

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

= = = = =  
IN THE MATTER OF THE APPLICATION  
OF QWEST CORPORATION TO RECLASSIFY  
LOCAL EXCHANGE SERVICES AS FULLY  
COMPETITIVE

TC03-057

**ORIGINAL**

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Transcript of Tape-recorded Proceedings  
July 7, 2003  
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BEFORE THE PUBLIC UTILITIES COMMISSION,  
ROBERT SAHR, CHAIRMAN  
GARY HANSON, VICE CHAIRMAN (by telephone)  
JIM BURG, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
John J. Smith  
Kelly Frazier  
Jim Mehlhaff  
Greg Rislov  
Harlan Best  
Keith Senger  
Dave Jacobson  
Michele Farris  
Tina Douglas  
Bonnie Bjork  
Heather Forney  
Pam Bonrud

APPEARANCES

David Gerdes  
Darla Rogers

Reported By Cheri McComsey Wittler, RPR

**PRECISION REPORTING**

**L I M I T E D**

1  
2 APPEARANCES BY TELEPHONE3 Gary Jensen  
4 Bill Heaston  
5 Matt McCaulley  
6 Mary Lohnes  
7 Tom Simmons  
8 Tom Welk  
9 Colleen Sevold  
10 Larry Toll  
11 Tim Goodwin  
12 Joe Schuele

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14 The following is a TRANSCRIPT OF  
15  
16 TAPE-RECORDED PROCEEDINGS, held in the above-entitled  
17  
18 matter, at the South Dakota State Capitol, Room 412,  
19  
20 500 East Capitol Avenue, Pierre, South Dakota, on the  
21  
22 7th day of July 2003.  
23  
24  
25

1 CHAIRMAN SAHR: Bill Heaston and  
2 Matt McCaulley?

3 MR. HEASTON: We're still here.

4 CHAIRMAN SAHR: Mary Lohnes and  
5 Tom Simmons?

6 MS. LOHNES: Mary Lohnes is here.  
7 Tom Simmons is joining shortly.

8 CHAIRMAN SAHR: Thank you.  
9 Joe Schuele?

10 MR. SCHUELE: Here, sir.

11 CHAIRMAN SAHR: Colleen Sevold?

12 MS. SEVOLD: Here, Mr. Chairman.

13 CHAIRMAN SAHR: Larry Toll?

14 MR. TOLL: Here, Mr. Chair.

15 CHAIRMAN SAHR: Tim Goodwin?

16 MR. GOODWIN: Here, Mr. Chair.

17 CHAIRMAN SAHR: Tom Welk?

18 MR. WELK: Here, Mr. Chairman.

19 CHAIRMAN SAHR: Okay. Great. And  
20 then we have everybody on the line that was there  
21 before, and as soon as Commissioner Hanson gets  
22 moved in, we'll go ahead and start.

23 (Discussion off the record)

24 CHAIRMAN SAHR: (Inaudible) --  
25 driven off the road?

1 VICE CHAIR HANSON: I drove into  
2 Kennebec real quick.

3 CHAIRMAN SAHR: Intentionally or  
4 unintentionally?

5 VICE CHAIR HANSON: I was not  
6 airborne.

7 CHAIRMAN SAHR: Good. Well, let's  
8 go ahead and get started with the ad hoc meeting.

9 And I guess the first question I would ask is  
10 the Commission has requested that the parties try  
11 to come up with some type of acceptable agreement,  
12 and I'm wondering did that happen and were there  
13 any of the issues narrowed or resolved?

14 MR. WELK: Mr. Chairman, this is  
15 Tom Welk. At the Commissioners' suggestion I wrote  
16 a letter after our last meeting and asked all  
17 counsel if they have alternatives to call me and to  
18 discuss it. We were willing to do that.

19 I received one telephone call from Dave Gerdes  
20 who had a proposal but said it was conditioned upon  
21 everybody else agreeing to it, and no one else  
22 called me.

23 CHAIRMAN SAHR: All right. Thank  
24 you. So I don't think we have anything resolved  
25 among the parties themselves, which is always

1           unfortunate because it makes it a lot easier if you  
2           all can figure out what works best for everyone.

3           But that happens, and today we're dealing with  
4           three separate questions, one, shall the Commission  
5           grant Qwest's motion to compel discovery, two,  
6           shall the Commission grant any or all motions for  
7           protective order filed by Prairie Wave, Black Hills  
8           Fibercom, Midcontinent Communications, MidState  
9           Telecom, and Northern Valley Communications, and,  
10          three, shall the Commission grant Prairie Wave's  
11          motion to dismiss.

12          And with the third question I believe  
13          Prairie Wave said that was filed July 3; is that  
14          correct?

15                 MR. MCCAULLEY: Mr. Chairman, this  
16                 is Matt McCaulley. Yes. That was filed. It was  
17                 mailed on the 2nd of July, I believe, and didn't  
18                 get placed in the mailbox -- (Inaudible) -- picked  
19                 it up. So I e-mailed it out on the 3rd then. It  
20                 probably would have got in people's mail boxes  
21                 today.

22                 CHAIRMAN SAHR: All right. Thank  
23                 you. And I think due to the fact that people may  
24                 not have received that even today, I don't know if  
25                 it's appropriate to handle it at this particular

1 meeting.

2 And, Mr. Welk, do you have any comment? Do  
3 you want to respond? Do you want time to respond?

4 MR. WELK: We would like to file a  
5 formal response. And I don't know when the next  
6 Commission meeting -- is it the 15th, Mr. Chairman?

7 CHAIRMAN SAHR: Yes, it is.

8 MR. WELK: I'm assuming we would  
9 just have it deferred to the 15th, and we would  
10 make a written response between now and then.

11 CHAIRMAN SAHR: Thank you. And I  
12 think that makes a lot of sense. So let's dispose  
13 of the third item, and we'll just anticipate  
14 Qwest's brief coming in.

15 And, Mr. Welk, and I'm sure you'll do this,  
16 but it would be helpful if we had it before the  
17 15th so we have a chance to review it. And then  
18 we'll go ahead and put that on the agenda for the  
19 15th.

20 With that in mind then, the question  
21 becomes -- well, the questions become the first two  
22 about Qwest's motion to compel discovery and the  
23 other parties' motion for protective order.

24 Mr. Welk, do you want to start off?

25 MR. WELK: Well, I can.

1 Mr. Chairman, without repeating what I said last  
2 time, as I anticipated, nothing new was filed since  
3 we last met. There were motions filed by Midco,  
4 MidState, and Northern Valley, all essentially  
5 making -- although Midco's is somewhat different  
6 because they did produce -- as Mr. Gerdes  
7 indicated, is filing some documents, have agreed to  
8 produce others, and then decided to adopt the  
9 arguments of other counsel.

10 MidState's and Northern Valley's arguments are  
11 basically to deny the request for information and  
12 to enter a protective order. But the essential  
13 legal arguments, there's nothing new that's being  
14 argued by anybody today or in those additional  
15 filings that was not argued before. Essentially  
16 the Commission has to look at the statutory  
17 criteria that it needs to consider to reclassify a  
18 service. Those are in our papers we've set forth.

19 We believe that the information regarding  
20 facilities, customers, forecasts, market studies  
21 are clearly relevant for the Commission to know  
22 about the market that we seek to reclassify to  
23 fully competitive. So we don't believe that  
24 there's been any questions raised about relevancy.  
25 The only question has to deal with the

1 confidentiality of the information.

2 And one point that I'd like to make that  
3 wasn't made last time is that merely because we  
4 believe as the others -- the competitors do, that  
5 the information is confidential. Just merely  
6 because information is treated confidential, does  
7 not make that information a trade secret.

8 There is a particular meeting -- and this is  
9 not the time and the place to adjudicate what is or  
10 is not a trade secret, but the Commission should  
11 know that our Supreme Court and our South Dakota  
12 statutes treat information as a trade secret with  
13 defined specificity. And it's required, among  
14 other things, to have the information be kept with  
15 reasonable secrecy and needs to be information that  
16 has economic value.

17 And what we're saying is we don't need to get  
18 into that argument. We understand that the  
19 information that these parties don't want to  
20 produce is confidential, and we're willing to have  
21 a protective order entered.

22 As I said before, the issue should be how do  
23 we get the information to produce -- to our side of  
24 the case because we have the burden, and we believe  
25 this information is relevant and how to restrict

1 its authorization and disclosure in the case.

2 And we believe that the Commission could enter  
3 a protective order. We believe that all the people  
4 that are participating in the docket are honorable.  
5 You enter an order saying that use of this  
6 information should be produced to Qwest, that it's  
7 information that's limited to this docket, and  
8 we're not authorized to use it in any other manner,  
9 and that your order should be submission for  
10 everyone on notice, including attorneys, that this  
11 is the way the information should be used and this  
12 is the way that the case should proceed.

13 It's the way we proceed every day in  
14 commercial litigation when there's sensitive  
15 confidential information.

16 And with that we respectfully request that our  
17 motion to compel be granted subject to the entry of  
18 a protective order limiting its use to that of the  
19 docket and also require that it not be disclosed  
20 outside of the docket. Thank you.

21 CHAIRMAN SAHR: Thank you. Do we  
22 want to -- who should we have lead off for the  
23 interveners? Any particular order you want to  
24 follow?

25 MS. CREMER: (Inaudible).

1 CHAIRMAN SAHR: And what was that?  
2 Is Prairie Wave first?

3 MS. CREMER: Prairie Wave.

4 CHAIRMAN SAHR: Why don't we go  
5 ahead then and start off with Prairie Wave and,  
6 Mr. McCaulley, if you want to proceed.

7 MR. MCCAULLEY: Thank you,  
8 Mr. Chairman. I appreciate the chance to address  
9 the Commission on this issue. And I am sorry that  
10 this matter has come before the Commission.  
11 Prairie Wave and Qwest were in contact before  
12 the -- (Inaudible) -- to compel was filed, had  
13 intended to resolve this difference.

14 We were unable to resolve it due to the nature  
15 of information they sought and would disagree with  
16 Mr. Welk. This is not just confidential  
17 information Prairie Wave is maintaining, and it is,  
18 in fact, trade secret information.

19 The Supreme Court definition and Mr. Welk  
20 talks about is referred to in affidavit of  
21 Mr. Anderson in paragraph 2 in which we set forth  
22 the fact that the information being sought by Qwest  
23 in the motion to compel is not only confidential  
24 information but also trade secret information.

25 And trade secrets are just that, they're trade

1 secrets. It's a secret because Qwest doesn't know  
2 what that information is. And we're asking the  
3 Commission to protect the sensitive nature -- to  
4 protect this information from disclosure from  
5 Qwest. And that's as such we appear here before  
6 you today, Mr. Chairman, members of the Commission.

7 I might also add -- I don't want to repeat the  
8 argument that we had at the prior Commission  
9 hearing, but I also want to set forth that in the  
10 event that the Commission deems that this trade  
11 secret information is relevant, the question isn't  
12 whether it's relevant or whether it should be  
13 disclosed or not but to whom it should be  
14 disclosed.

15 And Prairie Wave has a possible resolution,  
16 Mr. Chairman, members of the Commission, which  
17 suggests that in lieu of granting the Qwest's  
18 motion to compel or the Prairie Wave protective  
19 order that the Commission could simply require this  
20 information be turned over to the Commission under  
21 confidentiality for inspection by the Commission.  
22 I believe that would satisfy the requirements of  
23 SDCL 49-31-3.2, which says the Commission shall  
24 consider this information.

25 And it's sensitive here that Qwest and

1 Prairie Wave are at an impasse, Qwest insisting on  
2 the motion to compel being granted and our  
3 maintaining that this information is trade secret  
4 when, in fact, it is a trade secret. That might be  
5 a viable alternative for the Commission to consider  
6 that requiring -- we would agree to turn this  
7 information over to the Commission for their  
8 inspection only, subject to the protections that  
9 the Commission might in its judgment deem fit to  
10 protect the nature of this information.

11 So with that, Mr. Chairman, I'd yield the rest  
12 of my time to the other interveners in this matter.

13 CHAIRMAN SAHR: Thank you. And,  
14 let's see, who's up next then?

15 MS. CREMER: Black Hills.

16 CHAIRMAN SAHR: Black Hills?  
17 Gary Jensen, would you like to proceed on behalf of  
18 Black Hills?

19 MR. JENSEN: Well, my understanding  
20 is that you heard from Linn at the last hearing,  
21 and so I'm sitting in for him today because he had  
22 to be gone. And perhaps I would be better served  
23 by coming in at the end if there's something that  
24 nobody else has said. Because I think we're  
25 basically all in agreement, and I am certainly in

1 agreement with what was just said, that this  
2 information is fundamental.

3 There is a trade secret in this business.  
4 This is the information that that constitutes.  
5 It's the very basis upon which these businesses  
6 were began and continue. I can't think of anything  
7 that's more sensitive than this information.

8 CHAIRMAN SAHR: And that's fine. I  
9 can appreciate your situation there, and certainly  
10 Mr. Evans provided ample justification in his  
11 briefs and argument.

12 So we'll move along. Who is next? Is it  
13 Midcontinent?

14 MR. GERDES: Thanks, Mr. Chairman.  
15 I'll be brief because I did make an argument at the  
16 last meeting. To just recap our contention or our  
17 arguments, Mr. Chairman, members of the Commission,  
18 essentially we want the Commission to remember that  
19 Qwest is one of our competitors for both local  
20 service and long distance.

21 And the information that has been filed with  
22 the Commission would indicate that the information  
23 that Mr. Teitzel used could only have come about  
24 had there been communication between the retail and  
25 wholesale sides of Qwest. And that's exactly what

1 we're complaining about, and that is why should the  
2 retail side of Qwest know information that the  
3 wholesale side of Qwest don't.

4 And so we would emphasize the disclosure to  
5 whom part of this question. And we believe that --  
6 and we mentioned it at the last hearing, that I  
7 think there's a total of six or seven different  
8 Qwest people that have signed the confidentiality  
9 agreement, and their job titles at least would  
10 indicate that some have roles with reference to  
11 both retail and wholesale functions of Qwest.

12 So we believe that as presently configured,  
13 the suppositions behind the confidentiality  
14 agreement are flawed. And just as an aside,  
15 Mr. Chairman, the proposal we made to Qwest was  
16 that if Qwest would limit the number of people that  
17 could see this information on the one hand, and on  
18 the other hand because Midcontinent is a small  
19 company and under the definitions in the  
20 confidentiality agreement literally no one in  
21 Midcontinent can see Qwest's information.

22 If we could agree on a designation of a person  
23 within Midcontinent that could see Qwest's  
24 information and make decisions, then we would have  
25 no objection to going forward.

1           But we believe that right now the  
2           configuration, if you will, of the exchange of  
3           information is such that there's just too great of  
4           a likelihood that Qwest's retail side would have  
5           access to the information as well. And so that is  
6           our primary objection.

7           We do agree with the points that are made with  
8           the other -- or by the other interveners in this  
9           matter, Mr. Chairman, but we believe that something  
10          has to be done in the way -- if the Commission is  
11          considering granting any part of the motion to  
12          compel, then I think the Commission has to give  
13          some attention to the manner in which the  
14          information is going to be handled beyond what the  
15          current protective order contemplates. Because we  
16          think there's just too many ears involved if  
17          there's -- if that's the way to say it.

18          So for that reason, Mr. Chairman, based on the  
19          record at this point we would urge that the motion  
20          to compel from Qwest be denied and the motion for  
21          protective order filed by Midcontinent be granted.

22                   CHAIRMAN SAHR: Thank you.

23           Ms. Rogers.

24                   MS. ROGERS: Thank you, Commission.

25           I would note that I did have a chance to discuss

1 this issue after -- or subsequent to your last  
2 hearing with Tim Goodwin and then again with my  
3 clients. And I think where we are is basically, as  
4 I set forth in my motion, number one, we concur  
5 with Prairie Wave's position that, in fact,  
6 information sought is trade secret information.

7 With regard to the issue of to whom should it  
8 be disclosed, if at all, my clients did not have  
9 any level of comfort with disclosing any of the  
10 information to Qwest's people. And so we are still  
11 opposed to disclosing the information at all.

12 Furthermore, with regard to especially  
13 MidState to where, you know, we're a really, really  
14 small company and the only CLEC in the area, I  
15 believe that Qwest would be able to ascertain a lot  
16 of this information on its own without requiring us  
17 to disclose protected trade secrets.

18 So we would stand by our position as  
19 enunciated in our motion for a protective order and  
20 request the Commission not to compel either  
21 MidState or Northern Valley to turn over this  
22 information.

23 CHAIRMAN SAHR: Thank you. Staff,  
24 any comments?

25 MS. CREMER: Staff really has no

1 opinion. It is a legal question that doesn't  
2 involve us. The only question, I guess, I had,  
3 though, was as to Prairie Wave's suggestion that  
4 it's turned over to the Commission. Did any of the  
5 other parties think they wanted to do that?

6 And then my other problem -- or concern with  
7 that would be I'm not sure how that gets in the  
8 record. And, you know, if it comes in and the  
9 Commission sees it, do they make assumptions about  
10 what that information means, and how would you base  
11 your decision on something no one could ask any  
12 questions about or talk about, or how would you get  
13 your questions answered if you did have some  
14 regarding the information?

15 I just am not sure how valuable that  
16 information would become if nobody can see it or  
17 discuss it or -- like I said, I don't even know how  
18 you'd move it into the record. And that's really  
19 all staff has.

20 CHAIRMAN SAHR: Thank you. And  
21 counsel or analysts, any questions? Any comments  
22 or questions? John?

23 MR. SMITH: Well, I guess, maybe,  
24 Tom, for you in terms of the individuals to whom  
25 disclosure will be made, who are those people?

1 MR. WELK: Mr. Smith, I've had --  
2 Larry Toll is here and I have in front of me a list  
3 of the people who have signed this and Mr. Toll has  
4 gone back and he was in a position to tell you what  
5 positions they really are as far as the policy law  
6 department.

7 There's been a lot of misinformation probably  
8 innocently put in the record because of job titles.  
9 But Mr. Toll will list to you who the people are.

10 MR. TOLL: There are eight people  
11 from Qwest who have signed the protective order  
12 agreement and understand that Qwest -- obviously  
13 the 14 states where we are have a significant local  
14 exchange business.

15 We have regulatory groups in all of those  
16 states. We have regulatory issues outside the 14  
17 states where we do business in other states. And  
18 so we have a policy in law organization that deals  
19 with all the regulatory issues that come before the  
20 company.

21 Six of the eight people that have signed that,  
22 including Dave Teitzel, who I think his title  
23 causes the most concern, work in the policy and law  
24 organization. None of these people work with any  
25 retail determination of services or rates.

1           They are strictly in the policy and law. They  
2 do this for a living to try to collect the  
3 information and gather it and put it in a form so  
4 that we can respond to interrogatories, put  
5 testimony together, and prepare for hearings like  
6 we're about to come on in this instance.

7           Two of the other people are Marsha (sic) Gude  
8 and Brad Yerger are finance people. You'll  
9 recognize Marsha's name. She's a witness in this  
10 case. And Bradley's is her support person in  
11 preparing for the case. So it's all policy and law  
12 and finance people, and it's all geared towards  
13 this case.

14           One of the other issues that I heard is the  
15 fact that Mr. Teitzel has access to wholesale data.  
16 He does. That wholesale data, however, is on an  
17 aggregate level. He does not disclose anything  
18 publicly and doesn't have information on a specific  
19 customer-by-customer basis, but we can share  
20 information that is public knowledge when you have  
21 a wholesale data.

22                   MR. WELK: Do you want the names,  
23 Mr. Smith, of those people that have signed?

24                   MR. SMITH: I mean, at some point  
25 here we might have to match that up. Let me read

1           you this from a case that was cited by Mr. Evans  
2           and it's quoting the judge in the case and this is  
3           the Brown Bag case.

4           And he's referencing a U.S. Supreme Court case  
5           involving disclosure to in-house personnel. And  
6           basically here's what it says. "A crucial factor  
7           in the U.S. Steel case was whether the in-house  
8           personnel was involved in 'competitive  
9           decision-making,' that is advising on decisions  
10          about pricing or design, 'made in light of similar  
11          or corresponding information about a competitor.'"

12          Can you maybe address the relationship of the  
13          individuals involved to that kind of a standard?  
14          Is this person involved in competitive  
15          decision-making for Qwest?

16                 MR. TOLL: This is Larry again,  
17          John. No. None of these people are involved in  
18          any of the retail decision-making or competitive  
19          decisions. They're strictly in policy and law  
20          supporting our public policy objectives.

21                 MR. SMITH: Are they physically  
22          separated from the competitive people?

23                 MR. TOLL: Yes. Most of these  
24          people -- one of them, Dave Teitzel, lives in  
25          Seattle. His support person is in Phoenix. But

1 all the rest of the people on this with the  
2 exception of the two finance people are based in  
3 Denver. They're on the 47th floor of the  
4 1801 California building.

5 The other two, the finance people, are in  
6 Omaha, and they are in the finance organization  
7 there. All of our marketing people are located in  
8 other locations.

9 MR. SMITH: Is that large a group of  
10 people required to see this information? Again,  
11 don't get the feeling here that I'm presuming that  
12 it would be disclosed, but I just want to know the  
13 facts.

14 MR. TOLL: Part of the agreement, I  
15 believe, that Mr. Gerdes offered was to limit it  
16 and we were more than willing to accept that but it  
17 had to be on the basis that it was an all or  
18 nothing, all parties had to agree to that. We'd  
19 certainly look at the limits as to the critical  
20 people as part of this case.

21 MR. SMITH: Well, I think right now  
22 the Commission states with this in that cases that  
23 I've seen make it pretty clear that the Commission  
24 is to utilize basically a balancing type of  
25 analysis here. But based upon what I've seen, that

1 balancing doesn't just involve putting the two  
2 sides on a teeter-totter and seeing which one sinks  
3 to the bottom. It's also seeing whether you can  
4 fashion a protective order which permits the  
5 disclosure to occur but does so in a way that  
6 provides the necessary protection to a party.

7 And the cases I've looked at, they involve  
8 everything from limiting the people, sometimes  
9 limiting them to only outside personnel, a third  
10 party, a consultant, all the way to requiring  
11 significant monetary sureties so that if there is a  
12 disclosure that's wrongful, there's a hammer on the  
13 end of it.

14 And I'm not suggesting any of those things  
15 here. I'm just saying I think that's the nature of  
16 this.

17 So, I don't know, I mean, from Qwest's  
18 standpoint, I mean, what do you really need, Tom,  
19 at a minimum in terms of to whom -- who's the  
20 minimum number of people that this would need to be  
21 reviewed by in order to do what you think you need  
22 to do to put on a case?

23 MR. WELK: The two witnesses that  
24 are identified right now, Marti Gude who is the  
25 financial witness and Dave Teitzel, and their two

1 support people, Bradley Yerger and Starla Rook  
2 would be the people -- the people people that would  
3 be at the hearing are -- Marti and Dave will be at  
4 the hearing, and their support people will be  
5 helping with the information that was received.

6 And a person probably just to -- Randy Kim.  
7 All what he does is help coordinate, you know, the  
8 dissemination of information. All he does is we  
9 send it to him, and he distributes it to the people  
10 who should get it. He does not -- all he does is  
11 process information.

12 MR. SMITH: Tom, okay, now I've got  
13 Marti.

14 MR. WELK: Marti Gude, G-U-D-E and  
15 that's M-A-R-T-I, and then Bradley Yerger,  
16 Y-E-R-G-E-R. Bradley is Marti's support person and  
17 Dave Teitzel is a named witness and Starla Rook,  
18 R-O-O-K, is his support person, and then Randy Kim  
19 would be someone who would be the person who would  
20 receive the information and disseminate to those  
21 people.

22 MR. SMITH: Is Kim K-Y-M?

23 MR. WELK: Yes.

24 MR. TOLL: K-I-M.

25 MR. WELK: K-I-M, Randy Kim.

1 MR. SMITH: Oh, K-I-M. Okay.

2 MR. JENSEN: Mr. Smith, could we ask  
3 one question? This is Gary Jensen in Rapid.

4 MR. SMITH: Please do, yeah.

5 MR. JENSEN: We were wondering if  
6 any of these individuals that Tom has now listed  
7 were involved in the decision to bring on this  
8 docket number, to bring this matter to a hearing,  
9 given that seems to be a competitive move or  
10 decision, if you will, in and of itself.

11 MR. TOLL: No, they were not. This  
12 is Larry Toll.

13 MR. GERDES: Just one other thing  
14 that I'd like to reiterate that seems to be getting  
15 lost here. There's another side to the problem,  
16 and that is the problem that the small companies  
17 have under the way that the -- that the protective  
18 order is now -- or the protective order -- the  
19 agreement is now constituted, and we don't have  
20 anybody in our companies that can review Qwest's  
21 information on the other side.

22 And I think that if the Commission is  
23 considering trying to fashion a protective order, I  
24 would submit that we've got to figure out a way to  
25 identify somebody within the companies, the

1           intervener companies, as well to be fair to both  
2           sides.

3                       MR. WELK: This is Mr. Welk. I  
4           agree with Mr. Gerdes. In fact, that offer has  
5           been out to Prairie Wave. It's been out to anybody  
6           to talk to me about it. And in so far as  
7           Mr. Gerdes and my discussion, I mean, he did  
8           designate Mr. Simmons as a potential, even though  
9           it hasn't been agreed to. And we have no  
10          objection.

11                      And the integrity of Qwest's witnesses are no  
12          better or worse than others. We assume that the  
13          Commission enters an order and Mr. Simmons is a  
14          designated person and he will abide by the order  
15          just as the Qwest people will.

16                      So each party -- I understand the significance  
17          of the size of the organizations, but nobody but  
18          Mr. Gerdes even proffered anybody.

19                      MR. SMITH: Tom, this is John Smith  
20          again. Could you -- the various of the motions  
21          have argued that the information that you would  
22          obtain through this method in terms of what it  
23          shows in terms of Qwest's competitive position --  
24          and that's really the issue, I think, is obtainable  
25          through other means that don't involve these

1 parties having to disclose specific what they  
2 consider to be proprietary information.

3 Could you address that, please.

4 MR. WELK: It's the most interesting  
5 argument of all. All of them have argued it's  
6 trade secrets and they protect it, and we can't get  
7 it, yet we're supposed to manufacture it. I mean,  
8 think about that. The argument is nonsense. If  
9 it's truly a trade secret, it can't by law be  
10 available to anybody else, unless they're not  
11 making their case appropriately.

12 So if it's such a trade secret, we can't get  
13 to it. So how could we put it together?

14 MR. SMITH: Well, let me ask you  
15 this, Tom. In terms of like, for example, the  
16 percentage of service of a particular class in a  
17 particular location, is not -- without reference to  
18 a particular other company out there, is that  
19 not -- information not, I guess, producible through  
20 a sort of reverse logic, in other words, everybody  
21 out there that's not a Qwest customer is somebody  
22 else's customer?

23 MR. WELK: Well, some issues you  
24 might be able to do that, but that doesn't tell you  
25 what the market is, John. I mean, we could produce

1           our data, but we don't have control of some of this  
2           other data that they have. I mean, where  
3           facilities are located, the type of customers, the  
4           number of customers that are out there, we can  
5           guess at some of this.

6           And then on the other hand, if we come in with  
7           guesses, then we're liable for you didn't make your  
8           burden of proof, you don't have the quality of  
9           information. So we're between the proverbial rock  
10          and a hard spot. The information lies in their  
11          hands. We can make suppositions about it, but then  
12          we're subject to conjecture.

13                   CHAIRMAN SAHR: And that's one of  
14          the questions that I wanted to ask the various  
15          parties here today was the one thing we really  
16          haven't gotten into at least orally is the specific  
17          information being requested.

18           And I guess I would have a question, first of  
19           all, for Qwest and then one for the interveners.  
20           The question I'd have for Qwest is when we get into  
21           information like marketing information, surveys,  
22           and those types of things, why is that necessary to  
23           put forward your case here, as opposed to the other  
24           information that's maybe related more towards  
25           market share and the number of lines and ability to

1 compete with, you know, location of facilities and  
2 those type of things?

3 Mr. Welk.

4 MR. WELK: There are other factors  
5 other than the market share. If you look at the  
6 factors, Mr. Chairman, and the statute, if you read  
7 it carefully, it all talks about market power, and  
8 it also talks about the ability to make  
9 functionally equivalent or substitute services at  
10 competitive rates and terms, and it also states to  
11 an extent the services are available for  
12 alternative providers in the relevant market in the  
13 number and size.

14 All of the facilities, the forecast, the  
15 marketing show that the market -- their ability to  
16 make functionally equivalent services, the extent  
17 that they're available, and their ability to  
18 influence market power.

19 If you look at number four, it talks about the  
20 market share, the ability to hold prices to costs,  
21 and other economic measures of market power. That  
22 is the ability to look at market power is to know  
23 how can they get in and out of a market, what's the  
24 forecast, and all of those factors are subsumed in  
25 the market power issues as well as factors two,

1 three in the statute.

2 CHAIRMAN SAHR: Thank you. And  
3 the -- I guess the flip side to the interveners,  
4 I'll get to it in just a little bit. Mr. Welk,  
5 another question I had was with Mr. Teitzel.

6 MR. WELK: Yes.

7 CHAIRMAN SAHR: Prairie Wave has  
8 included some information about some prior  
9 statements from him about his particular role  
10 within the Qwest organization, and how would you  
11 respond to that?

12 Is he somebody that, although by job title and  
13 organization appears to be somebody that you're  
14 making argument that's not going to be working the  
15 retail side of things, but what about Prairie  
16 Wave's argument?

17 MR. WELK: I don't understand their  
18 argument, where they're getting their basis.  
19 Mr. Toll's here. If you'd like to put him under  
20 oath or Mr. Teitzel, I'll be glad to put them under  
21 oath and represent what he's done.

22 I mean, most of this is taking things out of  
23 context and making arguments. The bottom line is  
24 he is not in the provisioning of services, he  
25 doesn't make price decisions, he doesn't do

1 anything but accumulate data and talk about  
2 products and markets.

3 MR. TOLL: For the last two years,  
4 Mr. Chair, he has been on the 271 group and  
5 testifying through the various state 271 procedure  
6 meetings and then submitting affidavits, obviously,  
7 to the FCC for the application.

8 That's part of the reason this docket -- I  
9 would have liked this docket to come before this  
10 Commission earlier but because of Mr. Teitzel being  
11 tied up in other things, the delay --

12 CHAIRMAN BURG: Who is this speaking  
13 now?

14 MR. TOLL: This is Larry Toll.  
15 Pardon me.

16 CHAIRMAN BURG: Okay, Larry. I  
17 didn't --

18 MR. TOLL: So Mr. Teitzel has been a  
19 policy and law witness for as long as I can  
20 remember. And he deals with marketing issues,  
21 however.

22 CHAIRMAN SAHR: Thank you. And then  
23 the, I guess, flip question I have for the other  
24 parties is when you're dealing with information  
25 like location of facilities, numbers of lines, and

1           that type of information what is the -- what is  
2           your response to the argument that Qwest needs that  
3           information to put on their case, especially when  
4           they're dealing with things like market share and  
5           market power, that snapshot in time type of  
6           information?

7                     And I guess I'd open that up first to  
8           Prairie Wave.

9                     MR. HEASTON: Thank you,  
10          Mr. Chairman. This is Bill Heaston. The arguments  
11          to the questions they filed -- or the  
12          interrogatories that they posed that they want a  
13          response to or at least part of their motion to  
14          compel, the exact location and nature of our  
15          facilities we just don't understand -- to us it  
16          seems proprietary information, how we build our  
17          network, what our business plans are, that sort of  
18          things.

19                    That's very trade secret, and we don't  
20          understand what that has to do with Qwest's ability  
21          to determine whether or not they've lost some  
22          market share or meet -- or can meet these standards  
23          in 49-31-3.2.

24                    Same thing with number nine. I mean, number  
25          nine, the interrogatory there is looking for

1 numbers of line. We provided an annual report to  
2 the Commission with the aggregate numbers of lines  
3 that -- (Inaudible) -- DSS, Mr. Dave Teitzel deals  
4 with when he goes over and looks at what's on the  
5 wholesale side of Qwest's business, then this ought  
6 to be enough for him on this side and he can look  
7 at a South Dakota annual report for all the  
8 companies involved here and get what they report.  
9 We report ILEC and CLEC, what our aggregate lines  
10 are in South Dakota. That information's available.

11 Why do they have to have it for each exchange?  
12 Why do they have to have it for all of those years?  
13 You know, this goes to us beyond what they need to  
14 make a case. It goes into trying to delve into our  
15 secret plans to learn about their competitor and to  
16 fashion competitive responses.

17 And I think I heard Mr. Toll say that  
18 Mr. Teitzel is involved in the marketing side of  
19 the house. And if that's true, then this gives him  
20 a great insight into how we operate our company and  
21 how we can respond and advise Qwest to respond in a  
22 competitive market going forward knowing what they  
23 know about our networks, about our facilities, how  
24 we operate our facilities, how we set up our plant,  
25 and what the potential customer base is out there

1 as we see it from our side of the fence.

2 And also in number nine they talked about  
3 market share. And I'm not sure, as I -- if you've  
4 had a chance to look at the response to this, this  
5 question is -- I'm not sure this is what is meant  
6 by market share here.

7 Qwest has not volunteered to further define  
8 that term. They've filed in that attachment one to  
9 Mr. Teitzel's testimony a whole bunch of things  
10 that they want deregulated, and I'm not sure  
11 what -- when you talk about market share what we're  
12 referring to there.

13 Are you talking market share by customers?  
14 Are we talking about market share by access lines?  
15 Are we talking market share by revenues? Are we  
16 talking market share -- sometimes the way we might  
17 look at it is market share by the number of homes  
18 passed, which would not necessarily be the same  
19 number of customers that Qwest has in any  
20 particular area.

21 And so it is very difficult to determine, from  
22 our perspective, and to reveal this sort of  
23 information without knowing a little bit more,  
24 number one. And, number two, it's something that  
25 we take -- again, it gets into our deepest secrets

1 and considerations when it comes to deciding how  
2 we're going to compete with Qwest in a particular  
3 market, where we're going to go with our  
4 facilities, where we're going to go with our  
5 customer efforts, and this sort of thing.

6 And the same thing, with any surveys and this  
7 sort of stuff, both give you the more protected to  
8 the extent that we have these sorts of things.  
9 That really gets into deeply how we plan.

10 And I don't think that's what was the intent  
11 of this legislation is to give Qwest or any other  
12 incumbent company, monopoly, an opportunity to  
13 completely learn about its competitor and then have  
14 that advantage or at least completely -- or  
15 undermine whatever competitive advantage a company  
16 like Prairie Wave might have in a Qwest market.

17 CHAIRMAN SAHR: Thank you.

18 Mr. Gerdes.

19 MR. HEASTON: This is Mr. Heaston.

20 CHAIRMAN SAHR: No. That was thank  
21 you, period. Mr. Gerdes dot, dot, dot.

22 MR. GERDES: He was looking at me  
23 when he said that.

24 CHAIRMAN SAHR: I'm not thanking  
25 him, Bill. I thank you.

1 MR. GERDES: Mr. Chairman, I'd like  
2 to just set the stage and then ask Mr. Simmons if  
3 he has any comments. He's on the line.

4 Basically our objection is to number nine. We  
5 either responded partially to some of the other  
6 questions, or the questions weren't applicable. So  
7 if we were asked to go further in some of those  
8 responses to the other questions, we might have  
9 further objections. But our question is -- our  
10 objection is primarily to number nine.

11 And it really gets down to the guts. They  
12 list I think it's like six or eight years. They  
13 want number of customers in both business and  
14 residential categories. They want number of lines.  
15 They want market share. And all they have to do is  
16 look at a map and they can put our business plan,  
17 and for those reasons we think that's confidential  
18 business-related information.

19 And if Mr. Simmons has further insights, I'd  
20 ask him to speak up.

21 MR. SIMMONS: Thank you, Dave. The  
22 only thing I might add is that when we see a list  
23 that's as long as this one, we're very concerned  
24 about its relevance to this particular case.  
25 Because any time we disclose this information once

1           it's out there, it's out there among all the  
2           parties.

3           I understand that we're looking at it now as  
4           it impacts this particular case, but it has a life  
5           beyond all of that, especially when you look at the  
6           survey information. And while the survey  
7           information that we're offering might, in fact, be  
8           dated information, just this year, in fact, that we  
9           asked these particular questions, means we have  
10          interest in certain areas which could give rise to  
11          what our business plans might be looking at.

12          So it is very sensitive information, and we  
13          regard it as trade secret.

14                 CHAIRMAN SAHR: Thank you.

15                 MR. SMITH: Well, Dave, let me ask  
16                 you something just on that. Do you have your code  
17                 book over there?

18                 MR. GERDES: I don't have -- I was  
19                 reading another statute.

20                 MR. SMITH: Oh.

21                 MR. GERDES: Thank you, Ms. Rogers.

22                 MR. SMITH: I'm just looking here.  
23                 Let's take a look at -- well, let's take any of the  
24                 top three. Let's take number three, the ability of  
25                 alternative providers to make functionally

1 equivalent or substitute services readily  
2 available.

3 Can you just give me your take on how Qwest  
4 does that without being -- without having accurate  
5 information on what the other providers have in the  
6 way of functional ability?

7 MR. GERDES: Well, number one, I  
8 think that what the other providers provide  
9 publicly as to their capabilities technically  
10 certainly tells something about the type of  
11 equipment that they have.

12 And so then, you know, do you have a type A  
13 widget or a type B widget. That I think is  
14 confidential to the company. The question is can  
15 they perform the service -- or can they sell the  
16 service, can they provide the service that's  
17 provided by a widget of whatever kind, not type A,  
18 B, C, or D.

19 So then we get to the level of detail, and,  
20 again, when you go back -- as I said, I'm talking  
21 strictly about the answers to number nine in terms  
22 of our position, and those are very detailed  
23 questions. It's the level of detail.

24 MR. SMITH: One last question, and  
25 maybe this is for all of the interveners. Is there

1 anything that can be done here in the way of like  
2 requests for admission and dealing with it that  
3 way, if there's some summary way of dealing with  
4 this to -- if the issue isn't resolvable, then  
5 obviously not, but --

6 MR. GERDES: Are you posing that  
7 question to me?

8 MR. SMITH: Uh-huh.

9 MR. GERDES: I think abstractly as  
10 an abstract thought, yes, I think there's something  
11 that can be done by Qwest for admission. But  
12 you're going to have a hit and miss proposition  
13 that will take forever, you know, and you may have  
14 to redraft the request periodically -- or, I mean,  
15 several times and things like that.

16 I still think the best way to do it is for all  
17 of us to sit down and decide who concedes what and  
18 how we're going to do it.

19 And maybe that won't work. But that -- that's  
20 really the easiest way to do it. And maybe Qwest  
21 is going to have to back off on the type of  
22 information they want a little bit too. I mean,  
23 that's another thing that we might want to think  
24 about.

25 But I'm probably the wrong person to ask

1 because we probably went the farthest in terms of  
2 suggesting how to solve this problem.

3 MR. HEASTON: Mr. Smith.

4 MR. SMITH: Yes.

5 MR. HEASTON: This is Bill Heaston.  
6 If you look at Interrogatory No. 10, and we did  
7 file our responses to Qwest with the Commission,  
8 and our response to that -- Qwest's question was at  
9 least in our first set of interrogatories is that  
10 able to provide local exchange services or  
11 functionally equivalent or substitute services at  
12 competitive rates, terms, and conditions of service  
13 compared to Qwest within Qwest's service area in  
14 South Dakota. And if not, briefly explain why not.

15 And our answer was yes, to the extent that  
16 Prairie Wave uses its own facilities.

17 MR. SMITH: Well, then doesn't that  
18 beg the issue, though, that from Qwest's standpoint  
19 is do they need to know what facilities you have in  
20 order to get to the next step?

21 MR. HEASTON: How do they know by  
22 looking at our website, which Mr. Teitzel needs to  
23 update looking at our website since we became  
24 Prairie Wave, but to that extent that pretty well  
25 tells you we have a brochure out that shows you,

1           you know, a generalized look at the network.

2           It doesn't list all the facilities. It  
3           doesn't list every repeater and every -- designate  
4           what type of remote or anything like that we may  
5           have in a particular area, but it certainly, you  
6           know -- and it gives aggregate numbers.

7                   CHAIRMAN SAHR: We haven't heard yet  
8           from Ms. Rogers.

9                   MS. ROGERS: Well, I'm not sure I  
10          have a lot to add. I concur with what's been  
11          stated, but I might suggest that maybe one size  
12          doesn't fit all in this case.

13                 You know, I mentioned that I had had some  
14          discussions with Mr. Goodwin with regard to my  
15          client -- or with regard to my client. You know,  
16          my clients are here asking this Commission for some  
17          protection from things that we believe are clearly  
18          trade secret and are integral to our business. On  
19          the other hand, this is a hard docket because of  
20          what Qwest is seeking here.

21                 I'm thinking that perhaps instead of, you  
22          know, everybody agreeing or one size fitting all  
23          with regard to the different types of players that  
24          are here, you know, maybe there is, you know, more  
25          negotiation.

1           If I tell my small companies that, well, even  
2 narrowed down as far as possible Qwest at a minimum  
3 needs to have five or six or seven people see this  
4 information, I mean, that's not going to offer any  
5 level of comfort at all to my clients with regard  
6 to who can view this particular information.

7           And on the other hand, if Qwest would be  
8 willing to back off a little on exactly what they  
9 need, is there more general things we can give them  
10 that would satisfy what they need to look at in  
11 this docket and can we further narrow the scope  
12 down -- you know, maybe there are some  
13 possibilities for resolving it that way, request  
14 for admission or something like that.

15           But I'm concerned that perhaps some of us are  
16 coming from a little different perspective,  
17 especially from the perspective of my very small  
18 company.

19                   CHAIRMAN SAHR: Vice Chairman  
20 Hanson, do you have any questions?

21                   VICE CHAIR HANSON: No. I just look  
22 at this as a Catch-22 for Qwest. They certainly  
23 should have their right to their day in court. At  
24 the same time, other companies should not be  
25 required to disclose confidential information to a

1 competitor.

2 So I'm interested in how we untie the --  
3 (Inaudible) -- knot here and allow the judicial  
4 process to go through.

5 CHAIRMAN SAHR: Amen. Commissioner  
6 Burg.

7 CHAIRMAN BURG: Well, the one thing  
8 that occurs to me -- and I can understand Qwest's  
9 desire to put on the best case to make sure that  
10 they can have the reclassification that they're  
11 requesting, but how much of their request could be  
12 attested to by some of the parties?

13 And as Mr. Heaston just mentioned, we've  
14 answered yes. Okay. You need to pursue that  
15 farther. If they say yes, you know, that  
16 particular checklist item is met, how much of that  
17 can occur?

18 It looks to me like, you know, this may not be  
19 as difficult of decision as to whether the things  
20 have actually occurred. What the problem is is  
21 that as people are getting into the competitive  
22 nature, now they're saying we don't want to share  
23 that information and probably could prove that it's  
24 competitive, otherwise, you wouldn't even have the  
25 information in the first place.

1 All right. The thing that I would seek would  
2 be what part of that request -- how many parties  
3 would be willing to attest to and thus avoid giving  
4 that information and probably pass the necessity of  
5 having the information for Qwest to include?  
6 Because that's what I heard Mr. Heaston say, we  
7 agree.

8 MR. WELK: This is Tom Welk. We  
9 asked that question in the interrogatories, whether  
10 you post it. And everyone answered it differently.  
11 Mr. Heaston, he answered it one way. Others said  
12 yes, see the testimony of the witnesses.

13 And that's precisely your thinking is what I  
14 thought about when we rolled the question. If  
15 there isn't an opposition to some of these factors  
16 in the statute, then there's no reason to have this  
17 information. But the companies have said no. Some  
18 of them have said yes, kind of yes, like  
19 Mr. Heaston. Others have said no, see the  
20 testimony of our witnesses.

21 So here we're sitting with, you know, five or  
22 six different people opposing the reclassification,  
23 not wanting to give the information that's required  
24 by the statute.

25 And I am sensitive to the issue, but we deal

1 with this every day in commercial litigation, and  
2 you have to enter an order as the Commissioner of  
3 courts and expect people to abide by it, and if  
4 they don't, there are consequences.

5 And as Mr. Smith indicated, the courts deal  
6 with this every day. You have to fashion a remedy.  
7 We all have honorable people here. Have somebody  
8 designated from the companies to receive the  
9 information, enter an order that they can't  
10 disclose it, and if it's ever disclosed, we'll be  
11 back in front of you and people will have to answer  
12 if they disclosed it or not.

13 CHAIRMAN BURG: Mr. Welk, along the  
14 lines of Ms. Rogers' question, if -- not  
15 everybody's treated the same. If you got a  
16 agreement from somebody that, yes, that's  
17 competitive now, we agree as Mr. Heaston has  
18 indicated, would you be willing to treat each  
19 company separately?

20 MR. WELK: Well, if they've conceded  
21 that. But we still at the end of the day if we  
22 have people that are refusing that and the  
23 information is still required to show the market,  
24 we still have to prove it.

25 If Ms. Rogers' client says, you know, we agree

1           that there's a function that -- that wireless  
2           service is a functional equivalent, which all of  
3           them haven't agreed, by the way, then that's one  
4           party. But we have to have it for the rest of  
5           them.

6                     Why does one company think that wireless is a  
7           functional equivalent and others do not? You've  
8           got varying answers, Commissioner, by everybody.

9                     CHAIRMAN BURG: And that was my  
10          question. If you have one company that agrees, can  
11          you bypass the information from that company and  
12          only go to those that don't agree and say show us  
13          why not?

14                    MR. WELK: Yeah. If they've  
15          admitted the fact, that's true. If they have said  
16          there's no issue with us, those that contest it  
17          should have to do it.

18                    CHAIRMAN BURG: But I also have an  
19          additional question. And maybe it goes to the law.  
20          Why do you need the information on the futures?

21                    For example, marketing surveys, which I think  
22          would reflect on what could happen in the future or  
23          a forecast of new customers, forecast indicating in  
24          the future. Is not your burden of proof to show  
25          whether that's occurring today?

1 MR. WELK: Well, it also has to show  
2 the extent to which they're available and they may  
3 be available in the future and the ability of them  
4 to provide functionally equivalent service.

5 So maybe they can say we could go into another  
6 area if we want to, we just decided not to do it,  
7 but physically they have the ability to do that.

8 So if someone says, well, this market's  
9 limited to this or this area but they've got a  
10 survey that says we could go there but they just  
11 chose not to do that, that's part of our case to  
12 say it's there, you just chose as a business  
13 decision not to do it. It doesn't mean it  
14 shouldn't be classified. It's just you as a  
15 company chose not to do that.

16 MR. JENSEN: This is Gary Jensen  
17 again in Rapid City. Could I ask another question?  
18 Would that be appropriate?

19 CHAIRMAN SAHR: Absolutely. I only  
20 took you last because you asked to go last.

21 MR. JENSEN: And I appreciate that  
22 very much. I'm trying to understand -- everybody  
23 on the phone as much more familiar with it than I,  
24 but my understanding is that all of these other  
25 companies have intervened, and that's how come we

1 get into the discovery issue.

2 What would have happened -- how would Qwest  
3 now be proving its case if these interveners  
4 weren't here and you couldn't get discovery? It  
5 seems to me that you may very well really kill the  
6 incentive that people have to intervene and all the  
7 good that comes from that if they're going to be  
8 subjected to having to turn over documents,  
9 especially if they're sensitive.

10 MR. WELK: First of all, it's got  
11 nothing to do, Gary, with the statutory  
12 requirements. If they had not intervened, we would  
13 seek third party discovery, just like you do in  
14 every other lawsuit.

15 So if they chose to intervene, they're a party  
16 and their obligations are greater. If they are not  
17 a party, then there's third party discovery. And  
18 then we would have the same issues we do in any  
19 other case. We'd have to make market share.

20 You either produce it by a consultant with  
21 other information that's available -- and this  
22 information, as everybody said, is a trade secret.  
23 We can't get to it.

24 MR. JENSEN: So then how would you  
25 go about proving your case?

1 MR. WELK: We would go just as we're  
2 doing right now. Except your company has said they  
3 won't produce anything. They've taken the worst  
4 position of everything and said, no, you're not  
5 entitled to anything. So we have a statutory  
6 dictate to prove this, but the people who are there  
7 opposing this refuse to give us this information.

8 MR. JENSEN: I'm just trying to  
9 understand. I mean, the basis that you had or  
10 Qwest must have had to proceed, there must be  
11 something there, otherwise, you wouldn't have  
12 started this proceeding.

13 MR. WELK: Well, if you've read the  
14 docket, read the testimony, Gary, you'll see it.

15 MR. JENSEN: I've read it.

16 MR. WELK: That's not complete.

17 MR. SMITH: Tom, this is John Smith.

18 MR. WELK: Yes, sir.

19 MR. SMITH: Do five people need to  
20 see this stuff?

21 MR. WELK: Well, you mean,  
22 Randy Kim? I mean, I can take care of  
23 disseminating it so he doesn't have to see it. I  
24 mean, Marti Gude is a support person, and  
25 Starla Rook and Dave Teitzel are the people that

1 need to see it.

2 CHAIRMAN SAHR: Any other questions?  
3 Well, I think we certainly have gone a long way  
4 flushing out the issues. I think the Commission,  
5 though, considering the diversity of the parties,  
6 considering the different objections that have been  
7 raised and certainly considering Qwest's position  
8 on these issues, I think it's pretty impractical to  
9 expect us to be able to rule on the seat of our  
10 pants on these issues.

11 So what I would propose is that the Commission  
12 will schedule another ad hoc hearing, and at that  
13 point in time actually come forward with the  
14 ruling -- or at least certainly with some type of  
15 action on the pending motions. And I think that's  
16 probably the most appropriate way to sort through  
17 this.

18 Because, frankly, there's a lot of us that  
19 could be -- (Inaudible) -- and to try to do that  
20 orally without having to consider the issues raised  
21 today and try and do that at this point in time I  
22 think is going to be very, very difficult.

23 So what the parties should expect is that the  
24 Commission will issue a notice of a hearing, some  
25 type of ad hoc meeting, that will be scheduled

1 within the next couple of days. I hope everyone's  
2 still mindful that we do have a July 14 discovery  
3 deadline and that is still looming and at this  
4 point in time that is still the deadline.

5 One last thing that I would like to ask Qwest  
6 is your deadline is the 28th to produce documents;  
7 is that correct?

8 MR. WELK: It's to produce rebuttal  
9 testimony, Mr. Chairperson.

10 CHAIRMAN SAHR: Thank you very much.  
11 I appreciate the clarification. On that issue it  
12 sounds like you're working with Midco on whether or  
13 not Mr. Simmons can look at the information and so  
14 on and so forth.

15 I would encourage the parties, if we could,  
16 let's propose names and let's get people either --  
17 let's take care of that issue if at all possible  
18 you can without the Commission having to take  
19 action. Because that seems like to me to be  
20 hopefully a fairly simple issue of to whom the  
21 information can be given.

22 So I would suggest that the interveners get  
23 the names that they intend to -- or that they would  
24 like to have or give the information to Qwest and,  
25 Mr. Welk, if you and Qwest would review those and

1 work with the interveners to see if we can get  
2 those done without having to do something formally,  
3 I think that would make a lot more sense.

4 So I would encourage the parties to do that.  
5 Otherwise, just everything else that we're talking  
6 over today just we'll take that under advisement.  
7 And I appreciate everyone coming back for a second  
8 day on this.

9 MR. HEASTON: Mr. Chairman.

10 CHAIRMAN SAHR: Yes.

11 MR. HEASTON: This is Bill Heaston.  
12 Not to complicate this any more than we need to,  
13 but we've been served with a second set of  
14 interrogatories, which are in some ways much more  
15 onerous in seeking competitive information than the  
16 first set.

17 They're looking for average revenue per  
18 service, per customer, which really gets into some  
19 trade secret stuff. Revenue -- there's  
20 subelements, revenue, they're wanting value,  
21 average inter and intraLATA toll revenue per  
22 customer, proportionate intrastate and interstate  
23 toll generated by a residential customer.

24 This isn't going to go away with this first  
25 set, I'm afraid. So I just wanted to make you

1           aware of that.

2                   CHAIRMAN SAHR:  When did you receive  
3           that request?

4                   MR. HEASTON:  I think it was dated  
5           the 1st or 2nd of July.

6                   CHAIRMAN SAHR:  Okay.  And that's  
7           something certainly where when we're looking at a  
8           July 14 deadline we certainly will take into  
9           consideration when the parties were served a  
10          particular request --

11                   MR. WELK:  Wait a second.  That was  
12          the motion to shorten time that was served that was  
13          already decided by the Commission, which as the  
14          Commission nobody objected to shortening the time  
15          and nobody's filed an objection.

16                   CHAIRMAN SAHR:  And if I would have  
17          been able to finish my sentence, the parties  
18          certainly have the ability to file any appropriate  
19          motions if they have a problem with a particular  
20          request for discovery, otherwise, we proceed on.

21                   So, Mr. Heaston, if there's a problem out  
22          there, in your opinion, then I would go ahead and  
23          file the appropriate documents with the Commission,  
24          give Mr. Welk a chance to respond, and we'll go  
25          forward when that comes forward.  But right now

1 we're just dealing with what is before us today.

2 But I appreciate the heads-up on that. And  
3 certainly there is nothing preventing you from  
4 filing a motion regarding that request for  
5 discovery.

6 MR. HEASTON: Thank you.

7 CHAIRMAN SAHR: Thank you. And with  
8 that, we will be adjourned.

STATE OF SOUTH DAKOTA )

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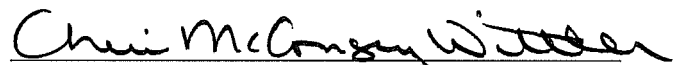
CERTIFICATE

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 transcribed, to the best of my  
ability, the cassette tape of the foregoing  
proceedings.

Dated at Pierre, South Dakota this 21st day  
of July 2003.

  
Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter

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