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THE PUBLIC UTILITIES COMMISSION

OCT 25 2002

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE ANALYSIS  
INTO QWEST CORPORATION'S COMPLIANCE  
WITH SECTION 271(C) OF THE  
TELECOMMUNICATIONS ACT OF 1996

TC01-165

=====

Transcript of Proceedings  
October 17, 2002

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
JIM BURG, CHAIRMAN  
PAM NELSON, COMMISSIONER  
ROBERT SAHR, COMMISSIONER

**ORIGINAL**

COMMISSION STAFF

Rolayne Ailts Wiest  
John Smith  
Karen Cremer  
Kelly Frazier  
Greg Rislov  
Harlan Best  
Keith Senger  
Dave Jacobson  
Michele Farris  
Heather Forney  
Bob Knadle  
Terri Iverson  
Debra Elofson  
Mary Giddings

APPEARANCES

Mary Hobson, Qwest Communications  
Lynn Stang, Qwest Communications (by telephone)  
John Munn, Qwest Communications (by telephone)  
David A. Gerdes, Midcontinent  
Kyle White, Black Hills FiberCom (by telephone)  
Steven Weigler, AT&T (by telephone)  
Rick Wolters, AT&T (by telephone)

Reported By Cheri McComsey Wittler, RPR

**PRECISION REPORTING**

**L I M I T E D**

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 2 OF THE STATE OF SOUTH DAKOTA  
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 42 Reported By Cheri McComsey Wittler, RPR  
 43  
 44  
 45

1 APPEARANCES BY TELEPHONE 2  
 2 Jeff Carmon, Qwest Corporation  
 3 Susan Rao, Western Wireless Corporation  
 4 Gene DeJordy, Western Wireless Corporation  
 5 Janet Browne, AT&T  
 6 Ron Spangler, Otter Tail Power Co.  
 7  
 8 -----  
 9 TRANSCRIPT OF PROCEEDINGS, held in the  
 10 above-entitled matter, at the South Dakota State  
 11 Capitol, Room 412, 500 East Capitol Avenue, Pierre,  
 12 South Dakota, on the 17th day of October 2002,  
 13 commencing at 1:30 p.m.  
 14  
 15  
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1 CHAIRMAN BURG: TC01-165, In The  
 2 Matter of the Analysis into Qwest Corporation's  
 3 Compliance with Section 271(c) of the  
 4 Telecommunications Act. Today shall the Commission  
 5 grant AT&T's motion, and shall the Commission grant  
 6 Qwest's request, and shall the Commission find  
 7 Qwest in compliance with certain Section 271  
 8 agreements?  
 9 Who's on from AT&T? What was your request?  
 10 Do you want to brief that? Who's going to  
 11 represent AT&T?  
 12 MR. WOLTERS: Chairman, this is  
 13 Rick Wolters. Can you hear me?  
 14 MR. CHAIRMAN: Yes.  
 15 MR. WOLTERS: We filed a motion.  
 16 Let me explain basically what it was about.  
 17 Qwest withdrew the nine state applications at  
 18 the FCC because at the time it could not approve  
 19 that Section 272 affiliate maintained books and  
 20 records and compliance with 272. They couldn't  
 21 make that filing to the satisfaction of the FCC.  
 22 The company has gone back and created a new Section  
 23 272 affiliate. The affiliate that they were using  
 24 at the time of the filing was called Qwest  
 25 Communications Corporation, and they now have a new

1 affiliate called, I believe, Qwest Long Distance  
 2 Corporation.  
 3 It's our contention that the findings that  
 4 this Commission made and the record that was  
 5 developed was developed based on Qwest  
 6 Communications Corporation, not the new  
 7 Section 272 affiliate.  
 8 So what's happened is that you have -- you  
 9 don't have any record to show that the new  
 10 Section 272 affiliate's in compliance with the  
 11 nondiscrimination of structural and transactional  
 12 safeguards of 272 being (Inaudible).  
 13 Now what Qwest is assuming is that they can  
 14 use the findings that have been made regarding the  
 15 old Section 272 affiliate to show its compliance  
 16 for the new Section 272 affiliate, which is not --  
 17 can't be done.  
 18 For example, 272 requires that the Section 272  
 19 affiliate maintain separate charts of accounts,  
 20 operate independently, have separate officers,  
 21 directors, and employees. The findings that were  
 22 made for QCC or the old 272 affiliate just won't  
 23 carry forward to the new long distance affiliate  
 24 that they've created to try to get around the  
 25 problems they had complying with the requirement

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1 that the 272 affiliate maintain separate books and  
 2 records according to GAP.  
 3 So it was our position that really the  
 4 Commission needs to go back and have Qwest make a  
 5 filing to demonstrate that their new 272 affiliate  
 6 meet the transactional, structural, and  
 7 nondiscrimination safeguards of 272(b) and c.  
 8 That's simply what our Motion asks for.  
 9 MR. CHAIRMAN: Again, restate to me  
 10 what your motion is.  
 11 MR. WOLTERS: We're asking the  
 12 Commission to require Qwest to basically come back  
 13 in and make some kind of showing to the  
 14 Commission's satisfaction that their new 272  
 15 affiliate complies with 272(b) and c.  
 16 CHAIRMAN BURG: Thank you. Qwest.  
 17 MS. HOBSON: Thank you. I'm  
 18 Mary Hobson representing Qwest this afternoon.  
 19 With me is Tom Welk today in the hearing room, and  
 20 on the telephone is John Munn and Lynn Stang. They  
 21 are also representing Qwest, and as I said they're  
 22 on the telephone. They've previously been admitted  
 23 for the purposes of this matter.  
 24 Mr. Munn is the attorney that's going to  
 25 address this AT&T motion.

6

1 CHAIRMAN BURG: Okay.  
 2 MR. MUNN: Good afternoon,  
 3 Commissioners. I just want to address AT&T's  
 4 motion briefly. First of all, I want to point out  
 5 that no states have granted AT&T's motion.  
 6 10 states have denied it. There's seven states,  
 7 being Colorado, Montana, Nebraska, New Mexico,  
 8 North Dakota, Washington, and Wyoming that have  
 9 actually issued orders specifically denying it.  
 10 Three others, Idaho, Iowa, and Utah have, I  
 11 think, effectively denied AT&T's motion in the  
 12 comments that were filed on October 15 at the  
 13 FCC -- I mean, the effect of the positive  
 14 recommendations is to deny AT&T's motion.  
 15 I think the reasons why the motion has been  
 16 denied everywhere and has not been granted anywhere  
 17 is very important and equally applicable to  
 18 South Dakota as they are to all of these other  
 19 10 states.  
 20 First of all, it's not necessary for  
 21 South Dakota to conduct a state review of 272. So  
 22 as you listen to AT&T's statements and look at  
 23 their motion, that's a point from which you need to  
 24 begin your examination of the process. And I just  
 25 want to cover three points very quickly that I

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1 think dictate denial of this motion.  
 2 First of all, just common sense I think  
 3 dictates denial of the motion. AT&T has filed  
 4 substantially the same motion in all 14 states  
 5 across the region. Even though the narrow 272  
 6 issue that triggered the refiling of Qwest's  
 7 federal 272 applications -- even though that  
 8 doesn't vary from state to state and even though  
 9 the FCC's already in the midst of deciding this  
 10 issue finally now for all states, since this isn't  
 11 an issue that varies from state to state, and  
 12 actually on an expedited comment special.  
 13 AT&T is now asking for the 14 commissions in  
 14 our region, including your Commission, to conduct  
 15 14 separate investigations into the matter.  
 16 I think the suggestion that the Commission  
 17 start again in South Dakota is particularly  
 18 inappropriate here since AT&T never sponsored any  
 19 testimony on Section 272 in the South Dakota  
 20 proceedings that we have already conducted and  
 21 didn't even bother to attend the previous  
 22 proceedings on that issue.  
 23 But some of the other commissions have  
 24 articulated this common sense point. Since the FCC  
 25 is already in the process of deciding these

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1 issues -- for example, the Washington Commission  
 2 said that, at this time reopening the proceeding  
 3 would be a waste of administrative resources, if  
 4 all 14 states in Qwest's region or even just our  
 5 state were to consider an issue that will soon be  
 6 directly before the FCC.  
 7 They issued that order on September 26. Today  
 8 it is directly before the FCC. In fact, all  
 9 parties, including AT&T, have been able to file  
 10 comments about the 272 showing and both filed  
 11 comments and declarations on that point.  
 12 New Mexico said it, I think, pretty well too.  
 13 They said it would be a waste of administrative  
 14 resources and patently inefficient to conduct an  
 15 isolated review -- and I think this is the key  
 16 part -- of an indisputably region wide issue that  
 17 can and will be addressed at region level.  
 18 I think the duplicative proceeding makes no  
 19 more sense in South Dakota than in the 10 states  
 20 that have already denied it.  
 21 I think an additional point, and it dovetails  
 22 into the common sense piece, is that the FCC has  
 23 given the state commissions no indication that it  
 24 wants additional state review into this matter.  
 25 Actually on the contrary the FCC staff advised the

1 states outright at the last ROC meeting that no  
 2 such review is necessary.  
 3 The FCC is considering Qwest's refiled  
 4 272 application on an expedited comment schedule  
 5 right now that actually shortens the time for  
 6 states to weigh in, which I would contend -- at  
 7 least deductive reasoning would assume the FCC  
 8 wanted comment on 272. One, they told you directly  
 9 they don't need it. Two, they shortened the  
 10 comment schedule, which also, I think, sends that  
 11 message.  
 12 But besides just the common sense aspects of  
 13 the fact -- just look at timing. I mean, the FCC's  
 14 going to decide this issue with or without a  
 15 process occurring in South Dakota. The second  
 16 point is just a legal point. I mean, there's  
 17 nothing in the act or in FCC precedent that  
 18 requires the South Dakota Commission to issue any  
 19 recommendation to the FCC on Section 272 at all.  
 20 And I'm making an assumption here, but I would  
 21 assume that's the driver for why the FCC staff made  
 22 the statements at the ROC meeting that it made.  
 23 Because Congress directed the FCC in the act to  
 24 consult with the states on Subsection C.  
 25 And that makes sense. That's Track A. That's

1 also the 14 point competitive checklist. As the  
 2 Commission is well-aware from the proceedings that  
 3 have already occurred, those are issues that can  
 4 have state specific components to them. But the  
 5 provision requiring the FCC to determine an  
 6 applicant's compliance with 272 isn't one of those  
 7 requirements of Subsection C. It's found in  
 8 Subsection D.  
 9 And the Washington Commission echoed this same  
 10 point when they said under the plain language of  
 11 the statute, Section 721(d)2(B), it does appear  
 12 that a state Commission's duty is limited to  
 13 reviewing BOC requirements of Subsection C. North  
 14 Dakota Commission said the same thing in their  
 15 comments filed a couple of days ago.  
 16 So although this Commission did conduct an  
 17 extensive review proceedings on 272, it was never  
 18 required to do so. It's something that Qwest  
 19 brought forward as a matter of just wanting to  
 20 inform the Commission about the aspects of 272.  
 21 But the Commission is not obligated to conduct any  
 22 additional state review, nor would it make sense to  
 23 do so when the FCC is already reviewing this issue  
 24 and is going to decide this region-wide issue  
 25 before a South Dakota determination could, I guess,

1 wind its way into the FCC.  
 2 The third point and last point that I just  
 3 want to address is that in AT&T's argument in its  
 4 motion they rely -- they make the claim that the  
 5 FCC relies on the states that develop a record on  
 6 Section 272.  
 7 I think that is just inaccurate. The FCC told  
 8 you at the ROC it's not necessary for the states to  
 9 do this. As we pointed out in our brief, and I  
 10 won't go through the legal analysis, but all of the  
 11 references in AT&T's pleading to FCC orders are the  
 12 state dependant local competition factors of  
 13 271(c). None of them even discuss compliance with  
 14 Section 272. And that's not surprising since the  
 15 BOC's relationship to 272 affiliate wouldn't be  
 16 expected to vary from state to state.  
 17 So I guess Qwest would ask the Commission to  
 18 deny AT&T's motion, and Qwest believes that this  
 19 AT&T motion should not delay the resolution of the  
 20 Commission's work that is already underway on the  
 21 271 Docket. Because I think that, as these other  
 22 commissions have pointed out, the commissions have  
 23 finite resources and it is -- I think it would be  
 24 at best a very inefficient use of the Commission's  
 25 finite resources to conduct a review that the FCC

1 has already told the states it doesn't need.  
 2 CHAIRMAN BURG: Thank you. Staff,  
 3 do you have any comments on the request?  
 4 MS. AILTS WIEST: This is  
 5 Rolayne Wiest. Qwest did, however, submit  
 6 extensive testimony on 272, and haven't other state  
 7 commissions actually issued recommendations on the  
 8 272 issue?  
 9 MR. MUNN: Rolayne, this is John.  
 10 That's a correct statement. And I guess my point  
 11 is that that was never a requirement to do so.  
 12 It's something that Qwest brought forward to the  
 13 states. I mean, we want to present a picture of  
 14 the aspect of the Act to the states even though  
 15 there was never a requirement to do so.  
 16 The point is now the state's already conducted  
 17 the 272 review. We all had a hearing. AT&T didn't  
 18 show. And now that very party is coming in asking  
 19 to kind of redo this process in the environment of,  
 20 you know, FCC staffers telling you you don't need  
 21 to do any of this. The issues are interLATA issues  
 22 within the purview of the FCC and the fact that  
 23 there's no legal requirement to do it.  
 24 So the Commission's not required to have this  
 25 review, and I think that it doesn't make sense to

1 conduct one now given the facts that exist today on  
2 October 17.

3 MS. AILTS WIEST: So is it your  
4 understanding that the FCC doesn't even look at a  
5 state's recommendation on a 272 issue?

6 MR. MUNN: I will not try to look  
7 into the mind of the FCC and what they do or don't  
8 do. I think what the FCC has said is that this is  
9 not something that is necessary. They're  
10 evaluating the issues now, and I'm not aware of --  
11 the 272 affiliate is the 272 affiliate across the  
12 region.

13 I'm a positive person so I'm going to assume  
14 with the nine states that we have filed with the  
15 FCC we will have an approval for 272 in that  
16 application. That's what I expect to happen and  
17 what I hope to happen. Let's make that assumption.

18 MR. WOLTERS: Can I respond to that  
19 question?

20 MR. MUNN: Hold on, Rick. If that  
21 happens, then I think this issue has been  
22 decided -- and obviously the FCC can look at this  
23 issue again and the filings that are made for each  
24 and every state, but I don't see a basis on which  
25 that type of determination would change. It's not

1 a state-specific issue.

2 MR. WOLTERS: May I respond to that?  
3 I think if you look at the very first  
4 America-Michigan order, the FCC rejected  
5 Ameritech's application based in part on 272  
6 noncompliance. I think if you look at a  
7 Bell South-Louisiana 2 order I believe they filed  
8 noncompliance with 272 based on the state records.

9 So the FCC does look at the state records and  
10 in several instances have found noncompliance based  
11 on those records.

12 MR. MUNN: And I would agree that  
13 the FCC did not find Ameritech-Michigan and I think  
14 you're right there on the first Bell  
15 South-Louisiana order, but -- and, first of all, I  
16 didn't say that they don't look at state records.

17 My point is they have not asked for it and  
18 specifically said it's not necessary given the  
19 facts that we're in today.

20 MS. AILTS WIEST: Well, when you  
21 talk about not necessary given the facts that we  
22 are in today, would that also apply -- most of the  
23 states have already ruled on this.

24 Would that also apply to a state that actually  
25 hasn't ruled on this issue?

1 MR. MUNN: I think it does because  
2 regardless of the state's action -- and again I  
3 want to be very clear. I am obviously not employed  
4 or an agent representative of the FCC. So I don't  
5 want anybody to hear me saying what the FCC does or  
6 does not do.

7 I know what they've said in the ROC in front  
8 of all the states. But if they decide this for the  
9 nine states, I don't see -- I mean, there's  
10 certainly no state-specific nuance presented here  
11 in South Dakota that makes it different than the  
12 determination that will already be given by the FCC  
13 in the nine-state application that's already  
14 pending before the FCC.

15 So, I mean, one, you've got the FCC saying we  
16 don't need your review. Two, they shorten the  
17 comment cycle, which I'm inferring from that, you  
18 know, if they needed some state review there, they  
19 wouldn't have shortened the comment cycle to allow  
20 states to have a process.

21 And then, third, I think once they decide that  
22 issue I don't see the path or avenue for that type  
23 of determination to change because the name of the  
24 state has changed. Because the evaluation is  
25 between two companies that don't change from state

1 to state. It's the BOC, and then the 272  
2 affiliate.

3 MR. WOLTERS: This is Rick Wolters  
4 again. Two states that have not made  
5 recommendations yet, Minnesota and Arizona. The  
6 Arizona staff has recommended that the Commission  
7 go back and look at the record again for the new  
8 Section 272 affiliate, and so has the Minnesota  
9 Department of Commerce that in large part serves as  
10 the advocacy arm of the Commission.

11 So those two states have not made  
12 recommendation yet on Qwest's compliance with 272,  
13 and in both of those cases the staff and the  
14 department have recommended that the Commission go  
15 back and look at their new Section 272 affiliate  
16 for compliance with 272.

17 COMMISSIONER NELSON: Let me see if  
18 I got it right. You want me to believe that I  
19 should not make any kind of -- this state should  
20 have any kind of record or make any kind of  
21 recommendation because we should just let the FCC  
22 decide the 272 stuff? Despite the fact that you  
23 already conceded several times in this conversation  
24 that the FCC's record indicates they do rely on the  
25 state's record and what the state's recommendations

1 are.  
 2 Or did I get confused in what you were trying  
 3 to say?  
 4 MR. MUNN: Yeah. I believe I have  
 5 not articulated it clearly, and for that I  
 6 apologize. I'm saying that AT&T has made the  
 7 argument in its brief and has made it today that  
 8 the FCC is relying on the state to develop a record  
 9 on Section 272.  
 10 I think that claim is false and every FCC  
 11 order that they've cited to is not -- has  
 12 absolutely nothing to do with 272. But that's a  
 13 different issue from whether -- if they state  
 14 presents something, you know, a 272 record, to the  
 15 FCC whether they would consider it or not.  
 16 And that's something that I would assume since  
 17 the FCC said we don't need it, I can't predict what  
 18 the FCC would do if there's some new proceeding in  
 19 a state and its presented to the FCC. I'm not  
 20 going to presume what the FCC will do with that  
 21 information. I just don't know.  
 22 I do know they've said that they don't need  
 23 it, and they're in the process right now of  
 24 deciding those issues. And none of the states for  
 25 the nine states that are pending was there a state

1 process dealing with the new 272 affiliate. In  
 2 addition to the nine states that are involved in  
 3 the current filing at the FCC, New Mexico, which is  
 4 not involved at the current filing at the FCC, has  
 5 also denied AT&T's motion outright.  
 6 So I would suggest that that is not necessary,  
 7 and it's an issue where this Commission can simply  
 8 tell the FCC in its recommendation that, you know,  
 9 this is an issue that you don't need to provide a  
 10 recommendation and you're not providing a  
 11 recommendation.  
 12 COMMISSIONER NELSON: But did I hear  
 13 you say that you believe that other states have  
 14 provided a record and a recommendation?  
 15 Because I thought I heard you agree that that  
 16 was true, that in other states they have had a  
 17 record and they have made a recommendation and the  
 18 FCC considered it.  
 19 MR. MUNN: Again, I think I'm doing  
 20 a poor job here.  
 21 COMMISSIONER NELSON: I would agree  
 22 with that.  
 23 MR. MUNN: Okay. Let me try to do  
 24 it better.  
 25 COMMISSIONER NELSON: It's a simple

1 thing. Yes or no.  
 2 MR. MUNN: The issue of the FCC  
 3 relying on a state to develop a 272 record, I don't  
 4 see any evidence of that anywhere. And I don't  
 5 see -- there's nothing in what AT&T has cited that  
 6 supports that. That's completely separate from the  
 7 fact that in all nine of these states and actually  
 8 all 14 of Qwest's in-region states we have  
 9 conducted state proceedings on 272.  
 10 But the key is not because that was required  
 11 or necessary but because we choose to file  
 12 declarations dealing with this issue so that the  
 13 state could look at that.  
 14 COMMISSIONER NELSON: Except you're  
 15 not answering my question. My question to you is  
 16 really this: Do you agree that the FCC has relied  
 17 on and considered records, where the states have  
 18 developed one, on this particular issue?  
 19 Although they're not required, they have  
 20 considered it if it was available. Yes or no.  
 21 MR. MUNN: Commissioner Nelson, I am  
 22 not aware of what the FCC orders say about the  
 23 review of the state record. I know the FCC has  
 24 looked at what has been filed and has rejected or  
 25 granted applications.

1 And I apologize. I just don't know off the  
 2 top of my head what they have said about the record  
 3 developed at the state versus the record developed  
 4 in the FCC filing in the declarations themselves.  
 5 COMMISSIONER NELSON: Well, I guess  
 6 I'm interpreting your answer as a yes so --  
 7 CHAIRMAN BURG: I guess what I'm  
 8 looking for, Rolayne, I know you very thoroughly  
 9 reviewed this.  
 10 What is your recommendation as far as the  
 11 Commission granting AT&T's motion?  
 12 MS. AILTS WIEST: Well, first I  
 13 would like to hear staff's recommendation.  
 14 COMMISSIONER NELSON: Maybe they  
 15 prefer yours.  
 16 CHAIRMAN BURG: I asked for it once,  
 17 and she give it to you so I don't know.  
 18 MS. AILTS WIEST: Okay.  
 19 MS. CREMER: I guess the question I  
 20 would have of Qwest is if we were to hold the  
 21 hearing today, if we had not held our hearing yet,  
 22 would the testimony on 272 be substantially  
 23 different than what was given before?  
 24 MR. MUNN: The answer to that is no.  
 25 In fact, that is a very good point. The controls

1 that were addressed in South Dakota in the record  
2 that's already before you in the controls that  
3 presumably you're evaluating now, the evidence  
4 about the controls relating to 272, those controls  
5 that applied and related to QCC also apply and  
6 relate to the new affiliate.

7 So, I mean, the evaluation that you're doing  
8 and whether, you know, part of that evaluation is  
9 the controls, do you have adequate controls, you  
10 know, do they show compliance with separate  
11 employees, officers, directors, for example, those  
12 controls are -- all of those controls were also  
13 overlaid onto the new 272 affiliate.

14 So the answer to your question is no, there  
15 wouldn't be anything substantially changed.

16 MR. WOLTERS: Wait a second.  
17 Rick Wolters, AT&T. That's the whole point. I  
18 think that's the point we're making. We disagree  
19 with those assumptions.

20 They're asking you to assume that the new  
21 affiliate is in compliance based on the findings  
22 from the old affiliate. And they have changed and,  
23 in fact, we don't believe controls have been  
24 adequate because the controls that they argued were  
25 in place that showed their books and records were

1 maintained in accordance with GAP were not found to  
2 be adequate, had to go back and make changes in  
3 order to try to demonstrate that the new  
4 Section 272 affiliate books and records are in  
5 compliance with GAP.

6 So there is change, and you cannot rely on the  
7 findings for the old affiliate to justify the  
8 findings for the new affiliate. That's essentially  
9 the basis of our motion.

10 MR. MUNN: I can respond, Rick, very  
11 briefly. I think what AT&T is saying is that they  
12 disagree that we comply. And I expect them to  
13 disagree that we comply, and that's consistent with  
14 where they've been on each -- you know, in each  
15 state.

16 That's not the question that I answered. The  
17 question that was asked was whether the record or  
18 the evidence would change substantially from the  
19 showing that's already before the Commission, you  
20 know, to the showing now, and the answer to that is  
21 no.

22 Whether you agree or disagree that that  
23 showing meets the requirements of 272 is an issue  
24 that this Commission hasn't determined. Obviously  
25 Qwest says that it does, and AT&T says it doesn't.

1 CHAIRMAN BURG: Did you get your  
2 question answered?

3 MS. CREMER: Yes, I did.

4 COMMISSIONER NELSON: I guess, my  
5 question for AT&T is if this is such a hot issue,  
6 how come you didn't show up the first time?

7 MR. WOLTERS: We did file the brief  
8 at South Dakota, but at the time we litigated this  
9 at the multi-state and we litigated in every other  
10 state except South Dakota because essentially we  
11 had gone through the records in every case and we  
12 just at that point didn't have the resources to do  
13 it one more time.

14 MR. WEIGLER: This is Steve Weigler.  
15 I'm actually the attorney that did the scheduling,  
16 and as you recall there was also a hearing going on  
17 in Washington at the same time as well as Arizona.  
18 I did the scheduling and we were able to get an  
19 attorney and a witness out there for everything but  
20 272 because Mr. Wolters had a hearing both at that  
21 time in Washington and Arizona. So he was riding a  
22 circuit and --

23 COMMISSIONER NELSON: Well, and like  
24 there's always a difference of -- a matter of  
25 allocation and resources and what your priorities

1 are, and apparently your record in South Dakota  
2 wasn't a priority.

3 CHAIRMAN BURG: If you litigated at  
4 multi-state, what's going to be different on a  
5 single state?

6 MR. WOLTERS: Chairman, ask your  
7 question again, please.

8 CHAIRMAN BURG: It was just  
9 indicated that you didn't appear in South Dakota  
10 because you litigated most of this at the  
11 multi-state.

12 MR. WOLTERS: I think, as  
13 Mr. Weigler said, we did have conflicts. I did all  
14 the 272 work. It is not an easy issue to pick up.  
15 So we would have had to impose on some attorney  
16 that had no familiarity with the subject to go to  
17 South Dakota. And I had conflicts, as Mr. Weigler  
18 pointed out, so we could not go to South Dakota.

19 CHAIRMAN BURG: I understood that,  
20 and I also understood him to say one of the reasons  
21 you didn't address it is because you dealt with it  
22 in the multi-state process.

23 MR. WOLTERS: I said we attended the  
24 multi-state process.

25 COMMISSIONER NELSON: That's not

1 exactly what you said.  
 2 CHAIRMAN BURG: Rolayne.  
 3 MS. AILTS WIEST: At this point  
 4 actually I would like to look at a couple of the  
 5 FCC decisions that were referenced, and I would  
 6 just recommend that the Commission defer any action  
 7 on the motion today.  
 8 CHAIRMAN BURG: The same with the  
 9 other two motions?  
 10 MS. AILTS WIEST: No. We haven't  
 11 heard on the Qwest request.  
 12 CHAIRMAN BURG: Okay. We'll act on  
 13 this one in the beginning. I would then support a  
 14 deferral because, frankly, Rolayne has examined  
 15 this up one side and down the other, and I'm not  
 16 about to ask whether she's ready to give us a good  
 17 recommendation so I would support deferring.  
 18 COMMISSIONER NELSON: I'd go with  
 19 that.  
 20 COMMISSIONER SAHR: I support  
 21 deferral.  
 22 CHAIRMAN BURG: Okay. The second  
 23 question being shall the Commission grant Qwest's  
 24 request, and again I need to have you refer what  
 25 that request is and comment on it.

1 MS. HOBSON: Certainly. This is  
 2 Mary Hobson. Qwest is requesting permission to  
 3 include a performance indicator definition, that's  
 4 a new PID called PO-20 in the South Dakota QPAP.  
 5 PO-20 measures Qwest's performance in  
 6 accurately processing manual orders. It's designed  
 7 as a 95 percent benchmark, and it is also designed  
 8 as a Tier 2 measure. That means that payments for  
 9 noncompliance with that PID would go to the states,  
 10 and payments for this PID as with all the PIDs  
 11 would become effective when the QPAP for  
 12 South Dakota becomes effective.  
 13 Your question probably is why are we bringing  
 14 this up now. PO-20 was first developed as a  
 15 diagnostic measurement. It was for informational  
 16 purposes only. And it was designed to respond to  
 17 questions that were raised during the ROC OSS  
 18 process. It was Qwest's intention originally to  
 19 have further discussions in the collaborative  
 20 process and bring this along in the long-term PID  
 21 administration.  
 22 However, in the course of the FCC's  
 23 investigation of Qwest's first 271 application  
 24 there was a discussion of this topic there, and as  
 25 a result Qwest committed to ask the state

1 regulatory commissions to include PO-20 in the  
 2 QPAPs for each of its states.  
 3 Now AT&T and WorldCom have filed comments  
 4 opposing Qwest's proposal. We're not sure what it  
 5 is that WorldCom is doing here since WorldCom  
 6 didn't intervene. But we'll assume they are AT&T's  
 7 comments. And I'm not going to respond to those  
 8 point by point.  
 9 Qwest's proposal is to offer South Dakota an  
 10 interim PID, and I emphasize the word "interim"  
 11 that was never requested by AT&T or any CLEC in the  
 12 course of the QPAP administration or in the ROC OSS  
 13 testing.  
 14 Qwest's offering is something that would not  
 15 otherwise be included in the QPAPs until the first  
 16 six-month review at the earliest. This means that  
 17 if you adopt this -- or accept this request now,  
 18 you will be receiving performance measures and  
 19 Qwest will potentially be making payments to the  
 20 state much sooner than would otherwise occur.  
 21 Now AT&T objects that all PIDs should come  
 22 forward through a collaborative process, but there  
 23 is nothing about your acceptance of this PID at  
 24 this time that will prejudice CLECS or preclude any  
 25 further collaborative development and refinement of

1 this particular PID. Again, it is an interim PID.  
 2 In the long-term PID administration forum this  
 3 will be taken up -- in fact, we fully expect this  
 4 to be one of the items that is discussed in that  
 5 forum and to the extent that consensus is  
 6 eventually reached through that process as to  
 7 exactly what this PID should be and what it should  
 8 cover, we expect that that decision will be brought  
 9 forward in the six-month reviews for resolution.  
 10 All of AT&T's technical objections can be  
 11 worked through there. And that's exactly what the  
 12 PID administration forum is for. There's no need  
 13 for this Commission to tackle any of those issues  
 14 now. Meanwhile AT&T is not prejudiced by this  
 15 interim PID going into the QPAP.  
 16 The bottom line really is this is a no harm no  
 17 foul situation. If this Commission accepts Qwest's  
 18 proposal, you will have another performance measure  
 19 and South Dakota will potentially receive more  
 20 payments than it otherwise would. That provides  
 21 benefits right now or at least when this becomes  
 22 effective in the form of greater incentives for  
 23 Qwest's performance and possibly payments to the  
 24 state without precluding any collaborative  
 25 discussion, without prejudicing CLECS.

1 So we suggest that you take the request.  
 2 Thank you.  
 3 MS. AILTS WIEST: I was just  
 4 curious. I was looking at the Colorado order, I  
 5 believe. And you said no harm no foul, but I just  
 6 point out, and I'm sure you're aware of this, why  
 7 did the Colorado Commission then find that adopting  
 8 the PO-20 now will result in more confusion and  
 9 errors in reporting and it outweighs their concern  
 10 about waiting?  
 11 MS. HOBSON: I saw that as well, and  
 12 I didn't, of course, participate in the Colorado  
 13 proceeding but Ms. Stang is on the phone and I  
 14 think maybe she would like to address that.  
 15 CHAIRMAN BURG: Ms. Stang, have you  
 16 got a comment on that?  
 17 MS. STANG: Yes. Thank you,  
 18 Commissioners. I don't know really what the  
 19 Commission's concern was. I think that there is  
 20 certainly a lot of discussion by AT&T that would  
 21 lead and try and make a Commission believe that  
 22 there could be some harm. But there really isn't.  
 23 In my view there's nothing that I can  
 24 understand that somebody would be prejudiced from  
 25 accepting this now because we are reporting and

1 doing what we can do in terms of what this measure  
 2 is designed to do certain things. AT&T would like  
 3 to see it expanded.  
 4 As Ms. Hobson said, we're perfectly willing  
 5 and intend to have committed to go and discuss that  
 6 long-term PID administration. But that doesn't  
 7 mean that anything is locked in in terms of this  
 8 being a static PID. But, unfortunately, I cannot  
 9 explain and there wasn't a discussion in their  
 10 order -- I did not attend the opening meeting. I  
 11 can't explain what harm may come from that because  
 12 I truly don't believe any harm would actually  
 13 result.  
 14 I would point out the Colorado Commission did  
 15 expect or has -- and I'm not sure where they got  
 16 this conception, that this would be a Tier 1-B  
 17 measure. And what we have proposed here is a  
 18 Tier 2 measure based on our physical capabilities  
 19 at this time.  
 20 Technically we do random sample, and I won't  
 21 get into all of that. But long-term PID is where  
 22 we would discuss when and how if we could  
 23 transition to a Tier 1 measure. But, once again,  
 24 at the same time there is no harm from allowing us  
 25 to implement this measure as it is and then make

1 that transition when and if it is appropriate.  
 2 MS. AILTS WIEST: Well, didn't they  
 3 get the idea that it would be a Tier 1-B measure  
 4 because that's what they ordered in their order  
 5 before?  
 6 MS. STANG: I'm saying I don't know  
 7 where they got that impression. This measure is in  
 8 other BOC's plans or at least in measurement --  
 9 they have metrics, and I know that at least two of  
 10 them have this in their plan.  
 11 It is a Tier 2 measure in Bell South for the  
 12 same reason it is now a Tier 2 measure for Qwest,  
 13 and that is we have the capability right now --  
 14 it's a manual measurement -- and we can only pull  
 15 random samples of orders from our state. It's a  
 16 regional measure. So we can't count each  
 17 individual CLEC's orders to say, you know, what  
 18 happened with this CLEC manual order so we could  
 19 assess and pay at the CLEC level. I know Bell  
 20 South does have that capability, but they are  
 21 mechanized.  
 22 So it's not unusual for us to be in this  
 23 position and, again, I can't understand or I don't  
 24 personally know where the Commission identified an  
 25 intention that this be a Tier 1-B measure.

1 MS. AILTS WIEST: In how many states  
 2 as of today have actually adopted or accepted this  
 3 PID?  
 4 MS. STANG: Washington, New Mexico,  
 5 and Idaho to date have accepted the PID.  
 6 MS. AILTS WIEST: How many have  
 7 rejected it?  
 8 MS. STANG: Montana and Wyoming, and  
 9 you mentioned Colorado.  
 10 MS. AILTS WIEST: And the others are  
 11 considering?  
 12 MS. STANG: Yeah. Theirs are still  
 13 considering.  
 14 MS. AILTS WIEST: And why haven't  
 15 you brought it up in the collaborative process? Or  
 16 perhaps I don't understand that process.  
 17 Do you intend to do so soon?  
 18 MS. STANG: We do. And if I could  
 19 give you a little more background, maybe it would  
 20 make this a little clearer.  
 21 PO-20 -- well, you all are aware we went  
 22 through the ROC OSS collaborative. PO-20 was  
 23 developed basically after that collaborative  
 24 finished, you know, closed. And so Qwest in  
 25 response to some issues that were raised did

1 develop it as a measure, sent it out in June to the  
 2 long-term PID administration because we were  
 3 talking at that time about having a collaborative.  
 4 That had not begun, but we did send it out  
 5 saying we want to measure this, report data on, and  
 6 Ms. Hobson said it was diagnostic and we wanted to  
 7 discuss the long-term PID. We filed that measure  
 8 with the FCC and discussed our intentions there.  
 9 The reason it hasn't been collaborative, quite  
 10 honestly, is it got caught in the middle. And as  
 11 Ms. Hobson said, well, the status quo would have  
 12 been, as I said, that we would have gone forward,  
 13 continued to report the data, and brought this to  
 14 long-term PID. I didn't hear any objections to  
 15 that, were unaware of any objections to that  
 16 initially.  
 17 In the interim the FCC -- there were  
 18 discussions, and we committed to the FCC that not  
 19 changing that status quo one bit we would commit to  
 20 apply a standard -- we picked a 95 percent standard  
 21 because that's what all the other measures were --  
 22 and that we would pay penalties if we failed to  
 23 adhere to what was identified in this measurement.  
 24 So that, I hope, will answer your question.  
 25 It's not that we were trying to avoid a

1 collaborative. One had just not begun or there  
 2 wasn't one available at that time. Long-term PID  
 3 has been -- is moving along. We've had some  
 4 meetings, and it has been Qwest's intention to  
 5 embrace that and participate in the collaborative  
 6 as soon as that collaborative is ready for us.  
 7 MS. AILTS WIEST: Thank you.  
 8 CHAIRMAN BURG: Interveners, anybody  
 9 have a comment?  
 10 MR. WEIGLER: Yes. This is  
 11 Steve Weigler from AT&T. AT&T filed its response  
 12 to Qwest's motion to have the PO-20 PID approved by  
 13 this Commission, and in such a response AT&T  
 14 requested that Qwest's request be denied.  
 15 First of all, it's important to note that  
 16 Qwest thinks this is an AT&T-Qwest issue. It might  
 17 be in South Dakota, but in many other states it's  
 18 more of a CLEC, Commission, Commission staff, and  
 19 against Qwest issue. A lot of other people have  
 20 found issue with this particular PID.  
 21 Why this PID came about is that Qwest had  
 22 problems with manually processing orders and that  
 23 was evident and so the FCC -- I wasn't there, but  
 24 the FCC raised concern -- and this is Qwest's  
 25 solution to the concern is -- the problem with it

1 is it's a bad PID, and I'll explain that.  
 2 Qwest was ordered -- simply put it's a bad PID  
 3 that will make it appear that Qwest's performance  
 4 in manually processing orders is better than it  
 5 really is. It's limited fields that Qwest chose to  
 6 evaluate and those fields are easy to meet or ones  
 7 that Qwest has imminent plans to put in place, to  
 8 edit, or error check.  
 9 Qwest left out those fields that are the most  
 10 error prone. It only includes a subset of the LSR  
 11 field. A LSR can contain information in more than  
 12 50 fields. Qwest's proposed PID only looks at 14.  
 13 Qwest's proposal excludes important fields  
 14 such as the services and features ordered, the  
 15 customer's telephone number, the customer's E-911  
 16 information, the customer's directory listing  
 17 information, the customer's billing address  
 18 information, the ported telephone number, the  
 19 circuit ID for unbundled loop orders, and a remarks  
 20 field.  
 21 Qwest also references that KPMG Consulting  
 22 (Inaudible) studies as one of the inspirations for  
 23 PO-20 PID. KPMG Consulting recommended that all  
 24 LSR fields, not just the subset that Qwest lists,  
 25 be examined as part of the service bar order of

1 accuracy measure.  
 2 KPMG Consulting recommended that a benchmark  
 3 standard be established that reports the percent of  
 4 Qwest service orders that are completely consistent  
 5 with the LSR received from the CLEC. Again, you  
 6 heard that Qwest is only including a subset of the  
 7 LSR measure, and KPMG wanted complete consistency.  
 8 And in an attempt to justify the extremely  
 9 limited number of fields that Qwest proposed to be  
 10 examined in PO-20, Qwest stated the intent and  
 11 focus of the measurement Qwest developed and  
 12 submitted to this question is related to areas in  
 13 which testers perceived Qwest had issues that  
 14 should be monitored.  
 15 Not true. As evidenced by the fact that  
 16 KPMG Consulting recommends that Qwest be measured  
 17 against the percent of service orders that are  
 18 completely consistent with the LSR, it would appear  
 19 that the tester perceived that Qwest has problems  
 20 with more than the 14 fields that Qwest proposed.  
 21 Qwest also attempts to justify the extremely  
 22 limited number of fields that Qwest proposed to be  
 23 examined as part of PO-20 by linking problems  
 24 identified by one exception, exception 31-20, and  
 25 one observation, observation 31-10, as the only

<p style="text-align: right;">37</p> <p>1 areas where KPMG Consulting saw problems with human 2 error. 3 That's not true. KPMG Consulting opened 4 observation 31-86 after reviewing 49 observations 5 and exceptions that identified human error as a 6 factor with unidentified problems. KPMG Consulting 7 also identified problems with human errors 8 resulting in feature and services and directory 9 listing problems, exception 30-43 and 10 exception 30-28. KPMG Consulting certainly found 11 human error issues with more than two examples that 12 Qwest apparently based its PO-20 proposal on. 13 Now it's interesting because Qwest has kind of 14 changed its argument a little about what the FCC 15 did. They represented to some other commissions 16 that the FCC approved this PO-20 measure, at least 17 strongly implied that that was the case. 18 (Inaudible). It was asked of Elizabeth Yokus 19 (phonetic) of the FCC staff at the ROC meeting. 20 Elizabeth Yokus was clear and unequivocal that the 21 FCC had not approved it. 22 So what you heard Qwest say today, which I 23 found really interesting, is, well, we had 24 discussions with the FCC, and all the sudden we 25 came up with this PID. Well, that's not the same</p>	<p style="text-align: right;">39</p> <p>1 in the long-term PID administration, it might be -- 2 it might not even happen. We might not be able to 3 change the PID. 4 And the same holds true with the Commission 5 change control. Qwest says, oh, we can change it 6 in the six-month review. But remember -- and I 7 remember Commissioner Nelson asked me this 8 question. 9 Qwest said you can't change very much in the 10 six-month review. You don't have the change 11 control. And they've been arguing that -- and this 12 Commission hasn't come out with an order as to what 13 they feel about this Commission change control. 14 But I can't assume that Qwest, if they don't 15 like the way a measure -- is going to allow this 16 Commission -- will put up every road barrier they 17 can to have this Commission change the PID. We 18 think this is a terrible PID. We think that it's 19 Qwest favoring. And we think it should be denied. 20 Qwest also said that we never requested this 21 PID, this is like just another barrier that we're 22 trying to put up for Qwest's entry. We did request 23 the PID. The CLECs requested the PID as part of 24 OP-5 measure in 1999 or the year 2000. What we 25 found out is we were basically duped.</p>
<p style="text-align: right;">38</p> <p>1 as the FCC approving this PID, and the FCC made 2 clear they're not approving the PID. And they 3 shouldn't approve the PID because it's a bad PID 4 for the reasons I'm stated. 5 And Qwest makes it seem like, oh, we'll either 6 deal with this in the long case administration or 7 at a six-month review. The long-term PID 8 administration hasn't even -- Ms. Stang says it's 9 being developed. We're at the point where we're 10 trying to figure out what the government's process 11 is. 12 I don't know -- I know some of the staff in 13 South Dakota, particularly Mr. Best, was involved 14 in the collaboration to process what's been a QPAP 15 and we spent months determining what the process 16 even was and two years determining what the QPAP 17 was. 18 So the fact that this will be handled in a 19 long-term PID administration when we're still even 20 trying to figure out what that PID administration 21 is, that's months down the line. So the issue, to 22 put a bad PID in place that is completely Qwest 23 favoring and wait 14, 18 months to then see if we 24 could change it -- 25 Also if there's no strong government process</p>	<p style="text-align: right;">40</p> <p>1 We thought manual processing would be in the 2 OP-5 measure, and it wasn't. So now we have to 3 come back -- and that's the whole reason that the 4 PO-20 measurement came up at the FCC. It wasn't 5 there before because everyone thought it would be 6 in the OP-5 measure. 7 Now what have other states done. And I think 8 Ms. Wiest asked this question. Colorado rejected 9 Qwest's request, and Ms. Wiest talked about what 10 Colorado did. Montana rejected Qwest's request, 11 ordered Qwest to developed a PO-20 PID using a 12 collaborative process and to add to the PAP in the 13 six-month review. 14 Washington conditionally approved Qwest's 15 request, but the condition is that Qwest must work 16 with interested CLECS to extensively refine and 17 modify the measure prior to any six-month review. 18 And Washington has maintained some change control, 19 at least on those issues. 20 North Dakota requested that Qwest withdraw the 21 request and allow the long-term PID administration 22 and (Inaudible) process to proceed. Nebraska has a 23 hearing on October 28. Wyoming denied it. 24 New Mexico has taken -- New Mexico approved this 25 PID. New Mexico asked for a PO-20 measure because</p>

1 just like the FCC it wasn't there before Qwest put  
 2 in this PID.  
 3 So the argument with New Mexico, is this a PID  
 4 that New Mexico is requesting? In other words, the  
 5 order came out before the PID. They said if  
 6 there's a PO-20 measurement in the development  
 7 process when it's implemented, you know, meaning  
 8 going through the collaborative process and  
 9 implemented, we want to see it in this plan. And  
 10 this is what Qwest said it's approved by the  
 11 New Mexico Commission. The New Mexico Commission  
 12 has never reviewed or looked at this PID.  
 13 And Idaho didn't authorize this PID. It stood  
 14 moot and remained neutral on the PID. There's a  
 15 misunderstanding in the Idaho order also that the  
 16 FCC approved. As I said, the FCC didn't approve,  
 17 and that was made clear by Ms. Yokus.  
 18 We just said why wait for the six-month review  
 19 and this PID administration to start when all of  
 20 these other states have ordered the collaborative  
 21 process to begin immediately? We want to start  
 22 negotiating on this PID and finding the best PID  
 23 possible so we have the best not only PID for  
 24 long-term PID administration but also the QPAP. We  
 25 want to make sure we have the most comprehensive

1 and best PID.  
 2 And we want to do that now instead of waiting  
 3 6, 8 months, 10 months, 12 months down the road.  
 4 And Qwest said they would do that. And that's the  
 5 end of my presentation.  
 6 MS. STANG: Commissioner, may I  
 7 briefly respond to a couple of things that I  
 8 think --  
 9 CHAIRMAN BURG: Wait a minute.  
 10 Mr. White, are you on the phone?  
 11 MR. WHITE: Yes, I am.  
 12 CHAIRMAN BURG: Do you have any  
 13 comments from Black Hills FiberCom? Because we  
 14 just as well have Qwest's response to all  
 15 observations.  
 16 MR. WHITE: No. Today we're just  
 17 listening in.  
 18 CHAIRMAN BURG: Okay. You may go  
 19 ahead with a response.  
 20 MS. STANG: Thank you. First let me  
 21 set the record straight here. Qwest never  
 22 represented that the FCC had approved this PID.  
 23 What we represented was that we had agreed to go  
 24 and make this offering to the state.  
 25 And, you know, certainly AT&T has flung their

1 opposition to PO-20 and in front of the FCC at this  
 2 point, and FCC if they had a concern, I suppose  
 3 they will let us know about it.  
 4 But, you know, the question is what is a bad  
 5 PID? You know, first of all, this PID is one that  
 6 does provide -- it has many of the attributes of  
 7 other measures in other states. Not all, but as I  
 8 explained there are some physical incapacibilities  
 9 that we admit. We can't right now mechanize all of  
 10 those fields that, for instance, the FCC may have.  
 11 The products that we measure are very close to  
 12 PIDs.  
 13 But the point is is this PID is a PID that  
 14 provides the Commission with some information about  
 15 how we are handling service order accuracy. And to  
 16 that end we will have an incentive to meet it, and  
 17 we will pay penalties if we don't. All the  
 18 arguments AT&T just made, they can make in  
 19 long-term PID administration. And there is  
 20 absolutely nothing that precludes them so I'm at a  
 21 loss to understand what they are concerned about  
 22 here.  
 23 The other thing -- and I would say too I have  
 24 not heard anyone in opposition to this PID other  
 25 than AT&T and WorldCom.

1 And the other thing I would say is -- I  
 2 realize this Commission has not ruled and made a  
 3 recommendation on our QPAP, but what we have  
 4 provided to the Commission in terms of a six-month  
 5 review specifically identifies a process whereby a  
 6 new PID could be brought to the Commission at the  
 7 six-month review or (Inaudible).  
 8 And we also included language in our proposed  
 9 PAP that is in other QPAPs -- I think all the nine  
 10 that are before the FCC except Colorado and says as  
 11 follows: "Nothing in this provision" -- well, it  
 12 says, "Any agreements on adding, modifying,  
 13 deleting, or reclassifying performance measurements  
 14 as per Statute Section 16.1, which talks about the  
 15 six-month review, are reached between Qwest and  
 16 CLECS participating in an industry regional  
 17 oversight committee administration forums. Those  
 18 agreements shall be incorporated into the QPAP and  
 19 modify the agreement between CLEC and Qwest at any  
 20 time those agreements are submitted to the  
 21 Commission, whether before or after the six-month  
 22 review."  
 23 So, you know, going back to Ms. Hobson's no  
 24 harm no foul, we have a measure that has many  
 25 attributes that are similar to others in other BOC

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1 regions. Not all, I admit. But some of that is  
 2 because of technical infeasibility. And AT&T and  
 3 Qwest will disagree about what the test results  
 4 indicated, but we can talk about that in a  
 5 long-term PID.  
 6 And the long-term PID process can take its  
 7 course, and if we all reach agreement, which we all  
 8 hope to do, keep in mind Qwest wants 14 state  
 9 consistency so we have strong motivation, then we  
 10 can bring that back to South Dakota. If not,  
 11 disputes can be raised at the Commission. All of  
 12 these things that AT&T is objecting to or  
 13 (Inaudible) can come back -- moreover they can come  
 14 back with some record and evidence that says why  
 15 something is the way it is or why it should be the  
 16 way it is or is not.  
 17 And I just want to set the record straight.  
 18 New Mexico issued an order for Qwest to put PO-20  
 19 in its QPAP after it had just on its own identified  
 20 our ex parte filing indicating we would go to the  
 21 state, and I think it took a preemptive step to ask  
 22 that it be put in the QPAP.  
 23 It was also prior to a final recommendation on  
 24 their QPAP so that when we filed our New Mexico  
 25 compliance filing we could include the PO-20 there

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1 without making a separate request.  
 2 Thank you very much.  
 3 CHAIRMAN BURG: Thank you.  
 4 MS. AILTS WIEST: Does staff have a  
 5 recommendation?  
 6 CHAIRMAN BURG: Yeah. Does staff  
 7 have comments or recommendations? You don't have  
 8 to make them as long as the other two did.  
 9 MS. CREMER: Okay. Ms. Hobson, is  
 10 there a record developed every time, you know, on  
 11 the QPAP if -- when you make additions to the QPAP  
 12 will there be a record every time on these PIDs  
 13 that comes before the Commission?  
 14 MS. HOBSON: Well, of course, we  
 15 don't have a QPAP yet so we don't really have a  
 16 process established. I think Lynn Stang is better  
 17 equipped than I to tell you what is anticipated  
 18 about how that's going to work going forward.  
 19 MS. CREMER: Just yes or no, Lynn.  
 20 Do you anticipate there will be a record developed  
 21 every time there's a review process or every time  
 22 the QPAP is changed?  
 23 MS. STANG: We would expect that  
 24 issues that are brought in front of the Commission  
 25 at the six-month review would have a record.

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1 MS. CREMER: Okay. My point being  
 2 there is no record, of course, on this PID, and I  
 3 don't know if that matters to anybody.  
 4 My other question would be is what happens if  
 5 this PID doesn't make it through the review process  
 6 but the Commission approves it? I mean, is it  
 7 like, oh, well, cross it off, or you want your  
 8 money back or what happens?  
 9 MS. HOBSON: You mean, if this  
 10 Commission accepts this proposal now and then the  
 11 long-term PID administration concludes this is a  
 12 bad idea, we shouldn't have anything like this?  
 13 MS. CREMER: Right. It's a bad PID.  
 14 MS. HOBSON: Well, I think it's kind  
 15 of an unlikely hypothetical, but if that were to  
 16 happen, I would assume that Qwest and/or other  
 17 interested parties would come before this  
 18 Commission and say this is what we've concluded and  
 19 this is why we've done it and this is why we think  
 20 it makes sense to take PO-20 out, but that until  
 21 that happens it would be included in your QPAP.  
 22 MS. CREMER: And then I think --  
 23 South Dakota is not a part of the long-term PID; is  
 24 that right, Harlan?  
 25 I mean, I don't know. Is there an op date

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1 agreed to be? I know you monitor but -- you keep  
 2 talking about, well, we can take care of it in that  
 3 manner, but I don't think -- are we a part of it?  
 4 MR. BEST: At this point the  
 5 Commission chose not to respond to the questions of  
 6 the long-term PID.  
 7 MS. CREMER: Okay. So my bottom  
 8 line here is that I see that the Commission has  
 9 three options. And if the Commission is not ready  
 10 to issue its decision on the QPAP, and I have no  
 11 idea where you are on that, you can take comments  
 12 from the parties and maybe they could all work it  
 13 out and develop a really good PID or, two, if the  
 14 Commission is close to making its decision and  
 15 issuing its decision on the QPAP, in that case it's  
 16 probably better to have a QPAP with this PO-20 in  
 17 it than to have a QPAP without it.  
 18 And it can be amended or looked at at the  
 19 six-month review. And I think that six-month  
 20 review -- doesn't that begin once the FCC approves?  
 21 That's not six months from when we approve. So you  
 22 haven't even filed with the FCC. So it would be  
 23 90 days and then six months. So just so you  
 24 understand, it wouldn't be six months from when you  
 25 decide.

1 Or you could reject it all together and then  
 2 just take it up on the six-month review.  
 3 CHAIRMAN BURG: Well, let me ask a  
 4 question pertaining to that. If we have not done  
 5 the QPAP yet, why couldn't we consider this when we  
 6 make a decision on the QPAP?  
 7 MS. CREMER: And you could. You  
 8 could take comments or something on it. I mean, I  
 9 don't know that you need to open the record in the  
 10 sense that you could bring everybody back here, but  
 11 you could do that too.  
 12 CHAIRMAN BURG: But are you saying  
 13 it would be advisable or not advisable to accept it  
 14 before we make the QPAP decision?  
 15 MS. CREMER: Depending on where you  
 16 are. If you're not close to making your decision  
 17 on the QPAP and you still want to hear it, I think  
 18 if you've got time, go ahead and hear it. If  
 19 you're ready to make your decision today on QPAP or  
 20 in November, well, then maybe just go ahead and  
 21 accept it, understanding that --  
 22 CHAIRMAN BURG: I think my real  
 23 question is, though, is there any reason we  
 24 couldn't do it at the time we do the QPAP if this  
 25 enhances the QPAP?

1 MS. CREMER: Well, I'm not sure that  
 2 you have any record to reflect that. You've got,  
 3 of course, AT&T who says it's a bad PID.  
 4 CHAIRMAN BURG: We don't have any  
 5 record on this either, do we?  
 6 MS. CREMER: Right. You don't have  
 7 any record on this either. So that would be my  
 8 concern, how you would incorporate it in without  
 9 somehow taking comment or opening the record.  
 10 COMMISSIONER NELSON: That was my  
 11 concern I raised with John a minute ago, whether or  
 12 not we need to do anything about the record.  
 13 CHAIRMAN BURG: So now your decision  
 14 is very clear. Rolayne.  
 15 MS. AILTS WIEST: My intention  
 16 actually today was to listen to the comments on  
 17 this. We haven't issued the QPAP order yet so I  
 18 think that the Commission can further consider it.  
 19 At this point I don't see any need for  
 20 conducting any additional hearings or taking  
 21 additional comments.  
 22 CHAIRMAN BURG: But you don't see  
 23 adopting it today either?  
 24 MS. AILTS WIEST: I don't think we  
 25 need to adopt it today.

1 CHAIRMAN BURG: That would be my  
 2 conclusion. I mean, we heard the comments. We  
 3 heard some very lengthy comments on it. We have  
 4 not decided the QPAP yet. I think we can decide  
 5 based on some of the comments and the distilling of  
 6 those comments how we feel about this proposal and  
 7 decide at that point.  
 8 So I would -- I would move then that we not  
 9 grant -- that we delay the request of Qwest's  
 10 concerning this issue.  
 11 MS. AILTS WIEST: I think we just  
 12 defer it at this point so you don't actually need a  
 13 motion.  
 14 CHAIRMAN BURG: Okay. Finally, the  
 15 last question is shall the Commission find Qwest in  
 16 compliance with certain Section 271 requirements.  
 17 Rolayne, do we need comments from anybody on  
 18 this, or is this a decision?  
 19 MS. AILTS WIEST: No.  
 20 CHAIRMAN BURG: Okay. Thank God.  
 21 By the way Dave, I ignored you. Did you have any  
 22 comments on any of these?  
 23 MR. GERDES: No. I was just here to  
 24 listen as well.  
 25 CHAIRMAN BURG: Okay. You did a

1 good job.  
 2 MR. GERDES: Shortened it up by 10,  
 3 15 minutes.  
 4 MR. MUNN: Mr. Chairman, this is  
 5 John Munn. May I ask a clarifying?  
 6 CHAIRMAN BURG: Sure. Go ahead.  
 7 MR. MUNN: The discussion on the 272  
 8 motion discussion, I think Ms. Wiest had indicated  
 9 that there were a couple of cases mentioned. I  
 10 think I can help provide some clarity because while  
 11 you were talking about PO-20 I was multi-tasking  
 12 looking at that and with Ameritech-Michigan that's  
 13 dealing with paragraphs 344 to 373 and the  
 14 Bell South-Louisiana 2 was the other case and  
 15 that's paragraphs 320 to 360.  
 16 And I've looked through those, and I don't see  
 17 any reference to review of state record or  
 18 consultation with the state on 272 anywhere in  
 19 there. There are cites to the Telecom Act, FCC  
 20 orders, affidavits and comments filed at the FCC,  
 21 but nothing about review of a state record or  
 22 consultation with the state.  
 23 CHAIRMAN BURG: Okay.  
 24 MR. MUNN: I assume those are the  
 25 two -- okay. I guess my question is are those the

1 two cases you were referring to, Ms. Wiest?  
 2 Or hopefully I've provided something helpful.  
 3 If not, disregard it.  
 4 MS. AILTS WIEST: I believe those  
 5 were the cases that AT&T mentioned.  
 6 MR. MUNN: Yeah. Those are  
 7 definitely the cases they mentioned. When you said  
 8 there were a couple of cases, I sort of made that  
 9 assumption and just wanted to provide you with  
 10 that.  
 11 CHAIRMAN BURG: Thank you. As far  
 12 as the last section, which is the compliance of  
 13 certain Section 271 requirements, I have a motion.  
 14 I would move that the Commission make the  
 15 following decisions regarding checklist items 2, 4,  
 16 5, and 6. Subject to its finding regarding the  
 17 applicable OSS test results, the Commission finds  
 18 that Qwest is in substantial compliance with  
 19 checklist items 2, 5, and 6.  
 20 In order for the Commission to find that Qwest  
 21 is in substantial compliance with checklist item  
 22 number 4 the Commission requires Qwest to make the  
 23 following changes. 1, that Qwest shall change its  
 24 SGAT language to provide that a CLEC is not  
 25 responsible for trouble isolation testing charges

1 if the trouble is determined to be on Qwest's  
 2 network.  
 3 Second, with respect to the issue regarding  
 4 access to loop qualification data, Qwest shall  
 5 include the language developed in Arizona regarding  
 6 Qwest's obligation to conduct a manual search and  
 7 Qwest shall add language regarding the ability of a  
 8 CLEC to request an audit of the Qwest's records and  
 9 databases pertaining to the loop information.  
 10 And, third, with respect to standard intervals  
 11 for DS-1 loops, Qwest shall make the following  
 12 changes: For 1 to 8 lines the intervals shall be  
 13 five business days. For 9 to 16 lines, 7 business  
 14 days. For 17 to 24 lines, nine business days. And  
 15 for 25 or more lines the interval should be  
 16 determined on an individual case basis.  
 17 That's the motion that I will make.  
 18 COMMISSIONER NELSON: Second it.  
 19 COMMISSIONER SAHR: And I concur.  
 20 CHAIRMAN BURG: Secondly, I would  
 21 move that the Commission make the following  
 22 decisions regarding general terms and conditions in  
 23 Track A compliance. In order for the Commission to  
 24 find Qwest is in substantial compliance regarding  
 25 its general terms and conditions provisions, the

1 Commission requires Qwest to make the following  
 2 changes.  
 3 One, Qwest shall put language in Section 5.18  
 4 stating that a request for arbitration is merely an  
 5 offer to arbitrate, which is nonbinding unless both  
 6 parties agree to proceed to arbitrate.  
 7 Second, Qwest shall revise its SGAT language  
 8 to provide that the party raising a dispute may  
 9 choose to have the arbitration conducted in the  
 10 city of its principal place of business or at any  
 11 other mutually agreeable location.  
 12 Item number 3, that Qwest shall remove the  
 13 first sentence of Section 5.18.3.2 and the word  
 14 "such" in the second sentence regarding discovery  
 15 conducted in arbitration proceedings. And, fourth,  
 16 Qwest shall revise its SGAT language for  
 17 Section 5.18.5 to read that any dispute must be  
 18 brought within the time for bringing such an action  
 19 as provided under South Dakota Law.  
 20 With respect to Track A, the Commission finds  
 21 that Qwest has demonstrated that it meets the  
 22 standards imposed in Section 271(c)(1)(A) as well  
 23 as the FCC's four criteria.  
 24 COMMISSIONER NELSON: Second.  
 25 COMMISSIONER SAHR: And I concur.

1 CHAIRMAN BURG: Okay. Is there  
 2 anything else left on TC01-165?  
 3 MS. AILTS WIEST: No. I'll just  
 4 clarify, though, the when Commission made its  
 5 decision on 2, 4, 5, and 6, that also includes all  
 6 emerging services issues.  
 7 MS. HOBSON: Thanks.  
 8 CHAIRMAN BURG: With that, I want to  
 9 take a five-minute recess before we go on to the  
 10 rest of this.  
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1       STATE OF SOUTH DAKOTA )  
2                       :SS            CERTIFICATE  
3       COUNTY OF HUGHES    )

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

8                DO HEREBY CERTIFY that as the duly-appointed  
9       shorthand reporter, I took in shorthand the proceedings  
10      had in the above-entitled matter on the 17th day of  
11      October 2002, and that the attached is a true and  
12      correct transcription of the proceedings so taken.

13               Dated at Pierre, South Dakota this 25th day  
14      of October 2002.

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18                \_\_\_\_\_  
19                Cheri McComsey Wittler,  
20                Notary Public and  
21                Registered Professional Reporter

22  
23  
24  
25

STATE OF SOUTH DAKOTA )

:SS

CERTIFICATE

COUNTY OF HUGHES )

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

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 17th day of October 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 25th day of October 2002.

  
Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter

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