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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE)
)
PUC AGENDA MEETING)
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MAY 10 2001
**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS: May 8, 2001
1:30 P.M.
Room 412, Capitol Building
Pierre, South Dakota

PUC COMMISSION: Jim Burg, Chairman
Pam Nelson, Vice-Chair

COMMISSION STAFF
PRESENT: Rolayne Ailts Wiest
Karen Cremer
Kelly Frazier
Harlan Best
Gregory A. Rislov
David Jacobson
Michele Farris
Heather Forney
Keith Senger
Leni Healy
Mary Healy
Charlene Lund
Mary Giddings
Sue Cichos

A P P E A R A N C E S

BY TELEPHONE:

For US West: Thomas Welk
Colleen E. Sevold

For McLeod: Barbara Berkenpass

For Midcontinent
Communications: Mary Lohnes

For AT&T: Steve Weigler

P R O C E E D I N G S

CHAIRMAN BURG: I'll call the meeting to order.
This is Jim Burg, I'm Chairman of the Commission. Pam
Nelson, Commissioner, is also present.

Let me do a roll call on the people on the phone.
Are you on Colleen? (Roll Call.)

CHAIRMAN BURG: Thank you. Anybody on that I did
not call? Okay. I'm sure the others will probably join
us. First thing on the agenda is approval of the minutes
of the Commission meeting held on April 17, 2001. Mary,
any corrections or additions?

MS. GIDDINGS: There were none, Chairman Burg.

1 CHAIRMAN BURG: I'll move the approval of the
2 minutes for the meeting held April 17th.

3 COMMISSIONER NELSON: I second it.

4 CHAIRMAN BURG: Okay. Consumer issues, status
5 report on consumer utility inquiries and complaints
6 recently received by the Commission. Leni.

7 MS. HEALY: Thank you, Chairman Burg. So far this
8 year the Commission has received 1,344 consumer contacts.
9 69 of those were since our last meeting. Of those
10 contacts, 55 involve telecommunications where the chief
11 issues were billing and slamming. There were 10
12 electricity contacts, most of those were disconnections.
13 There were four natural gas contacts. Those were
14 complaints about gas prices and disconnections. So far
15 this year the Commission has informally received 1,243
16 complaints.

17 CHAIRMAN BURG: I know last time we asked about
18 how many disconnections and if they looked like they were
19 going up. Have we found anything out on that? Is that
20 kind of completed or not? Were you looking at that, Dave,
21 or not?

22 MR. JACOBSON: I mailed out the letter. The
23 results came in for all the companies except for Northern
24 States Power Company. They just came in yesterday.

25 CHAIRMAN BURG: So you'll have that at the next

1 meeting or something? I just wondered. Well, probably
2 preliminary, are they up quite a bit or --

3 MR. JACOBSON: Well, I didn't get a chance to
4 review that yet.

5 CHAIRMAN BURG: Okay. Anything else anybody have
6 any questions or comments on Leni's report? Okay.

7 First item on the agenda is CT00-112, in the
8 matter of the complaint filed by Mike Mattern, Aberdeen,
9 South Dakota, against McLeod Telecommunications Services,
10 Incorporated, regarding poor service.

11 Charlene, do we want -- is there anything
12 Mr. Mattern needs to say or --

13 MS. BERKENPAS: This is Barb.

14 CHAIRMAN BURG: Do you want to comment on the
15 motion in CT00-112?

16 MS. BERKENPAS: Yes. We're asking Qwest be added
17 as a party because we're a reseller of Qwest, and it's my
18 understanding that Qwest did not oppose being brought in
19 as a party.

20 CHAIRMAN BURG: Okay. Colleen, any comments?

21 MR. WELK: This is Tom Welk, Mr. Chairman. I
22 joined.

23 CHAIRMAN BURG: Okay, Tom.

24 MR. WELK: We have no comments or we have no
25 objection, Mr. Chairman.

1 CHAIRMAN BURG: Okay. And Mr. Mattern, you're
2 aware of this procedure; is that correct?

3 MR. MATTERN: Yes.

4 CHAIRMAN BURG: And that's okay with you?

5 MR. MATTERN: Yes, it is.

6 CHAIRMAN BURG: Okay. With that I'll move that we
7 include Qwest in CT00-112.

8 COMMISSIONER NELSON: And I'd second it.

9 CHAIRMAN BURG: Okay. Telecommunications:
10 TC00-191, in the matter of the filing by Qwest Corporation
11 for approval of its statement of generally available
12 terms.

13 Today, how shall the Commission proceed?

14 Who is -- are you taking that one, Colleen or Tom?

15 MR. WELK: I will, Mr. Chairman. I'm assuming
16 that this matter is on the agenda because the Commission's
17 order that was entered January 24th indicated the
18 Commission set a procedural schedule at a later time. In
19 the papers that Qwest previously filed, we sort of teamed
20 this up for the Commission to come back after the end of
21 April with the thought that most of the other workshops in
22 the other states would be completed. I'm not familiar
23 with each and every workshop, but I don't think they're
24 all completed, but a substantial number have been
25 completed.

1 I have spoken to the appropriate persons within
2 Qwest, and we have a suggestion for the Commission to
3 consider regarding a procedural schedule. And the
4 suggestion is as follows: That on or before July 1st or
5 the first business day thereafter, that Qwest would file
6 an updated SGAT, along with an issue matrix showing the
7 disputed issues that have existed in these multi-state
8 workshops by August 1st; the intervenors would file their
9 supplemental issue matrix if we have failed to identify an
10 issue or if they perceive in a different manner they may
11 do so; and by September 15th, or if I'm off on the
12 calendar, whatever business day, that all parties would
13 file simultaneous prefiled testimony and that there would
14 be no rebuttal testimony because all these issues have
15 been thrashed through to a large extent in all these
16 workshops; and that the Commission set a hearing for a
17 period of not less than two weeks in either October or
18 November, and that we provide a period of time to allow
19 briefs to be filed on what the parties may agree to; and
20 that a proposed decision by the Commission, which would be
21 triggered 30 days after the last brief was submitted. And
22 that is our suggestion for the Commission to consider.

23 CHAIRMAN BURG: Tom, what was your statement on
24 the hearing, when the hearing would be?

25 MR. WELK: Sometime, Mr. Commissioner, in October

1 and November. And I've been asked, based on what they've
2 seen, to set it for about two weeks.

3 CHAIRMAN BURG: You said not less than, didn't
4 you?

5 MR. WELK: Not less than two weeks.

6 CHAIRMAN BURG: Are we required to schedule a
7 two-weeks commission?

8 MR. WELK: No. For the Commission, based on what
9 they've been doing for other states, and they told me they
10 expected the issued matrix to be as many as 75 issues, and
11 the SGAT that would be updated would include the language
12 from the other workshops, which everybody has agreed to so
13 there shouldn't be an issue on that. When I say two
14 weeks, I'm just giving you, Mr. Chairman, sort of what
15 they think that's what, you know, is a ball park if
16 there's that many issues and that could be less, you know,
17 than that. But just because of the scheduling the
18 Commission's time that was the time frame that was
19 suggested to me.

20 CHAIRMAN BURG: Okay. Karen, do you have any
21 comment as far as that schedule from staff's viewpoint?

22 MS. CREMER: I believe were we all sitting as one
23 on this.

24 MS. WIEST: I think we are.

25 CHAIRMAN BURG: But I mean I'm still saying I'm

1 looking at timewise for staff even setting for us and also
2 as far as, Rolayne, what comments you have on that
3 recommended scheduling.

4 MS. WIEST: I'd like to hear if any of the other
5 parties have any comments first because I know other
6 parties -- I believe it was AT&T's position, I think, at
7 the last one that the Commission should wait to do the
8 SGAT until such time as Qwest actually filed the 271 in
9 South Dakota. So does AT&T have any comments?

10 MR. WEIGLER: This is Steve Weigler from AT&T.
11 That would be my first comment. Qwest hasn't even filed
12 an application, to my understanding, to the State of South
13 Dakota asking for 271 relief. As far as Mr. Welk's
14 comments that workshops, you know, these issues aren't --
15 I mean, to paraphrase, that these issues are in good order
16 and the workshops are almost done.

17 I have a workshop schedule in front of me that
18 shows the workshops on these particular issues on the
19 SGAT, which is an ever-changing document and kind of a
20 moving target, which was the subject of our last argument,
21 anyway that the workshops are scheduled all the way to
22 August 1st.

23 A big part of this and that's the workshops if all
24 issues are resolved in those workshops the workshops would
25 end on possibly on August 1st. However, as experience

1 had -- if experience is any indicator, these workshops are
2 continuously ongoing. So the SGAT at this point and what
3 we argued before in front of the Commission is an
4 ever-changing document and is currently an incomplete and,
5 again, ever-changing. So as far as the SGAT being in good
6 shape and the issues become solidified, that that is
7 indeed not the case at this point.

8 The combination of Qwest doesn't even have an
9 application going, that there are -- at least without the
10 workshops being finished and even close to knowing what
11 additional issues are going to be in place, I would
12 venture to state that if South Dakota wants to do a
13 thorough investigation at these hearings, it's very
14 difficult to set hearings at a time when we're not even
15 sure what the issues on the hearings are. And we haven't
16 even seen an application from Qwest.

17 Another indication to a big part of these
18 proceedings involve OSS testing, which won't -- if
19 everything goes smoothly, which again isn't anticipated by
20 any of the parties, the date OSS testing will be completed
21 and a report will be generated is September 1st, 2001. So
22 all these things are going on that we have no idea what
23 the completion date is. We have no idea what the issues
24 are that lie in front of us this summer. We have -- and
25 South Dakota has because there's been no application

1 filed -- hasn't taken any action or visited any of those
2 issues, and according to the FCC, needs to do so if its
3 recommendation would carry a great deal of weight in front
4 of the FCC, citing FCC language.

5 So it seems to me the most appropriate thing to do
6 at this point is not set a procedural schedule because the
7 procedural schedule would be subject to a great deal of
8 scrutiny and most definitely change because we're not sure
9 what lies ahead of us in the summer and we haven't seen an
10 application from the Qwest and the state of South Dakota.

11 The other thing I have a problem with is the idea
12 of simultaneous testimony, because these issues have been
13 worked out in other workshops. That is not the truth.
14 And the law is clear, if I could get a cite -- I have it
15 in front of me. But Qwest is supposed to present a prima
16 facie case in its application and all the requirements of
17 Section 271 has been satisfied. Once the applicant has
18 made such a showing, opponents of the RBOC's entry must
19 produce evidence and arguments necessary to show the
20 application does satisfy requirements of Section 271.
21 Once that is done, then RBOC's retain at all times the
22 ultimate burden of proof that application status on
23 Section 271. What Mr. Welk suggested completely shifts
24 that burden where Mr. Welk would provide simultaneous
25 testimony, that the burden of prove is on Mr. Welk's

1 client and the testimony should reflect that.

2 CHAIRMAN BURG: Mary Lohnes, do you have anything
3 from Midcontinent?

4 MS. LOHNES: Chairman, I have Tom Simmons here
5 with me so...

6 CHAIRMAN BURG: Okay, Tom.

7 MR. SIMMONS: I guess our concern is that our
8 portion of involvement with the testing, in fact, has just
9 begun. We're participating actively in all this, but our
10 portion is just beginning. And, obviously, we have no
11 idea what the outcome might be at this particular time.
12 We tend to agree with AT&T in that, you know, if
13 everything moves very smoothly according to clock work,
14 you know, the schedules could be met. But so far the
15 activities have been anything but smooth. So I'm a little
16 concerned about our ability to participate in this time
17 table until we see some direct results of our portion of
18 the testing.

19 CHAIRMAN BURG: Okay. McLeod.

20 MS. BERKENPAS: McLeod doesn't have any comments,
21 Mr. Commissioner.

22 MS. WIEST: I just had one more question for Mr.
23 Welk. And does Qwest have any idea as to a time frame for
24 filing of a 271 yet?

25 MR. WELK: All I can -- I've asked that question.

1 I mean it's compared to other states. It's down the road.
2 I don't have a time frame that I can represent you,
3 general counsel, as to when it will be.

4 MS. WIEST: Okay.

5 CHAIRMAN BURG: So, Tom, is it your statement then
6 that you want to do an SGAT before we have the 271?

7 MR. WELK: That's what we've been on this tract,
8 Mr. Commissioner. That's what we've been doing on this
9 one and to take this process through. It is confusing
10 because the Commission is not in the other workshops.
11 There are 271's. This is the SGAT filing.

12 CHAIRMAN BURG: Well, it seems like, too, the 271
13 keeps slipping back. I mean I know it's behind what
14 schedules we were told at one time already. So I keep
15 wondering, you know, what we're going to get out of the
16 SGAT if we do it before we have a 271 to know how you're
17 filing it.

18 MR. WEIGLER: Mr. Commissioner, Steve Weigler from
19 AT&T. It's my understanding and I could be corrected, but
20 Qwest is using the SGAT on a tract B to show its 271
21 compliance. At least that's what they're doing in 13 --
22 12 other states, not in Minnesota. So that's what they're
23 using, they're using the SGAT.

24 MR. WELK: As one piece of it, yes.

25 CHAIRMAN BURG: Any other comments from staff?

1 Anybody else that wants to comment? Any comment?

2 MS. WIEST: No. I would suggest that the
3 Commission take this under advisement. I just wanted an
4 update from the parties as to where they're at, and I
5 think we need to think it over now.

6 CHAIRMAN BURG: Okay. This was just an update.
7 We'll take it as that. Thanks, Tom.

8 MR. WELK: You bet.

9 CHAIRMAN BURG: Item two, TC0-021, in the matter
10 of the filing for approval of an agreement for terms and
11 conditions for interconnection, unbundled network
12 elements, ancillary services, and resale of
13 telecommunications services between Qwest Corporation and
14 Essex Communication, Incorporated, doing business as Elec
15 Communications.

16 Is that -- is anybody representing that company on
17 the phone? Does Qwest have any comment on this
18 application?

19 MR. WELK: No, Mr. Chairman.

20 CHAIRMAN BURG: Kelly?

21 MR. FRAZIER: Yes. This appears to have been
22 properly filed under Administrative Rule 20:10:32:21 and
23 the proper period has passed, 20 days, without comment.
24 So staff's position would be that the interconnection
25 should be approved.

1 CHAIRMAN BURG: Any other comments? If not, I'll
2 move we approve proposed interconnection agreement between
3 Qwest and Essex Communications.

4 COMMISSIONER NELSON: Seconded.

5 CHAIRMAN BURG: It has been approved. TC01-021
6 has been approved.

7 TC01-024, in the matter of the filing for approval
8 of an adoption wireline interconnection agreement between
9 Qwest corporation and Avera Communications. Today shall
10 the Commission approve the proposed interconnection
11 agreement?

12 Who do we -- we don't have Avera on, do we? And
13 Qwest, any comments from Qwest?

14 MR. WELK: No. It's a routine filing.

15 CHAIRMAN BURG: Kelly, any comments that you have?

16 MR. FRAZIER: Routine filing, Your Honor --
17 Chairman, interconnection between Qwest and Avera. One
18 point to note, there will be adopting amendments 1 and 2
19 on the negotiated agreement between Qwest and McLeod.
20 It's kind of a pick and choose so it will just be
21 amendments 1 and 2 to that agreement which was approved
22 by the Commission on the 23rd of July 1999 in TC99-057.
23 The Administrative Rules appear to have been followed, and
24 I recommend approval.

25 CHAIRMAN BURG: With that I'll move we approve the

1 proposed interconnection agreement between Qwest
2 Corporation and Avera McKennan.

3 COMMISSIONER NELSON: Seconded.

4 CHAIRMAN BURG: TC01-024 has been approved.

5 TC01-032, in the matter of the filing for approval
6 of a first amendment to an interconnection agreement
7 between Qwest Corporation and TW Wireless. Today shall
8 the Commission approve the amendment to the
9 interconnection agreement? Any comments from U S West?

10 MR. WELK: None, Mr. Chairman.

11 CHAIRMAN BURG: Kelly?

12 MR. FRAZIER: Again, very routine filing.
13 Administrative Rules appear to have been filed, and I'd
14 recommend approval.

15 COMMISSIONER NELSON: I would move approval of the
16 interconnection agreement requested in TC01-032.

17 CHAIRMAN BURG: I'll second it. It has been
18 approved.

19 TC01-034, in the matter of the filing for approval
20 of a second amendment to an interconnection agreement
21 between Qwest Corporation and NewPath Holdings,
22 Incorporated. Today shall the Commission approve the
23 amendment to the interconnection agreement? Any comments
24 from Qwest?

25 MR. WELK: No, Mr. Chairman.

1 CHAIRMAN BURG: And Kelly.

2 MR. FRAZIER: Same as the last two files,
3 Chairman. I'd recommend approval.

4 COMMISSIONER NELSON: I'd amend that the
5 Commission approve the inter -- for the interconnection
6 for NewPath Holdings.

7 CHAIRMAN BURG: TC01-034, I'll second. It has
8 been approved.

9 TC01-039, in the matter of the filing by Qwest
10 Corporation for approval of revisions to its exchange and
11 network service tariff.

12 Today, shall the Commission approve the proposed
13 tariff revisions?

14 Qwest, who's -- Tom or Colleen, who's taking that,
15 comments on that?

16 MS. SEVOLD: This is Colleen, Mr. Chairman. I'll
17 take it. Qwest has made this filing to introduce some
18 more options for customers who are looking at purchasing
19 digital switched service. And we would just ask the
20 Commission to approve those additional options.

21 CHAIRMAN BURG: Colleen, if I understood those,
22 are those sort of geared towards a service for a little
23 bit smaller units or companies?

24 MS. SEVOLD: This is the discounts that were
25 previously in the tariff were for the advanced, and this

1 is to accommodate the basic DSS trunks. So it gives a
2 break for that customers who are buying the basic trunks.

3 CHAIRMAN BURG: Heather, do you have anything?

4 MS. FORNEY: The only comment I would make,
5 Chairman Burg, is that Qwest has requested an effective
6 date of May 5th; and staff would just recommend an
7 effective date be the day the order is signed.

8 MS. SEVOLD: Qwest would agree to do that.

9 CHAIRMAN BURG: Any other comments? Okay. With
10 that, I'll move that the Commission approve the proposed
11 tariff's revision with effective date the date of the
12 order.

13 COMMISSIONER NELSON: I'd second.

14 CHAIRMAN BURG: TC01-039 has been approved.

15 (The hearing concluded at 2:15 p.m.)
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