

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE		) TC98-176
		) CT99-020
PUC AGENDA MEETING		) TC99-053
		) TC99-086
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HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS:                   September 21, 1999  
  1:30 P.M.  
  Room LCR 1, Capitol Building  
  Pierre, South Dakota

PUC COMMISSION:               Jim Burg, Chairman  
  Laska Schoenfelder, Commissioner  
  Pam Nelson (Not Present)

COMMISSION STAFF  
PRESENT:                        Rolayne Ailts Wiest  
  Karen Cremer  
  Camron Hoseck  
  Harlan Best  
  Gregory A. Rislov  
  Michele Farris  
  Heather Forney  
  Keith Senger  
  Leni Healy  
  Martin Bettmann  
  Shirleen Fugitt  
  Sue Cichos

Reported by:                       Lori J. Grode, RMR

ORIGINAL

A P P E A R A N C E S

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For SDITC:

Richard D. Coit  
P.O. Box 57  
Pierre, SD 57501

For MCI:

Neal Fulton  
P.O. Box 160  
Pierre, SD 57501

For Qwest:

Robert Riter, Jr.  
P.O. Box 280  
Pierre, SD 57501

Appearances by Telephone:

Colleen Sevold, U S West  
Thomas J. Welk, U S West  
Alex Duarte, U S West  
Edward Peters, U S West  
Michelle Singer, AT&T  
Wendy Bluemling, DSLnet

P R O C E E D I N G S

1  
2 CHAIRMAN BURG: This is Commissioner Jim  
3 Burg. I'm chairman of the Commission. I'll call the  
4 meeting to order. Commissioner Schoenfelder is  
5 present, and Commissioner Nelson is not here today.

6 Let me call roll first.

7 (Reported but not transcribed.)

8 CHAIRMAN BURG: Anybody else that I did not  
9 call? We'll move on and the first thing is approval of  
10 the minutes of the Commission meeting held on September  
11 8, 1999. Shirleen, were there any corrections or  
12 additions noted?

13 MS. FUGITT: There were not.

14 COMMISSIONER SCHOENFELDER: I would move  
15 approval of the minutes as printed.

16 CHAIRMAN BURG: I will second the motion.

17 (NG99-005 and status report on consumer  
18 issues not transcribed.)

19 CHAIRMAN BURG: The first item under  
20 telecommunications is TC98-176, in the matter of the  
21 complaint filed by Randy Kieffer, Sturgis, South Dakota  
22 against U S West Communications, Incorporated,  
23 regarding telephone service outages and inadequate  
24 service. And also that's combined with CT99-002, in  
25 the matter of the complaint filed by Randy Kieffer,

1 Sturgis, against U S West regarding service problems.

2 The question being today, does the Commission  
3 find that U S West committed an unlawful or  
4 unreasonable act, rate, practice, or omission and  
5 whether U S West is liable for damages caused the  
6 complainant and, if so, what is the amount?

7 At this time any comments from staff on this  
8 issue at this time?

9 MS. HEALY: I believe this was put on in  
10 error. We're not scheduled yet for this decision or  
11 for any further action.

12 CHAIRMAN BURG: Okay. So we just delay the  
13 decision on this at least until the next meeting.

14 (CT99-014 and CT99-016 reported but not  
15 transcribed.)

16 CHAIRMAN BURG: CT99-020, in the matter of  
17 the complaint filed by Fred Holpp, Rapid City, South  
18 Dakota, against U S West Communications, Incorporated,  
19 regarding failure to provide service.

20 Today, does the Commission find probable  
21 cause of an unlawful or unreasonable act, rate,  
22 practice, or omission to go forward with this complaint  
23 and serve it upon the respondent?

24 Mr. Holpp, you indicated you are on the  
25 phone. Do you want to just quickly tell us what the

1 problem that you've had with the phone company?

2 MR. HOLPP: Okay. I sure will. I apologize  
3 for not being able to be at the meeting. I'm on the  
4 road today.

5 CHAIRMAN BURG: This is fine.

6 MR. HOLPP: Thanks for taking my call. I was  
7 moving into a new area, new home, and I was having it  
8 built. I called U S West around January. I told them  
9 that I would be moving into this house on the first of  
10 May and that my business, which is a computer-based  
11 business, didn't want any disruption, you know, and  
12 that I was planning on putting another house on my  
13 acreage that I could put my office in and an apartment  
14 and a storage area so that, you know, I could live in  
15 that apartment until the middle of May when it was done  
16 so there would be no disruption in my business, and I  
17 would need that hooked up on May 1.

18 Well, they told me that would be no problem.  
19 You know, if they would have told me I couldn't have  
20 phone service for a year, I could have made different  
21 arrangements, but they said it would be no problem.

22 CHAIRMAN BURG: What was the date of that  
23 again, please?

24 MR. HOLPP: May 1. I called one other time  
25 then around May 13th, and I'm not sure if they called

1 me or I called them. It didn't look like I was going  
2 to get any service. And I was told that it would be  
3 maybe, you know, like two to three weeks. And I said,  
4 well, if that's -- fine, we can operate with that. And  
5 I had to go ahead and move into the other building on  
6 May 1.

7           To make a long story short, I kept getting  
8 told it would be two to three weeks, two to three  
9 weeks, and it took three months. I didn't get phone  
10 service until July 21st. And it was probably, you  
11 know, the worst of all worst situations to get messed  
12 up like that when we're switching businesses around. I  
13 couldn't call home. I had no way of calling out. I  
14 finally had to go to Interlinks, a cell phone, I think,  
15 after 60 days into my house that we could get a little  
16 bit of a cell phone service in and out of there, but I  
17 had no computers, no faxes, or anything.

18           And I just finally I called an attorney. I  
19 said, "I've got to get phones. I don't know what's  
20 going on." And when we called them, they basically  
21 told him if you didn't like it, sue them, you know. So  
22 it was just a bad attitude and a bad situation to be  
23 in.

24           And but it took me -- and it wouldn't have  
25 been so bad if they would have told me I wasn't going

1 to get it, but I gave them plenty of time to get this  
2 thing done, but it drug on forever. And I was grateful  
3 to get it July 21st.

4 CHAIRMAN BURG: You do have service now?

5 MR. HOLPP: I do have service now.

6 CHAIRMAN BURG: Is it working completely  
7 satisfactorily for you?

8 MR. HOLPP: Yes.

9 CHAIRMAN BURG: Okay. U S West, do you have  
10 any response?

11 MS. SEVOLD: This is Colleen, Chairman Burg,  
12 from U S West Communications. And the customer had  
13 asked in his complaint for service. That has been  
14 provided on July 21st, as he said. He has since come  
15 back to U S West and asked for some lost compensation  
16 and other things, and I just received that maybe 45  
17 minutes ago. So at this time I guess we'd recommend  
18 that it go to probable cause.

19 CHAIRMAN BURG: Have we received anything of  
20 compensation?

21 MR. HOSECK: This is Camron Hoseck. I  
22 haven't seen it.

23 CHAIRMAN BURG: Mr. Holpp, did you forward to  
24 the PUC any request for compensation?

25 MR. HOLPP: No. I talked to Colleen last

1 week, I believe, like Friday, and she was wanting to  
2 know what it would make to kind of get this thing  
3 settled. And I said I would like to have my extra  
4 costs covered, you know, because it was just a bad  
5 situation. It was worse than bad. And my wife did --  
6 I'm on the road. My wife just faxed that to her today,  
7 so she's right. But I haven't asked for any  
8 compensation from anybody else now.

9 CHAIRMAN BURG: I guess my recommendation is  
10 that we defer a finding of probable cause because if it  
11 can be settled, there would be no point of opening a  
12 docket and going through the process. And so far it  
13 sounds like you're amenable?

14 MR. HOLPP: I'm not trying to get rich off  
15 the deal. I'm not being vindictive. I was just  
16 saying, you know, that it was a bad situation. It  
17 should have never happened.

18 CHAIRMAN BURG: We will keep the docket open  
19 so if you're not satisfied with whatever negotiations  
20 you have, that we could consider it again. But it  
21 sounds to me like you may be on the road to settlement  
22 and there's no point in us opening a docket or finding  
23 probable cause if that's the case.

24 MR. HOLPP: We'll take your recommendation,  
25 you know, whatever you think, but I do know other



1 people around me got service and I just didn't get it,  
2 you know. And I really don't know why, but it just  
3 didn't happen. It was ninety days without service,  
4 which is pretty bad. But I do thank you for your time.

5 COMMISSIONER SCHOENFELDER: Mr. Chairman, I'm  
6 going to move that we find probable cause in this. U S  
7 West recommended it, and it can always be closed and  
8 dismissed at either stage in the game. So I would move  
9 for probable cause.

10 CHAIRMAN BURG: I don't object to it, but I'm  
11 trying to figure out what our probable cause finding is  
12 on because what they requested was met. The only thing  
13 we have before us is service provisioning and it is  
14 provided, so what do we finding probable cause on?

15 MR. HOSECK: May I respond, Mr. Chairman?

16 CHAIRMAN BURG: Go ahead.

17 MR. HOSECK: I think there are rates and  
18 service quality issues under the new standards of the  
19 Commission has adopted with regard to having facilities  
20 available and an adequate plant, things of that general  
21 nature and in order to provide basic service. And so  
22 those are issues as to whether or not U S West has  
23 complied with those service quality standards that the  
24 Commission has adopted.

25 COMMISSIONER SCHOENFELDER: And I would

1 submit this Commission very well could find it was an  
2 unreasonable length of time before service was  
3 provided. I would just like to find probable cause.

4 CHAIRMAN BURG: I'll second the motion.

5 COMMISSIONER SCHOENFELDER: Thank you.

6 CHAIRMAN BURG: Probable cause has been found  
7 in CT99-020.

8 Thank you, Mr. Holpp.

9 MR. HOLPP: Thank you.

10 (CT99-033 and CT99-039 reported but not.  
11 Transcribed.)

12 CHAIRMAN BURG: TC99-053, in the matter of  
13 the filing by U S West Communications, Incorporated,  
14 for approval of tariff pages for its access service  
15 tariff implementing its intraLATA dialing parity plan.

16 Today, shall the Commission grant U S West's  
17 motion for continuance?

18 MS. WIEST: It's on the addendum also. You  
19 might take the second question first.

20 CHAIRMAN BURG: Yes. There's actually two  
21 parts to this question. Shall the Commission grant  
22 AT&T's motion for extension of time to file testimony  
23 and allow AT&T through September 23rd, 1999, to file  
24 its testimony.

25 Is there -- do you have any comments on the

1 request, U S West?

2 MR. DUARTE: Yes, we do, Commissioner. This  
3 is Alex Duarte. We have two main reasons for our  
4 request for a continuance. The first one is that we  
5 are very close to settling our inter carrier disputes  
6 with the intervenors. Specifically, we have a  
7 settlement in principle with AT&T.

8 The SDITC has stated that it has no  
9 objections to settlement that we proposed with AT&T.  
10 We've agreed to a certain number and certain parameters  
11 that we entered into in a previous settlement on the  
12 same issues in Colorado.

13 And, in addition, U S West and AT&T have  
14 agreed to include staff in our settlement discussion to  
15 make sure that, you know, a settlement is something  
16 that they also feel is in the best public interest.

17 We believe that given that we are very close  
18 to settlement, we have come to certain resolutions that  
19 it makes sense to continue the hearing for simply 30 to  
20 40 days or so just so we can be able to wrap this up.

21 In the unlikely event that staff, after we've  
22 come to the agreements with AT&T, has the concern about  
23 the issues, then we think that we can have a hearing,  
24 but the hearing will be much more narrowly-based,  
25 narrowly-focused than it would be if we go forward at

1 this point in time.

2           The second reason -- and I have to apologize  
3 for our mistake here, but we sent the letter yesterday,  
4 that it should have been received by the Commission  
5 this morning, along with a new Section 8 of our Cost  
6 Study.

7           Apparently after we've reviewed Harlan Best's  
8 testimony, as well as the motion for an extension that  
9 was filed by AT&T to have their briefs and testimony  
10 filed, we realized that there was an error made by us  
11 when we calculated Section 8 of the Cost Study.

12           Apparently somebody had pulled the wrong file  
13 and therefore that entire section is -- I don't know if  
14 the entire section is wrong, but the section has  
15 incorrect information. My understanding from our  
16 witness Mr. Brigham, is that only Section 8 has been  
17 affected.

18           So we since sent all parties, staff, Mr. Best  
19 and Ms. Cremer, as well as AT&T and SDITC, a new copy  
20 of Section 8, which we also filed with the Commission  
21 this morning. Or we sent that out via Federal Express  
22 yesterday.

23           And so, therefore, we feel that given that,  
24 unfortunately through no fault of his own, Mr. Best was  
25 working off wrong numbers that we had supplied. His

1 testimony it is really not going to be that on point  
2 because most of the issues that I think that he's  
3 addressed will be addressed by the fact that he now has  
4 the new numbers.

5           And same thing with AT&T. AT&T won't be able  
6 to file their testimony until sometime this week.  
7 They've asked until Thursday. And by the time we get  
8 that and by now they have the new numbers, it's going  
9 to take a while for them to do their testimony.  
10 Obviously, we only have currently a date to do our  
11 reply testimony.

12           And given those errors, if you will, we think  
13 that another reason why we should go ahead and  
14 continuing this thing hopefully we can get the thing  
15 resolved and never have to have a hearing. Or if we do  
16 have to have a hearing, it will be a very  
17 narrowly-focused hearing because it would only be  
18 staff's concerns with whatever numbers AT&T and U S  
19 West have come to an agreement.

20           So for those reasons, I think that's in the  
21 best interests for everybody to avoid a lot of needless  
22 work to move the hearing for about 30 days or so. And  
23 we think that it won't be a hearing ultimately that  
24 will be necessary.

25           CHAIRMAN BURG: Have we received the document

1 they're talking about?

2 MS. CREMER: Yes. We got that this morning,  
3 and Harlan has done his needless work.

4 CHAIRMAN BURG: AT&T, do you have any  
5 comments?

6 MS. SINGER: Michelle Singer on behalf of  
7 AT&T, Mr. Chairman. We would just add that we don't  
8 have any objection to the 30-day extension requested by  
9 U S West. We are working hard on trying to settle the  
10 case. And we have received those new pages to the Cost  
11 Study, and then we asked for just until this Thursday  
12 to file our testimony. We did not anticipate that we  
13 would have received anything by U S West -- from U S  
14 West by that time.

15 I think if the Commission does choose to  
16 grant U S West's request for a 30-day extension, we  
17 would ask for a little bit more time to put together  
18 our testimony, you know, even five days or so. I'm  
19 sure we could get it done by next week. That's all I  
20 have.

21 CHAIRMAN BURG: Do you want to specify a  
22 date?

23 MS. SINGER: I would say by September 30  
24 would be sufficient.

25 CHAIRMAN BURG: Rolayne, is that the first

1 question we wanted to answer is their extension?

2 MS. WIEST: Actually these two questions are  
3 so intertwined, I would just suggest that the  
4 Commission give AT&T their extension until September  
5 30th, change the date for the rebuttal until October  
6 8th, and then the hearing would be held November 2nd  
7 and 3rd, if necessary, in Pierre.

8 CHAIRMAN BURG: Any objections to that  
9 recommendation?

10 MR. DUARTE: No objections from U S West.

11 MS. SINGER: AT&T has no objection. Thank  
12 you.

13 MR. COIT: I don't have any objection.

14 COMMISSIONER SCHOENFELDER: Staff?

15 CHAIRMAN BURG: No comments at all, Rich?

16 MS. CREMER: That's fine for staff.

17 COMMISSIONER SCHOENFELDER: I will just move  
18 that we grant the continuance and that September 30 is  
19 the date for AT&T, October 8th is U S West's date, and  
20 the hearing will be held November 2nd and 3rd. And  
21 that's going to go in the order if a hearing is  
22 necessary.

23 This Commission is getting to the point where  
24 scheduling is getting to be very, very, very, very  
25 difficult, and so companies are going to have to

1 cooperate with us because there is nothing open the  
2 rest of the year. So you're going to have to --  
3 November 2nd and 3rd will be the hearing date, and  
4 there will not be any deviation from that.

5 CHAIRMAN BURG: Rich, I don't remember, did  
6 you guys file anything?

7 MR. COIT: We didn't present any testimony.

8 CHAIRMAN BURG: In light of the additional  
9 information, do you have any desire to file anything?

10 MR. COIT: Not really. I would just clarify  
11 that in talking with U S West about this case, we  
12 really, you know, haven't had any -- haven't really  
13 found the tariff itself to be objectionable, but with  
14 regard to any settlement, we haven't seen any  
15 settlement yet. So to say straight out that we  
16 wouldn't have any objection to that, a settlement, is  
17 not quite correct. Obviously I would want the  
18 opportunity to look at it first.

19 CHAIRMAN BURG: We'll give everybody a month  
20 to get that settlement right.

21 MS. SINGER: Mr. Chairman, this is Michelle  
22 Singer again from AT&T. The process we need to follow  
23 is now that we have a valid Cost Study from U S West,  
24 we can go through and apply -- talk to Mr. Brigham and  
25 apply this process that we had agreed to in Colorado



1 specifically to the numbers in South Dakota. And,  
2 again, we would like to invite staff to participate in  
3 this discussion and any other parties that are  
4 interested.

5 CHAIRMAN BURG: We do have a motion on the  
6 floor, and I'll second it. So we have granted the  
7 extension both to U S West and AT&T for the filing.

8 TC99-086, in the matter of the filing by U S  
9 West Communications, Incorporated, for approval of  
10 agreement for local wireline network interconnection  
11 and service resale between DSLnet Communications and  
12 U S West Communications.

13 Today, shall the Commission approve the  
14 interconnection agreement?

15 U S West, do you want to go first in  
16 discussing that agreement?

17 MR. DUARTE: I don't think we have any  
18 comments, Commissioner.

19 CHAIRMAN BURG: And I believe, who do we  
20 have? Wendy, do you have any comments?

21 MS. BLUEMLING: Yes. No, we are opting into  
22 an already approved Commission agreement taking  
23 advantage of a Telecommunications Act provision.

24 CHAIRMAN BURG: Harlan, do you have any  
25 comments?

1 MR. BEST: No.

2 CHAIRMAN BURG: Nobody has any comments?  
3 Okay.

4 MR. HOSECK: Mr. Chairman and Commissioner  
5 Schoenfelder, this is an agreement for interconnection  
6 and resale. And as the party mentioned, it is an  
7 adoption of the AT&T and U S West arbitrated  
8 agreement.

9 The comment period ran on September 8th and  
10 no one filed any comments. I've reviewed the agreement  
11 briefly, especially as to the applicability of South  
12 Dakota law, and it is compliant with that. And in that  
13 regard, I would recommend approval of the agreement.

14 CHAIRMAN BURG: Okay.

15 COMMISSIONER SCHOENFELDER: And I would move  
16 approval of the agreement in TC99-086.

17 CHAIRMAN BURG: I'll second that. The resale  
18 agreement has been approved in TC99-086, the  
19 interconnection agreement, excuse me.

20 I think I'll take the other addendum before  
21 we go to rule making.

22 (CT99-018 reported but not transcribed.)

23 CHAIRMAN BURG: Any other? I think I've  
24 covered all the dockets except the rule making one.

25 (THE HEARING CONCLUDED AT 2:00 P.M.)

1 STATE OF SOUTH DAKOTA )  
2 COUNTY OF HUGHES )

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4 I, LORI J. GRODE, Registered Merit Reporter  
5 and Notary Public in and for the State of South  
6 Dakota:

7 DO HEREBY CERTIFY that the above hearing,  
8 pages 1 through 18, inclusive, was recorded  
9 stenographically by me and reduced to typewriting.

10 I FURTHER CERTIFY that the foregoing  
11 transcript of the said hearing is a true and correct  
12 transcript of the stenographic notes at the time and  
13 place specified hereinbefore.

14 I FURTHER CERTIFY that I am not a relative or  
15 employee or attorney or counsel of any of the parties,  
16 nor a relative or employee of such attorney or counsel,  
17 or financially interested directly or indirectly in  
18 this action.

19 IN WITNESS WHEREOF, I have hereunto set my  
20 hand and seal of office at Pierre, South Dakota, this  
21 23rd day of September 1999.

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\_\_\_\_\_  
Lori J. Grode, RMR, RPR

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