

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 23 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

)
)
IN THE MATTER OF THE)
)
PUC AGENDA MEETING)
)
_____)

CT99-006
CT00-090
TC98-187
TC00-091

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS:

October
~~December~~ 17, 2000
9:30 A.M.
Room 412, Capitol Building
Pierre, South Dakota

PUC COMMISSION:

Jim Burg, Chairman
Pam Nelson, Vice-Chair
Laska Schoenfelder, Commissioner

COMMISSION STAFF

PRESENT:

Rolayne Ailts Wiest
Karen Cremer
Harlan Best
Gregory A. Rislov
David Jacobson
Michele Farris
Keith Senger
Leni Healy
Charlene Lund
Mary Giddings
Heather Forney
Sue Cichos
Bill Bullard

Reported by:

Lori J. Grode, RMR/RPR

A P P E A R A N C E S

For Sprint: Thomas Harmon

Appearances by Telephone:

For Qwest: Alex Duarte

For AT&T: Larry Weigler

P R O C E E D I N G S

CHAIRMAN BURG: Okay. This is Jim Burg. I'll do the call on the list. Alex Duarte, are you on yet?

MR. DUARTE: Yes, good morning.

(ROLL CALL.)

CHAIRMAN BURG: Anybody on that I did not call? Okay. This is Chairman Jim Burg. I'll call the meeting to order, and let the minutes show that Commissioners Schoenfelder and Nelson are also present.

The first item of business is the approval of the minutes of the Commission meeting held on September 26th and October 3rd, 2000. Were there any corrections or additions, Mary?

MS. GIDDINGS: There were none, Chairman Burg.

CHAIRMAN BURG: Okay.

COMMISSIONER SCHOENFELDER: I would move approval of the minutes of the Commission meetings held on

1 September 26th and October 3rd.

2 CHAIRMAN BURG: I'll second it.

3 COMMISSIONER NELSON: I concur.

4 CHAIRMAN BURG: Consumer issues. Leni, would you
5 report on the consumer issues?

6 MS. HEALY: Thank you, Chairman Burg. First I'd
7 like to ask that the first paragraph under consumer issues
8 be stricken. There's a duplicate there from last meeting
9 that was not erased.

10 CHAIRMAN BURG: First paragraph is an erroneous
11 one?

12 MS. HEALY: That's right. So far this year the
13 Commission has received 1,767 consumer contacts. 54 of
14 those were since our last meeting. 48 of the contacts
15 involve telecommunications in which slamming and billing
16 issues are our chief concerns. There were six electricity
17 contacts. Most of those were disconnections. And there
18 were no natural gas issues this month.

19 So far this year we have informally resolved 1,407
20 complaints.

21 CHAIRMAN BURG: Any complaints or questions for
22 Leni? If not, thank you, Leni.

23 First item is in the dismissal of the complaint...

24 * * * * *

25 CHAIRMAN BURG: Item number three, CT99-006, In

1 the Matter of the Complaint of TeleTech, Incorporated, and
2 Long Line, Incorporated, Sioux Falls, South Dakota,
3 Against U S West Communications, Incorporated, Concerning
4 Overcharges for Telecommunications Services.

5 Today, how shall the Commission rule on a petition
6 for rehearing or reconsideration?

7 Is there anybody on the phone that intended to
8 testify on that docket?

9 MS. WIEST: I don't see anybody from TeleTech.

10 CHAIRMAN BURG: I don't see anybody from TeleTech.
11 Alex, do you have any comments on this particular docket?

12 MR. DUARTE: No, Your Honor, just that we filed
13 our response. TeleTech cited nothing new in their
14 petition. Obviously, the interest issue and the refund
15 issue is moot because we did, in fact -- in fact, we
16 overpaid them with the interest based on miscalculations,
17 so that has been settled.

18 And as far as the Commission's rulings, the
19 Commission found that Qwest did nothing unreasonable; that
20 this was an eligible telecommunications company that
21 should have known that it was being billed for lines that
22 were dedicated to them for over four years. And there's
23 really nothing new that Mr. Noonan raises in his petition.

24 CHAIRMAN BURG: And you're not going to come back
25 for reconsideration for the overpayment?

1 MR. DUARTE: No, we're not.

2 MS. WIEST: Mr. Duarte, it was your understanding
3 that Mr. Noonan was satisfied with the interest portion of
4 his petition?

5 MR. DUARTE: Yes. He -- after we advised him what
6 the tariff said, he agreed that the amount that we were
7 dealing with is the correct amount. The reason why we
8 overpaid him is that we actually miscalculated the time
9 period. We took it from August of, I believe, '98 instead
10 of August of '99, or maybe I got -- I think it was August
11 of '97 instead of August of '98, so we gave them 12 more
12 months of interest. It only came out to about \$1,000 or
13 maybe less than that, so we decided to just -- you know,
14 we basically mentioned it to him, but he obviously has not
15 paid us back.

16 CHAIRMAN BURG: Does staff have any comments on
17 this docket at all?

18 MS. CREMER: I don't.

19 CHAIRMAN BURG: Okay. If not, the question was
20 how shall the Commission rule in the petition for
21 rehearing or reconsideration? I'll move that we deny the
22 rehearing and reconsideration in CT99-006.

23 COMMISSIONER NELSON: Seconded.

24 COMMISSIONER SCHOENFELDER: And I dissent as I
25 dissented on the original decision.

1 MR. DUARTE: Thank you.

2 CHAIRMAN BURG: Item number four (sic) the
3 Petition For Rehearing or Reconsideration has been denied
4 in CT99-006.

5 * * * * *

6 CHAIRMAN BURG: CT00-090 and we'll do the addendum
7 at the same time because of 090. It's in the matter of
8 the Complaint Filed by Ed and Janice St. Gemme, Dakota
9 Dunes, South Dakota, Against AT&T Communications of the
10 Midwest, Incorporated, Regarding Unauthorized Switching of
11 Services.

12 And the question being today, shall the Commission
13 grant AT&T's Motion to Dismiss? And in the addendum it's
14 shall the Commission grant Qwest's Motion to Dismiss?

15 Ms. St. Gemme, are you on?

16 MS. ST. GEMME: Yes, I am.

17 CHAIRMAN BURG: Do you want to explain to us?

18 MS. WIEST: Since it's their motion, AT&T, they
19 should go.

20 CHAIRMAN BURG: It's their Motion to Dismiss. We
21 have already accepted the complaint, that's right. Alex,
22 do you want to go for Qwest first?

23 MR. DUARTE: Sure. As we mentioned in our papers,
24 Mr. Chairman, AT&T filed a Motion to Dismiss based on
25 their claim that somehow U S West, or Qwest, may have done

1 something incorrect. But according to their Exhibit B,
2 the number at issue they claim belongs to a Jerry Cray,
3 but that number does not belong to a Jerry Cray. In
4 addition, the address that AT&T says is of Mr. Jerry Cray
5 belongs to yet another person. It appears that AT&T did
6 not update their customer records.

7 Moreover, the South Dakota law requires that an
8 IXC have a letter of authority; and, thirdly, there's no
9 letter of authority or verified third party recording that
10 has been submitted to the Commission.

11 Therefore, we believe that any liability, if it
12 exists at all, would be against AT&T. And, you know, it's
13 not appropriate, as it has happened a few times in the
14 last six to 12 months, to have Qwest be in the middle of
15 it because Qwest obviously does not do any slamming.
16 Qwest is not an IXC. Qwest has no interest in this
17 whatsoever in slamming a customer because it's not like
18 Qwest is going to receive any revenue from slamming a
19 customer to its long distance, which it doesn't offer.

20 So because of all those reasons, Qwest shouldn't
21 really be in this matter. And whether AT&T's motion
22 should be dismissed or not I guess would be for the
23 Commission to decide, but we believe that our -- at a very
24 minimum, our Motion to Dismiss should be granted.

25 CHAIRMAN BURG: Okay. Steve Weigler, two

1 questions. Should Qwest's Motion to Dismiss be granted
2 and why your own request for dismissal?

3 MR. WEIGLER: Well, Your Honor, I think as far as
4 Qwest's Motion to Dismiss, that's a question of fact.
5 While AT&T's position is that AT&T as far as that goes
6 received information from Qwest a while ago that Jerry
7 Clay was the customer. And we get our information from
8 Qwest, from the local, the ILEC, on who is the customer
9 and they never -- our position is that they never gave us
10 an update that it was the St. Gemmes or that the St.
11 Gemmes had another long distance carrier.

12 This goes back way to 1996, 1997, as far as us
13 getting a PIC tape, or a third party verification tape.
14 There's no way we could have got a third party
15 verification tape because in 1996 and '97 there was no
16 requirement to get a third party verification tape.

17 So as far as Qwest's Motion to Dismiss, I believe
18 it relates on a matter of fact. I think there's been some
19 representations by Qwest that AT&T would certainly dispute
20 any proceeding that we have. However, AT&T's Motion to
21 Dismiss -- and I believe Qwest would agree to this because
22 we've spoken about this -- has to do with the remedies
23 allowed by Qwest by the St. Gemmes as a matter of law.

24 And to look at what the St. Gemmes' remedies are,
25 all remedies that are allowed to the St. Gemmes have been

1 satisfied by AT&T as the matter of law. Therefore, the
2 St. Gemmes are not entitled to any additional remedies by
3 either Qwest or AT&T as a matter of law. And with the
4 Commission's permission, I could walk through it.

5 AT&T subpoenaed the records of the St. Gemmes'
6 telephone number. AT&T showed that the number belonged to
7 Jerry Clay. How AT&T bills, it just has a copy of the
8 number and it gives whoever whatever calls were made on
9 that number. It shoots it over via computer to Qwest.
10 Qwest then prints the bill. And Qwest was printing the
11 bills to the St. Gemmes unbeknownst to AT&T.

12 AT&T also showed that at least since 1997 AT&T has
13 billed the St. Gemmes for telephone service on April 13th,
14 1997. Someone at the St. Gemmes' telephone number called
15 Fort Wayne, Arkansas, and was billed \$16.83 from AT&T.
16 Qwest stated in their last -- in our last hearing on this
17 end that, and AT&T agrees, that AT&T was written all over
18 that bill. And the St. Gemmes paid that bill.

19 On August 13th, 1998, pursuant to the relevant
20 laws, AT&T began to bill monthly conductivity charges and
21 carrier line charges. AT&T from April -- I mean August,
22 August 13, 1998, on, AT&T was written all over the St.
23 Gemmes' bill, according to our records which are records
24 subpoenaed from Qwest. After that AT&T billed a customer
25 for the conductivity charges and carrier line charges,

1 charges that are required by law.

2 AT&T appeared clearly marked on the bill from
3 1990 -- from April -- August 13th, 1998, on. Any time the
4 St. Gemmes made a direct call AT&T directly charged the
5 customer and it was paid. An example is May 23rd, 1999,
6 the St. Gemmes made a charge toll charge to Parker,
7 Colorado, area code 303-841-3103. It was a 32-minute
8 call, and they were billed directly from AT&T. They paid.
9 And AT&T was clearly written on the bill.

10 In sum, the St. Gemmes said that they never had
11 AT&T service, but they were billed by AT&T and had such
12 service since April 13th, 1997. The St. Gemmes complained
13 and AT&T refunded the total amount, including the
14 universal conductivity charge and the carrier line charge.
15 Thus, the St. Gemmes are more than whole as AT&T
16 reimbursed them for charges that they were required to pay
17 by law regardless of who they thought the carrier was.

18 So AT&T picked up their carrier line charge and
19 the universal conductivity charge regardless the statute
20 to give additional compensation to the St. Gemmes is
21 49-31-93 South Dakota law. That only applies to any
22 slamming, per se, done after December 1998. As the AT&T
23 records show, as subpoenaed by Qwest, the St. Gemmes had
24 been enlisted and been paying and AT&T is written all over
25 the bill since April 13, 1997.

1 Under South Dakota law 2-14-21 (sp) statute,
2 fully-enacted statutes will not be given retroactive
3 intent unless the intent is clearly expressed by the
4 legislature. If you look at 49-31-93, the intent is not
5 to have retroactive effect, and that's supported also by
6 Lyons versus Lederle, 440 NW2d 769, 770, that also which
7 stands for the point that any substantive statutes are not
8 given retroactive effect.

9 Therefore, because the St. Gemmes had AT&T service
10 since 1997, that they complained about it and were
11 credited, there is no additional remedies available to the
12 St. Gemmes as a matter of law to AT&T or for Qwest.

13 CHAIRMAN BURG: Let me ask you this question:
14 Have you been billing them under what name?

15 MR. WEIGLER: AT&T.

16 CHAIRMAN BURG: But what name, customer name?

17 MR. WEIGLER: What we do -- and I found this out,
18 Mr. Commissioner, after the last hearing we had to add
19 Qwest, we just send over -- we don't bill under a name, we
20 just send over the number telephone numbers. So, for
21 example, the St. Gemmes had a telephone number -- I'd have
22 to look up exactly what their number was, but it was
23 605-555-5555, we have the records for 605-555-5555, send
24 them over electronically to Qwest and Qwest puts them in
25 the bill. But AT&T always as far as their records

1 thought -- they thought that they were billing a Jerry
2 Clay.

3 CHAIRMAN BURG: Okay. They thought they were
4 billing a Jerry Clay, you're saying?

5 MR. WEIGLER: That goes into another dispute and
6 that's the dispute between Qwest and AT&T. However, that
7 dispute doesn't have to be heard today because the St.
8 Gemmes have been satisfied as a matter of law.

9 AT&T, to go into that dispute, just for the
10 Commission's understanding, way back when AT&T -- a
11 gentleman by the name of Jerry Clay must have signed up
12 for AT&T services because Mr. Clay is in the AT&T data
13 bank as being an AT&T customer assigned to that telephone
14 number.

15 CHAIRMAN BURG: And how far back does that go?

16 MR. WEIGLER: That must go -- our AT&T records
17 show that that goes back to at least 1996. That's the
18 last time it was updated. Since AT&T -- since the
19 Clays -- my understanding is the St. Gemmes took over the
20 telephone number, and AT&T's position is there was never a
21 carrier feed to show that, from Qwest, to show that there
22 was another customer on the line. So AT&T has no reason
23 to be made aware that there was another customer put on
24 that line. Regardless, the St. Gemmes were getting AT&T
25 service. It said AT&T clearly on the bill since 1997.

1 CHAIRMAN BURG: And one last question for me is do
2 you know what address -- did the address change at all for
3 that telephone number, or don't you even have that?

4 MR. WEIGLER: We have no idea. I mean, I guess I
5 could look at the St. Gemmes' telephone number on the
6 complaint, but AT&T never got a carrier feed to show this
7 was a different number. I have a feeling, just knowing
8 about the telecommunications and how it works as far as
9 number portability, it probably went into some kind of
10 data bank as by the St. Gemmes. But I have no knowledge
11 of that, and AT&T has no -- without a carrier feed, they
12 have no way to get knowledge of that.

13 CHAIRMAN BURG: Does either the Commissioners have
14 any questions for Steve? I guess what I'd like to do
15 first, though, is go back to Alex for any response to the
16 comments made by AT&T.

17 MR. DUARTE: Well, Qwest agrees with the legal
18 proposition that the slamming laws only apply after
19 December of 1998. And the records do show that the St.
20 Gemmes did receive AT&T calls, or did make AT&T calls and
21 were billed for those AT&T calls going back to 1997.

22 We also agree that we understand that AT&T has, in
23 fact, reimbursed the St. Gemmes for all of the AT&T
24 charges; and so in that sense I think I agree with AT&T's
25 counsel that, in fact, they have been made whole.

1 You know, with respect -- frankly, we believe that
2 the case should be dismissed against both companies. The
3 only reason why we filed a Motion to Dismiss is because we
4 were brought in by AT&T. And we feel, you know, even if
5 there was a change from Mr. Cray to the St. Gemmes,
6 nevertheless, AT&T still needs authority, whether it was a
7 formal letter of authority or a third party verification
8 that occurred, that was required as of 1998 or beforehand.
9 They would still need some kind of authorization when a
10 number is switched to somebody else that they, in fact,
11 are the IXC of record. And so in that sense, I disagree
12 with him that they don't have to have any kind of proof
13 from or show any kind of proof that, in fact, the St.
14 Gemmes picked AT&T over somebody else.

15 But needless to say, I do believe that because of
16 the fact that the St. Gemmes have been aware of AT&T since
17 1997, we don't see where they should now bring a slamming
18 case that brings in both AT&T and then a third party
19 joinder, Qwest.

20 CHAIRMAN BURG: How do you know, how would AT&T
21 know that that number had gone to a different party?

22 MR. DUARTE: I don't know. To be honest,
23 Mr. Chairman, I don't know how that works. But my
24 understanding is that any time new service is -- it would
25 be new service because obviously --

1 CHAIRMAN BURG: How would they --

2 MR. DUARTE: -- moved out. And also this number
3 became available and the St. Gemmes were assigned that
4 number. Clearly it's a completely new account. The phone
5 number obviously was the same, but phone numbers, you
6 know, are used over and over again when somebody moves out
7 and somebody moves into the area. So in that sense it's a
8 new account. And like anything else, the AT&T or whoever
9 the IXC is, has to have some kind of authority that, in
10 fact, this is the IXC that this new account holder wants
11 to pick.

12 CHAIRMAN BURG: How would they know that though if
13 U S West didn't tell them that number had gone to a new
14 party?

15 MR. DUARTE: I don't think there has been any
16 evidence that U S West didn't tell them about a new
17 number.

18 CHAIRMAN BURG: That was their point is that they
19 didn't know the St. Gemmes had this number. They still --
20 in their records it was still the number from before. And
21 once a number is assigned to somebody, I presume you
22 continue to bill that until you get a notice that somebody
23 else has it; right?

24 MR. DUARTE: Yes.

25 CHAIRMAN BURG: That's where I see the dispute

1 between AT&T and U S West. And I don't know if that is
2 pertinent to this particular one. That is just a
3 clarification I wanted to try to get.

4 Ms. St. Gemme, do you have any comments on
5 anything you've heard or originally from your complaint?

6 MS. ST. GEMME: Yes, I do. The call that he's
7 talking about for Wayne and I, it's not Arkansas it's
8 Alaska. And my daughter did make that phone call. I'm
9 sure that I called and asked him in the very beginning. I
10 don't remember. But if AT&T was on there, how come none
11 of the other times it appeared for that and how come I
12 never got charged for the three months' charge until a
13 year ago?

14 MR. DUARTE: Because the three-month charge --

15 MS. ST. GEMME: I mean shouldn't that have been
16 charged all along in sense then?

17 MR. WEIGLER: What the three-month charge,
18 conductivity charge, wasn't bill billed by AT&T until it
19 was required to be charged by law, and that was August
20 13th, 1998. And your bills show you were paying it on a
21 monthly basis.

22 CHAIRMAN BURG: Mr. Weigler, can you tell us what
23 law requires you to charge that?

24 MR. WEIGLER: I was trying to find that out, Your
25 Honor.

1 COMMISSIONER SCHOENFELDER: Excuse me, this is
2 Commissioner Schoenfelder, and I think you're wrong, and I
3 think you had better go back and look at your FCC orders
4 that permit you to do those things, but it doesn't mandate
5 that you do. And I really don't believe you should be
6 saying it's a law when it's not.

7 MR. WEIGLER: I was told that it was a law. I
8 apologize. We have the right --

9 COMMISSIONER SCHOENFELDER: Don't good lawyers
10 check the statute?

11 COMMISSIONER NELSON: Well, I think that it looks
12 to me like whether they picked AT&T or didn't, and they
13 said they didn't, just because AT&T bills them for
14 something that they didn't want to pay for or that they
15 didn't ask for -- I mean if I get stuff, bills for things
16 that I don't belong, I figure it was a mistake, I throw it
17 out. I just don't think because it appeared on their bill
18 necessarily makes them have to accept any responsibility
19 for those things.

20 MR. WEIGLER: And that has been credited.

21 MS. ST. GEMME: And also in the very beginning
22 when my husband was here first because we were selling a
23 house then in Denver, when we signed up for this, for the
24 phone, we were asked in the very beginning what long
25 distance carrier do you want? It was not AT&T; it was

1 MCI.

2 COMMISSIONER NELSON: I also think cramming is
3 covered in the same law. And even if it weren't slamming,
4 it seems to me they were being billed for unauthorized
5 services and that would be cramming, and that did happen
6 after the law was in effect.

7 COMMISSIONER SCHOENFELDER: Well, I have a
8 question from General Counsel about the recommendation to
9 dismiss or not because that's the question today; right,
10 from both of them?

11 MS. WIEST: Right. I think there are clearly a
12 lot of facts in dispute, and I wouldn't recommend that
13 either motion for dismissal be granted. But I would like
14 to ask if staff had a different recommendation.

15 COMMISSIONER SCHOENFELDER: Sorry.

16 MS. CREMER: No, staff's recommendation was to
17 deny both Motions to Dismiss. I agree with Rolayne, we've
18 got Jerry Cray, Jerry Clay, Jean Mulder, the St. Gemmes.
19 I don't know how these people can have the same phone
20 number. When you call that number you get the St. Gemmes.

21 And even if the remedy does not apply here, if for
22 some reason the thousand dollars does not apply, that's
23 merely part of her remedy. She's still entitled to go to
24 a hearing and have this whole thing straightened out
25 whether or not she's ultimately awarded the thousand

1 dollars or not.

2 COMMISSIONER SCHOENFELDER: I thank staff for that
3 recommendation because I was going to say that there are
4 so many facts in dispute here and so many things that I
5 believe need to be straightened out so we can get a clear
6 idea of what happened that I would move to deny both
7 motions.

8 CHAIRMAN BURG: I'll second that.

9 COMMISSIONER NELSON: And I'd concur.

10 MR. DUARTE: Alex Duarte with Qwest. Could I ask
11 a clarification request if it's okay to ask Ms. St. Gemme?
12 And that is whether she's been charged for MCI long
13 distance called as she picked when she first got her
14 service?

15 MS. ST. GEMME: You know, on that phone number it
16 was my daughter's line and we used it for a computer. I
17 don't remember, to be very honest. I don't remember.
18 Because then I started using someone else after that and
19 then I had a slamming thing put on my phone. So to be
20 very honest, I don't really remember.

21 CHAIRMAN BURG: I do believe that's a fact that
22 will need to come out as we proceed with the hearing
23 process. And you concurred, didn't you, Pam?

24 COMMISSIONER NELSON: Yes, I did.

25 CHAIRMAN BURG: We have unanimously decided not to

1 dismiss either. I think there's too many facts in
2 dispute, and the only way we're going to clear this up is
3 to have all parties take part in a hearing process.

4 COMMISSIONER SCHOENFELDER: And I might ask
5 Mr. Duarte he needs to ask that when the complainant is
6 under oath.

7 CHAIRMAN BURG: So the Motion to Dismiss has been
8 denied to both AT&T and Qwest in CT00-090.

9 MR. WEIGLER: Mr. Commissioner, I didn't receive a
10 copy of Qwest's Motion to Dismiss if Mr. Duarte could
11 forward one to me.

12 MR. DUARTE: I would be happy to do that.

13 CHAIRMAN BURG: TC98-187, In the Matter of the
14 Petition for an Order Directing U S West Communications,
15 Incorporated, to File Updates to its Exchange and Networks
16 Service Catalog, Access Services Catalog, Advanced
17 Communications Services Catalog and Private Line Transport
18 Service Catalog.

19 Today, how shall the Commission rule on the
20 petition for reconsideration?

21 Who's handling that? Are you handling that as
22 well, Alex?

23 MR. DUARTE: Yes.

24 CHAIRMAN BURG: Do you want to explain why you
25 want reconsideration?

1 MR. DUARTE: Well, I'm sorry, I believe this is --
2 you know, I'm sorry, Mr. Chairman, I pulled the wrong
3 motion here. I thought this was staff's motion for
4 reconsideration. You may recall that back in October of
5 last year staff filed a motion for reconsideration of the
6 Commission's decision in the catalog docket that it issued
7 back in the fall of last year.

8 And our argument that was basically there was no
9 claim of error and there was no newly discovered facts or
10 circumstances that would require any kind of
11 reconsideration and that we had that basically staff had
12 made the same arguments that it made three times before in
13 its previous briefs and during the hearing itself.

14 I see that the agenda calls for a decision on
15 Qwest's motion for a petition for reconsideration, and I
16 had not pulled that one. I apologize. If I can maybe put
17 this at the end of the docket and I could go ahead and
18 pull that so I can review that because I grabbed the wrong
19 motion?

20 CHAIRMAN BURG: Okay. Alex, are you still there?
21 You do have the next docket too. Are you prepared for
22 that one?

23 MR. DUARTE: I am prepared for that one, Your
24 Honor.

25 CHAIRMAN BURG: Okay. TC00-091, In the Matter of

1 the U S West Communications, Incorporated, Classification
2 of Certain Services. Today, what is the Commission's
3 decision?

4 Do you want to make whatever comments you have as
5 to the reclassification of those services?

6 MR. DUARTE: Certainly as we mentioned in both our
7 comments and in our rebuttal comments, these services are
8 also part of a family of toll service restriction
9 products. They're completely optional, they're completely
10 discretionary. And with respect to several of them, the
11 Commission has already found them to be fully competitive.

12 And really the whole dispute comes down to only
13 one service that's at issue and that's the billed number
14 screening service, and that again is a restriction of toll
15 calls, that collected third party billing calls that
16 the -- that are -- that the server that's offered by toll
17 companies and obviously have been deregulated.

18 So really all we're talking about are services
19 that really emanate from regulated toll services that the
20 Commission has already deregulated in the past.

21 CHAIRMAN BURG: Has pay per call restrictions,
22 that been satisfied?

23 MR. DUARTE: Pay per call, yes, I believe that the
24 staff has indicated that this reclassification is
25 appropriate for a pay per call.

1 CHAIRMAN BURG: What I understood you to say those
2 that have already been taken care of, but I was under the
3 impression -- and let's get comment from staff and we'll
4 sort it out. Who's taking that?

5 MS. CREMER: I can take that. As to there were
6 four services you were looking at. Toll restriction we
7 would agree is presently classified as fully competitive.
8 Toll blocking is presently classified as fully
9 competitive. Pay per call staff would agree that that
10 service is fully competitive. However, it's our position
11 and has been all along that the reclassification of that
12 service needs Commission approval.

13 So, you know, our point is you would need to
14 approve their reclassification of that service as a fully
15 competitive one. As to bill number screening, the great
16 unknown here is whether interexchange carriers are
17 offering this service. If they are, it can be classified
18 as fully competitive, but we don't know that and no one
19 seems to know whether that really is being offered by the
20 interexchange carriers.

21 The bottom line from staff's perspective is that
22 in TC99-099 the Commission only determined that WATS and
23 MTS were fully competitive. That determination, in and of
24 itself, does not make all the auxiliary service as
25 associated with those services also fully competitive.

1 And until the Commission and not Qwest determines that
2 auxiliary services are fully competitive, it should remain
3 a noncompetitive service.

4 MR. DUARTE: And I disagree really for two
5 reasons. One is it would defeat the whole purpose of
6 whether the Commission set in the catalog docket for us to
7 have to come before the Commission for every related toll
8 restriction or toll type of service.

9 Moreover, the Commission's decision back in I
10 believe it was 98-187 indicated that if at some point
11 staff or the Commission on its own motion determines that
12 there may be reason for, you know, to question Qwest's, or
13 U S West at that time, decision to classify something as
14 fully competitive, that obviously the Commission and/or
15 staff have the right to file some kind of request for
16 information or challenge Qwest's position.

17 So I think it's really a matter of which way you
18 look at it. Rather than to have Qwest come before the
19 Commission for every product and there are many, many
20 products that are related to toll products, rather than
21 come before the Commission every single time, obviously
22 the Commission or staff can be able to challenge any
23 particular product that they believe is not related to
24 that toll family of products.

25 CHAIRMAN BURG: And can I ask this question?

1 Under the decision in 98-187 do you have to file those new
2 services?

3 MR. DUARTE: I believe -- and don't quote me on
4 this. But I believe we stated and the Commission
5 determined that it was not inappropriate for us to file
6 our informational tariffs or catalogs within 30 days of
7 the initiation of the service.

8 CHAIRMAN BURG: I'm going to ask, Harlan, are you
9 getting those copies of new services?

10 MR. BEST: They are filing the tariffs 30 days
11 after they go into effect.

12 CHAIRMAN BURG: As long as they are, because
13 otherwise how would they know to challenge? If they
14 didn't know what you were offering, how would they know
15 what to challenge? But it sounds like they are filing and
16 so that that would be a way. Other response?

17 MS. CREMER: No.

18 CHAIRMAN BURG: The question I would have, Karen,
19 is toll restriction, do you consider that a toll service?

20 MS. CREMER: That's correct and it would be an
21 auxiliary service.

22 CHAIRMAN BURG: Well, the reason again for that
23 question is you said that you don't know whether others
24 offered it or not. Even if others don't offer it --

25 MS. CREMER: That was billed number screening.

1 CHAIRMAN BURG: Excuse me.

2 MR. DUARTE: Mr. Chairman, Qwest has indicated
3 that this service is offered by toll companies.

4 CHAIRMAN BURG: And even if it were not, if it
5 were a toll service, it could still fall under the same
6 category for being what they -- still you're saying they
7 would need to at least file it.

8 MS. CREMER: Billed number screening, is that the
9 one you're talking about?

10 CHAIRMAN BURG: Yes, right, right.

11 MS. CREMER: Right.

12 CHAIRMAN BURG: The point I'm getting at if it was
13 a toll service, we've already addressed these. They're
14 looking at there are others under that category would not
15 have to fall under the category whether it would be
16 offered or not, would that be correct? Because when you
17 brought on your comments, you said that billed number
18 screening you don't know whether it's being offered by
19 anybody else.

20 MS. CREMER: Right, right. That was one of the
21 questions you had asked and nobody seems to know.

22 CHAIRMAN BURG: And if we haven't you know and U S
23 West just said it is.

24 MS. CREMER: I thought they said they don't know.

25 MS. WIEST: I think in their follow-up comments

1 they mention for billed number screening that a number of
2 carriers, it was their understanding, were offering that.
3 It might be the pay per call. They weren't for sure on
4 whether anybody else was offering, if I remember
5 correctly.

6 MR. DUARTE: We did say with respect to billed
7 number screening, it's on pages 1 and 2 of our rebuttal
8 comments that we filed on or about August 28th, that this
9 service is a toll service, offered by toll companies which
10 would be regulated and is offered through toll operators.
11 And we underscored toll companies and toll operators.
12 Thus there is no dispute whatsoever that the billed number
13 screening is -- that billed number screening is a toll
14 service and is therefore fully deregulated under the
15 Commission reclassification order in 99-099.

16 COMMISSIONER SCHOENFELDER: But, Mr. Duarte, when
17 we said that that toll, that WATS and MTS were -- we
18 didn't deregulate them, we reclassified them under our
19 statute. Can I finish? And if we did that we did not say
20 every other service related to that, did we?

21 MR. DUARTE: I don't recall the precise language
22 of the order, Your Honor.

23 COMMISSIONER SCHOENFELDER: Well, I think that
24 that -- you know, our intent was to allow you some
25 freedom. That didn't mean that every service you offered

1 would be -- would meet that criteria. And I guess I may
2 be wrong, but I do believe that they're a little bit
3 different than the services that you offer as new optional
4 services that you could be -- that could be classified
5 differently or considered differently under 187. I
6 believe this is a toll service. And I think what the
7 statute says it needs to be reclassified. Is that not
8 right?

9 MR. DUARTE: Well, and that's, I think, what we're
10 talking about here is it should be reclassified.

11 COMMISSIONER SCHOENFELDER: But you haven't
12 requested reclassification; is that true?

13 MR. DUARTE: Well, again, I go back to 187. And I
14 don't have the order in front of me, and I apologize for
15 that, but I believe there the Commission determined that
16 products that would be essentially related to products
17 that have already been fully classified as fully
18 competitive, we would have the right to be able to
19 basically put those in that bucket.

20 And if there's a dispute or a challenge, then
21 obviously we would have to defend ourselves against that
22 challenge. I think in the order it said much more, much
23 better than that I did right now, but I think that's the
24 gist how we read 187.

25 COMMISSIONER SCHOENFELDER: That might be how you

1 read 187, but that's not how -- I don't think that's what
2 we did in '99. So I'm a little confused about that.

3 MR. DUARTE: I think when we get down to the main
4 points of this matter, staff does not -- to me, does not
5 seem to disagree that this would be a toll product. I
6 think they just said they don't really know. And we have
7 asserted that, in fact, toll companies do offer this and
8 it is a toll service. But I don't think that billed
9 number screening is any different than the other three
10 that apparently the staff does not question is a toll
11 related product.

12 CHAIRMAN BURG: Karen, could I have you repeat
13 your recommendation?

14 MS. CREMER: Our recommendation as to pay per call
15 is that we would agree that the service is fully
16 competitive. However, we think the reclassification needs
17 to be done with Commission approval. And it would be the
18 same with billed number screening. You know, they're
19 asserting that other companies provide this. I guess we
20 don't know that. If, assuming that's true, then it could
21 be classified as fully competitive, but again the
22 Commission would have to be the one that approves that and
23 it can't just be an automatic.

24 CHAIRMAN BURG: What would be the procedure for
25 that reclassification? Do we need to go through a full

1 hearing on it?

2 MS. CREMER: Is that what they did before with the
3 services? I guess I believe that the statute --

4 MR. BEST: The statutes have set forth what they
5 have to do for reclassification as well as the
6 Administrative Rules.

7 CHAIRMAN BURG: But could we do it through a
8 motion now?

9 MS. CREMER: It probably wouldn't be noticed, so
10 you probably wouldn't be able to. I don't know. I guess
11 I don't know that. I would have to look.

12 COMMISSIONER NELSON: Karen said that the staff
13 isn't sure these things are competitive or not so my
14 personal opinion is they need to come forward and
15 demonstrate it is.

16 MS. CREMER: Which would either be affidavit or we
17 would need something. It's merely Alex or Tom or whoever
18 signed that.

19 CHAIRMAN BURG: I guess my flip side is this goes
20 out to all the other providers, and if they were concerned
21 about it reclassification, that some of them would have --
22 might have indicated. I'm just reluctant to go through a
23 big process for what I see is a fairly minor change at
24 this point.

25 MS. WIEST: And with respect to this 099, you

1 know, another option, I guess, is that in that order the
2 Commission referenced toll services and WATS. And so the
3 question is whether these type of services, which everyone
4 seems to agree are toll services, have been already been
5 reclassified as fully competitive services.

6 CHAIRMAN BURG: I'm prepared to just move that
7 they be reclassified if that procedure is proper. That's
8 the question that I have today. What's your
9 recommendation?

10 MS. WIEST: Yeah, I think that might be a problem
11 that --

12 COMMISSIONER SCHOENFELDER: Well, first of all, we
13 have an intervenor.

14 MS. WIEST: Right, and they haven't done anything.

15 COMMISSIONER SCHOENFELDER: That's okay, there's
16 still intervention; they're still parties.

17 MS. WIEST: I guess my point, I assume they had
18 the opportunity to file comments, which they chose not to
19 do, and I would assume they had notice of this meeting,
20 which -- and they have again chosen not to show up.

21 CHAIRMAN BURG: So the recommendation is that if
22 they want those reclassified, they need to file a
23 reclassification?

24 MS. CREMER: And follow the statute, whatever it
25 requires of them.

1 CHAIRMAN BURG: Okay.

2 MR. DUARTE: Your Honor, I do believe that in
3 TC98-187, I believe it's conclusion number five, and I'm
4 going to pull it. But I have some reference here that the
5 Commission recognized in conclusion number five of the
6 order that U S West has the ability to make the initial
7 determination whether such services or products are
8 necessary to meet competition, and thereafter the
9 Commission or staff or others parties may open a docket to
10 determine whether such product or service is necessary to
11 meet competition.

12 So I believe that really the test here that these
13 should be classified as fully competitive, if for some
14 reason there is a dispute by staff or any interested party
15 or the Commission on its own motion, then essentially they
16 can make Qwest essentially have to show proof that, in
17 fact, this is necessary and it should be fully classified
18 -- fully competitive.

19 MS. WIEST: Well, I would have to disagree with
20 Mr. Duarte on that point. The point in the 187 was to
21 specifically address the statute that allows you to do
22 certain things and not have approval if those products and
23 services are to meet competition. But the Commission
24 specifically found that does not give U S West the right
25 to unilaterally reclassify services.

1 So the point is even if a service is classified as
2 noncompetitive, if U S West is introducing it or changing
3 it and the purpose is to meet competition, then we have
4 said that certain of our approvals are not necessary. But
5 it's a whole different issue as to whether -- as to the
6 classification. I don't think that statute or that order
7 stated that U S West actually has the ability to
8 unilaterally reclassify services. And then that actually
9 gets into your motion for reconsideration in the 187
10 docket.

11 CHAIRMAN BURG: Mr. Duarte, we don't like this any
12 more than anybody else, at least I don't. I think it's
13 extremely confusing, I think it's extremely complicated.
14 But this was the law that U S West had a great part in
15 passing, and we're just trying to figure out how we can
16 comply with it at this point. Because I think all of it
17 is really a conglomeration of effort, but I don't think we
18 can ignore what was in that statute.

19 MR. DUARTE: I guess, Mr. Chairman, I understand
20 those concerns. I guess my only response would be that
21 the application then would be such that it would be very
22 burdensome for the Commission and for Qwest for us to have
23 to every -- to come to the Commission for every service
24 that is an auxiliary service to something that has already
25 been reclassified as fully competitive.

1 As I mentioned before, Qwest has a myriad of
2 products that are all related to toll and, you know, every
3 day they're coming up with some new little type of, you
4 know, auxiliary service that is part of its toll family of
5 services. And for Qwest to have to come and burden the
6 Commission with reclassification for every single thing
7 that relates to something that's already been
8 reclassified, we think is a regulatory burden that neither
9 the Commission nor Qwest should have to.

10 CHAIRMAN BURG: I agree with that. I think that's
11 what I just said. But we weren't the ones that wrote the
12 law that said it had to happen that way. It was you
13 wanted the opportunity to be able to change things to
14 compete, and the law authorized that. But it doesn't
15 allow you to automatically be reclassified and that's
16 where the problem comes.

17 MR. DUARTE: Well, I guess sticking to the points
18 regarding this particular docket, I mean we do have four
19 services. We have presented to the Commission information
20 regarding the fact that they are related to toll, which
21 has already been reclassified. And so obviously on a
22 going-forward basis, we'll have to, you know, certainly do
23 what's required by the law. But here I believe that there
24 really has been no dispute with any kind of evidence that,
25 in fact, these four products are not related to the toll

1 family of products.

2 CHAIRMAN BURG: But I don't believe it refers to
3 any -- I think we're just going to move on with it and you
4 have to follow whatever the law says to get it
5 reclassified. Is that right?

6 MS. WIEST: We can defer it.

7 CHAIRMAN BURG: I mean, well, the decision is does
8 it apply to have them reclassified if you want them
9 reclassified as fully competitive; right? I'm willing to
10 make a motion to say that they're competitive, but I don't
11 think that meets the law, from what I heard.

12 MR. DUARTE: But given that we have essentially
13 all parties were noticed of this hearing, we have staff
14 and we have the three commissioners, and given that
15 there's no dispute that these are related to the toll
16 products that are the toll services that have been
17 reclassified, I guess my question is why wouldn't we be
18 able to then have them reclassified here since it is
19 before the Commission?

20 MS. WIEST: And that's why I thought it might be
21 better if you might want to defer it and then we could
22 look into that point and see if it would be proper that we
23 could actually reclassify.

24 CHAIRMAN BURG: I'm satisfied that that are --
25 that even if it isn't, it's insignificant and to have them

1 reclassified, but I haven't been under the understanding
2 that we can do that; that you have to go through a
3 reclassification procedure to do that, I think. So I
4 think we will defer this one and investigate that and if
5 there's a way we can do it, we'll address it.

6 MS. WIEST: Right. I think that will come out
7 when we go back to 187 with respect to new products and
8 services the Commission has allowed an expedited procedure
9 to classify those from noncompetitive to fully
10 competitive.

11 CHAIRMAN BURG: Okay. If we can use that
12 procedure, it's okay with me. Anything else? If not, we
13 will defer the decision on 00-091.

14 * * * * *

15 MR. DUARTE: I believe we deferred 187. And the
16 issue -- and I apologize, first of all, for being
17 unprepared. I had pulled the wrong motion, and I just
18 pulled the right one that Mr. Welk had prepared.

19 The issue in this case is whether the Commission
20 should reconsider and modify the order to provide that U S
21 West, or Qwest, get introduced new products and services
22 pursuant to Section 84, but not have to have such services
23 reclassified provided that U S West will accept the risk
24 that such new products and services are necessary to meet
25 competition.

1 And that's when I referred to conclusion number
2 five where the Commission basically said that U S West has
3 the ability to make the initial determination whether such
4 services or products are necessary to meet competition.
5 However, the Commission staff or other persons could be
6 able to open up a docket to challenge that or to determine
7 whether in fact such products or services are necessary to
8 meet the competition.

9 We believe that as General Counsel Wiest
10 indicated, this is related somewhat to TC00-091. And,
11 therefore, if the Commission is not prepared to grant our
12 motion at this time, then I would suggest that the
13 Commission defer it to the next meeting to basically
14 consider this petition with the matter that was deferred
15 under TC00-091.

16 CHAIRMAN BURG: Let me ask you this, Alex: Once
17 we decide TC00-091, would that have the likelihood of
18 making the consideration request go away? Would that
19 probably clarify?

20 MR. DUARTE: I think it would be clarified. I
21 mean there are two separate points, but they're all sort
22 of related. And that is what is really necessary for, you
23 know, new products that come on the scene that have not
24 been previously classified, you know, especially if
25 they're products that Qwest has introduced to meet

1 competition.

2 So I think they are very related. Depending on
3 how the Commission comes out on its rulings, I think that
4 one may become moot over the other. So I think that they
5 are necessarily related and should probably be considered
6 in tandem.

7 CHAIRMAN BURG: Does staff have any comment before
8 we would decide whether to delay the decision?

9 MS. WIEST: I don't think we need to defer it.
10 It's a separate issue. The issue is whether the
11 Commission wants to change its decision and say that new
12 products and services are not still noncompetitive. Well,
13 the Commission already issued a decision years ago that
14 said they were. If U S West wants intraLATA new products
15 and services to be reclassified from a noncompetitive to
16 fully competitive, it certainly can file a petition.

17 When U S West's main problems in their petition
18 for reconsideration is that they said that the Commission
19 had decided in a previous docket that it have some sort of
20 expedited approval for these type of dockets and Qwest
21 said that we had not done so. Well, that's not correct.

22 In fact, what has happened is that what we have
23 allowed U S West to do is we have allowed U S West when
24 it's a new product or service, an intraLATA new product or
25 service, we have allowed to make it as a tariff revision.

1 And the Commission has stated in those tariff revisions
2 that it can be considered as fully competitive.

3 So I would recommend that the Commission deny U S
4 West's petition for reconsideration.

5 CHAIRMAN BURG: Other comments?

6 MR. DUARTE: Well, the other comment is the
7 procedure that was contemplated in F. 37-43 (sp) obviously
8 has never been implemented and was prior to the
9 application of SDCL 49-31-84, which is what was the heart
10 of Qwest's position in TC98-187. And, again, I do believe
11 that they are related to the issues in the other docket,
12 and I think that the best approach might be just to
13 consider them in tandem.

14 CHAIRMAN BURG: Well, I don't think I'm prepared
15 to do a reconsideration. I think we heard that one and in
16 detail and made a decision. And so I'm going to move we
17 deny the petition for reconsideration.

18 COMMISSIONER SCHOENFELDER: Second.

19 COMMISSIONER NELSON: Concur.

20 CHAIRMAN BURG: On 187, so the petition for
21 reconsideration has been denied in TC98-187 and we will
22 defer the 091.

23 Anything else? If not, thank you.

24 (The hearing concluded at 10:36 a.m.)

25

