

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
PUC AGENDA MEETING

) CT99-090
)
) TC98-187
)
)

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS:

January 6, 2000
10:30 A.M.
Room 412, Capitol Building
Pierre, South Dakota

PUC COMMISSION:

Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

COMMISSION STAFF

PRESENT:

Rolayne Ailts Wiest
Karen Cremer
Camron Hoseck
Harlan Best
Gregory A. Rislov
David Jacobson
Michele Farris
Keith Senger
Heather Forney
Leni Healy
Shirleen Fugitt
Bill Bullard

Reported by:

Lori J. Grode, RMR

ORIGINAL

A P P E A R A N C E S

For SDITC: Richard D. Coit
 and Gregory Dean
 P.O. Box 57
 Pierre, SD 57501

Appearances by Telephone:

Tom Welk, U S West

Alex Duarte, U S West

Colleen Sevold, U S West

P R O C E E D I N G S

CHAIRMAN BURG: Okay. We'll call the meeting to order. I'm going to call the roll call first.

(Roll Call.)

CHAIRMAN BURG: The first item of business is approval of the minutes of the Commission meeting held December 28th, 1999. Shirleen, were there any corrections or additions to that?

MS. FUGITT: There were none.

COMMISSIONER SCHOENFELDER: I would move approval of the minutes of December 28th, '99.

CHAIRMAN BURG: Thank you. I'll second it.

COMMISSIONER NELSON: Concur.

CHAIRMAN BURG: The minutes have been approved for December 28, 1999. At this point it isn't on the agenda but we're going to have a report from Leni Healy, consumer person. (Not transcribed.)

CHAIRMAN BURG: Any questions for Leni? Thank you for that report.

* * * * *

CHAIRMAN BURG: CT99-090, in the matter of the complaint filed by James Melgaard, Pierre, South Dakota, against U S West Communications, Incorporated, and Sprint Communications Company LP regarding unauthorized switching of service.

1 Today, does the Commission find probable
2 cause of an unlawful or unreasonable act, rate,
3 practice, or omission to go forward with this complaint
4 and serve it upon the respondent. Mr. Melgaard isn't
5 here?

6 MR. HOSECK: Mr. Chairman, members of the
7 Commission, I had a call from Mr. Melgaard late
8 yesterday and he had just gotten back from Christmas
9 vacation and reviewed his paperwork, said that
10 adjustments had been made to his bill, and that he
11 asked that the matter be dismissed. He's satisfied
12 with the settlement that he's received in it.

13 CHAIRMAN BURG: Okay.

14 MR. HOSECK: Accordingly, I would move the
15 Commission to close the docket and dismiss the action.

16 CHAIRMAN BURG: And I'll so move that we do
17 dismiss the complaint and close the docket in CT99-090.

18 COMMISSIONER NELSON: Second.

19 COMMISSIONER SCHOENFELDER: Concur.

20 CHAIRMAN BURG: Camron, did he give you any
21 background on it? This was a very confusing one, and
22 just the solution would be interesting to me to know
23 exactly what happened because it kind of helps, I
24 think.

25 MR. HOSECK: No, I don't. I did not get any

1 background on this from him. Typically, Mr. Chairman,
2 and for the other Commissioners, too, I don't inquire
3 into the details of settlement. If the consumer calls
4 up and says I'm satisfied with what has occurred, I
5 don't normally inquire further.

6 CHAIRMAN BURG: Colleen, are you on the phone
7 now?

8 MS. SEVOLD: Yes, I am, Commissioner Burg.

9 CHAIRMAN BURG: Did you have any comments on
10 this one?

11 MS. SEVOLD: Yes, I do. I was -- it was
12 going to be our position that U S West shouldn't have
13 been a part of the complaint because I think
14 Mr. Melgaard was talking about interstate calls, and we
15 don't bill for -- we don't charge for interstate
16 calls. That would be his interstate carrier.

17 I do know that U S West did go ahead and make
18 an adjustment for Sprint on his account in the amount
19 of \$112.62. That would have been to rerate his Sprint
20 call. But his PIC code was never changed to Sprint.
21 For a long time he had AT&T and then on November 16th
22 he called in and he wanted no PIC at all. And, in
23 other words, he's using the dial-around.

24 CHAIRMAN BURG: Right.

25 MS. SEVOLD: The only thing I can think of is

1 that perhaps this Vartec is a reseller of Sprint
2 services. U S West was not involved in it at all
3 except to make the adjustment for Sprint.

4 CHAIRMAN BURG: And Sprint actually ended up,
5 then he and Sprint are or Vartec or somebody actually
6 reached the settlement that he indicated then; is that
7 correct?

8 MS. SEVOLD: Well, apparently, unless there
9 was something else. The only adjustment I know of is
10 the \$112.62.

11 CHAIRMAN BURG: And the adjustment you made,
12 you got the direction or the request to make that
13 adjustment from Sprint?

14 MS. SEVOLD: Yes, we did.

15 CHAIRMAN BURG: Thank you. Thank you,
16 Colleen.

17 That concludes the telecommunications, the
18 complaint ones.

19 * * * * *

20 CHAIRMAN BURG: TC98-187, in the matter of
21 the petition for an order directing U S West
22 Communications to file updates to its exchange and
23 network services catalog, access service catalog,
24 advanced communications services catalog, and private
25 line transport services catalog.

1 Today, how shall the Commission proceed?

2 Who goes first on that?

3 MR. HOSECK: Mr. Chairman, staff has asked
4 this matter be placed on the agenda. Commission staff
5 filed its petition in this matter on October 26th,
6 1998; and in that petition we recited that U S West had
7 failed to file updates to four catalogs with the
8 Commission as it had done in the past.

9 In the prayer for relief, staff specifically
10 asked for an order, and I quote directing, that U S
11 West shall hereafter furnish to the Commission all
12 changes to the catalogs and that all changes in them
13 since June 1998 be furnished to the Commission in order
14 that complete and up-to-date catalogs may be maintained
15 within the records of the Commission.

16 The issues in this proceeding were framed in
17 that petition. This matter has been the subject of an
18 evidentiary hearing on April 27th, 1999, the opening of
19 dockets 99-098 and TC99-099, which have now been
20 concluded. And a petition to reconsider the indefinite
21 deferral of this docket yet to be acted upon.

22 For slightly over 14 months Commission staff
23 has conducted its affairs without the benefit of a
24 ruling in this matter, which posed an elementary
25 question of whether or not U S West has to file its

1 tariffs as just described with the Commission.

2 Since the filing of this matter, this
3 Commission has approved about 70 certificates of
4 authority for companies to do business in South
5 Dakota. The applications were made pursuant to the
6 Commission's Administrative Rules, and the orders in
7 each of those cases contain a specific provision and
8 condition that those companies must file changes in
9 their tariffs with the Commission for informational
10 purposes.

11 These companies, too, are providing
12 competitive service. U S West makes its case for
13 equitable treatment, and staff does not object to
14 uniform treatment. However, if this tool is to
15 continue to be available to staff to function in its
16 usual manner, and the Commission decides, for instance,
17 that a Web page is a sufficient -- or is sufficient,
18 then the same level of responsibility should be placed
19 upon other competitive providers. In other words, that
20 we just be furnished their Web page.

21 The bottom line is that as staff we are
22 asking, in fact, begging for an answer in this matter.
23 Thank you.

24 CHAIRMAN BURG: U S West.

25 MR. WELK: Mr. Chairman, this is Tom Welk.

1 I'll respond.

2 I think Mr. Hoseck has set forth the
3 procedural schedule adequately, and I do think that the
4 Commission needs to take some action on this file. The
5 staff filed a petition for reconsideration on their
6 issues on September 17th, '99, and U S West filed a
7 response to the petition for reconsideration saying in
8 essence the staff failed to follow the applicable
9 Administrative Rules as setting forth what's required
10 in a petition for reconsideration.

11 The Commission in its order indefinitely
12 deferring this docket, stated that the reclassification
13 of interLATA services from emerging competitive to
14 fully competitive would render most -- or would render
15 moot some of the issues raised in the docket. You
16 deferred the docket, as Mr. Hoseck indicated. Now you
17 have made the orders and most of the services that were
18 a subject, in fact, almost all of them in this docket
19 have now been fully competitive.

20 I'm reading between the lines, and Mr. Hoseck
21 can talk for himself. I'm assuming it's more of a
22 policy issue on what you're going to do, because right
23 now the issues as to the services that were subject to
24 this are now fully competitive and don't have to be
25 filed.

1 And so I think that you need an
2 administrative action to close the docket. Our
3 position is that insofar as this docket is concerned,
4 your rulings have made the issues moot and it ought to
5 be closed.

6 CHAIRMAN BURG: Response?

7 MR. DUARTE: Commissioner, this is Alex
8 Duarte. Could I add simply of the six different
9 catalogs that Commission staff had raised in the
10 docket, as we mentioned both in our opening brief and
11 opening post hearing brief and reply brief, the only
12 one that was not fully competitive was emerging -- was
13 interLATA toll, which at that time was emerging
14 competitive. And, of course, the Commission has now
15 reclassified that to fully competitive.

16 So really I think Mr. Welk is correct. The
17 issues are now moot given what the issues were in the
18 docket that staff brought.

19 CHAIRMAN BURG: Mr. Hoseck.

20 MR. HOSECK: Mr. Chairman, members of the
21 Commission, the issues are not moot. 14 months ago we
22 asked whether or not they had to file the tariffs.
23 Period. It baffles me that we had to go through the
24 evidentiary hearing that we did.

25 But the point of it is Commission staff has

1 only wanted a yes or no on whether or not they have to
2 file the tariffs. That has been the only question that
3 we have ever posed, and that's all we're asking for.

4 CHAIRMAN BURG: Rolayne.

5 MS. WIEST: Just for clarification on staff's
6 part, I know you want the filings, but what's staff's
7 position on whether U S West has to file them for
8 approval if they're designed to meet competition?

9 MR. HOSECK: I think I just stated we don't
10 have any problem with treating everybody alike. But in
11 the meantime we are going down one road where we are
12 approving certificates of authority and telling these
13 people they have to file them for informational
14 purposes.

15 If you recall the evidence that we put on at
16 the hearing, that was a tool primarily used by Harlan
17 in his everyday duties in performing the job of the
18 Commission. That's what we wanted in the first place.
19 All we wanted was an answer of whether or not that was
20 a tool we had to use or whether we had to revert to the
21 Web page, which the record shows what problems that
22 have been there.

23 That's what we are asking for from the
24 Commission. That is all we have ever asked for from
25 the Commission.

1 MS. WIEST: So then you don't have a position
2 on whether they have to be filed for approval?

3 MR. HOSECK: That's your call. In other
4 words, if you're going to treat everybody alike, you
5 know, we don't approve other competitive filings. For
6 instance, in these other certificates of authority, we
7 don't approve those tariff changes. They are filed for
8 informational purposes. All we have ever asked for is
9 whether or not this is a tool that we get to use in
10 performing our everyday duties.

11 MS. WIEST: Hasn't U S West stated in its
12 reply brief it will provide staff with paper copies of
13 the same tariff and catalog information on its Web site
14 within 30 days?

15 MR. HOSECK: I don't know that's occurred.

16 MR. WELK: We haven't, General Counsel, but
17 that is correct that is in our brief.

18 MR. HOSECK: But in the meantime we've been
19 going 14 months figuring out what to do.

20 MS. WIEST: My question is in the reply brief
21 U S West stated that it was willing to provide staff
22 with paper copies of the same tariff and catalog
23 information that it posts on its Web site within 30
24 days of the effective date of that rate change or
25 service offering. Is that what staff wants?

1 MR. HOSECK: Harlan, is that what you want?

2 MR. BEST: Getting something 30 days after
3 the fact really doesn't help when you're trying to
4 answer a consumer inquiry. If they want us to use the
5 Web page and the Commission decides that's the
6 appropriate way to go, fine, we'll use the Web page.
7 But I feel at the same time that the Web page then
8 should be available to all the other fully competitive
9 providers at the same time and they should no longer be
10 required within Commission orders for a certificate of
11 authority to file on an informational basis before the
12 change occurs what they're doing with their rates.

13 CHAIRMAN BURG: Let me ask this question:
14 Given the nature of the competitiveness, is it even
15 practical to get the tariffs before they're
16 implemented?

17 MR. BEST: Well, U S West is saying to us in
18 effect, no, you don't need to know it before it occurs
19 because we don't know when it's going occur.

20 CHAIRMAN BURG: Are we getting them from
21 other providers other than initially we're getting
22 initially upon approval of a certificate. Are we
23 getting them all?

24 MR. BEST: When they make -- before they make
25 changes they file copies with the Commission.

1 CHAIRMAN BURG: We have all those on record
2 of all the companies that have certificates, all their
3 changes?

4 MR. BEST: Those that have made changes and
5 informed the Commission of changes, yes. As was
6 determined at the hearing, I have not proactively
7 pursued companies who have not filed changes since the
8 day that their tariffs were approved within their
9 certificates of authority.

10 CHAIRMAN BURG: That's --

11 MR. BEST: That's why Camron and I were
12 looking for an answer was if a Web page is appropriate
13 for U S West, then a Web page should also be
14 appropriate for other fully competitive providers.

15 MS. WIEST: But aren't you going under the
16 assumption that everything is fully competitive now and
17 it's not?

18 MR. BEST: All we were speaking to were the
19 catalogs. We were not speaking to the switched access
20 tariff, which U S West has made changes to and never
21 informed the Commission of, and to the noncompetitive
22 portion of the exchange and network access tariff.
23 We're not asking that those be in effect on the Web,
24 which they are. U S West has said, well, they always
25 file for Commission approval for any changes to those

1 tariffs. Well, that's debateable whether they do that
2 or not.

3 MS. WIEST: Well, I disagree with U S West.
4 Even after reclassification there are a number of
5 issues that were brought up here that are still valid
6 issues that the Commission needs to decide.

7 And I would just recommend to the Commission
8 that at its next Commission meeting it issue a decision
9 in this addressing all of those issues.

10 CHAIRMAN BURG: Okay. I would support the
11 deferral of that. So that end with the affirmation
12 that we will make an absolute decision in the next
13 Commission meeting. Is that agreeable?

14 COMMISSIONER NELSON: That's agreeable to me.

15 COMMISSIONER SCHOENFELDER: It's okay.

16 CHAIRMAN BURG: We deferred action decision
17 on TC98-187 until the next Commission meeting.

18 (The hearing concluded at 11:51 a.m.)
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4 I, Lori J. Grode, Registered Merit Reporter,
5 Registered Profession Reporter and Notary Public in and
6 for the State of South Dakota:

7 DO HEREBY CERTIFY that the above hearing
8 pages 1 through 15, inclusive, was recorded
9 stenographically by me and reduced to typewriting.

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

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

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and seal of office at Pierre, South Dakota, this
21 14th day of January 2000.

Lori J. Grode RMR/RPR

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