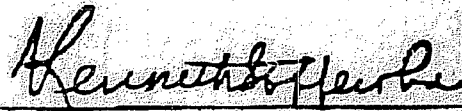
Ken Neffern
Chairman
Jim Burg
Vice-Chairman
Linda Schwaiblmair
Commissioner

William Dillard Jr.
Executive Director

- Edward R. Anderson
- Harlan Best
- Martin C. Hoffmann
- Charlie Bole
- Ken Calkins
- Kenneth E. Croner
- Myra F. Frazar
- Sharon Fygi
- Richard Gindup
- John H. Henshaw
- Tamara Henshaw
- Lisa Hunt
- Carole Hunsat
- Dave Jacobson
- Bob Kunkle
- Debra Kunkle
- Ken A. Kunkle
- Teri J. Kunkle
- Terry Mason
- Gregory A. Baker
- James M. Wagner
- Rebecca A. Wick



of policy may be presented by any party to the Iowa sales to the Federal Communications Commission or any other appropriate public body having jurisdiction over such matters.



KENNETH STOFFERAHN, Chairman



JAMES A. BURG, Commissioner

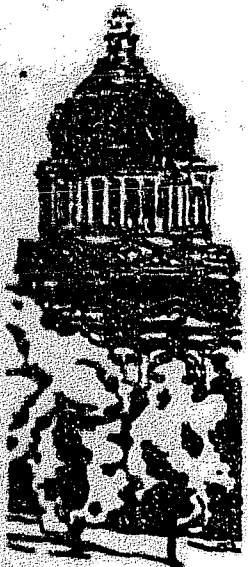
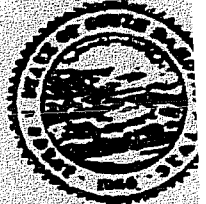
Commissioner Laska Schoenfelder concurred with the vote to not object to the sales, but dissented on the issue of waivers of study areas.



LASKA SCHOENFELDER, Commissioner

South Dakota Public Utilities Commission

State Capital Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



March 12, 1996

Mr. Kent A. Nilsson
Federal Communications Commission
2000 L Street NW, Room 812
Washington, DC 20554

RE: Expedited Joint Petition For Waiver - AAD 85-72

Dear Mr. Nilsson:

On May 17, 1995, the North Dakota Public Service Commission issued an order approving the sale by U S WEST Communications, Inc. (U S WEST) of 68 telephone exchanges to 15 telephone companies (Acquiring Companies). Included in this sale are three North Dakota telephone exchanges which provide service within the state of South Dakota. The South Dakota Public Utilities Commission (Commission) has previously stated that it does not object to the sale of the North Dakota exchanges.

In an Expedited Joint Petition for Waiver, U S WEST and the Acquiring Companies have requested the Federal Communications Commission (FCC) to grant waivers of the FCC's study area definition in order to delimit the 68 exchanges from U S WEST's study area and to add the exchanges to the Acquiring Companies' existing study areas or to create new study areas. On March 5, 1995, the Commission received a letter from U S WEST requesting that the Commission send a letter to the FCC indicating that it has no objection to the study area waivers being requested by U S WEST and the Acquiring Companies.

By order dated June 21, 1995, the FCC requires each local exchange carrier that petitions for a study area boundary waiver to file with the FCC "a state certificate or other valid document that satisfactorily demonstrates that the affected state authority does not object to a proposed reconfiguration of study area boundaries." In the Matter of Petitions for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, AAD No. 95-78, adopted June 21, 1995.

U S WEST submitted information concerning the impact of the study areas, involving the customers located in South Dakota, relating to the high cost fund. CTC Communications, Inc., with 98 lines in South Dakota, showed no dollar impact on the high cost fund. Dickey Rural Communications, Inc., with 36 lines in South Dakota, showed an increase of \$576.00. Red River Telecommunications, Inc., with three lines in South Dakota, showed an annual decrease of \$44.00.

At its regularly scheduled March 12, 1996, meeting, the Commission considered the request. The Commission found that it does not object to the waiver of the study area boundaries.

Sincerely,

Kenneth Stafferahn, Chairman

James A. Burg, Commissioner

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Warehousing Division
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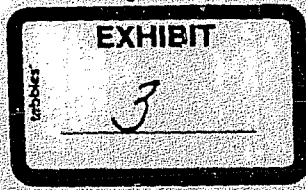
TDD Through
Relay Texas Deafline
1-800-877-1113

Internet
www.sdpublicutilities.com

Ken Stafferahn
Chairman
Jim Burg
Vice-Chairman
Linda Schenckel
Commissioner

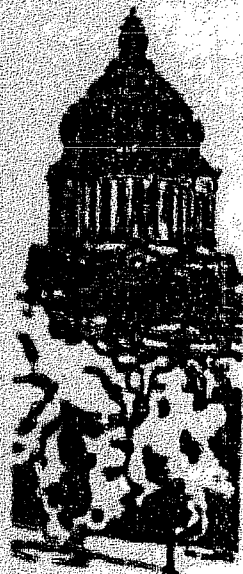
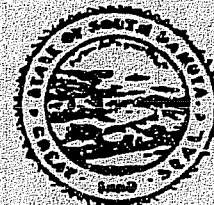
William B. Burt II,
Executive Director

Edward K. Anderson
Dalean Best
Marian C. Branstetter
Charles Belski
Sue Carlson
Karen E. Cramer
Johnnie Flathman
Shirley Feght
Bekah Galtup
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Lynn Hest
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Dave Johnson
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Terry Meehan
Gregory A. Fisher
Susan M. Higgins
Betsy Ann Hunt



South Dakota Public Utilities Commission

State Capitol Building, 501 East Capitol Avenue, Pierre, South Dakota 57501-5070



June 25, 1996

U S WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202

Attention: Mr. William P. Heaston
Senior Attorney

Re: South Dakota Docket TC96-086

Dear Mr. Heaston:

On May 23, 1996, the South Dakota Public Utilities Commission (Commission) received an application from your company for an indication that it has no objection to the action of the Nebraska Public Service Commission, regarding the sale of certain Nebraska telephone exchanges which provide service within the State of South Dakota.

The application reflects that these South Dakota customers are in the Nebraska LATA and are in the Cody, Crookston, Gordon and Bristow exchanges in Nebraska. Further, the purchasers and exchanges being purchased are as follows:

Great Plains Communications, Inc.:

- Cody
- Crookston
- Gordon

Northeast Nebraska Telephone Company:

- Bristow

Commission staff reviewed this proposal and recommended that there be no objection to the action of the Nebraska Public Service Commission. Upon considering the impact of the sale of the above exchanges from U S WEST Communications, Inc., upon those telephone consumers residing within the boundaries of the State of South Dakota, and no one intervening or objecting to

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Executive Director
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TTY Service
State of South Dakota
1-800-477-1111

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http://www.sdpucc.com

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Jim Berg
Vice Chairman
Linda Schwabacher
Commissioner

William Dillard Jr.
Executive Director

Francis A. Anderson
Luther Sims
Marty C. Brummett
Theresa Baker
Jim Cahoon

Keith G. Eganer
Marlene Frankovich
Deborah Fugle
Robert Galtner
Loretta Harwood
Teresa Hensley
Loree Hunt

Charles Henson
Steve Heston
Bob Keady
Sharon Koser
Jim A. Kuntz
Tom J. Lammert
Loree Martin

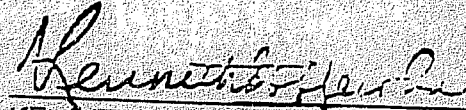
Gregory A. Miller
James M. Neugebauer
Bonnie Ann West

EXHIBIT

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tabbies

the proposed sale, the Commission does not object to these sales as described above or to study area waivers being requested by U S WEST, and the purchasing company. Further, the Commission understands that this expression of policy may be presented by any party to the Nebraska sales to the Federal Communications Commission or any other appropriate public body having jurisdiction over such matters.



KENNETH STOFFERAHN, Chairman



JAMES A. BURG, Commissioner

Commissioner Laska Schoenfelder concurred with the vote to not object to the sales, but dissented on the issue of waivers of study areas.



LASKA SCHOENFELDER, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

TC 98-155

**IN THE MATTER OF THE COMPLAINT
FILED BY LORETTA SPEAR, HILL CITY,
SOUTH DAKOTA, AGAINST U S WEST
COMMUNICATIONS, INC. REGARDING
TELEPHONE SERVICE OUTAGES AND
INADEQUATE SERVICE**

**U S WEST COMMUNICATIONS,
INC.'S PETITION FOR
RECONSIDERATION**

U S WEST Communications, Inc. ("U S WEST"), pursuant to ARSD 20:10:01.30.01, requests reconsideration and rehearing of the August 17, 1999 Order Requiring Service Upgrade and Filing of Plan ("the Order") entered by the South Dakota Public Utilities Commission ("Commission") in this docket. In support of this petition, U S WEST relies on the Affidavit of Edward Peters¹ in support of the Petition for Reconsideration, and the evidence requested to be considered in the Motion to Take Judicial Notice, which are filed contemporaneously herewith. U S WEST respectfully submits that the findings of fact in the Order are erroneous. Moreover, the Order is so vague and ambiguous that U S WEST cannot reasonably interpret or comply with it. Furthermore, the Order violates SDCL 49-31-85 and Section 254 of the Telecommunications Act of 1996, 47 U.S.C. 151 *et seq.* ("the Act"), as well as U S WEST's rights to due process under the United States and South Dakota Constitutions. Thus, U S WEST respectfully submits that the Order should be reconsidered because it is erroneous and because it fails to consider the consequences resulting from compliance with the Order which would violate both South Dakota and federal law.

¹ In this petition, his affidavit will be referred to as "Peters Aff" followed by the number of the paragraph referred to in the affidavit.

EXHIBIT

D

PROCEDURAL HISTORY

The Order correctly summarizes the basic procedural history of this docket. However, the Order fails to address the undisputed evidence that U S WEST has provided Mrs. Spear with good voice grade telephone service to satisfy the complaint in this docket. In fact, at the evidentiary hearing held on December 15, 1998, Staff counsel specifically asked Mrs. Spear the following question:

Q. And can you tell the Commission what relief you're seeking, what you want?

A. Reliable phone service.

(Transcript, p. 19.)

At the December 15th hearing, U S WEST's witness Ed Peters conceded that the signals serving Mrs. Spear were not within the design limits. (Transcript, pp. 30-31.) Thereafter, U S WEST expended a great deal of time, money and effort to provide the "reliable phone service" which Mrs. Spear desired. Indeed, Mr. Peters' March 1, 1999 letter to the Commission's executive director outlined the testing and work that U S WEST had completed to provide the service Mrs. Spear required. In addition, Mr. Peters provided undisputed testimony at the subsequent June 8, 1999 Commission proceedings before the Commission that the "drop" to Mrs. Spear's residence had been replaced and that, as a result of U S WEST's repairs and work, Mrs. Spear's voice grade service quality exceeded industry standards. Thereafter, at that same June hearing, Commission Staff requested that the matter be deferred to allow comment by a Staff witness after Mr. Peters had testified. No other witness or evidence, however, has been presented challenging U S WEST's test results or the work that U S WEST has completed.

Accordingly, the record before the Commission is undisputed that what Mrs. Spear wanted, "reliable phone service", has now been satisfied. The Order, however, fails to

acknowledge even the existence any of the these unchallenged facts. As such, the Order is clearly erroneous because it fails to recognize these undisputed facts.

I.

THE ORDER'S FINDINGS OF FACT ARE ERRONEOUS

The Order contains five numbered paragraphs, which arguably contain both findings of fact and a conclusion of law. Paragraph 1 sets forth the basis for the Commission jurisdiction.

The Order then makes the following finding of fact in paragraph 2.

The telephone services provided by U S WEST to the complainant, at all times relevant hereto, are not comparable to services being provided to certain other U S WEST subscribers residing in her immediate neighborhood. (Emphasis added.)

Mrs. Spear testified, however, that she resides on a country road five miles between Hill City and Keystone. (Transcript, p. 12) She further testified that there is a neighbor across the road that lives up a hill. The next closest neighbor is a quarter mile. (Transcript, p. 13) She does not reside in a defined subdivision. Rather, her area of residence is a rural area where there are no physical boundaries. (Peters Aff. 2). Paragraph 2, however, fails to adequately identify what is Mrs. Spear's "immediate neighborhood", especially in light of the record. As such, this paragraph is impermissibly vague and ambiguous such that U S WEST cannot reasonably interpret it.

This vagueness, and the resulting confusion, is further compounded by paragraph 3 of the Order, which states:

The telephone services provided by U S WEST to the complainant, at all times relevant hereto, were delivered through an analog carrier system whereas certain other U S WEST subscribers in her neighborhood are served through a system capable of delivering digital services. (Emphasis added.)

Mr. Peters testified at the December 15th hearing that there are eight (8) other carrier systems that serve the general area in which Mrs. Spear lives. The majority of the trouble, however, has occurred on the particular system that serves Mrs. Spear. (Transcript, p. 30) Thus, the finding of fact in paragraph 3 of the Order continues to be bewildering in its reference to the ill-defined phrase "her neighborhood," as well as the "certain" other U S WEST subscribers "in her neighborhood".

In addition, the finding of fact in paragraph 3 is unclear in the use of the phrase "a system capable of delivering digital services". As shown in Mr. Peters' Affidavit in paragraph 3, the finding confuses digital services and digital facilities. Furthermore, Mrs. Spear's "neighborhood" is served by metallic loops and analog facilities out of the same switch that serves Mrs. Spear. (Peters Aff. 8.) When the findings of fact in paragraphs 2 and 3 are considered together with the record, they are so vague and confusing that they are simply not capable of any reasonable interpretation.

The only remaining finding of fact in the Order is paragraph 4, which states:

The analog system does not allow U S WEST to provide services to the complainant at levels comparable to certain neighbors, and in the absence of such an upgrade to digital delivery, the complainant will continue to sustain service discrimination. (Emphasis added.)

Again, the record fails to identify the "certain neighbors" to which the Order refers, or the type of "service discrimination" which purportedly exists. (Peters Aff. 2 and 8) The phrases "upgrade to digital delivery" and the "neighborhood" are again vague and confusing. More importantly, the undisputed facts are that no unjust or unreasonable service discrimination exists because Mrs. Spear receives no different services than others of "her neighbors". (Peters Aff. 8)

Moreover, that portion of the Order requiring to U S WEST to do certain acts and furnish certain information (paragraph 5) is also vague and ambiguous and, thus, is not reasonably

capable of being implemented by U S WEST. Specifically, the Order requires that "U S WEST provide the complainant a telecommunications plant capable of furnishing digital services at an acceptable Internet speed." As shown in Mr. Peters' Affidavit, the Order is unclear as to whether U S WEST should provide all or certain digital services or digital facilities. (Peters Aff. 3) In addition, as also shown in Mr. Peters' Affidavit, the phrase "acceptable Internet speed" is vague and ambiguous, and thus is not reasonably capable of being understood with any reasonable certainty. This is especially so because Internet speeds are available at a range of speeds. Thus, what may be "acceptable" to one person may not be acceptable to another. (Peters Aff. 5) Furthermore, as is also shown in Mr. Peters' Affidavit (paragraph 5), U S WEST does not have control as to all of the factors that are required to provide Internet speed. The U S WEST network is only one portion of what is required for customers to have Internet access at their homes. (Id.)

Finally, and perhaps most importantly, the portion of the Order requiring U S WEST to furnish telecommunications plant capable of providing "acceptable Internet speed" fails to cite to any statute authorizing such a requirement. There is simply no statutory authority for such a mandate, and thus the Commission has exceeded its authority in entering the Order.

II.

THE ORDER ATTEMPTS TO ADOPT THE RULES THAT THE COMMISSION REJECTED IN 1998

The Order attempts to do what the Commission specifically rejected late last year in the Commission's rulemaking docket. That is, the Order attempts to impose on U S WEST a requirement to provide to its customers a certain Internet access speed. The subject of Internet access speed was an issue of considerable controversy in the Commission's rulemaking docket in 1998 which resulted in a substantial number of Commission rules effective December 27, 1998.

For example, the Commission had proposed a rule, ARSD 20:10:33:04, which would have provided as follows:

20:10:33:04. Minimum transmission levels for local exchange service. A local exchange company's subscriber loops shall meet the following minimum transmission levels from the subscriber network interface or demarcation point:

(1) Transmission loss from the central office to the subscriber network interface or demarcation point for existing subscriber loops may not exceed 10 dB at 1004 Hertz. All new, upgraded, or replaced subscriber loops may not exceed 8dB at 1004 Hertz;

(2) Loop current shall be above 20 milliamperes;

(3) Total external loop resistance, excluding customer premises equipment, may not exceed the basic range requirement of the terminating electronics. Range extension equipment shall be applied to those subscriber loops that are longer than the basic working range of the terminating electronics;

(4) Circuit noise objective on subscriber loops measured at the subscriber network interface or demarcation point shall be equal or less than 20 dBmC;

(5) The minimum data rate shall be 14,400 bps;

(6) The frequency response range shall be 300 Hertz to 3,000 Hertz with an amplitude deviation not to exceed four dB;

(7) The power influence level shall be less than 90 dBmC; and

(8) The longitudinal balance shall be greater than 60 dB.

All subscriber loops shall meet these minimum transmission levels by January 1, 2001.

Both U S WEST and the South Dakota Independent Telephone Coalition ("SDITC") provided extensive comments on this proposed rule. Proposed subsection 5 would have required the subscriber loops to have a data transmission rate of 14,400 bps. This is the connect speed of modem-to-modem data transmissions from a dial-up connection. The independent companies' testimony to the Commission indicated that a study performed for them by Martin & Associates showed that there were more than 6500 customers of SDITC companies (roughly 40%) who are

more than 18,000 feet from the central office switch and who are being served by analog carrier systems. (Transcript of November 2, 1998 ("Rulemaking Tr."), p. 42.) The SDITC showed that providing such data speed would require their investment of more than \$480 million.² U S WEST also provided evidence to the Commission if this proposed rule would have, if deployed, required U S WEST to make an investment of an approximately additional \$1.7 billion. (Rulemaking Tr., p. 97.) The Commission, therefore, rejected the proposed rule in its entirety.

The Commission in the 1998 rulemaking proceeding had also proposed a rule, ARSD 20:10:33:05, which would have stated:

20:10:33:05 Minimum requirements for new, upgraded, or replaced facilities. Outside plant, including subscriber loops, constructed, upgraded, or replaced after January 1, 1999, shall be able to provide, as built or with additional equipment, transmission and reception of data at a rate no lower than 1 Mbps. New or replacement switching systems installed after January 1, 1999, shall be capable of providing custom calling features. At a minimum, custom calling features must include call waiting, call forwarding, abbreviated dialing, caller identification, and three-way calling. New or replacement switching systems installed after January 1, 1999, shall also be capable of providing enhanced 911 service. (Emphasis added.)

Again, this rule was the subject of considerable comment by U S WEST and the SDITC, especially with respect to the required data transmission speed of 1 Mbps. The Commission thereafter rejected a specific data speed requirement. Thus, the Commission deleted the first sentence of the proposed rule, and thereafter enacted the rule (minus the first sentence) as ARSD 20:10:33:04 (since the previously proposed ARSD 20:10:33:04 discussed above had been rejected).

Moreover, on December 28, 1998, Mr. Peters testified in this docket that U S WEST has approximately 233 Anaconda systems in South Dakota that serve approximately 1600 customers. (Transcript, p. 40) In addition, as the independent companies testified at the rulemaking hearing,

² See Martin & Associates Cost Study, table 3-6, which was filed with the Commission in the rulemaking

more than 6500 of their customers are being served by similar Anaconda systems. (Transcript, 42.) Thus, the consequences of the Commission's Order here would, as a practical matter, arguably reinstate regulations the Commission had previously rejected.

Accordingly, the Order attempts to expand on the Commission's rulemaking authority by requiring U S WEST to provide to its customers certain services that are not authorized by either statutory law or by the Commission's own rules or rulemaking authority. As such, the Order exceeds the Commission's authority and should be reconsidered.

III

THE ORDER VIOLATES SDCL 49-31-85

The Commission's Order also violates recently enacted SDCL 49-31-85 ("Section 85")

Section 85 provides:

Any regulation of telecommunications service by the commission pursuant to chapters 49-13 and 49-31 shall be fair, reasonable, nondiscriminatory and applicable to all telecommunications carriers providing service in the state. The commission shall establish, by rules promulgated pursuant to chapter 1-26, quality of service standards. (Emphasis added.)

The Order, however, is not fair, reasonable, nondiscriminatory nor applicable to all telecommunications providers in South Dakota. To U S WEST's knowledge, the Commission has not required any other telecommunications carriers in South Dakota to provide the type of service or telecommunications plant it apparently wants to require U S WEST to provide (to the extent such requirements can even be interpreted with any reasonable certainty). There are numerous telecommunications carriers with relatively similar analog carrier systems providing local service in South Dakota. Nevertheless, the Commission has never ordered them to provide the services that it has ordered U S WEST to provide. Accordingly, unless the Commission is prepared to order all local exchange carriers, including the independent companies (which have

proceeding.

more (6500) similarly-situated customers) to replace all analog carrier systems throughout the state, and to provide "acceptable Internet speed" to all of their customers, the Order has the effect of being unfair, unreasonable and discriminatory to U S WEST. As such, the Order violates Section 85.

Finally, the Order violates that part of Section 85 which requires the Commission to establish service quality standards by rules. This is so because, as stated in the previous section, there are no rules that have been adopted requiring the type of service quality "upgrade" that the Commission attempts to promulgate in this docket. Indeed, the Commission rejected rules now being implemented by the Order. In addition, U S WEST submits that, as both a procedural and a substantive matter, the Commission in its Order essentially attempts to expand one individual residential customer's complaint about voice grade service quality into a universal rulemaking docket on advanced or enhanced services without proper notice to U S WEST and in conformance with SDCL 1-26. Indeed, SDCL 1-26-6.8 states:

No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter.

As no such rule has ever been adopted, the Order is unenforceable and violates Section 85.

IV

NO DISCRIMINATION EXISTS AS TO SERVICES PROVIDED TO MRS. SPEAR UNDER SDCL 49-31-11

The Order in numbered paragraphs 3 and 4 concludes, in essence, that service discrimination exists because Mrs. Spear is served by an analog system as compared to subscribers in "her neighborhood" (whatever that term means in the context of this docket) who are served by a "system capable of delivering digital services." The Order is erroneous as to what is service discrimination. South Dakota law does not require every customer in South

Dakota to be offered the same services. SDCL 49-31-11, which is the applicable South Dakota statute, in relevant part:

No person or telecommunications company may **unjustly** or **unreasonably** discriminate between persons in providing telecommunications services. . . . No telecommunications company may make or give any **unjust** or **unreasonable** preference or advantage to any person, nor unjustly or unreasonably prejudice or disadvantage any person, in the provision of any telecommunications service. . . .

The law is clear that only **unjust** or **unreasonable** discrimination is prohibited. Telecommunication companies must be able to change networks and offer services that may only be initially available to certain customers. Otherwise, a company could only offer a new service when a single network providing the same services could be offered simultaneously to all South Dakota customers. Technology and economics must be considered in determining whether disparity in service offerings are unjust or unreasonable. For example, U S WEST has a new high speed data service called DSL (Digital Subscriber Line). This service is currently limited to customers within a designated distance of central offices. Thus, all customers in South Dakota cannot receive this service because of where they live. (Peters Aff. 3) The relevant question is whether providing DSL service to only certain customers is **unjust** or **unreasonable** discrimination. Clearly, no unjust or unreasonable discrimination exists because of technical and economic limitations. Under the Order, however, U S WEST would be guilty of service discrimination.

Such analysis is no less applicable in this case. It is true that some of Mrs. Spear's neighbors are able to receive caller identification and Mrs. Spear cannot. However, there are other customers of U S WEST and the independent companies who cannot receive caller identification. Does that mean the U S WEST and the independent companies are unjustly and unreasonably discriminating against certain customers? If that service situation is to be rectified,

all facilities not capable of providing caller identification of all companies would have to be replaced, even if they provide basic telephone service. However, it is not unjust or unreasonable for U S WEST and the independent companies to not provide enhanced services, as opposed to only basic local service.

Indeed, under federal law, as discussed in the next section, the Commission is precluded from ordering the provision of services beyond basic voice service without compliance with universal support mechanisms. If the Commission cannot, under federal law, order the provisioning of enhanced services at this time, how can the actions of U S WEST in failing to offer caller identification to Mrs. Spear be unreasonable or unjust?

V.

THE ORDER VIOLATES THE FEDERAL ACT

The Order also violates Section 254(f) of the Act, as well as other subparts of Section 254. Section 254(f) states:

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

47 U.S.C., § 254(f) (emphasis added.)

The Order requires U S WEST to provide facilities for services that are in excess of the universal service standards that the Federal Communications Commission ("FCC") has defined. The FCC has defined the supported services for rural, insular and high cost areas, and lists nine

services or functionalities designated for federal universal support mechanisms. These listed services are:

1. Voice grade access to the public switched network;
2. Local usage;
3. Dual tone multi-frequency signaling or its functional equivalent;
4. Single-party service or its functional equivalent;
5. Access to emergency services;
6. Access to operator services;
7. Access to interexchange service;
8. Access to directory assistance; and
9. Toll limitation for qualifying low-income consumers.

47 C.F.R., § 54.101.

Digital services and Internet access, or other enhanced or advanced services for that matter, are not within the basic universal services stated in Section 54.101. Under Section 254(f), the Commission is allowed to adopt "regulations" to preserve and advance universal service so long as they are not inconsistent with the FCC's regulations. The Commission has not, however, adopted any universal service regulations.

Moreover, even if the Commission had adopted a regulation stating the "advanced services" were supported services, such regulation would be inconsistent with Section 254(c), which is the Federal Act's provision defining supported services. Section 254(c) requires that support should only be provided to those services that:

- (a) are essential to education, public health or public safety;
- (b) have, through the operation of market choices by customer, been subscribed to by a substantial majority of residential customers;

(c) are being deployed in public telecommunications networks by telecommunications carriers; and

(d) are consistent with the public interest, convenience and necessity.

47 U.S.C., § 254(c) (emphasis added).

The record is barren of any facts that any advanced services to be furnished to Mrs. Spear meet any of the foregoing requirements.

Additionally, Section 254(f) requires "specific, predictable, and sufficient mechanisms" to support a state's addition to supported services. The Order here violates this provision as well because there is currently no mechanism or funding in place whatsoever to support ubiquitous advanced services let alone high cost voice grade service. See also 47 U.S.C. § 254(b)(4) (requiring equitable and nondiscriminatory contributions by all telecommunications companies for the preservation and advancement of universal service); 47 U.S.C. § 254(b)(5) (requiring specific, predictable and sufficient federal and state support mechanisms to preserve and advance universal service); and 47 U.S.C. § 254(e) (providing that only Eligible Telecommunications Carriers (ETCs) (U S WEST here) are eligible for federal universal service support, and that any universal service support should be "explicit and sufficient" to achieve the purposes of this section).

Finally, Section 254(f) requires that "[e]very telecommunications carrier that provides intrastate telecommunication services shall contribute on an equitable and nondiscriminatory basis as determined by the State to the preservation and advancement of universal services in that State." There is no such system in South Dakota for any supported service, however, let alone "advanced services". Instead, the Order purports to require U S WEST to be the sole support for ubiquitous advanced services.

In essence, what the Order purports to do is to require U S WEST to provide advanced services beyond universal service without having South Dakota regulations or funding to provide nondiscriminatory contributions of a universal support mechanism by all carriers.³ In simple terms, the Order has failed to consider the consequences of universal service and Section 254 of the Act, and thus should be reconsidered.

VI.

THE ORDER VIOLATES THE UNITED STATES AND SOUTH DAKOTA CONSTITUTIONS AND VIOLATES U S WEST'S RIGHT TO DUE PROCESS

Finally, the Commission's Order violates U S WEST's constitutional rights under both the United States and South Dakota Constitutions.

For example, the Order violates the Fourteenth Amendment of the United States Constitution and Article VI, §2 of the South Dakota Constitution because it denies U S WEST's rights to due process. This is especially so because the Order is discriminatory against U S WEST, without any legitimate state interest, in that it unfairly singles out U S WEST, and only U S WEST, to provide these advanced facilities and services.

In addition, the Order denies U S WEST's rights to due process because it essentially turns what was a voice grade (basic) service complaint by one residential customer (whose complaint has been remedied) into a universal rulemaking proceeding. Moreover, this rulemaking proceeding will potentially require U S WEST to expend more than \$1 billion to provide such services to any South Dakota customer who either requests "comparable" services or who complains that he or she cannot obtain "acceptable Internet speed". The Commission's Order does so without proper notice to U S WEST, and without giving U S WEST an adequate

³ It is noteworthy that the independent companies in the rulemaking proceedings brought this very issue to the Commission's attention. (Rulemaking Tr., pp. 45.)

opportunity to properly defend itself. Under the South Dakota Administrative Procedures Act, specifically SDCL 1-26-18, "Opportunity shall be afforded to all parties to respond and present evidence on issues of fact and argument on issues of law or policy . . ." These rights were not provided to U S WEST before entry of the Order. This is especially so because the scope of the issue in this docket was limited to the very narrow issue whether Mrs. Spear had "reliable phone service", and was never about advanced or enhanced services.

Finally, to the extent that the Commission does not provide for a reasonable, realistic and competitively neutral cost recovery mechanism for U S WEST, the Order would be a de facto violation of U S WEST's constitutional rights, in addition to a violation of SDCL 49-31-98 ("Section 98"). This is so because, while Section 98 on its face provides U S WEST with the right to recover these costs over 10 years, the Order nevertheless would be a de facto violation (as opposed to a de jure violation) of U S WEST's constitutional rights because under Section 98 there is no practical or realistic way to recover the hundreds of thousands of dollars to upgrade Mrs. Spear's loop (or the millions (and potentially billions) of dollars to upgrade all South Dakota loops) to the Commission's satisfaction. U S WEST submits that the Commission's Order does not provide a realistic manner for U S WEST to recover these costs.

In short, the Order violates U S WEST's constitutional rights under the laws of the United States and of South Dakota.

CONCLUSION

The Order is erroneous in its findings of fact and conclusions of law, and further, fails to consider violations of South Dakota and federal law. Accordingly, U S WEST respectfully requests that the Commission reconsider the Order and thereafter withdraw it **in its entirety**.

DATED this 15th day of September, 1999.



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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

TC00-068

IN THE MATTER OF THE FILING BY U S
WEST COMMUNICATIONS, INC.
REGARDING THE SALE OF
EXCHANGES IN NEBRASKA AND
MINNESOTA

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 15th day of May, 2000 at approximately 11:30 p.m., true and correct copies of U S WEST Communications, Inc.'s Response to Staff's Motion for Hearing and Certificate of Service were personally served on the following via facsimile to the following number and by UPS Overnight Delivery and First Class Mail as follows:

VIA FACSIMILE

Camron Hoseck 605-773-3809
SD Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501

VIA US FIRST CLASS MAIL

Aloa Stevens, Vice President
Regulatory & Government Affairs
Citizens Communications
P.O. Box 251209
Plano, TX 75025-1209

VIA US FIRST CLASS MAIL

Milton and Sheryl Klein
HC 14, Box 37
Valentine, NE 69201

Clifford and JoAnn Klein
HC 14, Box 37A
Valentine, NE 69201

Lawrence Klein
HC 14, Box 37B
Valentine, NE 69201

Margaret Figert
P.O. Box 229
Mission, SD 57555


Thomas J. Welk

FAX Received MAY 15 2000

RECEIVED

MAY 16 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

IN THE MATTER OF THE FILING BY U S)
WEST COMMUNICATIONS, INC. REGARDING)
THE SALE OF EXCHANGES IN NEBRASKA)
AND MINNESOTA)

ORDER DENYING STAFF
MOTION

TC00-068

On April 10, 2000, the Public Utilities Commission (Commission), received a letter from Citizens Communications, Plano, Texas (Citizens) and U S WEST Communications, Inc. (U S WEST) indicating, among other things, that a sale of the Valentine, Nebraska exchange was occurring and further requesting that the Commission not object to the Federal Communications Commission's granting of a study area waiver or to any configuration of study area boundaries involving the South Dakota portion of the Valentine, Nebraska exchange.

On April 27, 2000, the Staff of the Commission filed a Motion for Hearing and Notice of Motion. Staff moved the Commission for a hearing under SDCL 49-31-59 on the grounds that the Valentine, Nebraska exchange, as it is situated in South Dakota, has presented a history of service quality problems for patrons of that exchange and that the Commission should consider this sale pursuant to these statutory standards. Staff further questioned the ability of the intended purchaser to provide acceptable service.

On May 17, 2000, at its regularly scheduled meeting, the Commission considered the Motion. Citizens was represented by Darla Pollman Rogers and Alex Duarte represented U S WEST. The Commission voted to deny Staff's Motion, Commissioner Nelson dissenting.

The Commission, having heard the arguments of the respective parties and having considered their arguments and authorities which have been submitted by them and being fully advised in the premises, hereby

ORDERS, that the Motion of Staff for a hearing in this docket is hereby denied.

Dated at Pierre, South Dakota, this 23rd day of May, 2000.

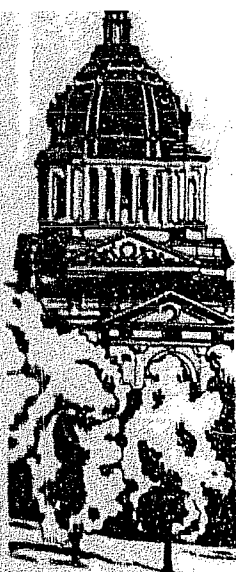
CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Melaine Kolbo</u>
Date: <u>5/25/00</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

PAM NELSON, Commissioner, dissenting

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner



South Dakota Public Utilities Commission



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

June 9, 2000

Mr. Larry Toll
South Dakota State Vice President
U S WEST Communications, Inc.
125 South Dakota Avenue
Sioux Falls, SD 57194

RE: In the Matter of the Filing by U S WEST Communications, Inc.
Regarding the Sale of Exchanges in Nebraska and Minnesota
Docket TC00-068

Dear Mr. Toll:

On April 10, 2000, the South Dakota Public Utilities Commission (Commission) received a letter from U S WEST Communications, Inc. (U S WEST) and Citizens Utilities Company (Citizens) regarding the sale of U S WEST's Valentine, Nebraska telephone exchange and Ortonville-Big Stone, Minnesota telephone exchange to Citizens. The letter explained that approximately 95 South Dakota customers are served out of the Valentine exchange and approximately 520 South Dakota customers are served out of the Ortonville-Big Stone exchange.

In the letter, U S WEST and Citizens requested that the Commission "issue two separate statements that: 1) contingent on the Nebraska Public Service Commission's approval of the Nebraska sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Valentine, Nebraska exchange and; 2) contingent on the State of Minnesota Public Utilities Commission's approval of the Minnesota sale, the Commission does not object to the FCC granting study area waivers nor to any configuration of study area boundaries involving the South Dakota portion of the Ortonville-Big Stone, Minnesota exchange."

At its May 30, 2000, meeting, the Commission considered U S WEST's and Citizen's request. The Commission voted unanimously to find that it does not object to the FCC granting study area waivers nor to any reconfiguration of study areas boundaries involving the South Dakota portions of the Valentine, Nebraska and the Ortonville-Big Stone, Minnesota exchanges.

James A. Burg *Pam Nelson* *Laska Schoenfelder*
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Chairman Commissioner Commissioner

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Jim Burg
Chairman
Pam Nelson
Vice-Chairman
Laska Schoenfelder
Commissioner

William Dullard Jr.
Executive Director

Harlan Best
Martin C. Bettmann
Sue Cichos
Karen E. Cremer
Terry Emerson
Michele M. Farris
Marlene Fischbach
Heather K. Forney
Mary Giddings
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