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THE PUBLIC UTILITIES COMMISSION

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF DISMISSING  
COMPLAINTS CT00-060, CT00-068,  
CT00-084, CT00-090, CT00-104,  
AND CT00-106.

**ORIGINAL**

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Transcript of Proceedings  
December 12, 2000

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
PAM NELSON, VICE CHAIRMAN  
LASKA SCHOENFELDER, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
Karen Cremer  
Kelly Frazier  
Leni Healy  
Charlene Lund  
Mary Giddings  
Greg Rislov  
Harlan Best  
Keith Senger  
Dave Jacobsen  
Michele Farris  
Heather Forney  
William Bullard Jr.  
Sue Cichos

Reported By Cheri McComsey Wittler, RPR

**PRECISION REPORTING**  
**L I M I T E D**

## APPEARANCES

Tom Harmon  
James Robbennolt  
Terry Barge  
Richard Coit  
Thomas Tobin  
Timothy G. Rich  
Donald Niles  
Les Sumption  
Darla Pollman Rogers  
Kyle White  
Larry Hettinger

APPEARANCES BY TELEPHONE

Colleen Sevoid, Qwest  
Tom Welk, Qwest  
Vernessie Reese, Qwest  
Jim Cushman, Qwest  
Darrell Bolen, Martin & Associates  
Don Lee, Martin & Associates  
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Marsha Huber, Valley Communications Coop  
Tim Geraghty, Global Telelink Services  
Ron Jackson, Global Telelink Services  
Fred Campbell, Ionex  
Gary Keister

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TRANSCRIPT OF PROCEEDINGS, held in the  
above-entitled matter, at the South Dakota State  
Capitol, Room No. 412, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 12th day of December 2000,  
commencing at 2:00 p.m.

1 CHAIRMAN BURG: In The Matter Of  
2 The Dismissing Of Complaints CT00-060, CT00-068,  
3 CT00-084, CT00-090, CT00-104, CT00-106. The  
4 question being if the above matters are resolved,  
5 shall the Commission dismiss the Complaints and  
6 close the Dockets.

7 Do you have any comments on any of them,  
8 Karen?

9 MS. CREMER: I've talked to all the  
10 Complainants. They've settled with the company,  
11 and they wish to dismiss and close.

12 COMMISSIONER NELSON: I would move  
13 to close the Docket and dismiss the Complaints in  
14 the Dockets that you talked about.

15 COMMISSIONER SCHOENFELDER: Second.

16 CHAIRMAN BURG: I'll concur. Just  
17 to make sure we've got it on the record, I will  
18 quickly read them again. The Complaints have been  
19 dismissed and the Docket will be closed in  
20 CT00-060, 068, 084, 090, 104, and 106, all of those  
21 are CT00.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING FOR  
APPROVAL OF AN AGREEMENT FOR LOCAL  
WIRELINE NETWORK INTERCONNECTION  
AND SERVICE RESALE BETWEEN US WEST  
COMMUNICATIONS INCORPORATED AND  
HEALTHCARE LIABILITY MANAGEMENT  
CORPORATION

TC00-061

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Transcript of Proceedings  
December 12, 2000

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
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Gary Keister

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above-entitled matter, at the South Dakota State  
Capitol, Room No. 412, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 12th day of December 2000,  
commencing at 2:00 p.m.

1 CHAIRMAN BURG: TC00-061, In The  
2 Matter Of The Filing For Approval Of An Agreement  
3 For Local Wireline Network Interconnection And  
4 Service Resale Between US West Communications  
5 Incorporated And Healthcare Liability Management  
6 Corporation. Today shall the Commission approve  
7 the proposed Interconnection Agreement.

8 Do we have anybody representing the companies  
9 here?

10 MS. CREMER: No. That would be  
11 mine. This one is an older interconnection  
12 agreement. Camron had had contact with them a  
13 number of times. They had requested a continuance  
14 a couple of times. I have written them twice, in  
15 August, September -- or the last we heard from them  
16 was in August.

17 I've written them in September and October and  
18 have not heard from them since. So I would  
19 recommend that it be denied. They never have filed  
20 for a COA there.

21 CHAIRMAN BURG: Do you recommend  
22 closing the Docket as well?

23 MS. CREMER: Yeah.

24 CHAIRMAN BURG: Any other comments?

25 COMMISSIONER SCHOENFELDER: But that

1 would be Healthcare Liability Management  
2 Corporation, not US West that hasn't responded?

3 MS. CREMER: Right.

4 CHAIRMAN BURG: I would move that we  
5 deny proposed Interconnection Agreement and close  
6 the Docket in TC00-061.

7 COMMISSIONER NELSON: Second.

8 COMMISSIONER SCHOENFELDER: Concur.

9 CHAIRMAN BURG: The request has been  
10 denied and the Docket closed.

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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING  
FOR APPROVAL OF A RESALE  
AGREEMENT BETWEEN US WEST  
COMMUNICATIONS, INC. AND NOW  
COMMUNICATIONS, INC.

TC00-078

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Transcript of Proceedings  
December 12, 2000

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
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19 above-entitled matter, at the South Dakota State  
20 Capitol, Room No. 412, 500 East Capitol Avenue, Pierre,  
21 South Dakota, on the 12th day of December 2000,  
22 commencing at 2:00 p.m.

1 CHAIRMAN BURG: TC00-078, In The  
2 Matter Of The Filing For Approval Of A Resale  
3 Agreement Between US West Communications, Inc. And  
4 Now Communications, Inc. Today shall the  
5 Commission approve the proposed resale agreement.

6 MS. CREMER: And on that one I would  
7 ask for deferral. The company has indicated they  
8 will file for a COA this week.

9 CHAIRMAN BURG: Okay. There's  
10 another one without a COA.

11 MS. CREMER: Yes.

12 CHAIRMAN BURG: Okay. Any objection  
13 to the deferral? If not, it will be deferred.

14 MR. WELK: Mr. Chairman, this is  
15 Tom Welk. I want to tell you and the other  
16 Commissioners as a matter of general course in the  
17 future I'll be handling the interconnection  
18 agreement, but basically Qwest looks, as  
19 obligation, at the resale agreement and when the  
20 staff legitimately raises questions about COA,  
21 those go to the other company and so that's why  
22 you're not hearing us respond, because the staff's  
23 inquiry, which I believe were appropriate, don't go  
24 to Qwest. They go to the other company.

25 CHAIRMAN BURG: I recognize that.

1 Thank you, Tom.

2 MR. WELK: Okay.

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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING FOR  
APPROVAL OF A RESALE AGREEMENT  
BETWEEN QWEST CORPORATION AND DPI  
TELECONNECT, LLC

TC00-132

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Transcript of Proceedings  
December 12, 2000

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
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19 above-entitled matter, at the South Dakota State  
20 Capitol, Room No. 412, 500 East Capitol Avenue, Pierre,  
21 South Dakota, on the 12th day of December 2000,  
22 commencing at 2:00 p.m.

1 CHAIRMAN BURG: TC00-132, In The  
2 Matter Of The Filing For Approval Of A Resale  
3 Agreement Between Qwest Corporation And DPI  
4 Teleconnect, LLC. Today shall the Commission  
5 approve the proposed resale agreement.

6 Is there anybody on here for DPI?

7 MS. CREMER: No, there's not. They  
8 sent a letter on November 21, 2000 to staff  
9 advising us that they would not be filing an  
10 application for a COA and, therefore, the  
11 Interconnection Agreement with Qwest is not needed.  
12 So I would recommend that -- I don't know if it  
13 would be a withdrawal.

14 Would it be a denial and close the Docket or  
15 just allow them to withdraw the Interconnection  
16 Agreement?

17 MS. AILTS WIEST: I don't think it  
18 matters. Did they ask for a withdrawal  
19 specifically?

20 MS. CREMER: No. They don't say  
21 withdrawal. They just say they will not be filing  
22 an application and, therefore, interconnection is  
23 not needed.

24 MS. AILTS WIEST: I would deny it.

25 CHAIRMAN BURG: Does US West have

1 any comment?

2 MR. WELK: No, Mr. Chairman. It was  
3 interesting listening to your conversation. These  
4 are communications from the companies earlier and  
5 our obligation is to negotiate and when they can't  
6 come through with the COA, that's their issue we  
7 believe, not ours.

8 CHAIRMAN BURG: I will move then we  
9 deny the proposed agreement in TC00-132 and close  
10 the Docket.

11 COMMISSIONER SCHOENFELDER: Second.

12 COMMISSIONER NELSON: Concur.

13 CHAIRMAN BURG: The Docket has been  
14 closed and resale agreement denied in TC00-132.  
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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING  
FOR APPROVAL OF RESALE AGREEMENT  
BETWEEN QWEST CORPORATION AND  
CHOCTAW COMMUNICATIONS, INC.  
D/B/A SMOKE SIGNAL COMMUNICATIONS.

TC00-144

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Transcript of Proceedings  
December 12, 2000

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
PAM NELSON, VICE CHAIRMAN  
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1 CHAIRMAN BURG: TC00-144, In The  
2 Matter Of The Filing For Approval Of Resale  
3 Agreement Between Qwest Corporation and Choctaw  
4 Communications, Inc. D/B/A Smoke Signal  
5 Communications. Today shall the Commission approve  
6 the proposed resale agreement.

7 MS. CREMER: Again, this is another  
8 one I've written to a couple of times. They  
9 haven't responded. They have no COA, and I would  
10 recommend denial.

11 CHAIRMAN BURG: What are you doing,  
12 cleaning out your files?

13 MS. CREMER: Yes, I am.

14 COMMISSIONER SCHOENFELDER: I would  
15 move we deny the resale agreement in TC00-144 and  
16 close the Docket.

17 COMMISSIONER NELSON: Second.

18 CHAIRMAN BURG: Concur. The  
19 proposed agreement is denied and the Docket closed  
20 on TC00-144.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING BY  
QWEST CORPORATION FOR APPROVAL  
OF ITS COST RECOVERY TRUE-UP  
FOR DIALING PARITY IMPLEMENTATION.

TC00-183

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Transcript of Proceedings  
December 12, 2000

= = = = =

BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
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Capitol, Room No. 412, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 12th day of December 2000,  
commencing at 2:00 p.m.

1 CHAIRMAN BURG: TC00-183, In The  
2 Matter Of The Filing By Qwest Corporation For  
3 Approval Of Its Cost Recovery True-up For Dialing  
4 Parity Implementation. Today shall the Commission  
5 approve the proposed cost recovery true-up. Qwest.

6 MR. WELK: Mr. Chairman, Vanessa,  
7 are you on still?

8 MS. REESE: Yes.

9 MR. WELK: Mr. Chairman, we have  
10 filed for a true-up study and Vanessa from Qwest in  
11 Denver would be available to ask any questions.  
12 Harlan from the staff has asked a series of  
13 questions about the study. It's been revised and  
14 to take into consideration some of the questions  
15 Harlan has asked I have filed, as of yesterday, the  
16 last revised study.

17 As the agenda indicates, we've asked for a  
18 rate change to be effective January 1, and I'll let  
19 Harlan or Vanessa -- if you have any questions  
20 relative to this matter.

21 CHAIRMAN BURG: Harlan, I'm going to  
22 ask you whatever comments you might have about the  
23 filings.

24 MS. REESE: And this is Vanessa. I  
25 have no questions at this time.

1 MR. BEST: This is Harlan Best of  
2 the Commission staff. What I would like to do is  
3 walk you through what has changed in the cost study  
4 that Qwest has submitted. If you have the cost  
5 study in front of you, this is the one that's --  
6 what they submitted was one dated December 6. It's  
7 in the -- inside the packet itself, the Manila  
8 envelope.

9 CHAIRMAN BURG: Are you going to be  
10 talking about -- any reason we need to clear the  
11 room?

12 MR. BEST: I'll try not to use  
13 numbers.

14 CHAIRMAN BURG: Okay.

15 MR. BEST: If you go to Page 6 of  
16 that document, it's entitled at the top Revenues  
17 Forecast. It's got a G in front of it.

18 CHAIRMAN BURG: Yeah. It's actually  
19 Page 1 at the bottom.

20 MR. BEST: If you look at the column  
21 entitled EANRC, you'll see the 001136. I had  
22 requested that Qwest update those numbers to what  
23 is shown there. When they had filed the initial  
24 study they included an incorrect rate.

25 What had happened is that the 001136 rate was

1 in effect from July 22 through December 12 and the  
2 revised study now reflects that rate that was in  
3 effect.

4 Also on that same page you will note that from  
5 the November 2000 numbers through October 2001  
6 those numbers all increased from the initial study.  
7 The reason as stated by Qwest was that they had  
8 pulled an incorrect column of numbers from an  
9 underlying study.

10 And the November 2001 numbers through the  
11 July 22, 2002 numbers were decreased, and the basis  
12 that Qwest gave was that those numbers were also  
13 pulled incorrectly from an underlying study.

14 I have just accepted those because it's a way  
15 to get to a forecasted revenue number. The next  
16 change that I would like you to look at is -- what  
17 I'm handing out is the response that Qwest  
18 submitted to me and the first data request that I  
19 sent out.

20 And the question was does the EANRC include  
21 any business plus res minutes for the 1999 July  
22 period. And I asked them to explain why. And  
23 their response was that nine days of usage from  
24 July 22 through July 31 were included in the August  
25 '99 data.

1 Well, I didn't find any of that information in  
2 the data that had been submitted by Qwest so I  
3 asked some follow-up questions to get the July  
4 report and the August report. And the Qwest  
5 response came back, which is included in the packet  
6 of information that you have in front of you as --  
7 the first question -- it's not in the cost study  
8 but in the -- attached under the cover letter.

9 COMMISSIONER SCHOENFELDER: It's the  
10 one we got today?

11 MR. BEST: The one we received  
12 today, yes. And the response there is that --  
13 reading the third sentence, "Qwest management team  
14 made the strategic decision that if any intraLATA  
15 toll dialing parity is implemented after the 15th  
16 of any month, Qwest will not begin to track that  
17 usage until the first day of the following month."

18 So on one data response they said it was  
19 included in August, and the next data response they  
20 said they made a management decision not to include  
21 it at all.

22 MS. REESE: I think there's some  
23 misunderstanding there perhaps in the way we  
24 explained that. The data that was not included or  
25 the data that is not included until the first day



1 of the following month, is that for toll? I  
2 believe it was eight or nine days for switch access  
3 for July was included in the August data.

4 CHAIRMAN BURG: Okay.

5 MR. BEST: What I was looking at on  
6 Page 6 for revenues forecast is you will note  
7 within that study they show no equivalent access  
8 use. They've billed at the 001136 rate.

9 And the other change that you should be made  
10 aware of is that the expense -- notification  
11 expense was updated to actual numbers, and that  
12 arrives at the rate number that is shown on the top  
13 sheet now. But when they filed their initial study  
14 it was in the range of 8 and a half.

15 The gist of all of this anyway is the rate  
16 they filed is now lower than what they had  
17 initially requested. And they filed initially for  
18 a rate of 000874 as noted in the agenda and now  
19 with this last cost study the rate will be 0007245.  
20 And that would be the rate that staff would  
21 recommend.

22 CHAIRMAN BURG: Is that a rate that  
23 US West has agreed to?

24 MR. BEST: That's what the revised  
25 study that was received -- that we received today

1 would indicate to be the appropriate rate.

2 CHAIRMAN BURG: And this is  
3 effective January 1?

4 MR. BEST: Of 2001, yes.

5 CHAIRMAN BURG: 2001. So you're  
6 recommending approval of the cost study recovery  
7 true-up with those figures?

8 MR. BEST: As revised in the  
9 December 6 study.

10 CHAIRMAN BURG: And effective  
11 January 1, 2000?

12 MR. BEST: 2001.

13 CHAIRMAN BURG: 2001. Any other  
14 comments from US West or Qwest?

15 MS. REESE: I have none.

16 MS. AILTS WIEST: The fact that they  
17 filed late is all taken care of in the revised  
18 numbers? According to the settlement agreement  
19 they were supposed to have filed, I believe, in  
20 July --

21 MR. BEST: That rate that they filed  
22 in January would then be in effect for a full year  
23 is what it would amount to.

24 MS. AILTS WIEST: Okay. Did they  
25 file another true-up, though, this July?

1 MR. BEST: In July of 2001 they  
2 will.

3 MS. AILTS WIEST: They'll file  
4 another true-up, right, with the settlement  
5 agreement?

6 MR. BEST: Right.

7 CHAIRMAN BURG: What you're saying  
8 is the rate they filed last January will end up  
9 running for a full year rather than six months? It  
10 was supposed to have been revised in July or not --

11 MR. BEST: Well, what they were  
12 supposed to have done is file sometime in July.  
13 They did not. I called -- sent an E-mail or called  
14 Colleen Sevold and asked where the true-up cost  
15 study was, and by the time Qwest finally got it  
16 submitted it was in -- whenever this filing came  
17 in.

18 But the 001108 rate would be in effect for a  
19 full year. I don't know if the Commission had  
20 contemplated that to be less than a full year or  
21 not.

22 COMMISSIONER SCHOENFELDER: Well,  
23 but if the new rate now is that much less, so then  
24 there's actually an over collection. Does that  
25 mean this rate will last a lesser period of time?

1 MR. BEST: What they're trying to do  
2 is recover the whole amount, all of the expense,  
3 over a three-year period. Rather than keep it at  
4 the higher rate and collect it for a shorter period  
5 of time, they're collecting a lesser rate for a  
6 longer period of time.

7 COMMISSIONER SCHOENFELDER: Okay.  
8 So you don't have a problem with -- because this is  
9 going to --

10 MR. BEST: The agreement was --

11 COMMISSIONER SCHOENFELDER: The end  
12 gain is going to be the same number?

13 MR. BEST: The same expense amount  
14 will be recovered, yes.

15 COMMISSIONER SCHOENFELDER: Right.  
16 That's what I meant.

17 MR. BEST: Yes.

18 CHAIRMAN BURG: Does anybody have  
19 anything else?

20 COMMISSIONER SCHOENFELDER: We don't  
21 worry about interest or anything on this?

22 MR. BEST: No.

23 COMMISSIONER SCHOENFELDER: Thank  
24 you.

25 CHAIRMAN BURG: Okay. I will move

1 we approve the proposed cost recovery true-up in  
2 TC00-183.

3 COMMISSIONER NELSON: Second.

4 COMMISSIONER SCHOENFELDER: Concur,  
5 if what you're recommending is the final numbers  
6 they agreed on.

7 CHAIRMAN BURG: And I probably  
8 should add effective January 1, 2001. That's  
9 agreeable with you too Pam; right?

10 COMMISSIONER NELSON: Yes.

11 CHAIRMAN BURG: TC00-183 has been  
12 approved.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

= = = = =

IN THE MATTER OF THE FILING BY  
BLACK HILLS FIBERCOM, LLC FOR  
APPROVAL OF ITS INTRASTATE  
SWITCHED ACCESS TARIFF AND FOR  
AN EXEMPTION FROM DEVELOPING  
COMPANY SPECIFIC COST-BASED  
SWITCHED ACCESS RATES.

TC00-190

= = = = =

Transcript of Proceedings  
December 12, 2000

= = = = =

BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
PAM NELSON, VICE CHAIRMAN  
LASKA SCHOENFELDER, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
Karen Cremer  
Kelly Frazier  
Leni Healy  
Charlene Lund  
Mary Giddings  
Greg Rislov  
Harlan Best  
Keith Senger  
Dave Jacobsen  
Michele Farris  
Heather Forney  
William Bullard Jr.  
Sue Cichos

Reported By Cheri McComsey Wittler, RPR

## APPEARANCES

Tom Harmon  
James Robbennolt  
Terry Barge  
Richard Coit  
Thomas Tobin  
Timothy G. Rich  
Donald Niles  
Les Sumption  
Darla Pollman Rogers  
Kyle White  
Larry Hettinger

APPEARANCES BY TELEPHONE

Colleen Sebold, Qwest  
Tom Welk, Qwest  
Vernessie Reese, Qwest  
Jim Cushman, Qwest  
Darrell Bolen, Martin & Associates  
Don Lee, Martin & Associates  
Marlene Bennett, Martin & Associates  
Mary Lohnes, Midcontinent Cable  
Steve Weigler, AT&T  
Sandy Hofstetter, AT&T  
Greg Bernard, Black Hills FiberCom  
Bob Schuetzle, Valley Communications Coop  
Marsha Huber, Valley Communications Coop  
Tim Geraghty, Global Telelink Services  
Ron Jackson, Global Telelink Services  
Fred Campbell, Ionex  
Gary Keister

[illegible]

TRANSCRIPT OF PROCEEDINGS, held in the  
above-entitled matter, at the South Dakota State  
Capitol, Room No. 412, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 12th day of December 2000,  
commencing at 2:00 p.m.

1 (This portion of transcript begins approximately  
2 one minute into the proceeding)

3 MR. WHITE: -- who helped us prepare  
4 this filing. We would oppose the intervention  
5 request of Qwest. Our situation is a bit unique  
6 here. We became aware late of our requirement to  
7 file a switched access service tariff.

8 We have been providing services to Qwest for  
9 some period of time. It is our understanding that  
10 their position is that they are unable to pay us  
11 for those services until we have a tariff in place  
12 and, therefore, we filed as soon as we learned of  
13 that tariff under the Commission's rules.

14 We believe that the Commission's practice  
15 previous to this as well as the rules of the  
16 Commission are pretty clear as to what's to be done  
17 with a new company like Black Hills Fibercom and,  
18 therefore, we do not believe that there's any real  
19 basis upon which Qwest should be intervening in  
20 this proceeding.

21 In our docket -- or our request we have asked  
22 and petitioned the Commission for an exemption from  
23 developing company specific cost-based switched  
24 access rates under the Administrative Rule  
25 20:10:27:11. Under that it is our burden of proof



1           that our company lacks the necessary financial data  
2           under which we would determine company specific  
3           cost-based intrastate switched access rates.

4           Being a new company that is one that is  
5           continuing to build on its network and its customer  
6           base, we really began our marketing activities in  
7           January of this year and have been adding customers  
8           since that period of time. We lack the historical  
9           test year upon which to determine these costs.

10          We also would have a very difficult time  
11          determining the known and measurable adjustments to  
12          that test year because we do believe we are going  
13          to continue to grow in the future.

14          As a result of that position, if the  
15          Commission accepts that we are deficient in having  
16          appropriate financial data or appropriate  
17          historical test year, then the Commission's  
18          Administrative Rules state that under 20:10:27:12  
19          that the determination of switched access rates for  
20          a company granted exemption from a company  
21          developed specific cost rates base should be the  
22          rate -- in-state switched access rates of  
23          telecommunications company which is granted  
24          petition for exemption are based on the cost of  
25          automatic telecommunications companies with 100,000

1 access lines that determine switched access costs  
2 pursuant to Chapters 20:10:28 and 20:10:29. We  
3 have done that.

4 And, in fact, this Commission on three  
5 previous occasions has approved the rates that we  
6 are requesting under very similar circumstances. A  
7 company with a similar name to ours, Fibercom,  
8 petitioned the Commission and received those rates.  
9 Northern Valley Telecom in the fall of 1999  
10 petitioned and received those rates and just as  
11 recently as October of this year the Commission  
12 approved the identical rates that we're requesting  
13 for Midcontinent Communications.

14 So it is our request that the Commission, to  
15 the extent that we request, oppose the intervention  
16 of Qwest. In the event that you should allow that  
17 intervention, it is our position that we have met  
18 the requirements under the Commission's  
19 Administrative Rules to have the tariffs placed  
20 into effect today. We asked for November 22, but  
21 we understand it would occur at the time of the  
22 Commission's order.

23 And we believe that staff is in the best role  
24 to determine if we have met our burden of proof in  
25 determining whether we have sufficient historical

1 test data, particularly financial data, to support  
2 the development of company specific cost-based  
3 rates.

4 And, therefore, we would suggest that we have  
5 an implementation of the rates as we've requested  
6 them, possibly with the requirement that at some  
7 future date when our company is more mature that we  
8 would file company specific cost-based rates for  
9 our switched access services.

10 So that's basically our case. We are being  
11 currently billed by Qwest. I have a copy of their  
12 switched access bill for the month of November  
13 here. It's interesting to note that approximately  
14 \$60,000 of the \$70,000 billing is related to our  
15 decision to provide the toll-free calling  
16 throughout the northern Black Hills, the extended  
17 area service.

18 If this were denied, it would cost our  
19 company, we believe, in the neighborhood of about  
20 \$15,000 of lost revenue for each month of delay.  
21 Although that does not seem significant, it is  
22 significant to a start-up company such as ours.

23 So that's our position and we're concerned  
24 that Qwest's intervention may be more based upon  
25 wanting to delay the effective date of our filing

1 since their position is they won't pay us until we  
2 have a tariff rather than actually getting to the  
3 facts of company-specific rates.

4 CHAIRMAN BURG: Mr. Welk, do you  
5 have a response to that request for denial of your  
6 intervention?

7 MR. WELK: Yes. I'm assuming he's  
8 raised two Docket items. I thought you would  
9 confine this just to the intervention. I'll  
10 discuss all the merits, but I thought you only  
11 wanted it to the intervention.

12 Clearly under the Administrative Rules of this  
13 Commission and under the South Dakota  
14 Administrative Procedures Act if a party has a  
15 direct and immediate pecuniary interest, we shall  
16 be granted intervention.

17 I can't imagine any situation where someone  
18 purchases a service of over \$100,000 a year, that  
19 that wouldn't satisfy that requirement. So as a  
20 matter of right we have a right to be here.

21 And I don't know if the Commission has ever  
22 denied anybody the right to intervene in a  
23 proceeding that has this substantial pecuniary  
24 interest. So that's a separate issue. But I don't  
25 see any, frankly, discretion for the Commission

1 because of the nature of our pecuniary interest.

2 So I would ask that we'll get into the Docket,  
3 and then we can talk about the other issues that he  
4 wants to talk about.

5 CHAIRMAN BURG: Does staff have any  
6 position on the request for intervention?

7 MS. FORNEY: Staff has reviewed this  
8 Docket. We agree with Black Hills Fibercom that  
9 they have followed the LECA tariff. They have  
10 followed the current rates that are established  
11 with the cost companies with under 100,000 access  
12 lines.

13 I believe staff is in a position to determine  
14 that Black Hills Fibercom has followed the rules  
15 and the law as set forth. However, I do understand  
16 that Qwest does have a pecuniary interest, and as  
17 such I don't know that you can deny intervention.

18 CHAIRMAN BURG: What was the date of  
19 the filing of --

20 MR. WHITE: I believe it was  
21 November 22.

22 MS. FORNEY: We received this on  
23 November 22.

24 CHAIRMAN BURG: Is this a reasonable  
25 amount of time to file an intervention?

1 MS. FORNEY: They filed the  
2 intervention within the date.

3 MS. AILTS WIEST: Qwest clearly has  
4 an interest and should be granted intervention.

5 CHAIRMAN BURG: Okay. Any other  
6 discussion on the request for intervention from  
7 Qwest?

8 MR. BERNARD: This is Greg Bernard.  
9 I have one suggestion, and that is given Fibercom's  
10 concerns that an intervention may delay the  
11 approval of the rates, is there any procedure or an  
12 opportunity for the Commission to shorten the  
13 discovery time, the response times, et cetera, if  
14 Qwest is inclined to follow and answer through the  
15 petition, shorten the discovery times, et cetera,  
16 so some of Fibercom's -- this may drag out -- are  
17 applied.

18 CHAIRMAN BURG: Who can respond?

19 MS. AILTS WIEST: Well, I don't know  
20 if Qwest is requesting discovery. I guess I would  
21 like to have the Commissioners vote on the  
22 intervention, and then we can get to the merits.

23 CHAIRMAN BURG: Okay. Any other  
24 comments?

25 MR. FRAZIER: Just that if the

1 Commission does choose to grant the intervention  
2 that Bill, our executive director here, could  
3 establish some type of procedural schedule to this  
4 thing so it doesn't get unnecessarily delayed.

5 COMMISSIONER SCHOENFELDER: Well,  
6 I'm going to move that we grant Qwest's  
7 intervention, but I would acknowledge that we might  
8 need to move this more quickly and just ask whether  
9 Mr. Welk could accommodate that.

10 CHAIRMAN BURG: I'll second the  
11 request for intervention. I don't see any basis  
12 for not granting it.

13 COMMISSIONER NELSON: I'd concur.

14 CHAIRMAN BURG: Okay. Intervention  
15 has been granted. I would suppose that would mean  
16 that the request in Item 13 on the regular agenda  
17 is moot for the time being.

18 MR. WELK: Mr. Chairman, now let me  
19 address the merits of Mr. White's concerns. We've  
20 talked in the company, and we have no intention to  
21 delay this matter even though our own rates at  
22 times have been delayed for a lot of reasons, which  
23 is an interesting dynamic.

24 But what we want to do is -- and we believe  
25 there ought to be an interim rate. We do not want

1 to deny Black Hills Fibercom the right to  
2 compensation. We do have some issues about perhaps  
3 what the rate ought to be, and we are willing to  
4 find an interim rate.

5 We are willing to defer to get a historical  
6 year consistent with what they want. And we've  
7 tried to call Mr. White today, and unfortunately we  
8 didn't get a chance to talk with him. And we will  
9 agree to any procedural schedules that will  
10 accommodate our witnesses.

11 But if you'd give us a little bit of time to  
12 talk to Fibercom, perhaps we could come to some  
13 resolution to agree on an interim rate and  
14 historical test period which would be consistent  
15 with what they want and we want and we wouldn't  
16 have to waste the Commission's time.

17 If we can't come to some accommodation in a  
18 very short period of time as we've done in the  
19 past, we will contact general counsel, we will  
20 contact Mr. Bernard, we will get together a  
21 schedule that will be expeditious.

22 But we have no intent to delay this. We have  
23 some concerns as to the cost they've adopted.  
24 They're not rural companies like LECA. They do not  
25 serve rural customers like the LECA companies do.



1 So we do have some concerns about their cost and  
2 the nature of their customers.

3 We believe in talking with Black Hills  
4 Fibercom we can come to an accommodation to have  
5 interim rates so they can get their money,  
6 historical test period, and we can move on with  
7 this without a lot of delay.

8 If you can give us a few days to talk to them  
9 and their counsel, I think we can get back to you  
10 to try to get this resolved.

11 CHAIRMAN BURG: Any response,  
12 Mr. White?

13 MR. WHITE: Yes. I do have a  
14 response. It was our understanding Qwest desired  
15 we have a tariff on file so we could bill them for  
16 these services. We have acquired assistance from  
17 Martin & Associates. They've prepared the Northern  
18 Valley Telecom filing previously.

19 Our filing is entirely consistent with the  
20 three previous applications which were approved by  
21 this Commission. We are a company that is in the  
22 same character of those three companies, in  
23 particular Northern Valley Telecommunications.

24 We're late in getting this filed. A lot of  
25 that is the result of our own failure to do so.

1           However, we believe we have complied. We have  
2           demonstrated to staff that this would be an  
3           appropriate result to our request that these, I  
4           guess, LECA rates be approved.

5           I have not prepared a switched access service  
6           rate previously. However, just on the logic of our  
7           situation we have a Nortel DMS 500  
8           telecommunication switch, which has now probably  
9           been in depreciation approximately a year. So it  
10          has a significant value and rate base. We have a  
11          customer base that started with just a handful of  
12          customers not very long ago, and it's continued to  
13          grow.

14          All of that would say to me that we probably  
15          have sufficient costs to support those rates.  
16          Regardless of the fact that we may not be a rural  
17          company, we are still a small and growing company  
18          with a significant investment to serve a much  
19          larger customer base.

20          And so although I would not know what the  
21          result of our study would be, logic based on  
22          experience in the electric industry would say we  
23          probably would support those costs. But we believe  
24          we've followed the Commission's rules here.

25                           COMMISSIONER SCHOENFELDER: Kyle,

1 I'd like to ask you a question. Do you want to  
2 negotiate this with US West, or do you want to have  
3 us just move this and go to hearing?

4 MR. WHITE: Well, if the Commission  
5 is unwilling to approve our request today --

6 COMMISSIONER SCHOENFELDER: I don't  
7 think we can today because of the intervention, and  
8 I do believe they have the right to intervene.

9 MR. WHITE: Well, what I guess we  
10 would request is that the Commission maybe place  
11 these rates into effect on an interim basis subject  
12 to negotiation of the parties and followed by a  
13 potential hearing.

14 CHAIRMAN BURG: Response to that,  
15 Mr. Welk?

16 MR. WELK: You've never done that  
17 for us. We will agree to an effective date for the  
18 date of the tariff. That's the date they'll run.  
19 But this would be the first time I've heard this.

20 I mean, the times we requested that, the  
21 Commission never did that for us. You approved it  
22 on a given date. But I will represent to you that  
23 the date of their tariff filing will make their  
24 effective date.

25 When we went through this whole process I

1 remember six interventions. You didn't grant any  
2 interim rates to US West until we had a hearing. I  
3 just want to know if the rules of the game are the  
4 same.

5 CHAIRMAN BURG: Comment from  
6 Black Hills Fibercom? Go ahead.

7 MR. HETTINGER: This is  
8 Larry Hettinger. The Commission has set interim  
9 access before. LECA had 7 cents originating, 11.01  
10 terminating for two and a half years while LECA and  
11 US West had these same hearings trying to decide  
12 what the final rate is.

13 The rules -- at that time we did not have  
14 rules 20:10:27, 28, and 29. I worked with  
15 Doug Martin and Bill Heaston, US West's former  
16 senior attorney, on developing those rules  
17 20:10:27:11-13. The reason why there's a  
18 20:10:27:11, if you look through there, it says for  
19 an exemption from a company that doesn't have the  
20 financial data.

21 We anticipated that there would be new  
22 companies started when we drafted the rules. They  
23 bore the -- it says this there, that the company  
24 must bear the burden to prove that you do not have  
25 the financial data to do that. That's what it

1 does.

2 20:10:27:14 says you must have 12 months of  
3 historical data. Black Hills Fibercom doesn't have  
4 it. So they've met 20:10:27:11. Or I guess that's  
5 for you to decide, did they meet that of  
6 20:10:27:11. Yes.

7 And then 20:10:27:12 is put in there  
8 specifically for those cases where you need the  
9 exemption. And it spells it out. You base it on  
10 the cost studies for the companies with under  
11 100,000 access lines. That's what was done here.  
12 That's what was done on October 17 with Midco in  
13 which case US West did not intervene.

14 If I can explain this access situation, what  
15 is happening here today, if Tom Welk makes a long  
16 distance call to Randy Houdek in Sully Buttes, then  
17 Sully Buttes bills for terminating -- when that  
18 call terminates it uses Sully Buttes' facilities,  
19 and Sully Buttes bills LECA rate.

20 Now because of the filing you did on  
21 October 17 and you approved Midco's rates, if  
22 Tom Welk calls into Rapid City to a Midco  
23 subscriber, he's going to pay Midco's approved  
24 rates. Black Hills Fibercom has the same rates as  
25 Midco. That's what we filed. They're based on the

1 same thing.

2 Now when Tom Welk calls into Black Hills  
3 Fibercom in Rapid City US West has paid 0 so far,  
4 and they will pay 0 until this is approved. Now I  
5 think there might be some reason why they want to  
6 stretch this out.

7 Although US West is billing \$70,000 a month to  
8 Black Hills Fibercom. That's the situation. And  
9 that's why we're asking for approval of these  
10 rates, the same that was done in Fibercom, the same  
11 that was done in Northern Valley, and the same that  
12 was done in Midco. We just are asking that the  
13 Commission not discriminate against Black Hills  
14 Fibercom.

15 COMMISSIONER SCHOENFELDER: The  
16 Northern Valley, they're mostly over building in  
17 Aberdeen. I mean, they're not rural; is that  
18 correct?

19 MR. HETTINGER: That's correct.

20 CHAIRMAN BURG: Mr. White, if the  
21 effective date is the date of your filing -- which  
22 you've already done; is that correct?

23 MR. WHITE: We have requested that.

24 CHAIRMAN BURG: Mr. Welk indicated  
25 the effective date would be the day of your filing

1 so you would be able to go back and collect from  
2 that date. Would that be accurate?

3 MR. WHITE: Well, that is what he is  
4 suggesting may be part of our stipulation. At this  
5 point we have not had an opportunity to have any  
6 discussion. I will tell you that the bills that we  
7 sent them prior to our knowledge that they would  
8 not pay until we had a tariff were basically at the  
9 US West rates. Those have been rejected.

10 CHAIRMAN BURG: If it was effective,  
11 would there be a practical effect of you having a  
12 loss?

13 MR. WHITE: Well, at this point we  
14 probably have 60 to \$70,000 of back billings that  
15 would not be covered by a tariff. We think going  
16 forward we've probably got about 15,000 each month  
17 and hopefully growing as our customer base grows.

18 One of the things about a stipulation that  
19 would concern me is I don't know what parameters  
20 they may want to bring into that. We have a  
21 billing dispute right now in the neighborhood of  
22 60 to \$70,000, plus effective date, plus no  
23 knowledge of costs, nor no way to substantiate what  
24 my true costs are.

25 Therefore, I'm attempting to follow Commission

1 rules. They've rejected our attempt to copy their  
2 rates so now we've gone to the Commission rules.

3 MS. AILTS WIEST: Well, the question  
4 on interim rates, I don't know that the Commission  
5 needs to put into effect any type of interim rate.  
6 I think Black Hills Fibercom should look at the  
7 tariff provisions in 49:31:12.2 and 12.4 and the  
8 question is -- I would suggest that your attorney  
9 look at those.

10 And the question is for noncompetitive  
11 services generally if it's an increase in a  
12 noncompetitive service, those can go into effect  
13 30 days after it's been filed. And my point is --  
14 I'm not making any determination in this case, but  
15 I would suggest that you look through those  
16 statutes.

17 And you can talk to Mr. Welk in the next few  
18 days about interim rates. And if no agreement has  
19 been met, just contact the Commission, and we would  
20 set up a procedural schedule.

21 MR. HETTINGER: That refers to an  
22 increase in rates, you're correct.

23 MS. AILTS WIEST: Yes.

24 MR. HETTINGER: I think everyone --  
25 it's US West's position they don't have any rates



1 on file so there is no increase in rates so that  
2 does not apply. It did not apply to Northern  
3 Valley, Midco, it did not apply to Fibercom.

4 CHAIRMAN BURG: But if you had 0,  
5 wouldn't it be an increase?

6 MR. HETTINGER: They never had rates  
7 before.

8 MR. WHITE: Maybe the way to resolve  
9 this would be is if we could request to the  
10 Commission that a determination be made today, that  
11 whatever rates are resolved either through  
12 stipulation or through a hearing and a Commission  
13 order would have an effective date of November 22.

14 MR. WELK: Mr. White, I already told  
15 you that 10 minutes ago.

16 MR. WHITE: Well, that assumes if I  
17 get a stipulation.

18 MR. WELK: That means any rights  
19 that the Commission approves effective I told you  
20 we'd agree to November 22. If we can't come to an  
21 understanding, whatever the Commission's rule is,  
22 that's what it is. We are not trying to do  
23 anything but make it effective on that date.

24 COMMISSIONER SCHOENFELDER: Excuse  
25 me, Mr. Welk. I have a question of general

1           counsel. I'm not sure -- and I could be totally  
2           wrong about this, but I'm not sure that Black Hills  
3           and Qwest can reach a stipulation on access rates.  
4           I think this Commission sets access rates so I  
5           don't know how they can reach a stipulation. Tell  
6           me if that's doable.

7                       MS. AILTS WIEST: The whole question  
8           would be what the stipulation was. My point is if  
9           it didn't correspond with our rules, of course, we  
10          couldn't accept the stipulation.

11                      COMMISSIONER NELSON: Can the  
12          Commission implement the interim rate as requested?

13                      CHAIRMAN BURG: Well, here's the  
14          other thing that I would say is don't we have the  
15          right to set the effective date? It sounds like  
16          there's an agreement on November 22 now, but even  
17          if there isn't, couldn't we determine November 22  
18          was the effective date?

19                      MS. AILTS WIEST: That depends on  
20          when your order comes out, but there's a question  
21          about determining it.

22                      CHAIRMAN BURG: Retroactive.

23                      MS. AILTS WIEST: Yeah.

24                      CHAIRMAN BURG: So if that's the  
25          case, we couldn't grant it today either.

1 MS. AILTS WIEST: Doesn't Mr. Welk  
2 agree whatever rate we come up with will be  
3 effective on November 22?

4 COMMISSIONER SCHOENFELDER: But I'm  
5 still questioning about who decides this rate. And  
6 I think -- and, Lord, I don't have the rules in  
7 front of me but I believe that we set this rate  
8 based on a cost study or we set this rate based on  
9 the way we set the LECA companies and Midco and  
10 everybody else in the past and I don't think they  
11 can stipulate to anything else.

12 COMMISSIONER NELSON: I think  
13 Commissioner Schoenfelder is absolutely right. My  
14 next question is why can't we do as Mr. White asks  
15 and set the interim rates and treat them like they  
16 pointed out that we did Midco and Northern Valley  
17 and other companies?

18 MR. HETTINGER: Excuse me, but  
19 20:10:27:12 tells you how to set the rate. That's  
20 what we did.

21 COMMISSIONER SCHOENFELDER: But we  
22 either have to accept that or a rate based on a  
23 cost study. That's my opinion. My opinion may be  
24 wrong. I don't think you can reach a stipulation.  
25 I don't think -- I think this Commission is going

1 to set that rate.

2 MR. HETTINGER: There are other IXEs  
3 too. US West -- when Black Hills Fibercom doesn't  
4 have a tariff it's not just US West. I mean, they  
5 have other intrastate rates.

6 And you're exactly right. Black Hills  
7 Fibercom will do like the other LECs you have done.  
8 As soon as they have this data, they're supposed to  
9 come back within three years and do a cost study  
10 and Black Hills Fibercom will do that.

11 In the interim you have Rule 20:10:27:12 that  
12 says how you're supposed to do it, and that's what  
13 was done.

14 COMMISSIONER SCHOENFELDER: So I  
15 guess what I would like to do -- and we've granted  
16 intervention. I don't know how much time US West  
17 and Black Hills need to have before we go to  
18 hearing, but I think I'd like to set this for  
19 hearing quickly, as quickly as we can legally.

20 COMMISSIONER NELSON: Well, I guess  
21 I still want to know from our legal counsel whether  
22 or not we can set the interim rates. I think it's  
23 ridiculous that they shouldn't get paid anything.

24 CHAIRMAN BURG: I have a further  
25 question. If we set the rates and they establish

1 rates based on them, what's the practical rate of  
2 the intervention, objecting to the way they  
3 established them?

4 MS. AILTS WIEST: Right. I guess my  
5 problem is the issue of interim rates has just been  
6 raised here. I mean, it wasn't in their filing.  
7 The question was shall the Commission approve the  
8 proposed filing.

9 We have accepted interim rates in sale of  
10 exchanges, but that's after that has been noticed  
11 up to us that this was a possibility that we were  
12 going to accept interim rates.

13 COMMISSIONER NELSON: Could we do an  
14 ad hoc meeting to set the interim rate?

15 MR. HETTINGER: 20:10:27:12 doesn't  
16 say they're interim. 20:10:27:12 says how you  
17 calculate the rates. They don't have a they're  
18 interim. It says this is how you calculate the  
19 rates.

20 COMMISSIONER SCHOENFELDER: That's  
21 what it says is how you calculate the rates until  
22 you have a cost study available. Isn't that  
23 correct?

24 CHAIRMAN BURG: I'm trying to figure  
25 the effect of the intervention, if it's spelled out

1           what we do.

2                   COMMISSIONER SCHOENFELDER:  If we've  
3           already spelled out what we do, why I suggested  
4           setting it for hearing is because I thought we had  
5           to do that because we granted US West intervention.

6                   I truly believe they have the right to  
7           intervention and truly the right to be heard.  And  
8           we probably haven't heard them on the price here.  
9           But I don't know -- I mean, it would be easy for me  
10          to go back and just grant the Black Hills rate now,  
11          but I'm not sure that's giving due process.

12                   CHAIRMAN BURG:  Anything else?

13                   MS. AILTS WIEST:  Well, the point is  
14          I believe Qwest is raising the question as to  
15          whether Black Hills properly should be given the  
16          rates under those exemptions to the cost-based  
17          study rates, and I believe that is their issue.

18                   I would defer the whole question on approval  
19          of the proposed filing at this time.  If they want  
20          some sort of interim rates, if that's what they're  
21          requesting, I think they need to request interim  
22          rates or, like I said, look at 49:31:12.2 and 12.4  
23          about putting tariffs into effect.

24                   MR. WHITE:  What is the likelihood  
25          that we would have an effective date of November 22

1 or today, December 12? We've been in proceedings  
2 before. They can drag out for long periods of  
3 time. And this is an expensive issue for us and  
4 one that will take attention that could maybe best  
5 be placed other places.

6 CHAIRMAN BURG: I guess the question  
7 I'm still having a problem with, if it specifies  
8 how we establish those rates, what is the effect of  
9 a hearing?

10 MS. AILTS WUEST: Then Qwest is  
11 going to have to spell out why Black Hills Fibercom  
12 should not be -- come under those particular rules,  
13 which are in exception to the regular way we do the  
14 rules.

15 CHAIRMAN BURG: So if we come under  
16 those rules, there is no challenging what we  
17 decide? I mean, we can decide that without a  
18 hearing?

19 COMMISSIONER SCHOENFELDER: We're  
20 going to set that rate.

21 CHAIRMAN BURG: Yeah. If we set the  
22 rate under those two exception sections, does that  
23 allow an objection to that, or is that absolute?

24 COMMISSIONER NELSON: It seems to me  
25 US West is asking us to treat Black Hills Fibercom

1 differently than we have treated anybody else, and  
2 it's financially lucrative for them to do so.

3 MS. AILTS WIEST: I don't know  
4 exactly what the basis is going to be for their  
5 objection, but the point is they were just granted  
6 intervention today.

7 COMMISSIONER NELSON: Well, could  
8 they ask, though -- are you saying it's not in an  
9 order for them to ask for an interim rate then? Or  
10 can they implement the rate and they can intervene  
11 on whether they're appropriate or not?

12 MR. HETTINGER: Exactly. Any party  
13 can intervene on anybody's access rates at any  
14 time. Anybody can intervene LECA rates or anyone  
15 can object to anyone's access rates at any time.

16 All we're asking is the Commission puts the  
17 rates into effect exactly as the rules state.  
18 US West can continue in their intervention. That's  
19 no problem with that. If they want to proceed  
20 forward and protest or whatever, that's fine. But  
21 that states what the rules state that you're  
22 supposed to do.

23 If you need something, a certified letter from  
24 Black Hills Fibercom, that says they don't have  
25 12 months of financial data, we can get you that.



1 That's your basis for saying that they meet the  
2 exemption. Once they meet the exemption,  
3 20:10:27:12 tells you how you calculate the rates.  
4 And it doesn't say they're interim. That's what it  
5 says.

6 Why does US West want to treat  
7 Black Hills Fibercom different than Midco? They  
8 knew Midco was a competitor in Sioux Falls and  
9 Rapid City on October 17. They did not file.

10 MR. WELK: Mr. Hettinger, whether we  
11 chose to file in other proceedings is US West's  
12 business, and we don't purchase as much as we do --  
13 that's not really relevant.

14 What's legally relevant is how the Commission  
15 sets the rates. What we chose to do in other  
16 proceedings has nothing to do whatsoever with your  
17 client's rates. I've never been involved in a  
18 proceeding where you're granted intervention and  
19 we're going to the merits on a day.

20 The Commission has allowed us intervention.  
21 I've asked 15 minutes ago to give us a few minutes  
22 to talk about this the next few days when people  
23 are available. I don't think the world's going to  
24 go away in the next few days. We tried to talk to  
25 you today. Unfortunately, people's schedules are

1 not.

2 As I suggested, give us a couple of days to  
3 talk about it. We can get it back to the  
4 Commission, and they can make the decision on what  
5 they think is appropriate. It's the Commission  
6 that's going to make the decision. But it's not  
7 proper to raise the merits issue and (Inaudible)  
8 once the party got into today.

9 CHAIRMAN BURG: I guess  
10 Mr. Hettinger, I'm still not clear on you're saying  
11 under those two exception sections since you filed  
12 and you show you do not have the data that it can  
13 absolutely be implemented and then any objections  
14 can continue to run forward?

15 MR. HETTINGER: That's what it  
16 says. Do you agree with me, Karen, that's why the  
17 rules were put in there?

18 That's why that section was put in there. We  
19 knew there was going to be cases where there would  
20 be a company that didn't have a cost study. LECA  
21 has companies that have never filed a cost study.  
22 They were granted an exception. Those rates were  
23 calculated in accordance with 20:10:27.1. Harlan  
24 is familiar with that.

25 MS. AILTS WIEST: It has nothing to

1 do with the Commission approving the rate.

2 MR. HETTINGER: No. It's automatic  
3 once you determine there's an exemption.

4 CHAIRMAN BURG: See that's what I'm  
5 getting at. If they prove it's an exemption -- and  
6 what I hear Mr. Hettinger saying is those rates go  
7 into effect until the proper financial records are  
8 available.

9 MS. CREMER: But can you have any  
10 proof if -- you're not in a hearing situation. My  
11 problem is, you know, we're just doing this all  
12 based --

13 COMMISSIONER NELSON: We already  
14 know for a fact when they got their Certificate of  
15 Authority. We know --

16 MS. CREMER: But there's nothing on  
17 the record yet. You're not having --

18 CHAIRMAN BURG: I agree with that.  
19 I think they need to somehow submit under those  
20 sections the fact that they don't have the  
21 financial statements so they come into compliance.  
22 They can do that within a matter of days, I  
23 presume, and then the thing goes forward. Is  
24 that -- you don't accept that?

25 MS. CREMER: But then you've got all

1 of that cross-examination problem. I'm just  
2 thinking they say they meet the exemptions. Do we  
3 know? That I'm not sure we know. I haven't read  
4 it --

5 MR. HETTINGER: In Black Hills  
6 Fibercom in their letter to the Commission it  
7 states Black Hills is still constructing  
8 construction of its network to provide services.  
9 Black Hills does not have one year of historical  
10 testing.

11 MS. CREMER: But that's not  
12 evidence. Evidence is under oath, when you're  
13 placed under oath, the court reporter,  
14 cross-examination. That's not evidence.

15 MS. FORNEY: But, Karen, would it be  
16 different than what happened with Northern Valley?

17 MS. CREMER: You didn't have an  
18 intervener who has rights to be protected here is  
19 your difference.

20 MR. BERNARD: Aren't Qwest's rights  
21 limited to the percentage issue of whether or not  
22 the exemption applies and you take evidence on that  
23 issue? It's Fibercom's burden of proof that -- if  
24 it's proved to the satisfaction of the Commission  
25 that the exemption does apply, then what standing

1 does Qwest have to contest the rates inside of that  
2 proceeding itself other than -- isn't it true that  
3 they would have to file a separate proceeding to  
4 contest the rate, you know?

5 COMMISSIONER NELSON: Is there any  
6 limit about how many days they would have so if we  
7 set a hearing date for like no later than Monday,  
8 does that give them the opportunity, or are they  
9 going to argue --

10 MS. CREMER: There's 30 days to  
11 answer. You know, they have their rights to be  
12 protected here.

13 MS. AILTS WIEST: The burden of  
14 proof is on Black Hills Fibercom to show it lacks  
15 financial and technical managerial resources to  
16 comply with the costs, and once somebody intervenes  
17 then if they want to push it to hearing, then  
18 that's where the evidence comes in on that burden.  
19 You don't decide it here.

20 CHAIRMAN BURG: I agree with that.

21 MR. BERNARD: Is that (Inaudible)  
22 then of the proceeding?

23 MR. WHITE: Maybe to help with this,  
24 Mr. Welk has offered to visit with us regarding  
25 this. We will take the opportunity to talk with

1 him. I'm not sure where they're headed with this.  
2 We believe we are to some extent required to comply  
3 with the Commission's rules so we'll get an  
4 opportunity to find out what direction Qwest would  
5 like to see with our switched access service rates.

6 We would ask this Commission,  
7 however, to recognize that we have been providing  
8 these services for a long time this year, I guess,  
9 and that we are in a position that we would like to  
10 have this tariff effective as soon as possible  
11 since we're being billed by Qwest and that we would  
12 like to provide that service. And so to the extent  
13 that we can hold to a very tight hearing schedule,  
14 that would be appreciated by us.

15 Evidently, because they have rights to due  
16 process, they're going to be able to exercise those  
17 rights and that will have an impact on us. I guess  
18 we'll have to accept that. However, it is  
19 frustrating.

20 CHAIRMAN BURG: So the Item  
21 No. 13, does that need any action at this time?

22 MS. AILTS WIEST: No.

23 CHAIRMAN BURG: Okay. Item No. 13  
24 will be deferred or not acted on.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

= = = = =

IN THE MATTER OF THE COMPLAINT  
FILED BY BLACK HILLS FIBERCOM,  
LLC, RAPID CITY, SOUTH DAKOTA,  
AGAINST US WEST COMMUNICATIONS,  
INC. REGARDING COMPETITIVE  
PRICING AND PROMOTION PRACTICES.

CT00-055

= = = = =

Transcript of Proceedings  
December 12, 2000

= = = = =

BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
PAM NELSON, VICE CHAIRMAN  
LASKA SCHOENFELDER, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
Karen Cremer  
Kelly Frazier  
Leni Healy  
Charlene Lund  
Mary Giddings  
Greg Rislov  
Harlan Best  
Keith Senger  
Dave Jacobsen  
Michele Farris  
Heather Forney  
William Bullard Jr.  
Sue Cichos

Reported By Cheri McComsey Wittler, RPR

## APPEARANCES

Tom Harmon  
James Robbennolt  
Terry Barge  
Richard Coit  
Thomas Tobin  
Timothy G. Rich  
Donald Niles  
Les Sumption  
Darla Pollman Rogers  
Kyle White  
Larry Hettinger

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Tom Welk, Qwest  
Vernessie Reese, Qwest  
Jim Cushman, Qwest  
Darrell Bolen, Martin & Associates  
Don Lee, Martin & Associates  
Marlene Bennett, Martin & Associates  
Mary Lohnes, Midcontinent Cable  
Steve Weigler, AT&T  
Sandy Hofstetter, AT&T  
Greg Bernard, Black Hills FiberCom  
Bob Schuetzle, Valley Communications Coop  
Marsha Huber, Valley Communications Coop  
Tim Geraghty, Global Telelink Services  
Ron Jackson, Global Telelink Services  
Fred Campbell, Ionex  
Gary Keister

= = = = =

TRANSCRIPT OF PROCEEDINGS, held in the  
above-entitled matter, at the South Dakota State  
Capitol, Room No. 412, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 12th day of December 2000,  
commencing at 2:00 p.m.



1 CHAIRMAN BURG: CT00-055, In The  
2 Matter Of The Complaint Filed By Black Hills  
3 Fibercom LLC, Rapid City, South Dakota, Against  
4 US West Communications, Inc. Regarding Competitive  
5 Pricing And Promotion Practices. Today if the  
6 matter is resolved, shall the Commission dismiss  
7 the Complaint and close the Docket.

8 I presume that may be resolved. Is it still  
9 resolved?

10 MR. WHITE: Can I change my mind?  
11 We made a determination that it would provide no  
12 real additional benefit to continue with that  
13 proceeding so the parties have agreed -- although  
14 they didn't agree on the merits of the situation,  
15 they have agreed to discontinue that Complaint. We  
16 would ask that it be dismissed.

17 CHAIRMAN BURG: Any comment from  
18 US West?

19 MR. WELK: No. I've signed on  
20 behalf of the company, Mr. Chairman, a voluntary  
21 dismissal. I've provided that to Mr. Bernard, and  
22 we've agreed to dismiss the matter.

23 MR. BERNARD: I faxed that Petition  
24 of voluntary dismissal to Mr. Bullard today.

25 COMMISSIONER SCHOENFELDER: I have

1 to --

2 CHAIRMAN BURG: With that, I'll move  
3 we dismiss the Complaint and close the Docket  
4 CT00-055.

5 COMMISSIONER SCHOENFELDER: Second.

6 COMMISSIONER NELSON: Concur.  
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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY  
QWEST CORPORATION FOR APPROVAL  
OF ITS STATEMENT OF GENERALLY  
AVAILABLE TERMS. TC00-191

Transcript of Proceedings  
December 12, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
PAM NELSON, VICE CHAIRMAN  
LASKA SCHOENFELDER, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
Karen Cremer  
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Charlene Lund  
Mary Giddings  
Greg Rislov  
Harlan Best  
Keith Senger  
Dave Jacobsen  
Michele Farris  
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William Bullard Jr.  
Sue Cichos

Reported By Cheri McComsey Wittler, RPR

## 1 APPEARANCES

2 Tom Harmon  
3 James Robbennolt  
4 Terry Barge  
5 Richard Coit  
6 Thomas Tobin  
7 Timothy G. Rich  
8 Donald Niles  
9 Les Sumption  
10 Darla Pollman Rogers  
11 Kyle White  
12 Larry Hettinger

## 13 APPEARANCES BY TELEPHONE

14 Colleen Sevold, Qwest  
15 Tom Welk, Qwest  
16 Vernessie Reese, Qwest  
17 Jim Cushman, Qwest  
18 Darrell Bolen, Martin & Associates  
19 Don Lee, Martin & Associates  
20 Marlene Bennett, Martin & Associates  
21 Mary Lohnes, Midcontinent Cable  
22 Steve Weigler, AT&T  
23 Sandy Hofstetter, AT&T  
24 Greg Bernard, Black Hills FiberCom  
25 Bob Schuetzle, Valley Communications Coop  
Marsha Huber, Valley Communications Coop  
Tim Geraghty, Global Telelink Services  
Ron Jackson, Global Telelink Services  
Fred Campbell, Ionex  
Gary Keister

=====

18 TRANSCRIPT OF PROCEEDINGS, held in the  
19 above-entitled matter, at the South Dakota State  
20 Capitol, Room No. 412, 500 East Capitol Avenue, Pierre,  
21 South Dakota, on the 12th day of December 2000,  
22 commencing at 2:00 p.m.

1 CHAIRMAN BURG: TC00-191, In The  
2 Matter Of The Filing By Qwest Corporation For  
3 Approval Of Its Statement Of Generally Available  
4 Terms. Today shall the Commission grant  
5 intervention to AT&T, McLeod USA, and Midco.

6 And do we need to take Midco separate since  
7 late filing or any others who filed?

8 MS. AILTS WIEST: Yeah. Does Qwest  
9 have any objection to any of these interventions?

10 MR. WELK: No. We did not know  
11 about Midco. I knew about AT&T and McLeod. When  
12 was it filed?

13 MS. AILTS WIEST: I think it was  
14 faxed to us this morning. It was a few days late.

15 MR. WELK: That's fine. We don't  
16 care.

17 CHAIRMAN BURG: With that, I'll move  
18 we grant intervention to AT&T, McLeod USA, and  
19 Midco in TC00-191.

20 COMMISSIONER SCHOENFELDER: Second.

21 COMMISSIONER NELSON: Concur.

22 CHAIRMAN BURG: It has been granted.  
23  
24  
25

1 STATE OF SOUTH DAKOTA )

2 :SS

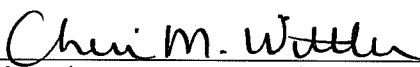
CERTIFICATE

3 COUNTY OF HUGHES )

4  
5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter and Notary Public in and for the  
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 12th day of  
11 December 2000, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 27th day  
14 of December 2000.

15  
16  
17   
18 Cheri McComsey Wittler,  
19 Notary Public and  
Registered Professional Reporter