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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT FILED
BY PRAIRIEWAVE TELECOMMUNICATIONS, INC. CT05-007
AGAINST AT&T COMMUNICATIONS OF THE
MIDWEST, INC., REGARDING ACCESS CHARGES

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Transcript of Proceedings
August 9, 2006

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COMMISSION STAFF

John Smith
Sara Greff
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ORIGINAL

APPEARANCES

WILLIAM P. HEASTON,
General Counsel, PrairieWave Telecommunications,
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appearing on behalf of PrairieWave Telecommunications;

REBECCA B. DECOOK,
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appearing on behalf of AT&T Communications of the
Midwest, Inc.

Reported by Carla A. Bachand, RMR, CRR

1 WEDNESDAY, AUGUST 9, 2006

2 MR. SMITH: We are all in here and we do have Carla
3 here as a reporter so we have a record of what we do.

4 MR. HEASTON: All right.

5 MR. SMITH: And that will be good because we have so
6 many things going on I can't remember what we do half the time.
7 Yesterday we had some public discussion. It was stated by
8 somebody, it might have been you, Bill, or Bill Van Camp that
9 we hadn't scheduled a hearing for this. We in fact had, and
10 Heather, do you want to give the details on what we had done?

11 MS. FORNEY: I have October 11, 12 and 13th blocked on
12 our calendar and I have all three commissioners on board for
13 those dates, so we are good to go from our perspective on a
14 hearing in October.

15 MR. SMITH: And Becky, you said yesterday you had
16 concerns about the adequacy of -- and that would be
17 approximately a 60-day, slightly longer time frame.

18 MS. DeCOOK: Right.

19 MR. SMITH: You had expressed some concerns about
20 whether that was an adequate time frame for whatever discovery
21 you feel you need to do. You know, in taking to heart Bill's
22 very politely expressed admonitions involving timing and how
23 long we have been dragging this on, and I think he's got some
24 points there, I guess let's discuss that discovery schedule,
25 but I'd like to discuss it in the context that I do think we

1 are at the point where, to the extent we can, we should
2 expedite this thing and move it along. I think it's only fair
3 to everyone, including us, just to get the commission -- at
4 some point we gotta get these things off our plate.

5 MS. DeCOOK: I don't have a problem with expediting,
6 but I don't see how 60 days is going to be possible. Setting
7 aside discovery, which we -- we have sent out discovery but
8 received virtually nothing relevant in exchange. I don't see
9 how we can do the rest, reply and rebuttal testimony in 60
10 days.

11 MR. SMITH: Are we going to do -- do we want to do
12 prefiled in this case?

13 MS. DeCOOK: Yes, we do.

14 MR. SMITH: We do?

15 MS. GREFF: We haven't discussed anything about --

16 MR. SMITH: We haven't discussed that.

17 MS. DeCOOK: That would be my client's preference.

18 MR. SMITH: You want to do prefiled? Does the staff
19 want to?

20 MS. GREFF: I don't think staff will have any
21 prefiled, but we don't care if the other parties want to do
22 prefiled.

23 MR. HEASTON: I don't mind doing prefiled, it
24 certainly makes things go faster at the hearing.

25 MR. SMITH: I know there are principles at stake here,

1 but it is a mathematical case in the end, right?

2 MR. HEASTON: It is a mathematical case and my
3 assumption is that insofar as the reasonableness of the rate,
4 that's going to be AT&T's burden to carry. I think we are in
5 somewhat -- we are not dealing with a Minnesota statute here,
6 we are dealing with a South Dakota statute that puts the burden
7 on the challenge, the reasonableness of the rate. Since that's
8 the counterclaim, AT&T has conceded they owe us money. They
9 did that yesterday in the hearing.

10 MS. DeCOOK: There's not going to be a dispute over
11 what we indicated we were going to pay you. You should receive
12 that on the 14th.

13 MR. HEASTON: All right, so the only deal is the
14 increment and whether or not the rates we are charging right
15 now are fair and reasonable.

16 MS. DeCOOK: Correct.

17 MR. HEASTON: So that would be, then, I would
18 assume -- assuming we can sign a protective order or a
19 protective agreement, I don't know that we have one in this
20 case yet, I could get the cost study to you tomorrow.

21 MS. DeCOOK: That's all well and good, but there were
22 one, two, three, four, five, six, seven, eight, nine other
23 discovery responses that you refused to respond to, plus just
24 on cost information, and there's three others that you refused
25 to respond to. So --

1 MR. HEASTON: I'll review those, but I'll give what I
2 can to you as quickly as I can. And I hope by the end of the
3 week.

4 MR. SMITH: Have you guys signed a confidentiality
5 agreement?

6 MR. HEASTON: There is an agreement in the case, I
7 don't know if anybody from PrairieWave has signed it and I
8 don't know if we have signed it.

9 MS. GREFF: Staff hasn't signed one.

10 MS. DeCOOK: I don't know the actual attachment,
11 Exhibit 8, if it has been signed.

12 MR. SMITH: All you have to do to obtain
13 confidentiality here is to just follow our confidentiality
14 rules and we are bound by -- we are legally bound.

15 MS. DeCOOK: And let me go back to the scheduling of
16 this because it is correct that we have the burden and I
17 appreciate that there are some dollars at risk, but all we are
18 talking about is the increment here. The lion's share of what
19 was in dispute is going to be paid, so that seems to me to take
20 a fair amount of the urgency out of the case. But aside from
21 that, we have the burden and, therefore, we should be able to
22 at least conduct discovery that we feel we need to conduct and
23 do the investigation we need to do to make our case and then
24 have the opportunity to present our case in an ordinary, usual
25 fashion and not in a rush to get everything filed.

1 MR. HEASTON: I think 60 days is an ordinary,
2 reasonable fashion.

3 MS. DeCOOK: It is not in South Dakota or in any state
4 where I've ever practiced.

5 MR. HEASTON: Well, I --

6 MS. DeCOOK: Come on, Bill, you know that.

7 MR. HEASTON: I think it is in this case. You have
8 rules that have been around for a long time.

9 MS. DeCOOK: I don't care about the rules. I
10 appreciate there are rules, but this is a factual case and a
11 policy case and I'm not going to say that just because there
12 are rules, that that means you can expedite the proceeding.

13 MR. HEASTON: What do you mean, you don't care about
14 the rules? For crying out loud, that's what this whole case is
15 about.

16 MS. DeCOOK: I do care about the rules, they are
17 relevant to the case, but just because there are rules in place
18 doesn't mean that serves as a basis for expediting the process.

19 MR. HEASTON: But it serves as a basis for --

20 MS. DeCOOK: That makes no sense whatsoever.

21 MR. HEASTON: It serves as a basis to determine what
22 is reasonable, and this is not a policy case, this is not a
23 case where we are going to challenge the policy and the rules,
24 this is a case strictly on the facts and whether we followed
25 the rules.

1 MS. DeCOOK: Well, it will be a policy case if what
2 you are doing is what you did in Minnesota, because the
3 question will be is that an appropriate cost methodology for
4 South Dakota.

5 MR. HEASTON: No, the rules have been in place since
6 1993. Those are the rules, Becky, you are not going to change
7 these rules. You are not going to create new rules.

8 MS. DeCOOK: I'm not suggesting that, but you are
9 applying the rules to your cost study, you have never done that
10 before. This is the first time. So this is a novel
11 proceeding. We have a right to challenge the way in which you
12 have applied the rules in your cost study. What I'm saying is
13 that if you applied them and did a cost study similar to the
14 one that you did in Minnesota, then that calls into question
15 some policy issues as to whether that's the appropriate way to
16 implement the rules.

17 MS. GREFF: What I suggest is if the October -- what
18 we have set right now, if October 11th through the 13th is not
19 going to be good, how about we go out another month in November
20 and look at the available dates that the commission has for a
21 hearing and let's get the hearing set and then work back from
22 there with discovery.

23 MR. SMITH: Can I ask you one preparatory question to
24 that before we get there? We are talking about one cent here;
25 is that right, Becky and Bill?

1 MS. DeCOOK: Yes. But from my client's perspective,
2 it's the process that was employed.

3 MR. SMITH: I know that, but I mean what I'm trying to
4 get at here is one cent, and as I understand it, I'm trying to
5 get a magnitude here of the -- you are saying you are going to
6 escrow the disputed amount.

7 MS. DeCOOK: Correct.

8 MR. SMITH: And is there a dispute right now
9 concerning present value maintenance, interest, in other words?

10 MR. HEASTON: There's a late payment fee that we are
11 collecting on this. I think if you want a policy issue, the
12 policy issue is AT&T's decision not to pay us all those months
13 and what the commission is going to do to sanction AT&T for
14 failing to follow the rules.

15 MR. SMITH: What I'm trying to get at, Bill, is if
16 AT&T is going to pay you everything up until what is the date
17 again now, December 15th?

18 MR. HEASTON: December 15th.

19 MR. SMITH: They are going to pay you 85 percent of
20 the difference, what I'm trying to get is a handle on the
21 magnitude of the dollars that are then on the table, just to
22 know whether this is a huge deal from a cash standpoint for
23 PrairieWave or whether it isn't, so we know whether an extra
24 month or so is a killer of an issue.

25 MR. HEASTON: Assuming the check comes on August 14th,

1 as promised, and we have had promises in the past, and there is
2 not going -- then the cash value is substantially reduced, the
3 amount of money we are out.

4 MR. SMITH: Any thoughts on that, Becky?

5 MS. DeCOOK: I agree with that.

6 MR. SMITH: If that payment is made, and we may rely
7 on your representations, AT&T, may we not?

8 MS. DeCOOK: You may, and we intend to provide you
9 evidence of payment as soon as we get the wire transfer.

10 MR. SMITH: I guess what I say, then, is let's look,
11 Heather, if we could, at some dates out a ways. Becky, you
12 have stated you believe 60 days isn't enough. What do you
13 believe is a reasonable time frame for AT&T to prepare,
14 conclude its discovery and prepare its testimony?

15 MS. DeCOOK: I think we like 60 days for discovery,
16 because I think we are going to have some follow-up discovery.
17 We would at least like to reserve the right in the event that
18 the answers we get from PrairieWave generate additional
19 questions, which they did in the Minnesota case.

20 MR. SMITH: Is there discovery, are there discovery
21 requests that you intend to make now that are different than
22 the ones that you have already served? Or have you already
23 served them and it's just a question of PrairieWave not --

24 MS. DeCOOK: We have already served our initial set of
25 requests.

1 MR. SMITH: If PrairieWave is to -- if PrairieWave
2 expeditiously responds to that first and does so relatively
3 fully, does that change that equation at all?

4 MS. DeCOOK: Well, it depends on whether those
5 responses generate additional discovery questions.

6 MR. SMITH: I guess what I'm getting at is the 60
7 days, assuming we got one -- that you have an initial 30-day
8 waiting period for like a first round and then we gotta sit
9 around and wait 30 days and then you do some analysis and then
10 do a second round?

11 MS. DeCOOK: No, 60 days assumes that they respond
12 expeditiously. We have a period of time to analyze what they
13 have produced, we have opportunity to file motions, if we need
14 to, or additional discovery requests, if we need to.

15 MR. SMITH: What do you have, Heather, over there?

16 MS. FORNEY: Well, I've got the 1st, 2nd and 3rd of
17 November.

18 MS. DeCOOK: I can't do it then.

19 MS. FORNEY: 6th, 7th and 8th?

20 MS. DeCOOK: I have an event on the 4th, 5th, 6th and
21 7th that I can't get out of, and then I have, just FYI, a
22 hearing in Minnesota November 14th through the 16th. That's a
23 fairly critical hearing that's going to require a lot of energy
24 on my part unless it settles the week before that. So that's
25 my -- the first part of November is tough for me.

1 MS. FORNEY: Then we are looking at December.

2 MR. SMITH: We are looking at --

3 MS. DeCOOK: December is wide open.

4 MR. SMITH: What days are in December?

5 MS. FORNEY: Well, are we talking three full days, two
6 and a half days, what --

7 MS. DeCOOK: I think two days tops, don't you, Bill?

8 MR. HEASTON: I think two days would do it also.

9 MR. SMITH: That's good.

10 MS. FORNEY: I can maybe try the 7th and 8th of
11 December or the 11th and 12th.

12 MR. HEASTON: Have you heard anything if they are
13 going to do that telecom CLE this year?

14 MS. DeCOOK: That's right, I'm doing it. Just a
15 second, let me pull up my file and see exactly what date it is.

16 MR. HEASTON: That's the only thing that I have in
17 December that I really want to go to because that gets me
18 almost 15 hours of CLE, which is my requirement in Colorado and
19 Minnesota every year.

20 MR. SMITH: Do they have it in a place where you can
21 play golf in December?

22 MR. HEASTON: No, but they have it in a place where I
23 can get up on the mountain and ski a couple days later.

24 MS. DeCOOK: It's the 7th and the 8th.

25 MS. GREFF: What about the 11th and 12th?

1 MS. DeCOOK: 11th and 12th are fine.

2 MR. HEASTON: I'm going to be skiing on the 9th and
3 10th.

4 MS. FORNEY: 12th and 13th?

5 MR. SMITH: Did you hear that?

6 MR. HEASTON: I heard it, it means I come out to
7 Pierre on the 11th, all right.

8 MR. SMITH: When are you skiing, Bill?

9 MR. HEASTON: I would do it the 9th and 10th of
10 December, but the 12th and 13th.

11 MR. SMITH: Have we reached agreement on the 12th and
12 13th?

13 MS. DeCOOK: Sounds good.

14 MS. FORNEY: I'm going to give you my usual disclosure
15 and disclaimer that I can't guarantee those dates for sure
16 because I still need to double check with the commissioners,
17 that what I have on my calendar is not necessarily what they
18 have on their personal schedules, and so I'll pencil in for the
19 12th and 13th and then I'll get back to you and let you know
20 for sure once I hear back from them.

21 MR. HEASTON: John, if our cost studies were reviewed
22 extensively by Harlan and Greg, it's my expectation that they
23 will be testifying.

24 MR. SMITH: They are both sitting here right now and I
25 don't know -- you know, obviously you have the right, if you

1 want to, Bill, to subpoena them.

2 MR. HEASTON: If the staff is not going to
3 participate, then I am going to be required to subpoena them.

4 MS. GREFF: Staff is participating, but I don't know
5 how much we will have to add.

6 MR. HEASTON: Well, you know, you did an extensive
7 review, the staff did, and approved and sent those studies up
8 to the commission with their approval and, you know, that's how
9 the system works and there's got to be testimony in the record
10 on that, prefiled or otherwise.

11 MS. DeCOOK: Well, if there's testimony in the record,
12 it's going to have to come from you if they don't volunteer
13 to -- you can subpoena them, but --

14 MR. HEASTON: That's what I mean, that's why I raised
15 the question, they are going to become my witnesses.

16 MR. SMITH: Okay. Greg, did you want to say
17 something?

18 MR. RISLOV: This is Greg, Bill, Rebecca. I did not
19 participate with staff. I sat with the commission on this
20 docket.

21 MS. GREFF: But you approved it.

22 MR. RISLOV: No, the commissioners approved it.

23 MR. HEASTON: You reviewed it, didn't you, Greg?

24 MR. RISLOV: I did review it, but I was not a staff
25 member and I don't know if there's a distinction to be made.

1 MR. HEASTON: I understand, but I probably would want
2 to subpoena you and Harlan because you were the two, whether it
3 was for staff or for commission, it was based on your
4 recommendations that they approved the studies and the rates.

5 MR. SMITH: We will get there.

6 MS. DeCOOK: If that's the case, then we may want to
7 depose you in advance and do discovery on what your analysis
8 entails.

9 MR. SMITH: They are smiling.

10 MR. RISLOV: Let me check my calendar. I think I'll
11 be skiing in November and December.

12 MR. HEASTON: I'll be with you, Greg.

13 MR. SMITH: Let's start working backwards here. If we
14 have the hearing on the 12th and 13th, let's get -- you are
15 saying discovery you want to have done by around October when?
16 You guys, I hope you know this, frequently in cases that I've
17 seen here, discovery doesn't generally conclude before the
18 filing of testimony totally, because normally the filing of
19 testimony triggers additional discovery, just from what I've
20 seen. Or it can.

21 MS. DeCOOK: Will you actually impose a discovery
22 cutoff? There are some commissions that don't.

23 MR. SMITH: We do not as a rule. We do have cases
24 where we have. If somebody wants to request a discovery
25 cutoff, then we can include it in a procedural schedule.

1 Ordinarily we don't do that because of the fact that from what
2 we have seen anyway, that so often testimony triggers, prefiled
3 testimony triggers the need for additional discovery so often,
4 and then we end up just back in front of the commission redoing
5 procedural schedules and fiddling around.

6 MS. GREFF: In the same breath, though, you don't file
7 discovery -- you don't do discovery requests two weeks before
8 the hearing or anything like that either.

9 MR. SMITH: Not usually, no. Not unless there is
10 something that happens. Ordinarily I think, Rebecca, we rely
11 upon attorneys' good faith compliance with the discovery rules,
12 and if there's a problem, then you gotta be aggressive and get
13 in here and seek relief. The commission very frequently issues
14 orders to compel, protective orders, that's not uncommon at
15 all. But it is important for attorneys to get in here and not
16 sit on things, you know. If you are not getting cooperation in
17 discovery, we need to know that and we need to issue
18 appropriate orders and resolve issues.

19 MS. DeCOOK: Right.

20 MR. SMITH: So we don't sit there and delay things.
21 Well, why don't we -- the only reason I'm asking about
22 discovery, the first event, then, unless we are going to
23 schedule discovery, if you need expedited dates, I don't know,
24 if we don't need that, because the normal 30-day dates, maybe
25 you want shorter periods if you guys have already been

1 analyzing this and have been at this for a while. You have
2 already been through the same damn case in Minnesota.

3 MS. DeCOOK: I'm not sure, basically I haven't seen
4 the cost study, that it's going to be the same case.

5 MR. HEASTON: It's not going to be.

6 MS. DeCOOK: Until we see the cost study and based on
7 what Bill said yesterday, the cost study may look entirely
8 different --

9 MR. HEASTON: It does.

10 MS. DeCOOK: -- because of the South Dakota rules, so
11 I'm operating under the assumption that the cost study we are
12 going to see is different.

13 MR. SMITH: Okay, then, when do you want to have --
14 here is the bottom line. What's the date we want to have for
15 filing of direct testimony?

16 MS. DeCOOK: If we work back from the hearing date and
17 have three rounds, if we assumed a 30-day, that would put us
18 back into August, wouldn't it? Or maybe September.

19 MR. HEASTON: Well, we are in August right now.

20 MR. SMITH: This is August.

21 MS. DeCOOK: Right, I understand that, but if I'm
22 working backwards, that would put direct testimony due in
23 August, which I don't think is feasible.

24 MR. SMITH: No, we are not going to do that. I was
25 looking along the lines of something like October 1st for

1 direct, with rebuttal to be filed, say, three weeks later. Or
2 responsive testimony and with rebuttals filed a week after
3 that. And I'm assuming each of you guys have a direct -- you
4 are both complainants. Do you believe that you should file
5 your direct on both the complaint and the counterclaim
6 simultaneously? Hello.

7 MR. HEASTON: I'm thinking.

8 MS. DeCOOK: Me, too. It seems like it makes sense.

9 MR. HEASTON: We can both file direct on the 1st of
10 October and rebuttal on the 1st of November; is that what you
11 are saying?

12 MR. SMITH: Yep.

13 MS. DeCOOK: That's assuming we get expedited
14 responses to our discovery, I think that would work. Although
15 October 1st is a Sunday.

16 MR. SMITH: Maybe we don't want to have it, maybe we
17 will have it be the 2nd. Is that better? We could even do it
18 the following Friday, if you want to do that, and then we
19 will -- I don't think you are going to need more than three
20 weeks, for goodness sakes.

21 MR. HEASTON: I'm going to have it in quickly.

22 MR. SMITH: What's that?

23 MR. HEASTON: I don't know, with the hearing date not
24 until December, mid December, it's kind of -- you know, we
25 don't need to break our neck here now. To me I would go with

1 the 2 October for direct and 1 November for rebuttal.

2 MS. GREFF: What about depositions?

3 MR. HEASTON: That's discovery, you can set those up
4 whenever.

5 MR. SMITH: Right now we are talking -- any thoughts
6 on October 2nd for direct by both parties?

7 MS. GREFF: That's fine.

8 MR. SMITH: Is that doable for AT&T?

9 MS. DeCOOK: It is.

10 MR. SMITH: Okay, and we want the first responsive
11 testimony on November 1st. That's not a Sunday or whatever, is
12 it?

13 MS. DeCOOK: That's a Wednesday.

14 MR. SMITH: And rebuttal.

15 MR. HEASTON: That's rebuttal.

16 MR. SMITH: Yeah, reply, pardon me.

17 MR. HEASTON: Why do we need a third round of
18 prefiled?

19 MR. SMITH: Doesn't the proponent usually want to have
20 the last shot? Maybe you don't want that. It's up to you. We
21 couldn't hear you, Becky.

22 MS. DeCOOK: I think we would. I think that's pretty
23 typical.

24 MR. SMITH: It is pretty typical, Bill, from what I've
25 seen. Theoretically, this case is kind of odd because both of

1 your directs may serve the purpose that normally we get on
2 rebuttal, which is telling us what the other side's view of the
3 case is. Otherwise you usually don't even know what that is
4 until you get your rebuttal testimony, and that gives you --

5 MR. HEASTON: Third round in by the 17th of November.

6 MR. SMITH: Sounds like a plan.

7 MS. DeCOOK: Can I ask for a slight change in that
8 since I will be in hearing the 14th through the 16th?

9 MR. SMITH: What would you suggest?

10 MS. DeCOOK: I would like the 20th, if possible.

11 MR. SMITH: I don't see that as a problem. Bill, is
12 that okay?

13 MR. HEASTON: That's fine.

14 MR. SMITH: November 20th. Do you guys want to
15 preschedule a motions hearing? What do we have for commission
16 meetings along in November?

17 MS. FORNEY: Along about November our first commission
18 meeting is the 14th, which might go away. October 31st,
19 November 28th or December 6th.

20 MR. SMITH: We have got a lot of commission meetings
21 in there. I'm going to say right now we have not a clue as to
22 whether there will even be any motions. We have already had
23 the dispositive motions made. But I don't know this, but why
24 don't we leave it up to the parties as we go along. If you
25 believe that at some point that discovery has produced a

1 situation where, you know, a new motion for summary judgment is
2 appropriate, why don't you just make it and we'll schedule it
3 for an appropriate commission meeting.

4 MS. DeCOOK: Okay.

5 MR. SMITH: Or whatever your motions are, whether you
6 got a motion in limine or whatever you want to do. But we will
7 handle those. It appears as though we have got enough
8 commission meetings and we can schedule something if and when
9 the parties feel they need to or want to.

10 MS. DeCOOK: Do you need to preserve a calendar date
11 for that?

12 MR. SMITH: Do you want to? Heather, could we do
13 that? Do you want to do that?

14 MS. GREFF: Yes.

15 MR. SMITH: What do we have in October?

16 MS. FORNEY: We have got a November 28th.

17 MS. GREFF: November 28 or December 6.

18 MR. SMITH: How about November 28th? By then you will
19 have eight days to look at the final round of prefiled and
20 at --

21 MS. GREFF: Discovery should be almost done.

22 MR. HEASTON: That's fine.

23 MR. SMITH: November 28th. Okay, and do we need any
24 other dates at this point in time? Do you need anything in
25 there on -- do we need to say anything in the order regarding

1 discovery or can you guys proceed in accordance with the rules
2 and hopefully that will work itself out?

3 MS. DeCOOK: I'm fine with that.

4 MR. SMITH: Bill, are you okay with that?

5 MR. HEASTON: Yep.

6 MR. SMITH: If you need relief, come in promptly so
7 that we can get it over with and not delay.

8 MS. DeCOOK: Okay.

9 MR. SMITH: Anything else that you guys feel we need
10 on this?

11 MR. HEASTON: Are you going to put out a little
12 scheduling order?

13 MR. SMITH: It will come out as soon as we can get it
14 done here. I've got to leave, I have to work in Sioux Falls
15 tomorrow and Friday, so it may be next week.

16 MR. HEASTON: That's fine.

17 MR. SMITH: One last thing I'm going to bring up here.
18 This is now we are one cent apart, right? Do you know where
19 I'm going? And we are -- when is your next filing due, Bill?

20 MR. HEASTON: My next filing would be due next summer.

21 MR. SMITH: Next summer. I mean, I'm just going to
22 throw out, is there enough at stake here to where you guys are
23 talking about settling that last cent?

24 MR. HEASTON: I'm not coming down.

25 MR. SMITH: I guess that answers that. And that we

1 could take up the, quote, principal issues and philosophy and
2 policy issues on a prospective basis in the next cost study
3 hearing.

4 MR. HEASTON: You know, that was my point yesterday,
5 but obviously the commission didn't care.

6 MR. SMITH: They did care, Bill, I think.

7 MR. HEASTON: Not enough. Anyway, that's --

8 MR. SMITH: Facetiously --

9 MR. HEASTON: You know, PrairieWave in good faith
10 spent a lot of money doing those cost studies and getting them
11 filed and getting in South Dakota and everybody else is paying
12 that rate and for me to compromise it now and have to deal with
13 50 other companies makes no sense to me.

14 MR. SMITH: Okay. All right, well, I guess that's
15 that. And that will be -- and AT&T, you guys aren't willing to
16 pay that extra cent until the next hearing?

17 MS. DeCOOK: You know, I'm just their lawyer. I can't
18 say what's on their mind right now.

19 MR. SMITH: Why don't you ask them. Otherwise we will
20 get the order out and hopefully we can look for it being out,
21 we should be able to get it out.

22 MS. DeCOOK: Just so you know, I have raised the
23 question, but I have gotten no response and I think they wanted
24 to get past the motions and find out what happened there.

25 MR. SMITH: Okay. Well, thanks a lot, and again, it's

1 our job to hear cases and resolve them. It just hits me if we
2 are talking philosophy and all that and we have a cost study
3 hearing coming up shortly, that maybe it wouldn't be all that
4 stupid to deal with it in that context, but especially if
5 there's not a lot of money at stake. You guys have a right to
6 be in front of the commission, so we will hear the case if you
7 want it to go that way.

8 MS. DeCOOK: Okay.

9 MR. SMITH: Okay, everybody, thank you very much and
10 we'll hopefully have an order out, what's that -- oh, yeah.
11 AT&T, you are a party, too, right? Or you are a participant in
12 the intercarrier comp rule making or policy review that we are
13 undergoing.

14 MS. DeCOOK: I believe that's the case. I'm not
15 involved in it, but I believe that to be the case.

16 MR. HEASTON: It was at AT&T's insistence when you
17 wouldn't let them intervene in the '04 docket that you opened
18 up the rule making.

19 MS. DeCOOK: I can't speak to that.

20 MR. HEASTON: You don't know that, Becky, but Bill Van
21 Camp knows that because he was at that hearing.

22 MS. DeCOOK: But he's not there in the room.

23 MR. HEASTON: That's my understanding, is why we have
24 got that rule making docket open principally is because when
25 AT&T was not allowed to intervene in the '04 cost studies with

1 all the other companies, the commission opened up a docket to
2 look at the rules.

3 MR. SMITH: Okay, well, again, to me this looks like a
4 case where some thought ought to be given to settling it and we
5 will move on and deal with it in the future, but that's up to
6 you. We will try to have the order out by next week, early
7 next week, maybe even today it might be possible.

8 MS. DeCOOK: Great. Thank you.

9 MR. SMITH: Thank you guys.

10 MR. HEASTON: Bye.

11 (Whereupon, the proceedings were concluded at 10:37
12 a.m.)

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C E R T I F I C A T E

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STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this transcript represents a true and accurate transcription of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 16th day of August 2006.

Carla A. Bachand

Carla A. Bachand, RMR, CRR
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2012.