

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

_____)	CT00-101
)	CT00-102
IN THE MATTER OF THE)	CT00-043
)	TC00-091
PUC AGENDA MEETING)	TC00-145
)	CT00-060
)	CT00-072
_____)	CT00-104
		TC00-107

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS:

November 2, 2000
1:30 P.M.
Room 412, Capitol Building
Pierre, South Dakota

PUC COMMISSION:

Jim Burg, Chairman
Pam Nelson, Vice-Chair
Laska Schoenfelder, Commissioner

COMMISSION STAFF
PRESENT:

Rolayne Ailts Wiest
Karen Cremer
Kelly Frazier
Harlan Best
Gregory A. Rislov
David Jacobson
Michele Farris
Keith Senger
Heather Forney
Leni Healy
Charlene Lund
Mary Giddings
Bill Bullard

Reported by:

Lori J. Grode, RMR

A P P E A R A N C E S

For Sprint: Thomas Harmon

For Sully Buttes: Darla Rogers
Janelle Poindexter

For SDITC: Richard D. Coit

Appearances by Telephone:

For U S West: Thomas J. Welk

For Western Wireless: Gene Dejordy

For I-Link: Brian Jones

For AT&T: Steve Weigler

P R O C E E D I N G S

CHAIRMAN BURG: I will call the meeting to order.
Let the record show that I'm Commissioner Jim Burg, and
Commissioners Schoenfelder and Nelson are also present at
this meeting. Let me take roll call for those on the
phone again. (Roll Call.)

Is there anybody that I did not call? We'll start
the meeting. The first item of business is approval of
the minutes of the Commission meeting held on October
17th, 2000.

MS. GIDDINGS: There were no corrections or
changes.

CHAIRMAN BURG: Okay. I'll move approval of the
minutes of the October 17th meeting.

COMMISSIONER SCHOENFELDER: Second.

COMMISSIONER NELSON: Concur.

CHAIRMAN BURG: Consumer issues, status report and
consumer utility inquiries and complaints recently
received by the Commission. Are you taking -- oh, Leni.

MS. HEALY: Thank you, Chairman Burg. So far this
year the Commission has received 1,874 consumer contacts.
Seventy-seven of those contacts were made since our last
meeting. Of the 77 contacts, 61 involved
telecommunications where the chief issues are billing and
slamming.

1 There were ten electric contacts. Most of those
2 were disconnections. There were six natural gas contacts,
3 and most of those were disconnections. So far this year
4 the staff has informally resolved 1,525 complaints.

5 CHAIRMAN BURG: Any comments or questions for
6 Leni? Okay. Thank you.

7 The first item, then, is CT00-101, In the Matter
8 of Dismissing the Complaints -- excuse me, In the Matter
9 of Dismissing Complaints of CT00-101 and CT00-102. Karen,
10 is there any comments on these?

11 MS. CREMER: Both parties have settled the matter
12 and would like their complaints dismissed and the dockets
13 closed.

14 CHAIRMAN BURG: Okay.

15 COMMISSIONER NELSON: I would move that we close
16 the docket and dismiss the complaints in CT00-101 and
17 CT00-102.

18 COMMISSIONER SCHOENFELDER: Second.

19 CHAIRMAN BURG: I'll concur. Both CT00-101 and
20 CT00-102 have been dismissed and the dockets will be
21 closed.

22 CT00-043, In the Matter of the Complaint Filed by
23 Marvie Tschetter, Huron, South Dakota, Against FirsTel,
24 Incorporated, Regarding Billing Dispute and the Delayed
25 Release of Service.

1 Today the question being shall the Commission
2 amend the complaint and shall the Commission join Qwest?
3 Is Marvie on? Has anybody talked to her? Was she
4 intending to be?

5 MS. CREMER: Marvie actually lives in Phoenix now,
6 but she has an attorney who made an appearance. I don't
7 see him on the list. I can't think of his name.

8 MR. WELK: Karen, this is Tom Welk. Dave Hosmer
9 from Yankton.

10 MS. CREMER: I have no idea.

11 CHAIRMAN BURG: What is the request in this then?

12 COMMISSIONER NELSON: To add Qwest to the
13 complaint.

14 MR. WELK: Mr. Chairman, this is Tom Welk. I've
15 read the papers and I think at this point in time U S
16 West, now known as Qwest, doesn't object to the motion to
17 add as a party. So we can go ahead and have the motion
18 added, or the Qwest added as a party.

19 My concern is that there's a hearing scheduled
20 December 13th and if we're added, I do anticipate some
21 discovery, so I'm assuming that and contemporaneously with
22 the granting of the motion, the hearing would be deferred
23 until counsel have an opportunity to discuss the matter
24 and talk with the appropriate people at the Commission to
25 schedule a new hearing date.

1 CHAIRMAN BURG: Okay. Was that -- let's see, I
2 was trying to read this. Is the motion to amend the
3 complaint, is that amendment to join Qwest?

4 MS. WIEST: We could take them both together. The
5 same party made it.

6 CHAIRMAN BURG: It's the same purpose; right?

7 MS. WIEST: Yeah.

8 CHAIRMAN BURG: I would move we amend the
9 complaint, that we join Qwest and that we do change the
10 date to comply with the time necessary.

11 COMMISSIONER SCHOENFELDER: Second.

12 COMMISSIONER NELSON: Concur.

13 CHAIRMAN BURG: CT00-043, the complaint has been
14 amended in joining Qwest.

15 Telecommunications, TC00-091, In the Matter of the
16 U S West Communications, Incorporated, Classification of
17 Certain Services.

18 Today, what is the Commission's decision? That's
19 a decision. I will move that the Commission find that --
20 do we need any comments?

21 MS. WIEST: No.

22 CHAIRMAN BURG: I would move that the Commission
23 find that the pay per call restriction and billed number
24 screening are optional services and shall be classified as
25 fully competitive.

1 COMMISSIONER NELSON: Seconded.

2 COMMISSIONER SCHOENFELDER: I will concur.

3 CHAIRMAN BURG: Okay. The decision has been
4 agreed upon by all three Commissioners in TC00-091.

5 TC00-145, In the Matter of the Filing for Approval
6 of a Type Two Wireless Interconnection Agreement Between
7 Qwest Corporation and WWC License L.L.C.

8 Today shall the Commission approve the
9 interconnection agreement?

10 Anybody representing either Qwest or who else,
11 WWC?

12 MS. CREMER: Western Wireless, Gene DeJordy, but I
13 don't think he was -- did he ever come on?

14 CHAIRMAN BURG: Gene Dejordy, are you on the
15 phone?

16 MR. DEJORDY: Yes.

17 CHAIRMAN BURG: Do you have any comments on this
18 docket?

19 MR. DEJORDY: Well, this is kind of an expanded
20 interconnection agreement that has been entered into
21 between Western Wireless subsidiaries and Qwest.
22 Essentially it's the same agreement that has been filed
23 and approved in 13 other states. So I don't see any
24 issues with respect to its approval.

25 Basically what it does is we have an existing

1 agreement that essentially mirrors that agreement and this
2 revised agreement just incorporates a couple changes
3 negotiated between the companies.

4 CHAIRMAN BURG: Any comments from Qwest?

5 MR. WELK: None, Mr. Chairman. This is Tom Welk.

6 CHAIRMAN BURG: Staff?

7 MS. CREMER: I've got that. Staff would recommend
8 that the interconnection agreement not be approved as WWC
9 does not have a certificate of authority, and in the past
10 we have required companies to have a certificate of
11 authority or it is not in the public interest.

12 Staff believes that WWC does not fall under the
13 jurisdiction of the FCC and therefore they must be
14 certificated by the Commission.

15 CHAIRMAN BURG: Any response?

16 MR. DEJORDY: Yes. I'm not sure what staff is
17 basing that decision on, but Western Wireless WWC Holding
18 Co., Inc., which is a subsidiary of Western Wireless, is a
19 cellular licensee. And under both the statute and the FCC
20 rules, it is a CMRS carrier that's exempt from state entry
21 and rate regulation and has been operating in that fashion
22 for over ten years in South Dakota.

23 It doesn't have a certificate. It is providing
24 cellular service. The interconnection agreements like
25 this between cellular service providers and local

1 telephone companies have been submitted routinely before
2 the Commission and have been granted routinely. So I
3 don't see any basis whatsoever for imposing a certificate
4 requirement on Western Wireless.

5 MS. WIEST: When did staff change their position?

6 MS. CREMER: On what?

7 MS. WIEST: On allowing interconnection agreements
8 between wireless companies and Qwest when wireless
9 companies don't have certificates of authority.

10 MS. CREMER: Well, in this case it's fixed,
11 because it is on a fixed wireless, and I'm basing it on
12 the FCC docket 00-246 where the FCC says because of the
13 evolving nature of fixed wireless services, we will decide
14 regulatory treatment on a case by case.

15 And, anyway, my reading of it is they do not --
16 they are not saying that with fixed wireless in this case
17 that it falls under their jurisdiction and they leave it
18 on a case-by-case basis. And so staff's belief is that
19 the Commission shouldn't give up jurisdiction here but
20 should maintain it.

21 MR. DEJORDY: If I could just respond to that,
22 because there's no basis in this agreement whatsoever to
23 come to the conclusion that this is a fixed wireless
24 service. The agreement is for interconnection between
25 Qwest and Western Wireless as a CMRS carrier.

1 And as a CMRS carrier it is subject to the statute
2 30-4-70 U.S.C. 332. It is also subject to the FCC's rules
3 under chapter 30-4-70, and it's clearly as a CMRS carrier,
4 it doesn't have to give a certificate. And we provide
5 cellular service within a state and that's on a mobile
6 basis.

7 So I'm not sure on what basis staff is concluding
8 that this is a fixed service. I don't think there's any
9 place in this agreement whatsoever that it says that the
10 service being provided is fixed. It states that the
11 service being provided is a CMRS service and as a CMRS
12 service it is exempt from state entry and rate regulation.

13 MS. CREMER: That's not how I read the agreement.

14 MS. WIEST: Are you providing fixed wireless?

15 MR. DEJORDY: No, we're not, not in South Dakota.

16 MS. CREMER: I thought when I talked to Nathan
17 Glazer the other day from Western Wireless he told me
18 that's what it was.

19 MR. DEJORDY: I spoke to Nathan before he left on
20 the trip and if he said that to you, he didn't say that to
21 me. He knows that the agreements that we enter into are
22 for our cellular service offerings and our cellular
23 service offering is under the name of Cellular One in the
24 state. I think, you know, you can take notice of the fact
25 that, you know, this is a mobile service offering.

1 MS. CREMER: What he told me is that this is fixed
2 to a house and while it is still moveable and mobile, it
3 is still a fixed unit.

4 MR. DEJORDY: I'm not sure what you're referring
5 to. The interconnection agreement that we're talking
6 about here is for a cellular service offering within the
7 state that's being offered under the Cellular One name.
8 It is a mobile service. Anyone can go into a Cellular One
9 store and get a mobile handset. So it's clearly a mobile
10 service our cellular service offering.

11 I think what you're maybe confusing our service
12 offering with is that, you know, we have indicated our
13 plans in various states to provide what we call wireless
14 residential service offering that some people have
15 classified as being fixed.

16 We've maintained all along that it is not a fixed
17 service. And, you know, I guess if you're referring to
18 that wireless residential service offering, you know,
19 maybe your argument that that's a fixed service.

20 But that's not what's before the Commission at
21 this time. What's before the Commission is this
22 interconnection agreement which is for the provisioning of
23 CMRS service. And right now the way we're provisioning
24 CMRS service is through our cellular mobile service
25 offerings.

1 MS. WIEST: Well, I understand staff's point. I
2 guess I'm just not clear what they're providing. And the
3 statement is that they're providing cellular mobile, and
4 in the past the Commission has not required a certificate
5 of authority for a CMRS pursuant to, I don't know, Section
6 332, I believe, of the Federal Act which states that we do
7 not have authority over market entry for CMRS.

8 And I realize that it certainly is a different
9 question that the Commission has not yet answered as to
10 whether a company providing fixed wireless or what they
11 call fixed. I think local loop has to have a certificate
12 of authority. That has not been specifically addressed.

13 I understand staff's point. The only thing I can
14 say is I can either go by what Mr. DeJordy states, who has
15 stated that this is a CMRS and ask the Commission to
16 approve it, or if there is a concern that this is a fixed
17 wireless local loop offering, I guess the Commission could
18 defer it until that's clarified. What date was this? We
19 have the ninety days. What date was it?

20 MS. CREMER: Yes, I think the ninety days ran last
21 Friday.

22 MS. WIEST: I don't think so. It's October 24th.

23 MS. CREMER: No, just the 20 days have run. In
24 their Part D they do offer UNE's, which to me the
25 agreement was different than your usual reciprocal --

1 yeah, the one that you normally see it in. It seemed to
2 be more like the ones that we do with the local. You
3 know, like I said, it has UNE's, it has things like that.
4 It struck me as being different. When he I talked to them
5 they told me it was fixed to a house yet still moveable
6 and mobile.

7 COMMISSIONER SCHOENFELDER: I, for one, do not
8 want to approve this until Western Wireless will clarify
9 to us what it is they're doing in this state. Because it
10 seems to me we've got conflicting facts here if one person
11 stated to staff that it's fixed wireless and now
12 Mr. DeJordy is saying it's not.

13 I think we need something in writing that says
14 whether it's fixed or not and they're willing to
15 certificate to it before we do anything with that. I
16 prefer to defer this if it's at all possibly legal so we
17 get --

18 MS. WIEST: We're not violating any time lines by
19 deferring it.

20 COMMISSIONER SCHOENFELDER: I would really,
21 Mr. Chairman, like to defer this.

22 CHAIRMAN BURG: I suspected that. Or the other
23 thing that I thought of is that we do an approval with a
24 prohibition on anything except total mobile.

25 COMMISSIONER SCHOENFELDER: No, I want to know

1 exactly what they're doing before we decide whether we
2 have jurisdiction or not.

3 CHAIRMAN BURG: Let's just defer TC00-145 for that
4 clarification.

5 Is there anything -- I think that's all of them on
6 the regular agenda. On the addendum, CT00-060, In the
7 Matter of the Complaint Filed by Don and Judy Blindauer,
8 Mitchell, South Dakota, Against Sprint Communications
9 Company, LP, Qwest Corporation, and I-Link Communications
10 Regarding Unauthorized Switching of Long Distance
11 Provider.

12 Today shall the Commission strike the answer of
13 I-Link Communications, Incorporated? And I think
14 somebody, Mr. Jones or Oxborrow, are you representing
15 I-Link and do you want to comment on the request to
16 strike?

17 MR. JONES: Yes. This is -- Mr. Commissioner,
18 this is Brian Jones representing I-Link. Of course we
19 would request that the Commission deny Sprint's motion for
20 a couple of reasons. I suppose first is back in September
21 I appeared before the Commission as part of -- well, in
22 response to Sprint's earlier motion to include I-Link as a
23 third-party defendant.

24 And the Commission granted that motion based at
25 least in part on the Commission's proper belief, I

1 believe, that I-Link had some facts that it could bring to
2 the table to help quickly resolve Ms. Blindauer's slamming
3 complaint against Sprint. And so Sprint did not raise any
4 objections at that point, notwithstanding the fact that I
5 had had conversations with Sprint attorneys and
6 represented myself as an attorney representing I-Link on
7 that call.

8 So I question the timing of Sprint's raising this
9 issue. It seems to me if they were concerned about it and
10 felt that it was important, they should have raised it on
11 my first appearance and not waiting for us to burn through
12 the cycles to submit an answer and then object.

13 So I can't argue South Dakota procedure. I
14 haven't even had time to even look and find out, and I'm
15 certainly not going to argue that I'm licensed to practice
16 in South Dakota. But it just seems to me not right that
17 Sprint waits until now to move to strike our entire answer
18 based on the fact that I'm not licensed to practice in
19 South Dakota.

20 So basically I-Link's interest in this whole thing
21 is get it resolved, get the facts out there as the
22 Commission requested. You know, we're a small carrier
23 that competes and cooperates with Sprint. And, you know,
24 I don't want to imply any bad faith on their part, but,
25 gosh, I mean it just seems like a lot of money and time

1 for us to burn through when we're ready, willing, and able
2 to provide whatever facts the Commission needs to quickly
3 resolve this.

4 CHAIRMAN BURG: Mr. Harmon.

5 MR. HARMON: Yes, Tom Harmon representing Sprint.
6 And I believe that on the phone are some other Sprint
7 representatives from regulatory if you wish to speak with
8 them.

9 CHAIRMAN BURG: Let me check and see if they're on
10 because they weren't before. Mr. Reiber? Or Mr. Reiber,
11 Mr. Brown, are either one of you on for Sprint? They
12 weren't on when I first called roll and so far they must
13 not have joined us.

14 MR. HARMON: To address what Mr. Jones has to say
15 here, in the prior situation Sprint had made a motion to
16 include I-Link as a party. At that time they were not a
17 party. He resisted the motion. There were no pleadings
18 filed before the Commission. In fact, the first pleading
19 filed before this Commission appears to be the answer.

20 The rules in South Dakota are quite clear. And
21 while they are not the rules of the Commission, they are,
22 in fact, the rules of the court and having to do with the
23 unauthorized practice of law.

24 And Mr. Jones makes no representation that he is
25 authorized to practice law in South Dakota. He has

1 submitted this pleading. The statutes are clear what
2 constitutes a pleading, that it must be signed by an
3 attorney. There is a process for him to be allowed to
4 practice in South Dakota as an out-of-state attorney
5 through joining with a local attorney for that purpose and
6 getting an order from the local court, as I'm sure the
7 Commission recalls we have done this with Sprint a number
8 of times when in-house counsel wishes to appear before the
9 Commission.

10 This is not in the ordinary course of a regulatory
11 proceeding, but this is a contested case. There is an
12 attorney general's opinion that I submitted to the
13 Commission that was, in fact, addressed to this
14 Commission, not the same members of this Commission, but
15 this body, some number of years ago holding to the fact
16 that this is the practice of law and that the rules of the
17 court require it.

18 I would point out to the Commission that due, I
19 think, to a dictation error, I identified the unauthorized
20 practice as a misdemeanor pursuant to 16-18-30 on page two
21 of my motion, and that was a misstatement. It is, in
22 fact, 16-16-1 where the court has taken that rule and made
23 it a rule issued by the Supreme Court of South Dakota.

24 So the fact that no objection was made before they
25 were allowed entry as a party seems to me to make a

1 distinction. And I think that the Commission could allow
2 such an appearance for the purpose of resisting being
3 brought into the proceeding because if you're not in the
4 proceeding you don't need an attorney. But once they are
5 in the proceeding and pleadings are being filed, it's the
6 position of Sprint that the rules should be followed.

7 CHAIRMAN BURG: I'm going to ask counsel,
8 Commission counsel, what's the effect if we strike those
9 answers? What effect does it have on the whole issue?

10 MS. WIEST: Well, I would assume that they could
11 get in-state counsel and then perhaps file a late-filed
12 answer, you know, at the discretion of the Commission.

13 CHAIRMAN BURG: That's what I was thinking. It
14 doesn't remove them from any possibility of doing it.

15 MR. JONES: This is Brian Jones speaking again.
16 And I recognize that and I suppose we're willing to do
17 that. It will be precisely the same answer, you know,
18 unless local counsel has an issue with it. I don't know
19 what it gains the Commission or Sprint for that matter to
20 require, you know, a local counsel to submit that answer.

21 And really I don't know that is the PUC the proper
22 place to enforce or interpret unauthorized practice of law
23 rules? You know, I don't know. If you are, then you are,
24 but if you're not, then I wonder even why we're here now.

25 COMMISSIONER NELSON: I don't know if it's the

1 appropriate place or not, but I think we certainly have
2 every obligation to follow the state law, and I think that
3 Mr. Harmon is absolutely correct that the law requires
4 that you be represented by in-state attorney in some way.

5 MS. WIEST: Does staff have a position, opinion?

6 MS. CREMER: Well, staff's opinion would be that
7 in the past we have only enforced that and we have
8 diligently enforced that in the past when we go to a
9 formal proceeding. And that at this level when people are
10 coming by phone, we have never required that, but we do
11 require it when it does go to the actual proceeding
12 itself. And so my opinion would be that they do not need
13 to be admitted at this point.

14 MS. WIEST: Because they're not practicing law?

15 MS. CREMER: Well --

16 MS. WIEST: I don't know how I get around 16-18-1
17 when it says it's a pleading and anybody who practices law
18 has to be an active member of the Bar.

19 MS. CREMER: Practicality, but if we're going to
20 do that, then we never have in the past and...

21 CHAIRMAN BURG: Not been any objections?

22 MS. CREMER: There's not been objections so maybe
23 we should, but it will now become quite a mess, or it's
24 going to require everybody from now on to get local
25 counsel.

1 MS. WIEST: I don't know how I get around it, I
2 guess, is my problem.

3 COMMISSIONER SCHOENFELDER: But this is a
4 contested case, is it not?

5 MS. WIEST: Yes.

6 MS. CREMER: Yes. To me we haven't gone to any
7 formal proceeding yet so and that's where we've always
8 done it in the past is that's where we have enforced it
9 in the past when we've actually gone to a formal
10 proceeding. Most these cases they are filing answers by
11 the company. And it's their regulatory people that are
12 filing and that's what has been and we've told them all
13 along those may be thrown out when it comes to hearing.
14 But 99.9 percent of them settle.

15 MR. HARMON: Can I respond to that?

16 CHAIRMAN BURG: Mr. Harmon, yes.

17 MR. HARMON: It seems to me there is a distinction
18 between the very initial definition of a proceeding when a
19 complaint is filed and an informal response is submitted
20 by a company. If that can be resolved by staff and the
21 vast majority of them will at that point, there is no need
22 for an attorney.

23 When it first comes before this Commission and
24 this Commission determines whether there is what in
25 criminal court would be probable cause to go forward, even

1 to that point, I don't believe that an attorney is
2 required.

3 But once this Commission has accepted the thing,
4 has ordered that an answer be filed and that motions have
5 been filed and documents are being filed, then I think it
6 is a formal proceeding. It is simply leading up to the
7 hearing or trial, if you would.

8 MS. CREMER: But, Tom, we don't have a probable
9 cause or any of that anymore. The minute they file that
10 thing becomes official and that's when an answer is due.
11 So on your theory from now on everybody is going to have
12 to get local counsel and they're going to have to file an
13 answer. And I just don't see it is at that point where
14 we're in a formal proceeding. But under your theory we
15 are and so that's fine. I don't care one way or the
16 other. They can go out and hire local counsel for each
17 and every one of these, but that's what we're going to end
18 up doing.

19 MR. JONES: And may I, Commissioners? This is
20 Brian Jones again. I-Link would be more than happy to,
21 you know, have Mr. Oxborrow, who's our regulatory person,
22 who I believe is even on record there at South Dakota as
23 being our contact person, to file, refile our answer if it
24 gets the Commission around this issue.

25 MR. HARMON: We certainly would object to it

1 being filed by a non-lawyer. It's objectionable when it's
2 filed by a lawyer who isn't admitted to practice in South
3 Dakota. That would not improve the situation.

4 COMMISSIONER NELSON: I'm not sure I agree with
5 the statute, but that's not my prerogative to decide which
6 ones I like and not like. I mean I think it's an
7 employment lawyer employment plan for South Dakota, you
8 know. But I think it is the law, and I don't know how you
9 really get around it.

10 CHAIRMAN BURG: Is there any room for
11 interpretation whether this is into that level of
12 proceeding?

13 MS. WIEST: It says no person shall engage in the
14 practice of law unless you're duly licensed in and an
15 active member of the Bar.

16 MS. CREMER: Yeah, but at what point?

17 CHAIRMAN BURG: When engaging in the practice of
18 law.

19 MS. WIEST: My point is if you're signing
20 pleadings before an administrative body, it appears that
21 you're practicing law.

22 MR. HARMON: I would certainly support that. I
23 believe that's what the attorney general's opinion is
24 talking about contested cases, not the rate setting
25 regulatory things you do. That is not in companies with

1 or without their lawyers. That's legislative; this is
2 judicial.

3 MR. JONES: Well, I mean if that's the case, where
4 did Ms. Blindauer's original complaint fall in that all
5 that?

6 MR. HARMON: She is pro se as far as I understand
7 and that's certainly acceptable.

8 MS. CREMER: But corporate can't be pro se.

9 MR. HARMON: You cannot represent another person.
10 And in this case I-Link is a person under the corporate
11 entity of person.

12 CHAIRMAN BURG: It appears to me that we're at the
13 point where, you know, the legal position is that that
14 person needs to be represented. I mean that you need to
15 have somebody approved in South Dakota to represent. I do
16 believe the practical effect is not immediate
17 justification for the complainant. It delays that
18 determination. However, it looks like there's nothing
19 lost with I-Link because they can refile it by the proper
20 person and still not lose position; is that correct?

21 MS. WIEST: I think they can certainly petition to
22 file a late-filed answer. I assume somebody could object
23 to that but the Commission can rule on it.

24 MR. JONES: So could the Commission just grant us
25 additional time right now to file that answer?

1 MS. WIEST: Is there any objection?

2 MR. HARMON: The hearing is scheduled presently
3 for December 11th. I would think there is plenty of time
4 within there to --

5 CHAIRMAN BURG: Mr. Jones, do you -- would this
6 cause you any problem with the December 11th hearing date?

7 MR. JONES: It may. We've never had to go seek
8 counsel in South Dakota, so I'm kind of starting from
9 ground zero.

10 CHAIRMAN BURG: They'll probably give you a list
11 of names.

12 MR. WELK: Mr. Chairman, this is Tom Welk. I
13 think people should read 16-18-2, the last paragraph of
14 that statute says that the appearance of a nonresident
15 attorney unlicensed in the state of South Dakota and an
16 administrative hearing under 126 shall be in accordance
17 with the requirements of this section and subject to the
18 approval of the circuit court for the county in which the
19 hearing takes place or in the circuit court for Hughes
20 County. I don't believe you have any discretion.

21 CHAIRMAN BURG: But now if -- let me understand it
22 right totally as a nonlawyer. They have two choices,
23 either to retain local counsel, get permission through
24 what you just read to have permission to be counsel in
25 South Dakota?

1 MR. HARMON: And the way that is done, Your Honor,
2 is that local counsel goes into the court, submits a
3 motion to the court in the name of this PUC proceeding. I
4 have done many of them, seeking that, you recall the
5 predecessors from Sprint, Mr. Low and others, that they be
6 allowed to appear before the Commission. The court enters
7 an order which is filed with the Commission.

8 CHAIRMAN BURG: And that would be required for
9 every incident?

10 MR. HARMON: Where an out-of-state attorney is
11 representing.

12 CHAIRMAN BURG: I mean once the out-of-state
13 attorney was in for one incident, he would have to
14 continue?

15 MS. CREMER: Every docket there's a fee and then
16 they also have to have in-state counsel if it goes to
17 hearing. Actually they have to have in-state counsel
18 present at the hearing.

19 MS. WIEST: That is the law.

20 COMMISSIONER SCHOENFELDER: And I agree. I'm
21 going to move that we grant Sprint's motion to strike
22 I-Link.

23 CHAIRMAN BURG: I'm going to reluctantly second.

24 COMMISSIONER NELSON: And I concur.

25 CHAIRMAN BURG: Looks like an extremely waste of

1 money.

2 MR. WELK: Mr. Chairman, this is Tom Welk. Just
3 to guide I-Link through this process, could the motion be
4 amended to be stricken but with leave granted with a
5 certain reasonable period of time to obtain counsel to
6 comply with the statute so that they can go find somebody
7 and if they can get somebody in say two weeks they don't
8 have to come back?

9 I think it accomplishes the statute's purposes,
10 allows I-Link time and so they'll have to have someone
11 sign off, but I think that would be a way we wouldn't have
12 to go back and address this again.

13 CHAIRMAN BURG: Tom, are you saying this would be
14 in lieu of getting approval for late-filed testimony?

15 MR. WELK: Well, yeah, I just -- and I think that
16 the proper way you have to strike the answer but with
17 leave that if they file with local counsel within ten days
18 the answer, or 20 days, whatever they want, to be
19 reinstated so they don't have to refile it, they just have
20 to get a signature and show they've got an in-state
21 licensed attorney so they don't have to keep coming back
22 and we don't have to raise this issue again.

23 CHAIRMAN BURG: Is there any objection to that?

24 MR. HARMON: You can recognize Mr. Welk as amicus
25 in this proceeding here.

1 MS. WIEST: He's a party.

2 CHAIRMAN BURG: He's never meek either.

3 MR. HARMON: That's a fact. No, if the process
4 is followed and the Commission wishes to give a delayed
5 effective date of the motion to strike, that no objection
6 will be made.

7 CHAIRMAN BURG: Okay. Counsel?

8 MS. WIEST: I think you just give them two weeks
9 to file a late-filed answer and you've already given them
10 permission to file late-filed answer.

11 COMMISSIONER SCHOENFELDER: I'm going to make a
12 new motion to give them two weeks to file a late-filed
13 answer.

14 COMMISSIONER NELSON: And I would second.

15 CHAIRMAN BURG: And I will concur.

16 MR. HARMON: Properly filed.

17 COMMISSIONER SCHOENFELDER: Yes, sir, properly
18 filed.

19 MR. JONES: Two weeks from today then. Thank you,
20 Commissioners.

21 MS. WIEST: Yes.

22 MR. JONES: I'll get the phone book out.

23 MS. WIEST: Thank you. CT00-072, In the Matter of
24 the Complaint Filed by Judy M. Nelson, Piedmont, South
25 Dakota, Against U S West Communications, Incorporated,

1 Regarding Wrongful Billing and Billing Practices for Long
2 Distance Telephone Service as a Result of Slamming by
3 Various Telephone Companies.

4 Today, if the matter is resolved, shall the
5 Commission dismiss the complaint and close the docket?
6 Sharlene or Karen, are you taking this? This is a
7 dismissal.

8 MS. CREMER: Oh, the parties have resolved this
9 matter and Miss Nelson has asked to dismiss the complaint
10 and close the docket.

11 CHAIRMAN BURG: I'll move that we dismiss the
12 complaint and close the docket in CCT00-072.

13 COMMISSIONER SCHOENFELDER: Seconded.

14 COMMISSIONER NELSON: Concur.

15 CHAIRMAN BURG: CT00-104, In the Matter of the
16 Complaint Filed by Joan Clark, Yankton, South Dakota,
17 Against AT&T Communications of Midwest, Incorporated,
18 Regarding Unauthorized Switching of Long Distance Carrier.

19 Today shall the Commission join Qwest
20 Communications as a party and shall the Commission dismiss
21 AT&T as a party? We have Miss Clark on the phone. Thank
22 you for your patience.

23 MS. WIEST: AT&T should go first; correct? It's
24 their motion.

25 CHAIRMAN BURG: Okay. AT&T, is that Steve?

1 MR. WEIGLER: I'm here. Just to clarify
2 procedural matter, I am not licensed in South Dakota. And
3 we traditionally have John Lovald of Olinger, Lovald,
4 Robbennolt, McCahren and Reimers as our attorney and he
5 has signed onto all our pleadings.

6 Based on protocol, which is usually Mr. Duarte,
7 Ms. Sevold and I have been arguing these procedural
8 matters, although we all have counsel, I believe Qwest has
9 Mr. Welk and we have Mr. Lovald, however, Mr. Lovald isn't
10 on the line today. Would the Commission okay -- I mean
11 I've gotten kind of blind-sided by this because this is
12 all the procedure that we used to follow and it's been
13 accepted by the Commission up to this date.

14 Does the Commission want Mr. Lovald on the line on
15 this? Or I mean what do I have to do?

16 CHAIRMAN BURG: The Commission doesn't, but I
17 think the Bar does.

18 MR. WEIGLER: That was my understanding and,
19 granted, I'm very new at this, but it's my understanding
20 that -- I'd be glad to have Mr. Lovald, but that even Miss
21 Sevold has argued, you know, motions of this type, and I
22 don't believe she's even an attorney. So we've done that
23 at this into the process.

24 But if the Commission -- and I'd just like a
25 chance to take a look at the law on this. And if it

1 indeed is a law, and it sounds from what Mr. Welk says it
2 is the law, that I'm able to comply and get Mr. Lovald on
3 the line. The problem with this and why we did this so
4 quickly is because the hearing is such we subpoenaed
5 records from Qwest and the hearing was set, I believe, for
6 the 29th of this month and we got the records back, I
7 believe, last week and we immediately filed a motion to
8 get it on the Commission's docket before so we could hear
9 this before the actual hearing date. If I need to get
10 Mr. Lovald, I would need everything to kind of be recessed
11 so we could get our guarantee of due process.

12 MS. WIEST: Well, what is the other party's
13 position? Mr. Welk, is it your position that Miss Sevold
14 can no longer appear on behalf of the Commission or on
15 behalf of Qwest any time that we're arguing any type of
16 motions?

17 MR. WELK: I think that what Mr. Harmon said
18 earlier is probably correct. And that is that when the
19 matter becomes a contested case, and that's what the
20 statute says, then you need to have a licensed attorney or
21 to be admitted through 16-18-1 and 2.

22 As he properly pointed out, a lot of times
23 companies in the past when your procedure was should we be
24 brought in, you really weren't in the proceeding, but once
25 you become in the proceeding, I think you need to be

1 represented by counsel.

2 Now, that doesn't mean -- I mean it's a very
3 simple process. And Mr. Lovald has been historically
4 their local counsel, and I know that AT&T's counsel is new
5 to the proceedings and certainly he can go ahead and have
6 that process done and get to the merits of the case, but I
7 think he has to comply with the statute.

8 MS. WIEST: So everybody want to defer this?

9 CHAIRMAN BURG: Do we have a choice, Karen?

10 MS. CREMER: If we defer it then the hearing won't
11 be held on November 29th.

12 CHAIRMAN BURG: I move we defer it.

13 MS. WIEST: Won't be the first time.

14 MR. WEIGLER: If I could just request the
15 Commissioners then, I just want to take a look at the law
16 and have Mr. Lovald, who is a South Dakota attorney, look
17 at the law because there may be some other interpretation
18 that we could present to the Commission, but I don't know
19 at this time.

20 MS. WIEST: Sure.

21 CHAIRMAN BURG: Thank you. We'll defer 00-104.
22 Thank you for joining us, Miss Clark. Did you have any
23 comment you wanted to make?

24 MS. CLARK: I just wanted to say that I do feel
25 that U S West, Qwest, may be a party here at fault because

1 they are the ones that told me, that asked if I would like
2 to switch to AT&T as my long distance carrier when we
3 recently moved, and I had told them that I did not. So I
4 guess I don't know who's at fault, but it is Qwest or
5 AT&T.

6 CHAIRMAN BURG: I do apologize for the delay, but
7 you have not lost the opportunity to do that or to bring
8 them in. We've just postponed everything right now.

9 MS. CLARK: All right if I hang up though?

10 CHAIRMAN BURG: Yes, it is, and you can join us
11 next time as well when we -- we will notify you when we
12 put it back on.

13 MS. CLARK: Thank you.

14 CHAIRMAN BURG: Last item, TC00-117, In the Matter
15 of the Joint Petition Filed by Sully Buttes Telephone
16 Cooperative, Incorporated, and Qwest Corporation for
17 Designation as an Eligible Telecommunications Carrier For
18 Sully Buttes Telephone Cooperative, Incorporated, in the
19 Sisseton Exchange and for Relinquishment of Qwest
20 Corporation's Designation as an Eligible
21 Telecommunications Carrier in the Sisseton Exchange.

22 Today shall the Commission approve the
23 simultaneous positions?

24 Who do we need to go first?

25 MS. WIEST: Doesn't matter.

1 CHAIRMAN BURG: Excuse me, go ahead.

2 MS. ROGERS: I think perhaps the title to this
3 docket is the hardest part about it, it has gotten pretty
4 long. What it is is a joint petition for ETC designation
5 relinquishment at the same time.

6 As you are aware, Sully Buttes Telephone
7 Cooperative is purchasing the Sisseton Exchange. The
8 closing is scheduled for November 30th, so as of December
9 1st, then, Sisseton will take over -- Sully Buttes will
10 take over the operations of the Sisseton Exchange.

11 And so it's as of that date that we would like to
12 be designated as the ETC carrier in that exchange and then
13 at the same time you would relinquish U S West's
14 designation.

15 CHAIRMAN BURG: Let me ask you this question: If
16 you did not do them simultaneously, what would be the
17 effect?

18 MS. ROGERS: Well, I don't think you can have two
19 in the same. What we were going to originally do is
20 simultaneous petitions, i.e. they were going to file
21 theirs and then I was going to file ours to be designated
22 and they were going to file there's as a separate
23 relinquishment petition.

24 And that's the way I drafted it actually
25 originally. And then when I talked to Mr. Welk about it,

1 he said why don't we just do this as one joint petition
2 and it can be done simultaneous.

3 CHAIRMAN BURG: I have one concern, but I want to
4 get staff's input before because it may be cleared up.
5 Who's taking that? Keith, are you?

6 MR. SENGER: Yes, I am. Do we want to let Qwest
7 go first on this, or do you want mine right now?

8 CHAIRMAN BURG: Probably Qwest. Do you have any
9 other comments Qwest?

10 MR. WELK: No, I have nothing further on than what
11 Darla already said.

12 CHAIRMAN BURG: I made the assumption you were
13 doing it simultaneous. My mistake. Go ahead, Keith.

14 MR. SENGER: I will answer your question. I mean
15 I first want to talk a little bit what the filing
16 includes. Essentially, the filing includes an affidavit
17 -- description and affidavit from Randy Hodeck, and staff
18 has reviewed this filing and the affidavit.

19 And in it it states that Sully Buttes can and will
20 provide all the requirements of an eligible
21 telecommunications carrier in the Sisseton Exchange once
22 they do purchase it. As Ms. Rogers, stated the closing
23 date is scheduled for November 30th, 2000, and they will
24 take control December 1st, essentially, my understanding
25 is 12:01 a.m. on December 1st.

1 Therefore, my recommendation would be that we go
2 ahead and grant both the relinquishment and the -- to U S
3 West and the ETC status to Sully Buttes. However, my
4 concern is that I don't want to specifically state what
5 day it does because if something would happen between now
6 and November 30th, the closing date.

7 So my recommendation is that we just put an
8 effective date on it as of the closing date. There may be
9 other methods that the Commission may want to choose to do
10 that, but that's my recommendation.

11 CHAIRMAN BURG: Maybe, Karen, did you have
12 something?

13 MS. CREMER: I would just say basically staff's
14 recommendation is that you not take any action on it
15 today; that you wait until the closing is November 30. If
16 you have a Commission meeting on that day, we will know
17 for certain on that day that they have closed. And then I
18 think, you know, you can take all the facts today and
19 staff's recommendation but not take any action today.

20 CHAIRMAN BURG: Probably answers my question
21 because my concern is that we grant ETC status before
22 they're actually offering the service, and in connection
23 with the prior case that we've had and that was going to
24 be my question. Do you have a response, Darla?

25 MS. ROGERS: My response was going to be that --

1 and I think we have discussed this concern. That you
2 could either grant the order, that it would be effective
3 upon closing, and I think that that would satisfy the
4 concern. Because as soon as the closing has occurred, we
5 will offer those services. And that's why we've provided
6 the affidavit stating we offer these services now already
7 in our existing exchanges.

8 These are the exact same services that we will
9 offer in this new exchange. And if you make your order
10 effective or to take effect at closing, which whether it's
11 a date or at closing of December 1, 2000, I think that
12 that would satisfy your concern as of that time we will be
13 offering those services.

14 CHAIRMAN BURG: Let me ask what problem you have
15 if we have a meeting that day and could do it at the day
16 of closing?

17 MS. ROGERS: I don't know that we would have a
18 problem with that other than, I mean, we can't be here on
19 that date. I don't know that we would necessarily need to
20 be. I don't know that you would know any more then as far
21 as whether the closing actually occurred because we would
22 be doing it, you know, so it might not be done as of the
23 time you were meeting.

24 COMMISSIONER NELSON: Why is it that big a deal we
25 do it so soon? So if we put it on the December meeting,

1 what real effect does it have?

2 CHAIRMAN BURG: She's saying they won't be here to
3 represent --

4 COMMISSIONER NELSON: I'm saying so they won't be
5 here November 30. Is it a matter it affects finances or
6 why can't you do it in our December meeting or whatever?
7 I mean I have a real concern.

8 MS. WIEST: And make it effective December 1st,
9 the day you took over.

10 MS. ROGERS: You mean do it after the fact and
11 make it retroactive?

12 COMMISSIONER NELSON: Yes. I just don't see why
13 it's critical this get done before we actually have a
14 closing and we actually know that you're providing the
15 services, because I do want to be very consistent in the
16 position that you be providing services before we
17 recognize ETC or that we grant it. I mean why is it so
18 big? Show me why it's necessary.

19 MS. ROGERS: It affects, of course, our
20 eligibility for any universal service funds and so we
21 would want to have it effective as the day -- as of the
22 day that we take over. And I would assume that U S West
23 or Qwest would also -- I mean they're not offering the
24 services. They are on that date any more so they should
25 not be the eligible telecommunications carrier.

1 COMMISSIONER NELSON: So would it only be
2 affecting the universal service dollars that would be
3 available between the time that they relinquish their
4 providing -- I mean a few days' worth? I mean does it
5 really make a big difference? I mean it's not like we
6 wouldn't grant ETC status and fairly quickly. Couldn't we
7 do it -- even have a special meeting to do it?

8 MS. WIEST: Yes, certainly.

9 CHAIRMAN BURG: I would think the other thing from
10 our standpoint that we would be concerned about is that
11 the right party is held responsible for those services.

12 MS. WIEST: Right, exactly.

13 CHAIRMAN BURG: Because if you change parties, you
14 don't want to wait two days and have one that's already
15 gone be responsible for something that might not work.

16 COMMISSIONER NELSON: Couldn't we just have a
17 special meeting?

18 COMMISSIONER SCHOENFELDER: When it comes to the
19 ETC, the universal service funds, U S West doesn't get any
20 there, or Qwest doesn't get any there anyway, so you have
21 to set up a new flow for that and a new application for
22 that. So if you had everything ready to go for the FCC
23 for that application, and I know it's contingent upon our
24 approval, but I think if you close on the 30th, we could
25 have an ad hoc on the 1st.

1 And I don't know if those days are on -- what days
2 they fall on. I think we could have an ad hoc. I don't
3 want to preapprove something in case something slips. And
4 I just have a problem with that. But I don't want to hold
5 them to your process either because of this. I mean I'm
6 perfectly willing to cooperate as far as dates are
7 concerned and that kind of thing.

8 MS. ROGERS: And I guess the alternative would be
9 we will obviously know like, for example, on the 28th or
10 the 29th if we're going to close on the 30th.

11 COMMISSIONER SCHOENFELDER: Yeah. But the
12 signatures aren't on the line yet, and I'm kind of a
13 stickler for that.

14 MS. ROGERS: I understand that. But we don't have
15 a time yet, and I don't know when your meeting is going to
16 be. It may be we will close before your meeting, in which
17 case we could notify you and let you know of that I.
18 Wouldn't think you would need to call a special meeting,
19 but it's up to you.

20 MS. CREMER: It's 2 o'clock.

21 COMMISSIONER SCHOENFELDER: Do they have to file
22 anything other than what's filed now?

23 MS. CREMER: No. If you had any questions for
24 them today might be a good date. The meeting shows on
25 here November 30 at 2 o'clock. Maybe they could just move

1 the whole meeting to December 1. I mean I don't know if
2 you're going to be for that ad hoc -- you can be around
3 for the regular meeting so we could just --

4 COMMISSIONER SCHOENFELDER: I want to cooperate.
5 I just don't want to do something that could become
6 embarrassing if something didn't happen the way we think
7 it's going to.

8 CHAIRMAN BURG: Tell me the down side from making
9 passing but making it effective upon the signatures.

10 MS. WIEST: Our position is that we don't grant
11 ETC status until the company is actually providing service
12 in that area.

13 CHAIRMAN BURG: I mean we wouldn't be if we didn't
14 do -- if we made the order effective that date.

15 MS. WIEST: Then it's a conditional order. I
16 prefer not to.

17 CHAIRMAN BURG: I just had a question.

18 MS. WIEST: I understand your point. I did have
19 some questions actually to the merits. It's my
20 understanding that Sisseton Exchange contains a former
21 Lake Traverse Reservation; is that correct?

22 MS. ROGERS: I believe that's correct.

23 MS. WIEST: And so I know in your affidavits you
24 stated you will do everything to provide Lifeline and Link
25 Up services. Do you know how you're going to provide the

1 tribal Lifeline and Link Up in the Sisseton area since
2 it's a former exchange and contains Indian allotments and
3 tribal trust lands?

4 MS. ROGERS: I have with me today Janelle
5 Poindexter, who is the office manager of Sully Buttes, and
6 she has some information with her on that. If I could ask
7 her to come forward.

8 MS. POINDEXTER: As to your question on the tribal
9 areas in the Sisseton Exchange, we do have some tribal
10 areas in the southern portions of our Highmore and Harold
11 Exchange, so we have been offering the enhanced Lifeline,
12 Link Up services there, and we would offer those same
13 services in the Sisseton Exchange for to allow crediting
14 for back one dollar credited service basically and the
15 Link Up portion that is half of up to 60 dollars Link Up,
16 which, truthfully, that's all ours ever goes to. It never
17 exceeds that. So the enhanced portion doesn't apply and
18 our charges will be the same up there.

19 MS. WIEST: Actually the enhanced will apply
20 because now tribal you can give it for extension, line
21 extensions, so that would apply. But my point is that
22 when you look at the map of the former, it's very tiny
23 little areas with Indian allotments and trust lands. Are
24 you verifying at all that people live on those, or someone
25 just marked it off, you'll accept that, that they're

1 living on that?

2 MS. POINDEXTER: The way we're handling it now, we
3 actually look at the maps to see where people are located
4 as we hook them up so we will be able to know where they
5 are prior to hookup and send them the appropriate form,
6 the enhanced form, if they qualify for the enhanced or the
7 standard Lifeline form if they qualify for that.

8 MS. WIEST: You're basing that on the BIA maps?

9 MS. POINDEXTER: I believe so, yes.

10 MS. WIEST: Are you including not only Indian
11 allotments, but trust lands, because I think there is some
12 confusion or uncertainty as to whether the FCC intended
13 trust lands to be included?

14 MS. POINDEXTER: I know there's some uncertainty,
15 and I guess we're kind of waiting to see. At this point
16 we're planning to include those until we're told
17 otherwise.

18 COMMISSIONER SCHOENFELDER: Can I ask just a
19 practical question because this is an issue that really
20 concerns me about how companies are going to deal with
21 this. Do you superimpose those BIA maps on your own
22 territory maps? I mean this has to be really difficult
23 for your service people to figure out and everybody else.

24 MS. POINDEXTER: I think it probably will be. We
25 have a mapping system in house that shows --

1 COMMISSIONER SCHOENFELDER: I wonder how you do it
2 because I am really concerned about how companies are
3 going to deal with this.

4 MS. POINDEXTER: That's really how we plan on
5 doing it is use our internal mapping system to be able to
6 highlight those so then as the service reps go to install
7 a new service somewhere, or we actually can do it in the
8 office at times, they can look and see. And we'll
9 probably have them a different color, so if they're within
10 a certain color, then they get the enhanced.

11 COMMISSIONER SCHOENFELDER: So does that -- do you
12 have to reprogram your billing system and everything to
13 fit this mapping, plus the different charges?

14 MS. POINDEXTER: No. The billing system would
15 remain as it is giving the different categories of
16 Lifeline Link Up service. But there would have to be a
17 second step in there to check that map.

18 COMMISSIONER SCHOENFELDER: I just -- I've just
19 wondered how companies were going to physically and
20 mechanically deal with this because it seems to me it's a
21 more difficult question than what I believe the FCC
22 thought they were going to deal with when they started.

23 MS. POINDEXTER: I agree, I agree.

24 CHAIRMAN BURG: I presume when you enter them into
25 your billing system, that's all identified for that

1 individual.

2 MS. POINDEXTER: Yeah, we have locations for each
3 phone number basically so we know where everybody is at as
4 well as what number they have.

5 MS. WIEST: I'm not sure if this actually is
6 applicable to the ETC application, but you stated in the
7 joint petition that you'll be the only rural telephone
8 company providing local exchange services in the Sisseton
9 Exchange. And as you're probably aware, a lot of CLEC's
10 have been given authority to operate in there.

11 Is it your position that those CLEC's then can
12 compete in your service territory?

13 MS. ROGERS: I think I believe what we stated was
14 we're the only facilities-based local exchange carrier
15 that was at least in one part of the petition. Now, what
16 was your question? I'm sorry.

17 MS. WIEST: Well, you know, when we give
18 certificates of authorities to competitive local exchange
19 providers, generally we put the rural safeguard language
20 in there. For example, in order to provide service in the
21 rural areas, then they'll have to come back and there are
22 a bunch of different things we have to look at.

23 It's just now when we're talking about a nonrural
24 exchange that's being sold to a rural company, the
25 question then becomes we have authorized CLEC's to provide

1 local exchange service when it was the Qwest exchange. Is
2 it Sully Buttes' position that those CLEC's then still may
3 compete in Sully Buttes Exchange even though it is now
4 being served by a rural telephone company?

5 MS. ROGERS: No, that's not our position. We
6 would prefer that they would -- our first position would
7 be that we would be able to maintain our rural safeguards
8 and that there would have to be another procedure that
9 they would come back, or we'll have to, I guess, phase
10 that.

11 MS. WIEST: Yeah. Well, that may be a question
12 for the future because the point is they've already been
13 authorized to provide service there.

14 MS. ROGERS: I understand. I think that's an
15 issue, I concur.

16 CHAIRMAN BURG: Let me ask this follow-up on it.
17 Are we aware that any of them are offering service in this
18 territory and would that have an effect if they were
19 currently offered as compared to the authority to offer?

20 MS. WIEST: I'm not sure because they do have --
21 they did have the authority today to offer those services,
22 all those CLEC's do, any CLEC.

23 CHAIRMAN BURG: Is that authority tied to an area
24 or to a company?

25 MS. WIEST: It's tied to rural versus nonrural,

1 and it's tied to Qwest versus everyone else.

2 CHAIRMAN BURG: Right, because Qwest is considered
3 a nonrural.

4 MS. WIEST: Exactly.

5 CHAIRMAN BURG: And if they did not offer the
6 service, would that transfer for a territory even though
7 it was no longer Qwest?

8 MS. WIEST: We might have to answer that.

9 COMMISSIONER SCHOENFELDER: Well, but I think it's
10 a question and there might not be anyone providing service
11 there now, but I think if there are more sales of
12 exchanges, this is a question we're going to have to face
13 and we're going to have to get some kind of definitive
14 ruling because sooner or later we're going to -- someone
15 is going to find someone that is going to be servicing
16 there in a competitive basis, if not, in fact,
17 overbuilding, and so you may have -- I mean it's something
18 that I don't think we thought of, and I'm not sure that
19 the FCC contemplated, nor the Federal Act contemplates.

20 MS. ROGERS: Right, because what actually has
21 happened here is you're sort of changing the
22 characteristics of the exchange to a certain extent by
23 going from Qwest to a --

24 MS. WIEST: Has the Sisseton Exchange become part
25 of your study area? Have you petitioned the FCC to do

1 that.

2 MS. ROGERS: Yes.

3 MS. WIEST: It will be part of your study area?

4 MS. ROGERS: Yes.

5 MS. WIEST: It's not required to be a separate
6 one?

7 MS. ROGERS: No, I don't believe so. It's going
8 to be --

9 MS. WIEST: One study area?

10 MS. ROGERS: One study area, which may make a
11 difference.

12 COMMISSIONER SCHOENFELDER: But then I believe
13 that that exchange then becomes transferred from nonrural
14 to rural and that may solve the problem because the FCC
15 would do that, as opposed to tier one versus smaller
16 companies. So it may be automatic, but I don't know that
17 there's a procedure for it. And I still think the
18 question isn't answered.

19 MS. WIEST: Uh-huh.

20 CHAIRMAN BURG: And sooner or later we're probably
21 going to find where somebody is servicing and it might
22 make a whole different answer. Okay. We still have to
23 have the decision.

24 MS. WIEST: I recommend we defer it.

25 COMMISSIONER SCHOENFELDER: I want to defer it, if

1 you don't mind, please.

2 CHAIRMAN BURG: Is that a motion?

3 COMMISSIONER SCHOENFELDER: Yes, it is, sir. I
4 would move we defer until closing.

5 CHAIRMAN BURG: Yeah, okay. Thank you, everybody.
6 I think that covers everything we had, doesn't it?

7 (The hearing concluded at 2:50 p.m.)
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1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2 :SS
3 COUNTY OF STANLEY) SIXTH JUDICIAL CIRCUIT

4 I, Lori J. Grode, Registered Merit Reporter and
5 Registered Professional Reporter and Notary Public in and
6 for the State of South Dakota:

7 DO HEREBY CERTIFY that the above hearing pages 1
8 through 47, inclusive, was recorded stenographically by me
9 and reduced to typewriting.

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

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

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 and seal of office at Ft. Pierre, South Dakota, this 8th
21 day of November, 2000.

22 *Lori J. Grode*
23 Lori J. Grode, RMR/RPR
24 Notary Public
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