

IN THE MATTER OF)
THE COMMISSION MEETING) TC01-141
) TC01-149
) TC01-165
)

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS: December 12, 2001
 1:30 P.M.
 Room 412, Capitol Building
 Pierre, South Dakota

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

COMMISSION STAFF
PRESENT:

Rolayne Ailts Wiest
Karen Cremer
Harlan Best
Gregory A. Rislov
David Jacobson
Michele Farris
Keith Senger
Mary Healy
Mary Giddings
Charlene Lund
Heather Forney
Debra Elofson
Sue Cichos

Reported By: Lori J. Grode, RPR/RMR

APPEARANCES:

For Qwest:	Thomas Welk Colleen Sevold Jeff Carmon John Munn
For MidContinent Communications:	Mary Lohnes
For AT&T:	Gary Witt Sandy Hofstetter
For Black Hills Fiber Com:	Greg Bernard Kyle White

P R O C E E D I N G S

CHAIRMAN BURG: We'll start the meeting. I'll take roll first.

(Roll call.)

CHAIRMAN BURG: We will begin the meeting. Let the record show I'm Jim Burg, Chairman. Commissioner Pam Nelson is also presented.

The minutes of the Commission meeting held in November 27 and 29, were there any corrections to that Mary?

MS. GIDDINGS: There were none, Chairman Burg.

COMMISSIONER NELSON: I'd move approval.

CHAIRMAN BURG: I'd second that. The minutes are approved for the November 27th and November 29th, 2001,

1 meetings. Consumer issues status report on consumer
2 utility inquiries and complaints recently received by the
3 Commission.

4 (Not transcribed.)

5 * * * * *

6 CHAIRMAN BURG: TC-01-141, in the matter of the
7 filing by Qwest Corporation for approval of revisions to
8 its exchange and network services tariff.

9 Today shall the Commission grant the withdrawal
10 and close the docket this docket?

11 I guess, any comments from Qwest on the closing of
12 the docket?

13 MS. SEVOLD: Chairman, this is Colleen Sevold, and
14 we have no comment.

15 CHAIRMAN BURG: Anything from staff? Heather?

16 MS. FORNEY: Staff would approve the request for
17 withdrawal.

18 COMMISSIONER NELSON: Inquiring minds want to
19 know, why are you withdrawing the request?

20 MS. SEVOLD: We are just withdrawing it at this
21 time and re-looking at the filing.

22 CHAIRMAN BURG: With that I'll move that we grant
23 the withdrawal and close the docket in TC01-141.

24 COMMISSIONER NELSON: I'd concur.

25 CHAIRMAN BURG: It has been approved. I didn't

1 know you would work hard to keep it.

2 COMMISSIONER NELSON: I was curious.

3 CHAIRMAN BURG: TC01-149, in the matter of the
4 filing or approval of a resale agreement between Qwest
5 Corporation and C12. Today shall the Commission approve
6 the proposed agreement?

7 Who is talking from Qwest on that one?

8 MR. WELK: This is Tom Welk, Mr. Chairman. We
9 don't have any comments. We would defer to staff.

10 CHAIRMAN BURG: Okay. Anything on that? Kelly
11 isn't here. Karen got it? Okay. Sounds like there's no
12 comments.

13 MS. WIEST: I think we have to defer it. I don't
14 know if Kelly has been in touch.

15 CHAIRMAN BURG: We will defer TC01-149.

16 * * * * *

17 CHAIRMAN BURG: TC01-165, in the matter of the
18 analysis into Qwest Corporation's compliance with Section
19 271(C) of the Telecommunications Act of 1996. And today
20 how shall the Commission proceed in this docket?

21 MS. WIEST: Chairman, maybe I could just go first.
22 And I have read all the comments by all the intervenors, I
23 believe, that filed the comments, and Qwest filed -- I got
24 something today from them. And I have come up with just a
25 proposed schedule that people can speak to after I've

1 talked about it. I'm sure nobody will like it, so this is
2 it.

3 On January 18th I would recommend that intervenors
4 identify identified disputed issues. The Commission would
5 hold a prehearing conference on February 7 then for any
6 disputed issues. On March 18th intervenors could file
7 testimony. April 2nd Qwest could file a rebuttal. I
8 assume it would be optional rebuttal testimony. The
9 Commission would set this case for hearing for April 22nd
10 through the 26th.

11 And then I recognize that the final OSS reported
12 is due perhaps in the first week of March, though I don't
13 know if that date will be met. But after the final OSS
14 report is issued, then I believe that we would determine
15 whether any more hearings would be necessary in order for
16 issues raised by that report.

17 So at this point I will just ask for parties'
18 comments on that schedule. Qwest?

19 MR. MUNN: Thank you, this is John Munn for Qwest.
20 And I would like to thank you for the opportunity to just
21 address these issues. I think Qwest recommends that the
22 Commission evaluate Qwest's compliance with the
23 requirements of 271 in a timely and a responsible fashion.
24 And we think that the schedules that have been proposed by
25 some of the other parties like AT&T and Black Hills would

1 cause an unnecessary and prejudicial way in evaluating our
2 271 application.

3 I think that the dates that were just laid out
4 with, for example, on April 22 through 26th hearing also
5 cause concern in just the amount of delay in the process
6 with, I think, testimony not being filed until the middle
7 of March by the intervenors.

8 And I think what we need to look at here today in
9 setting up a procedural schedule, the issue is not whether
10 the recommendation on the merits of the application, when
11 that recommendation would be made; but the issue is when
12 will the analysis and evaluation of the application take
13 place through hearings and testimony, et cetera. A delay
14 in the schedule of even considering Qwest's application
15 would directly harm the consumers of the state of South
16 Dakota.

17 The incentive for the intervenors in this docket
18 to delay Qwest's application and the evaluation of it is,
19 I think, pretty clear. I mean, every day there's a delay
20 in this procedural schedule is simply another day that
21 Qwest is not allowed to compete in the long distance
22 market. So that delay in the schedule will benefit the
23 competitors and intervenors while harming South Dakota
24 consumers by depriving them of increased competition and
25 better rates in the long distance and local markets.

1 We don't believe that there's any reason for delay
2 in the resolution of the 271 application in South Dakota
3 until completion of the ROC OSS test. This issue is
4 brought forward primarily by AT&T in its proposed
5 procedural schedule that was filed with this Commission.
6 Qwest does agree that the results of the ROC OSS test is
7 one important factor that this Commission should evaluate
8 and will evaluate. However, there's no reason to delay
9 commencement of the entire process of evaluating 271
10 issues until completion of the ROC OSS test.

11 In other states we have Commission recommendations
12 and orders that have been issued on all 14 checklist
13 items. In Colorado, Idaho, Nebraska and Wyoming, all of
14 these ROC states participating in the OSS test and in the
15 other eight states' request has proceeded the commissions
16 have issued recommendations and orders on the majority of
17 the checklist items.

18 And what would occur there is simply a
19 recommendation subject to successful completion of the ROC
20 OSS test, and none of these states have followed the
21 approach of doing nothing until completion of the test.
22 And, as I understand, it's not staff's recommendation that
23 we wait until completion of the test, but the considerable
24 delay in having hearings in April on this matter do some
25 of the same, or affect some of the same problems here

1 because nothing makes South Dakota unique in the ability
2 to proceed with evaluation of the 271 application, just --
3 I mean just as it has occurred in every other state where
4 Qwest has brought these issues forward.

5 And Qwest recommends that the intervenors should
6 be required to timely identify their issues, and those
7 issues should be evaluated and addressed by this
8 Commission and the parties quickly. I mean we have the
9 process.

10 And what we propose is that the Commission can
11 rely on the seven-state process as a foundation for its
12 evaluation of Qwest's 271 application in South Dakota.
13 AT&T, for example, was a very active participant in all
14 stages of that process. And the parties reached consensus
15 on a large number of issues, and a lot of that work is
16 already done.

17 The disputed issues which would be of particular
18 concern to the Commission, the disputed issues out of that
19 seven-state process are identified in the Antonuek reports
20 which were attached to Qwest's petition, and it contains
21 Mr. Antonuek's evaluation and recommendations on those,
22 knowing that they're certainly not binding on this
23 Commission, just like they're not binding on any of the
24 commissions in the seven states. But it's his
25 recommendation.

1 AT&T had claimed in its filing that its proposal
2 would result in maximum efficiency. In fact, to Qwest it
3 certainly wastes valuable time and suggests that we should
4 basically stick our heads in the sand until completion of
5 the ROC OSS test.

6 I think that the need for the identification of
7 issues quickly and then the filing of testimony needs to
8 be begin in the near future without any unnecessary and
9 harmful delay as has been employed by some of the
10 intervenors.

11 I would point out that I think MidContinent filed
12 a proposal that was much closer to Qwest's time table, so
13 Qwest is not alone in the request to move the process
14 along more quickly.

15 I think that once the OSS tests are complete,
16 Qwest will begin the process of presenting its case in the
17 14-state region to the FCC. If the South Dakota
18 Commission has not started and started timely, like in the
19 very near future, considering the merits of the 271
20 application, I think the South Dakota Commission will be
21 in kind of a difficult and unnecessary catch-up position.
22 The delay in evaluating the Qwest application benefits no
23 one but competitors that hope to cling to market share and
24 the current pricing levels in the long distance market.

25 So what we ask for this Commission to do is to

1 establish a procedural schedule along the lines that Qwest
2 has proposed in its filing. And I think as far as the
3 April hearing dates and the filing dates of testimony
4 being pushed out so far in the recommendation that was
5 just made, I would request that the Commission consider
6 following the proposal that was laid out in the Qwest
7 procedural schedule that we had submitted.

8 MS. WIEST: When did Qwest file in Colorado?

9 MR. MUNN: Well, the application for 271?

10 MS. WIEST: Yes.

11 MR. MUNN: I don't know for certain. But I can
12 tell you that -- certainly can address that point. It has
13 been filed for, I would say, a year at this point. So I
14 think that was one of the first states where we were
15 bringing these issues forward. I think the good news for
16 South Dakota, even though it has not been there and was
17 not a participant in the seven-state process and didn't
18 have another process, you know, moving along during the
19 times those workshops were going on is that we have
20 resolved a large number of these issues that took time to
21 address.

22 So that now we're in a position where we can
23 present issues, number one, just disputed issues or what
24 we need to talk about here because the majority of the
25 issues have been weeded out already and the companies and

1 intervenors are in agreement on.

2 But, secondly, you have the benefit of taking
3 whatever notice and giving whatever weight the Commission
4 chooses to for evaluations and recommendations of the
5 resolution of those issues, not just from Mr. Antonuek and
6 the seven-state process, but from many other states as
7 well.

8 So I think the time line for seeing the issues,
9 number one, the issue is much smaller than any of the
10 other states, or certainly should be because we resolved
11 the issues, or a large number of them; and, two, the means
12 by which they should be resolved. The wheel has been
13 invented in the process of other states. So I think both
14 of those things should help really shorten the time needed
15 here.

16 And basically what we're talking about is
17 requiring the parties that are intervening -- and our
18 testimony has been on file in South Dakota. I think we
19 filed in October or November in this state. And if we
20 were looking at a filing in 2002, there's been sufficient
21 time for evaluation of the testimony and to have
22 responsive testimony drafted and put in place so that the
23 Commission can begin the evaluation process.

24 COMMISSIONER NELSON: I guess I would say that
25 you've had since 1996 to make this request, and so I think

1 the proposed schedule that the counsel made seems
2 reasonable and fair considering the importance and
3 significance of the issues to be dealt and other people's
4 ability to respond to your request. It seems like a
5 reasonable schedule to me and you've had since 1996.

6 I might suggest that you might also even iron out
7 or come to agreement on more issues than we would be
8 currently looking at. So if you followed the proposed
9 schedule, you could still be working on those issues.

10 You make it sound like we will be doing nothing
11 between now and April, and that's not the case. I guess
12 you said earlier at the beginning of your testimony or
13 comments today that you thought consumers in South Dakota
14 would be harmed, and I would suggest that if consumers
15 would be harmed in a truly competitive environment that
16 would be the case.

17 CHAIRMAN BURG: I've been wondering if they would
18 be harmed by this schedule. How have they been harmed
19 since 1996 by not having that opportunity?

20 Black Hills FiberCom, any comments?

21 MR. BERNARD: This is Greg on the line. Is Kyle
22 on the line?

23 MR. WHITE: Yes. I just joined. I apologize for
24 being late.

25 CHAIRMAN BURG: Kyle, do you have any comments?

1 MR. WHITE: Only that these are very important
2 issues and that we need appropriate opportunity to address
3 them. Unfortunately, I missed some of the conversation.
4 But the fact we will have time to address them during the
5 first quarter and a little more next year.

6 CHAIRMAN BURG: Did you hear the proposed
7 schedule?

8 MR. WHITE: No, I did not, but Greg can comment on
9 them.

10 CHAIRMAN BURG: Greg, did you have any comments on
11 the proposed schedule?

12 MR. RISLOV: I did hear the schedule. In my
13 opinion it's doable, but it's again a little bit short.
14 And I don't think FiberCom is so committed to the
15 completion of the OSS testing before anything starts so
16 much as it is committed to the schedule that that would
17 have represented for getting the issues in South Dakota
18 ironed out.

19 Obviously, FiberCom is in this for the broader
20 reason to insure there's the true competition in South
21 Dakota that the Act envisions, but I think more selfishly
22 to insure that some of the many problems that FiberCom has
23 catalogued in their experience with interconnection with
24 Qwest come to the fore and we decide, number one, are
25 those still -- have those problems been resolved; and,

1 number two, if not, let's get them resolved.

2 I think the reality is that FiberCom doesn't have
3 the resources to commit the time and personnel, et cetera,
4 into digesting this probably 40-pound box of material that
5 we got from Qwest. And I think that's probably true of
6 most small CLEC's in South Dakota as evidenced by there's
7 really only one small-to-medium-sized CLEC that's
8 intervened here.

9 My biggest concern is that a short schedule,
10 particularly the one proposed by Qwest, would effectively
11 preclude FiberCom from any sort of meaningful
12 participation in this. And so if anything else, or if
13 nothing else, I would suggest that the Commission's
14 proposed schedule be put off by at least one month more.
15 But I'll defer to Kyle, I think it's doable if we had to.
16 We could essentially push it hard.

17 COMMISSIONER NELSON: I seem a little confused by
18 both parties who are arguing here because our proposed
19 schedule does not presume that we do nothing until OSS
20 testing is done. We are going to be moving along and only
21 talked about resolving the issues around OSS after the
22 report is done, but we'll be addressing all the other
23 issues prior to that, disputed ones anyway.

24 CHAIRMAN BURG: MidContinent? Mary, do you have
25 any comments?

1 MS. LOHNES: Tom, are you on the line?

2 MR. WELK: Yes, I am.

3 MS. LOHNES: Tom Simmons.

4 CHAIRMAN BURG: I'm sorry, I didn't have you
5 listed. Tom, do you have comments on the proposed
6 schedule, Tom?

7 MS. LOHNES: I guess he's not on the line. I
8 guess no comment at this time.

9 CHAIRMAN BURG: You don't know whether -- I mean
10 you don't have a comment whether that intervention is
11 adequate for you?

12 MS. LOHNES: Yeah, it can work for us.

13 CHAIRMAN BURG: And AT&T, who's talking on behalf
14 of AT&T?

15 MR. WITT: Good afternoon, Mr. Chairman and
16 Commissioner Nelson. This is Gary Witt on behalf of AT&T.
17 And I did hear the proposed schedule. At this point it
18 would certainly be easy for AT&T to dig in its heels and
19 continue to argue that nothing should happen until after
20 the OSS test results have come out. But in looking at
21 this from an entire -- from an overall perspective, I'd
22 like to say two things to start with.

23 First of all, I'd like to echo many of the
24 comments, if not all of the comments, that we've heard
25 from FiberCom. What we are mainly concerned with here is

1 providing the Commission with an adequate opportunity to
2 build its record so that it has at its disposal the kind
3 of information, the kind of data that is necessary for it
4 to make a recommendation to the FCC one way or the other.

5 And certainly from the get-go it seems to us that
6 by waiting until the OSS report has come out, that would
7 probably provide the Commission with additional time in
8 which to accomplish that.

9 However, the second thing that I would like to say
10 is that the proposed -- when you look at it and really
11 analyze it, the proposed procedural schedule that has been
12 put forth by the -- I believe it was by the Commission's
13 staff, is certainly reasonable. It seems to be a
14 reasonable compromise between the position that's being
15 taken by Qwest and the position that's been taken by AT&T.

16 Now, certainly AT&T would prefer to have that
17 additional month to look at things and make certain that
18 we are able to analyze things. I mean we're looking, as
19 has been pointed out here, we're looking at a 40-pound box
20 of material here, and that's difficult even for a company
21 the size of AT&T to digest. I mean, frankly, we have some
22 serious resource issues in this regard. And I will not
23 try to tell you that we are superman and superwomen here.
24 We are stretched very, very thinly here.

25 So asking for additional time, yes, we would like

1 to do that. But the bottom line here is the staff has
2 come up with what we regard as a reasonable, although
3 slightly accelerated procedural schedule. I think that
4 they have examined this in such a way that they are aware
5 of their own abilities, and I would certainly not argue
6 with their assessment of the situation. I think that AT&T
7 would certainly support the staff proposed procedural
8 schedule.

9 CHAIRMAN BURG: Thank you. That schedule was
10 actually put out by Commission Counsel Rolayne Wiest. And
11 so I'm going to ask the other staff members, do you have
12 any comments on that procedural schedule? Karen.

13 MS. CREMER: Staff would be okay with the
14 procedural schedule as recommended by Commission counsel.

15 CHAIRMAN BURG: Okay. And with that, too, I'm
16 going to also make a comment at this time that from at
17 this point staff will be considered a separate party in
18 this procedure. Now, this is an adversarial procedure and
19 up until now we've been working together with staff. But
20 we felt it was important that we allow staff to analyze
21 the issues that were brought up, and if, on behalf of the
22 public, if there's any issue that's missed, to have the
23 opportunity to also participate as a separate entity. So
24 at this time staff will be considered a separate party as
25 we move forward.

1 Any other rebuttal? Any other comments that
2 anybody would make based on what has been said? If not,
3 I'm going to move then that the Commission adopt the
4 procedural schedule as recommended by Commission counsel.

5 COMMISSIONER NELSON: And I would concur.

6 CHAIRMAN BURG: Okay. It has been approved in
7 TC01-165.

8 (The hearing concluded at 2:35 p.m.)
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STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF STANLEY) SIXTH JUDICIAL CIRCUIT

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

DO HEREBY CERTIFY that the above hearing pages 1 through 18, inclusive, was recorded stenographically by me and reduced to typewriting.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Ft. Pierre, South Dakota, this 13th day of December, 2001.

Lori J. Grode
Lori J. Grode, RMR/RRR
Notary Public