

= = = = = SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION FOR EXTENSION OF SUSPENSION DATE AND THE DATE TO FILE FURTHER SUSPENSION REQUEST

TC05-137

= = = = =

Transcript of Proceedings November 1, 2005

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION, GARY HANSON, CHAIRMAN BOB SAHR, VICE CHAIRMAN DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF Rolayne Ailts Wiest John Smith Karen Cremer Greg Rislov Harlan Best Keith Senger Dave Jacobson Bob Knadle Deb Gregg Tina Douglas Heather Forney Pam Bonrud

APPEARANCES

Darla Pollman Rogers, Joint Petitioners David Gerdes, Midcontinent Communications Richard Coit, SDTA

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING LIMITED

1 THE PUBLIC UTILITIES COMMISSION  
2 OF THE STATE OF SOUTH DAKOTA  
3 -----  
4 IN THE MATTER OF THE JOINT PETITION  
5 FOR EXTENSION OF SUSPENSION DATE AND TC05-137  
6 THE DATE TO FILE FURTHER SUSPENSION  
7 REQUEST  
8 -----  
9  
10 Transcript of Proceedings  
11 November 1, 2005  
12 -----  
13 BEFORE THE PUBLIC UTILITIES COMMISSION,  
14 GARY HANSON, CHAIRMAN  
15 BOB SAHR, VICE CHAIRMAN  
16 DUSTY JOHNSON, COMMISSIONER  
17  
18 COMMISSION STAFF  
19 Relayne Ailts Wiest  
20 John Smith  
21 Karen Cremer  
22 Greg Rislov  
23 Harlan Best  
24 Keith Senger  
25 Dave Jacobson  
26 Bob Knadle  
27 Deb Gregg  
28 Tina Douglas  
29 Heather Forney  
30 Pam Bonrud  
31  
32 APPEARANCES  
33  
34 Darla Pollman Rogers, Joint Petitioners  
35 David Gerdes, Midcontinent Communications  
36 Richard Coit, SDTA  
37  
38 Reported By Cheri McComsey Wittler, RPR, CRR

3  
1 CHAIRMAN HANSON: TC05-137, In the  
2 Matter of the Joint Petition for Extension of  
3 Suspension Date and the Date to File Further  
4 Suspension Request.  
5 The question before the Commission is shall  
6 the Commission grant the Motion to limit the scope  
7 of issues.  
8 Ms. Rogers.  
9 MS. POLLMAN ROGERS: Good afternoon  
10 again, members of the Commission. My name is  
11 Darla Rogers, and I represent the Joint Petitioners  
12 in this case.  
13 The Commission granted suspensions of LNP  
14 obligations, both intermodal and intramodal, to the  
15 Petitioners and set deadlines by which the  
16 Petitioners had to refile to extend the suspension  
17 or for the suspension to end. Subsequent to that  
18 the Court of Appeals for the District of D.C.  
19 stayed enforcement of intermodal LNP for  
20 Petitioners until the FCC acts on the final  
21 regulatory flexibility analysis. Within the  
22 six-month deadline imposed by this Commission the  
23 Petitioners filed the current Joint Petition, and  
24 what we were asking you to do as a Commission in  
25 that Joint Petition is to extend the suspension

2  
1 APPEARANCES BY TELEPHONE  
2 Jeff Larson  
3 Doug Eidahl  
4 Talbot Wieczorek  
5 Meredith Moore  
6 John Miller  
7 Jeff Decker  
8 Mary Sisak  
9 Melissa Thompson  
10 Jim Adkins  
11 Lynn Ratanvale  
12 Mary Lohnes  
13 Don Ball  
14 Linda Walsh  
15 -----  
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 1st day of November 2005,  
21 commencing at 1:30 p.m.  
22  
23  
24  
25

4  
1 that you imposed, which will expire the end of  
2 December of 2005 until six months after the final  
3 decision by the FCC.  
4 Except for the case of ITC, the Petitioners  
5 only have intermodal LNP requests, and even for ITC  
6 this Commission ordered interim LNP, which is  
7 provided, but they granted a suspension of  
8 long-term LNP.  
9 The Petitioners are simply asking the  
10 Commission to extend the deadlines already granted  
11 to recognize the Federal Court action. It's our  
12 position that it really makes no sense for the  
13 Petitioners to spend the time and money and for  
14 this Commission to also waste its resources on more  
15 LNP proceedings until the FCC acts and establishes  
16 the Petitioner's intermodal LNP obligations.  
17 But the truth of the matter is we do not know  
18 what the FCC is going to do and what they're going  
19 to rule in these cases. And so we're asking you to  
20 recognize that there is that federal action out the  
21 there pending, and it could and probably most  
22 certainly will affect the final obligations of the  
23 Petitioners.  
24 The intramodal LNP arguments that are raised  
25 by Midco and WWC are in my opinion red herrings.

5

1 As I pointed out, no Petitioner except ITC has a  
 2 lawful request for intramodal LNP. Under the FCC's  
 3 rules even if such a request was received today,  
 4 Petitioners would not be required to provide  
 5 intermodal LNP until six months after the request.  
 6 So, therefore, as a practical matter an extension  
 7 of the LNP suspension can have no impact on any  
 8 potential wireline competitor.

9 For ITC the Commission already heard the  
 10 arguments about the merits of interim versus  
 11 long-term LNP and the costs of providing long-term  
 12 LNP, and based on that evidence this Commission  
 13 ordered interim LNP but granted a suspension of  
 14 long-term LNP. The Commission did not make the  
 15 distinction in its Orders between intramodal and  
 16 intermodal long-term LNP but rather granted a  
 17 suspension of both. And the Commission set the  
 18 same deadlines by which ITC had to refile to extend  
 19 the suspension or for the suspension to end.

20 In light of the court's action, that is the  
 21 Federal District Court, ITC is also seeking this  
 22 Commission to extend that deadline or the time line  
 23 to either request a further suspension or to  
 24 provide long-term LNP. And that is in accordance  
 25 with what this Commission has already granted. The

6

1 suspension is already granted.

2 I want to take just a moment to comment to a  
 3 couple of points raised by WWC in its opposition to  
 4 this Motion. First of all, I would like to clarify  
 5 that the timing of the Motion and the Motion here  
 6 is to limit the scope of this proceeding to  
 7 actually what we've asked for. And, as I said, all  
 8 we're asking is that you recognize the Federal  
 9 Court action and how that could potentially affect  
 10 our obligations and the time frames in which we  
 11 would have to comply with those obligations.

12 So the timing then of this current Motion, and  
 13 that is a Motion to Limit the Scope, is not  
 14 generated by a discovery deadline. We have said  
 15 from the very beginning that our purpose in filing  
 16 the Joint Petition was to ask the Commission to  
 17 recognize the federal action. We don't want to be  
 18 caught in the middle and end up with some time  
 19 schedule or compliance deadline with which it is  
 20 impossible for us to comply.

21 In one portion of WWC's opposition they admit  
 22 that the Petitioners may have an argument for a  
 23 continuance of the intermodal LNP suspension until  
 24 the FCC completes the RFA. We agree with that  
 25 portion of WWC's opposition. We think we do have a

7

1 good argument, and that's why we brought it before  
 2 you.

3 I also need to clarify some of the statements  
 4 in WWC's opposition concerning Swiftel because they  
 5 are factually incorrect. Swiftel's wireless  
 6 company has implemented LNP, but it provides  
 7 service through a separate switch and Sprint  
 8 provides all the LNP know-how referred to in WWC's  
 9 opposition. Therefore, Swiftel's wireline  
 10 employees are not trained in LNP, and they have no  
 11 experience with LNP implementation.

12 With regard to Midco's opposition, Midco  
 13 argues that there are issues with interim LNP that  
 14 the parties have been unable to find solutions for.  
 15 And, in fact, I think the Petition -- or the  
 16 opposition goes so far as to say that the parties  
 17 are at loggerheads. I would disagree with that  
 18 categorization.

19 As an initial matter, Midco's comments are  
 20 unsupported statements, and there is no evidence to  
 21 support them. And we dispute them -- ITC disputes  
 22 those statements.

23 ITC has tested interim LNP, the process, and  
 24 it works. And we've worked with Midco to resolve  
 25 certain issues like caller i.d. We've tested the

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1 proposed solution, and it works. ITC is certainly  
 2 available to discuss other alternative solutions or  
 3 other alternative interim LNP methodologies and to  
 4 try and resolve those issues.

5 If, however, the Commission believes that  
 6 these issues need to be examined factually, ITC  
 7 would need a suspension -- or an extension of the  
 8 existing suspension during that process.

9 So I guess the bottom line from the  
 10 perspective of the Joint Petitioners is if the stay  
 11 is lifted, we need a reasonable time to respond.  
 12 We don't know what the FCC is going to do. Will  
 13 they give us time to implement if that's what they  
 14 order? If so, how much time? We don't want to be  
 15 caught in a box of having the suspension here  
 16 expire and then maybe a sudden and unexpected  
 17 ruling from the FCC with regard to the stay.

18 So that's our bottom line reason for bringing,  
 19 first of all, the Joint Petition and then also the  
 20 Motion to Limit the Scope. The Petitioners have  
 21 already made the requisite showing under  
 22 47 U.S.C. Section 251(f)(2). We wouldn't be here  
 23 today but for the proceedings at the federal level,  
 24 and so we're just asking this Commission to  
 25 recognize those federal actions and to extend our

1 suspension accordingly.  
 2 Thank you.  
 3 CHAIRMAN HANSON: Thank you very  
 4 much.  
 5 Mr. Coit.  
 6 MR. COIT: Thank you, Mr. Chairman,  
 7 Commissioners. This is Richard Coit again  
 8 representing SDTA. I would concur with Darla's  
 9 comments, and I guess I agree with her that really  
 10 the bottom line here is, you know, we as  
 11 companies -- those companies that have not  
 12 implemented LNP want to make sure that whatever the  
 13 FCC decision is there's a reasonable amount of time  
 14 after that decision for them to take the action  
 15 that they feel they need to take.  
 16 And whether that be putting in another request  
 17 to this Commission for a continued suspension or  
 18 actually implementing LNP, you know, that's really  
 19 the -- that's really what this is about.  
 20 You know, as far as the -- you know, the stay,  
 21 currently there's a federal stay. And that's going  
 22 to be in place until the FCC takes some other  
 23 action. I have not heard anything as to when the  
 24 FCC is expected to take that action. I'm not sure  
 25 if anybody on the phone might have any input on

1 that. But we don't really know what's going to  
 2 happen, and until we do, we just don't want to be  
 3 caught in a bind without a sufficient period of  
 4 time.  
 5 I suppose there could be some debate about,  
 6 you know, the amount of time after the FCC makes  
 7 the decision, but other than that, I agree that the  
 8 issues in here should not extend to having to  
 9 relitigate the actual suspension request. That  
 10 doesn't seem to be the question here.  
 11 So that's all I have, unless there are any  
 12 questions.  
 13 CHAIRMAN HANSON: Thank you,  
 14 Mr. Coit.  
 15 Mr. Wieczorek, are you still on the line with  
 16 us? Tal?  
 17 MR. WIECZOREK: Yes, I am.  
 18 CHAIRMAN HANSON: Great.  
 19 MR. WIECZOREK: And the Motion  
 20 that's pending they say it's to limit issues. And  
 21 I'm not exactly sure what issues we're limiting  
 22 here. What I hear them arguing essentially is we  
 23 don't have an obligation to put on any evidence to  
 24 establish this continuance. And, quite frankly, I  
 25 don't see how that can be a legal determination.

1 I think this Commission to continue the stay  
 2 that it granted -- or the suspension, excuse me,  
 3 that it granted, it has to take evidence. The  
 4 evidence we discussed at hearing is at least -- the  
 5 information that's been presented at hearing is at  
 6 least 18 months old, at least 18 months old. And  
 7 during those 18 months there's been substantial  
 8 changes of these companies.  
 9 Now I see that there's the -- there's this  
 10 argument that the only reason they are here is  
 11 because of the federal case. And I understand that  
 12 the federal case on remand has essentially stayed  
 13 intermodal LNP, and I'm going to reserve -- or  
 14 restrict my comments to intermodal, as I believe  
 15 that the Federal Court does not address intramodal  
 16 at all.  
 17 But in that they are asking for not only that  
 18 they don't have to provide local number portability  
 19 while the FCC is completing its RFA analysis,  
 20 they're asking for an automatic -- for every ILEC  
 21 in this Petition an automatic six months beyond  
 22 that. And if I understand Ms. Rogers's comments,  
 23 Ms. Rogers's comments is that they get the six  
 24 months and then even of the FCC would decide the  
 25 RFA, we would have to make another bona fide

1 request for them, provide local number portability,  
 2 and they might be able to tack onto that request an  
 3 additional six months.  
 4 So they're asking for a substantial additional  
 5 length of time, and I think the law is clear that  
 6 they have to hold up some standard and put some  
 7 evidence in to justify that additional length of  
 8 time.  
 9 Now if they're comfortable with just relying  
 10 on the stay, frankly, our position is the stay from  
 11 Federal Court, if it goes longer than the end of  
 12 this year, they're entitled to not -- it's their  
 13 option, frankly, under the District Court -- or  
 14 Circuit Court case as to whether they want to begin  
 15 introducing intermodal LNP before the FCC finishes  
 16 that analysis. But for them to get the additional  
 17 six months beyond that, they have to show some  
 18 evidence.  
 19 And a good example of that is while the  
 20 meeting was going on today I got faxed to me from  
 21 Ms. Rogers's office a supplemental filing by  
 22 RC Communications on this noticed matter, and  
 23 RC Communications says in that supplemental notice  
 24 that they've upgraded one of their switches and now  
 25 it has local number portability. Now they don't

1 want to begin providing local number portability.  
2 But they used the fact that their switches were not  
3 LNP compliant as grounds to grant the suspension in  
4 the first place.

5 They can't just -- they can't spend 18 months  
6 upgrading their systems, changing where they're at,  
7 and come in here and say, look, we all need an  
8 additional six months. I used the Swiftel analogy.  
9 We argued that in the original hearing, and there  
10 is evidence on that. Swiftel has some of this  
11 technology, already has some of the information.

12 The other thing that was obvious, if we recall  
13 back to the original hearing, some of these  
14 companies are CLECs going into competitive markets  
15 where they have to provide portability. Now what  
16 they've done to provide portability as CLECs we  
17 should know, and that evidence should be put into  
18 place.

19 This is not something where a blanket --  
20 blanket suspension should be granted. This should  
21 be granted on what they have available and the time  
22 it will take them to get up to speed. The  
23 comparison they use is that six months is allowed  
24 under the FCC rules once you receive a bona fide  
25 offer. Essentially, they want to say we get to

1 start from scratch on this, even though  
2 Western Wireless requested local number portability  
3 two years ago from us. And the law supports that.  
4 I think they have to establish evidence for that  
5 additional six months. The Commission has to make  
6 findings to give them that additional six months.

7 You know, the comments are such that, well, we  
8 don't know what we have to do. Well, if this  
9 Commission didn't do anything, if they allow the  
10 status quota to remain static until the FCC decided  
11 every issue that might touch on the legal matters,  
12 this Commission wouldn't ever do anything.

13 I think it's safe to say that the FCC is not  
14 going to put these companies in anymore -- or put  
15 these companies in any position that's going to be  
16 more demanding than the current laws that exist  
17 today. Even if the FCC decides something, it's the  
18 length of -- they can't change the actual statutory  
19 law. They can't change the 47 U.S.C. 251(f)(2)  
20 that sets forth the standards needed to get the  
21 extension. The only thing they change is maybe the  
22 implementation date and how the costs are going to  
23 be split out, but that's about it.

24 The -- in the -- I think we need to go back to  
25 even what their submission was. They don't provide

1 any legal authority that stands for the position  
2 that they don't have to put evidence on to get the  
3 additional extension. If the Commission looks back  
4 to its original Orders, it walks through the  
5 standards to meet to get a suspension.

6 To say now that they can come in and because  
7 they got a suspension 18 months ago they are  
8 automatically entitled to another suspension,  
9 cannot factually be supported and cannot legally be  
10 supported.

11 With that, I will take any questions the  
12 Commission might have.

13 CHAIRMAN HANSON: Thank you, Tal.  
14 Are there any questions at this time?

15 If not, Mr. Gerdes.

16 MR. GERDES: Mr. Chairman, members  
17 of the Commission, my name is Dave Gerdes. I  
18 represent Midcontinent Communications in this  
19 proceeding.

20 As the Commission knows, we're -- as it  
21 relates to Midcontinent, we're talking about  
22 intramodal LNP. The Commission specifically dealt  
23 with intramodal LNP in the prior Docket when it  
24 said that with respect to providing interim  
25 intramodal number portability in Webster and Waubay

1 exchanges to Midcontinent ITC has not met the  
2 public interest or the adverse economic criteria.

3 The Commission went on to rule that since we  
4 had a settlement agreement, that we should go ahead  
5 and implement interim LNP. We have now found that  
6 there is no way to make interim LNP work so as the  
7 customer that is ported to Midcontinent has caller  
8 i.d.

9 Now caller i.d. is something -- sort of a  
10 nice-to-have thing that people like to have, and it  
11 hampers the ability of Midcontinent to secure  
12 customers because they're not going to want to come  
13 to Midcontinent -- those that are interested in  
14 LNP -- or, excuse me, interested in caller i.d.,  
15 they're not going to want to come to Midcontinent  
16 because they can't keep it. And that's an  
17 inconvenience, and that is a good argument because  
18 it makes -- it takes away a level playing field in  
19 competition.

20 But more importantly than that, it also means  
21 that you cannot use 911 and emergency services  
22 because the -- as I understand it, you're retaining  
23 the original -- or you're retaining the wrong  
24 number in the database, and so when it comes up for  
25 a 911 call they cannot get the correct address or

1 identity of the person because it's coming from  
 2 Midcontinent's switch and not the person's phone.  
 3 And I'm probably -- I see some puzzled looks. It's  
 4 explained to me, in any event, that it also makes  
 5 911 services impossible to use. So there's also a  
 6 public safety issue here.  
 7 On September 30, 2005 we -- or I should say  
 8 Midcontinent personnel communicated this fact to  
 9 ITC, that is that try as we might, this simply does  
 10 not work. What we had tried to do is do what was  
 11 called a double call-forwarding, which -- and we  
 12 are now told that that's illegal under the  
 13 FCC Rules. And that, quite frankly, is what we  
 14 were thinking would make it work. But we're now  
 15 told it's illegal. And we told them back on  
 16 September 30 that this is the problem and we need  
 17 to do something about it. We haven't heard  
 18 anything back since then to my knowledge in  
 19 response to that inquiry.  
 20 Now I'm not sure what the Motion to Limit the  
 21 Issues means as to intramodal LNP. That's part of  
 22 our problem. If, in fact, it is the intention of  
 23 ITC that somehow we should continue with this  
 24 interim LNP in the way that we are now using it, it  
 25 is totally unacceptable to Midcontinent. Back when

1 we settled this thing we were told that interim  
 2 number portability would work. It simply has not  
 3 worked.  
 4 I don't think there was any mean spirit or  
 5 misleading by anybody in the settlement  
 6 negotiations. I think we all thought it would  
 7 work, but it's not working. The fact that it's not  
 8 working has to be recognized, and we have to be  
 9 able to go forward. There has never been an order  
 10 that has suspended LNP that I'm aware of, LNP as it  
 11 relates to intermodal LNP. What we've been talking  
 12 about, intramodal -- excuse me. I got confused.  
 13 Other way around. There's never been an order that  
 14 relates to intramodal LNP. It all relates to  
 15 intermodal LNP.  
 16 So, quite frankly, what Midcontinent needs is  
 17 what the law provides and nothing more. And so we  
 18 need to make sure that we are able to distinguish  
 19 in this proceeding that we have right now between  
 20 intramodal LNP and intermodal LNP and get this  
 21 problem resolved. Midcontinent right now has an  
 22 application to go into Santel's area as well, and  
 23 so this is going to continue to be an issue until  
 24 it can be worked out to the satisfaction of all.  
 25 And, again, we don't want to get lost in the

1 shuffle here. There's a big fight here between the  
 2 wireless company WWC and Western Wireless and these  
 3 phone companies. And that's fine, well, and good,  
 4 and they need to get that resolved. But in the  
 5 process we were also in the original Docket, and we  
 6 were dealt with and we want to make sure that we  
 7 are entitled to be heard in this Docket and to find  
 8 some solution to the problem that we now have.  
 9 And that's why I'm here. I'm not sure what  
 10 this Motion to Limit the Issues means. But if it  
 11 means that we would be treated in such a fashion  
 12 that we cannot obtain redress, then we would  
 13 object.  
 14 CHAIRMAN HANSON: Thank you,  
 15 Mr. Gerdes.  
 16 Ms. Wiest.  
 17 MS. AILTS WIEST: Thank you. This  
 18 is Rolayne Wiest. Going back to their Joint  
 19 Petition -- or their Motion, what they -- the  
 20 Petitioners are asking the Commission to rule that  
 21 the proceeding is limited to the question presented  
 22 by the Petitioners, namely whether the Commission  
 23 should extend the deadlines in the LNP Orders in  
 24 light of the Federal Court and the FCC.  
 25 And what I think the Commission could do is I

1 think that the Commission could actually grant this  
 2 Motion to Limit to the extent that any evidentiary  
 3 hearing that is needed would not be about whether  
 4 they need to meet -- whether they have to show that  
 5 they meet the federal requirements, the 251(f)(2)  
 6 requirements. But I am very sympathetic to  
 7 Mr. Gerdes's argument. And what I would just point  
 8 out to everybody is what I think is a very possible  
 9 scenario in this is that the Commission could have  
 10 some sort of evidentiary hearing and it could be  
 11 about as Mr. Wiczorek's -- one of the main issues  
 12 he argued how long after should any such further  
 13 suspension -- do they really need six months, and  
 14 do all of them really need six months?  
 15 But I think a possible scenario is that since  
 16 they're basing it on the light of the actions of  
 17 the Federal Court and the FCC, which only relate to  
 18 intermodal, is that the Commission could very well  
 19 find that they will grant the extension for  
 20 intermodal and not grant the extension for  
 21 intramodal, which I think what would happen then is  
 22 that at the end of December, unless you give some  
 23 sort of temporary suspension in there, is that at  
 24 that moment ITC is then under the obligation to  
 25 provide intermodal LNP to Midcontinent at that

1 point.  
 2 If they want to limit the issues and so we're  
 3 not looking at whether they have to meet any of the  
 4 requirements, I think that would be the outcome of  
 5 this. And I would also note that it is -- it was  
 6 staff's position way back in this case that ITC  
 7 shouldn't be granted a suspension, and the reason  
 8 they shouldn't be granted -- one of the reasons  
 9 that they shouldn't be granted suspension is due to  
 10 the fact that Midcontinent was requesting  
 11 intramodal LNP.

12 So maybe I'm repeating myself but to the  
 13 extent that the Commission would grant the Motion  
 14 to Limit the Issues, I think that is fine, but I  
 15 just think that the Petitioners should be aware  
 16 that one of the very real outcomes is that they  
 17 will be -- at least for ITC may be providing LNP at  
 18 the end of December or if you grant temporary  
 19 suspension, whenever that ends. But at least the  
 20 evidentiary hearing wouldn't be all about do they  
 21 meet these requirements, do they have to show that  
 22 they meet all of those requirements. Because I  
 23 don't have a lot of sympathy with an intermodal  
 24 because a stay is a stay. They just don't have to  
 25 do it right now.

1 CHAIRMAN HANSON: Thank you. Are  
 2 there questions by the Commission at this time?

3 COMMISSIONER JOHNSON: I just want  
 4 to make sure that I got Ms. Wiest's point right.  
 5 Staff would be in favor of essentially bifurcating  
 6 the issue and granting the limit -- the Motion to  
 7 Limit on the intermodal side?

8 MS. AILTS WIEST: Actually -- and  
 9 I'm just thinking this through the way -- when we  
 10 were up here at the meeting. But I don't know that  
 11 there's any harm in granting the Motion to Limit  
 12 for both intermodal and intramodal. My point is  
 13 that the Petitioners have not asked to put in  
 14 evidence to show that they should be granted any  
 15 extension with respect to intramodal. They only  
 16 want an extension -- they want you to look at an  
 17 extension only in light of the Federal Courts and  
 18 the FCC.

19 Well, if you're only looking at it in the  
 20 light of what the Federal Courts and the FCC did,  
 21 then it's staff's belief that you may well decide  
 22 that, fine, intermodal is not going to be  
 23 implemented at the end of this year but that had no  
 24 effect on intramodal, and they have not as the  
 25 Order -- your Order already said they didn't make

1 that showing with respect to ITC. But the Order  
 2 also said that intermodal and intramodal was  
 3 suspended. You did suspend both. So I think a  
 4 likely outcome in staff's mind is that intramodal  
 5 LNP would have to be implemented at the end of  
 6 December. And maybe I'm missing something, but  
 7 those are just my thoughts.

8 CHAIRMAN HANSON: Mr. Smith, go  
 9 ahead.

10 MR. SMITH: A follow-up question. I  
 11 mean, because this issue is evolving as it is and  
 12 they did meet the Commission's directive  
 13 procedurally to file on or before whatever the day  
 14 was, and I forgot, if the Commission were to grant  
 15 the intermodal part and deny the intramodal part,  
 16 would it be appropriate for the Commission to  
 17 entertain a Motion from ITC or whomever the  
 18 intramodal portion related to to permit an  
 19 amendment of the Complaint to expand it to  
 20 encompass the additional factual elements of the  
 21 suspension?

22 MS. AILTS WIEST: I guess I would  
 23 have to -- I'd wait until they actually wanted to  
 24 make that -- that point. My point is that what  
 25 they've done here is they've made a Motion to Limit

1 it, and they want it limited to the federal action.  
 2 And if that's their Petition -- and I know you  
 3 asked for the Petition prior to a certain date.  
 4 Well, this is their Petition. Their Petition is  
 5 that you should extend the deadline because of the  
 6 actions of the Federal Court and the FCC. That's  
 7 what they asked for.

8 CHAIRMAN HANSON: Dusty, you were  
 9 done.

10 COMMISSIONER JOHNSON: Yes. Thank  
 11 you, Mr. Chairman.

12 CHAIRMAN HANSON: Bob.

13 VICE CHAIRMAN SAHR: I'll look to  
 14 both Mr. Gerdes and Rolayne for the answer to this  
 15 one and certainly give Ms. Rogers an opportunity to  
 16 correct me if I'm wrong. But with the intramodal  
 17 my recollection is part of the reason that we  
 18 granted the forbearance, so to speak, on that was  
 19 you thought you had a technical fix with that  
 20 double call-forwarding, and since it appears now  
 21 that that's not working, do you know, Ms. Rogers,  
 22 is what Mr. Gerdes said correct from your client's  
 23 standpoint?

24 MS. SISAK: May I answer that?  
 25 Mary Sisak.

1 VICE CHAIRMAN SAHR: Sure.  
 2 MS. SISAK: From ITC's standpoint  
 3 that is not correct. And, you know, it's kind of  
 4 hard to respond to what I will term allegations.  
 5 Frankly, our position is that Mr. Gerdes and  
 6 Midcontinent are simply wrong. There is no FCC  
 7 rule that prohibits double remote call-forwarding.  
 8 There is no industry rule that prohibits it. There  
 9 is an industry practice that establishes the way  
 10 the -- the preferred way for certain things to be  
 11 done, but it does not preclude carriers from doing  
 12 things in a different way. And from a technical  
 13 perspective caller i.d. will work, 911 will work.  
 14 They have another issue about CABS billing,  
 15 which would be Midcontinent getting certain  
 16 compensation. That would work out.  
 17 So in ITC's position all the outstanding  
 18 issues even raised by Midcontinent have been worked  
 19 out, but, frankly, most of the issues really don't  
 20 have anything to do with whether technically  
 21 interim LNP can work. These were just some kind of  
 22 fine-tuning issues that Midcontinent requested that  
 23 we investigate. We investigated. We came up with  
 24 a fix.  
 25 Now we obviously have a difference of opinion

1 because Midcontinent is here saying the fix doesn't  
 2 work. And if they want to present a factual case  
 3 showing why they think the fix doesn't work, we can  
 4 respond to it. But it's hard to just respond to  
 5 basically an assertion made by Mr. Gerdes.  
 6 MR. GERDES: Well, may I respond?  
 7 VICE CHAIRMAN SAHR: Yes. Please  
 8 do.  
 9 CHAIRMAN HANSON: Please.  
 10 MR. GERDES: This isn't an assertion  
 11 made by Mr. Gerdes. This is an e-mail that was  
 12 sent to Darla Rogers on the 30th of September to  
 13 which we have not received a response.  
 14 MS. SISAK: Well, I think Ms. Lohnes  
 15 is in the room. If she'd like to testify to her  
 16 e-mail and what she thinks it really means, I  
 17 suppose the Commission could have her do so, but my  
 18 reading of Ms. Lohnes's e-mail does not support  
 19 your position either, Mr. Gerdes. Again, that's, I  
 20 guess, ultimately a factual question.  
 21 VICE CHAIRMAN SAHR: Ms. Wiest, just  
 22 to jog my memory, the differences on the intramodal  
 23 versus intermodal, how do the obligations differ  
 24 when you look at LNP in those two situations?  
 25 MS. AILTS WIEST: I mean, they still

1 have to -- they have to -- to get a suspension they  
 2 need to meet the same requirements, the 251  
 3 requirements.  
 4 VICE CHAIRMAN SAHR: And with the  
 5 filing that's been put forth right now, has there  
 6 been -- what I'm trying to grasp at is with the  
 7 intramodal right now with the Petitioners filing  
 8 is -- in your mind is there enough to grant the  
 9 Motion to Limit the Scope of the Issues as to  
 10 intramodal -- intramodal?  
 11 MS. AILTS WIEST: See, I think that  
 12 you could grant the Motion for both intermodal and  
 13 intramodal. The question is is -- but that doesn't  
 14 mean -- necessarily mean that you don't have any  
 15 type of evidentiary hearing.  
 16 I think what the Motion to Limit -- and  
 17 Ms. Rogers can correct me, but what the Motion to  
 18 Limit would most likely do is it would not require  
 19 the Petitioners to try to prove up the 251  
 20 requirements at the evidentiary hearing. And with  
 21 respect to intermodal, I would think one of the  
 22 main issues would be, okay, fine, there's a stay.  
 23 How long after the stay do they really need in  
 24 order to either implement it or ask for another  
 25 suspension?

1 VICE CHAIRMAN SAHR: Thank you.  
 2 CHAIRMAN HANSON: Mr. Coit, did you  
 3 have something to add?  
 4 MR. COIT: Thank you. I would like  
 5 to just respond. You know, Mr. Sahr, your question  
 6 with regard to what's different about inter versus  
 7 intra. And I think we can't forget that transport  
 8 issue.  
 9 If you recall the hearing, there was an awful  
 10 lot of time spent on the transport issue. And at  
 11 the FCC proceeding in the RFA analysis, much of the  
 12 analysis that I believe the FCC is doing and  
 13 probably the most difficult part of their decision  
 14 has to do with which carrier has the responsibility  
 15 for transport in an LNP situation.  
 16 Because, you know, right now the way the FCC  
 17 had implemented intermodal before, there was not a  
 18 specific requirement that there would be a direct  
 19 connection by the wireless company within that  
 20 local calling area, which has led to a lot of  
 21 issues over, okay, if you're not going to have a  
 22 direct connect necessarily going to that particular  
 23 area, who's responsible for what in terms of how do  
 24 you get the calls to the wireless customer from a  
 25 landline customer and vice versa.



1 So those are really the more difficult issues  
 2 that I think the FCC is faced with. And, you know,  
 3 looking at it from a LEC perspective, I would just  
 4 ask the question of Mr. Wiczorek, what does he  
 5 want from the LECs? Is it reasonable to expect  
 6 that a LEC might have to -- you know, the FCC --  
 7 and maybe the FCC will address the issue of how  
 8 much time we all have. But is it reasonable if the  
 9 FCC tomorrow comes out with a decision and says  
 10 that the stay is over and you have to implement LNP  
 11 within two weeks, is it reasonable to expect that a  
 12 LEC would be in a position to do that within that  
 13 short of period of time?

14 I do think that, you know, there may be -- if  
 15 you're going to look at any questions, I think  
 16 Ms. Wiest has it correct. It's the question of how  
 17 much time. You know, how much time is necessary  
 18 for implementation. And that may vary from company  
 19 to company. But that's not the same as undertaking  
 20 a complete analysis of all of the costs of  
 21 implementing LNP, which is what we did the first  
 22 go-around.

23 It's not the same as looking at the public  
 24 interest with respect to LNP. So I think, you  
 25 know, that's the -- that's the focus of the Motion.

1 It's if you're going to limit it, you're going to  
 2 limit it to stuff that's relative to, okay, how  
 3 much time after the stay expires -- you know, how  
 4 much time should companies be given.

5 And it may all be rendered moot because maybe  
 6 the FCC will say we're going to lift the stay but  
 7 we're going to lift it nine months from now, we're  
 8 going to lift it six months from now. So but now  
 9 we don't know that, and it doesn't seem reasonable  
 10 to me to say that we don't have to address it  
 11 because, you know, they can implement it, you know,  
 12 with a snap of a finger. It's just not that way.

13 VICE CHAIRMAN SAHR: Do you know if  
 14 there's any negotiations going on to solve some of  
 15 the disputes over LNP? Because my recollection is  
 16 at hearing and right there after a number of the --  
 17 a number -- a few of the disputes got resolved and  
 18 one of the things that we talked about when we  
 19 ruled on it was hope that there would be ongoing  
 20 negotiations among all the groups to try to figure  
 21 out ways to move towards it, certainly mindful that  
 22 in some cases the cost factor is just prohibitive.

23 MR. COIT: I think that, you know,  
 24 there's certainly been, I know, discussions within  
 25 the LEC organization about -- or among the LECs

1 about, okay, how do we address the transport issue  
 2 where there's not a direct connect. But what's  
 3 happened in that case -- in that situation is,  
 4 again, one of the large issues that the FCC is  
 5 faced with, not just in the LNP case but in the  
 6 intercarrier compensation proceedings, is transport  
 7 obligations.

8 So what happened is the rural LECs have taken  
 9 their position with respect to, you know, transport  
 10 obligations in the intercarrier comp proceedings,  
 11 and those positions are pretty firm and solid right  
 12 now. And you've got the other position that the  
 13 wireless carriers and other carriers that don't  
 14 want to pay for as much transport as they may be  
 15 paying for today, you know, they're taking a  
 16 position that is kind of opposite of that.

17 And so you've got, you know, two groups that  
 18 don't agree on the transport. And really that has  
 19 stood in the way of carriers getting anything done  
 20 on transport because we're all sitting around  
 21 waiting to see, okay, what's the FCC going to  
 22 require us to do? Who's going to have  
 23 responsibility for what?

24 I look at the intercarrier comp proceedings.  
 25 There are really two big issues. And that is, you

1 know, will there be an access fee of some sort and  
 2 who has the responsibility to transport traffic to  
 3 where. And until those two obligations are  
 4 addressed, not much is happening. So I think the  
 5 FCC's going to have to look at those. And it all  
 6 relates to LNP. And that's why -- you know, that's  
 7 why we look at it and say how can you expect us to  
 8 do this stuff tomorrow? We don't know what the  
 9 obligation's going to be yet.

10 VICE CHAIRMAN SAHR: Well, thank  
 11 you. And I appreciate your comments about the  
 12 intramodal. And I was just trying to recall back  
 13 to where -- and I don't have a follow-up question,  
 14 just a comment to make.

15 I was just trying to recall back to some of  
 16 the discussions there because you have some  
 17 different dynamics dealing with intramodal, and  
 18 certainly from a competition standpoint I think  
 19 there's some pretty compelling arguments that can  
 20 be made on the intramodal side towards favoring,  
 21 you know, going to LNP that maybe necessarily don't  
 22 hold completely true on the wireless side.

23 But I appreciate you pointing out the  
 24 transport and consulting issue and some of the  
 25 other points. And I also want to let you know that

1 I certainly wasn't saying that those weren't  
 2 significant. I certainly appreciate that.  
 3 MR. COIT: I agree the issues are  
 4 significantly different.  
 5 CHAIRMAN HANSON: Just one minute.  
 6 Ordinarily we don't have folks who are testifying  
 7 ask questions of other folks that are testifying,  
 8 but I know Tal might be interested in answering  
 9 your question.  
 10 MR. WIECZOREK: Mr. Chairman, do you  
 11 want me to be sworn in before I respond?  
 12 I would like to address a couple of things.  
 13 First, Ms. Wiest's position. The ILECs -- in our  
 14 opinion, the ILECs -- in our opinion I mean WWC and  
 15 mine. They have essentially a stay under the  
 16 Federal Court action until the RFA is completed and  
 17 published as required under that court case.  
 18 Now I have actually learned more from what  
 19 potentially this Motion means from the comments  
 20 Mr. Coit just said than I have from anything up  
 21 until now or the filing. It appears to me there is  
 22 no way under the law they can argue for an  
 23 additional six months without some kind of  
 24 evidentiary hearing.  
 25 But what I hear Mr. Coit saying, which I

1 wasn't clear on before, is that they acknowledge  
 2 they have to put on some factual evidence so their  
 3 position is it might not have to be as much to get  
 4 the initial suspension. I think, however, it puts  
 5 the Commission in a situation given that there's  
 6 been no real definition of how they're going to  
 7 present it or what they think they need to put on  
 8 for this Commission to make a determination of  
 9 exactly how you narrow these issues. And that  
 10 causes me some concern.  
 11 You know, likely it's their issue, meaning the  
 12 ILEC's issue, because if they don't put on  
 13 sufficient evidence, there may be a legal challenge  
 14 as to whether they are entitled to an additional  
 15 six months.  
 16 Given Mr. Coit's question, I'm not the one or  
 17 WWC's not the one that asked for a blanket  
 18 suspension for every company. You look back to --  
 19 and I know the Commission didn't accept the staff's  
 20 determination, but if you look back at staff, what  
 21 they determined on the first go-around more than a  
 22 year ago, they thought some of these companies  
 23 could start providing local number portability  
 24 essentially by the time the appeal time had run on  
 25 any Order this Commission would have entered 30 to

1 60 days.  
 2 Those companies have done nothing -- even if  
 3 they stood still, they're still in that situation,  
 4 and more than likely most of them have done some  
 5 upgrades to make local number portability easier to  
 6 do.  
 7 So I think there has to be an evidentiary  
 8 hearing on that. I am -- you know, there might be  
 9 some practical short time period in which to begin  
 10 to provide local number portability. Do I think  
 11 the appropriate time period is six months, which is  
 12 the time period the FCC gives companies that start  
 13 from scratch? No. Certainly not for all of these  
 14 companies. Certainly some of these companies  
 15 are -- I mean, a lot of progression and are ready  
 16 to just flip the switch to add -- the software's  
 17 already on the switch, and all they have to do is  
 18 pay for it to get it implemented.  
 19 I wanted to address the transporting issue.  
 20 You know, I understand that that's a big issue for  
 21 the ILECs. It was a big issue and was litigated in  
 22 the underlying hearing. In that situation when  
 23 they did their cost analysis the ILECs assumed  
 24 worst case scenario they'd have to pay all of that  
 25 transportation. And even then the cost for some of

1 these companies was minor per month for  
 2 subscribers.  
 3 So I think there's been nothing but costs  
 4 going down on these, and I think there has to be  
 5 some evidentiary showing for them to be entitled to  
 6 anything beyond the stay period.  
 7 I think that -- I was trying to take notes  
 8 when Mr. Coit was asking his questions, and I think  
 9 that covers it. But if not, I'll take a follow-up.  
 10 CHAIRMAN HANSON: Thank you very  
 11 much, Tal. Are there any further questions by the  
 12 Commissioners?  
 13 John.  
 14 MR. SMITH: I have a question maybe  
 15 for Ms. Rogers or Mr. Coit with respect to the  
 16 procedural issue raised by Ms. Wiest.  
 17 If we were -- if the Commission were to grant  
 18 the -- your Motion and we limit it -- we limit the  
 19 scope of the evidentiary proceeding as it stands  
 20 now for both intermodal and intramodal to just the  
 21 stay, effect of the Order, and the other two things  
 22 you asked for were the two time limit rulings, what  
 23 then happens with respect to the intramodal  
 24 proceeding?  
 25 I mean, would it be your feeling that if we

1 were to grant that and that's the effect of it, are  
2 you going to want to come in and move to amend your  
3 Pleading with respect to ITC at least or any  
4 other --

5 MS. SISAk: Mr. Smith, may I answer  
6 that question? This is Mary SIsak.

7 MR. SMITH: Uh-huh.

8 MS. SISAk: I think I want to begin  
9 by simply saying that the purpose of the original  
10 filing and, frankly, the purpose of the Motion  
11 that's before the Commission today, when the  
12 Commission granted the original suspension they  
13 gave all the Petitioners the opportunity to come  
14 back into the Commission and to basically put on  
15 another whole case to demonstrate that a suspension  
16 should be extended beyond December 31 or if they  
17 didn't make that showing, then to be capable of  
18 providing LNP by December 31.

19 When we had the intervening court action  
20 basically telling all the Petitioners that they did  
21 not have to provide intermodal LNP, and for almost  
22 all the Petitioners except ITC that's the only kind  
23 of request that they saved, we looked at that and  
24 we said, well, we have no idea when the FCC's going  
25 to act, but we know that if we want an extension

1 beyond December 31 from the South Dakota  
2 Commission, we have to start preparing cost studies  
3 and we have to start preparing a case to be filed  
4 before the South Dakota Commission by October.

5 We didn't think that made any sense. We  
6 thought that -- that it didn't make sense for the  
7 Petitioners or for the Commission to go through  
8 another two-week hearing starting in October when  
9 we had this whole court FCC issue out there, which  
10 effectively meant that most of the Petitioners had  
11 no obligation to implement LNP. And that was the  
12 whole purpose of our filing.

13 So to get back to your specific question, we  
14 think that the Commission's original Order which  
15 gave the Petitioners the opportunity to come back  
16 in and make a new 251(f) showing, we think the  
17 Commission should still do that. And so if you  
18 don't grant our Motion and you don't grant our  
19 Petition ultimately, some of these Petitioners are  
20 still going to want the opportunity to be able to  
21 do the cost studies, get the consultants all lined  
22 up, and come back in and make another 251(f)  
23 showing.

24 And part of our problem with the way the  
25 process has gone is -- and I think Ms. Wiest's

1 comments demonstrate that our concern was not  
2 unjustified. You know, we filed this original  
3 Petition and included that October filing deadline  
4 as something we wanted the Commission to tell us,  
5 do we still have to meet that October deadline to  
6 make a full-fledged cost showing, or are we all  
7 going to recognize that there's this Federal Court  
8 action out there which just makes that time line  
9 not very practical anymore, the original time line  
10 put in place by the Commission?

11 MR. SMITH: Thank you. I mean -- I  
12 guess gut feeling-wise, my feeling is you met the  
13 deadline by making your filing for an additional  
14 suspension in terms of the deadline. I think what  
15 I'm getting at is just -- you know, what I'm trying  
16 to get at is do we have some kind of weird  
17 donnybrook here is, or is this something that -- if  
18 there is an issue, can it be easily corrected with  
19 a simple procedural -- a Motion? And that would be  
20 if we grant the Petition -- and I think Ms. Wiest  
21 is correct. Your position is couched in terms of  
22 the intramodal order and the stay that emanates  
23 from that, which does not apply to intramodal  
24 porting.

25 Is this something that could easily be fixed

1 by moving the Commission to permit an amendment of  
2 your Petition at least with respect to those  
3 companies that are impacted currently by the fact  
4 that the stay does not apply to intramodal porting?  
5 What I'm trying to get at, is this a problem that  
6 we can easily solve? It's not some intractable --

7 MS. SISAk: I think it's a problem  
8 that can be easily solved, if I understand your  
9 question. And, you know, tell me if I'm wrong, but  
10 are you possibly saying that ITC, for example,  
11 would file something else requesting some time to  
12 put together a case to continue the suspension on  
13 intramodal LNP? Is that what you're suggesting?

14 MR. SMITH: That's exactly what I'm  
15 suggesting.

16 MS. SISAk: Then, yes, that could be  
17 done.

18 MR. SMITH: Thank you.

19 MS. POLLMAN ROGERS: I concur with  
20 that. And I also wanted to note one other thing  
21 and I had it in my notes and forgot to footnote it.  
22 That's what I get for making notes, I guess.

23 I did neglect to mention that we did, in fact,  
24 file a Supplemental Petition on behalf of  
25 RC Communications. It was drawn to our attention

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1 after we filed our original Petition that shortly  
 2 after that RC did upgrade their switch in the  
 3 Summit exchange and have taken steps to implement  
 4 LNP.  
 5 But, again, I think that this is an example of  
 6 maybe Rolayne's point that, you know, maybe the  
 7 issue that we want to try to limit here is the  
 8 timing issue.  
 9 Obviously, RC still has the transiting issue  
 10 because they don't have any intramodal requests.  
 11 They're the only carrier in Summit. So there isn't  
 12 any other landline carrier -- or wireline carrier.  
 13 So we're not dealing with intramodal in that case.  
 14 But in our supplemental Petition they're requesting  
 15 the Commission to extend their obligation -- or to  
 16 extend the suspension with regard to intermodal  
 17 because it's not just the switch upgrade but there  
 18 are other issues out there that are unresolved.  
 19 And in their situation they've asked the Commission  
 20 to extend that for 120 days just because, you know,  
 21 they have taken some steps.  
 22 So I think we just need -- I think that we  
 23 need to have a specific handle on what the issues  
 24 are in this case, and that was the reason we  
 25 brought the Motion to Limit it. To the extent that

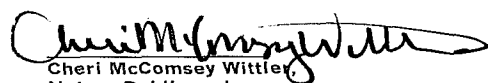
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1 we need to amend our Motion to provide some  
 2 additional factual determinations in the case of  
 3 ITC, then we would like the opportunity to do so.  
 4 Thank you.  
 5 CHAIRMAN HANSON: Thank you. Are  
 6 there any further questions by the Commission? Is  
 7 there anyone who is compelled to provide us any new  
 8 information?  
 9 If not, I will move the Commission take a  
 10 10-minute executive session.  
 11 VICE CHAIRMAN SAHR: Second.  
 12 COMMISSIONER JOHNSON: I concur.  
 13 (A short recess is taken at which time the  
 14 Commission meets in executive session)  
 15 CHAIRMAN HANSON: The Commission  
 16 will come back to order. We have a Motion. I move  
 17 that the Commission grant Petitioner's Motion to  
 18 Limit the Scope of Issues to the issues raised by  
 19 the Joint Petition. Namely, whether the existing  
 20 suspensions should be extended based upon the  
 21 pendency of the FCC's proceeding in CC Docket  
 22 No. 95-116, and, if so, what the length of the new  
 23 suspension should be.  
 24 VICE CHAIRMAN SAHR: Second.  
 25 COMMISSIONER JOHNSON: I concur.

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1 CHAIRMAN HANSON: Thank you. That  
 2 ends the hearing on TC05-137.  
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1 STATE OF SOUTH DAKOTA )  
 2 :SS CERTIFICATE  
 3 COUNTY OF HUGHES )  
 4  
 5 I, CHERI MCCOMSEY WITTLER, a Registered  
 6 Professional Reporter and Notary Public in and for the  
 7 State of South Dakota:  
 8 DO HEREBY CERTIFY that as the duly-appointed  
 9 shorthand reporter, I took in shorthand the proceedings  
 10 had in the above-entitled matter on the 1st day of  
 11 November 2005, and that the attached is a true and  
 12 correct transcription of the proceedings so taken.  
 13 Dated at Pierre, South Dakota this 7th day  
 14 of November 2005.  
 15  
 16  
 17   
 18 Cheri McComsey Wittler,  
 19 Notary Public and  
 20 Registered Professional Reporter  
 21  
 22  
 23  
 24  
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