

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

=====  
IN THE MATTER OF ESTABLISHING SWITCHED  
ACCESS REVENUE REQUIREMENTS IN DOCKETS  
TC05-083, TC05-087, TC05-090, TC05-091,  
TC05-092, TC05-093, TC05-094, TC05-095,  
TC05-097, TC05-098, TC05-099, AND TC05-109  
=====

Transcript of Proceedings  
September 27, 2005

**ORIGINAL**

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
GARY HANSON, CHAIRMAN  
BOB SAHR (by telephone), VICE CHAIRMAN  
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
John Smith  
Karen Cremer  
Sara Greff  
Greg Rislov  
Harlan Best  
Keith Senger  
Dave Jacobson  
Michele Farris  
Jim Mehlhaff  
Tina Douglas  
Heather Forney  
Pam Bonrud

Reported By Cheri McComsey Wittler, RPR, CRR

**PRECISION REPORTING**  
**L I M I T E D**

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 2 OF THE STATE OF SOUTH DAKOTA  
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 33 Reported By Cheri McComsey Wittler, RPR, CRR  
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1 CHAIRMAN HANSON: In the Matter of  
 2 Establishing Switched Access Revenue Requirements  
 3 in Dockets TC05-083, 087, 090, 091, 092, 093, 094,  
 4 095, 097, 098, 099, and TC05-109. And I need to  
 5 check and see if folks have been able to join us.  
 6 Jeff Decker, are you there? Mike Bradley?  
 7 MR. BRADLEY: Yes, Commissioners.  
 8 I'm here.  
 9 CHAIRMAN HANSON: Marlene Bennett?  
 10 MS. BENNETT: Yes. I'm here. And  
 11 Peter Rasmussen is also here with me.  
 12 CHAIRMAN HANSON: Thank you. Is  
 13 there anyone else who has joined us?  
 14 If not, then the question on the items that I  
 15 just read is today shall the Commission grant  
 16 intervention -- excuse me. I want to make sure --  
 17 yes. Today shall the Commission grant intervention  
 18 to Midcontinent Communications, MCI metro Access  
 19 Transmission Services, and AT&T Communications of  
 20 the Midwest, Incorporated?  
 21 Appearing before us today is -- Keith, are you  
 22 going to lead off or Dave?  
 23 Dave, you're going to start?  
 24 MR. GERDES: Mr. Chairman, members  
 25 of the Commission, I'm Dave Gerdes. I'm a lawyer

1 APPEARANCES BY TELEPHONE  
 2 Talbot Wiczorek  
 3 Colleen Sevold  
 4 Erin Jordahl  
 5 Doug Eidahl  
 6 David Chorzempa  
 7 Jeff Larson  
 8 Denny Law  
 9 Suzie Rao  
 10 Jeff Decker  
 11 Mike Bradley  
 12 Brian Everson  
 13 Marlene Bennett  
 14 Larry Hettinger  
 15 Peter Rasmussen  
 16 -----  
 17 TRANSCRIPT OF PROCEEDINGS, held in the  
 18 above-entitled matter, at the South Dakota State  
 19 Capitol, Room 412, 500 East Capitol Avenue, Pierre,  
 20 South Dakota, on the 27th day of September 2005,  
 21 commencing at 9:30 a.m.  
 22  
 23  
 24  
 25

1 from Pierre, and I represent Midcontinent  
 2 Communications.  
 3 At the outset I need to tell the Commission  
 4 that we misfired on a couple of the interventions  
 5 of -- I was under the erroneous assumption that  
 6 Fort Randall Telephone Company and Mount Rushmore  
 7 Telephone Company were members of LECA. They are  
 8 not. And it's also my understanding that their  
 9 cost studies are, for all practical purposes, about  
 10 to be approved or at least are potentially subject  
 11 to approval.  
 12 MS. CREMER: Are you talking the  
 13 2005; right?  
 14 MR. GERDES: Yeah.  
 15 MS. CREMER: I don't believe -- is  
 16 that true, Harlan? I don't think that's even  
 17 close.  
 18 MR. GERDES: Do they have 2004 cost  
 19 studies too? I guess --  
 20 MS. CREMER: Fort Randall  
 21 Mount Rushmore did not have 2004. The only thing  
 22 Fort Randall Mount Rushmore -- Harlan has sent one  
 23 data request, and I think he's gotten a response to  
 24 that so he's sent a second one. But there will be  
 25 a number of them.

1 MR. GERDES: Okay. In any event, we  
 2 would withdraw our intervention petitions in those  
 3 two because they're not members of LECA. We were  
 4 targeting LECA.  
 5 CHAIRMAN HANSON: What are the two  
 6 numbers on those?  
 7 MS. CREMER: They're actually filed  
 8 together so it's just 0 --  
 9 MR. GERDES: 099. They're filed  
 10 together.  
 11 CHAIRMAN HANSON: Okay. Thank you  
 12 very much.  
 13 MR. GERDES: As to the remainder of  
 14 the switched access revenue requirement dockets  
 15 involving both the cost studies and then the two  
 16 dockets involving LECA in '04 and '05, just as a  
 17 matter of background, there has been a long,  
 18 ongoing discussion among the companies doing  
 19 business in South Dakota that must pay switched  
 20 access rates to the ILECs in South Dakota that the  
 21 prices are simply too high.  
 22 If you look at national statistics, the  
 23 switched access rates are far higher than the  
 24 national averages. So some time ago MCI and  
 25 Midcontinent hired experts to take a look at,

1 And so that -- that's the background and kind  
 2 of the genesis of why we're here today and why you  
 3 have this large polyglot of dockets before you, all  
 4 of which we intervened in, and as you imagined it  
 5 was kind of an administrative problem in our office  
 6 to try to get them all put together. We did make a  
 7 couple of mistakes in a couple of intervention  
 8 petitions, and we've tried to cure those that we  
 9 know about.  
 10 Basically, we know that the FCC has entered at  
 11 least two orders that call into question the  
 12 desirability of implicit subsidies. And our  
 13 experts tell us that clearly the way they read the  
 14 cost studies in these dockets, there are implicit  
 15 subsidiaries which subsidize primarily local  
 16 service through switched access rates.  
 17 And the FCC has indicated that implicit  
 18 subsidies should be removed and that explicit  
 19 subsidies should be replaced in there instead. And  
 20 so overall that's the main objection. Now there I  
 21 think probably are going to be some other  
 22 objections as to inputs and how the inputs are  
 23 constituted and whether or not they're entirely  
 24 appropriate for the purpose they're intended to be  
 25 in individual cost dockets.

1 number one, the Commission's rules on switched  
 2 access rates and, number two, the individual cost  
 3 dockets and tell us what they think.  
 4 That review is still ongoing, but we have had  
 5 some preliminary information from those experts who  
 6 believe that there are some problems with the way  
 7 that the cost dockets are calculated and with the  
 8 way that the switched access rates would be  
 9 reflected in the LECA tariffs, and, therefore, we  
 10 struggle then with the proper legal way to bring  
 11 this question to the Commission.  
 12 And I have heard -- we've talked about, and I  
 13 have heard various ideas. Should there be a  
 14 rule-making docket? Should there be a  
 15 consolidation of these dockets and a discussion as  
 16 a part of consolidated dockets?  
 17 I saw no easy way for our group to present  
 18 this in a way that would get our arms around the  
 19 entire problem other than by simply intervening in  
 20 all the pending dockets, and then once we have  
 21 party status, we can sit down with staff and  
 22 perhaps come up with a proposal as to how to  
 23 address this or perhaps the Commission will want to  
 24 hold a hearing and decide how to come up -- how to  
 25 address the process.

1 But those are really the two objections that  
 2 we have that we can tell you will be voiced with  
 3 the Commission. As I said, the review is ongoing.  
 4 We need to do some discovery. We have not yet  
 5 filed any discovery. I hope to do that yet this  
 6 week. Obviously, we're not parties yet so there's  
 7 kind of a chicken or the egg issue there. But we  
 8 do intend to do some discovery and to, again, try  
 9 to put our arms around the dockets.  
 10 So that's the background on why we're here.  
 11 We're asking to be -- we're asking that we be  
 12 allowed to intervene in both the '05 and the '04  
 13 dockets. We had originally thought just of the '05  
 14 dockets, but in a little checking around that I  
 15 did, it was my understanding that the '04 dockets,  
 16 of course, are being -- the switched access rates  
 17 that are the subject of the '04 dockets are, in  
 18 fact, as I understand it, being collected under a  
 19 potential -- a conditional approval of the tariffs  
 20 and a potential obligation to refund.  
 21 And so there's not a final order in those  
 22 dockets. And so we thought, well, since those  
 23 dockets are not complete, it's my understanding  
 24 that there's still discovery outstanding in those  
 25 dockets. We felt that we might as well get as far

9

1 into the issue as we can and get as many of the  
 2 cost dockets of LECA as we can involved in this  
 3 consideration.  
 4 Somewhere along the line I can remember years  
 5 ago being involved in switched access hearings  
 6 where all of the carriers' switched access rates  
 7 were before the Commission at the same time and we  
 8 were in a great big room up above the Kings Inn, I  
 9 remember, and we went on for days talking about  
 10 switched access rates.  
 11 It seems now that the companies, for whatever  
 12 reason, don't file every year, but it seems like  
 13 every other year or every third year there's a  
 14 filing. So there's no way to get everybody in  
 15 front of the Commission at the same time based on  
 16 my knowledge. Now there may be another way to do  
 17 it, and that would be perhaps another  
 18 consideration.  
 19 So, in any event, we have applied to intervene  
 20 in both the '04 and the '05 dockets, primarily  
 21 because in the case of the '04 dockets there is  
 22 no -- and I realize that we're talking about the  
 23 '05 dockets here on the agenda but I thought that  
 24 perhaps I'd shorten this up a little bit by just  
 25 telling you why we're here and what we're doing.

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1 So we believe that since the '04 dockets are  
 2 not yet concluded and the '05 dockets certainly are  
 3 not yet concluded, that these interventions are  
 4 well taken. Of course, the Commission is familiar  
 5 with its own rules, and the Commission knows that  
 6 in order for us to intervene under the Commission's  
 7 rules, we must show that denial of the petition  
 8 would be detrimental to the public interest or  
 9 likely to result in a miscarriage of justice.  
 10 I needed that little exercise before I started  
 11 talking too, Mr. Chairman.  
 12 In my experience in the years that I've  
 13 practiced before the Commission the Commission has  
 14 been quite liberal in granting interventions. At  
 15 least one of the reasons given is that the  
 16 Commission wants to have all points of view  
 17 expressed so that they can make a good decision.  
 18 A second reason is that after all we are doing  
 19 the people's business here, and if there is a  
 20 source of information that will permit this  
 21 Commission to construct rates that are fair to  
 22 everyone, that that source should be heard from.  
 23 And so we believe that even though the petitions  
 24 are all, I think, beyond the intervention deadline  
 25 that's set by staff in the initial filing report

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1 that goes out, my understanding from what staff has  
 2 said in their filing is that none of these  
 3 petitions violate any procedural order that has  
 4 been established by the Commission, number one.  
 5 But just as a practical matter, as a practical  
 6 matter, we would submit that this is an important  
 7 issue. We think that we can show that switched  
 8 access rates continue to migrate up when we're  
 9 involved in a decreasing cost industry. There has  
 10 to be some reason why this is occurring. And we  
 11 think that it's appropriate for the Commission to  
 12 address this issue at this time.  
 13 And so with that, Mr. Chairman and members of  
 14 the Commission, I'll stand by for questions, and,  
 15 of course, I'll pop up again when another item  
 16 comes up. And I apologize for going on here, but  
 17 we would ask that other than the docket that we  
 18 withdrew, that Midcontinent and MCI be allowed to  
 19 intervene in the dockets that are the subject of  
 20 item number 1 on the agenda. And if you have  
 21 questions, I'll certainly respond.  
 22 CHAIRMAN HANSON: Mr. Smith, do you  
 23 have a question?  
 24 MR. SMITH: Yes, I do. You started  
 25 out sort of characterizing this as sort of a

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1 generalized, if you will, inquiry into this issue  
 2 as kind of a general policy issue.  
 3 In terms of intervention in these particular  
 4 cases, will the decision in this case impact your  
 5 company's financial relationship with the  
 6 applicants?  
 7 MR. GERDES: Yes.  
 8 MR. SMITH: And in turn does that --  
 9 that's true with respect to both the '04 and the  
 10 '05 dockets?  
 11 MR. GERDES: That's correct.  
 12 MR. SMITH: So depending on what the  
 13 Commission were to decide in these cases, that will  
 14 either cost your clients more or less money. And I  
 15 guess the second part of that is are those costs  
 16 then that in some way get passed down to their  
 17 consumers?  
 18 MR. GERDES: It would either cost --  
 19 it would cost my clients either more or less money  
 20 directly, and, secondly, that cost, increased cost,  
 21 is passed on to our customers or taken from our  
 22 bottom line, one or the other, depending on how the  
 23 individual companies choose to take it.  
 24 So it's an increased cost that we would have  
 25 to deal with. And I believe that each one of the

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1 petitions makes that allegation.  
 2 MR. SMITH: So this just isn't just  
 3 a theoretical policy issue here? We're talking  
 4 dollars and cents related to these particular  
 5 dockets and how that affects your customers with  
 6 respect to these particular dockets as well.  
 7 MR. GERDES: That's correct. And  
 8 that is the basis for our allegation that if we  
 9 were not allowed to question these costs, that  
 10 denial of our intervention would be detrimental to  
 11 the public interest or likely to result in a  
 12 miscarriage of justice, which, of course, is the  
 13 standard set by the Commission's rule.  
 14 MR. SMITH: Thank you.  
 15 CHAIRMAN HANSON: I have a quick  
 16 question, and that is of when the deadline was set  
 17 and how it was set. Is there someone that can tell  
 18 me if that was set as a result of rule, or is there  
 19 state law that guided that?  
 20 MS. CREMER: You mean on the facts  
 21 filing?  
 22 CHAIRMAN HANSON: Yes. The deadline  
 23 that was set for them to intervene.  
 24 MS. CREMER: Right. Generally --  
 25 and someone can correct me if I'm wrong, but a few

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1 years ago they decided to start sending out a facts  
 2 filing to interested parties to sign up for the  
 3 service and we'll send you a facts filing. And  
 4 what that shows is all the dockets that we've  
 5 opened in our office for the week. That way people  
 6 didn't have to call in all the time, What did you  
 7 open? What impacts me? It was out there on a  
 8 facts filing.  
 9 And I think Harlan, but I'm not sure about  
 10 that, came up with a -- we sent it out on Thursday,  
 11 and so it's generally a 15-day intervention period.  
 12 That seems to be a reasonable amount of time to  
 13 give them to intervene.  
 14 But, as I said in my response, we've done an  
 15 intervention deadline as little as three days if  
 16 something needs to get -- because if they file it  
 17 on Monday and it doesn't go out until Thursday but  
 18 there's a Commission meeting coming up on that  
 19 Monday or Tuesday and it needs to be filed, we will  
 20 put it on the facts filing Thursday, have the  
 21 intervention deadline end on Monday, and the  
 22 Commission determines it on that Tuesday.  
 23 So that's really just more an internal policy  
 24 of the Commission or the Commission staff on an  
 25 intervention deadline. There are some that are

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1 statutory, and that's under I believe the  
 2 electrical. I think there are some 60-day ones.  
 3 And so we'll use that. But, otherwise, really it's  
 4 an arbitrary number.  
 5 CHAIRMAN HANSON: Thank you.  
 6 Commissioner Johnson, did you have anything at this  
 7 time?  
 8 COMMISSIONER JOHNSON: I will have  
 9 some questions on the next agenda items dealing  
 10 with the '04 dockets but nothing with the '05.  
 11 CHAIRMAN HANSON: Thank you. Any  
 12 further questions at this time? Is there anyone  
 13 else who wishes to give testimony on this item?  
 14 MR. CHORZEMPA: Mr. Chairman, this  
 15 is David Chorzempa with AT&T. I'm here and would  
 16 be prepared to make a statement if this is the  
 17 appropriate time to do so.  
 18 CHAIRMAN HANSON: Yes.  
 19 MR. CHORZEMPA: Okay. Thank you.  
 20 My name is David Chorzempa. I'm in-house counsel  
 21 with AT&T, and I just wanted to make a couple of  
 22 statements in addition to what Mr. Gerdes said.  
 23 I think that AT&T's approach to this  
 24 particular -- in these cases is both the same and  
 25 maybe a bit different from the Midcontinent's. I

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1 think it's the same in the sense that we believe  
 2 there are problems with the LECA cost studies that  
 3 do inflate their switched access costs, and we are  
 4 looking at those and look forward if given an  
 5 opportunity in intervention to do discovery on  
 6 those issues.  
 7 We are most concerned to ensure the fact that  
 8 LECA is not recovering lost revenues that they have  
 9 picked up on their deregulated side. For example,  
 10 if they lost revenues to wireless and they are  
 11 themselves wireless carriers, I think it would be  
 12 inappropriate for them to pick up those lost  
 13 revenues in higher switched access prices.  
 14 As I stated before, our approach to this case  
 15 is a bit different, and it's different because we  
 16 believe that there are significant industry changes  
 17 that have occurred over the last few years and  
 18 certainly since the last time the Commission here  
 19 in South Dakota redid their access rules. There  
 20 are significant changes in the industry that  
 21 demand, I think, changes in the approach to  
 22 switched access pricing.  
 23 I'll mention two of those very quickly. The  
 24 first is that we've seen at least on a national  
 25 basis a significant decline in long distance rates.

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1 You know, we used to pay 20 cents a minute back  
 2 when I was a kid at least, and now we're paying 5  
 3 to 7 cents a minute. We see those rates  
 4 predominate throughout the nation.  
 5 Yet in South Dakota in terms of switched  
 6 access pricing, especially in calls originated and  
 7 completed between the LECA companies, we're seeing  
 8 access rates that exceed those national long  
 9 distance pricing. We're seeing access rates at  
 10 7 cents a minute range. And you have to ask  
 11 yourself how does that affect long distance  
 12 competition?  
 13 Well, it makes it very difficult for wireline  
 14 long distance carriers that are not in the local  
 15 market, such as AT&T, to compete, and certainly it  
 16 makes it likely, perhaps, over the next three years  
 17 for these companies to consider exiting the market  
 18 if those access rates remain.  
 19 The second industry change that I would  
 20 note -- that I think demands a change in the manner  
 21 in which states like South Dakota approach switched  
 22 access pricing is that we've seen a tremendous  
 23 amount of minutes flow from wireless -- from  
 24 wireline carriers to wireless. Also while you see  
 25 wireless carriers offering unlimited long distance

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1 plans at extremely low rates -- and the reason they  
 2 can do that is they have wireless carriers for the  
 3 most part do not pay switched access rates. They  
 4 pay cost-based reciprocal compensation rates. I  
 5 could get into a long explanation of all of that,  
 6 but generally they pay reciprocal -- cost-based  
 7 reciprocal compensation rates in instances when  
 8 AT&T, a wireline carrier, and wireline long  
 9 distance carriers are paying 7, 8 cents a minute  
 10 for switched access, again making it tremendously  
 11 difficult for wireline long distance carriers to  
 12 compete.  
 13 What we see also in South Dakota is that many  
 14 of the LECA companies are, in fact, also wireless  
 15 carriers. And I think I mentioned that before.  
 16 In regard to the procedural manner in which to  
 17 address these issues, all AT&T wishes to address is  
 18 a statewide problem on a statewide basis. AT&T is  
 19 certainly following here Midcontinent's procedural  
 20 leave by seeking to address the wrong of high  
 21 switched access rates by intervening in all the  
 22 pending LECA cost cases. And as Mr. Gerdes also  
 23 said, the rotating three-year time frame over which  
 24 LECA carriers file their switched access cost  
 25 studies makes it tremendously difficult for us to

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1 file interventions that would not at least in some  
 2 cases be tardy.  
 3 Certainly, we would not object to a generic  
 4 manner in which to address this issue. And I think  
 5 staff's comments even hinted that AT&T believes  
 6 this Commission must address switched access rates  
 7 on an entire industry basis and do so for all LECA  
 8 carriers. And that's the intention of our  
 9 intervention.  
 10 I would also finally note that if we are  
 11 allowed to intervene in these cases, we will be  
 12 conducting discovery consistent with some of the  
 13 issues Mr. Gerdes identified and also the issues  
 14 that I identified in addition to the question of  
 15 whether or not the LECA carriers can pass the  
 16 imputation requirements under South Dakota Law.  
 17 I thank you for listening to me, and I request  
 18 that this Commission grant our intervention in this  
 19 matter.  
 20 CHAIRMAN HANSON: Thank you. Is  
 21 there anyone else who wishes to come before this  
 22 Commission on this item?  
 23 MS. CREMER: If I could just -- this  
 24 is Karen Cremer from staff. If I could just ask  
 25 AT&T, were you also going to then withdraw your

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1 intervention in the Fort Randall 099 as Mr. Gerdes  
 2 did?  
 3 MR. CHORZEMPA: Yes.  
 4 MS. CREMER: Okay. Thank you.  
 5 MS. POLLMAN ROGERS: Good morning.  
 6 My name is Darla Pollman Rogers, and I represent  
 7 LECA, and I also represent jointly several of the  
 8 LECs who have filed individual objections to the  
 9 intervention petitions in these cases.  
 10 I need to clarify, are we talking right now  
 11 just about the '05 dockets, or are we talking  
 12 collectively about all of the interventions?  
 13 CHAIRMAN HANSON: I don't think  
 14 there's a huge trespass if you talk about all of  
 15 them, but we're talking about the '05 ones right  
 16 now.  
 17 MS. POLLMAN ROGERS: Okay. With  
 18 regard to the '05 dockets and, in fact, either of  
 19 them, regardless of how the deadline is  
 20 established, whether it's by rule or by statute or  
 21 by the policies of the staff, a deadline becomes  
 22 meaningless if parties are allowed to intervene at  
 23 any time. And I think this is especially true in  
 24 the '04 dockets.  
 25 I think that what this Commission needs to

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1 weigh is the prejudice to the parties. And the  
 2 other thing I think the Commission really needs to  
 3 look at carefully is the stated purpose for the  
 4 interventions.  
 5 I think both parties -- or all three parties  
 6 have stated, and especially AT&T, that they're more  
 7 concerned about a statewide solution for a  
 8 statewide problem. And I would submit to you that  
 9 that result cannot be achieved by allowing these  
 10 interventions because you do not have all of the  
 11 parties at the table. Not all of the companies  
 12 have filed cost studies in 2005, and so, therefore,  
 13 we don't have all the players at the table.  
 14 Furthermore, even if you grant the  
 15 intervention and if what the IXC's are requesting is  
 16 some type of a change or review or revamping of the  
 17 current rules that are in place, that is not  
 18 something that you can accomplish in these dockets.  
 19 Therefore, when you look at the goal here, and that  
 20 seems to be of the interveners to try to review the  
 21 process that's in place right now, and we look at  
 22 the form in front of you right now, those two do  
 23 not mesh and so even allowing these interventions  
 24 in the '05 dockets would not achieve the goals of  
 25 the parties.

22

1 I think it's also undeniable that increased  
 2 parties result in increased delays. And the test  
 3 is not what has occurred in the dockets to date.  
 4 The test is a showing of public interest and a  
 5 miscarriage of justice. And I don't believe that  
 6 the parties that are requesting intervention have  
 7 met that burden. Because the parties would not  
 8 be -- or Petitioners would not be able to achieve  
 9 what they really seek, and that is revised cost  
 10 models or new rules to determine access rates  
 11 within these dockets, these tests cannot be met.  
 12 I would further suggest that even if it does  
 13 affect the bottom line of these companies as there  
 14 was some testimony -- or some argument to that  
 15 effect, that's not a new circumstance, and that  
 16 does not excuse a failure to file a timely  
 17 intervention in a docket. Some of these IXC's have  
 18 little or no traffic that they carry or pay access  
 19 charges on a very, very insignificant amount. So  
 20 it's hard to even quantify how much it would affect  
 21 the bottom line.  
 22 I would also like to clarify or maybe correct  
 23 a couple of things that I heard AT&T's counsel  
 24 state. I am not aware of any of the LECA member  
 25 companies that are engaged in a wireless business.

23

1 And so I don't think that there is any instance  
 2 where there is a recovery of revenue from a  
 3 wireless business by these LECs. They are not  
 4 engaged in wireless.  
 5 So for these reasons I would oppose the  
 6 granting of intervention in the 2005 dockets. I  
 7 would have some additional comments to make on the  
 8 2004 dockets. I can do that now or reserve those  
 9 until we get to the 2004, whatever you would  
 10 prefer.  
 11 CHAIRMAN HANSON: Let's wait until  
 12 that time. Thank you.  
 13 Is there anyone else wishing to give testimony  
 14 on this item?  
 15 MR. BRADLEY: Commissioner, this is  
 16 Mike Bradley representing Fort Randall and  
 17 Mount Rushmore. In light of the voluntary withdraw  
 18 petitions, I assume there is no reason to talk at  
 19 this point.  
 20 CHAIRMAN HANSON: Thank you,  
 21 Mr. Bradley. We will be having a Motion to that  
 22 effect when we do the Motion. Well, we may as well  
 23 take that Motion now, get it off the table.  
 24 Is there a Motion to remove TC05-099, to  
 25 accept the withdrawal?

24

1 COMMISSIONER JOHNSON: I move the  
 2 Commission accept the withdrawal.  
 3 CHAIRMAN HANSON: I will second.  
 4 VICE CHAIRMAN SAHR: And I concur.  
 5 CHAIRMAN HANSON: Thank you,  
 6 Mr. Bradley.  
 7 MR. BRADLEY: Thank you.  
 8 CHAIRMAN HANSON: Is there anyone  
 9 else wishing to give testimony at this time?  
 10 Questions?  
 11 MR. SMITH: I had a question of  
 12 AT&T. Should I ask it before -- is it  
 13 Mr. Chorzempa? Is that how you pronounce your  
 14 name?  
 15 MR. CHORZEMPA: That's perfect.  
 16 Thank you.  
 17 MR. SMITH: You heard Mr. Gerdes's  
 18 responses to my questions concerning economic  
 19 impacts related to these particular cases and the  
 20 fact that it may have some influence or may either  
 21 cause or it may either increase or reduce his  
 22 client's costs of doing business in South Dakota  
 23 with respect to these particular years and  
 24 particular cases.  
 25 As I understood your comments, you are not

25

1 alleging that on behalf of AT&T?

2 MR. CHORZEMPA: I would be alleging

3 that on behalf of AT&T. I have -- I can't say this

4 is evidentiary-worthy information, but I have done

5 some background check on our access expense related

6 to the LECA companies in South Dakota to confirm

7 the fact that we are terminating phone calls within

8 their territories and paying them switched access

9 fees.

10 So the amount of the LECA company's switched

11 access rates directly affects AT&T's bottom line,

12 so to speak, or finances because it affects the

13 amount we pay them for terminating long distance

14 calls. And obviously that affects our operations

15 in the State of South Dakota.

16 MR. SMITH: So these are -- I mean,

17 you're expecting or at least you're expecting your

18 case to perhaps reveal that there will be some

19 possible significant economic outcome to your

20 company flowing from decisions in these particular

21 cases as opposed to forward-looking policy changes.

22 MR. CHORZEMPA: That's correct. And

23 I think that no matter what the forward-looking

24 policy changes might be, I think that these cases

25 are absolutely necessary for us to first ensure

26

1 that the -- you know, cost studies for each of

2 these companies was done properly. And I think the

3 information I think that might be garnered from

4 these cases would certainly help us determine what

5 other changes might need to be made going forward.

6 MR. SMITH: Thank you. And maybe

7 it's for both you and Mr. Gerdes, but in terms of

8 the inquiry that your experts and your discovery

9 intends to make, I mean, does that go below the

10 level of -- does it go below the level of the

11 written rules themselves into such things as the

12 actual cost accounting that has been presented by

13 these companies, rather than just the methodology

14 that's stated in our rules? You know, the

15 separations procedures, et cetera? Do you

16 understand what I'm asking you?

17 MR. GERDES: This is Dave Gerdes.

18 Yes. And I -- we don't have a final report from

19 our experts, but they have indicated that they

20 think there are problems with the inputs as well as

21 with the formula itself. So I think my answer to

22 your question is yes.

23 MR. SMITH: Is that true with AT&T

24 as well?

25 MR. CHORZEMPA: Based on what I know

27

1 right now, I think the answer is yes.

2 MR. SMITH: Okay. Thank you.

3 CHAIRMAN HANSON: Commissioner

4 Johnson.

5 COMMISSIONER JOHNSON: I have a

6 question for Ms. Rogers. The test that you spoke

7 about for granting intervention detrimental to the

8 public interest and likely to result in a

9 miscarriage of justice, isn't that test only

10 triggered with a late-filed request for

11 intervention, and aren't you only late if you're --

12 if that deadline was set by Commission Order?

13 MS. POLLMAN ROGERS: I don't believe

14 that's the case. Because I think that parties can

15 be prejudiced equally whether a deadline is set by

16 Commission Order or by staff. I think you need to

17 look at the whole picture and the time frame, and

18 that's what you have to weigh.

19 I do agree with you that the test that I

20 referenced was for late-filed petitions, yes.

21 COMMISSIONER JOHNSON: Setting aside

22 the '04 because we'll deal with those in a moment

23 and I think prejudice is probably different in

24 those cases than the '05 cases, I guess if the

25 burden is prejudiced toward your parties, I haven't

28

1 heard that yet for the '05 cases.

2 MS. POLLMAN ROGERS: I'm sorry if I

3 didn't make that clear.

4 COMMISSIONER JOHNSON: You probably

5 did and I just didn't catch it.

6 MS. POLLMAN ROGERS: I believe that

7 my parties are prejudiced because you are taking a

8 company-specific process and is the allegation

9 here, well, we're not following the rules, or is

10 the allegation that the rules are incorrect?

11 If the allegation is that the rules are

12 incorrect, it's not fair to delay the process and

13 impose additional discovery requirements and have

14 experts digging into what has been done in each of

15 these individual dockets, if that's not the real

16 goal. If the real goal is we have a problem with

17 our methodology, it's prejudicial to my clients to

18 delay the process here to try to fix a problem over

19 here.

20 Any time you have more parties involved, I

21 think you're talking about delays. The longer --

22 we're already on historical period. We're in a

23 declining minute of use environment. So when

24 you're taking minutes from back here, the longer

25 these processes are delayed, the farther you are



1 from actual minutes that are being switched by the  
 2 companies. And so they are prejudiced by any  
 3 delays in approval of these processes.  
 4 COMMISSIONER JOHNSON: Mr. Smith ha  
 5 asked the -- those requesting intervention if they  
 6 would be, you know, fiscally affected within the  
 7 individual dockets, and they indicated that they  
 8 would be.  
 9 Do you have any response to that?  
 10 MS. POLLMAN ROGERS: Well, I think  
 11 it depends on which Intervener you're talking  
 12 about. I guess, when we tried to check our records  
 13 to see, I think that in AT&T's case they do pay  
 14 switched access to several of the carriers. In  
 15 Midcontinent's case they have only two CIC codes.  
 16 We're talking about a very, very, very small  
 17 percentage of the overall traffic. With MCI metro  
 18 we could not find any instances where our companies  
 19 were receiving switched access from MCI metro.  
 20 COMMISSIONER JOHNSON: Is anybody  
 21 who's representing MCI metro on the line or in  
 22 person?  
 23 I guess, Mr. Gerdes, I'd be interested in  
 24 hearing your response. Does MCI metro, do they make  
 25 sense as an Intervener if there's no fiduciary

1 impact on them?  
 2 MR. GERDES: Commissioner Johnson,  
 3 first of all, it's my understanding that MCI does  
 4 terminate traffic with the LECA companies. I  
 5 cannot respond to what Ms. Rogers has said because  
 6 this really isn't a fact-finding forum. We have  
 7 alleged that, you know, we're going to be impacted  
 8 and believe that they will. I do not have those  
 9 facts available to me at this point.  
 10 And the other thing is, I mean, this isn't a  
 11 fact-finding hearing. And so I can't respond.  
 12 Certainly MCI terminates traffic in South Dakota  
 13 all over South Dakota and they in good faith think  
 14 they terminate traffic with the LECA companies. I  
 15 don't -- I'm not disputing what Ms. Rogers says,  
 16 but I am not able to respond.  
 17 COMMISSIONER JOHNSON: And I do  
 18 apologize for asking a fact-specific question, but  
 19 I think you can understand it does have some impact  
 20 as to whether or not somebody -- it would make  
 21 sense to be a party to these dockets.  
 22 MR. GERDES: I agree with what you  
 23 say, but I can't respond because our information is  
 24 MCI does, in fact, terminate traffic, which would  
 25 presumably give rise to the payment of switched

1 access to our charges.  
 2 MR. CHORZEMPA: This is  
 3 Dave Chorzempa from AT&T. I would just note here  
 4 from my experience in the long distance industry  
 5 that there may be a possibility here that the LECA  
 6 companies might be billing an entity to which  
 7 AT&T -- MCI might be reselling their long distance  
 8 services through. Therefore, the billing on access  
 9 might be indirect.  
 10 I have no idea whether or not that's true  
 11 here, but it certainly might be the case.  
 12 CHAIRMAN HANSON: Thank you. Is  
 13 there any further testimony on this item? Any  
 14 further questions?  
 15 MR. HETTINGER: Mr. Commissioner.  
 16 CHAIRMAN HANSON: Yes, please.  
 17 Identify yourself, please.  
 18 MR. HETTINGER: This is  
 19 Larry Hettinger with Heartland Consulting,  
 20 consultants to the Golden West Companies who are  
 21 part of the 2003 prospects.  
 22 CHAIRMAN HANSON: Good morning,  
 23 Mr. Hettinger. Would you please speak up just a  
 24 little bit louder?  
 25 MR. HETTINGER: I'll move a little

1 closer. A couple of items -- a couple of facts.  
 2 Number one was there was a question as to why some  
 3 companies didn't file cost studies every year.  
 4 According to the Commission rules, a company  
 5 must file a cost study once every three years. The  
 6 company has the option of filing in the other years  
 7 also. But there's only a requirement to file a  
 8 cost study once every three years.  
 9 One other item -- and also some of the parties  
 10 were saying that the access rates were in the --  
 11 possibly in the 7- to 8-cent range. The true  
 12 access rates are higher than that, just for the  
 13 record.  
 14 Another item is -- I have the position of MCI  
 15 in front of me that says MCI (Inaudible).  
 16 CHAIRMAN HANSON: Sir, we're losing  
 17 you. Would you speak up just a little bit louder,  
 18 please. We have a court reporter, and, of course,  
 19 all of us would like to hear what you have to say.  
 20 MR. HETTINGER: The intervention of  
 21 MCI is filed by MCI metro Access Transmission  
 22 Services, LLC and has been said before -- and I  
 23 review many CABS bills of the LECs, and I'm not  
 24 aware of any LEC that sends CABS bills or bills any  
 25 access to MCI Access Transmission Services, LLC.

1 So I'm not sure that they have any financial impact  
 2 at all in this docket.  
 3 As it's been said before, in the case of MCI,  
 4 I'm familiar with many of the LECs and also SDN  
 5 access has prepared CABS bills for SDN for a number  
 6 of years, and I am aware that MCI has a very small  
 7 amount of the traffic and, in fact, only pays  
 8 originating access and, in fact, to the best of my  
 9 recollection and look to the -- MCI would pay less  
 10 than 5 percent of the originating access, probably  
 11 less.  
 12 Following up on that and in the case of --  
 13 CHAIRMAN HANSON: Mr. Hettinger.  
 14 MR. HETTINGER: Yes.  
 15 CHAIRMAN HANSON: I am going to  
 16 interrupt you. I was concerned on some of the what  
 17 I'll call testimony that you were giving, and I  
 18 turned to my legal counsel here to ask for the  
 19 appropriateness of it at this time. We're not  
 20 really in a fact-finding position right now, as was  
 21 discussed earlier, the -- we are simply examining  
 22 whether an intervention should take place. We are  
 23 not in a position and I'm sure counsel is not  
 24 prepared to present facts and have people  
 25 cross-examined and things of this nature.

1 So I'm going to have to -- well, I'll look to  
 2 your counsel that is here to see whether there's  
 3 appropriateness or necessity to continue with any  
 4 of this testimony.  
 5 MR. HETTINGER: Thank you.  
 6 MS. POLLMAN ROGERS: To the extent  
 7 that Mr. Hettinger was able to clarify the filing  
 8 requirements of the companies, I think that it's  
 9 appropriate. I also think that someone that has  
 10 more knowledge with who's paying the CABS bills  
 11 presenting that information is okay.  
 12 I would make one correction to the final  
 13 comments that Mr. Hettinger was making with regard  
 14 to the small percentage of traffic of Midcontinent.  
 15 I think he referred to MCI, and I think his  
 16 comments really were to Midcontinent as opposed to  
 17 MCI. So I would just make that correction.  
 18 Beyond that I think what he has said certainly  
 19 corroborates what I have tried to portray to you.  
 20 MR. SMITH: Wouldn't you agree that,  
 21 I mean, we can't -- we don't have a Motion for  
 22 Summary Judgment on the table. Would you not agree  
 23 that we have to assess the merits of these  
 24 Petitions on the basis of what the parties have  
 25 alleged, not on the basis of various people's not

1 sworn, unsworn, assertions here today?  
 2 MS. POLLMAN ROGERS: I don't  
 3 disagree with that, Mr. Smith. My response in  
 4 going down this path really was precipitated in  
 5 trying to respond to the questions of the  
 6 Commissioners.  
 7 MR. SMITH: Okay.  
 8 CHAIRMAN HANSON: Thank you. Is  
 9 there anyone else to give testimony on the question  
 10 regarding intervention?  
 11 If not, we'll hear from staff.  
 12 MS. CREMER: Thank you. This is  
 13 Karen Cremer from staff. You've gotten my written  
 14 response. I'll just comment on a couple of things.  
 15 I keep hearing the standard the test on prejudice.  
 16 And I would just note that all matters or evidence  
 17 that do not favor a particular case are  
 18 prejudicial. And so the better test is really does  
 19 it unfairly prejudice your case.  
 20 And so I think what the Commission needs to do  
 21 is balance the probative value of having the  
 22 Interveners participate versus these allegations of  
 23 prejudice, whether they be fair or unfair. In  
 24 other words, the balancing process needs to  
 25 determine if the probative value of allowing the

1 Interveners in substantially outweighs the danger  
 2 of unfair prejudice to the LECs. And staff's  
 3 position is that the Interveners should be allowed  
 4 in.  
 5 Part of -- I understand the LEC's position on  
 6 should this be a rule making. I do think, however,  
 7 the allegations have been made that would allow the  
 8 Interveners in on matters of merit. And the reason  
 9 staff would like to see intervention granted, even  
 10 if this ultimately results in a rule-making docket  
 11 is we need some way and that way is a procedural  
 12 schedule of keeping everyone at the table and their  
 13 feet to the fire. Otherwise data requests are  
 14 unanswered. You know, nothing happens.  
 15 And so I think if you allow them in and we set  
 16 a hearing date -- because the next question you  
 17 have is on suspension. That's 120 days. You can  
 18 extend that for a total of 180 days so that's six  
 19 months, and I think I noted that would be March 29.  
 20 By then we'll have to have an answer here. And I  
 21 think that's our best bet.  
 22 The other thing I would like to note is that  
 23 if you don't allow them intervention, in particular  
 24 in dockets TC05-097 and 098, they have filed those  
 25 almost entirely as confidential. So if MCI, AT&T,

1 and Midcontinent even wanted to just look at those  
 2 just to see if they should be in or what -- you  
 3 know, to even look at the numbers at all to make a  
 4 determination, they cannot do that because these  
 5 have been filed confidentially. And so I think  
 6 that flies in the face of public interest here.  
 7 And I would like to see intervention granted in all  
 8 of those but for O99.

9 Thank you.

10 CHAIRMAN HANSON: Thank you. Are  
11 there any questions by the Commissioners?

12 Seeing none, is there a Motion?

13 COMMISSIONER JOHNSON: Mr. Chair, I  
 14 move the Commission grant intervention to  
 15 Midcontinent Communications, MCImetro Access  
 16 Transmission Services, LLC, and AT&T Communications  
 17 of the Midwest, and pursuant to SDCL 49-31-12.4,  
 18 that the Commission suspend the operation of the  
 19 tariff for 120 days beyond the proposed effective  
 20 date of the tariff or allow the rates to go into  
 21 effect subject to refund with interest.

22 CHAIRMAN HANSON: That sounds like  
 23 an absolutely excellent Motion. Unfortunately,  
 24 we're on the one just prior to that.

25 COMMISSIONER JOHNSON: Oh, just

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 27th day of  
 11 September 2005, and that the attached is a true and  
 12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 20th day  
 14 of October 2005.

15  
 16  
 17 *Cheri McComsey Wittler*  
 18 Cheri McComsey Wittler,  
 19 Notary Public and  
 20 Registered Professional Reporter  
 21  
 22  
 23  
 24  
 25

1 prior to that. Well, that's good to know.

2 So the Commission grant intervention to  
 3 Midcontinent, MCImetro Transmission Services, and  
 4 AT&T Communications of the Midwest.

5 CHAIRMAN HANSON: And I second.

6 COMMISSIONER JOHNSON: Thank you for  
7 the correction.

8 CHAIRMAN HANSON: Commissioner Sahr,  
9 are you still able to be with us?

10 VICE CHAIRMAN SAHR: Yes. You guys  
11 were talking at the same time. I concur.  
12  
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18  
19  
20  
21  
22  
23  
24  
25

Word Index

	<b>7</b>	[6] 8:12 11:18 13:9 19:11 20:22 36:3 Allowing [3] 21:9 21:23 35:25 Almost [1] 36:25 Amount [6] 14:12 17:23 22:19 25:10 25:13 33:7 Answer [3] 26:21 27:1 36:20 Apologize [2] 11:16 30:18 APPEARANCES [1] 2:1 Appearing [1] 3:21 Applicants [1] 12:6 Applied [1] 9:19 Approach [4] 15:23 16:14 16:21 17:21 Appropriate [4] 7:24 11:11 15:17 34:9 Appropriateness [2] 33:19 34:3 Approval [3] 4:11 8:19 29:3 Approved [1] 4:10 Arbitrary [1] 15:4 Argument [1] 22:14 Arms [2] 6:18 8:9 Aside [1] 27:21 Assertions [1] 35:1 Assess [1] 34:23 Assume [1] 23:18 Assumption [1] 4:5 AT&T [19] 3:19 15:15 15:21 17:15 18:8 18:17 18:18 19:5 19:25 21:6 24:12 25:1 25:3 26:23 31:3 31:7 36:25 37:16 38:4 AT&T's [4] 15:23 22:23 25:11 29:13 Attached [1] 39:11 Available [1] 30:9 Avenue [1] 2:13 Averages [1] 5:24 Aware [3] 22:24 32:24 33:6	[2] 26:9 26:10 Bennett [3] 2:7 3:9 3:10 Best [3] 1:16 33:8 36:21 Bet [1] 36:21 Better [1] 35:18 Between [1] 17:7 Beyond [3] 10:24 34:18 37:19 Big [1] 9:8 Billing [2] 31:6 31:8 Bills [5] 32:23 32:24 32:24 33:5 34:10 Bit [5] 9:24 15:25 16:15 31:24 32:17 BOB [1] 1:11 Bonrud [1] 1:19 Bottom [4] 12:22 22:13 22:21 25:11 Bradley [8] 2:6 3:6 3:7 23:15 23:16 23:21 24:6 24:7 Brian [1] 2:7 Bring [1] 6:10 Burden [2] 22:7 27:25 Business [5] 5:19 10:19 22:25 23:3 24:22
'04 [11] 5:16 8:12 8:15 8:17 9:20 9:21 10:1 12:9 15:10 20:24 27:22 '05 [14] 5:16 8:12 8:13 9:20 9:23 10:2 12:10 15:10 20:11 20:15 20:18 21:24 27:24 28:1	<b>8</b> 8 [1] 18:9 8-cent [1] 32:11		
<b>0</b>	<b>9</b>		
0 [1] 5:8 087 [1] 3:3 090 [1] 3:3 091 [1] 3:3 092 [1] 3:3 093 [1] 3:3 094 [1] 3:3 095 [1] 3:4 097 [1] 3:4 098 [2] 3:4 36:24 099 [4] 3:4 5:9 20:1 37:8	9:30 [1] 2:15 <b>A</b> A.m. [1] 2:15 Able [5] 3:5 22:8 30:16 34:7 38:9 Above-entitled [2] 2:12 39:10 Absolutely [2] 25:25 37:23 Accept [2] 23:25 24:2 Access [46] 1:4 3:2 3:18 5:14 5:20 5:23 6:2 6:8 7:16 8:16 9:5 9:6 9:10 11:8 16:3 16:13 16:19 16:22 17:6 17:8 17:9 17:18 17:22 18:3 18:10 18:21 18:24 19:6 22:10 22:18 25:5 25:8 25:11 29:14 29:19 31:1 31:8 32:10 32:12 32:21 32:25 32:25 33:5 33:8 33:10 37:15 Accomplish [1] 21:18 According [1] 32:4 Accounting [1] 26:12 Achieve [2] 21:24 22:8 Achieved [1] 21:9 Actual [2] 26:12 29:1 Addition [2] 15:22 19:14 Additional [2] 23:7 28:13 Address [8] 6:23 6:25 11:12 18:17 18:17 18:20 19:4 19:6 Administrative [1] 7:5 Affect [3] 17:11 22:13 22:20 Affected [1] 29:6 Affects [4] 13:5 25:11 25:12 25:14 Agenda [3] 9:23 11:20 15:9 Ago [3] 5:24 9:5 14:1 Agree [4] 27:19 30:22 34:20 34:22 Ailts [1] 1:13 Allegation [5] 13:1 13:8 28:8 28:10 28:11 Allegations [2] 35:22 36:7 Alleged [2] 30:7 34:25 Alleging [2] 25:1 25:2 Allow [4] 36:7 36:15 36:23 37:20 Allowed		
<b>1</b>	<b>A</b>		
1 [1] 11:20 120 [2] 36:17 37:19 15-day [1] 14:11 180 [1] 36:18			
<b>2</b>			
20 [1] 17:1 2003 [1] 31:21 2004 [4] 4:18 4:21 23:8 23:9 2005 [7] 1:8 2:14 4:13 21:12 23:6 39:11 39:14 20th [1] 39:13 27 [1] 1:8 27th [2] 2:14 39:10 29 [1] 36:19			
<b>4</b>			
412 [1] 2:13 49-31-12.4 [1] 37:17			
<b>5</b>			
5 [2] 17:2 33:10 500 [1] 2:13			
<b>6</b>			
60-day [1] 15:2			
	<b>B</b>		
	Background [4] 5:17 7:1 8:10 25:5 Balance [1] 35:21 Balancing [1] 35:24 Based [2] 9:15 26:25 Basis [6] 13:8 16:25 18:18 19:7 34:24 34:25 Becomes [1] 20:21 Behalf [2] 25:1 25:3 Believes [1] 19:5 Below		
		<b>C</b>	
		CABS [4] 32:23 32:24 33:5 34:10 Calculated [1] 6:7 Cannot [4] 21:9 22:11 30:5 37:4 Capitol [2] 2:13 2:13 Carefully [1] 21:3 Carrier [1] 18:8 Carriers [12] 16:11 17:14 17:24 17:25 18:2 18:9 18:11 18:15 18:24 19:8 19:15 29:14 Carriers' [1] 9:6 Carry [1] 22:18 Case [12] 9:21 12:4 16:14 25:18 27:14 29:13 29:15 31:11 33:3 33:12 35:17 35:19 Cases [15] 12:4 12:13 15:24 18:22 19:2 19:11 20:9 24:19 24:24 25:21 25:24 26:4 27:24 27:24 28:1 Catch [1] 28:5 Cents [5] 13:4 17:1 17:3 17:10 18:9 Certainly [10] 10:2 11:21 16:18 17:15 18:19 19:3 26:4 30:12 31:11 34:18 CERTIFICATE [1] 39:2 CERTIFY [1] 39:8 Cetera [1] 26:15 Chair	

**Word Index**

[1] 37:13  
**Chairman**  
 [38] 1:11 1:11 3:1 3:9 3:12 3:24 5:5 5:5  
 11 10:11 11:13 11:22 13:15 13:22 15:  
 5 15:11 15:14 15:18 19:20 20:13 23:  
 11 23:20 24:3 24:4 24:5 24:8 27:3 31:  
 12 31:16 31:22 32:16 33:13 33:15 35:  
 8 37:10 37:22 38:5 38:8 38:10  
**Change**  
 [3] 17:19 17:20 21:16  
**Changes**  
 [6] 16:16 16:20 16:21 25:21 25:24 26:  
 5  
**Characterizing**  
 [1] 11:25  
**Charges**  
 [2] 22:19 31:1  
**Check**  
 [3] 3:5 25:5 29:12  
**Checking**  
 [1] 8:14  
**Cheri**  
 [3] 1:24 39:5 39:18  
**Chicken**  
 [1] 8:7  
**Choose**  
 [1] 12:23  
**Chorzempa**  
 [13] 2:4 15:14 15:15 15:19 15:20 20:3  
 24:13 24:15 25:2 25:22 26:25 31:2 31:  
 3  
**CIC**  
 [1] 29:15  
**Circumstance**  
 [1] 22:15  
**Clarify**  
 [3] 20:10 22:22 34:7  
**Clear**  
 [1] 28:3  
**Clearly**  
 [1] 7:13  
**Client's**  
 [1] 24:22  
**Clients**  
 [3] 12:14 12:19 28:17  
**Close**  
 [1] 4:17  
**Closer**  
 [1] 32:1  
**Codes**  
 [1] 29:15  
**Collected**  
 [1] 8:18  
**Collectively**  
 [1] 20:12  
**Colleen**  
 [1] 2:2  
**Coming**  
 [1] 14:18  
**Commencing**  
 [1] 2:15  
**Comment**  
 [1] 35:14  
**Comments**  
 [5] 19:5 23:7 24:25 34:13 34:16  
**Commission**  
 [40] 1:1 1:10 1:13 3:15 3:17 3:25 4:3  
 6:11 6:23 8:3 9:7 9:15 10:4 10:5 10:  
 13 10:13 10:16 10:21 11:4 11:11 11:  
 14 12:13 14:18 14:22 14:24 14:24 16:  
 18 19:6 19:18 19:22 20:25 21:2 24:2  
 27:12 27:16 32:4 35:20 37:14 37:18  
 38:2  
**Commission's**  
 [3] 6:1 10:6 13:13  
**Commissioner**  
 [18] 1:12 15:6 15:8 23:15 24:1 27:3  
 27:5 27:21 28:4 29:4 29:20 30:2 30:  
 17 31:15 37:13 37:25 38:6 38:8  
**Commissioners**  
 [3] 3:7 35:6 37:11  
**Communications**

[6] 3:18 3:19 4:2 37:15 37:16 38:4  
**Companies**  
 [20] 5:18 9:11 12:23 17:7 17:17 18:14  
 21:11 22:13 22:25 25:6 26:2 26:13 29:  
 2 29:18 30:4 30:14 31:6 31:20 32:3  
 34:8  
**Company**  
 [6] 4:6 4:7 25:20 28:8 32:4 32:6  
**Company's**  
 [2] 12:5 25:10  
**Company-specific**  
 [1] 28:8  
**Compensation**  
 [2] 18:4 18:7  
**Compete**  
 [2] 17:15 18:12  
**Competition**  
 [1] 17:12  
**Complete**  
 [1] 8:23  
**Completed**  
 [1] 17:7  
**Concerned**  
 [3] 16:7 21:7 33:16  
**Concerning**  
 [1] 24:18  
**Concluded**  
 [2] 10:2 10:3  
**Concur**  
 [2] 24:4 38:11  
**Conditional**  
 [1] 8:19  
**Conducting**  
 [1] 19:12  
**Confidential**  
 [1] 36:25  
**Confidentially**  
 [1] 37:5  
**Confirm**  
 [1] 25:6  
**Consider**  
 [1] 17:17  
**Consideration**  
 [2] 9:3 9:18  
**Consistent**  
 [1] 19:12  
**Consolidated**  
 [1] 6:16  
**Consolidation**  
 [1] 6:15  
**Constituted**  
 [1] 7:23  
**Construct**  
 [1] 10:21  
**Consultants**  
 [1] 31:20  
**Consulting**  
 [1] 31:19  
**Consumers**  
 [1] 12:17  
**Continue**  
 [2] 11:8 34:3  
**Correct**  
 [6] 12:11 13:7 13:25 22:22 25:22 39:  
 12  
**Correction**  
 [3] 34:12 34:17 38:7  
**Corroborates**  
 [1] 34:19  
**Cost**  
 [25] 4:9 4:18 5:15 6:2 6:7 7:14 7:25 9:  
 2 11:9 12:14 12:18 12:19 12:20 12:20  
 12:24 16:2 18:22 18:24 21:12 22:9 26:  
 1 26:12 32:3 32:5 32:8  
**Cost-based**  
 [2] 18:4 18:6  
**Costs**  
 [4] 12:15 13:9 16:3 24:22  
**Counsel**  
 [5] 15:20 22:23 33:18 33:23 34:2  
**COUNTY**

[1] 39:3  
**Couple**  
 [8] 4:4 7:7 7:7 15:21 22:23 32:1 32:1  
 35:14  
**Course**  
 [5] 8:16 10:4 11:15 13:12 32:18  
**Court**  
 [1] 32:18  
**Cremer**  
 [12] 1:14 4:12 4:15 4:20 5:7 13:20 13:  
 24 19:23 19:24 20:4 35:12 35:13  
**Cross-examined**  
 [1] 33:25  
**CRR**  
 [1] 1:24  
**Cure**  
 [1] 7:8  
**Current**  
 [1] 21:17  
**Customers**  
 [2] 12:21 13:5

**D**

**Dakota**  
 [18] 1:2 2:12 2:14 5:19 5:20 16:19 17:  
 5 17:21 18:13 19:16 24:22 25:6 25:15  
 30:12 30:13 39:1 39:7 39:13  
**Danger**  
 [1] 36:1  
**Darla**  
 [1] 20:6  
**Data**  
 [2] 4:23 36:13  
**Date**  
 [3] 22:3 36:16 37:20  
**Dated**  
 [1] 39:13  
**Dave**  
 [6] 1:17 3:22 3:23 3:25 26:17 31:3  
**David**  
 [3] 2:4 15:15 15:20  
**Days**  
 [5] 9:9 14:15 36:17 36:18 37:19  
**Deadline**  
 [10] 10:24 13:16 13:22 14:15 14:21  
 14:25 20:19 20:21 27:12 27:15  
**Deal**  
 [2] 12:25 27:22  
**Dealing**  
 [1] 15:9  
**Decide**  
 [2] 6:24 12:13  
**Decided**  
 [1] 14:1  
**Decision**  
 [2] 10:17 12:4  
**Decisions**  
 [1] 25:20  
**Decker**  
 [2] 2:6 3:6  
**Decline**  
 [1] 16:25  
**Declining**  
 [1] 28:23  
**Decreasing**  
 [1] 11:9  
**Delay**  
 [2] 28:12 28:18  
**Delayed**  
 [1] 28:25  
**Delays**  
 [3] 22:2 28:21 29:3  
**Demand**  
 [1] 16:21  
**Demands**  
 [1] 17:20  
**Denial**  
 [2] 10:7 13:10  
**Denny**  
 [1] 2:5  
**Deregulated**

[1] 16:9  
**Desirability**  
 [1] 7:12  
**Determination**  
 [1] 37:4  
**Determine**  
 [3] 22:10 26:4 35:25  
**Determines**  
 [1] 14:22  
**Detrimental**  
 [3] 10:8 13:10 27:7  
**Different**  
 [4] 15:25 16:15 16:15 27:23  
**Difficult**  
 [3] 17:13 18:11 18:25  
**Digging**  
 [1] 28:14  
**Directly**  
 [2] 12:20 25:11  
**Disagree**  
 [1] 35:3  
**Discovery**  
 [8] 8:4 8:5 8:8 8:24 16:5 19:12 26:8  
 28:13  
**Discussed**  
 [1] 33:21  
**Discussion**  
 [2] 5:18 6:15  
**Disputing**  
 [1] 30:15  
**Distance**  
 [10] 16:25 17:9 17:11 17:14 17:25 18:  
 9 18:11 25:13 31:4 31:7  
**Docket**  
 [5] 6:14 11:17 22:17 33:2 36:10  
**Dockets**  
 [45] 1:4 3:3 5:14 5:16 6:3 6:7 6:15 6:  
 16 6:20 7:3 7:14 7:25 8:9 8:13 8:14 8:  
 15 8:17 8:22 8:23 8:25 9:2 9:20 9:21  
 9:23 10:1 10:2 11:19 12:10 13:5 13:6  
 14:4 15:10 20:11 20:18 20:24 21:18  
 21:24 22:3 22:11 23:6 23:8 28:15 29:  
 7 30:21 36:24  
**Dollars**  
 [1] 13:4  
**Done**  
 [4] 14:14 25:4 26:2 28:14  
**Doug**  
 [1] 2:3  
**Douglas**  
 [1] 1:18  
**Down**  
 [3] 6:21 12:16 35:4  
**Duly-appointed**  
 [1] 39:8  
**DUSTY**  
 [1] 1:12

**E**

**East**  
 [1] 2:13  
**Easy**  
 [1] 6:17  
**Economic**  
 [2] 24:18 25:19  
**Effect**  
 [3] 22:15 23:22 37:21  
**Effective**  
 [1] 37:19  
**Egg**  
 [1] 8:7  
**Eidahl**  
 [1] 2:3  
**Either**  
 [6] 12:14 12:18 12:19 20:18 24:20 24:  
 21  
**Electrical**  
 [1] 15:2  
**End**  
 [1] 14:21  
**Engaged**

Word Index

<p>[2] 22:25 23:4  <b>Ensure</b>                  [2] 16:7 25:25  <b>Entered</b>                  [1] 7:10  <b>Entire</b>                  [2] 6:19 19:7  <b>Entirely</b>                  [2] 7:23 36:25  <b>Entity</b>                  [1] 31:6  <b>Environment</b>                  [1] 28:23  <b>Equally</b>                  [1] 27:15  <b>Erin</b>                  [1] 2:3  <b>Erroneous</b>                  [1] 4:5  <b>Especially</b>                  [3] 17:6 20:23 21:6  <b>Established</b>                  [2] 11:4 20:20  <b>Establishing</b>                  [2] 1:4 3:2  <b>Et</b>                  [1] 26:15  <b>Event</b>                  [2] 5:1 9:19  <b>Everson</b>                  [1] 2:7  <b>Evidence</b>                  [1] 35:16  <b>Evidentiary</b>                  [1] 25:4  <b>Evidentiary-worthy</b>                  [1] 25:4  <b>Examining</b>                  [1] 33:21  <b>Example</b>                  [1] 16:9  <b>Exceed</b>                  [1] 17:8  <b>Excellent</b>                  [1] 37:23  <b>Excuse</b>                  [2] 3:16 22:16  <b>Exercise</b>                  [1] 10:10  <b>Exiting</b>                  [1] 17:17  <b>Expecting</b>                  [2] 25:17 25:17  <b>Expense</b>                  [1] 25:5  <b>Experience</b>                  [2] 10:12 31:4  <b>Experts</b>                  [6] 5:25 6:5 7:13 26:8 26:19 28:14  <b>Explanation</b>                  [1] 18:5  <b>Explicit</b>                  [1] 7:18  <b>Expressed</b>                  [1] 10:17  <b>Extend</b>                  [1] 36:18  <b>Extent</b>                  [1] 34:6  <b>Extremely</b>                  [1] 18:1</p>	<p><b>Fact-specific</b>                  [1] 30:18  <b>Facts</b>                  [8] 13:20 14:1 14:3 14:8 14:20 30:9                  32:1 33:24  <b>Failure</b>                  [1] 22:16  <b>Fair</b>                  [3] 10:21 28:12 35:23  <b>Faith</b>                  [1] 30:13  <b>Familiar</b>                  [2] 10:4 33:4  <b>Far</b>                  [2] 5:23 8:25  <b>Farris</b>                  [1] 1:17  <b>Favor</b>                  [1] 35:17  <b>FCC</b>                  [2] 7:10 7:17  <b>Fees</b>                  [1] 25:9  <b>Feet</b>                  [1] 36:13  <b>Felt</b>                  [1] 8:25  <b>Few</b>                  [2] 13:25 16:17  <b>Fiduciary</b>                  [1] 29:25  <b>File</b>                  [8] 9:12 14:16 18:24 19:1 22:16 32:3                  32:5 32:7  <b>Filed</b>                  [11] 5:7 5:9 8:5 14:19 20:8 21:12 27:                  10 27:20 32:21 36:24 37:5  <b>Filing</b>                  [10] 9:14 10:25 11:2 13:21 14:2 14:3                  14:8 14:20 32:6 34:7  <b>Final</b>                  [3] 8:21 26:18 34:12  <b>Finally</b>                  [1] 19:10  <b>Finances</b>                  [1] 25:12  <b>Financial</b>                  [2] 12:5 33:1  <b>Fire</b>                  [1] 36:13  <b>First</b>                  [3] 16:24 25:25 30:3  <b>Fiscally</b>                  [1] 29:6  <b>Fix</b>                  [1] 28:18  <b>Flies</b>                  [1] 37:6  <b>Flow</b>                  [1] 17:23  <b>Flowing</b>                  [1] 25:20  <b>Folks</b>                  [1] 3:5  <b>Following</b>                  [3] 18:19 28:9 33:12  <b>Form</b>                  [1] 21:22  <b>Formula</b>                  [1] 26:21  <b>Forney</b>                  [1] 1:19  <b>Fort</b>                  [5] 4:6 4:20 4:22 20:1 23:16  <b>Forum</b>                  [1] 30:6  <b>Forward</b>                  [4] 16:4 25:21 25:23 26:5  <b>Forward-looking</b>                  [2] 25:21 25:23  <b>Frame</b></p>	<p>[2] 18:23 27:17  <b>Front</b>                  [3] 9:15 21:22 32:15  <b>Furthermore</b>                  [1] 21:14</p> <p style="text-align: center;"><b>G</b></p> <p><b>Garnered</b>                  [1] 26:3  <b>GARY</b>                  [1] 1:11  <b>General</b>                  [1] 12:2  <b>Generalized</b>                  [1] 12:1  <b>Generally</b>                  [3] 13:24 14:11 18:6  <b>Generic</b>                  [1] 19:3  <b>Genesis</b>                  [1] 7:2  <b>Gerdes</b>                  [21] 3:24 3:25 4:14 4:18 5:1 5:9 5:13                  12:7 12:11 12:18 13:7 15:22 18:22 19:                  13 20:1 26:7 26:17 26:17 29:23 30:2                  30:22  <b>Gerdes's</b>                  [1] 24:17  <b>Given</b>                  [2] 10:15 16:4  <b>Goal</b>                  [3] 21:19 28:16 28:16  <b>Goals</b>                  [1] 21:24  <b>Golden</b>                  [1] 31:20  <b>Grant</b>                  [6] 3:15 3:17 19:18 21:14 37:14 38:2  <b>Granted</b>                  [2] 36:9 37:7  <b>Granting</b>                  [3] 10:14 23:6 27:7  <b>Great</b>                  [1] 9:8  <b>Greff</b>                  [1] 1:15  <b>Greg</b>                  [1] 1:15  <b>Group</b>                  [1] 6:17  <b>Guess</b>                  [5] 4:19 12:15 27:24 29:12 29:23  <b>Guided</b>                  [1] 13:19  <b>Guys</b>                  [1] 38:10</p> <p style="text-align: center;"><b>H</b></p> <p><b>HANSON</b>                  [31] 1:11 3:1 3:9 3:12 5:5 5:11 11:22                  13:15 13:22 15:5 15:11 15:18 19:20                  20:13 23:11 23:20 24:3 24:5 24:8 27:                  3 31:12 31:16 31:22 32:16 33:13 33:                  15 35:8 37:10 37:22 38:5 38:8  <b>Hard</b>                  [1] 22:20  <b>Harlan</b>                  [4] 1:16 4:16 4:22 14:9  <b>Hear</b>                  [2] 32:19 35:11  <b>Heard</b>                  [6] 6:12 6:13 10:22 22:23 24:17 28:1  <b>Hearing</b>                  [5] 6:24 29:24 30:11 35:15 36:16  <b>Hearings</b>                  [1] 9:5  <b>Heartland</b>                  [1] 31:19  <b>Heather</b>                  [1] 1:19  <b>Held</b></p>	<p>[1] 2:11  <b>Help</b>                  [1] 26:4  <b>HEREBY</b>                  [1] 39:8  <b>Hettinger</b>                  [12] 2:8 31:15 31:18 31:19 31:23 31:                  25 32:20 33:13 33:14 34:5 34:7 34:13  <b>High</b>                  [2] 5:21 18:20  <b>Higher</b>                  [3] 5:23 16:13 32:12  <b>Hinted</b>                  [1] 19:5  <b>Hired</b>                  [1] 5:25  <b>Historical</b>                  [1] 28:22  <b>Hold</b>                  [1] 6:24  <b>Hope</b>                  [1] 8:5  <b>Huge</b>                  [1] 20:14  <b>HUGHES</b>                  [1] 39:3</p> <p style="text-align: center;"><b>I</b></p> <p><b>Idea</b>                  [1] 31:10  <b>Ideas</b>                  [1] 6:13  <b>Identified</b>                  [2] 19:13 19:14  <b>Identify</b>                  [1] 31:17  <b>ILECs</b>                  [1] 5:20  <b>Imagined</b>                  [1] 7:4  <b>Impact</b>                  [4] 12:4 30:1 30:19 33:1  <b>Impacted</b>                  [1] 30:7  <b>Impacts</b>                  [2] 14:7 24:19  <b>Implicit</b>                  [3] 7:12 7:14 7:17  <b>Important</b>                  [1] 11:6  <b>Impose</b>                  [1] 28:13  <b>Imputation</b>                  [1] 19:16  <b>In-house</b>                  [1] 15:20  <b>Inappropriate</b>                  [1] 16:12  <b>Inaudible</b>                  [1] 32:15  <b>Incorporated</b>                  [1] 3:20  <b>Incorrect</b>                  [2] 28:10 28:12  <b>Increase</b>                  [1] 24:21  <b>Increased</b>                  [4] 12:20 12:24 22:1 22:2  <b>Indicated</b>                  [3] 7:17 26:19 29:7  <b>Indirect</b>                  [1] 31:9  <b>Individual</b>                  [6] 6:2 7:25 12:23 20:8 28:15 29:7  <b>Industry</b>                  [6] 11:9 16:16 16:20 17:19 19:7 31:4  <b>Inflate</b>                  [1] 16:3  <b>Influence</b>                  [1] 24:20</p>
<p style="text-align: center;"><b>F</b></p> <p><b>Face</b>                  [1] 37:6  <b>Fact</b>                  [10] 8:18 16:7 18:14 20:18 24:20 25:7                  30:18 30:24 33:7 33:8  <b>Fact-finding</b>                  [3] 30:6 30:11 33:20</p>	<p><b>Fort</b>                  [5] 4:6 4:20 4:22 20:1 23:16  <b>Forum</b>                  [1] 30:6  <b>Forward</b>                  [4] 16:4 25:21 25:23 26:5  <b>Forward-looking</b>                  [2] 25:21 25:23  <b>Frame</b></p>	<p><b>Held</b></p>	<p><b>Inappropriate</b>                  [1] 16:12  <b>Inaudible</b>                  [1] 32:15  <b>Incorporated</b>                  [1] 3:20  <b>Incorrect</b>                  [2] 28:10 28:12  <b>Increase</b>                  [1] 24:21  <b>Increased</b>                  [4] 12:20 12:24 22:1 22:2  <b>Indicated</b>                  [3] 7:17 26:19 29:7  <b>Indirect</b>                  [1] 31:9  <b>Individual</b>                  [6] 6:2 7:25 12:23 20:8 28:15 29:7  <b>Industry</b>                  [6] 11:9 16:16 16:20 17:19 19:7 31:4  <b>Inflate</b>                  [1] 16:3  <b>Influence</b>                  [1] 24:20</p>

**Word Index**

<p><b>Information</b> [6] 6:5 10:20 25:4 26:3 30:23 34:11 <b>Initial</b> [1] 10:25 <b>Inn</b> [1] 9:8 <b>Inputs</b> [3] 7:22 7:22 26:20 <b>Inquiry</b> [2] 12:1 26:8 <b>Insignificant</b> [1] 22:19 <b>Instance</b> [1] 23:1 <b>Instances</b> [2] 18:7 29:18 <b>Instead</b> [1] 7:19 <b>Intend</b> [1] 8:8 <b>Intended</b> [1] 7:24 <b>Intends</b> [1] 26:9 <b>Intention</b> [1] 19:8 <b>Interest</b> [6] 10:8 13:11 22:4 27:8 37:6 37:21 <b>Interested</b> [2] 14:2 29:23 <b>Internal</b> [1] 14:23 <b>Interrupt</b> [1] 33:16 <b>Intervene</b> [8] 8:12 9:19 10:6 11:19 13:23 14:13 19:11 20:22 <b>Intervened</b> [1] 7:4 <b>Intervener</b> [2] 29:11 29:25 <b>Interveners</b> [5] 21:20 35:22 36:1 36:3 36:8 <b>Intervening</b> [2] 6:19 18:21 <b>Intervention</b> [31] 3:16 3:17 5:2 7:7 10:24 12:3 13:10 14:11 14:15 14:21 14:25 16:5 19:9 19:18 20:1 20:9 21:15 22:6 22:17 23:6 27:7 27:11 29:5 32:20 33:22 35:10 36:9 36:23 37:7 37:14 38:2 <b>Interventions</b> [8] 4:4 10:3 10:14 19:1 20:12 21:4 21:10 21:23 <b>Involved</b> [4] 9:2 9:5 11:9 28:20 <b>Involving</b> [2] 5:15 5:16 <b>Issue</b> [8] 8:7 9:1 11:7 11:12 12:1 12:2 13:3 19:4 <b>Issues</b> [4] 16:6 18:17 19:13 19:13 <b>Item</b> [8] 11:15 11:20 15:13 19:22 23:14 31:13 32:9 32:14 <b>Items</b> [3] 3:14 15:9 32:1 <b>Itself</b> [1] 26:21 <b>IXCs</b> [2] 21:15 22:17</p>	<p>[1] 1:14 <b>Johnson</b> [15] 1:12 15:6 15:8 24:1 27:4 27:5 27:21 28:4 29:4 29:20 30:2 30:17 37:13 37:25 38:6 <b>Join</b> [1] 3:5 <b>Joined</b> [1] 3:13 <b>Jointly</b> [1] 20:7 <b>Jordahl</b> [1] 2:3 <b>Judgment</b> [1] 34:22 <b>Justice</b> [4] 10:9 13:12 22:5 27:9</p>	<p>[1] 23:17 <b>Likely</b> [4] 10:9 13:11 17:16 27:8 <b>Line</b> [6] 9:4 12:22 22:13 22:21 25:11 29:21 <b>Listening</b> [1] 19:17 <b>LtC</b> [3] 32:22 32:25 37:16 <b>Local</b> [2] 7:15 17:14 <b>Look</b> [11] 5:22 5:25 16:4 21:3 21:19 21:21 27:17 33:9 34:1 37:1 37:3 <b>Looking</b> [3] 16:4 25:21 25:23 <b>Losing</b> [1] 32:16 <b>Lost</b> [3] 16:8 16:10 16:12 <b>Louder</b> [2] 31:24 32:17 <b>Low</b> [1] 18:1</p>	<p><b>Midcontinent's</b> [3] 15:25 18:19 29:15 <b>Midwest</b> [3] 3:20 37:17 38:4 <b>Might</b> [8] 8:25 25:24 26:3 26:5 31:6 31:7 31:9 31:11 <b>Migrate</b> [1] 11:8 <b>Mike</b> [3] 2:6 3:6 23:16 <b>Minute</b> [5] 17:1 17:3 17:10 18:9 28:23 <b>Minutes</b> [3] 17:23 28:24 29:1 <b>Miscarriage</b> [4] 10:9 13:12 22:5 27:9 <b>Misfired</b> [1] 4:4 <b>Mistakes</b> [1] 7:7 <b>Models</b> [1] 22:10 <b>Moment</b> [1] 27:22 <b>Monday</b> [3] 14:17 14:19 14:21 <b>Money</b> [2] 12:14 12:19 <b>Months</b> [1] 36:19 <b>Morning</b> [2] 20:5 31:22 <b>Most</b> [2] 16:7 18:3 <b>Motion</b> [7] 23:21 23:22 23:23 23:24 34:21 37:12 37:23 <b>Mount</b> [4] 4:6 4:21 4:22 23:17 <b>Move</b> [3] 24:1 31:25 37:14 <b>Must</b> [4] 5:19 10:7 19:6 32:5</p>
<b>K</b>		<b>M</b>	
<p style="text-align: center;"><b>J</b></p> <p><b>Jacobson</b> [1] 1:17 <b>Jeff</b> [3] 2:4 2:6 3:6 <b>Jim</b> [1] 1:18 <b>John</b></p>	<p><b>Karen</b> [3] 1:14 19:24 35:13 <b>Keep</b> [1] 35:15 <b>Keeping</b> [1] 36:12 <b>Keith</b> [2] 1:16 3:21 <b>Kid</b> [1] 17:2 <b>Kind</b> [4] 7:1 7:5 8:7 12:2 <b>Kings</b> [1] 9:8 <b>Knowledge</b> [2] 9:16 34:10 <b>Knows</b> [1] 10:5</p>	<p><b>Main</b> [1] 7:20 <b>Manner</b> [3] 17:20 18:16 19:4 <b>March</b> [1] 36:19 <b>Market</b> [2] 17:15 17:17 <b>Marlene</b> [2] 2:7 3:9 <b>Matter</b> [9] 1:4 2:12 3:1 5:17 11:5 11:6 19:19 25:23 39:10 <b>Matters</b> [2] 35:16 36:8 <b>McComsey</b> [3] 1:24 39:5 39:18 <b>MCT</b> [16] 5:24 11:18 30:3 30:12 30:24 31:7 32:14 32:15 32:21 32:25 33:3 33:6 33:9 34:15 34:17 36:25 <b>MCImetro</b> [8] 3:18 29:17 29:19 29:21 29:24 32:21 37:15 38:3 <b>Mean</b> [5] 13:20 25:16 26:9 30:10 34:21 <b>Meaningless</b> [1] 20:22 <b>Meeting</b> [1] 14:18 <b>Mehlhaff</b> [1] 1:18 <b>Member</b> [1] 22:24 <b>Members</b> [4] 3:24 4:7 5:3 11:13 <b>Mention</b> [1] 16:23 <b>Mentioned</b> [1] 18:15 <b>Merit</b> [1] 36:8 <b>Merits</b> [1] 34:23 <b>Mesh</b> [1] 21:23 <b>Met</b> [2] 22:7 22:11 <b>Methodology</b> [2] 26:13 28:17 <b>Michele</b> [1] 1:17 <b>Midcontinent</b> [9] 3:18 4:1 5:25 11:18 34:14 34:16 37:1 37:15 38:3</p>	<p style="text-align: center;"><b>N</b></p> <p><b>Name</b> [3] 15:20 20:6 24:14 <b>Nation</b> [1] 17:4 <b>National</b> [4] 5:22 5:24 16:24 17:8 <b>Nature</b> [1] 33:25 <b>Necessary</b> [1] 25:25 <b>Necessity</b> [1] 34:3 <b>Need</b> [7] 3:4 4:3 8:4 20:10 26:5 27:16 36:11 <b>Needed</b> [1] 10:10 <b>Needs</b> [6] 14:16 14:19 20:25 21:2 35:20 35:24 <b>New</b> [2] 22:10 22:15 <b>Next</b> [3] 15:9 17:16 36:16 <b>None</b> [2] 11:2 37:12 <b>Notary</b> [2] 39:6 39:18 <b>Note</b> [5] 17:20 19:10 31:3 35:16 36:22 <b>Noted</b> [1] 36:19 <b>Nothing</b> [2] 15:10 36:14 <b>Number</b></p>
<b>L</b>		<b>M</b>	
<p><b>Large</b> [1] 7:3 <b>Larry</b> [2] 2:8 31:19 <b>Larson</b> [1] 2:4 <b>Last</b> [2] 16:17 16:18 <b>Late</b> [3] 27:10 27:11 27:20 <b>Late-filed</b> [2] 27:10 27:20 <b>Law</b> [3] 2:5 13:19 19:16 <b>Lawyer</b> [1] 3:25 <b>Lead</b> [1] 3:22 <b>Least</b> [7] 4:10 7:11 10:15 16:24 17:2 19:1 25:17 <b>Leave</b> [1] 18:20 <b>LEC</b> [1] 32:24 <b>LEC's</b> [1] 36:5 <b>LECA</b> [21] 4:7 5:3 5:4 5:16 6:9 9:2 16:2 16:8 17:7 18:14 18:22 18:24 19:7 19:15 20:7 22:24 25:6 25:10 30:4 30:14 31:5 <b>LECs</b> [5] 20:8 23:3 32:23 33:4 36:2 <b>Legal</b> [2] 6:10 33:18 <b>Less</b> [4] 12:14 12:19 33:9 33:11 <b>Level</b> [2] 26:10 26:10 <b>Liberal</b> [1] 10:14 <b>Light</b></p>	<p><b>Large</b> [1] 7:3 <b>Larry</b> [2] 2:8 31:19 <b>Larson</b> [1] 2:4 <b>Last</b> [2] 16:17 16:18 <b>Late</b> [3] 27:10 27:11 27:20 <b>Late-filed</b> [2] 27:10 27:20 <b>Law</b> [3] 2:5 13:19 19:16 <b>Lawyer</b> [1] 3:25 <b>Lead</b> [1] 3:22 <b>Least</b> [7] 4:10 7:11 10:15 16:24 17:2 19:1 25:17 <b>Leave</b> [1] 18:20 <b>LEC</b> [1] 32:24 <b>LEC's</b> [1] 36:5 <b>LECA</b> [21] 4:7 5:3 5:4 5:16 6:9 9:2 16:2 16:8 17:7 18:14 18:22 18:24 19:7 19:15 20:7 22:24 25:6 25:10 30:4 30:14 31:5 <b>LECs</b> [5] 20:8 23:3 32:23 33:4 36:2 <b>Legal</b> [2] 6:10 33:18 <b>Less</b> [4] 12:14 12:19 33:9 33:11 <b>Level</b> [2] 26:10 26:10 <b>Liberal</b> [1] 10:14 <b>Light</b></p>	<p><b>Main</b> [1] 7:20 <b>Manner</b> [3] 17:20 18:16 19:4 <b>March</b> [1] 36:19 <b>Market</b> [2] 17:15 17:17 <b>Marlene</b> [2] 2:7 3:9 <b>Matter</b> [9] 1:4 2:12 3:1 5:17 11:5 11:6 19:19 25:23 39:10 <b>Matters</b> [2] 35:16 36:8 <b>McComsey</b> [3] 1:24 39:5 39:18 <b>MCT</b> [16] 5:24 11:18 30:3 30:12 30:24 31:7 32:14 32:15 32:21 32:25 33:3 33:6 33:9 34:15 34:17 36:25 <b>MCImetro</b> [8] 3:18 29:17 29:19 29:21 29:24 32:21 37:15 38:3 <b>Mean</b> [5] 13:20 25:16 26:9 30:10 34:21 <b>Meaningless</b> [1] 20:22 <b>Meeting</b> [1] 14:18 <b>Mehlhaff</b> [1] 1:18 <b>Member</b> [1] 22:24 <b>Members</b> [4] 3:24 4:7 5:3 11:13 <b>Mention</b> [1] 16:23 <b>Mentioned</b> [1] 18:15 <b>Merit</b> [1] 36:8 <b>Merits</b> [1] 34:23 <b>Mesh</b> [1] 21:23 <b>Met</b> [2] 22:7 22:11 <b>Methodology</b> [2] 26:13 28:17 <b>Michele</b> [1] 1:17 <b>Midcontinent</b> [9] 3:18 4:1 5:25 11:18 34:14 34:16 37:1 37:15 38:3</p>	<p><b>Name</b> [3] 15:20 20:6 24:14 <b>Nation</b> [1] 17:4 <b>National</b> [4] 5:22 5:24 16:24 17:8 <b>Nature</b> [1] 33:25 <b>Necessary</b> [1] 25:25 <b>Necessity</b> [1] 34:3 <b>Need</b> [7] 3:4 4:3 8:4 20:10 26:5 27:16 36:11 <b>Needed</b> [1] 10:10 <b>Needs</b> [6] 14:16 14:19 20:25 21:2 35:20 35:24 <b>New</b> [2] 22:10 22:15 <b>Next</b> [3] 15:9 17:16 36:16 <b>None</b> [2] 11:2 37:12 <b>Notary</b> [2] 39:6 39:18 <b>Note</b> [5] 17:20 19:10 31:3 35:16 36:22 <b>Noted</b> [1] 36:19 <b>Nothing</b> [2] 15:10 36:14 <b>Number</b></p>

Word Index

<p>[8] 4:25 6:1 6:2 11:4 11:20 15:4 32:2 33:5  <b>Numbers</b>                  [2] 5:6 37:3</p>	<p>[5] 6:16 12:15 18:3 31:21 36:5  <b>Participate</b>                  [1] 35:22  <b>Particular</b>                  [10] 12:3 13:4 13:6 15:24 24:19 24:23 24:24 25:20 35:17 36:23  <b>Parties</b>                  [17] 8:6 14:2 20:22 21:1 21:5 21:5 21:11 21:25 22:2 22:6 22:7 27:14 27:25 28:7 28:20 32:9 34:24  <b>Party</b>                  [2] 6:21 30:21  <b>Pass</b>                  [1] 19:15  <b>Passed</b>                  [2] 12:16 12:21  <b>Path</b>                  [1] 35:4  <b>Pay</b>                  [9] 5:19 17:1 18:3 18:4 18:6 22:18 25:13 29:13 33:9  <b>Paying</b>                  [4] 17:2 18:9 25:8 34:10  <b>Payment</b>                  [1] 30:25  <b>Pays</b>                  [1] 33:7  <b>Pending</b>                  [2] 6:20 18:22  <b>People</b>                  [2] 14:5 33:24  <b>People's</b>                  [2] 10:19 34:25  <b>Percent</b>                  [1] 33:10  <b>Percentage</b>                  [2] 29:17 34:14  <b>Perfect</b>                  [1] 24:15  <b>Perhaps</b>                  [6] 6:22 6:23 9:17 9:24 17:16 25:18  <b>Period</b>                  [2] 14:11 28:22  <b>Permit</b>                  [1] 10:20  <b>Person</b>                  [1] 29:22  <b>Peter</b>                  [2] 2:8 3:11  <b>Petition</b>                  [1] 10:7  <b>Petitioners</b>                  [1] 22:8  <b>Petitions</b>                  [9] 5:2 7:8 10:23 11:3 13:1 20:9 23:18 27:20 34:24  <b>Phone</b>                  [1] 25:7  <b>Pick</b>                  [1] 16:12  <b>Picked</b>                  [1] 16:9  <b>Picture</b>                  [1] 27:17  <b>Pierre</b>                  [3] 2:13 4:1 39:13  <b>Place</b>                  [3] 21:17 21:21 33:22  <b>Plans</b>                  [1] 18:1  <b>Players</b>                  [1] 21:13  <b>Point</b>                  [2] 23:19 30:9  <b>Points</b>                  [1] 10:16  <b>Policies</b>                  [1] 20:21  <b>Policy</b>                  [5] 12:2 13:3 14:23 25:21 25:24  <b>Pollman</b></p>	<p>[9] 20:5 20:6 20:17 27:13 28:2 28:6 29:10 34:6 35:2  <b>Polyglot</b>                  [1] 7:3  <b>Pop</b>                  [1] 11:15  <b>Portray</b>                  [1] 34:19  <b>Position</b>                  [5] 32:14 33:20 33:23 36:3 36:5  <b>Possibility</b>                  [1] 31:5  <b>Possible</b>                  [1] 25:19  <b>Possibly</b>                  [1] 32:11  <b>Potential</b>                  [2] 8:19 8:20  <b>Potentially</b>                  [1] 4:10  <b>Practical</b>                  [3] 4:9 11:5 11:5  <b>Practiced</b>                  [1] 10:13  <b>Precipitated</b>                  [1] 35:4  <b>Predominate</b>                  [1] 17:4  <b>Prefer</b>                  [1] 23:10  <b>Prejudice</b>                  [6] 21:1 27:23 35:15 35:19 35:23 36:2  <b>Prejudiced</b>                  [4] 27:15 27:25 28:7 29:2  <b>Prejudicial</b>                  [2] 28:17 35:18  <b>Preliminary</b>                  [1] 6:5  <b>Prepared</b>                  [3] 15:16 33:5 33:24  <b>Present</b>                  [2] 6:17 33:24  <b>Presented</b>                  [1] 26:12  <b>Presenting</b>                  [1] 34:11  <b>Presumably</b>                  [1] 30:25  <b>Prices</b>                  [2] 5:21 16:13  <b>Pricing</b>                  [4] 16:22 17:6 17:9 17:22  <b>Primarily</b>                  [2] 7:15 9:20  <b>Probative</b>                  [2] 35:21 35:25  <b>Problem</b>                  [6] 6:19 7:5 18:18 21:8 28:16 28:18  <b>Problems</b>                  [3] 6:6 16:2 26:20  <b>Procedural</b>                  [4] 11:3 18:16 18:19 36:11  <b>Procedures</b>                  [1] 26:15  <b>Proceedings</b>                  [4] 1:8 2:11 39:9 39:12  <b>Process</b>                  [6] 6:25 21:21 28:8 28:12 28:18 35:24  <b>Processes</b>                  [2] 28:25 29:3  <b>Professional</b>                  [2] 39:6 39:19  <b>Pronounce</b>                  [1] 24:13  <b>Proper</b>                  [1] 6:10  <b>Properly</b>                  [1] 26:2  <b>Proposal</b>                  [1] 6:22  <b>Proposed</b></p>	<p>[1] 37:19  <b>Prospects</b>                  [1] 31:21  <b>Public</b>                  [9] 1:1 1:10 10:8 13:11 22:4 27:8 37:6 39:6 39:18  <b>Purpose</b>                  [2] 7:24 21:3  <b>Purposes</b>                  [1] 4:9  <b>Pursuant</b>                  [1] 37:17  <b>Put</b>                  [3] 7:6 8:9 14:20</p>
<b>O</b>			
<p><b>Object</b>                  [1] 19:3  <b>Objection</b>                  [1] 7:20  <b>Objections</b>                  [3] 7:22 8:1 20:8  <b>Obligation</b>                  [1] 8:20  <b>Obviously</b>                  [2] 8:6 25:14  <b>Occurred</b>                  [2] 16:17 22:3  <b>Occurring</b>                  [1] 11:10  <b>October</b>                  [1] 39:14  <b>Offering</b>                  [1] 17:25  <b>Office</b>                  [2] 7:5 14:5  <b>Once</b>                  [3] 6:20 32:5 32:8  <b>One</b>                  [11] 4:22 4:24 6:1 10:15 11:4 12:22 12:25 32:2 32:9 34:12 37:24  <b>Ones</b>                  [2] 15:2 20:15  <b>Ongoing</b>                  [3] 5:18 6:4 8:3  <b>Open</b>                  [1] 14:7  <b>Opened</b>                  [1] 14:5  <b>Operation</b>                  [1] 37:18  <b>Operations</b>                  [1] 25:14  <b>Opportunity</b>                  [1] 16:5  <b>Oppose</b>                  [1] 23:5  <b>Opposed</b>                  [2] 25:21 34:16  <b>Option</b>                  [1] 32:6  <b>Order</b>                  [5] 8:21 10:6 11:3 27:12 27:16  <b>Orders</b>                  [1] 7:11  <b>Originally</b>                  [1] 8:13  <b>Originated</b>                  [1] 17:6  <b>Originating</b>                  [2] 33:8 33:10  <b>Otherwise</b>                  [2] 15:3 36:13  <b>Outcome</b>                  [1] 25:19  <b>Outset</b>                  [1] 4:3  <b>Outstanding</b>                  [1] 8:24  <b>Outweighs</b>                  [1] 36:1  <b>Overall</b>                  [2] 7:20 29:17  <b>Own</b>                  [1] 10:5</p>	<p>[1] 19:3                  [1] 7:20                  [3] 7:22 8:1 20:8                  [1] 8:20                  [2] 8:6 25:14                  [2] 16:17 22:3                  [1] 11:10                  [1] 39:14                  [1] 17:25                  [2] 7:5 14:5                  [3] 6:20 32:5 32:8                  [11] 4:22 4:24 6:1 10:15 11:4 12:22 12:25 32:2 32:9 34:12 37:24                  [2] 15:2 20:15                  [3] 5:18 6:4 8:3                  [1] 14:7                  [1] 14:5                  [1] 37:18                  [1] 25:14                  [1] 16:5                  [1] 23:5                  [2] 25:21 34:16                  [1] 32:6                  [5] 8:21 10:6 11:3 27:12 27:16                  [1] 7:11                  [1] 8:13                  [1] 17:6                  [2] 33:8 33:10                  [2] 15:3 36:13                  [1] 25:19                  [1] 4:3                  [1] 8:24                  [1] 36:1                  [2] 7:20 29:17                  [1] 10:5</p>	<p>[9] 20:5 20:6 20:17 27:13 28:2 28:6 29:10 34:6 35:2                  [1] 7:3                  [1] 11:15                  [1] 34:19                  [5] 32:14 33:20 33:23 36:3 36:5                  [1] 31:5                  [1] 25:19                  [1] 32:11                  [2] 8:19 8:20                  [1] 4:10                  [3] 4:9 11:5 11:5                  [1] 10:13                  [1] 35:4                  [1] 17:4                  [1] 23:10                  [6] 21:1 27:23 35:15 35:19 35:23 36:2                  [4] 27:15 27:25 28:7 29:2                  [2] 28:17 35:18                  [1] 6:5                  [3] 15:16 33:5 33:24                  [2] 6:17 33:24                  [1] 26:12                  [1] 34:11                  [1] 30:25                  [2] 5:21 16:13                  [4] 16:22 17:6 17:9 17:22                  [2] 7:15 9:20                  [2] 35:21 35:25                  [6] 6:19 7:5 18:18 21:8 28:16 28:18                  [3] 6:6 16:2 26:20                  [4] 11:3 18:16 18:19 36:11                  [1] 26:15                  [4] 1:8 2:11 39:9 39:12                  [6] 6:25 21:21 28:8 28:12 28:18 35:24                  [2] 28:25 29:3                  [2] 39:6 39:19                  [1] 24:13                  [1] 6:10                  [1] 26:2                  [1] 6:22                  [1] 6:22</p>	<p>[1] 37:17                  [3] 7:6 8:9 14:20</p>
<b>Q</b>			
<p><b>Pam</b>                  [1] 1:19  <b>Part</b></p>	<p>[1] 20:21                  [5] 12:2 13:3 14:23 25:21 25:24                  [1] 20:21                  [5] 12:2 13:3 14:23 25:21 25:24                  [1] 20:21</p>	<p>[1] 26:2                  [1] 6:22                  [1] 6:22</p>	<p><b>Quantify</b>                  [1] 22:20  <b>Questions</b>                  [9] 11:14 11:21 15:9 15:12 24:10 24:18 31:14 35:5 37:11  <b>Quick</b>                  [1] 13:15  <b>Quickly</b>                  [1] 16:23  <b>Quite</b>                  [1] 10:14</p>
<b>R</b>			
<p><b>Precision Reporting, Ltd.</b></p>	<p><b>Precision Reporting, Ltd.</b></p>	<p><b>Precision Reporting, Ltd.</b></p>	<p><b>From Number to Referred</b></p>



Word Index

<p><b>Reflected</b> [1] 6:9</p> <p><b>Refund</b> [2] 8:20 37:21</p> <p><b>Regard</b> [3] 18:16 20:18 34:13</p> <p><b>Regarding</b> [1] 35:10</p> <p><b>Regardless</b> [1] 20:19</p> <p><b>Registered</b> [2] 39:5 39:19</p> <p><b>Related</b> [3] 13:4 24:19 25:5</p> <p><b>Relationship</b> [1] 12:5</p> <p><b>Remain</b> [1] 17:18</p> <p><b>Remainder</b> [1] 5:13</p> <p><b>Remember</b> [2] 9:4 9:9</p> <p><b>Remove</b> [1] 23:24</p> <p><b>Removed</b> [1] 7:18</p> <p><b>Replaced</b> [1] 7:19</p> <p><b>Report</b> [2] 10:25 26:18</p> <p><b>Reported</b> [1] 1:24</p> <p><b>Reporter</b> [4] 32:18 39:6 39:9 39:19</p> <p><b>Represent</b> [3] 4:1 20:6 20:7</p> <p><b>Representing</b> [2] 23:16 29:21</p> <p><b>Request</b> [3] 4:23 19:17 27:10</p> <p><b>Requesting</b> [3] 21:15 22:6 29:5</p> <p><b>Requests</b> [1] 36:13</p> <p><b>Requirement</b> [2] 5:14 32:7</p> <p><b>Requirements</b> [5] 1:4 3:2 19:16 28:13 34:8</p> <p><b>Reselling</b> [1] 31:7</p> <p><b>Reserve</b> [1] 23:8</p> <p><b>Respect</b> [3] 12:9 13:6 24:23</p> <p><b>Respond</b> [6] 11:21 30:5 30:11 30:16 30:23 35:5</p> <p><b>Response</b> [6] 4:23 14:14 29:9 29:24 35:3 35:14</p> <p><b>Responses</b> [1] 24:18</p> <p><b>Result</b> [6] 10:9 13:11 13:18 21:9 22:2 27:8</p> <p><b>Results</b> [1] 36:10</p> <p><b>Revamping</b> [1] 21:16</p> <p><b>Reveal</b> [1] 25:18</p> <p><b>Revenue</b> [4] 1:4 3:2 5:14 23:2</p> <p><b>Revenues</b> [3] 16:8 16:10 16:13</p> <p><b>Review</b> [5] 6:4 8:3 21:16 21:20 32:23</p> <p><b>Revised</b> [1] 22:9</p> <p><b>Rise</b> [1] 30:25</p> <p><b>Rislov</b> [1] 1:15</p> <p><b>Rogers</b></p>	<p>[12] 20:5 20:6 20:17 27:6 27:13 28:2 28:6 29:10 30:5 30:15 34:6 35:2</p> <p><b>Rolayne</b> [1] 1:13</p> <p><b>Room</b> [2] 2:13 9:8</p> <p><b>Rotating</b> [1] 18:23</p> <p><b>RPR</b> [1] 1:24</p> <p><b>Rule</b> [6] 6:14 13:13 13:18 20:20 36:6 36:10</p> <p><b>Rule-making</b> [2] 6:14 36:10</p> <p><b>Rules</b> [12] 6:1 10:5 10:7 16:19 21:17 22:10 26:11 26:14 28:9 28:10 28:11 32:4</p> <p><b>Rushmore</b> [4] 4:6 4:21 4:22 23:17</p>	<p><b>Show</b> [2] 10:7 11:7</p> <p><b>Showing</b> [1] 22:4</p> <p><b>Shows</b> [1] 14:4</p> <p><b>Side</b> [1] 16:9</p> <p><b>Sign</b> [1] 14:2</p> <p><b>Significant</b> [4] 16:16 16:20 16:25 25:19</p> <p><b>Simply</b> [3] 5:21 6:19 33:21</p> <p><b>Sit</b> [1] 6:21</p> <p><b>Six</b> [1] 36:18</p> <p><b>Small</b> [3] 29:16 33:6 34:14</p> <p><b>Smith</b> [17] 1:14 11:22 11:24 12:8 12:12 13:2 13:14 24:11 24:17 25:16 26:6 26:23 27:2 29:4 34:20 35:3 35:7</p> <p><b>Solution</b> [1] 21:7</p> <p><b>Someone</b> [3] 13:17 13:25 34:9</p> <p><b>Somewhere</b> [1] 9:4</p> <p><b>Sorry</b> [1] 28:2</p> <p><b>Sort</b> [2] 11:25 11:25</p> <p><b>Sounds</b> [1] 37:22</p> <p><b>Source</b> [2] 10:20 10:22</p> <p><b>South</b> [18] 1:2 2:12 2:14 5:19 5:20 16:19 17: 5 17:21 18:13 19:16 24:22 25:6 25:15 30:12 30:13 39:1 39:7 39:13</p> <p><b>Specific</b> [2] 28:8 30:18</p> <p><b>SS</b> [1] 39:2</p> <p><b>Staff</b> [11] 1:13 6:21 10:25 11:1 14:24 19:24 20:21 27:16 35:11 35:13 36:9</p> <p><b>Staff's</b> [2] 19:5 36:2</p> <p><b>Stand</b> [1] 11:14</p> <p><b>Standard</b> [2] 13:13 35:15</p> <p><b>Start</b> [2] 3:23 14:1</p> <p><b>Started</b> [2] 10:10 11:24</p> <p><b>State</b> [7] 1:2 2:12 13:19 22:24 25:15 39:1 39:7</p> <p><b>Statement</b> [1] 15:16</p> <p><b>Statements</b> [1] 15:22</p> <p><b>States</b> [1] 17:21</p> <p><b>Statewide</b> [4] 18:18 18:18 21:7 21:8</p> <p><b>Statistics</b> [1] 5:22</p> <p><b>Status</b> [1] 6:21</p> <p><b>Statute</b> [1] 20:20</p> <p><b>Statutory</b> [1] 15:1</p> <p><b>Still</b> [3] 6:4 8:24 38:9</p> <p><b>Struggle</b></p>	<p>[1] 6:10</p> <p><b>Studies</b> [9] 4:9 4:19 5:15 7:14 16:2 18:25 21: 12 26:1 32:3</p> <p><b>Study</b> [2] 32:5 32:8</p> <p><b>Subject</b> [4] 4:10 8:17 11:19 37:21</p> <p><b>Submit</b> [2] 11:6 21:8</p> <p><b>Subsidiaries</b> [1] 7:15</p> <p><b>Subsidies</b> [3] 7:12 7:18 7:19</p> <p><b>Subsidize</b> [1] 7:15</p> <p><b>Substantially</b> [1] 36:1</p> <p><b>Suggest</b> [1] 22:12</p> <p><b>Summary</b> [1] 34:22</p> <p><b>Suspend</b> [1] 37:18</p> <p><b>Suspension</b> [1] 36:17</p> <p><b>Suzie</b> [1] 2:5</p> <p><b>Switched</b> [29] 1:4 3:2 5:14 5:19 5:23 6:1 6:8 7: 16 8:16 9:5 9:6 9:10 11:7 16:3 16:13 16:22 17:5 17:21 18:3 18:10 18:21 18: 24 19:6 25:8 25:10 29:1 29:14 29:19 30:25</p> <p><b>Sworn</b> [1] 35:1</p>
<b>S</b>			
<p><b>Sahr</b> [4] 1:11 24:4 38:8 38:10</p> <p><b>Sara</b> [1] 1:15</p> <p><b>Saw</b> [1] 6:17</p> <p><b>Schedule</b> [1] 36:12</p> <p><b>SDCL</b> [1] 37:17</p> <p><b>SDN</b> [2] 33:4 33:5</p> <p><b>Second</b> [6] 4:24 10:18 12:15 17:19 24:3 38:5</p> <p><b>Secondly</b> [1] 12:20</p> <p><b>See</b> [9] 3:5 17:3 17:24 18:13 29:13 34:2 36:9 37:2 37:7</p> <p><b>Seeing</b> [3] 17:7 17:9 37:12</p> <p><b>Seek</b> [1] 22:9</p> <p><b>Seeking</b> [1] 18:20</p> <p><b>Send</b> [1] 14:3</p> <p><b>Sending</b> [1] 14:1</p> <p><b>Sends</b> [1] 32:24</p> <p><b>Senger</b> [1] 1:16</p> <p><b>Sense</b> [3] 16:1 29:25 30:21</p> <p><b>Sent</b> [3] 4:22 4:24 14:10</p> <p><b>Separations</b> [1] 26:15</p> <p><b>September</b> [3] 1:8 2:14 39:11</p> <p><b>Service</b> [2] 7:16 14:3</p> <p><b>Services</b> [6] 3:19 31:8 32:22 32:25 37:16 38:3</p> <p><b>Set</b> [9] 10:25 13:13 13:16 13:17 13:18 13: 23 27:12 27:15 36:15</p> <p><b>Setting</b> [1] 27:21</p> <p><b>Several</b> [2] 20:7 29:14</p> <p><b>Sevold</b> [1] 2:2</p> <p><b>Shall</b> [2] 3:15 3:17</p> <p><b>Shorten</b> [1] 9:24</p> <p><b>Shorthand</b> [2] 39:9 39:9</p>	<b>T</b>		
<p><b>Table</b> [5] 21:11 21:13 23:23 34:22 36:12</p> <p><b>Talbot</b> [1] 2:2</p> <p><b>Tardy</b> [1] 19:2</p> <p><b>Targeting</b> [1] 5:4</p> <p><b>Tariff</b> [2] 37:19 37:20</p> <p><b>Tariffs</b> [2] 6:9 8:19</p> <p><b>TC05-083</b> [2] 1:5 3:3</p> <p><b>TC05-087</b> [1] 1:5</p> <p><b>TC05-090</b> [1] 1:5</p> <p><b>TC05-091</b> [1] 1:5</p> <p><b>TC05-092</b> [1] 1:5</p> <p><b>TC05-093</b> [1] 1:5</p> <p><b>TC05-094</b> [1] 1:5</p> <p><b>TC05-095</b> [1] 1:5</p> <p><b>TC05-097</b> [2] 1:6 36:24</p> <p><b>TC05-098</b> [1] 1:6</p> <p><b>TC05-099</b> [2] 1:6 23:24</p> <p><b>TC05-109</b> [2] 1:6 3:4</p> <p><b>Telephone</b> [4] 1:11 2:1 4:6 4:7</p> <p><b>Terminate</b> [3] 30:4 30:14 30:24</p> <p><b>Terminates</b> [1] 30:12</p> <p><b>Terminating</b></p>			

Word Index

<p>[2] 25:7 25:13  <b>Terms</b>  [3] 12:3 17:5 26:7  <b>Territories</b>  [1] 25:8  <b>Test</b>  [7] 22:2 22:4 27:6 27:9 27:19 35:15 35:18  <b>Testimony</b>  [8] 15:13 22:14 23:13 24:9 31:13 33:17 34:4 35:9  <b>Tests</b>  [1] 22:11  <b>Themselves</b>  [2] 16:11 26:11  <b>Theoretical</b>  [1] 13:3  <b>Therefore</b>  [4] 6:9 21:12 21:19 31:8  <b>Third</b>  [1] 9:13  <b>Three</b>  [6] 14:15 17:16 18:23 21:5 32:5 32:8  <b>Three-year</b>  [1] 18:23  <b>Throughout</b>  [1] 17:4  <b>Thursday</b>  [3] 14:10 14:17 14:20  <b>Timely</b>  [1] 22:16  <b>Tina</b>  [1] 1:18  <b>Today</b>  [5] 3:15 3:17 3:21 7:2 35:1  <b>Together</b>  [3] 5:8 5:10 7:6  <b>Took</b>  [1] 39:9  <b>Total</b>  [1] 36:18  <b>Toward</b>  [1] 27:25  <b>Traffic</b>  [8] 22:18 29:17 30:4 30:12 30:14 30:24 33:7 34:14  <b>Transcript</b>  [2] 1:8 2:11  <b>Transcription</b>  [1] 39:12  <b>Transmission</b>  [5] 3:19 32:21 32:25 37:16 38:3  <b>Tremendous</b>  [1] 17:22  <b>Tremendously</b>  [2] 18:10 18:25  <b>Trespass</b>  [1] 20:14  <b>Tried</b>  [3] 7:8 29:12 34:19  <b>Triggered</b>  [1] 27:10  <b>True</b>  [7] 4:16 12:9 20:23 26:23 31:10 32:11 39:11  <b>Try</b>  [4] 7:6 8:8 21:20 28:18  <b>Trying</b>  [1] 35:5  <b>Tuesday</b>  [2] 14:19 14:22  <b>Turn</b>  [1] 12:8  <b>Turned</b>  [1] 33:18  <b>Two</b>  [9] 5:3 5:5 5:15 6:2 7:11 8:1 16:23 21:22 29:15  <b>Type</b>  [1] 21:16</p>	<p style="text-align: center;"><b>U</b></p> <p><b>Ultimately</b>  [1] 36:10  <b>Unanswered</b>  [1] 36:14  <b>Undeniable</b>  [1] 22:1  <b>Under</b>  [5] 4:5 8:18 10:6 15:1 19:16  <b>Understood</b>  [1] 24:25  <b>Unfair</b>  [2] 35:23 36:2  <b>Unfairly</b>  [1] 35:19  <b>Unfortunately</b>  [1] 37:23  <b>Unlimited</b>  [1] 17:25  <b>Unsworn</b>  [1] 35:1  <b>Up</b>  [15] 6:22 6:24 9:8 9:24 11:8 11:15 11:16 14:2 14:10 14:18 16:9 16:12 31:23 32:17 33:12  <b>UTILITIES</b>  [2] 1:1 1:10</p> <p style="text-align: center;"><b>V</b></p> <p><b>Value</b>  [2] 35:21 35:25  <b>Various</b>  [2] 6:13 34:25  <b>Versus</b>  [1] 35:22  <b>VICE</b>  [3] 1:11 24:4 38:10  <b>View</b>  [1] 10:16  <b>Violate</b>  [1] 11:3  <b>Voiced</b>  [1] 8:2  <b>Voluntary</b>  [1] 23:17</p> <p style="text-align: center;"><b>W</b></p> <p><b>Wait</b>  [1] 23:11  <b>Wants</b>  [1] 10:16  <b>Week</b>  [2] 8:6 14:5  <b>Weigh</b>  [2] 21:1 27:18  <b>West</b>  [1] 31:20  <b>Whole</b>  [1] 27:17  <b>Wieczorek</b>  [1] 2:2  <b>Wiest</b>  [1] 1:13  <b>Wireless</b>  [10] 16:10 16:11 17:23 17:24 17:25 18:2 18:14 22:25 23:3 23:4  <b>Wireline</b>  [5] 17:13 17:24 18:8 18:8 18:11  <b>Wishes</b>  [3] 15:13 18:17 19:21  <b>Wishing</b>  [2] 23:13 24:9  <b>Withdraw</b>  [3] 5:2 19:25 23:17  <b>Withdrawal</b>  [2] 23:25 24:2  <b>Withdrew</b>  [1] 11:18  <b>Wittler</b></p>	<p>[3] 1:24 39:5 39:18  <b>Words</b>  [1] 35:24  <b>Worthy</b>  [1] 25:4  <b>Written</b>  [2] 26:11 35:13</p> <p style="text-align: center;"><b>Y</b></p> <p><b>Year</b>  [5] 9:12 9:13 9:13 18:23 32:3  <b>Years</b>  [10] 9:4 10:12 14:1 16:17 17:16 24:23 32:5 32:6 32:8 33:6  <b>Yourself</b>  [2] 17:11 31:17</p>
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