

A P P E A R A N C E S

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3 For Qwest:
4 (Formerly US West) Thomas E. Welk
5 Alex Duarte
6 Colleen E. Sevold

7 For SDITC: Richard D. Coit

8 For USBI: Neil Fulton

9 For FiberCom: Greg Bernard
10 Kyle White

Appearances by Telephone:

11
12 For I-Link Communications: Brian Jones

13 For Gemini Company: Roger Specht

14
15 For Help Line: Carol Muller

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P R O C E E D I N G S

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2 CHAIRMAN BURG: Good morning. I'll call the
3 Commission meeting to order. I'm Chairman Jim Burg.
4 Commissioners Schoenfelder and Nelson are also present.
5 The first item of business is approval of the minutes of
6 the Commission meeting held on September 13th, 2000.
7 Mary, any corrections or anything?

8 MS. GIDDINGS: There were none, Chairman Burg.

9 COMMISSIONER NELSON: I would move approval.

10 COMMISSIONER SCHOENFELDER: Second.

11 CHAIRMAN BURG: I will concur. The minutes are
12 approved. Consumer issues? Excuse me, do we have
13 anything? No report from you? I thought something was
14 missing.

15 (Roll Call.)

16 CHAIRMAN BURG: Okay. We'll proceed. Item number
17 two, CT00-055, In the Matter of the Complaint Filed by
18 Black Hills FiberCom, LLC, Rapid City, South Dakota,
19 Against U S West Communications, Incorporated, Regarding
20 Competitive Pricing and Promotion Practices.

21 Today, shall the Commission grant the motion to
22 dismiss or alternatively, for summary judgment? Should
23 the motion to dismiss argument come first?

24 MS. WIEST: It's the same.

25 CHAIRMAN BURG: Okay. So?

1 MS. WIEST: Qwest goes first.

2 CHAIRMAN BURG: Okay. Qwest, who's on for Qwest?

3 MR. WELK: I am, Mr. Chairman. This is Tom Welk.
4 Thank you, Mr. Chairman, Commissioners. You should have
5 received a reply brief from our office yesterday. Did
6 anyone in Pierre receive that?

7 MS. WIEST: Yes.

8 MR. WELK: I want to make sure it got filed
9 because we got the responsive brief last week and we filed
10 yesterday. I'll be rather brief because I believe the
11 papers filed by both sides put forth what the issue is.

12 Qwest has asked the Commission to rule as a matter
13 of law that Black Hills FiberCom is not entitled to the
14 benefits of SDCL 49-31-86.2. The issue is one of law. It
15 can be decided now because the facts material to the
16 motion are undisputed.

17 FiberCom's complaint alleges, among other things,
18 that we offer broad band services throughout this local
19 exchange area. It further alleges it's entitled to be
20 protected from competition because of SDCL 49-31-86.2.
21 The statute is clear on its face that to have the
22 protection from promotions and competition, that the
23 facility based carrier must provide broad band services
24 "throughout its local exchange area."

25 FiberCom is authorized by this Commission to offer

1 services where U S West is the incumbent local exchange
2 carrier on file with the Commission and consistent with
3 the certificate of authority. The facts are undisputed
4 from the deposition of Mr. White and the admissions made
5 by FiberCom and the responsive brief to the Commission
6 that broad band services are not provided throughout this
7 local exchange. They're offering services wherever U S
8 West is. They do not provide broad band services in all U
9 S West exchanges.

10 Moreover, even in the areas in which they do
11 provide broadband services they do not serve rural
12 customers. The statute is clear on its face under the
13 rule of statutory construction the Commission must accept
14 a statute as written. It did not substitute its judgment
15 for the legislature. The statute is clear that this
16 requires that the facility based carrier provide its
17 services throughout the exchanges. It does not --
18 therefore, FiberCom is not entitled as a matter of law to
19 the benefits of the 49-31-86.2. That's all I have,
20 Commissioners.

21 CHAIRMAN BURG: FiberCom.

22 MR. BERNARD: Yes, Greg Bernard on behalf of
23 FiberCom. I haven't met a number of the Commissioners or
24 the staff, so I would say good morning. I'm here with
25 Kyle White. Together we're representing FiberCom. And I

1 think that the issues framed by the complaint are really
2 two-fold.

3 One is what protection does Section 86.2 provide
4 to competitive local exchange carriers, facilities based
5 competitive carriers; and the second issue and the issue
6 before the Commission today is when does that protection
7 kick in?

8 Obviously, there's -- if we get past today,
9 there's going to be a great deal of argument about what
10 the protection is. And I think in order to frame really
11 the issues today, we have to -- as Mr. Welk suggested, it
12 really is dependent on rules of construction, statutory
13 rules of construction.

14 Mr. Welk suggests that the Commission must accept
15 the statute as written and that there's no room for
16 construction, or construing the plain meaning of the
17 statute. But it's FiberCom's position that other rules of
18 construction apply.

19 In particular, when the construction of a statute
20 is unreasonable or creates an absurd result or somehow
21 frustrates the legislature's intention, the actual -- the
22 literal meaning of the words used takes second seat to the
23 legislature's intent.

24 Now, in a broader context, it's important to
25 realize or to bear in mind that the paramount purpose of

1 statutory construction is to determine and to force
2 legislators' intent and that another important principle
3 is that statutes are construed as a whole in terms of
4 their statutory scheme. That is, one particular statute
5 can't be construed or taken out of context or in an island
6 or isolation by itself and applied in isolation and, in
7 fact, it has to be interpreted within the scheme and the
8 legislature's intent can be determined from that scheme.

9 Okay. The legislature and the broader scheme of
10 the telecommunications statutes in South Dakota has
11 already determined by express intent that South Dakota
12 needs narrow, wide and broad band networks in order so
13 that their citizens can enjoy all of the benefits,
14 economic and social, of the -- that the new communications
15 age provides its citizens.

16 In that context, Qwest is suggesting that FiberCom
17 is not entitled to the protections of 86.2.

18 Interestingly, even Mr. Welk conceded in his argument just
19 a few minutes ago that the protection offered in 86.2 is
20 protection from promotion and competition. FiberCom
21 submits that 86.2 is a safe harbor provision that is
22 designed to allow facilities based competitive local
23 exchange carriers a safe harbor so that if they decide
24 that they're going to commit the money, the resources, the
25 time, to construct a facility -- and obviously

1 construction takes time. If they're going to make that
2 commitment, this provision gives us some assurance or
3 gives FiberCom some assurance that at the end of the
4 construction phase, there's going to be a pool of
5 customers available that isn't already target marketed,
6 isn't already tied up by the incumbent monopoly, so that
7 at least when we get to the point of completing
8 construction, we have a fair opportunity to compete fairly
9 and on an even playing field without the customers already
10 committed either contractually or otherwise to the
11 incumbent.

12 And I think that that interpretation of 86.2 is
13 formed by the whole statutory scheme, in particular,
14 49-31-60, which is the express legislative intent I just
15 mentioned earlier.

16 Qwest argues, on the other hand, that the
17 protection didn't apply until the CLEC, or FiberCom in
18 this case, has got all of its facilities in the ground,
19 has got all of its facilities to every corner of its local
20 exchange area and is fully operational. But that doesn't
21 make sense. That's an absurd result. At the end of that
22 construction phase, what is the protection?

23 At that point FiberCom and U S West are ready to
24 compete, and that's the whole point here is to get that
25 competitive market out there. But until it's up and

1 running, I would submit that FiberCom and other CLEC's
2 aren't without this kind of protection. The statute is an
3 incentive to build a network. And without that safe
4 harbor, these networks wouldn't have been seriously
5 considered as they are.

6 That's essentially our argument.

7 CHAIRMAN BURG: Can you give me the history of
8 this legislation, this statute?

9 MR. BERNARD: I can't as well as I think Mr. White
10 can.

11 MR. WHITE: Yes, Commissioner.

12 MR. WELK: Mr. Commissioner, I want to make a
13 formal objection to any evidence regarding legislative
14 history, as our Supreme Court has said that legislative
15 history is not admissible in any proceeding. In fact, you
16 have read the Famous Brands decision. That's exactly what
17 I tried to do, and they said we don't even consider it if
18 the statutory language is clear on its face.

19 So I'd like to make an objection to any evidence
20 in any time regarding legislative history because the
21 statute is clear on its face.

22 MR. BERNARD: Respond briefly. That again assumes
23 the statute is clear on its face and the legislative
24 intent is clear from the reading the four corners of the
25 statute, and that is our position, that it is not clear in

1 this case. The legislature history Mr. Welk argues is not
2 admissible in any proceedings.

3 But there is case law out there, and I'm sorry I
4 don't have it on my fingertips, that suggests that all
5 aids are available to the Commission or to the court when
6 the intent of the legislature is not clear from the
7 statute and that they in fact can consider matters outside
8 of the statute.

9 CHAIRMAN BURG: Any comment, Rolayne?

10 MS. WIEST: I'm not sure that, you know, we need
11 to get into legislative history for the Motion to Dismiss
12 would be my only point.

13 CHAIRMAN BURG: My only point is I'm trying to
14 figure out the intent of this legislation if it's not to
15 do exactly what's being requested here. And so would you
16 dismiss it if that was the intent?

17 I guess the reason I ask for history -- here's the
18 reason I ask for the history because, if I recall, that
19 legislation ran for a year and then the last legislature
20 extended it. And I'm trying to figure out the intent of
21 that extension. Because it was designed to be effective
22 for one year, and the legislature intentionally extended
23 that beyond the one year. And that's what I'm trying to
24 find out what was the reason for extending. Does that not
25 go towards the request for dismissal?

1 MR. WELK: Mr. Chairman, this is Mr. Welk. I
2 don't think it does because the operative words that we're
3 dealing with in the statute are throughout its local
4 exchange area, and the legislature didn't touch those
5 words in its amendment. Those words have been there since
6 the beginning.

7 CHAIRMAN BURG: How do I proceed?

8 MR. BERNARD: I don't think that the Commission is
9 absolutely prohibited from listening to the legislative
10 history to the extent that it wants to. The question is
11 would be, I think, on an appeal if the Commission
12 considers the history in its decision making there may be
13 a legal issue there, but I don't think you're absolutely
14 prohibited from hearing the evidence.

15 CHAIRMAN BURG: Does staff have any comments on
16 this one? Did staff enter into this request for dismissal
17 at all?

18 MS. CREMER: No, staff has not taken a position on
19 this.

20 CHAIRMAN BURG: I'm at a loss at the -- how do --
21 where do we proceed?

22 MS. WIEST: It's up to you if you still want the
23 legislative history or not. I guess my point was at this
24 point I think perhaps one of the problems is that parties
25 are using the terms local exchange area and service areas

1 interchangeably. And it would be my position that the
2 Commission needs to go to hearing on that entire issue and
3 that the Motion to Dismiss should be denied.

4 CHAIRMAN BURG: Any other comments from
5 Commissioners?

6 COMMISSIONER NELSON: I guess I would move to deny
7 the Motion to Dismiss.

8 COMMISSIONER SCHOENFELDER: I would second.

9 CHAIRMAN BURG: And I will concur. Motion to
10 Dismiss has been denied. Is that the only issue to find
11 here, Rolayne?

12 MS. WIEST: Yes.

13 MR. WELK: Can I ask one question, counsel? I
14 don't understand General Counsel's comment about local
15 exchange area and service area being used the same. The
16 only words that are being used are out of the tariff and
17 the orders of this own Commission. We're not dealing with
18 service areas. We're dealing with authorized local
19 exchange areas.

20 MS. WIEST: Right. And in your responsive brief
21 you have say FiberCom's local exchange area, singular,
22 mirrors that of Qwest. Is it your position Qwest has one
23 local exchange area?

24 MR. WELK: No, it has several exchange areas, but
25 it has the same, which is several throughout the state.

1 MS. WIEST: Does that prohibit FiberCom from
2 having several local exchanges areas?

3 MR. WELK: No, it's supposed to have the same one.
4 That's what the benefit of the statute says.

5 MS. WIEST: I think a determination of local
6 exchange areas for carrier is up to the Commission to
7 decide, and I think that needs to be decided at a hearing.

8 MR. WELK: That's the factual issue that we're
9 going to hearing on regarding this issue?

10 MS. WIEST: I believe that's one of the issues.

11 CHAIRMAN BURG: Okay. Thank you.

12 Item number three, CT00-060, In the Matter of the
13 Complaint Filed by Don and Judy Blindauer, Mitchell, South
14 Dakota, Against Sprint Communications Company L.P.
15 Regarding Unauthorized Switching of Long Distance
16 Provider.

17 Today shall the Commission add I-Link
18 Communications, Incorporated; and, if granted, shall the
19 Commission reschedule the hearing? Who's doing the
20 request?

21 MS. CREMER: I think Tom Harmon. I guess at that
22 point you can just rely on -- if he's not here to argue, I
23 think you can rely on his motion. And then I-Link is on
24 the phone.

25 CHAIRMAN BURG: Does I-Link have any comments on

1 adding you to this docket?

2 MR. JONES: Yes, yes, we do. We would of course
3 oppose the motion. I don't know what Sprint's claims are
4 or why they feel that we ought to be added, but we were
5 the carrier from who the Blindauers were slammed. I don't
6 think that -- I don't see any conduct on I-Link's part
7 that puts it within the scope of a South Dakota slamming
8 statute.

9 CHAIRMAN BURG: Does staff have a comment on this
10 one?

11 MS. LUND: Commissioner Burg, adding I-link
12 wouldn't imply that I-link was a contributing factor to
13 the problem here, but it might broaden the picture to
14 fully understand what took place with the switch.

15 CHAIRMAN BURG: If I understand what's been said,
16 I-Link was the carrier of choice by the Blindauers; right?

17 MS. LUND: That's correct.

18 CHAIRMAN BURG: They were slammed to Sprint?

19 MS. LUND: That's correct, or switched.

20 CHAIRMAN BURG: Switched or whatever to Sprint,
21 whichever the question may be, and nobody is here
22 representing Sprint? I guess I'm trying to understand why
23 Sprint wasn't included.

24 MS. WIEST: What they said in their motion is that
25 I-Link did not provide appropriate notice to Sprint that

1 when the service switch on the U S West lines was made,
2 that the Blindauers were to be attached to I-Link.

3 CHAIRMAN BURG: Any other comments?

4 MR. JONES: I don't quite understand that
5 statement when -- I don't understand what they mean by
6 that. I haven't seen the brief. I wasn't copied on it
7 or the motion. But I don't understand what their claim is
8 there.

9 CHAIRMAN BURG: Basically that would be the
10 purpose of bringing you into the issue so we can clarify
11 that part of their complaint.

12 MR. JONES: Well, if we were the carrier of the
13 Blindauers' choice and they ended up with Sprint, when in
14 the picture does I-Link fall?

15 MS. CREMER: My understanding, isn't Sprint your
16 underlying carrier?

17 MR. JONES: Yes, they were for some time.

18 MS. CREMER: I think -- this is Karen Cremer from
19 staff, and I think that's the problem. When the
20 Blindauers were put over to I-Link, if I understand the
21 allegations Sprint is making is that the -- that was --
22 that distinction was not made and so Sprint was carrying
23 the traffic when I-Link never notified whoever you were to
24 have notified that Blindauers were to be your customer and
25 so the traffic went to Sprint because they were the

1 underlying carrier.

2 MR. JONES: Well, the Blindauers were trafficking
3 with us and we did bill them for a period of two years
4 between April '97 and apparently, well, October or so of
5 '99, September, October of '99, so the Blindauers were
6 happy customers for a couple of years.

7 COMMISSIONER SCHOENFELDER: Mr. Chairman, I think
8 that we're getting into the merits of this, and I honestly
9 believe that by adding I-Link we can help clarify this
10 issue and we should. I would move that we add I-Link as
11 one of the people in this docket.

12 CHAIRMAN BURG: Second.

13 COMMISSIONER NELSON: Concur.

14 CHAIRMAN BURG: I-Link will be added and then the
15 Commission will reschedule the hearing. We don't have a
16 particular date when it will be rescheduled.

17 MR. JONES: So, Mr. Chairman, would it not be the
18 November 29th, 2000?

19 CHAIRMAN BURG: No, it would not be the November
20 29th, 2000. There's a problem with that date. But you
21 will be notified, or we will work with you to find a date
22 that works.

23 MR. JONES: Okay, thank you, Mr. Chairman.

24 CHAIRMAN BURG: I think we will revert to the
25 addendum and take the other CT dockets. CT00-096 then, In

1 the Matter of the Complaint Filed by Thermo Bond Buildings
2 International, Incorporated, Elk Point, South Dakota,
3 Against Qwest Corporation, Formerly Known as U S West
4 Communications, Inc., MCI WorldCOM and USBI regarding
5 Unauthorized Charges and Exorbitant Rates After Switching
6 to Long Distance Service -- After Switching its Long
7 Distance Service to MCI.

8 Today, shall the Commission rule on the Motion to
9 Dismiss and what is the ruling on the Motion to Dismiss?
10 And if I remember right, the Motion to Dismiss is by USBI;
11 is that correct?

12 MS. WIEST: Correct.

13 CHAIRMAN BURG: Who's representing USBI?

14 MR. FULTON: I am, Mr. Neil Fulton, associate of
15 Mr. Shaw from our office who filed the Motion to Dismiss.
16 That has been served on all the parties, and I assume the
17 Commission and staff have had an opportunity to review
18 that. I would just like to briefly comment on a couple
19 points raised in the brief.

20 The first and most important one to me is that in
21 this instance USBI did not have any involvement in the
22 switching of Thermo Bond's lines. USBI is a billing
23 aggregator. They don't control any lines. They don't
24 control any service areas. They simply process
25 information and send out bills for various

1 telecommunications companies.

2 In this case USBI didn't initiate any PIC change,
3 didn't process any PIC change, didn't do anything that
4 would place them within slamming.

5 The second point is that under the statute in
6 South Dakota, USBI just isn't a telecom company. Because
7 they didn't do anything wrong in this instance, I don't
8 think that is important to address, and since a larger
9 issue is we can take care of it on the easier one. I
10 would be happy to entertain any questions the Commission
11 or staff might have about the Motion to Dismiss.

12 CHAIRMAN BURG: Do any other parties have any
13 comments? Does staff have a comment?

14 MS. CREMER: No.

15 CHAIRMAN BURG: Let's see, if I remember right, we
16 did dismiss. Anything from the Commissioners?

17 I will move that we grant the Motion to Dismiss to
18 USBI.

19 COMMISSIONER NELSON: Second.

20 COMMISSIONER SCHOENFELDER: I'll concur.

21 CHAIRMAN BURG: And so the second part of the
22 question is moot then; right?

23 MS. WIEST: I believe so because the Motion for
24 Continuance was filed.

25 MR. FULTON: It's certainly moot as to us.

1 CHAIRMAN BURG: CT00-096, the Motion to Dismiss
2 has been granted to USBI.

3 MR. WELK: Mr. Chairman, this is Tom Welk. In
4 light of the Commission's ruling, is the hearing still
5 scheduled for October 3rd?

6 MS. WIEST: Yes.

7 MR. WELK: The answer from counsel is yes? Thank
8 you.

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10 CHAIRMAN BURG: Telecommunications, TC00-057, In
11 The Matter of the Application of Volunteer and Information
12 Center for the Assignment of N11 dialing code of 211 to
13 Provide Free Information and Referrals to Community
14 Service Organizations.

15 Today, how shall the Commission proceed? Who's
16 going to represent volunteer information, Janet or Carol?

17 MS. MULLER: This is Carol.

18 CHAIRMAN BURG: Carol, you're going to represent
19 Help Line Center?

20 MS. MULLER: Yes.

21 CHAIRMAN BURG: Do you want to give us an
22 explanation of what your filing is?

23 MS. MULLER: The filing status?

24 CHAIRMAN BURG: Why did you file this issue and
25 what you want to gain from it?

1 MS. MULLER: What we want to do is provide the 211
2 service in the Sioux Falls area. 211 has been a number
3 that has been advocated for through a national association
4 on its air switch which is Alliance of Information
5 Referrals System in order to provide community information
6 and referral. And that the service, exact same service is
7 what we're currently doing through the Help Line is 311
8 Help, but being able to turn this into a number that will
9 be eventually be receiving national recognition and
10 service and being able to provide that. So our goal is to
11 make it easier for consumers in order to access community
12 information referral.

13 CHAIRMAN BURG: Karen, are you taking this or
14 Keith?

15 MS. WIEST: I think the question is the FCC did
16 come out with an order which specifically designated the
17 211 for these types of services. And the question I guess
18 I would have to the intervenors would be whether the
19 Commission needs to do anything at this point because the
20 way I read the FCC decision, is all that the Volunteer and
21 Information Center needs to do is to go ask Qwest, in
22 fact, for the 211 number and the Commission need not
23 approve anything because, more or less, the FCC has taken
24 over this issue. Would that be correct interpretation of
25 the FCC order?

1 MR. DUARTE: Mr. Chairman, this is Alex Duarte.
2 That is a correct interpretation by the General Counsel.
3 The FCC's order on July 31st did provide that 211 is in
4 the public interest; and that when a telecommunications
5 provider such as Qwest provides or receives a request from
6 a community group, we have to insure that any entities
7 using 211 relinquish that code, which I don't think is a
8 problem in Sioux Falls. I don't think anybody is using
9 that 211 code. And then take any steps necessary such as
10 reprogramming switched software to provide the 211 calling
11 pattern.

12 We are in the process right now of developing
13 costs. We have some preliminary costs, and I think we'll
14 be able to have our cost study within a week or two and
15 we'll then know what will be entailed both on the wireline
16 and wireless side for the, you know, reprogramming of the
17 switch and all the other technical things that need to
18 happen for this to occur.

19 So I guess the best thing we can recommend is
20 perhaps, well, first of all, General Counsel, Ms. Wiest,
21 is correct that, in fact, it is an FCC matter. We will
22 work with the Volunteer and Information Center soon as we
23 have the costs available, so there's probably no need for
24 the docket. We are, of course, recommended to work with
25 them and we will work with them once we get those costs in

1 order.

2 CHAIRMAN BURG: Rich.

3 MR. COIT: Yes, Mr. Chairman, Commissioners, this
4 is Richard Coit with the SDITC. And I agree with the
5 Commission counsel's assessment here. We are obligated
6 now under the federal order to provide the 211 access
7 after it's requested. So it comes in response to a bona
8 fide request to the LEC. And once we receive those
9 requests, I'm not sure what the time line is, but
10 basically we have to, you know, go about doing those
11 things that are necessary to provide the service.

12 So I don't really know if there's anything left to
13 be done in this docket.

14 CHAIRMAN BURG: Who does the -- who bona fides it?

15 MR. COIT: I think the Volunteer and Information
16 Center would have to put in a request to any LEC that they
17 wanted the service center.

18 CHAIRMAN BURG: But what would the LEC then
19 determine if they fell within the parameters of the
20 qualifications to use that, who makes the determination
21 that this is a legitimate organization?

22 MR. COIT: Well, I think that's a good question.
23 You know, I can't recall exactly how the use was described
24 in the FCC order. I don't think it was described in any
25 specific detail.

1 So certainly at some point, you know, some issues
2 might arise as to whether it's a valid use of that
3 particular number. And I would under those, if that issue
4 does arise, that that issue has got to come back to this
5 Commission first.

6 MR. DUARTE: That's a good question. I was asking
7 myself that same question as I was reading the FCC's
8 order. Like many things the FCC Order says a lot of
9 things but oftentimes doesn't say other things that come
10 up.

11 One of the things they did not address is, for
12 example, what would happen if someone were to determine
13 that the Community Service Organization was not a bona
14 fide or legitimate service or if there were two competing
15 community groups.

16 I don't think that's a problem here. I think it's
17 probably one of those things where if that issue comes up,
18 I guess you can go to the FCC and get some guidance from
19 them. They probably don't address those issues unless
20 someone has raised them, and I guess no one has raised it
21 at this point.

22 I don't think that's going to be a concern here
23 because there are competing concerns. And from everything
24 I have read, I assume that the Volunteer and Information
25 Center is certainly a bona fide legitimate community

1 organization and referral service.

2 CHAIRMAN BURG: Could there only be one in a
3 community though?

4 MR. DUARTE: Well, I mean, I think so because, you
5 know, if you -- I mean I guess a couple different groups
6 have come to a LEC and asked for this dialing pattern;
7 and, you know, we could work with more than one group, but
8 ultimately the numbers will have to be run to one place.
9 I don't think you could be within a certain, I don't know
10 if it's by exchange or what. I mean presumably you could
11 have 211. Well, I guess I would contemplate that a 211
12 dialing pattern in Sioux Falls would go to a certain place
13 in Sioux Falls. The 211 pattern in an area like Pierre
14 would go to Pierre and same thing with Rapid City. And I
15 don't know how that really works.

16 But presumably in each location, whether it's an
17 exchange or metropolitan area, I don't know really know
18 how that is provided, but presumably there would only be
19 one place these calls would be routed to.

20 CHAIRMAN BURG: Ms. Muller, before we make a
21 decision, do you have any comment you would like to make?

22 MS. MULLER: No, we don't. We would look forward
23 to implementing the 211 in the year 2001.

24 CHAIRMAN BURG: Are you satisfied that we can
25 defer this, or that this would be an FCC decision and that

1 we don't take action as far as a state?

2 MS. MULLER: Yes, our biggest question at this
3 point is charges coming from U S West, and we look forward
4 to receiving them in the next week.

5 MS. WIEST: Mr. Specht, did you have any comments?

6 MR. SPECHT: Yes, a couple points: An earlier
7 speaker said there wasn't anyone using 211 in the Sioux
8 Falls area. We, in fact, do use 211 for our paid
9 telephone, our speed dial to a repair service. We would
10 be basically happy to give that up to the Volunteer and
11 Information Center. We would believe that they are the
12 right people in Sioux Falls with their history of Help
13 Line Center to do that service.

14 The other point of clarification is in this
15 wording of TC00-050 it reads to provide free information
16 referrals in community service organizations. In fact,
17 the FCC did not specifically address the issue of whether
18 or not these calls would be free from our payphones. We
19 would expect to be able to charge for these calls.

20 Based on the federal law, the revisions to the
21 Telecommunications Act of 1996, I guess it was now called
22 for the only calls going through payphones to be free
23 would be the 911 calls and the telecommunications relay
24 services calls. So that would be two points of
25 clarification that we would like to offer.

1 COMMISSIONER NELSON: I guess I have a question
2 for the counsel then because it's my understanding those
3 calls were to be free and they were to be treated like 911
4 and the 711 relay calls and that whole class of those
5 particular kinds of numbers were going to be treated the
6 same or similarly.

7 CHAIRMAN BURG: They're not free.

8 MS. WIEST: I specifically read through the 211
9 portion in the order and in that portion the FCC didn't
10 address the cost issue. I did note in other portions when
11 they talked about assignment of 511, I believe they did
12 mention costs, but they more or less said they weren't
13 going to go there.

14 So I don't know, does anyone else have any
15 information on whether the 211 was supposed to be free,
16 because the FCC Order certainly doesn't seem to give
17 necessary any information on this.

18 MR. SPECHT: This is Roger Specht again. The
19 information I have in front of me is from attorneys for
20 our association, and there is a statement in the 211/511
21 order the FCC did not address how the PSP's, which is
22 short for payphone service provider, will be compensated
23 for such calls. So this document would say they did not
24 address it on either 211 or 511.

25 MR. DUARTE: That's my reading as well. Again, as

1 a mentioned earlier, why the FCC oftentimes doesn't
2 address issues that aren't raised before it. I imagine
3 somebody else will raise it, you know, if there's a
4 dispute at some point. But, no, there is no explicit
5 discussion about cost in that order.

6 MS. WIEST: What I was referencing was paragraph
7 15, and that was the 511 where the FCC said that they
8 didn't specify parameters for cost recovery and other
9 technical issues contrary to suggestions of some. Instead
10 we leave with federal, state and local agency the
11 discretion on those issues.

12 MR. SPECHT: This is Roger Specht again. I guess
13 if people are in serious, you know, trouble, they will
14 dial 911, which is and should be a free call. I believe
15 that was probably the reasoning behind this. These are
16 more informational in nature.

17 MS. WIEST: I'm not aware if anybody else has any
18 request for clarification or reconsideration on this
19 order. Is anyone else before the FCC?

20 MR. DUARTE: No. But I should note that decision
21 in paragraph 15 about 511 was in response to comments
22 raised by WorldCOM. And apparently no one must have
23 raised comments on the cost issue for 211 because the
24 reason why FCC orders tend to be so long is they pretty
25 much respond to all the comments that are made in one form

1 or another. And I can only presume the reason there's no
2 cost information on 211 is because no one raised that
3 issue.

4 MR. SPECHT: Again, this is Roger Specht. The
5 document I have in front of me that says our association
6 did raise that issue and the FCC did not address it, so
7 for what that's worth...

8 MS. WIEST: So it's Qwest's intention to charge
9 for these calls; is that correct, Mr. Duarte?

10 MR. DUARTE: I believe it is, yes. That's why
11 we're coming up with a cost information cost study. As
12 soon as we have that, we'll be able to assess where we
13 are. I have no idea where the costs are. It might be
14 relatively simple switch programming, or it might be
15 something more complicated. I believe with, for example,
16 for wireless, if you get into issues of having to
17 reprogram individual cell sites, that's pretty extensive.

18 But, again, I'm not an engineer or technical
19 person so I'll have to wait until we receive a cost study,
20 which we will forward immediately on to Miss Muller and
21 her folks.

22 CHAIRMAN BURG: I don't think that's pertinent to
23 our decision today anyway; right?

24 MR. SPECHT: The word free is in the wording of
25 the TC00-057.

1 MS. WIEST: Okay. So at this point I guess I
2 would ask is there any reason for the Commission to keep
3 this docket open?

4 CHAIRMAN BURG: Hearing none, I'll move that we
5 close the docket in TC00-057.

6 COMMISSIONER SCHOENFELDER: Second.

7 COMMISSIONER NELSON: Concur.

8 CHAIRMAN BURG: TC00-107, In the Matter of the
9 Filing for Approval of First and Second Amendments to the
10 Interconnection Agreement Between McLeod
11 Telecommunications Services, Incorporated, and U S West
12 Communications, Incorporated.

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

15 MS. CREMER: Yes, staff would recommend approval
16 of both the first and second amendments to the
17 interconnection agreement.

18 CHAIRMAN BURG: Any other comments?

19 COMMISSIONER NELSON: I would move we grant the
20 approval of the proposed interconnection agreement in
21 TC00-107.

22 COMMISSIONER SCHOENFELDER: Agree.

23 CHAIRMAN BURG: Concur.

24 CHAIRMAN BURG: Interconnection has been granted
25 in 00-107.

1 TC00-018, In the Matter of the Filing for Approval
2 of a Paging Connection Agreement Between U S West
3 Communications and Arch Paging, Incorporated, and Mobile
4 Communications Corporation of America.

5 Today, shall the Commission approve the proposed
6 connection agreement? Karen.

7 MS. CREMER: Yes, staff would recommend approval
8 of the agreement, interconnection agreement, between Arch
9 and Qwest.

10 CHAIRMAN BURG: Any other comments?

11 COMMISSIONER SCHOENFELDER: I would move approval
12 of the connection agreement in TC00-018.

13 CHAIRMAN BURG: Second.

14 COMMISSIONER NELSON: Concur.

15 CHAIRMAN BURG: The connection agreement has been
16 approved in TC00-018.

17 TC00-119, In the Matter of the Filing for Approval
18 of a Third Amendment to the Interconnection Agreement
19 between McLeodUSA Telecommunications Services,
20 Incorporated, and Qwest Corporation, Formerly U S West
21 Communications, Incorporated.

22 Today, shall the Commission approve the proposed
23 third amendment? Karen again.

24 MS. CREMER: Staff would recommend approval of the
25 third amendment to the interconnection agreement.

1 MR. DUARTE: Again, Qwest concurs.

2 CHAIRMAN BURG: I'll move we approve the proposed
3 amendment.

4 COMMISSIONER SCHOENFELDER: Second.

5 COMMISSIONER NELSON: I concur.

6 CHAIRMAN BURG: The Commission has approved the
7 proposed third amendment in TC00-119.

8 TC00-131, In The Matter of the Filing for Approval
9 of a First Amendment to an Interconnection Agreement
10 Between Brookings Municipal Utilities Telephone Department
11 Doing Business as Swiftel Communications and Qwest
12 Corporation.

13 Today, shall the Commission approve the proposed
14 amendment interconnection agreement. Karen.

15 MS. CREMER: Staff would recommend approval of the
16 first amendment to the interconnection agreement.

17 CHAIRMAN BURG: Any other comments?

18 MR. DUARTE: Qwest concurs.

19 CHAIRMAN BURG: If not, I move that the Commission
20 approve the proposed amendment, amended interconnection
21 agreement in TC00-131.

22 COMMISSIONER NELSON: Second.

23 COMMISSIONER SCHOENFELDER: Concur.

24 CHAIRMAN BURG: TC00-133, In the Matter of the
25 Filing for Approval of an Interconnection Agreement

1 Between Qwest Corporation and @Link Networks,
2 Incorporated.

3 Today, shall the Commission approve the
4 interconnection agreement. Karen.

5 MS. CREMER: And staff would recommend approval of
6 the interconnection agreement.

7 CHAIRMAN BURG: Any other comments?

8 COMMISSIONER NELSON: I would move approval of the
9 interconnection agreement in TC00-133.

10 CHAIRMAN BURG: Second.

11 COMMISSIONER SCHOENFELDER: Concur.

12 CHAIRMAN BURG: The interconnection agreement has
13 been approved in TC00-133.

14 The last item is TC00-136, this is on the
15 addendum, In the Matter of the Filing by Qwest Corporation
16 for Approval of Revisions of its Exchange and Network
17 Service Tariffs.

18 Today, shall the Commission approve the proposed
19 tariff revisions. Karen? Harlan? Colleen?

20 MS. SEVOLD: Yes, thank you, Mr. Chairman and
21 Commissioners. Qwest has made this filing to comply with
22 the FCC Order to expand Lifeline and Link Up programs for
23 the qualifying individuals on tribal reservations. This
24 is to be effective October 1.

25 We are currently working with the BIA, Social

1 Services agencies, any organizations that we can to get
2 the word out to the customers that could benefit from this
3 program. We are right now in Minneapolis. We have people
4 that are up at the convention for tribal people and
5 they're talking about this program. We're getting the
6 word out every way that we can.

7 We would just ask the Commission to approve the
8 tariff.

9 MS. WIEST: I had some questions, Colleen, on
10 5.26(b)2, which is the enhanced Lifeline, under terms and
11 conditions you only list the four new ones. Don't you
12 need to list all of the old requirements also?

13 MS. SEVOLD: Excuse me, where are you looking?

14 MS. WIEST: 5.26(B)2, terms and conditions, A.

15 MS. SEVOLD: Yes, they should be listed.

16 MS. WIEST: I think all of them need to be listed
17 under A.

18 MS. SEVOLD: Okay. We can make that revision.

19 MS. WIEST: And then my next question, if you go
20 to the next page, you list some of the -- when you go to
21 number three there, 5.26(b)3, you list some areas and then
22 you have the credit amounts. And my question is -- first
23 question is, is that intended to be an all-inclusive list?
24 Is that the only areas that you believe apply?

25 MS. SEVOLD: Those are the areas that we have

1 identified that would apply to Qwest customers, yes.

2 MS. WIEST: And what reservation is in the Pierre
3 exchange?

4 MS. SEVOLD: You know, I have that here if you
5 could wait just a moment. I believe that they identify
6 it's just a very, very small portion, of the Crow Creek,
7 but it's a very small portion.

8 MS. WIEST: Okay. And then I was wondering about
9 the Yankton area, there aren't any areas down there?

10 MS. SEVOLD: I have been told that there is no
11 reservation, you know, and the FCC said that it would not
12 be anything except actual reservations at this time. And
13 I've been told that there is not an official reservation
14 at Yankton.

15 MS. WIEST: What about the FCC adopted the BIA's
16 definition of reservation, which includes Indian
17 allotments? It's my understanding that with or without a
18 reservation Indian allotments retain their status. Has
19 Qwest looked into that issue?

20 MS. SEVOLD: I couldn't answer that question,
21 frankly. I could check on that.

22 MS. WIEST: Could you also check on the issue
23 about trust lands because it's also my understanding that
24 with or without a reservation, the official designation as
25 a reservation, that trust lands retain their status,

1 though I think it's somewhat unclear from the FCC's order
2 whether trust lands were intended to be included. But I
3 was wondering what Qwest's position is on that issue.

4 MS. SEVOLD: I would have to check on that,
5 Rolayne, and get back to you.

6 MS. WIEST: And then my other point I believe was
7 on the expanded Link Up program. It's the last page of
8 your tariff, 5.26(d)1. When I read through that, it
9 states that the expanded is the extra \$70. And you
10 correctly state that the additional benefit will apply
11 towards 100 percent of the connection charges between \$60
12 and 130.

13 And but then you say that eligible charges include
14 things like line exchange and charges, which is correct,
15 but I believe the tariff gives a misimpression that only
16 the \$70 would apply to the line extension charges, where I
17 believe the FCC's order specifically says that it's the
18 entire hundred dollars, the \$30 plus the \$70 that would be
19 applicable to line extension charges. And I was wondering
20 if that should also needed to be changed.

21 MS. SEVOLD: Okay. We could change that. It is
22 definitely our position that the full \$100 would apply.

23 MS. WIEST: Okay. I think it just needs to be
24 clarified in there because that section only mentions the
25 70 and it doesn't really go back to the first benefit, the

1 30, the half of the 60.

2 MS. SEVOLD: Okay. We can certainly reword that.
3 But we definitely believe the hundred dollars applies.

4 MS. WIEST: Okay. Are there any other questions?

5 CHAIRMAN BURG: My only question would be can we
6 approve it without all these corrections?

7 MS. WIEST: Well, what I was thinking what the
8 Commission does, I believe, still have a Commission
9 meeting scheduled for next week, October 3rd, and since
10 this was mandated by the FCC that it be effective October
11 1st, I believe U S West could file their corrected pages
12 and the Commission could then -- you know, if they
13 complied with the order, approve that and then have it
14 effective October 1st consistent with the FCC's order.

15 COMMISSIONER SCHOENFELDER: Yeah, I agree to that,
16 but I need to ask Colleen a question.

17 Colleen, let's go back to the Yankton reservation.
18 I'm not sure, but I would suggest -- and I don't know the
19 legal status of this and you might have better information
20 than I do, but please go back and look at that last
21 Supreme Court case down on the Yankton reservation where
22 they were -- it's a jurisdictional issue and I think some
23 of that was declared under tribal jurisdiction and some
24 under state jurisdiction and I think they're back fighting
25 over that.

1 So you may be technically correct or may be just a
2 little bit technically not correct. I think you should
3 check that United States Supreme Court decision. And is
4 there an Eighth Circuit decision there also, I think? But
5 I do think it's a tough one. But I do think you should
6 take a good look at that.

7 MS. SEVOLD: We'll do that, Commissioner.

8 CHAIRMAN BURG: I was under the impression, too,
9 there was still some tribal land in the Yankton area.

10 COMMISSIONER SCHOENFELDER: We have to be careful
11 in this docket whether you talk about tribal land or
12 reservation areas. This is hard.

13 MS. WIEST: What you may need to do is actually
14 get maps that show Indian allotment areas because they
15 don't necessarily need to be -- it's my understanding they
16 don't necessarily need to be on a reservation to be
17 considered to be an Indian allotment, and the FCC did
18 adopt that definition that included Indian allotments. We
19 just want to make sure that every area that's entitled to
20 the benefits receive them.

21 MS. SEVOLD: Right. Okay. What I could do is
22 have these changes made and submit them within a couple of
23 days. Would that be okay?

24 MS. WIEST: Sure.

25 COMMISSIONER SCHOENFELDER: Defer this.

1 CHAIRMAN BURG: Your recommendation is to defer
2 it?

3 MS. WIEST: Right. We will defer this last item
4 on the docket, TC00-136. Anything else to come up?

5 (The hearing concluded at 10:43 a.m.)
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