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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT
FILED BY JACK AND CINDY BRUNSON,
EDGEMONT, SOUTH DAKOTA, AGAINST
GOLDEN WEST TELECOMMUNICATIONS
COOPERATIVE REGARDING TELECOMMUNICATIONS
SERVICES

CT07-006

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Transcript of Proceedings
May 3, 2011

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
STEVE KOLBECK, CHAIRMAN
GARY HANSON, VICE CHAIRMAN
CHRIS NELSON, COMMISSIONER

COMMISSION STAFF

John Smith
Karen Cremer
Greg Rislov
Deb Gregg
Bobbi Bourk
Demaris Axthelm

APPEARANCES

MARGO NORTHRUP, Golden West

Reported By Cheri McComsey Wittler, RPR, CRR

1 TRANSCRIPT OF PROCEEDINGS, held in the
2 above-entitled matter, at the South Dakota State Capitol
3 Building, 500 East Capitol Avenue, Room 413, Pierre,
4 South Dakota, on the 3rd day of May 2011, commencing at
5 1:33 p.m.

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1 CHAIRMAN KOLBECK: It is May 3 at approximately
2 1:30 in the afternoon. My name is Steve Kolbeck. We're
3 here in the State Capitol Building, Room 413 of the State
4 Capitol Building. I'm joined here today with
5 Commissioners Chris Nelson and Gary Hanson.

6 The reason for this hearing is to discuss the
7 matter of the Complaint filed by Jack and Cindy Brunson
8 of Edgemont, South Dakota against Golden West
9 Telecommunications Cooperative regarding
10 telecommunications service.

11 The question before us is a dismissal. What
12 we'll do is we'll go to the movant, which would be Golden
13 West and, first of all, we'll start out with
14 Ms. Northrup. She can give us her side, and then we'll
15 move to Jack and Cindy Brunson. They can give us their
16 side.

17 Let me just check one more time in case someone
18 was late. Is there anybody joining us on the phone line
19 today?

20 I do not hear anybody responding. If you have
21 your phone on mute or anybody is there, we cannot hear
22 you. Just in case. But I think we'll proceed forward,
23 Ms. Northrup.

24 MS. NORTHRUP: Thank you. Good afternoon.
25 Margo Northrup on behalf of Golden West. I'm an attorney

1 here in Pierre.

2 And the reason that we're here today is we filed
3 a Motion for Summary Judgment or in the alternative a
4 Motion to Dismiss. And just kind of as background, this
5 Complaint has been pending before the Commission since
6 2007. But that's not beginning of this Complaint. This
7 issue has started for Golden West back in 2006. And it
8 started when Golden West determined that they were going
9 to upgrade in this particular area to fiber.

10 We had contacts early on with Jack and
11 Cindy Brunson --

12 COMMISSIONER KOLBECK: That's okay. I think
13 someone's going to bring doughnuts to work tomorrow.
14 That is the policy at the PUC. If your phone does ring
15 in a meeting, you owe doughnuts. So I think Mr. Rislov
16 will make us all pretty happy tomorrow morning.

17 MS. NORTHRUP: Thank you. Yes.

18 As I was saying, this started in 2006 for
19 Golden West when they were working with their engineering
20 company to facilitate this upgrade, and contact was made
21 with the Brunsons to try to secure an easement not only
22 to their property but to some property that's adjacent to
23 theirs which is called the Igloo Subdivision.

24 Initially the easements that Golden West were
25 trying to obtain were not just to the Brunson property

1 but beyond the Brunson property. We continued those
2 negotiations. We weren't able to get a resolution, and
3 so actually we've had to change some of our routes and
4 things that we were going to do as a result of this.

5 In December of 2007 is when this Complaint was
6 filed. And generally what the Complaint is is that
7 Golden West has refused to provide service to their
8 hunting lodge, which is an old school house that's
9 located on their property.

10 After the Complaint was filed throughout 2008
11 and actually the first part of 2009 Golden West was
12 engaged in settlement negotiations with Pat Ginsbach, who
13 is an attorney that represented the Brunsons, to the
14 point where we actually thought we had a resolution in
15 this matter.

16 In March of 2009 you'll show in the record that
17 Mr. Ginsbach had withdrawn from the case and so that left
18 us to the point where we weren't in resolution and we
19 were trying to negotiate with the help of Staff and also
20 with the Brunsons directly.

21 We weren't able to come up with a resolution.
22 And that's when we decided in 2009 in April to go ahead
23 and file our Motion for Summary Judgment and our Motion
24 to Dismiss. And it's based on a couple of different
25 legal theories.

1 But I think, you know, primarily one of the
2 reasons that we think we're entitled to a Motion to
3 Dismiss is failure to prosecute. This is one of those
4 cases that's been pending with very little activity.
5 Golden West has tried to engage and initiate settlement
6 negotiations with very limited response.

7 I think you can tell from the record that the
8 Brunsons have put forward a lot of excuses such as them
9 calving, haying, the time of the year that we weren't
10 able to get this resolved or get this scheduled. And so
11 we weren't able to put this forward.

12 And really, I mean, since the year before we
13 filed this Motion for Summary Judgment there was very,
14 very limited things that happened. And since we filed it
15 in the last year that's still been the case. We have
16 sent a couple of letters. I think the Commission has
17 received a couple of letters. And we've filed some
18 informal discovery with Staff to try to help us resolve
19 this matter. And we actually did file that with the
20 Supplemental Affidavit that was filed last week.

21 And I did note that that was confidential. And
22 I just wanted to say that was because it has some
23 personal information about the Brunsons that I didn't
24 feel should be shared. So if we have to get into some of
25 those facts, that's why we marked it as confidential.

1 So I think primarily it can be dismissed because
2 of the lack of prosecution. And I think that even
3 stronger evidence is that Jack and Cindy Brunson are not
4 present at this hearing today. They have had an
5 opportunity over a year to respond to Motion for Summary
6 Judgment, and that hasn't occurred.

7 What the summary judgment standard is in
8 South Dakota is you are able to look at all of the
9 Pleadings, the Interrogatories, the Affidavits that are
10 on file and determine if there's any material issues of
11 fact that need to go forward for a hearing.

12 Well, what the summary judgment standard also
13 says and what the case law supports is that as the
14 nonmoving party, Jack and Cindy Brunson, you have an
15 affirmative duty to point out individual facts that are
16 in dispute. And that can't be just reliance on the
17 Pleadings. So it can't be just the letters and the
18 initial Complaint. They need to come forward and
19 affirmatively file facts in opposition to the facts that
20 were filed by Golden West. And that hasn't been done.

21 It hasn't been done in writing, which is what
22 it's required to be. Usually it's done by affidavits.
23 And also they had the opportunity to be here today, and
24 they weren't here. And so that's another reason that you
25 can grant summary judgment.

1 In that case if they don't point out facts that
2 are in dispute, then our facts are submitted and can be
3 taken as true to support our legal theories.

4 So, I mean, I think just based on those two
5 reasons you can grant the Motion to Dismiss and/or the
6 Motion for Summary Judgment.

7 But I am going to talk a little bit about some
8 of the legal theories that we've put forward. The way
9 that I look at this issue is whether or not the
10 Commission has authority to order Golden West to serve
11 the Brunsons without an easement. And really, you know,
12 if you look through the Pleadings and what the facts show
13 that have been undisputed by the Brunsons is that it's
14 the policy of Golden West to require an easement.

15 They required an easement for all of the other
16 people in this area. The easement that they provided to
17 the Brunsons, although initially was looking at Igloo, as
18 soon as we knew that was going to be a problem we
19 tailored it back. It was just to the hunting lodge.
20 That easement is the easement that's been presented to
21 everyone and is a reasonable easement.

22 And some of the reasons that we don't think that
23 the Commission has authority is that it would be ordering
24 Golden West to commit trespass. It would be ordering
25 Golden West for inverse condemnation because we don't

1 have authority to be on the property.

2 And, you know, one of the rebuttals may be,
3 well, you can certainly have some sort of agreement that
4 you can be on the property, but those agreements don't
5 run with the land. And so what that means is that if we
6 had to go back and do a service later, we wouldn't be
7 able to do that because we don't have any authority. We
8 don't have any easements. So we are subjecting ourselves
9 to liability. And I cited some cases in South Dakota
10 that definitely support that theory.

11 I kind of just wanted to talk a little bit about
12 some of the questions that Mr. Smith had identified as
13 possible things that might come into this hearing. And
14 I'll just kind of go down the list just briefly, and if
15 anyone does have any questions, we can talk about those
16 as well.

17 But, you know, one of the things that
18 Mr. Smith -- or actually it was the Commission identified
19 in the Notice of Hearing is whether a LEC is obligated to
20 extend services to people requesting service in the
21 service area.

22 And I just want to remind everyone that this is
23 a business line. This is a hunting lodge. You can tell
24 from the record that they do have other service to their
25 home in this matter. And so it's not like this is the

1 only service that goes to their property.

2 One of the other issues that kind of comes up in
3 this situation is whether or not, you know, a
4 precondition can be imposed on a customer to receive
5 service from Golden West. And really the way that I -- I
6 mean, that I look at this is when you are requesting
7 service from a company or entering a contract with them,
8 I mean, certainly payment of your bill is a precondition
9 to service. And requesting an easement as a precondition
10 for service is certainly reasonable and is something that
11 has been done in many of the other customers.

12 One of the other issues that's come up in this
13 case is -- and you can tell from the record is an issue
14 between copper and fiber. And I think you can tell from
15 the record that this has been upgraded to fiber. The
16 Brunsons have requested that the copper be used that they
17 installed themselves to utilize or to complete their
18 phone service.

19 Well, that's not workable for Golden West
20 either because as Mr. Law, who is the general manager of
21 Golden West, indicated in his Supplemental Affidavit,
22 there are lots of liability reasons and issues that that
23 isn't workable. It's not a policy or procedure that they
24 have that allows a customer to use its own facilities.

25 Also you still have the trespass issue because

1 you certainly know that any time that anyone has a
2 problem with their phone service the first thing that
3 they're going to do is call Golden West and ask them to
4 come fix it. And without that easement in place they're
5 committing trespass by being on the property if they have
6 to, you know, dig the line or do some other things to get
7 it fixed.

8 And so this easement, it is an important part
9 of the service. It's the policy and procedure of Golden
10 West to have it in place, and it certainly is
11 reasonable.

12 We have negotiated with the Brunsons on many --
13 well, actually since 2006 on different easements,
14 different legal descriptions. According to the Affidavit
15 of Mr. Law, the final or the most recent easement that we
16 sent was in, I think, November of 2010. And that
17 easement, as you can show from the picture, is just
18 directly down the section line that it needs to be on and
19 straight to the hunting lodge. It's not requesting any
20 further easement beyond that point.

21 The other issue that kind of has been brought up
22 to this is the pedestal and whether or not Golden West
23 has allowed other customers to just hook up their own
24 line to the pedestal. And I think from the record you
25 can tell that that is not the case. That is not

1 something that's happened in the past.

2 And so all of these, you know, road blocks that
3 have been identified from the Brunsons in some of the
4 letters that they have, although I think they still
5 support our legal argument, we -- since they haven't been
6 brought to you in a format that meets the summary
7 judgment standard, they really don't have any bearing or
8 any merit in this proceeding because the Brunsons didn't
9 take the affirmative step to fight the summary judgment
10 or to present evidence or facts that would dispute the
11 facts that Golden West has put in place.

12 And so what we're asking is that you dismiss
13 this Complaint. It's been pending for a very long time.
14 I think, you know, just based on the lack of involvement
15 and the Brunsons not being here today, you can do that
16 under the summary judgment regime. But I also think that
17 you can do it on the legal arguments that we've put
18 forward in our Summary Judgment Brief. And I would
19 certainly stand by for any questions.

20 CHAIRMAN KOLBECK: Thank you, Ms. Northrup.

21 How about we check the phone line for Jack and
22 Cindy Brunson.

23 No one there. And we're positive that our phone
24 lines are open, and we checked and double-checked that?

25 MS. AXTHELM: Yes.

1 CHAIRMAN KOLBECK: Okay. Would Staff like to
2 comment?

3 MS. CREMER: Thank you. This is Karen Cremer of
4 Staff. Staff would recommend granting Golden West's
5 Motion for the following reasons. And they're very
6 similar to what Ms. Northrup has already stated so I
7 won't go through them in great detail.

8 But basically, you know, case law, the statutory
9 law is that summary judgment is designed to eliminate the
10 delay and expense of litigating an issue when there is no
11 real issue to be tried.

12 The facts of the Complaint when viewed most
13 favorably for the Brunsons do not justify a formal
14 hearing on the issues raised by the Brunsons. There is
15 no claim made by the Brunsons for which relief can be
16 granted.

17 Further, summary judgment is authorized if the
18 Pleadings, Answers to discovery, and Affidavits show
19 there is no genuine issue as to any material fact. Here
20 Golden West has shown through its Pleadings that the
21 Brunsons could not prevail under any circumstances.
22 Therefore, Golden West as the moving party is entitled to
23 summary judgment as a matter of law.

24 Staff recommends that the Commission grant
25 Golden West's Motion as no genuine issues of fact exist,

1 and the material facts demonstrate that Golden West is
2 entitled to judgment as a matter of law.

3 Thank you.

4 CHAIRMAN KOLBECK: All right. Thank you. And
5 one more time we'll just check for Jack and Cindy
6 Brunson.

7 Not on the phone.

8 Okay. We'll move to Commissioner questions.
9 You want to start, Commissioner Nelson?

10 COMMISSIONER NELSON: I have some questions
11 related to Mr. Law's Affidavit and Exhibit A. I don't
12 know if he wants to respond or, Ms. Northrup, if you want
13 to respond.

14 MS. NORTHRUP: I guess why don't you let me try
15 to attempt to do that, and if we need to have Mr. Law, he
16 is in the room and available to comment if we need him
17 to.

18 COMMISSIONER NELSON: Perfect. And particularly
19 on Exhibit A I think the final page is a map and there's
20 no title on the map but it looks like this one
21 (indicating).

22 Okay. The pedestal in question, where is it
23 located?

24 And Commissioner Hanson just reminded me that
25 this exhibit was marked confidential so I don't know if

1 there's anything on this particular map that would be.

2 MS. NORTHRUP: I don't believe that this map is
3 confidential. But the pedestal is not marked actually on
4 the map, but it would run from the hunting lodge, which
5 if you see is circled straight back to where that road
6 is. The --

7 COMMISSIONER NELSON: The pedestal is right next
8 to, adjacent to the road?

9 MS. NORTHRUP: Correct.

10 COMMISSIONER NELSON: Second question. We've
11 been talking about running fiber out here. How far does
12 the fiber run?

13 Does it currently run to that pedestal or not?

14 MS. NORTHRUP: Right now the fiber would not be
15 put into the Brunsons' property because we don't have an
16 easement. Because of not having the easement, we do have
17 to run copper I think it's between 6 and 8 miles back
18 to -- I guess I'm not sure what the proper term is, but
19 it's 6 to 8 miles extra that we have to keep in place
20 because we're not able to get an easement to upgrade to
21 the fiber on their existing property. Because you have
22 to remember this would be an additional line, but they do
23 have existing lines on the property.

24 COMMISSIONER NELSON: Where on this map does
25 their property begin? Is it literally all of Section 1?

1 MS. NORTHRUP: Yeah. I think it's a majority.
2 We don't have the actual end of where their property line
3 is, but it is a large majority of Section 1.

4 COMMISSIONER NELSON: Okay. So at this point
5 covering all of their property, its existing copper, do
6 you have an easement for that copper now?

7 MS. NORTHRUP: Yes. There would be easements,
8 and there is some public right of way that's in there.
9 So it's where we don't have the easement is just the
10 portion that goes over the Brunsons' property.

11 COMMISSIONER NELSON: Okay. Maybe I'm not
12 understanding. Do you have an easement currently to run
13 the copper to the pedestal in question?

14 MS. NORTHRUP: Yes.

15 MR. LAW: It is. There already is --

16 MS. NORTHRUP: Go ahead. That's fine. We'll
17 have Mr. Law -- it may be easier.

18 MR. LAW: Good afternoon, Commissioners. I'm
19 Denny Law. I'm the general manager and CEO of Golden
20 West Telecommunications.

21 In regards to the facility that's currently in
22 place -- I'll maybe try and take a few of your questions,
23 Commissioner.

24 In regards to the facility that is currently in
25 place and just to make sure -- now I'm going to hold my

1 map up and make sure we're all looking at the same map.
2 This is the same one that you're looking at?

3 COMMISSIONER NELSON: Yes.

4 MR. LAW: All right. On the map if you would
5 look at what I would term to be the north side, so to
6 speak, of that road, you'll see -- I think your copy is
7 probably black and white, but there is an arrow with
8 several rectangles in it. You'll see starting closest to
9 the railroad a highlight box that says LP-10 and then I'm
10 working my way actually to the right. So D3A. That
11 specific facility is copper facility that is in place
12 today.

13 COMMISSIONER NELSON: And you have an easement
14 for that?

15 MR. LAW: We have an easement for that. It
16 dates -- I don't have an exact date, Commissioner. I
17 would say in excess of 30 years.

18 COMMISSIONER NELSON: And so with that easement
19 you could, in fact, run fiber up to the pedestal in
20 question?

21 MR. LAW: No. Not from a construction
22 standpoint. The easement was not filed for those
23 purposes. The easement -- we have an easement that was
24 not filed.

25 And also it would require us to construct right

1 on top of our existing facility, which is not adequate
2 for our construction standards. So we would try not to
3 plow right on top of something that still needs to work
4 for some other people.

5 COMMISSIONER NELSON: Okay. The Igloo
6 situation, I understand that you've removed that from the
7 table in this particular proceeding, but have you figured
8 out some other way to get fiber to Igloo?

9 MR. LAW: We have not. We have examined
10 alternative routes, which number multiple miles of
11 additional cost to go around to. We have looked at other
12 technology solutions, including wireless or microwave.
13 We have not made a determination yet.

14 COMMISSIONER NELSON: So for a company, that's
15 still an outstanding issue for you?

16 MR. LAW: A very large one, yes.

17 COMMISSIONER NELSON: Okay. So currently am I
18 understanding that the Brunsons have run their own
19 copper line from the pedestal in question to the hunting
20 lodge?

21 MR. LAW: My understanding is there is copper
22 that was installed by the Brunsons to the vicinity of
23 the pedestal. I hope it was not installed into the
24 pedestal.

25 COMMISSIONER NELSON: It's not hooked up.

1 MR. LAW: If it is, it was not hooked up by
2 Golden West.

3 COMMISSIONER NELSON: Are they paying for
4 service there?

5 MR. LAW: There is no service active on it. And
6 I'm neither alleging or anticipating that they actually
7 opened the pedestal and put it in. I suspect what
8 happened, but again I'd emphasize suspect, that copper
9 was perhaps placed in the ground in the vicinity of that
10 pedestal and is awaiting connection.

11 COMMISSIONER NELSON: I think that's all I've
12 got at the moment.

13 CHAIRMAN KOLBECK: Any other questions? I've
14 got a couple.

15 I'm a little -- when you go to a new facility
16 you want to do fiber.

17 MR. LAW: Uh-huh.

18 CHAIRMAN KOLBECK: Because eventually the Legacy
19 copper will be gone. Is there a time frame on that?

20 MR. LAW: If I could get through down further
21 down the road -- this is the only copper I have remaining
22 in this exchange outside of the city limits. And so if I
23 could get the fiber connected, this whole chunk of copper
24 would be gone.

25 CHAIRMAN KOLBECK: Then that -- you've got an --

1 probably like an AFC cabinet out there?

2 MR. LAW: Actually, no. This is physical from
3 the CO. It's about 6 and a half miles to the central
4 office. If you look in the upper right corner of that
5 map, you will see a circle that says Jack Brunson. That
6 is the physical location of their home.

7 From that location back north up the road to our
8 central office is approximately 6 and a half miles. By
9 slagging it to the end of the Igloo Subdivision is about
10 9 and a half miles. All of that copper -- the only thing
11 that is supported on the first 6 and a half miles of that
12 copper is the Brunsons, and the only thing that's
13 supported beyond that is the Igloo Subdivision. And
14 that's the last remaining copper I have in the rural area
15 of that exchange.

16 CHAIRMAN KOLBECK: So would you have an estimate
17 on what it costs Golden West monthly to maintain two
18 networks?

19 MR. LAW: I don't have an estimate,
20 Commissioner. I would say in terms of maintaining
21 30 plus year old copper for that number of miles -- and
22 you can see load point 10 on there. So I've got 10 load
23 points in there. That does mean it is higher
24 maintenance. And the reason we did fiber to the home in
25 this area to begin with is the copper was old. The pairs

1 are failing, as it is want to do.

2 CHAIRMAN KOLBECK: I would imagine with the load
3 points you have trouble with the hum on the line.
4 Maintenance would be increased.

5 MR. LAW: Maintenance increases combined with
6 the opportunity for anything beyond rudimentary dial up
7 is zero.

8 CHAIRMAN KOLBECK: Mrs. Brunson actually
9 mentions the easement is -- the distance of the easement,
10 is that any different than any other easement you've
11 proposed to other customers with Golden West? Is that
12 your standard width?

13 MR. LAW: I apologize, Commissioner. I can't
14 remember what the exact width is that's contained within
15 the easements.

16 CHAIRMAN KOLBECK: Maybe I could ask it this
17 way. Does the width of the easement vary with
18 customers?

-- 19 -- MR. LAW: The width of easement --

20 CHAIRMAN KOLBECK: In other words, if you buried
21 up to my house, would you need 8 feet and buried up to
22 Commissioner Hanson's house, you need 20 feet?

23 MR. LAW: Thank you. No. Typically it is not
24 unless there's some extenuating circumstances. This one
25 is a little different because we've got a railroad bore

1 here. As you'll see, Burlington Northern tracks, which
2 is a whole different pain for us. So there might be some
3 differences in variations because we might need a little
4 bit more width and variance to do that railroad bore,
5 assuming we also would have all the proper permits from
6 the railroad.

7 But, beyond that, no. I would say the five
8 gentleman in front of me, if you all were getting service
9 from Golden West, the standard width of the easement
10 required would all be substantially or identical unless
11 there was an extenuating circumstance.

12 CHAIRMAN KOLBECK: How deep are you burying your
13 fiber?

14 MR. LAW: Typically 36 inches. We'll go up to
15 40, 42 if we can. It depends on the terrain. I can't
16 speak to what this is here.

17 CHAIRMAN KOLBECK: Now in a copper plant you can
18 probably have a man on his belly and fix a copper -- if
19 you had to splice it. With fiber is it true that you
20 have to bring that out and put it into a -- so that's
21 going to -- you have to bring it out, put it in the
22 cabinets and put it in a fiber splicing --

23 MR. LAW: A lot more footage. Yeah. You end
24 up replacing several hundred -- I shouldn't say several
25 hundred. You can conceivably replace several hundred

1 feet to repair one fiber, as opposed to a isolated area,
2 yes.

3 CHAIRMAN KOLBECK: That in itself would actually
4 take more room?

5 MR. LAW: Potentially.

6 CHAIRMAN KOLBECK: Is it correct if you were to
7 bury copper, that's actually powered from the central
8 office?

9 MR. LAW: Correct.

10 CHAIRMAN KOLBECK: Whereas, if you were to put
11 that on a pedestal, you would still need some sort of AC
12 power, and that's -- I mean, if you were to put a -- the
13 NID, fiberoptic NID on a pedestal, it would virtually be
14 impossible because there's no power out there; correct?

15 MR. LAW: Yeah. I don't know how that would
16 work. You're right. There's nothing to energize the NID
17 from the pedestal. Couldn't serve as the demarc. point.

18 CHAIRMAN KOLBECK: But in the old days --

19 MR. LAW: In the good old days --

20 CHAIRMAN KOLBECK: -- you could probably do
21 that.

22 MR. LAW: You could probably make something
23 work. You could probably duct tape and baling wire,
24 something along that lines, for copper, make that work
25 for the purposes of providing dial phone services. Would

1 I want to stake my service levels on it? No. But could
2 I make it work? Probably.

3 CHAIRMAN KOLBECK: Okay. So I think we've -- in
4 my mind I think -- it's expensive to keep that copper
5 running?

6 MR. LAW: Very much so.

7 CHAIRMAN KOLBECK: And fiber is more
8 maintenance. However, in the long run it's cheaper for
9 the company and cheaper for the customer in the long run.

10 MR. LAW: Isolate that over 30 years -- you
11 know, I hope we get 30 plus years out of the copper
12 that's in the ground. I'm hoping to get 30 plus years
13 out of the fiber that's in there too, and if you amortize
14 that over the period, it's very reasonable.

15 CHAIRMAN KOLBECK: Sure. And do you -- I know
16 there's different forms of burying. You could use a
17 mini-sneaker or a backhoe. In a situation like this when
18 you've got a 6 and a half mile run you're going to need
19 bigger equipment; correct?

20 MR. LAW: We would need bigger equipment. Now
21 we have the fiber nearby. We're about a mile away. If
22 you look on again referring to the map, Commissioner, now
23 I'm on what I will term to be the south side of the road
24 where there is the hyphenated line. You'll see about --
25 in Section 1 you'll see a designation of R2D-7.

1 CHAIRMAN KOLBECK: Okay.

2 MR. LAW: Follow along with me. And I'll wait.
3 That is the fiber that comes from our central office and
4 down. And so if we were to serve this area with fiber
5 where we have requested the easement from is beginning
6 past -- on the left side of Highway 471 but then in
7 Section 2 all the way along that road underneath the
8 railroad tracks, that would be the area we would have to
9 construct to get fiber optic service to the hunting
10 lodge.

11 CHAIRMAN KOLBECK: And could you help me? She
12 mentions a couple -- numerous times in her letter about
13 school house. Could you --

14 MR. LAW: My understanding -- I have not seen it
15 personally, but my understanding, Commissioner, is the
16 hunting lodge was formerly a school house, and they have
17 converted it or done some modifications to it to turn it
18 into a hunting lodge. That's my understanding,
19 Commissioner.

20 CHAIRMAN KOLBECK: That makes more sense. Okay.
21 Thank you.

22 Commissioner Nelson.

23 COMMISSIONER NELSON: Yeah. The two techies
24 were talking here for a moment, and you used the term
25 "load point." What does that mean?

1 MR. LAW: Probably jokingly, Commissioner, I'd
2 defer to Commissioner Kolbeck on that since I have a
3 journalism degree as my original background and the
4 Commissioner has a technical degree.

5 But when you're pushing copper large distances
6 to account for or provide for adequate signal quality at
7 a customer's home it's sometimes necessary to put load
8 points or load coils in with the copper to regenerate the
9 signal isn't the right technical phrase for it but
10 basically to smooth out the amplitude of it and provide
11 for a quality connection.

12 COMMISSIONER NELSON: And would Commissioner
13 Kolbeck agree with that description?

14 CHAIRMAN KOLBECK: Yes. As copper is bonded
15 through ground source it creates noise. And then when
16 you run that up into a pedestal you put what's called a
17 load coil or a load point, and then it takes that noise
18 out of the cable. So if you have ever spoken on a phone
19 that hums, that's probably what it was about.

20 COMMISSIONER NELSON: The other question, so if
21 we grant your Motion today, you're back at square one and
22 you still don't have your fiber run and you're still
23 running two systems and you're back to square one.

24 MR. LAW: Correct.

25 COMMISSIONER NELSON: Okay. No more questions

1 at this point.

2 CHAIRMAN KOLBECK: Mr. Rislov.

3 MR. RISLOV: I'm curious with this whole thing
4 about Commissioner Kolbeck mentioned cost. And it's one
5 thing that I didn't find in the record for whatever
6 reason. But normally these complaints center around what
7 a customer has to pay and what they don't want to pay but
8 yet there's no mention -- it seems to be a bit of a
9 different issue in this case.

10 But I guess even though it wasn't mentioned, I'm
11 a bit curious if there is any issue related to, say,
12 customer aides to contribution or other rates that may be
13 affecting this situation?

14 MR. LAW: If I understand your question
15 accurately, the record does not reflect any cost from
16 Golden West to the Brunsons because we were not
17 anticipating charging them any aide to construction or
18 other amounts specifically to continue on down the road.

19 MR. RISLOV: So let me get this straight. All
20 you were looking at assessing them was your monthly rate
21 for service?

22 MR. LAW: Your monthly rate, and we wanted an
23 easement -- because of our investment that we had to put
24 in the ground, we wanted an easement to reflect that, and
25 that was all.

1 MR. RISLOV: We can talk about the value of the
2 easement. I won't. But essentially you're just asking
3 for the right to extend the facility to wherever they
4 chose to have that facility extended so they can get the
5 service they wish to have?

6 MR. LAW: Correct.

7 MR. RISLOV: And I think the width of that
8 easement, if I recall correctly, was 16 and a half feet.
9 But it's an old man's memory.

10 Okay. So I guess I found out what I wanted to
11 know.

12 CHAIRMAN KOLBECK: Any other questions?
13 Commissioner Hanson.

14 COMMISSIONER HANSON: I think I have more of
15 comment than questions, but I'll save those to a little
16 bit later.

17 Mr. Law, is it likely that as a result of not
18 being able to come to a resolution here with the Brunsons
19 that there could be a result of deterioration in service
20 or a substandard service of some form for the Igloo
21 individuals?

22 MR. LAW: Certainly the Igloo individuals have
23 been -- to my knowledge, Commissioner, there are three
24 households in the Igloo Subdivision. All three of
25 them -- two items regarding them.

1 First is they are served by the same 30 plus
2 year old copper that comes past the Brunsons' house and
3 the hunting lodge and goes up north into Edgemont. The
4 second item is we have had multiple requests from the
5 consumers in that division to provide advanced services,
6 specifically broadband. With the current facility I'm
7 absolutely unable to provide any broadband services.

8 At the same time, that 30-year old facility
9 continues to degradate or fail every day. I don't
10 exactly remember. It's a 50 pair of copper. I know
11 multiple pairs have failed in it so far somewhere in the
12 6 and a half to 9 and a half miles. I am confident over
13 time it will continue to fail until we get down to three,
14 four, or five pairs. It's just a ticking clock at the
15 moment.

16 COMMISSIONER HANSON: When you say it fails
17 daily are you exaggerating, or does it actually fail on a
18 daily basis?

19 MR. LAW: Thank you. Daily may be an
20 exaggeration. I do not believe without having checked,
21 Commissioner, that we do any type of daily troubles. At
22 the same time, multiple pairs of copper will fail every
23 year over the course of a year. It could be as few as
24 four or five pairs. It could be 10 or 20 pairs.

25 Eventually -- and whether it's next year or the

1 following year, eventually we'll just get down to where
2 we only have three or four or five working pairs and then
3 one will fail and I will have a much larger issue to deal
4 with.

5 COMMISSIONER HANSON: If fiber -- occasionally
6 we need to ask questions that we know the answers to. If
7 fiber were provided to the citizens in Igloo, would they
8 be able to enjoy better quality service and, in fact,
9 more opportunities with their communication systems?

10 MR. LAW: They would both, I think, have a
11 higher standard of quality in terms of clarity,
12 consistency, and the quality experience that we strive to
13 serve. And in terms of advanced technological services
14 it's endless certainly in terms of broadband and
15 otherwise that they'd be able to enjoy and, quite
16 frankly, in a very remote area.

17 COMMISSIONER HANSON: Are they -- are you able
18 to provide that fiber service without the easement from
19 the Brunsons?

20 MR. LAW: We would be able to provide it, but
21 the solutions that we have identified up to this point
22 involve alternate routes that add 10 plus miles of fiber
23 to get to these same three customers.

24 So on a rough basis for those three customers if
25 it's 15,000 a mile, it's another 150,000 in cost to get

1 to these same three customers. And I won't argue about
2 the economics of it to begin with in terms of providing
3 fiber to those same customers, but it was something we
4 were committed to do. When you add an additional
5 \$150,000 in cost on to what is already arguably probably
6 not economical, it makes it a slam dunk that it just --
7 that just can't happen that way. We continue to look at
8 other alternatives, however.

9 COMMISSIONER HANSON: And is the terrain
10 amenable -- perhaps you can give us an idea of what the
11 terrain is like out there for providing an alternate
12 route?

13 MR. LAW: You know, my understanding of the
14 terrain is is it's fairly -- it's prairie land. I would
15 say we've -- we've dealt with easier -- of course, we
16 serve a lot of territory, I guess. We've dealt with
17 easier terrain. We've certainly dealt with harder
18 terrain, I would say.

19 It's certainly a little above average in terms
20 of degree of difficulty. But it's not the worst terrain
21 we've ever been in. I apologize. I think of some areas
22 in Custer and Hot Springs and the Hills that are a lot
23 harder to bury to.

24 COMMISSIONER HANSON: But it's certainly not
25 going through a wheat field?

1 MR. LAW: No, sir.

2 COMMISSIONER HANSON: Thank you, Mr. Chairman.
3 Thank you, Denny. Mr. Law.

4 CHAIRMAN KOLBECK: Any other questions?

5 I just have one more. When you said three
6 customers? I was under the understanding that anything
7 past the hunting lodge into Igloo cannot be fed with
8 fiber. Is that --

9 MR. LAW: Well, it can't be fed with fiber
10 because we cannot -- the Brunsons own all of that land
11 including the roads, and we cannot get an easement down
12 to Igloo. Our initial -- and I will say in '06 and '07
13 but certainly after this Docket began in our initial
14 correspondence with the Brunsons we requested an easement
15 all the way past the hunting lodge all the way down to
16 Igloo so we could serve those customers and Igloo, and
17 the Brunsons denied that.

18 CHAIRMAN KOLBECK: There's more than three
19 people in Igloo?

20 MR. LAW: My understanding is there's three
21 services in that circular or oval area.

22 CHAIRMAN KOLBECK: Okay.

23 MR. LAW: I cannot verify that individually,
24 Commissioner. I have not been there to view those three,
25 but that's my understanding is we have three active

1 services and households there that have requested
2 broadband from us and those are the only three.

3 CHAIRMAN KOLBECK: They have requested broadband
4 from us? From you, I should say?

5 MR. LAW: Yes, sir.

6 CHAIRMAN KOLBECK: Okay. Thank you. Any other
7 questions?

8 Any other comments from anyone wishing to
9 comment on this Docket?

10 Ms. Northrup.

11 MS. NORTHRUP: I guess I feel compelled for the
12 purposes of my record just to remind the Commission that
13 although I think Mr. Law's information that he gave was
14 very helpful, it wasn't testimony, and it's not something
15 you can rely on when making your decision.

16 And although I felt very comfortable with, you
17 know, everything that he's said, I just want to make sure
18 that we are able to separate that. Because a summary
19 judgment really has to be based on the record and what
20 you have before you.

21 And so I feel strong enough and comfortable
22 enough with our record that we've got the legal arguments
23 and the facts in the record that would allow you to be
24 able to do a summary judgment in our favor.

25 CHAIRMAN KOLBECK: Thank you. Anyone else

1 wishing to comment?

2 I'll check one more time on the phone line.

3 Mr. and Mrs. Brunson, have you joined us on the phone
4 line?

5 No one else wishing to comment. We'll turn to
6 Commissioner -- anymore Commissioner questions and/or
7 action?

8 We got Mr. Smith.

9 MR. SMITH: Just curious, Margo -- or
10 Ms. Northrup, on the issue of the various motions that
11 are pending, right, or at least two. And then also in
12 there, I mean, to me you've characterized it as sort of a
13 subset of failure to prosecute. But we did put a default
14 notice in our Notice of Hearing too.

15 And, you know, in wrestling with -- I always
16 feel safer myself with summary judgment just because it's
17 less pop, you know. But would it -- ideally would you
18 like a Motion from the Commissioners if they're going to
19 ~~go either way that would maybe base it on multiple bases~~
20 such as both summary judgment and, alternatively, Motion
21 to Dismiss for Failure to Prosecute?

22 MS. NORTHRUP: Yes. I think that is
23 appropriate. And I don't think I mentioned it in my oral
24 argument, but I also mentioned it in my Summary Judgment
25 Motion that a 12(b)(6) dismissal, which is just a Motion

1 to Dismiss for failure to state a claim in which relief
2 can be granted, which has a different standard than
3 summary judgment.

4 But yes. I think, you know, just the fact that
5 we have a Summary Judgment Motion, we have undisputed
6 facts that we've put in the record supported by
7 Affidavits and Pleadings and the fact that they haven't
8 disputed any of those facts, I think that you can grant
9 summary judgment on that, number one.

10 I think you can also do it on number two,
11 failure to prosecute. Because there has been very
12 limited action within not just the last year but the last
13 two or three years. And also that they're not here
14 today. I think that that just supports the failure to
15 prosecute. And, again, even the 12(b)(6) I think you
16 could dismiss on all three of those grounds.

17 CHAIRMAN KOLBECK: All right. Any other
18 questions by anyone?

19 -Hearing none, any motions?

20 Commissioner Nelson.

21 COMMISSIONER NELSON: I move to grant Golden
22 West's Motion for Summary Judgment and to find for
23 Golden West on the issue of whether it breached its
24 obligation to extend service to the Complainants. The
25 obligation to extend service is accompanied by an

1 associated obligation on the part of the customer to
2 provide access for such purpose and to pay the reasonable
3 and nondiscriminatory costs of line extension. Because
4 of the circumstances of Golden West's deployment of fiber
5 to the home, I also do not believe that Golden West
6 breached its obligation to the Brunsons by requiring the
7 point of demarcation to be at the building and not at the
8 pedestal at a significant distance from the point of use.

9 CHAIRMAN KOLBECK: All right. We have a Motion.
10 Any discussion?

11 I'd just mention that this is a tough case. We
12 have someone out there who thinks one way, obviously, and
13 we have a company who thinks another.

14 However, just like flying on a plane. If you
15 want to get on a plane, you have to go through security.
16 If you want to drive on the roads, you've got to pay
17 taxes. There's a little bit of give and take on
18 everything.

19 ~~And I believe that Golden West has laid out a~~
20 good plan. The failure, I think, on the part of the
21 Complainant to come to terms with that and to understand
22 that with this there needs to be some room, there needs
23 to be an easement, it is actually affecting other people
24 in that area.

25 Hopefully, as Commissioner Nelson had fleshed

1 out, that this actually puts the company back to zero.
2 And I hope the resolution can be resolved, though. I
3 certainly understand both parties and hope that they can
4 come to an agreement.

5 Commissioner Nelson.

6 COMMISSIONER NELSON: If I could just make a
7 comment. I am a rural landowner. I deeply appreciate
8 private property rights. I understand the importance of
9 that. And to an extent I understand where the Brunsons
10 are coming from.

11 But by the same token, if you want service,
12 you've got to be able to let the company do it the way it
13 needs to be done and done right. And that's one of the
14 reasons that I'm coming to this conclusion.

15 COMMISSIONER HANSON: Mr. Chairman.

16 CHAIRMAN KOLBECK: Yes.

17 COMMISSIONER HANSON: Just a comment or two. I
18 think Ms. Northrup makes a very good point when she
19 ~~steered us back to the facts and to the record that have~~
20 to sustain whatever position that we take here today.

21 We've, for the record -- certainly from my
22 perspective, I took the opportunity to pursue some
23 questions with Mr. Law, which I felt were certainly on
24 the backs of most people's minds as to what's going on
25 here, why is this not coming to some sort of a

1 resolution. We can certainly glean that from the record
2 as well.

3 But this is extremely frustrating to go through
4 a process like this. It started with a Docket in '07
5 with us, but it started in discussions long before that
6 between Golden West and the Brunsons on attempting some
7 form of resolution. I'd like to commend Golden West for
8 the efforts that they have made in trying to resolve
9 this.

10 I guess I'm a bit beside myself. I'm trying to
11 figure out why on earth the Brunsons would file this
12 Docket and then just not -- well, being intransigent
13 towards a resolution and not participate in the effort to
14 come to a resolution that you can see just from the
15 personnel that are involved in this hearing alone, the
16 amount of time and the expense that it takes to go
17 through this process.

18 That's not fair to the other customers
19 ~~certainly. -- It's not fair to the other customers with the~~
20 service that they are being denied because of this
21 process as well.

22 I recognize that's not a fact before us for
23 determination at this time, but it's extremely
24 frustrating to see a situation -- a prick that bleeds and
25 a person who's making it bleed is not attempting in any

1 way to resolve the matter whatsoever and as a result
2 everyone else has to go through the processes. It's just
3 very disconcerting for me.

4 I should probably hold my tongue so that I'm
5 not -- that I don't have to stand down on any future
6 Docket. But I just -- going through processes like this
7 I recognize it's our job and our responsibility, but
8 people have to understand there are a host of analysts.
9 There are attorneys. There are filings. There's just a
10 tremendous amount of time and expense that different
11 agencies go through as a result of this.

12 And it simply is not fair for the Brunsons to
13 have created this matter without participating in it.
14 I'm just very disillusioned with them over that.

15 Thank you, Mr. Chairman.

16 CHAIRMAN KOLBECK: Absolutely. Good points.

17 Thank you very much.

18 Any other discussion?

19 ~~Hearing none, we'll continue to vote.~~

20 Commissioner Nelson.

21 COMMISSIONER NELSON: Aye.

22 CHAIRMAN KOLBECK: Commissioner Hanson.

23 COMMISSIONER HANSON: Aye.

24 CHAIRMAN KOLBECK: And Commissioner Kolbeck
25 votes aye also.

1 I believe that concludes our hearing here today.
2 Thank you all for your time and attention to this matter.
3 We are adjourned.

4 (The proceeding is adjourned at 2:21 p.m.)
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1 STATE OF SOUTH DAKOTA)

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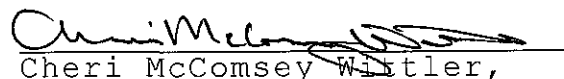
CERTIFICATE

3 COUNTY OF SULLY)

4
5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the 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 3rd day of May,
11 2011, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 12th day of
14 May, 2011.

15
16
17 

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter
22
23
24
25

\$	5	36:23 Affidavit [4] - 6:20, 10:21, 11:14, 14:11 affidavits [4] - 7:9, 7:22, 13:18, 35:7 affirmatively [1] - 7:19 afternoon [3] - 3:2, 3:24, 16:18 AGAINST [1] - 1:5 agencies [1] - 39:11 agree [1] - 26:13 agreement [2] - 9:3, 37:4 agreements [1] - 9:4 ahead [2] - 5:22, 16:16 aide [1] - 27:17 aides [1] - 27:12 alleging [1] - 19:6 allow [1] - 33:23 allowed [1] - 11:23 allows [1] - 10:24 alone [1] - 38:15 alternate [2] - 30:22, 31:11 alternative [2] - 4:3, 18:10 alternatively [1] - 34:20 alternatives [1] - 31:8 amenable [1] - 31:10 amortize [1] - 24:13 amount [2] - 38:16, 39:10 amounts [1] - 27:18 amplitude [1] - 26:10 analysts [1] - 39:8 AND [1] - 1:4 answers [2] - 13:18, 30:6 anticipating [2] - 19:6, 27:17 apologize [2] - 21:13, 31:21 APPEARANCES [1] - 1:17 appointed [1] - 41:8 appreciate [1] - 37:7 appropriate [1] - 34:23 April [1] - 5:22 area [1] - 4:9, 8:16, 9:21, 20:14, 20:25, 23:1, 25:4, 25:8, 30:16, 32:21, 36:24 areas [1] - 31:21 arguably [1] - 31:5 argue [1] - 31:1 argument [2] - 12:5, 34:24	arguments [2] - 12:17, 33:22 arrow [1] - 17:7 assessing [1] - 27:20 associated [1] - 36:1 assuming [1] - 22:5 attached [1] - 41:11 attempt [1] - 14:15 attempting [2] - 38:6, 38:25 attention [1] - 40:2 attorney [2] - 3:25, 5:13 attorneys [1] - 39:9 authority [4] - 8:10, 8:23, 9:1, 9:7 authorized [1] - 13:17 available [1] - 14:16 Avenue [1] - 2:3 average [1] - 31:19 awaiting [1] - 19:10 AXTHELM [1] - 12:25 Axthelm [1] - 1:16 aye [3] - 39:21, 39:23, 39:25	27:8, 27:11, 28:16, 1 36:17, 38:10 black [1] - 17:7 bleed [1] - 38:25 bleeds [1] - 38:24 blocks [1] - 12:2 Bobbi [1] - 1:16 bonded [1] - 26:14 bore [2] - 21:25, 22:4 Bourk [1] - 1:16 box [1] - 17:9 breached [2] - 35:23, 36:6 brief [1] - 12:18 briefly [1] - 9:14 bring [3] - 4:13, 22:20, 22:21 broadband [5] - 29:6, 29:7, 30:14, 33:2, 33:3 brought [2] - 11:21, 12:6 BRUNSON [1] - 1:4 Brunson [12] - 3:7, 3:15, 4:11, 4:25, 5:1, 7:3, 7:14, 12:22, 14:6, 20:5, 21:8, 34:3 Bruns [31] - 4:21, 5:13, 5:20, 6:8, 6:23, 8:11, 8:13, 8:17, 10:16, 11:12, 12:3, 12:8, 12:15, 13:13, 13:14, 13:15, 13:21, 18:18, 18:22, 20:12, 27:16, 28:18, 30:19, 32:10, 32:14, 32:17, 36:6, 37:9, 38:6, 38:11, 39:12 Bruns [3] - 15:15, 16:10, 29:2 Building [3] - 2:3, 3:3, 3:4 building [1] - 36:7 buried [2] - 21:20, 21:21 Burlington [1] - 22:1 bury [2] - 23:7, 31:23 burying [2] - 22:12, 24:16 business [1] - 9:23 BY [1] - 1:4
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