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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 FILING BY SANCOM,
INC. D/B/A MITCHELL TELECOM FOR APPROVAL
OF ITS INTRASTATE SWITCHED ACCESS TARIFF
AND FOR AN EXTENSION OF AN EXEMPTION FROM
DEVELOPING COMPANY SPECIFIC, COST-BASED
SWITCHED ACCESS RATES

TC07-128

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Transcript of Proceedings
August 12, 2008

ORIGINAL

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

COMMISSION STAFF

Rolayne Ailts Wiest
John Smith
Kara Semmler
Karen Cremer
Greg Rislov
Terri LaBrie Baker
Dave Jacobson
Bob Knadle
Brian Rounds
Deb Gregg
Nathan Solem
Jon Thurber
Stacy Splittstoesser

APPEARANCES

Chris Madsen (by telephone)
Jeffrey Larson (by telephone)
Bill Van Camp

PRECISION REPORTING

Cheri Wittler, RPR, CRR



1 TRANSCRIPT OF PROCEEDINGS, held in the above-entitled
2 matter, at the Visitor's Center, 650 East Capitol Avenue,
3 Pierre, South Dakota, on the 12th day of August 2008, commencing
4 at 9:30 a.m.

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1 CHAIRMAN HANSON: Telecommunications, TC07-128, In the
2 Matter of the Filing by Sancom, Incorporated Doing Business as
3 Mitchell Telecom For Approval of its Intrastate Switched Access
4 Tariff and For an Extension of an Exemption From Developing
5 Company Specific, Cost-Based Switched Access Rates.

6 On July 29, 2008 the Commission considered Sancom's
7 motion to quash and deferred action. Today the questions before
8 the Commission are shall the Commission grant Sancom's motion to
9 quash? Shall the Commission grant Qwest's motion to take
10 judicial notice? And, third, shall the Commission approve the
11 settlement stipulation?

12 We have several people on the phone with us this
13 morning, and, Mr. Larson of Sancom, do you wish to take the lead
14 on -- we have a few other people here as well.

15 MR. LARSON: Thank you, Mr. Chairman. Where we're at
16 is since two weeks ago when we appeared before the Commission on
17 this issue the parties have discussed and negotiated the matter.
18 However, we have not reached a final conclusion as we sit here
19 this morning.

20 Spoke with Chris Madsen this morning, and it was our
21 intention to advise the Commission that that's where we're at.
22 We've made various offers, and the latest offer on behalf of
23 Sancom was -- and we're dealing mainly or almost exclusively
24 with the three e-mails that were a part of the discovery request
25 made by Qwest. And Sancom has offered to turn over and disclose

1 all of that except three exhibits. At this time Qwest has not
2 accepted that other than in a qualified way we have not made
3 agreement on that at this time.

4 And I'd answer questions or whatever you might have.

5 CHAIRMAN HANSON: Thank you. I would like to hear
6 from all the parties that would like to be heard. Van Camp is
7 here and Mr. Senger.

8 Mr. Senger, are you part of this process today?

9 MS. CREMER: This is Karen Cremer from staff.
10 Mr. Senger will address the settlement stipulation question but
11 not the motion to quash.

12 CHAIRMAN HANSON: Thank you very much. On this
13 question then, Mr. Madsen.

14 MR. MADSEN: Well, thanks, Mr. Chairman. Let me see
15 if I can add a little bit to what Mr. Larson said about it as
16 far as where we are. We met with Mr. Smith last week in an
17 attempt to reach resolution, and I think we did make some
18 headway.

19 Let me back up, Mr. Chairman, just for a point of
20 reference. The motion to quash that was filed by Sancom goes as
21 to two elements of discovery.

22 There was a set of Interrogatories and request for
23 production. But then there's also a response to the e-mail.
24 We've set aside the Interrogatories and request for production
25 for the time being. We're talking only about the response to

1 the subpoena at this point. And basically what we wanted there,
2 what Qwest wanted, was to obtain Sancom's answers to discovery
3 requests, data requests that were put forward by staff.

4 So we're talking about those today. Mr. Larson's
5 correct, he had offered to make available everything that Sancom
6 had given to staff with the exception of three specific
7 discovery requests. Qwest is tentatively willing to accept
8 that. However, we simply want to reserve our right to go back
9 and revisit those three if we would decide after receiving the
10 other materials that we would need to request to receive those
11 others.

12 We're also willing to enter into a confidentiality
13 agreement to protect that information. And I think to cut right
14 to the chase of what the issue seems to be with the
15 confidentiality agreement is that we do not want to be
16 restricted to using any information that is obtained only in
17 this docket.

18 As the Commission's aware, there's litigation going on
19 in U.S. District Court, and if for some reason this information
20 would be pertinent to that other litigation, we would like to
21 use it there as well. And really the matter there,
22 Mr. Chairman, and members of the Commission is it can be
23 requested in the federal litigation as being relevant and
24 discoverable there. We're just trying to make it easy on
25 everyone so we can obtain this information once and make a

1 decision as to what we're going to do in this docket and move
2 on.

3 So if Mr. Smith doesn't have anything else to add,
4 Mr. Chairman, that's where we're at as we sit here this morning.
5 I think we're awfully close, but we're not quite there.

6 CHAIRMAN HANSON: Thank you. Staff, did you have
7 something to add?

8 MS. CREMER: Thank you. This is Karen Cremer from
9 staff. Staff has not been a part of these discussions of last
10 week. It matters none to us. We just need to be told
11 ultimately whether or not and what needs to be turned over, and
12 actually I believe Sancom will be the party that releases the
13 information once they work it out.

14 CHAIRMAN HANSON: Thank you. I have a number of
15 different people appearing on this docket. I know that there's
16 three different questions and people are addressing different
17 portions of the docket. And so if I should miss someone, please
18 speak up as we go through the process.

19 Mr. Smith, did you have anything to add on this item?

20 MR. SMITH: Thank you, Mr. Chairman. I guess maybe a
21 question here for both Mr. Larson and Mr. Madsen.

22 I guess where we need to get here is whether the
23 Commission ought to take action today on the motion to quash or
24 whether we ought to allow the process that you are engaged in to
25 play itself out and hopefully result in a mutually acceptable

1 resolution of this.

2 I guess I'd just be interested in your thoughts on
3 that. Maybe, Jeff, do you want to have a stab at that as to
4 what you think we ought to actually do today?

5 MR. LARSON: Thank you, Mr. Smith. I'm afraid -- I'm
6 not sure that at this point more time is going to help us. You
7 know, we've discussed this for the better part of a week, and we
8 may not come to an agreement on this, especially as it relates
9 to the exhibits and those three data requests.

10 Again, as Mr. Madsen points out, for a point of
11 reference we are not here and we disagree with Qwest's attempts
12 to obtain information in this forum as opposed to the Federal
13 District Court where is where they want it. The issues are
14 different in that proceeding than they are in this proceeding.
15 This is a rate case. And the items that we are asking not be
16 allowed to be discovered are, in our opinion, irrelevant to any
17 calculation of access rates and, accordingly, we don't think
18 that we will probably agree voluntarily to turn those over.

19 And so at this time I think while we would continue to
20 negotiate if that's what the Commission asks us to do, it may be
21 a little tough to get past these last three.

22 MR. SMITH: Maybe, Mr. Larson -- and, again, this
23 happened just before the meeting began. Maybe a half-hour
24 before that, I was CC'd on an e-mail from George Thompson who is
25 the Qwest counsel in-house on this. I don't know. It looked to

1 me like it was -- like he had basically, as Mr. Madsen said --
2 you know, on a reservation basis more on that 'same footing with
3 respect to Interrogatories and motion -- requests for
4 production, I thought his e-mail said on that same basis they
5 had agreed to that, pending -- or subject to your successful
6 negotiation of a protective order or a confidentiality
7 agreement.

8 That's what I saw. I don't know if you looked at that
9 e-mail, but it looked to me like he had agreed to that same kind
10 of deferral with respect to those three items.

11 MR. LARSON: I think that he indicated that actually
12 yesterday. My point being that holding in abeyance, you know,
13 we're not sure what that means for us and we want to make it
14 clear, I guess, that we are not probably going to go much
15 further as it relates to those three items.

16 MR. SMITH: Mr. Madsen, do you have a response to
17 that?

18 MR. MADSEN: Well, Mr. Smith, your indication of the
19 status of the matter is my understanding as well. And --

20 MR. SMITH: We just lost you Chris.

21 MR. MADSEN: Well, I mean, that's where we're at. We
22 agree to take what Sancom was offering to give us, which was
23 everything with exception to three specific data request
24 responses, subject to getting the proper confidentiality
25 agreements in place.

1 If after we have a chance to examine what's been
2 provided we feel it's necessary to revisit those three items,
3 that's what we do. It may not be necessary to resist them.

4 MR. SMITH: And again, you know, it may be that -- you
5 know, I do tend to agree with Jeff on the one issue that this is
6 a rate proceeding here. And I guess I'd just ask everyone to
7 keep that in mind as you're going through this stuff.

8 But, I don't know, Jeff, I mean, is what you're asking
9 is that the Commission rule on your motion today or --
10 definitely, or do you want to see whether the process you're
11 engaged in might play out to a mutually acceptable solution over
12 the next week, few days?

13 MR. LARSON: Well, Mr. Smith, I think our concern is
14 that if we're going to ask the Commission to agree to what has
15 tentatively been agreed to between the parties but then we have
16 this whole issue that -- or revisiting it, where does that leave
17 the subsequent question of approving the settlement stipulation?

18 You know, as I think we've indicated before, if this
19 is going to be revisited, it probably needs to be revisited in a
20 different docket or a different forum.

21 MR. SMITH: Right. What I'm getting at, Jeff, is --
22 because I -- is that something that if you guys might be able to
23 reach an agreement on this thing, is that something you want the
24 Commission -- do you think the Commission ought to rule on this
25 thing today, or should we defer action on the motion to quash

1 and we'll take it up again if you guys are unable to reach a
2 solution?

3 MR. LARSON: I think there's enough uncertainty here
4 that we probably are not asking for a final ruling today.

5 CHAIRMAN HANSON: A final ruling on the motion to
6 quash?

7 MR. LARSON: Correct.

8 CHAIRMAN HANSON: Is that shared by both parties?

9 MR. MADSEN: Mr. Chairman, this is Chris Madsen.
10 We're certainly willing to take a little bit more time to see if
11 we can resolve these couple remaining issues.

12 CHAIRMAN HANSON: All right. Thank you. Any
13 questions by the Commission?

14 Commissioner Johnson.

15 COMMISSIONER JOHNSON: Mr. Larson, what's the nature
16 of the three exhibits that Sancom is resistant to turning over?
17 In general what would your objection be to that discovery
18 request?

19 MR. LARSON: The first two, Mr. Commissioner, have to
20 do with market penetration, which as I indicated or alluded to
21 earlier, we don't understand how that would have anything to do
22 with the calculation of access rates.

23 And the third is an item called a trial balance, which
24 is kind of an accounting statement that would show each and
25 every single transaction in and out that is also going to be

1 used to create an income statement, you know, including the
2 money in and out of the secretary's cash drawer, and we don't
3 see that that will be relevant and have anything to do also with
4 the calculation of the rate.

5 COMMISSIONER JOHNSON: Mr. Larson, if those exhibits
6 don't have anything to do with the pending docket, why were they
7 turned over as part of a discovery request in that docket?

8 MR. LARSON: Well, it was staff's requests, you know,
9 and we thought staff was maybe reaching a little bit on their
10 requests there. There was some discussions about that. I think
11 our consultants had some discussions with them that this was not
12 the normal level of detail that there might be in other cost
13 study cases, and that was talked about. But nevertheless, we
14 complied with staff's requests.

15 COMMISSIONER JOHNSON: Mr. Chairman, body language is
16 indicating to me Mr. Senger desires to comment. I'm willing to
17 yield the floor to him if it's acceptable to you. I do have
18 some other questions.

19 CHAIRMAN HANSON: Just because he leapt over the table
20 and grabbed the microphone?

21 Yes, Mr. Senger.

22 MR. SENGER: When we're talking about a trial balance,
23 that is very pertinent to a switched access docket because we're
24 trying to get at and determine what rates are, and the method of
25 doing that is to get their financial information. I was looking

1 back through my discovery -- or data requests trying to identify
2 the two market penetrations, that essentially what we were doing
3 there is looking at the in-depth research in trying to find out
4 how active they were in that -- in the Mitchell market and
5 trying to determine the competitiveness and, thus, getting at
6 essentially a settlement that we reached today.

7 Staff believes they were very relevant to the docket
8 at hand, essentially the switched access docket that was filed
9 before staff.

10 COMMISSIONER JOHNSON: Mr. Chairman, if I might, I
11 have a question for Mr. Madsen.

12 CHAIRMAN HANSON: Yes. Please continue.

13 COMMISSIONER JOHNSON: I mean, Mr. Madsen, it seems as
14 though there is general agreement over just about everything
15 other than the confidentiality agreement. I mean, you're saying
16 you may not need to look at the exhibits so you're not going to
17 push that issue right now.

18 I mean, help me understand why the confidentiality
19 agreement shouldn't bar you from using those documents in
20 another court proceeding? I mean, can't you just go get it in
21 that federal proceeding? Why are we letting that issue hold up
22 this agreement?

23 MR. MADSEN: Mr. Johnson, your point is well taken and
24 I appreciate where you're coming on that but it's to make the
25 discovery easier for all the parties involved. I mean, there

1 are two separate cases going. There's this docket, and there is
2 the federal case going. And without getting into the splitting
3 hairs on how it's being used or if it's being used in one or the
4 other, I think that the simple -- the reality of the situation
5 is that there are two cases. If there's something that appears
6 in this docket that could be used in the other, it shouldn't
7 come as any great surprise to the other parties that it would
8 get used in the other case.

9 COMMISSIONER JOHNSON: Mr. Chairman, I want to throw
10 out a potential idea and maybe get Commissioners and staff and
11 advisor's thoughts on it prior to making a formal motion. My
12 thought is we just need to deny this motion to quash with regard
13 to the subpoena, in part not making any ruling on the exhibits,
14 deferring action on the exhibits and deferring any action on the
15 Interrogatories and data requests.

16 The parties have widespread agreement on that at this
17 point. And at this point I would say that that's -- that's
18 subject to Qwest entering into a confidentiality agreement that
19 does not allow them to use this information in a federal
20 proceeding.

21 They can go get the stuff in the federal process if
22 they want. Let's not let this hold up. If we defer this a
23 couple weeks, we'll be right back in the same spot. I guess I'd
24 be interested in doing those things.

25 CHAIRMAN HANSON: Are you recommending the Commission

1 grant Sancom's motion in part then?

2 COMMISSIONER JOHNSON: No. It would be to deny in
3 part and then to defer for the balance of the motion to quash.

4 CHAIRMAN HANSON: All right. Any discussion by the
5 Commission on that?

6 Commissioner Kolbeck.

7 COMMISSIONER KOLBECK: I was just wondering, deny in
8 part. What parts?

9 COMMISSIONER JOHNSON: With regard to the subpoenaed
10 information, the information that was turned over to Qwest
11 except for the exhibits. It seems as though Sancom is willing
12 to give that up. It seems to me on a common sense perspective
13 Qwest should have it.

14 We also have verbal representations from Qwest that it
15 is possible, if not likely, that once they get that information
16 they may be perfectly comfortable signing on with the settlement
17 stipulation that has been prepared by staff and Sancom. By
18 turning over some of this information right now we may close
19 this entire issue out. We may be able to move forward with all
20 parties in agreement. To me, let's move in that direction.

21 CHAIRMAN HANSON: Please, Mr. Kolbeck.

22 COMMISSIONER KOLBECK: I have one other maybe to add
23 to your motion. Would you think that adding to the motion that
24 no communication be held between Qwest the IXC and Qwest the
25 ILEC be in that motion?

1 COMMISSIONER JOHNSON: Well, you know, I'm no expert
2 on confidentiality agreements, but I would leave it to the
3 parties to draft -- you know, with Mr. Smith's oversight, draft
4 something that makes sense that the parties can agree on.
5 Certainly staff, Sancom, and Qwest have some experience with
6 those so that might well be part of it.

7 CHAIRMAN HANSON: Mr. Smith.

8 MR. SMITH: Yeah. I think -- again, you guys have the
9 agreements in front of you. I do too, but I'm not going to pull
10 them out unless I have to here. But I think what our agreement
11 basically states is that the only persons who will be provided
12 access to this information are people with a need to know
13 strictly relative to this case. And that's it.

14 MR. VAN CAMP: I hate to interject at this point --
15 Bill Van Camp, AT&T Communications of the Midwest -- but as some
16 of staff are aware, we do have outstanding discovery requests in
17 this docket. We are parties to the docket so this might not be
18 the appropriate forum to bring it up but if there is a
19 stipulation that's entered into between the parties, AT&T would
20 certainly have its own rights that it still has preserved as to
21 the data requests that were shared between staff, Qwest, and
22 Sancom and we are not going to waive that in any way by a
23 third-party agreement.

24 CHAIRMAN HANSON: Thank you for your comment. Well
25 taken. Further discussion?

1 Mr. Larson, you had stated that market penetration,
2 trial balance, and what was the third item?

3 MR. LARSON: Two of the items were market penetration.

4 CHAIRMAN HANSON: I see. Thank you.

5 MR. MADSEN: Mr. Chairman, I think I can make it easy
6 for you. I've got the e-mail up on my screen, and specifically
7 what we're talking about would be the Sancom responses to
8 DR 1-23, DR 1-28, and the first data request from, let's see, it
9 appears to be DR 3-3.

10 CHAIRMAN HANSON: Thank you. I'm inclined to agree to
11 the extent on the denying the motion to quash, but at the same
12 time I don't -- I'm not convinced that they need those items.
13 And if your motion -- if you were to make a motion including
14 that, then I would be inclined to support it.

15 COMMISSIONER JOHNSON: Yes. Mr. Chairman, that was my
16 intention, to not take any action on those three exhibits that
17 are in question mentioned by Mr. Madsen.

18 CHAIRMAN HANSON: That's what I understood from your
19 motion. I just wanted it clarified.

20 Thank you. Further discussion?

21 COMMISSIONER JOHNSON: I would just ask that -- I
22 would check with staff, make sure they don't have an objection
23 or some sort of concern that wouldn't be evident to me.

24 MS. CREMER: Staff would be fine with that motion.

25 COMMISSIONER JOHNSON: Thanks very much.

1 CHAIRMAN HANSON: Sounds like you have a motion to
2 make.

3 COMMISSIONER JOHNSON: I do. I would deny in part the
4 motion to quash with regard to the subpoena, excepting the three
5 exhibits that have been called into question, and I would have
6 the Commission defer action on the motion to quash with regard
7 to those three exhibits as well as the Interrogatories and data
8 requests dealing with the conferencing services offered by
9 Sancom.

10 CHAIRMAN HANSON: Discussion on the motion? I think
11 that makes a great deal of sense and brings us to a position at
12 least where we can continue to proceed. I appreciate the
13 motion.

14 Commissioner Kolbeck.

15 COMMISSIONER KOLBECK: This is -- the last time we
16 discussed this I wasn't comfortable, but I'm very comfortable
17 with the motion today.

18 CHAIRMAN HANSON: Mr. Smith advises that there should
19 be -- in addition to the motion should be subject to a
20 protective order. Is that correct?

21 MR. SMITH: Uh-huh.

22 COMMISSIONER JOHNSON: Yeah. Thanks. I forgot that
23 in my motion, and at least in my informal discussion comments
24 before I was interested in having that confidentiality agreement
25 not allow the parties to use data in a federal proceeding. If

1 the Commissioners are acceptable to an amended motion, I'd so
2 move.

3 CHAIRMAN HANSON: I assume you were still making your
4 motion so that's all part of the same motion. Further
5 discussion on the motion?

6 Commissioner Johnson.

7 COMMISSIONER JOHNSON: Aye.

8 CHAIRMAN HANSON: Commissioner Kolbeck.

9 COMMISSIONER KOLBECK: Aye.

10 CHAIRMAN HANSON: Hanson votes yes. The motion
11 carries.

12 Second question is shall the Commission grant Qwest's
13 motion to take judicial notice.

14 Mr. Madsen, did you have something to present at this
15 time on that?

16 MR. MADSEN: Mr. Chairman, I believe that the motion
17 for judicial notice was just in further support of our position
18 with regard to the motion to quash to take notice of another
19 proceeding, and I think the motion speaks for itself. I don't
20 know based on the decision the Commission has made that it's
21 necessary to take any action on the motion for judicial notice.

22 CHAIRMAN HANSON: Thank you. I didn't quite catch the
23 very last part of it.

24 MR. MADSEN: I'm sorry, Mr. Chairman. I'm not sure
25 it's necessary for the Commission to take action on that motion,

1 given the decision made by the Commission with regard to the
2 motion to quash.

3 CHAIRMAN HANSON: Thank you. Does staff have anything
4 on this item?

5 MS. CREMER: Based on Mr. Madsen's comment, I believe
6 the Commission could just simply take no action as to the
7 motion.

8 CHAIRMAN HANSON: Thank you. Since the moving party
9 has requested that we take no action, we will not.

10 Question number 3 is shall the Commission approve the
11 settlement stipulation. Under the circumstances of what has
12 prevailed up to this point -- I was going to say Commissioner
13 Smith.

14 MR. SMITH: I wish. You know, maybe because I know
15 we've got some other proceedings that our reporter is going to
16 be crunched for time, I mean, until we see how this thing plays
17 out, I think maybe the Commission ought to just not waste
18 anymore time on this and defer action on the stipulation today.

19 CHAIRMAN HANSON: Might be sound advice. I'd like to
20 think we weren't wasting time on the preceding portion.

21 MR. SMITH: I meant that I think we --

22 CHAIRMAN HANSON: Will the parties agree with that at
23 this point, or are there things that need to take place at this
24 time on this item? We are crunched for time a little bit.

25 MR. LARSON: Mr. Chairman, Jeff Larson. At this point

1 I think that makes sense what Mr. Smith has indicated.

2 CHAIRMAN HANSON: All right. Seeing no objection, we
3 will move on then.

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1 STATE OF SOUTH DAKOTA)

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CERTIFICATE

3 COUNTY OF HUGHES)

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5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and Notary
7 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 had in
10 the above-entitled matter on the 12th day of August, 2008, and
11 that the attached is a true and correct transcription of the
12 proceedings so taken.

13 Dated at Pierre, South Dakota this 15th day of
14 August, 2008.

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Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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