

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT FILED BY  
KENNEBEC TELEPHONE COMPANY, INC., AGAINST TC08-031  
ALLTEL COMMUNICATIONS, INC. REGARDING  
NONPAYMENT OF TRANSITING CHARGES

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Transcript of Proceedings  
February 9, 2010

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
DUSTIN JOHNSON, CHAIRMAN  
STEVE KOLBECK, VICE CHAIRMAN  
GARY HANSON, COMMISSIONER

COMMISSION STAFF  
Rolayne Ailts Wiest  
John Smith  
Karen Cremer  
Kara Semmler  
Tim Binder  
Jon Thurber  
Brian Rounds  
Terie Labrie Baker  
Bob Knadle  
Deb Gregg  
Demaris Axthelm

APPEARANCES

Meredith Moore, Kennebec Telephone Company, Inc.  
Talbot Wieczorek, Alltel Communications, Inc.

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, Pierre, South Dakota,  
4 on the 9th day of February 2010, commencing at 2:30 p.m.

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1           CHAIRMAN JOHNSON: The Complaint by Kennebec  
2 Telephone against Alltel. The question for the  
3 Commission today deals with Alltel's Motion for Summary  
4 Judgment of Dismissal for Lack of Subject Matter  
5 Jurisdiction. We have had Briefs filed. It does make  
6 sense to have some additional comments by the parties.

7           Mr. Wieczorek, any comments?

8           MR. WIECZOREK: Thank you, Mr. Chairman. I'm  
9 going to be fairly brief in my comments and some of it's  
10 going to be background perspective and I'll open up  
11 questions.

12           First I think it's important to clarify the  
13 difference between subject matter and personal  
14 jurisdiction. In the Response Brief of Kennebec there  
15 was some discussion I thought was -- could be misleading.  
16 Not intentionally but from a nonlawyer perspective in  
17 reading some of this.

18           It's Alltel's position in here that this  
19 Commission lacks subject matter jurisdiction over these  
20 types of cases. Clearly the Commission has personal  
21 jurisdiction over Alltel and Kennebec. However, that  
22 type of jurisdiction -- while that type of jurisdiction  
23 can be waived, subject matter jurisdiction cannot.

24           Meaning, the fact that Alltel showed up and  
25 appeared in this case, contested the previous motions by

1 Kennebec does not create subject matter jurisdiction of  
2 this Commission. That delay in bringing this issue  
3 forward had more to do with me not seeing the issue than  
4 anything else.

5 The concern, though, as soon as I saw this issue  
6 was a desire that the Commission needs to make this  
7 determination. Because the subject matter jurisdiction  
8 can be raised for the first time on appeal. It was not  
9 my desire or Alltel's desire to fully hear this, knowing  
10 there could be a subject matter jurisdiction question.  
11 But today we're in front of you asking the --

12 (Discussion off the record)

13 MR. WIECZOREK: Asking that the Commission make  
14 a determination on the subject matter jurisdiction.

15 Commissioners, I'm getting feedback of my own  
16 voice, and I wonder if that's causing it to cut out if a  
17 mic's picking me up.

18 CHAIRMAN JOHNSON: Well, we'll adjust things  
19 just a little bit on our end. Mr. Wieczorek, hold on  
20 just a moment.

21 All right. Let's go ahead and try again.

22 MR. WIECZOREK: So the question then is subject  
23 matter jurisdiction. Essentially the statutes set forth  
24 that for Kennebec this Commission lacks the ability to  
25 set rates for services unless -- for like a transiting

1 service unless Kennebec agrees to be regulated by the  
2 Commission. Facts are such that for transiting services  
3 Kennebec has not so agreed.

4 Now Kennebec takes the position in its Brief  
5 that the general jurisdictional or general scope of the  
6 power of the PUC should allow it to make the  
7 determination of the contractual questions or implied  
8 contractual questions they have submitted to this  
9 Commission.

10 However, the general law is that if you have a  
11 specific statute, the general statutes do not overrule  
12 it.

13 In this case if the Commission decides to go  
14 forward to a determination, part of the relief requested  
15 is for the Commission to determine an appropriate rate or  
16 charge for transiting. And I can't see how this  
17 Commission could not under SDCL 49-31-5.1 set the rate or  
18 make a determination of what rates Kennebec can charge  
19 for transiting in a regulatory matter but can have  
20 Kennebec come forth with a claim and have the Commission  
21 essentially decide that issue pursuant to a contract  
22 claim.

23 Now, I mean, I and Alltel realize that if this  
24 Commission decides it doesn't have subject matter  
25 jurisdiction, all we're doing is moving this to a

1 different forum. It is not a determination by the  
2 Commission that the claim is dismissed with prejudice.  
3 It's simply a determination the statutory authority  
4 provided the Commission does not encompass these types of  
5 decisions.

6 Alltel fully expects that if the Commission  
7 decides that, Kennebec will bring the action either in  
8 State Court or Federal Court and subject matter  
9 jurisdiction and personal jurisdiction exist in both of  
10 those forums.

11 So this is not some argument that we're trying  
12 to get out from under -- Kennebec essentially kind of  
13 asserted that we're trying to get out from under paying  
14 them anything. All it does is change the forum. But it  
15 should get into a forum that if a judgment is granted  
16 either way, it can't get thrown out on appeal simply  
17 because there was no jurisdiction for that forum to grant  
18 that relief.

19 That would be all I would have unless there are  
20 some questions by the Commission.

21 CHAIRMAN JOHNSON: We'll hold questions and at  
22 this time hear from Kennebec.

23 MS. MOORE: Thank you, Commissioners, Commission  
24 staff. Meredith Moore appearing on behalf of Kennebec  
25 Telephone Company.

1 Alltel's argument has some visceral appeal.  
2 That doesn't make it correct, however. Admittedly, when  
3 one looks at the statutory scheme comprised of Title 49,  
4 the Administrative Rules, as well as the general edicts  
5 within the Telecom Act itself, there is no specific  
6 statute or rule which says this Commission has  
7 jurisdiction over the transiting service specifically.

8 But I think what's more important to remember is  
9 that contrary to Alltel's argument with regard to  
10 SDCL 49-18-5.1 there is also absolutely no statute that  
11 deprives this Commission of jurisdiction.

12 And it's one of the general tenants as it  
13 relates to subject matter jurisdiction that if it is the  
14 intent of the legislature to take away a specific task  
15 from an administrative body or a court, it will  
16 explicitly say so. And it hasn't done so in this  
17 particular circumstance.

18 And essentially what Alltel's argument is is  
19 that because Kennebec Telephone Company has fewer than  
20 50,000 access lines and because it has not submitted to  
21 this Commission a resolution of the board of directors  
22 authorizing its rights to be regulated, that this  
23 Commission has no jurisdiction over it whatsoever.

24 So just because it can't regulate the rate, this  
25 Commission can regulate nothing as it relates to

1 Kennebec Telephone Company under these particular  
2 circumstances. And I would submit to you that that  
3 produces -- that -- the recognition of that type of an  
4 argument and the recognition of that particular statute  
5 as being superior to all others that this Commission has  
6 under Title 49 produces an absolutely absurd result.

7 At the same time it makes this Commission's  
8 jurisdiction, frankly, very narrow. Because if one looks  
9 again at Title 49, the Administrative Rules and the Act,  
10 I think the only jurisdiction that this Commission would  
11 have would be over cases involving slamming, cramming,  
12 and switched access. And I certainly don't think that's  
13 what the legislature intended either in enacting any of  
14 the statutes, including the one that Alltel references in  
15 its argument.

16 The law is clear, both case law and statutorily,  
17 that this Commission has general supervision and control  
18 of Alltel Communications companies offering common  
19 carrier services within the state to the extent such  
20 business is not otherwise regulated by federal law or  
21 regulation.

22 The statutory scheme that's inherent in Title 49  
23 specifically gives this Commission authority and  
24 jurisdiction over intrastate facilities. And if one  
25 looks at the transiting service, excuse me, itself, in



1 its simplest form what transiting is, is essentially an  
2 intrastate telecommunications service. It is the use of  
3 and compensation for one telecommunication carrier's use  
4 of another common carrier's network. And that's exactly  
5 what we have here in this particular context.

6 And while it's not a service defined in state  
7 statute, that being the transiting service or the rules  
8 or the Act, I think it's closest in form to the access  
9 regime. Because again what you're talking about is the  
10 use of and compensation for another carrier's network.  
11 And that's essentially what we're talking about.

12 Now Alltel references that when you have this  
13 more specific statute it overrules the general statute.  
14 But, again, I think that's taking the argument too far  
15 because it's suggesting to the Commission that just  
16 because you may not be able to set a rate as to  
17 transiting, you can't look at the issue at all.

18 And I think you may only look to SDCL 49-13-1  
19 that indicates that this Commission has jurisdiction over  
20 Complaints where a telecommunications company has done or  
21 omitted a service relating to an intrastate service. And  
22 that's exactly what Kennebec has filed for in this  
23 particular case.

24 And when one looks to prior docket filings for  
25 examples of the Commission exercising jurisdiction over

1 contract disputes or disputes regarding whether there is  
2 an obligation to pay on behalf of another for service,  
3 you can find that example in the S&S dockets, which I  
4 believe were started in about 2002 and concluded in 2005.

5 In that particular case the Commission  
6 determined that even though it didn't have jurisdiction  
7 over an issue involving retail rates, it did have the  
8 ability to analyze the contracts that were at issue there  
9 between S&S Telecommunications and its customers who had  
10 purchased prepaid telecommunications services, and this  
11 Commission did issue a damages award to the various  
12 Complainants in those consolidated dockets. So this  
13 Commission has certainly taken a look at contract issues  
14 in the past.

15 Additionally, while I appreciate that this  
16 Docket isn't resolved at this point in time, this  
17 Commission looked at the transiting issue in the -- I  
18 think it was CT05-001, which was the Complaint Docket  
19 between Golden West and Alltel's predecessor, Western  
20 Wireless. The issue presented in that particular case  
21 was virtually identical to the one here.

22 And while Mr. Wieczorek is certainly right,  
23 subject matter jurisdiction is never waived. Western  
24 Wireless did not raise that argument in that context.  
25 Nor did this Commission, which has the authority to

1 sua sponte or essentially of its own volition to raise  
2 any issues it has regarding the question of jurisdiction.  
3 It didn't do that.

4 And I would submit to you that at the time of  
5 the summary judgment hearing way back when now this past  
6 summer on this particular issue this Commission actually  
7 made a finding that SDCL 49-13-1 applied as well as other  
8 statutes.

9 So I think what the Commission has done in prior  
10 cases in terms of looking at contract disputes, looking  
11 at the issue of whether an obligation exists for  
12 compensation by one carrier for the use of another  
13 carrier's network, it's already done so. And by  
14 accepting Alltel's argument here today you're essentially  
15 calling into question this Commission's jurisdiction over  
16 a number of dockets and probably some that are currently  
17 pending before this Commission.

18 I appreciate I'm getting very close to making a  
19 parade of horribles argument here, but I don't think it's  
20 going too far to say that there's nothing that deprives  
21 this Commission of jurisdiction so it doesn't make sense  
22 to effectively abrogate jurisdiction when there has been  
23 no one who has told you such is actually appropriate  
24 under this case.

25 When one looks at the statute that Alltel is

1 using in this particular case, I think it's fair to state  
2 that there are very few carriers in this state, perhaps  
3 only Qwest and Midcontinent, who actually have more than  
4 50,000 access lines. And so again when one looks at the  
5 context in which that might be applied I think it's fair  
6 to state that there are other carriers who could  
7 indicate, well, technically we are a carrier with fewer  
8 than 50,000 access lines, we're not necessarily subject  
9 to this Commission's jurisdiction. And it essentially  
10 takes away then this Commission's regulatory authority  
11 over numerous other services which those carriers might  
12 provide.

13 I think this issue is far simpler than what the  
14 parties have likely made it out to be in their Briefs.  
15 And I would simply indicate that this Commission has  
16 jurisdiction over this action under its general statutes  
17 within Title 49 because what we're talking about here is  
18 an intrastate telecommunications service in the  
19 transiting service and whether an obligation exists for  
20 the compensation of the same.

21 Mr. Wieczorek mentioned one thing with regard to  
22 Alltel not trying to escape from any liability that it  
23 may ultimately have for the transiting charges which  
24 Kennebec seeks in this claim and has indicated that what  
25 would happen if this Commission dismissed this action for

1 lack of subject matter jurisdiction is that Kennebec  
2 would refile either in state or Federal Court. That's a  
3 true statement.

4           However, I think one of the other things that's  
5 important to keep in mind is that Alltel has, in fact,  
6 contested a rate here. And both Mr. Wieczorek and I have  
7 some experience at the Federal Court level with Federal  
8 Court judges who want nothing to do with making rates and  
9 looking at telecommunications issues within the Act.

10           And I don't know based upon my experience that  
11 there is any court who would relish looking at this  
12 issue. And I think that's because the Legislature has  
13 specifically delineated in those enabling statutes that  
14 this Commission has the authority and the administrative  
15 expertise in order to look at the ultimate service at  
16 issue here.

17           So we would respectfully request that this  
18 Commission deny Alltel's Motion to -- effectively to  
19 dismiss this matter for lack of subject matter  
20 jurisdiction. Thank you.

21           CHAIRMAN JOHNSON: Thank you, Ms. Moore.

22           Ms. Semmler.

23           MS. SEMMLER: Mr. Chairman and Commissioners,  
24 this is Kara Semmler for staff.

25           Staff argues that this Commission does have

1 jurisdiction to hear the Kennebec Complaint.

2 Just because the Commission may lack rate making  
3 authority, staff agrees with the argument that that does  
4 not prohibit it from making a determination regarding  
5 damages. Staff also looked to SDCL 49-13, which does  
6 provide general regulatory authority.

7 And we also looked at some of the -- you know,  
8 the contract issues and the arguments made by Alltel, and  
9 Alltel seemed to rely heavily on that Hub City case in  
10 its brief. And I think that is distinguishable and that  
11 that was an electric territory case where the statutes  
12 provide for some explicit mechanisms by which to transfer  
13 territory.

14 Now the parties appeared to try to preserve some  
15 rights through a contract. The Court found the  
16 Commission couldn't rely on that contract because the  
17 statutes I think ultimately dictate how that must be  
18 done. I don't think that case was intended to prevent  
19 this Commission from making a determination regarding  
20 obligations or ultimately maybe damages.

21 So regardless of rate making authority, staff  
22 doesn't support the argument that all jurisdiction is --  
23 regarding damages or obligations are pulled from the  
24 Commission.

25 CHAIRMAN JOHNSON: Thank you, Ms. Semmler.

1 Any questions for any party?

2 Hearing none, any comments or action?

3 COMMISSIONER KOLBECK: Well, I think that the  
4 Commission has shown jurisdiction in previous cases. I  
5 also think that Alltel's cases pertain to electric and  
6 gas dockets. I have a little bit of a question on that.

7 And then, thirdly, I think we shouldn't  
8 surrender jurisdiction until a higher Court has made that  
9 determination. I think there's plenty of ways you can  
10 surrender jurisdiction, but until you're told to, I don't  
11 think that we should. By a higher court, I should say.  
12 So I will Motion in TC08-031 -- I'm sorry.

13 COMMISSIONER HANSON: If I -- I didn't jump  
14 quite quick enough when Mr. Chairman asked us if we had  
15 any questions.

16 And I guess I do just have one question for  
17 Mr. Wieczorek, and that is how he might respond to the  
18 statement that the examples that -- of Supreme Court  
19 cases that they had -- that he had cited were I believe  
20 natural gas or electric and that we don't have the  
21 ability to interpret those contracts, that in this  
22 telecommunications case that they -- how that might  
23 apply.

24 CHAIRMAN JOHNSON: And, Commissioner Hanson,  
25 thank you for asking your question because I'll

1 apologize, Mr. Wieczorek. It was my intention to give  
2 him an opportunity, a brief rebuttal at the end. Your  
3 question gives an opportunity to do that in part.

4 Mr. Wieczorek, when you're done with  
5 Mr. Hanson's question please feel free to make other  
6 comments you feel appropriate and a brief rebuttal.

7 MR. WIECZOREK: Thank you, Mr. Chairman.

8 Directing first Commissioner Hanson's question,  
9 the electric rate case that -- I relied prominently on a  
10 Northwestern case has, you know, very similar language.  
11 Because it dealt with a rural electric co-op, and the  
12 language was the same under the electric as it exists  
13 under 5.1, basically exempting rural electric co-ops from  
14 rate regulation.

15 But there are other cases cited. For example,  
16 there is a case in the matter of the Public Utilities  
17 Commission Declaration Rule from back in '85 at  
18 364 N.W.2d 124. And in that case some of the LECs tried  
19 to argue for radio paging that you could not regulate  
20 them under the 5.1 statute. And the Court said basically  
21 there you could regulate them for radio paging but, you  
22 know, because that wasn't -- as long as you didn't  
23 regulate their rate essentially.

24 But you could regulate them on interconnection.  
25 You could regulate them on having to have a license to



1 provide the other service if they were doing it under a  
2 different company.

3           So while the Supreme Court hasn't directly had  
4 this issue in front of it, I think the -- the electric  
5 case is persuasive, especially when you're reading these  
6 other cases where the Supreme Court's talking about what  
7 49-31-5.1 applies to.

8           The because what happens here is -- I think what  
9 the Court is concerned with is, is the RLEC -- if I came  
10 in as Alltel and sued asking this Court -- or asking the  
11 Commission to make a determination to set transiting  
12 rates for various RLECs where I want to get transiting  
13 agreements with, you can bet these RLECs would say you  
14 can't set our rates for this Commission. But essentially  
15 that's what you're going to have to do if you take this  
16 case.

17           Because Kennebec has come in and said,  
18 Commission, make them pay us and give us the rate we  
19 want. So essentially they're coming in asking this  
20 Commission to set a rate in their Complaint for this  
21 action. So I see those cases as indistinguishable with a  
22 final determination that the Commission has to make is  
23 what is the appropriate rate.

24           And I -- the -- I don't believe that if this  
25 Commission lacks the power to force a rate upon the RLEC,

1 that it can force -- make a determination of an RLEC rate  
2 because the RLEC is suing somebody else under a contract.

3 And, Commissioner Hanson, that would be the  
4 conclusion of my response to your question. If you have  
5 a follow up, I can deal with that right now, or I can  
6 talk about a couple of other issues raised.

7 COMMISSIONER HANSON: Thank you very much. I do  
8 have a follow up to it. You referred to 49-31, and the  
9 SDCL 49-13 is what we've been basing some of our --

10 MR. WIECZOREK: Right. And 49-13.1 talks about  
11 any person complaining of anything done or admitted by  
12 any telecommunication company or motor carrier company  
13 subject to the provisions of this title in contravention  
14 of the provision thereof.

15 And I think that's a distinction. You do not  
16 have cart blanche to decide any issue just because you  
17 don't have authority to give a COA to a  
18 telecommunications. That doesn't mean anything that  
19 deals with the telecommunications company you now have  
20 authority under, under the statute.

21 The second part of that is it has to be the  
22 telecommunications company doing something in  
23 contravention of the statutory authority granted you.

24 So if you don't have statutory authority to set  
25 this rate, I don't see how you can make a determination

1 as to in this case what this rate should be for the  
2 purposes of determining what's open, if anything.

3 COMMISSIONER HANSON: I appreciate your answers.  
4 I'll allow you to give your rebuttal then.

5 MR. WIECZOREK: I'm not going to try to  
6 second-guess every case that's been in front of this  
7 Commission. There is -- there is undoubtedly situations  
8 where this Commission has jurisdiction under certain  
9 contractual issues but not others.

10 And I am not trying to make an argument today  
11 that this Commission under any contract can't make some  
12 kind of determination that a telecommunication company's  
13 not living up to a contract.

14 What I'm saying, in this situation when the  
15 contract term -- interpretation of contract term  
16 essentially forces the Commission to establish rates for  
17 a company that isn't subject to rate setting by this  
18 Commission, the Commission lacks subject matter  
19 jurisdiction for those types of claims.

20 Because the old Western Wireless Complaint case  
21 was raised, and while that matter is technically still  
22 pending -- it's been resolved for quite a while based on  
23 a settlement. Commissioner Hanson heard that case that  
24 went for several, several days -- that case dealt  
25 primarily with interconnection agreements. The only

1 issue that had to do with transiting was primarily a  
2 question of whether Golden West could charge transit to  
3 Vivian. The argument was these are the same carriers.  
4 And it was a request for refund from the Golden West  
5 companies by Western Wireless.

6 And so it actually would have been more likely  
7 that RLEC would have raised the subject matter  
8 jurisdiction in that case. And, frankly, that issue on  
9 transiting was resolved between the parties and is  
10 subject now to an agreement between the parties how  
11 they're moving that forward.

12 The jurisdiction here I think is limited by the  
13 statutes. And while I can appreciate the Commission does  
14 not want to necessarily limit or make a pronouncement of  
15 limiting its jurisdiction short of direction from a  
16 higher Court, it seems to be if the jurisdiction is so  
17 limited, which I believe the case law supports, it seems  
18 to be a lot of time invested into a case that's going to  
19 end up in another forum a year from now anyway.

20 And with that, unless there's another question,  
21 I would be completed.

22 CHAIRMAN JOHNSON: Thank you, Mr. Wieczorek.  
23 And, again, my apologies.

24 Other questions?

25 MS. AILTS WIEST: I have a question.

1           CHAIRMAN JOHNSON:  Yes, Ms. Wiest.

2           MS. AILTS WIEST:  For Ms. Moore.

3           Ms. Moore, you would agree, wouldn't you, that  
4 in this case your company is providing access to another  
5 telecommunications company, Alltel, to your facilities  
6 for their traffic?

7           MS. MOORE:  I would agree with that, Ms. Wiest.

8           MS. AILTS WIEST:  And in this case really your  
9 issue is whether you've received reasonable compensation  
10 for that access?

11          MS. MOORE:  I don't believe it would be a  
12 question of the reasonableness of the compensation  
13 because we didn't receive compensation.

14          MS. AILTS WIEST:  Receive any compensation for  
15 this access is your allegation?

16          MS. MOORE:  Correct.  Correct.  Because  
17 ultimately under the Complaint if one looks at the facts  
18 that were alleged, Alltel did initially pay.  They paid  
19 at the rate, the rate that had been in place since 1996.  
20 And then in 2007 I believe -- forgive me if I stated the  
21 incorrect year -- they ceased paying.

22          So we're not asking for a determination as to  
23 the reasonableness of the rate.  We're asking to be  
24 compensated at the rate that was billed at the rate that  
25 was originally paid.  So I would agree, yes, we are

1 seeking compensation for access to Kennebec's network  
2 from Alltel.

3 MS. AILTS WIEST: Thank you.

4 CHAIRMAN JOHNSON: Further questions?

5 Hearing none, Commissioner Kolbeck, you have the  
6 floor.

7 COMMISSIONER KOLBECK: I guess I was just in the  
8 middle of that -- and I understand Mr. Wieczorek's  
9 arguments, but he said himself that the Supreme Court has  
10 not directly had this in front of them. And I think that  
11 they need to make that determination. So one Commission  
12 says, yes, we do have jurisdiction and another Commission  
13 after I've had my first heart attack and the next  
14 Commission comes in and says, no, we don't have  
15 jurisdiction over that. So until that determination is  
16 made I think that we need to continue on.

17 So in TC08-031 I will Motion that -- deny the  
18 Motion for Summary Judgment of Dismissal for Lack of  
19 Subject Matter Jurisdiction.

20 CHAIRMAN JOHNSON: Motion has been made.

21 Is there any discussion on the Motion?

22 Hearing none, we will proceed to vote.

23 Hanson.

24 COMMISSIONER HANSON: As much as I would not  
25 like to hear this, I do think that we have jurisdiction;

1 therefore, I'm voting yes.

2 CHAIRMAN JOHNSON: Yeah. I don't know that I  
3 want to hear it very much either. I did spend a week  
4 with you, Mr. Wiecezorek, and others back in 2005. But  
5 Tal only credits you, Gary, for being there. So you must  
6 have asked much better questions, I think. Just kidding,  
7 Mr. Wiecezorek, of course.

8 Continuing our vote. Kolbeck.

9 COMMISSIONER KOLBECK: Aye.

10 CHAIRMAN JOHNSON: Johnson votes aye. Motion  
11 carries 3-0.

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY )

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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 9th day of  
11 February, 2010, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 18th day of  
14 February, 2010.

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

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	2:2, 24:10	<b>appearing</b> [1] - 6:24	<b>briefs</b> [2] - 3:5, 12:14	7:17
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