

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

CT00-014
TC98-203
TC99-112
TC99-117
TC00-011
TC00-059

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS: May 17, 2000
1:30 P.M.
Room 464, Capitol Building
Pierre, South Dakota

PUC COMMISSION: Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

COMMISSION STAFF
PRESENT: Rolayne Ailts Wiest
Karen Cremer
Camron Hoseck
Harlan Best
Gregory A. Rislov
David Jacobson
Michele Farris
Keith Senger
Leni Healy
Charlene Lund
Heather Forney
Sue Cichos
Bill Bullard

PROCEEDINGS

CHAIRMAN BURG: Item CT00-014, In the Matter of the Complaint Filed by Julie Roesler on the Behalf of Sleep Inn, Sioux Falls, South Dakota, Against Sprint Communications Company, LP, Regarding Unauthorized Disconnection and Unauthorized Switching of Service.

Today shall the Commission grant Sprint's motion to add McLeod and U S West and does the Commission find probable cause of an unlawful or unreasonable act, rate, practice, or omission to go forward with this complaint and serve it upon McLeod and U S West?

Who are you representing, Tom?

MR. HARMON: Sprint. And, principally, Mr. Chairman, I would introduce on the phone, I believe, is Andy Jones, counsel, staff counsel for Sprint. And I would advise the Commission that the order of pro hoc vice is underway and will be filed.

CHAIRMAN BURG: I would ask then are you going to or Mr. Jones explain to us the reason why they want to include the additional parties?

MR. HARMON: Mr. Jones.

MR. JONES: Yes, Your Honor, thank you. We submitted a renewed motion to add McLeod and U S West to this complaint. And I will briefly restate some of

A P P E A R A N C E S

For SDITC: Richard D. Coit
Pierre, SD 57501
For Citizens: Darla Rogers
Pierre, SD 57501
For Sprint: Thomas Harmon
Pierre, SD 57501

Appearances by Telephone:

For US West: Alex Duarte
Phil Roselli
Thomas J. Welk
Colleen Sevold
For AT&T: Michele Singer Nelson
Sandy Hofstetter
For Basic Long Distance: Brian Somerville
For Sprint: Andrew Jones

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the issues brought up in our renewed motion and that was a second answer that we filed as well.

Sprint received what are known as carrier records, sounding a lot like the case that was talked about earlier, CT00-050. I'm sure there are differences. We received no indication through our investigation here that we ever initiated any orders to switch the complainant's service. It appears that it was done by U S West, but who requested is unclear.

We believe it was probably McLeod, given that we received from U S West what's known as a sign-up date, indicating the certain numbers had been added to the Plaintiff's account under McLeod's name. And that would be the basis for our motion.

We've tried to communicate with both companies but we've been unable to determine without their cooperation and information just exactly who it was that initiated the switch. We do know from our investigation, though, that it was not Sprint who initiated any switch.

I do have a person who has been involved with the investigation here and her name is Shelly Stare.(sp) She would be available to answer any questions that may come up that are kind of beyond my reach as far as the technical ins and out of this

1 goes.

2 And if the Commission or parties have any
3 questions they want to direct them to either myself or
4 Miss Stare, we would be happy to answer them.

5 CHAIRMAN BURG: Is anyone here representing
6 McLeod? Anyone on the phone representing McLeod? Did
7 U S West have any comments on the move to include them
8 in this complaint?

9 MS. SEVOLD: Chair, Commission, this is
10 Colleen Sevold again. I just became involved in this
11 complaint this morning. I've not been involved in it
12 before, so I have not had time to pull the data
13 together.

14 So we would agree to be added to the
15 complaint at this time, and I assume that we would have
16 the right to file the motion to dismiss later if after
17 we gather the facts that we believe it's appropriate to
18 do so.

19 CHAIRMAN BURG: Does staff have any
20 comments?

21 MS. CREMER: I talked to Mrs. Roesler
22 yesterday and she just wanted any parties that had
23 anything to do with this to be included. She doesn't
24 care who they are, but she's not going to figure it
25 out.

1 29th of June?

2 CHAIRMAN BURG: Right.

3 MR. JONES: I would be available for that,
4 Your Honor.

5 MR. WELK: I am -- the only question would be
6 if we need a witness who I don't know what his schedule
7 is, but I'm available for that date.

8 CHAIRMAN BURG: So at least at this point
9 we'll reserve that date anyway. Let's do it that way,
10 although we have not had the motion to include you yet,
11 but since there's been no objection.

12 COMMISSIONER SCHOENFELDER: Mr. Chairman, I
13 would move we add U S West and McLeod to this complaint
14 and find probable cause. I would also make part of my
15 motion that the June 29th hearing date be adopted.

16 COMMISSIONER NELSON: I'd second.

17 CHAIRMAN BURG: And I will concur. So McLeod
18 and U S West have been included and probable cause has
19 been found with a hearing date of June 29th being
20 included in CT00-014.

21 * * * * *

22 CHAIRMAN BURG: TC98-203, In the Matter of
23 U S West Communications, Incorporated, for Approval of
24 the negotiated Arbitrated Terms of Agreement for
25 interconnection, Resale, and Unbundled Elements Between

1 The only other thing is this is still under
2 the old probable cause. Okay? She talked about a
3 motion to dismiss, and that's so I just wanted to make
4 sure so they have 20 days to answer.

5 CHAIRMAN BURG: Although I think a motion to
6 dismiss could come at any time.

7 MS. CREMER: It could. I wanted to make
8 sure.

9 CHAIRMAN BURG: Does anybody else have any
10 comments to make on this docket?

11 MR. WELK: Mr. Chairman, this is Tom Welk.
12 And I think I might be in error and someone can correct
13 me, this management is scheduled for hearing already on
14 May 31st. Am I correct on that?

15 MS. CICHOS: Yes.

16 MS. CREMER: Yes.

17 MR. WELK: If we are added, U S West, we are
18 obviously going to need time to respond to it and I
19 will not be available on May 31st. I will literally be
20 out of the country.

21 CHAIRMAN BURG: We anticipated that already,
22 Tom, so we do have an alternative date already cleared
23 with the Commission of June 29th. Do the parties have
24 any comments on that?

25 MR. JONES: Andrew Jones with Sprint. The

1 Advanced Communications Group, Incorporated, and U S
2 West Communications, Incorporated.

3 Today shall the Commission approve the
4 proposed amendment to the interconnection agreement?

5 U S West, do you want to explain what that
6 interconnection agreement is?

7 MR. DUARTE: Yes, Mr. Commissioner. This is
8 Alex Duarte. I don't have all the particulars

9 regarding the interconnection agreement. Those were
10 negotiated by our separate contract group and
11 submitted. And my understanding is that when those are
12 submitted, they're submitted based on signed, or
13 signatures by both parties.

14 So at that stage I don't really have any
15 particular information about this specific agreement.

16 CHAIRMAN BURG: You don't know what the
17 amendment was?

18 MR. DUARTE: I don't.

19 CHAIRMAN BURG: Is anybody here from
20 Advanced?

21 MR. HOSECK: Mr. Chairman, maybe I can shed a
22 little light on this. There are really two amendments
23 that are up here for your consideration today. One was
24 submitted on March 21st, and that amended an original
25 agreement between FirsTel and U S West, and that

1 amendment replaced in entirety Section Eight of the
 2 contract which addressed collocation.
 3 On April 12th a second amendment was sent in
 4 and that second amendment adds terms, conditions, and
 5 rates with regard to unbundled elements.
 6 Now, there may be a little bit of confusion
 7 here, but just for purposes of refreshing your
 8 recollection, the original agreement which is amended
 9 by these two amendments was between U S West and
 10 Advanced Communications Group and that Advanced
 11 Communications Group assigned its rights to FirsTel,
 12 and you approved that September 14th of 1999, so that's
 13 why it's between FirsTel and U S West.
 14 But there are really two amendments that are
 15 in front of you today, and the staff is recommending
 16 the matter be approved.
 17 CHAIRMAN BURG: For my clarification again, I
 18 probably missed it, what happened to go from FirsTel to
 19 Advanced?
 20 MR. HOSECK: The contract was assigned. In
 21 other words, there was an original deal between this
 22 company.
 23 CHAIRMAN BURG: FirsTel and U S West?
 24 MR. HOSECK: No. It was actually Advanced
 25 Communications Group and then Advanced Communications

1 Group assigned the contract to, I believe it was a
 2 wholly-owned subsidiary. There was some corporate
 3 relationship there and which is FirsTel and so that's
 4 why we're where we are today.
 5 CHAIRMAN BURG: Okay. And are you
 6 recommending approval of the --
 7 MR. HOSECK: Yes, of both amendments.
 8 CHAIRMAN BURG: Okay. Any other comments or
 9 questions? If not, I'll move that we approve the two
 10 amendments between U S West and Advanced
 11 Communications, or FirsTel. I want to get the motion
 12 right.
 13 MR. HOSECK: It's FirsTel.
 14 CHAIRMAN BURG: Well, the way the statement
 15 is here, Camron, is that it says the original agreement
 16 which was assigned to FirsTel -- which was assigned to
 17 FirsTel. Okay. So now FirsTel is the party.
 18 MR. HOSECK: FirsTel is the successor in
 19 interest, yes.
 20 CHAIRMAN BURG: That's who we want the
 21 amended amendment to the agreement to?
 22 MR. HOSECK: Yes.
 23 CHAIRMAN BURG: I'll move that we approve the
 24 two amendments proposed between U S West and FirsTel.
 25 COMMISSIONER NELSON: Seconded.

1 COMMISSIONER SCHOENFELDER: Concur.
 2 CHAIRMAN BURG: Okay. The amendments have
 3 been approved in TC98-203.
 4 * * * * *
 5 CHAIRMAN BURG: TC99-112, In the Matter of
 6 the Joint Application of U S West Communications,
 7 Incorporated, and Sully Buttes Telephone Cooperative
 8 and Venture Communications, Incorporated, Regarding the
 9 Sale by U S West of Sisseton Telephone Exchange to
 10 Sully Buttes Telephone Cooperative, Incorporated, and
 11 Venture Communications, Incorporated.
 12 Today shall the Commission approve the joint
 13 application? Who goes first? Darla?
 14 MS. ROGERS: Doesn't matter. I would just
 15 update.
 16 CHAIRMAN BURG: Because we had some
 17 unanswered questions, I believe.
 18 MS. ROGERS: I would also update the
 19 Commission on a couple of things that have transpired
 20 since the hearing. First of all, the parties did file
 21 a joint application for waiver of the switched access
 22 rules. And I believe you've all received a copy of
 23 that. And that was something that we discussed at the
 24 hearing, and I believe that you have entrusted the
 25 parties to do, and we have taken care of that.

1 I think that there was also a little bit of,
 2 or some questions at the hearing about who actually was
 3 the purchasing party of the Sisseton Exchange. And
 4 actually this was hot off the press today and that's
 5 why I was a few minutes late here. But we have
 6 prepared an assignment of the agreement for the
 7 purchase and sale of telephone exchanges.
 8 In the assignment then Venture is assigning
 9 all of its rights and interests under the purchase
 10 agreement to Sully Buttes. And I think we represented
 11 at the hearing that Sully Buttes is the purchasing
 12 party, and so now we have taken care of this with an
 13 assignment of all the contractual rights.
 14 And attached to the assignment is the consent
 15 of U S West, and I believe U S West is also on the
 16 phone and they have consented to that as well. And I
 17 have copies of that if you're interested.
 18 CHAIRMAN BURG: Just a question first. Had
 19 all other Venture Communications' rights already been
 20 assigned?
 21 MS. ROGERS: All of the telephone assets of
 22 Venture Communications have been acquired by Sully
 23 Buttes Telephone.
 24 CHAIRMAN BURG: And you're just following
 25 that with this knew purchase one?

1 MS. ROGERS: That's correct.
 2 CHAIRMAN BURG: Is Venture even -- will
 3 Venture even exist any more?
 4 MS. ROGERS: Yes, communication, anything --
 5 Venture still exists and they have like some cable,
 6 CATV business in that subsidiary, some wireless,
 7 things, so there are other businesses that Venture
 8 still takes care of, but all of the telephone
 9 businesses and exchanges are now in Sully Buttes' name
 10 so we have done the same with this.
 11 CHAIRMAN BURG: Okay. If you want to
 12 distribute that.
 13 Did anybody have any question of Ms. Rogers
 14 on this issue?
 15 MS. WIEST: I had a question on the waiver of
 16 the switched access rates. And first I was just
 17 curious. I know you came up with seven and seven for
 18 originating and terminating, but then you had different
 19 rates for the different elements, different originating
 20 versus different terminating. Can you explain why
 21 those were different?
 22 MS. ROGERS: You're referring to?
 23 MS. WIEST: Page three of your application.
 24 MS. ROGERS: To be perfectly honest, I got
 25 these elements from our consultant Mark & Associates,

1 and I think -- I mean it was just a mathematical.
 2 MS. WIEST: My point is they're different
 3 between originating and terminating. But could you
 4 explain that, Harlan, or do you have any idea why he
 5 did it that way?
 6 MR. BEST: I'm not sure why they did what
 7 they did, but it could possibly be that they took the
 8 LECA rate and prorated those down to a seven cent in
 9 the proration. That's how they came up with different
 10 originating and terminating elements.
 11 MS. WIEST: Okay.
 12 MS. ROGERS: I think that's correct, that
 13 that is what we did, took the LECA rate by those
 14 percentages.
 15 MR. BEST: I don't know if that's how they
 16 did it, but that could possibly be.
 17 MS. ROGERS: That's my recollection of what
 18 the consultant took and went through when he came up
 19 with those.
 20 MS. WIEST: My other question was, I know in
 21 the application it requests a waiver for the 12-month
 22 period and then at that time based on the transcript at
 23 the end of the 12 months, Sully Buttes proposed to use
 24 the then current LECA rate and then Sully Buttes would
 25 do a cost based revenue requirement at the end of one

1 calendar year operation.
 2 So would it be your understanding that you
 3 need more than a one-year waiver if you're going to use
 4 LECA rights after this 12 months is up before you
 5 actually apply for cost, you know, before the knew
 6 exchange is actually included in Sully Buttes, or the
 7 LECA rate with the cost?
 8 MS. ROGERS: More than one year from the --
 9 MS. WIEST: This is only for a 12-month
 10 period, the seven and seven cents.
 11 MS. ROGERS: Right.
 12 MS. WIEST: But you're actually after that
 13 time period you're going to use the LECA rate, but
 14 you're going to use the LECA rate without Sisseton's
 15 actual costs being included in the LECA rate? At that
 16 point were you going to ask for a further waiver?
 17 MS. ROGERS: That would be our intention
 18 because I think we would need --
 19 MS. WIEST: So at this point you're only
 20 asking for the 12-month for the seven and seven?
 21 CHAIRMAN BURG: If I understand what you're
 22 saying, they would still need a waiver for the time
 23 from that they apply the LECA until they submit their
 24 own.
 25 MS. WIEST: Right. My point is Sisseton's

1 costs would not be in that LECA rate during that time
 2 period.
 3 CHAIRMAN BURG: So the LECA rate itself would
 4 change when Sisseton's costs are included. It could
 5 anyway?
 6 MS. ROGERS: I would assume we would need
 7 like another year.
 8 MS. WIEST: Probably at least and depends on
 9 when the sale is completed for sure. Do you have any
 10 estimation of when you're actually closing on it?
 11 MS. ROGERS: No. I guess depending on what
 12 happens here, it will probably take, I would estimate,
 13 at least three to four months to get the FCC approval,
 14 so we're looking at a few months, I would anticipate.
 15 MS. WIEST: Okay.
 16 CHAIRMAN BURG: Any other question for Ms.
 17 Rogers?
 18 U S West have any comments on this?
 19 MR. WELK: No, Mr. Chairman. We just ask the
 20 approval of the application.
 21 MS. WIEST: Does staff have any more
 22 comments?
 23 MR. SENGER: I just want to point out that it
 24 is my understanding that the Commission on the sale of
 25 exchanges has not approved different originating,

1 terminating rates in the past.
 2 MS. WIEST: Different elements?
 3 MR. SENGER: Different elements, excuse me,
 4 the same rate but different elements for the separate
 5 elements.
 6 MS. WIEST: Thank you.
 7 CHAIRMAN BURG: When would those separate
 8 elements come into place?
 9 MS. WIEST: Unbundled.
 10 CHAIRMAN BURG: Is there any unbundled there
 11 now? And, Keith, just because you brought up the
 12 comment, do you see anybody being harmed by if somebody
 13 requested unbundled elements from there, do you see any
 14 harm?
 15 MR. SENGER: I can't think of any.
 16 CHAIRMAN BURG: Okay. Any other comments?
 17 So the question now being today shall the Commission
 18 approve the joint application?
 19 COMMISSIONER NELSON: And the waiver.
 20 CHAIRMAN BURG: Right.
 21 COMMISSIONER NELSON: I would second the
 22 motion to --
 23 CHAIRMAN BURG: No, we need this.
 24 COMMISSIONER NELSON: Okay. I move that the
 25 proposed sale of U S West Sisseton Exchange to Sully

1 Buttes Telephone Cooperative, Inc., be approved as in
 2 the public interests subject to the following
 3 conditions:
 4 One, that the current service rates not be
 5 increased for 18 months from the date of the company
 6 begins to operate the purchased exchange;
 7 Two, the company shall not recover any of the
 8 acquisition adjustment through its regulated
 9 interstate, intrastate rates, through its local rates,
 10 or through the federal state or universal service
 11 funds;
 12 Three, the company shall honor all existing
 13 contracts, commitments, leases, licenses, and other
 14 agreements which relate to, arise from, or are used for
 15 the operation of the purchased exchange;
 16 Four, that the company offer at a minimum all
 17 existing services currently offered by the purchased
 18 exchange with the exception of local measured service.
 19 For local measured service the company shall charge
 20 local measured rates for current customers for 18
 21 months from the date the company begins to operate the
 22 purchased exchange;
 23 And, five, that the company not discontinue
 24 any existing extended area service without first
 25 obtaining approval from the Commission.

1 I further move that U S West be allowed to
 2 retain the gain from the sale for the benefit of the
 3 stockholders.
 4 I further move that the Commission find it
 5 does not object to granting any required study area
 6 waivers by the FCC.
 7 And I would further move that the U S West
 8 petition to relinquish ETC status be denied as
 9 premature.
 10 I further move that the Commission approve
 11 the waiver of the switched access rates as requested by
 12 the parties.
 13 CHAIRMAN BURG: Okay. I'll second that.
 14 COMMISSIONER SCHOENFELDER: I'm going to
 15 concur, but I'm still concerned about the fact that we
 16 asked -- the staff asked for data that they didn't get
 17 and for the fact that the contracts that we asked for
 18 were not explained fully to my satisfaction.
 19 And I am a little bit concerned about the
 20 different elements being priced differently in the
 21 switched access. If we have a problem arising from
 22 that, I'm putting on notice.
 23 CHAIRMAN BURG: Okay.
 24 MS. ROGERS: Just to clarify, it will be in
 25 the name of Sully Buttes.

1 MS. WIEST: Yes.
 2 COMMISSIONER NELSON: I read it that way.
 3 CHAIRMAN BURG: Yeah, we did cross out the
 4 other part. Commission has approved the joint
 5 application in TC99-112.
 6 MR. WELK: Mr. Chairman, this is Tom Welk. I
 7 have an issue on the ETC issue because it was denied as
 8 being premature. Is it the pleasure of the Commission
 9 then that that be filed contemporaneously with the
 10 application that's anticipated from Sully Buttes to be
 11 the ETC carrier of the exchange? Do you want to handle
 12 those all together?
 13 MS. WIEST: Exactly.
 14 MR. WELK: That's fine. I just want to do
 15 what we want to do procedurally.
 16 CHAIRMAN BURG: Any other questions?
 17 COMMISSIONER NELSON: I have a comment too.
 18 Though I share Commissioner Schoenfelder's concern
 19 about the staff not getting the requested information
 20 and I think that that's important, the reason I'm
 21 willing to overlook that information not being provided
 22 is because under oath we have the testimony that they
 23 will provide whatever is required. So if they didn't
 24 read the contracts and aren't familiar, still we have
 25 their word that they're going to honor those.

1 CHAIRMAN BURG: Okay. Anything else?
2 * * * * *

3 CHAIRMAN BURG: Item number four, TC99-117,
4 In the Matter of the Filing by U S West Communications,
5 Incorporated, for Approval of Revisions to its Exchange
6 Network Service Tariffs.

7 Today shall the Commission approve the
8 proposed tariffs, tariff revisions? Okay. U S West.

9 MS. SEVOLD: Yes, this is Colleen Sevold, U S
10 West Communications again. And Commissioner Burg just
11 stated that's a matter that did come before the
12 Commission at a previous meeting. The issues that the
13 Commissioners had about the word may has been addressed
14 in this change. We have made that shall. So, in other
15 words, it will be applied in all cases.

16 We also made any changes that the staff had
17 requested. And what this change does is it allows U S
18 West to be compensated for expending resources to
19 provide service by due date and then the customer is
20 probably not ready to accept it or unwilling to accept
21 it at that time.

22 At that time we would advise the customer
23 that the service is ready. If the customer is still
24 not willing or able to take it, we would hold the
25 service for 30 business days at no charge. After that

1 They have made all the other changes that staff has
2 requested, and we would recommend approval of the
3 tariff revisions.

4 CHAIRMAN BURG: And the way you understand
5 it, the effect of that changing to may and shall, is
6 that if that item is met, they will impose the same
7 criteria on everybody?

8 MS. FORNEY: That's correct.

9 CHAIRMAN BURG: Any other comments or
10 questions? If not, I will move that the Commission
11 approve the proposed tariffs revisions in TC99-117.

12 COMMISSIONER SCHOENFELDER: Seconded.

13 COMMISSIONER NELSON: Concur.

14 CHAIRMAN BURG: The proposed tariff revisions
15 have been approved in TC99-117.

16 * * * * *

17 CHAIRMAN BURG: TC00-011, In the Matter of
18 the Filing by U S West Communications, Incorporated, of
19 a Notice of Intent to File a 271 Application.

20 Today how shall the Commission proceed?

21 I will introduce this one by indicating that
22 we are considering closing this docket because we don't
23 see what direction it wants to go. But I want to open
24 it up to any comments of why we should not close the
25 docket at this time.

1 time we would ask that we would be able to either apply
2 monthly charge that they should be paying if they were
3 taking the service or apply a cancellation charge.

4 Now, this is only for lines five or more,
5 analog or digital lines, and only for those
6 noncompetitive services that could be ordered when you
7 order a DS1. I'm not aware of any other companies or
8 LEC's that are required to keep services available for
9 customers.

10 And so we would just ask that we would be
11 allowed to do this. By the way, this change has been
12 implemented as we are requesting it in all of the other
13 13 states.

14 CHAIRMAN BURG: Heather, do you have
15 anything, or Camron?

16 MS. FORNEY: Chairman Burg, Commissioners,
17 U S West has filed the revised tariff pages for their
18 Exchange and Network Services Tariff. These are
19 amended since our last presentation to the Commission.

20 For clarification purposes, I believe that
21 the may and the shall that were being discussed and
22 changed were in paragraph section 221, subsection B,
23 cancellations and deferments, probably the fourth line
24 up where it says shall be applied. And the previously
25 said may be applied and they changed that to shall.

1 And, U S West, do you have any comment
2 first?

3 MR. DUARTE: Yes, Mr. Chairman, this is Alex
4 Duarte. Unfortunately, I don't have Chuck Steece
5 available with me, but let me note a couple matters.

6 It's my understanding that both the South
7 Dakota and North Dakota Commissions have expressed an
8 interest in joining the four other states in a
9 checklist collaborative; the four other states being
10 Montana, Utah, Idaho and Iowa.

11 There is right now a draft of procedural
12 order being considered by the staffs of the six state
13 Commissions and as part of the six-state
14 collaborative. And as I understand it, there was a
15 conference call last Monday, the 15th, as well as one
16 this morning among, I believe, U S West, AT&T, and
17 staff members from the different states. And that
18 proposed procedural order calls for workshops to be
19 beginning as early as July of 2000.

20 So it would seem to me that the best
21 recommendation would be that South Dakota move forward
22 with this six-state process based on my understanding
23 that South Dakota has expressed an interest and that
24 there have been discussions among the six states which
25 were originally four states. So those are the points

1 that I wanted to raise.

2 CHAIRMAN BURG: Is this basically an
3 invitation to join that four-state collaborative?

4 MR. DUARTE: I don't know the status, and I
5 don't want to speak out of turn. My understanding is
6 that there have been discussions and there was a
7 conference call this morning -- I'm sorry, well, this
8 morning, as well as one last Monday, the 15th.

9 And Chuck Steece wrote a letter that I
10 believe was e-mailed to staff members of the six states
11 that expressed some of the U S West comments regarding
12 the proposed drafts, the procedural schedule that's
13 been proposed.

14 There was staff -- apparently the different
15 staffs -- excuse me, the different staffs apparently
16 submitted a red line version of that procedural order.
17 And so my understanding is that U S West is discussing
18 or negotiating with AT&T and the other staffs regarding
19 that procedural schedule.

20 So my understanding is that all six states
21 were involved in those decisions. Whether that means
22 that's a formal invitation or whether that means that
23 South Dakota and North Dakota have formally accepted, I
24 don't know.

25 And I apologize for not having Mr. Steece

1 here available, but my understanding is that there's at
2 least those discussions taking place literally as we
3 speak.

4 COMMISSIONER SCHOENFELDER: Mr. Duarte, this
5 is Commissioner Schoenfelder. I would just like to
6 know if you are still planning and if you're going to
7 stay firm with your deadlines of filing in this state
8 in the fourth quarter of 2000?

9 MR. DUARTE: Again, I really don't know. I
10 know the procedural schedule calls for a series of four
11 different workshops beginning in July of 2000, up
12 through, I believe, February or March of 2001 and those
13 -- my understanding is that those would pertain to all
14 14 checklist items.

15 There might be some testing in the first and
16 maybe possibly second quarter of 2001. But my
17 understanding -- I don't exactly know how the process
18 works and what all it entails as far as a formal
19 application.

20 COMMISSIONER SCHOENFELDER: I'm not talking
21 about the testing, nor am I talking about the process.
22 I'm talking about when you're going to file, when U S
23 West at corporate level intends to file the 271
24 application in South Dakota.

25 MR. DUARTE: My understanding is what we said

1 before was late fourth quarter of 2000. And I presume,
2 and again I don't really -- am not involved in 271 very
3 thoroughly, but I presume that's all part and parcel of
4 this workshop process that will run from July of 2000
5 to spring of 2001.

6 CHAIRMAN BURG: My feeling is so far we have
7 been just monitoring those conference calls or those
8 calls and not necessarily including ourselves when we
9 were not invited to be part of it originally.

10 So I guess I'm open to what process, if
11 there's not going to be a filing coming soon, well,
12 then I'm not sure what good it does. And all along
13 I've been wondering why the notice that an intent of
14 filing? Why not just the filing at a certain point?

15 But at this point I'm going to ask does staff
16 or the people that's been involved on what happened on
17 the conference call this morning -- Harlan, do you have
18 anything to add?

19 MR. BEST: This is Harlan Best with staff.
20 On the first call that I sat in on was back on, I
21 believe, Tuesday of last week, or Monday of last week,
22 whatever it was. It was made very clear that this
23 Commission had not made any decision on whether to join
24 that four-state collaborative or not.

25 I was on the call Monday. I made no comment

1 on the call. Today I introduced myself and that was
2 it. Where U S West determined that this Commission had
3 already joined the collaborative, I do not know where
4 that came from. It did not come from me.

5 CHAIRMAN BURG: Has the formal applications
6 been filed in those four states?

7 MR. DUARTE: South Dakota had joined. All I
8 said was -- again, and I'm not in the 271 loop. If you
9 will, all I said was I note there's been discussions.
10 There have been conference calls that involve all six
11 states. And when Chairman Burg asked me whether we had
12 formally invited South Dakota, I said I really don't
13 know what the process is. All I know is there have
14 been discussions with all six staffs. So I'm not
15 trying to imply or state that, in fact, South Dakota
16 had either been formally invited or that South Dakota
17 has agreed to be part of the process.

18 CHAIRMAN BURG: Has the formal application
19 been filed in those four states? I think it's Iowa,
20 Idaho, Montana, and Utah. Has the formal application
21 for 271 been filed in those four states?

22 MR. DUARTE: I do not believe so. And,
23 again, my understanding is that this workshop process
24 is part of that entire application process. But
25 whether the truckload of documents that have been filed

1 in Colorado, Nebraska, and Arizona, those have not been
2 filed, to my understanding, in any of those other four
3 states.

4 CHAIRMAN BURG: I guess I go back to my
5 original question. Is there a reason to keep this
6 docket open, which is simply a notice of intent to file
7 at this point?

8 MR. DUARTE: I think, Mr. Chairman, there is
9 -- because I am I have not heard anything different
10 than what we stated when we first filed that
11 application or the notice of intent, I should say that
12 basically said that we intend by the fourth quarter of
13 2000 to file an application in this state.

14 CHAIRMAN BURG: But my question is would you
15 try to file under this docket or would you just file a
16 knew application so that becomes a knew docket?

17 MR. DUARTE: Procedurally, Mr. Chairman, I'm
18 afraid I don't know the answer.

19 COMMISSIONER SCHOENFELDER: Mr. Chairman, we
20 opened this docket for comments is basically what we
21 opened it for. We've heard comments from a lot of
22 companies. If and when U S West gets around to filing
23 in this state, I think we can open a knew docket. So
24 I'm going to move to close this docket.

25 MS. WIEST: And then I think maybe the

1 Commission should, you know, officially state whether
2 it has any intentions of joining or attempting to join
3 in the four-state multi-state collaborative effort.

4 CHAIRMAN BURG: I guess, you know, I'm going
5 to support -- I'm going to second the motion to close
6 the docket. I see no --

7 MR. DUARTE: This is Alex Duarte again. You
8 know, we filed that notice of intent, and one of the
9 things we suggested was the fact that, you know, we
10 wanted -- we were advocating this collaborative
11 process, this workshop process. We suggested that the
12 state commission might want to consider joining some
13 other state or states in this workshop process.

14 So to me, that application is essentially
15 what we're doing today and that is discussing what's
16 the best way to go about this, whether it's workshops
17 or eventual hearings, whether it's workshops involving
18 one state or multiple states.

19 So in that sense I would think that what we
20 have filed and exactly what the process is working
21 itself out. Obviously notices haven't been made yet as
22 far as what the final line-up is going to be and what
23 the procedural order will look like, but I think that
24 we're sort of on track with what we said we would do
25 back in February of 2000.

1 CHAIRMAN BURG: Well, back to this issue. I
2 don't believe that U S West requested a docket be
3 open. You just filed a notice of intent. We opened
4 the docket for comment. I think this docket has
5 accomplished that. We've gotten the comments. I think
6 it has exhausted the purpose of it, and I don't think
7 that any way reflects on the intent that you filed.

8 So what we're saying today is unless somebody
9 adds any real reason why it should stay open, there's
10 no point to keep it open, and so far I have not heard
11 one. I guess I'd like to break the issue apart and we
12 will act on the motion to close the docket and then
13 discuss whether we will join. There's a motion and a
14 second. Do you want to concur?

15 COMMISSIONER NELSON: I'd concur.

16 CHAIRMAN BURG: So we have a motion, second
17 and concur that we close the docket in TC00-011.

18 I guess I would just put out is this the
19 proper time and place to decide whether we're going to
20 join that collaborative?

21 COMMISSIONER SCHOENFELDER: Mr. Chairman,
22 it's my opinion we haven't been invited to join that
23 collaborative. It's also been indicated to some of our
24 staff that we probably -- U S West would rather we
25 weren't in that. So until we get -- it would be my

1 recommendation that until we get formal proceeding
2 asking us to join that collaborative, we can act on it
3 then.

4 CHAIRMAN BURG: And we can continue to
5 monitor and participate as we have until that point.
6 So I think we will not take an action today. I would
7 rather hear some more input from especially the people
8 that's been working on it before we make that kind of
9 decision. So I think we will just move forward, and we
10 have closed the docket in TC00-011.

11 MS. SINGER NELSON: Mr. Chairman, this is
12 Michelle Singer Nelson from AT&T. I would just make a
13 request from U S West.

14 U S West, if you do make that formal
15 invitation to the Commission, or if you send anything
16 to the Commission relating to that collaborative, could
17 you please copy the parties to this docket and the
18 parties to the 271 docket that has been opened back
19 when the Commission issued its original order? It's
20 TC96-165 where the Commission issued an order on how it
21 was going to handle U S West 271 applications.

22 If you could please notify other parties so
23 we would have an opportunity to be informed of what's
24 going on, I would appreciate it.

25 MR. DUARTE: We will do that.

1 CHAIRMAN BURG: One other thing, there are
 2 other parties involved, aren't there, besides AT&T?
 3 MR. DUARTE: Yes, there are.
 4 CHAIRMAN BURG: How many? Are we even
 5 familiar?
 6 MR. DUARTE: In this state I believe we
 7 received petitions from AT&T, McLeod, Midcontinent,
 8 Black Hills FiberCom, maybe. I'm not sure. I would
 9 assume Sprint as well, and perhaps SDITC. I'm not sure
 10 about that.
 11 CHAIRMAN BURG: And there's also New Edge
 12 Network that did. So far those people have not been
 13 parties to the collaborative discussion that's been
 14 going on; is that correct?
 15 MR. DUARTE: I don't know. They may have as
 16 part of others. I know that the most recent ones were
 17 with AT&T, U S West, and staffs.
 18 CHAIRMAN BURG: Wasn't there another computer
 19 company? What did you mention this morning, Harlan?
 20 MR. BEST: Rhythms.
 21 CHAIRMAN BURG: Rhythms, is there a party
 22 named Rhythms?
 23 MR. DUARTE: They've been involved in this
 24 process. I don't know they've formally intervened in
 25 South Dakota, but they will certainly be given notice.

1 We know who all the players are that wanted to be
 2 involved in some extent or another, so we'll give
 3 notice to everybody.
 4 CHAIRMAN BURG: Thank you.
 5 MS. SINGER NELSON: Mr. Chairman, to be
 6 clear, it is AT&T's position, as you stated and as the
 7 other Commissioners have stated, that an application
 8 should be filed before the Commission do anything. An
 9 application should be filed in South Dakota before the
 10 Commission do anything. And I think on the call this
 11 morning, the North Dakota Commission expressed that
 12 same point of view.
 13 CHAIRMAN BURG: Let me ask you then,
 14 Michelle, what has happened in the other four states?
 15 MS. SINGER NELSON: The other four states
 16 that U S West has not filed an application, but U S
 17 West has made the same kind of request that the
 18 Commission get started on the 271 process in a workshop
 19 format and set up a schedule without an application.
 20 CHAIRMAN BURG: Are you recommending the same
 21 thing occur in South Dakota then instead of an actual
 22 application?
 23 MS. SINGER NELSON: No, no, AT&T has opposed
 24 the Commission doing anything until after U S West
 25 files an actual application with that particular

1 Commission.
 2 CHAIRMAN BURG: You've taken the same
 3 position in those four states?
 4 MS. SINGER NELSON: Yes.
 5 MR. DUARTE: It would be our position, as
 6 we've stated many times, that that's not necessary for
 7 all the reasons we've stated both in our statements
 8 back in February and in March. And clearly it seems
 9 the direction of these other four states are at least
 10 that we will go forward with these workshops even
 11 though there's been no formal application filed.
 12 MS. SINGER NELSON: Your Honor, this is Lise
 13 Strom with New Edge Networks. And just as an
 14 informational, I know the Wyoming commission was in a
 15 similar position and thought that all parties who had
 16 intervened in the matter where U S West had filed a
 17 notice of intention to file an application, that docket
 18 has been closed.
 19 CHAIRMAN BURG: In Wyoming?
 20 MS. STROM: Yes.
 21 CHAIRMAN BURG: I find it quite confusing and
 22 just from the discussion with everybody, with the lack
 23 of an application, of knowing just exactly what to do.
 24 But we will not get in any more depth today. I do find
 25 it to be an issue just in listening to everybody's

1 comments. I think we'll move on to the next docket. I
 2 think we've expressed our concerns on that one.
 3 * * * * *
 4 CHAIRMAN BURG: Okay. That jumps us up to
 5 item number 44, TC00-059, In the Matter of the Filing
 6 by U S West Communications, Incorporated, for Approval
 7 of Revisions to its Exchange and Network Services
 8 Tariff.
 9 Today shall the Commission approve the
 10 staff's motion. Again, what's staff's motion?
 11 MR. HOSECK: Thank you. Mr. Chairman,
 12 members of the Commission, you should have in front of
 13 you the motion, notice of motion, which was filed in
 14 this.
 15 And basically staff has asked for an order in
 16 this docket that U S West provide certain information,
 17 and this is illustrated in the motion that there have
 18 been certain things filed with the Commission, certain
 19 things which have not been filed with the Commission by
 20 U S West and these are for noncompetitive services.
 21 And it is apparent to staff that U S West has
 22 unilaterally implemented the provisions of these
 23 tariffs without Commission approval.
 24 Now, that having being said, I'm going to
 25 defer to Harlan Best, who is going to give you a

1 factual scenario of what he has experienced in these.
 2 MR. BEST: This is Harlan Best with
 3 Commission staff. What I have passed out is the
 4 process that has occurred since the Commission issued
 5 its order in TC98-187. That order was issued on
 6 February 23rd of 2000.

7 After the Commission issued that order, I
 8 went through the tariff books of U S West that were on
 9 the Web, and I compared those to what were on file with
 10 the Commission in my office.

11 On February 28th you see an e-mail that I
 12 sent to Colleen Sevold which lists a number of sections
 13 and pages and releases with effective dates that speak
 14 to the Exchange of Network Services Tariff.

15 On the left-hand side of that you'll notice
 16 that there is something captioned S.D. PUC docket
 17 number. The TC99-098 was a proceeding for the
 18 Commission to make directory assistance fully
 19 competitive. I could determine those specific tariff
 20 sheets based on the Commission order approving those
 21 tariff sheets in TC99-098.

22 The other sheets that are shown within this
 23 e-mail that was sent to Colleen Sevold on February 28th
 24 are changes that were made to the Exchange of Network
 25 Services Tariff, which is a noncompetitive tariff

1 MR. HOSECK: Mr. Chairman, members of the
 2 Commission, we are not going beyond any motion. If you
 3 read the motion, Mr. Welk, it talks about the problem
 4 we've had with U S West and their ability to be
 5 responsive to what staff has asked for. All of these
 6 items are items which have been received by your
 7 client. I don't know if you have them or not, but
 8 these are all items which either are originating from
 9 U S West or are a matter of correspondence, and they
 10 are items that you have.

11 And, furthermore, Mr. Best certainly is
 12 entitled to provide to the Commission the background
 13 information so that they fully understand what U S West
 14 has been doing here. This is not outside the scope of
 15 the motion.

16 MR. WELK: I vociferously object because read
 17 the motion they filed. Are you looking at the same
 18 sections of the tariff that are the subject to the
 19 motion? That's my question. Because we've attached
 20 the sections that they have raised issues on in our
 21 response.

22 And I object to any argument, any
 23 presentation of any evidence to the Commission that's
 24 outside the motion that has been not noticed to U S
 25 West.

1 book. These tariff sheets I could not determine when
 2 the Commission had ever issued an order approving the
 3 specific sheets.

4 So my e-mail to Colleen Sevold requested that
 5 U S West provide me with a South Dakota PUC docket
 6 number associated with each of the above, the U S West
 7 job number associated with each of the above, and where
 8 within the U S West Web page I could find each of the
 9 above job numbers so I could look at what was filed
 10 within those job numbers.

11 The second page to what I have sent you or
 12 handed out to you --

13 MR. WELK: Mr. Chairman, this is Tom Welk.
 14 Why weren't we served with any of this material? I
 15 mean we're sitting here and what Mr. Best is doing is
 16 beyond the motion that's been filed. We have specific
 17 sections that were subject to this motion that we have
 18 filed a response to.

19 We are not being provided these documents at
 20 the same time you are. They were not served us ahead
 21 of time. Why aren't we responding to the motion that's
 22 been filed and the response we've made to it? We are
 23 going beyond the motion.

24 MR. HOSECK: May I respond?

25 CHAIRMAN BURG: Yes, Mr. Hoseck.

1 MR. HOSECK: Mr. Chairman, this is argument,
 2 it's not evidence.

3 MR. WELK: I'm making a motion that
 4 everything be stricken because it is not part of the
 5 motion.

6 CHAIRMAN BURG: I guess I'm confused. Is the
 7 motion or the request of U S West -- are we talking
 8 about the staff motion or are we talking about the
 9 request of U S West for approval of the revisions to
 10 its Exchange and Network Tariffs, Mr. Welk? Which are
 11 you referring to?

12 MR. WELK: I'm referring to the motion that
 13 is subject to hearing today, that the arguments that
 14 are being made to you are beyond the motion and beyond
 15 the documents that were raised in the motion, and that
 16 it's improper and we've had no notice that these items
 17 were going to be discussed in the motion.

18 The motion raises specific tariff items with
 19 specific pages that we have responded to in our
 20 response. What is being presented to you is beyond the
 21 scope of the motion, and I object to any consideration
 22 furnishing any information of the Commission because it
 23 is not in the motion.

24 CHAIRMAN BURG: Not being an attorney, I
 25 don't know how to answer your argument between two

1 attorneys. Do you have anything to add, Rolayne?
 2 MS. WIEST: I guess I'm not sure what tariff
 3 pages are at issue now. I was only looking at the
 4 pages that were filed in staff's motion.
 5 MR. WELK: Read our response. Those are the
 6 tariff pages.
 7 MS. WIEST: I have read your response, and my
 8 point is I don't know what Harlan's point is with these
 9 e-mails.
 10 MR. HOSECK: Can I ask Mr. Best respond to
 11 that?
 12 MR. BEST: May I continue?
 13 MS. WIEST: Go ahead.
 14 MR. BEST: Within this February 28 e-mail
 15 that I sent to Colleen Sevold, you will see an arrow
 16 drawn on the right-hand side that references section
 17 one, page 13, release four. That is the specific sheet
 18 that is referenced within staff's motion that was made
 19 in this proceeding.
 20 My request to U S West on February 28th was
 21 where did this tariff revision come from? I never
 22 received a response to this e-mail that indicated where
 23 that change -- when that change occurred or why it
 24 occurred.
 25 If you look at the second page and it's a

1 We never got a response from them, from U S
 2 West, and now suddenly they're saying within the
 3 response of U S West that that revision was because of
 4 the Commission's action in TC99-099. The letter from
 5 Miss Sevold indicates that the only thing that 099
 6 changed was the Exchange of Network Services Catalog.
 7 It did not change the Exchange and Network Services
 8 Tariff.
 9 MS. WIEST: And then did you have anything
 10 further, Mr. Hoseck?
 11 MR. HOSECK: Well, nothing other than the
 12 fact that, you know, by reason of our motion, we have
 13 asked that U S West explain what's gone on here because
 14 we don't think that they have been responsive to this
 15 Commission's orders and that there have been tariffs
 16 apparently implemented without this Commission's
 17 approval.
 18 And so as I state in my motion we have asked
 19 for an explanation of this, and if it isn't sufficient,
 20 that the Commission impose sanctions against U S West
 21 as provided by statute. And that's the sum and
 22 substance of where we're at. Thank you.
 23 CHAIRMAN BURG: Mr. Welk, any response?
 24 MR. WELK: Colleen, do you want me to go
 25 first or do you want to?

1 response from Colleen to me on February 28 at 3:23
 2 p.m., that says I will be in Pierre tomorrow and then
 3 go on vacation. I'll be out of the office until March
 4 13 and then back in Pierre until March 15th. I will
 5 work on it if possible, but it may not be until I get
 6 back from vacation.
 7 Now, that was on February 28th. Staff filed
 8 a letter that went out over the signature of Camron
 9 Hoseck, but was directed to Mr. Welk on December 9th of
 10 1999 requesting how U S West was going to implement the
 11 orders that were issued in TC99-098 and 099. 099 was
 12 the reclassification of MTS and WATS to fully
 13 competitive.
 14 Their response, which is one page forward
 15 from Camron's letter, the response from Colleen
 16 specific to 099 is the toll services are already listed
 17 in the U S West Exchange and Network Services Catalog.
 18 The catalog, not the tariff.
 19 Then you see the response from U S West which
 20 the Commission received via fax on May 12, at the
 21 bottom part of it states that U S West did in changing
 22 the tariff -- when they speak to the tariff they are
 23 now speaking to the section one, page 13, release four,
 24 which is the one that I had asked them about
 25 specifically on February 28th.

1 MS. SEVOLD: Let me go first and clear up a
 2 couple things here. First of all, this is Colleen
 3 Sevold, U S West Communications. And in response to
 4 Mr. Best's request to me, I did send an e-mail stating
 5 I'd be on vacation; however, when I came back from
 6 vacation, I called or sent an e-mail, and I do not
 7 recall which, informing Mr. Best that this was a matter
 8 that I thought I needed to discuss with my attorneys
 9 and therefore I would not be responding, but I,
 10 instead, would be working with the attorneys on it.
 11 We have heard nothing since then until we get
 12 this motion. And I would agree with Mr. Welk this
 13 motion has to deal with only one particular instance
 14 and it is toll services. And when I stated that the
 15 toll services were all in the catalog, I was mistaken
 16 because we find these four toll services are in the
 17 tariff. They should have never been in the tariff.
 18 They're toll services.
 19 The Commission has found in their order that
 20 toll services are fully competitive. Other companies
 21 offered these same services. They aren't regulated.
 22 We simply moved toll services in the catalog and does
 23 as the order states. And, Tom, you can add anything if
 24 you have it.
 25 MR. WELK: I don't think I have anything.

1 The response states exactly responds to the staff's
2 motion as to what happened, and Colleen has summarized
3 it. We've provided you with the exact pages and all
4 that happened simply is that these were toll services
5 that were in the tariff and they were pulled out after
6 your order and changed and put in the catalog and
7 that's simply the answer to it.

8 MS. SEVOLD: They're toll services that never
9 should have been in the tariff. They should have been
10 in the catalog. And at some point they were apparently
11 put in the tariff.

12 CHAIRMAN BURG: By whom?

13 MS. SEVOLD: I couldn't -- I would have to go
14 way back. They've apparently been in there for quite
15 some time.

16 CHAIRMAN BURG: If a service is transferred
17 from a tariff to a catalog, is it your position that
18 U S West can unilaterally decide that's where it
19 belongs?

20 MS. SEVOLD: The order from the Commission
21 says that U S West intraLATA toll and wide area
22 telephone service shall be classified as fully
23 competitive. So we moved these toll services. They
24 are strictly toll services. And we moved those along
25 with the other toll services. We did not move any

1 MS. WIEST: That's not my question.

2 MS. SEVOLD: Therefore they could allow --
3 it's a service that doesn't work unless your carrier
4 cooperates.

5 MS. WIEST: No, that's still not my
6 question. My question is who provides toll restriction
7 services? Can a pure toll provider, a provider who
8 does not provide local exchange services, can a toll
9 provider provide toll restriction services on your
10 phone?

11 MS. SEVOLD: I'm not sure of the answer to
12 that. I guess a carrier would have to answer that.
13 But I can tell you that other local exchange carriers
14 would have this service as a fully competitive service
15 and just like we. McLeod toll restriction is fully
16 competitive.

17 MS. WIEST: But if you classify -- if you
18 mean you're saying it's a toll-related service --

19 MS. SEVOLD: I'm saying it's a toll service,
20 it has to do with toll. If you don't have toll on your
21 phone or you don't have anything to do with toll, this
22 service means nothing to you. It's a toll service.

23 COMMISSIONER NELSON: I think it's a local
24 exchange service because it's a requirement to be
25 considered for you have to have to be able to provide

1 other services other than toll services in this
2 particular part that we're talking about.

3 MS. WIEST: I guess my question is are toll
4 restriction services services that can be provided by
5 an IXC?

6 MS. SEVOLD: Toll restriction would be
7 provided by McLeod if you had McLeod as a carrier. It
8 would be provided by whoever your carrier is.

9 MS. WIEST: By your toll carrier or by your
10 local exchange provider?

11 MS. SEVOLD: We can put toll restriction on
12 someone's account. None of the carriers need to honor
13 that. In other words, we can put the note on the
14 account for the customer that the carriers do not have
15 to honor it.

16 So if really wanted a toll restriction on
17 your account, you would need to work with the carriers
18 because they don't have to honor what we've put on
19 their account. The only person that has to honor that
20 is if you're a U S West customer.

21 MS. WIEST: So AT&T, as a toll provider only,
22 not as a local exchange company, AT&T can restrict toll
23 service to say somebody's phone?

24 MS. SEVOLD: What I'm saying, they don't have
25 to honor if we put it on there.

1 ETC, to be an ETC, you have to be able to provide toll
2 restriction. That is provided by the local exchange
3 carrier, not an interexchange carrier.

4 Now, it might be true that some of the
5 interexchange carriers are providing local service. In
6 that case if they have an ETC status, they have to be
7 able to provide a toll restriction. So I don't
8 necessarily agree with you when you say that it's only
9 a toll service and it's a deregulated service.

10 MS. SEVOLD: But we have to provide toll
11 restriction, but my point is no one has to honor it.
12 So, in other words, it's not a service that we can put
13 on someone's account and make sure that it works
14 because no one has to honor that.

15 CHAIRMAN BURG: Let me reverse that. If
16 somebody else offers their customer toll service, can
17 they provide that? A reseller of your service, can
18 they provide that without your cooperation?

19 MS. SEVOLD: A reseller would have to answer
20 that question. I'm not sure.

21 CHAIRMAN BURG: Come on, there's no way they
22 can put it on because they don't have the equipment. I
23 mean it has to be implemented by the local provider;
24 correct?

25 MS. SEVOLD: I'm not sure a reseller couldn't

1 put it on one of their switches.

2 CHAIRMAN BURG: They could offer it but the
3 only way it's going to be implemented is to go through
4 the local provider; isn't that correct?

5 MS. SEVOLD: They may be able to put it on
6 one of their switches. I don't know the answer to
7 that.

8 MS. WIEST: I think the question here,
9 though, is whether these toll restriction services were
10 properly deemed to be fully competitive by U S West.
11 And I don't know that the Commission has ever decided
12 that question.

13 MS. SEVOLD: It says intraLATA toll and wide
14 area telephone services, so this is a toll service.
15 All of these are toll services.

16 CHAIRMAN BURG: In the eyes of U S West.

17 MS. SEVOLD: Well, they're all toll. I mean,
18 you know, no matter whether the carrier is McLeod.

19 CHAIRMAN BURG: I still believe it's up to
20 the Commission to determine whether they're properly
21 classified. The only question I've had all along is I
22 believe everything the staff has brought is
23 legitimate. I think it's something should be looked at
24 and dealt with. My only question is is that properly
25 brought in the question of U S West? In other words,

1 did they comply with the original request?

2 MS. WIEST: In this docket.

3 CHAIRMAN BURG: Yeah, in this docket. You
4 know, the fact we still should look at the issues you
5 have, there's no doubt in my mind that we should. You
6 brought up a very legitimate concern. But does that
7 fully fit within the request of U S West and have they
8 met -- you know, is that request legitimate, you know,
9 despite the fact that in the pursuit of that issue you
10 found these other problems?

11 MS. WIEST: I guess just to clarify, it would
12 appear to me that the Commission should address this
13 issue in a separate docket because specifically what
14 U S West is asking for tariff revisions here isn't as
15 related as to the issue that the staff brought up as to
16 whether these services should have been put into the,
17 or classified as fully competitive without any
18 Commission approval.

19 MR. HOSECK: I think I can safely say we're
20 not hung up procedurally how this is attacked, but we
21 have brought to you a problem again very similar to the
22 187 case where we are having functional problems with
23 this regulated company in their filings of what they
24 represent to us as noncompetitive filings and that's
25 the basic problem.

1 So whether you continue with this or leave
2 this as a parallel docket and flip another -- flip the
3 issue into another docket, I'm not hung up on that.
4 But it is something I do believe this Commission has to
5 address because the problem has not gone away for about
6 two years now.

7 CHAIRMAN BURG: I agree with that. The
8 question, I think, that was asked in this docket was,
9 let's see, U S West has filed a change in the Exchange
10 Network Service Tariffs to reflect the customers have
11 additional options besides a check to pay their
12 billing.

13 My question to you would be is do you object
14 to that change in tariff limited strictly to that?

15 MR. HOSECK: I'd defer to Mr. Best. I don't
16 know.

17 MR. BEST: At this point I haven't looked.
18 At that time I was mainly concentrating on staff's
19 motion.

20 MS. WIEST: And I don't think -- at this
21 point I don't think that's actually a question before
22 the Commission. It could certainly be brought up on
23 another agenda since the only question was concerning
24 staff's motion.

25 COMMISSIONER NELSON: Okay. I would move

1 that the Commission grant the staff's motion and open a
2 docket to consider the issues brought forward in this
3 docket.

4 MS. WIEST: To open a docket. Instead of
5 stating that it's granting staff's motion, I would just
6 say that the Commission should open a docket to
7 consider the issues that staff has brought forward
8 within its motion.

9 COMMISSIONER NELSON: I would so move.

10 COMMISSIONER SCHOENFELDER: I'll second that.

11 CHAIRMAN BURG: And I will concur. That
12 leaves this particular issue.

13 COMMISSIONER SCHOENFELDER: It hasn't been
14 noticed.

15 CHAIRMAN BURG: I know that. That was not
16 going to be my question. That leaves this particular
17 issue for consideration on its own merit to be brought
18 up at a later date and the issues you brought are spun
19 off a separate docket.

20 MR. HOSECK: That's fine. And I think,
21 practically speaking, at some point in the future we
22 could merge them together for purposes of trial or
23 something like that so the whole picture would be at
24 the same time if you wanted to do that. But that's --

25 CHAIRMAN BURG: Only if they're that related,

1 otherwise I'd rather address the question they brought
2 before us and address this one as on its own merit.

3 MR. HOSECK: That's fine. Procedurally, I
4 have no strong position on that.

5 MR. WELK: Mr. Chairman, I have no idea what
6 you're ruling.

7 CHAIRMAN BURG: We will let you know. We've
8 ruled that the issues that are brought before the
9 Commission are legitimate issues but should be handled
10 in a separate docket. But the consideration today was
11 not whether to approve TC00-059, it was only on whether
12 to act on the staff's motion.

13 And in light of acting on staff's motion,
14 we've opened a separate docket to deal with the issues
15 that they've brought forward, which now leaves the
16 issues that you brought in TC00-059 to be considered on
17 their own merit. But that was not before us today so
18 we cannot act on them.

19 * * * * *

20 CHAIRMAN BURG: TC00-068, In the Matter of
21 the Filing by U S West Communications, Incorporated,
22 Regarding the Sale of Exchanges in Nebraska and
23 Minnesota.

24 Today shall the Commission grant the staff's
25 motion? I guess I would go to staff for their motion.

1 what is the ability of the phone company to provide
2 modern state-of-the-art telecommunication services that
3 will promote, among other things, economic development
4 and distance learning.

5 As you may recall, this is primarily a rural
6 exchange, agriculture-based, but there's also, as I
7 recall, a rural school out in that area that would be
8 affected by this service.

9 And, quite frankly, we have had problems that
10 as far as the data transmission, U S West has taken the
11 position that this is nothing that's required of them
12 and they're existing in the 19th century approach to
13 telecommunications.

14 One point that I want to make here and that
15 is that I think there's a very serious question with
16 regard to this purchase of this exchange. And that is
17 I'm looking at an excerpt from the October 1999
18 Exchange Magazine, which is a publication, a trade
19 publication, and I'll read directly from this and it
20 has a fact sheet. It has various statistics cited
21 about a telecommunications company.

22 And it says local telephone company rated
23 lowest in residential customer satisfaction according
24 to J.D. Powers and Associates: Citizens. This is who
25 the intended purchaser of this exchange is. And as far

1 MR. HOSECK: Mr. Chairman, members of the
2 Commission, Camron Hoseck on behalf of staff.

3 We have moved the Commission to hold a
4 hearing on the sale of the Valentine Exchange as it is
5 situated in Todd County, South Dakota; and we have done
6 so under the provisions of 49-31-59, which is the
7 general sale of exchange statutes.

8 Of particular interest, from a public
9 interest point of view, is the history of the service
10 as you're well aware on this exchange. We have four
11 dockets which are still open that were complaint
12 matters that were filed by these people, and I believe
13 it's approaching a couple of years since these matters
14 were heard.

15 Although voice grade service seems to be
16 presently okay, there still seems to be a problem with
17 the data transmittal. And in light of the filing of
18 this motion, I did hear from one of the parties who
19 indicated and confirmed to me that this is still a
20 problem. Granted, this is a rural exchange, but I
21 think that these people deserve to be participating in
22 the 21st century and whatever that carries with it in
23 terms of communications.

24 I think that primary importance and given
25 that is the provision in the statute that talks about

1 as I'm concerned, the appearance at this point in time
2 is that we're going from bad to worse, or at least that
3 potential is there.

4 That's the reason that I think there's a need
5 for a hearing in this case, that the patrons, if they
6 so wish, can come forward and tell the Commission about
7 their problems. And, secondly, I think that there is a
8 very serious interest in what the proposed purchaser
9 may be offering in this particular case given their
10 general reputation.

11 And so, accordingly, we have just asked that
12 a hearing be held in this matter so that these matters
13 can be heard.

14 COMMISSIONER NELSON: I guess I have a
15 question.

16 CHAIRMAN BURG: Just one I was going to ask
17 quickly is do you know has the controlling state of
18 this exchange, which would be Nebraska, have they acted
19 on this application yet?

20 MR. HOSECK: I believe Nebraska has approved
21 it, yes.

22 CHAIRMAN BURG: Has approved it?

23 MS. ROGERS: Correct.

24 CHAIRMAN BURG: I was under the impression
25 they had not.

1 COMMISSIONER NELSON: I guess my question is
 2 this: I wasn't around here and on the Commission when
 3 most of the sales of exchanges took place. But it was
 4 my understanding in asking other people around here who
 5 were there for the most part all the time, I was -- at
 6 least I believed it to be true that they felt that the
 7 Commission had felt that the sale of exchange, foreign
 8 exchanges, were not subject to the sale of exchange
 9 statutes, so why is this case different?

10 MR. HOSECK: I think this case is different
 11 primarily given the factual distinction and that is
 12 what kind of service are these 95 patrons going to have
 13 on this line that essentially starts at the Nebraska
 14 line and goes up to Mission. And I think that there is
 15 a factual distinction in this case that and I think the
 16 statute allows you to have a hearing if you wish to
 17 have one.

18 And my recollection is that there was a
 19 policy decision made not to hold them on some of these
 20 foreign exchanges that extend into South Dakota. But I
 21 don't think it's prohibited. And in this case I'm
 22 urging that one is necessary because of the quality of
 23 service problems and who the intended purchaser is.

24 COMMISSIONER NELSON: But even if we didn't
 25 -- if we didn't have a hearing and we've stayed with

1 our policy, which is our belief that the foreign
 2 exchange sales -- that the statute on sale of exchanges
 3 doesn't apply, we still would retain all quality of
 4 service customer complaints, authority jurisdiction
 5 over the purchasing company, so I don't see how they
 6 would be harmed by --

7 MR. HOSECK: I'm not disputing that. The
 8 problem is we've got four dockets that have been
 9 sitting there for two years that have not been dealt
 10 with, and we have an intended purchaser here that we
 11 don't know what their reputation is, and from the
 12 indication it's not good.

13 And I think that the sale of exchanges is an
 14 opportune time on a wholesale basis to address these
 15 95, or whatever it is, customers out there and take a
 16 look at what kind of service is intended, what kind of
 17 facilities are going to be used, and what the ultimate
 18 result is.

19 Are these people going to have anything
 20 that's modern, or are they going to be left in the
 21 sticks with stuff that's patched together with nobody
 22 caring about it? And that's the concern.

23 COMMISSIONER NELSON: Are you telling me it
 24 wasn't that the -- that the Commission believed in the
 25 past that the foreign exchange sales didn't -- that the

1 statute wouldn't apply to them, was that it was really
 2 that we decided the hearings weren't necessary?

3 MR. HOSECK: I think that was a consideration
 4 although, you know, I wasn't in on --

5 COMMISSIONER NELSON: You weren't here
 6 either?

7 MR. HOSECK: I was here, but I was on the
 8 other side. I was on the staff's side, so I really
 9 don't know what the motivating factor was as to what
 10 the Commission's decision was. But all I can say is if
 11 there was ever a case for a need for a hearing, this is
 12 it.

13 CHAIRMAN BURG: Let me ask this question:
 14 What do you think the effect would be if we denied the
 15 sale and it's already been approved by Nebraska? What
 16 effect would that have?

17 MR. HOSECK: Well, I think U S West would
 18 continue to own it. It would be no different, for
 19 instance, than the actions that were taken in the
 20 McIntosh, Timber Lake and Morrystown.

21 CHAIRMAN BURG: But we were the controlling
 22 state in those.

23 MR. HOSECK: That would be the same effect.

24 MR. ROSELLI: Phil Roselli from U S West. If
 25 I could opine on this, I beg to differ from Mr.

1 Hoseck's conclusion. I think the sale would be
 2 consummated. I think the Nebraska -- it's clear the
 3 Nebraska Commission has approved this transaction, and
 4 we did attach that to the papers we filed Monday.

5 The result, I believe, is there would be some
 6 uncertainty about whether the parties, respectively U S
 7 West and Citizens, would be permitted to adjust their
 8 study area boundaries to take stock of the
 9 transaction.

10 That's not altogether clear what the outcome
 11 would be at the FCC, but if this Commission, the South
 12 Dakota Commission, were to object to the adjustment of
 13 study area boundaries with regard to the ninety or so
 14 customers in South Dakota, all that would mean
 15 presumably is that we would not adjust the study area
 16 boundaries for this one exchange, Valentine and
 17 Nebraska, but the sale would be consummated because
 18 it's fairly clear these 14 exchanges reside obviously
 19 in Nebraska.

20 So I think the conclusion is that we would
 21 probably consummate the sale.

22 MR. HOSECK: I beg to differ with that
 23 because I don't think the Nebraska Commission has any
 24 authority on this side of the line.

25 MS. WIEST: My question is how can the

1 Commission pick and choose as to which foreign
2 exchanges it's going to apply 49-31-59 to? Your motion
3 only goes to the Valentine Exchange. The 49-31-59
4 applies to foreign exchanges, then it should apply to
5 all foreign exchanges, whether or not there's a hearing
6 held.

7 MR. ROSELLI: This is Phil Roselli again.
8 You can look on the face of the facts if necessary in
9 49-31-59. And with all do respect, it does seem to
10 confirm jurisdiction on the South Dakota Commission
11 only as to exchanges located in South Dakota. That's
12 the express language of the statute.

13 This is undeniably not an exchange located in
14 South Dakota, so I'm unclear how it leaves pursuant to
15 that statute in the context of approving, "approving"
16 the sale of exchanges the South Dakota Commission can
17 assert jurisdiction in this matter.

18 MR. HOSECK: I disagree. I think it is an
19 exchange. I think it's within South Dakota, and I
20 think the Commission does have jurisdiction.

21 But as to your question, I think that the
22 Commission, given again the public interest argument
23 that's contained in the statutes and the general public
24 interest authority that this Commission has, can look
25 at this issue and if there was ever a case that they

1 should, this is it.

2 MS. WIEST: I want to look at the
3 Ortonville-Big Stone, Minnesota, and see if the
4 49-31-59 applies to the Nebraska exchanges.

5 MR. HOSECK: In the first place, no one has
6 raised the matter as a matter of public interest that
7 there's been any problems like there have been
8 experienced in this exchange, that there's a potential
9 problem with the purchaser. I think that factually
10 it's distinguishable. You've got a different
11 situation. And, quite frankly, staff never raised the
12 issue in the other ones but we have in this case, this
13 one.

14 CHAIRMAN BURG: We took the position on all
15 of the others that regardless of whether there was that
16 those issues there that a hearing was held in every
17 single exchange, which is under South Dakota
18 jurisdiction. And but we took the position that those
19 foreign exchanges were not under our jurisdiction and
20 now this is, looks to me, like a change.

21 MR. HOSECK: I don't know that that was the
22 position as a matter of law that you took that there
23 was absolutely no jurisdiction over. I thought they
24 were signed off on because there was not any objection
25 to the sale as it cropped over into South Dakota.

1 I don't think it was any relinquishment of
2 this Commission's jurisdiction. I think if you chose
3 not to exercise it -- and that is perhaps the best way
4 I can think of of describing what occurred. But in
5 this case staff is asking you to exercise the
6 jurisdiction that I believe you do have because of the
7 nature of the service that's been granted to these 95
8 people.

9 CHAIRMAN BURG: Ms. Rogers, who are you
10 representing?

11 MS. ROGERS: Thank you, Commissioner. I'm
12 representing, newly representing Citizens. I just sort
13 of got brought into this lately. And I have talked to
14 Mr. Hoseck a little bit even to see if we can try and
15 resolve something here. We're happy to provide
16 whatever information with regard to what we're going to
17 do with these customers in South Dakota to the
18 Commission.

19 But what we're concerned about here is just a
20 delay in the process. We need the letter of
21 non-objection from this Commission, and we've offered
22 to come in to meet with staff or meet with the
23 Commission, whatever you require, to provide
24 information if you so request. But we would just
25 really not want to delay the process because we need

1 this letter of non-objection at this time.

2 MS. WIEST: Are you aware of Citizens
3 actually has a certificate of authority to offer local
4 exchange services in South Dakota?

5 MS. ROGERS: Citizens does not at this time,
6 but it would be our intention to apply for that right
7 away and, you know, we will do so.

8 MS. WIEST: That would be prior to them
9 taking over?

10 MS. ROGERS: That would be prior to them
11 taking over, yes. But the closing currently is
12 scheduled for September. Again, that's why we're
13 really needing to move forward at this time.

14 CHAIRMAN BURG: Do they need FCC approval as
15 well?

16 MS. ROGERS: They need FCC -- well, okay, the
17 Nebraska order will serve as the basis for the
18 approval. But what they need from this Commission is
19 the letter of non-objection to the waiver.

20 CHAIRMAN BURG: And what I'm saying is it
21 does go forward to the FCC? As a matter of fact, I
22 believe I saw in a filing or a mention that they
23 already have applied for FCC approval to discontinue.
24 U S West has applied for approval to discontinue or
25 not?

1 MR. ROSELLI: That's correct, we have. This
 2 is Phil Roselli.
 3 CHAIRMAN BURG: What would be the effect on
 4 the FCC decision if we denied it? Is that one of the
 5 concerns as well?
 6 MR. ROSELLI: Let me see if I can explain
 7 that. We addressed this issue in our papers that we
 8 filed. The FCC has indicated that it won't process
 9 what is called a Part 36 Study Area Waiver Application
 10 by the parties absent an indication of non-objection by
 11 affected state authorities.
 12 There's no specific S.D. order or rule I can
 13 point you to that would indicate whether South Dakota
 14 is or is not considered an "affected authority." It's
 15 our belief, based on our past dealings with the FCC and
 16 sale of exchanges, that the FCC probably will consider
 17 South Dakota an "affected authority" because of the
 18 crossover issues with Ortonville, Minnesota, and
 19 Valentine, Nebraska.
 20 So that is the reason why it's important to
 21 us to try to get the non-objection letter and move
 22 forward with the FCC filing as expeditiously as
 23 possible to keep on the time table that we've set for
 24 closing.
 25 What would happen? I think you've asked a

1 question what would happen if the Commission were not
 2 to grant that non-objection. At a minimum, that
 3 probably means we'd have an issue with regard to
 4 whether Valentine, the Valentine Exchange alone could
 5 become a part of Citizens' study area, or whether it
 6 would be retained as part of U S West's study area.
 7 It's not an impediment to closing. It would
 8 be an impediment to adjusting study area boundaries.
 9 And FCC rules and orders have made clear it's not
 10 absolutely required of study areas be adjusted to take
 11 stock of exchange sales, but it's essentially advisable
 12 because I think they've described it as an anomalous
 13 and absurd result if U S West were to sell 14 exchanges
 14 to Citizens in Nebraska and get U S West would retain
 15 those exchanges and those costs for purposes of the
 16 study area, and Citizens would not have those exchanges
 17 and those costs added to its study area.
 18 It doesn't mean the transaction wouldn't
 19 close, it just means the study area boundaries would
 20 not be adjusted, which would lead to an anomalous
 21 result particularly for the people in this Valentine,
 22 Nebraska, exchange.
 23 CHAIRMAN BURG: Do you think the effect on
 24 the Valentine Exchange members would be --
 25 MR. ROSELLI: Right now -- and again we've

1 addressed this in our papers -- the Citizens is limited
 2 to draw the same amount of support from the federal
 3 high cost fund that we, U S West, the seller, currently
 4 draw, which is nothing at this point.
 5 But the point we tried to emphasize is that
 6 you probably well know the federal high cost fund is
 7 subject to, well, I guess I'll say revision at this
 8 point. They're moving to the knew forward-looking high
 9 cost fund, and it seems to be a process that is
 10 constantly in flux.
 11 And all I can say is in the long term it
 12 would seem to me to be beneficial to these citizens,
 13 including the 95 or so South Dakota citizens, if they
 14 were part of Citizens study area. If there's ever
 15 going to be a situation where an entity could draw
 16 federal high cost fund support, seems to me Citizens is
 17 probably more likely a candidate than is U S West given
 18 Citizens' comparative size and given the fact that it's
 19 obviously a smaller carrier.
 20 So long term it's probably not an immediate
 21 impact, but long term it could mean that if there's
 22 potential high cost funding support to these citizens
 23 if they remain in kind of stranded in limbo in U S
 24 West's study area, it may mean they don't have a chance
 25 to benefit from that high cost funding. That's

1 conjecture on my part.
 2 COMMISSIONER SCHOENFELDER: Excuse me,
 3 Mr. Roselli, this is Commissioner Schoenfelder. First
 4 of all, I believe that Citizens classified -- I can't
 5 remember for sure, rural or nonrural?
 6 MR. ROSELLI: Well, they're -- I think
 7 they'll be nonrural.
 8 COMMISSIONER SCHOENFELDER: Okay.
 9 MR. ROSELLI: I'm sorry, rural, I misspoke.
 10 COMMISSIONER SCHOENFELDER: I thought they
 11 were one of the small nonrural companies but I can't
 12 remember for sure. Refresh my memory about the ruling,
 13 the ETC ruling about study areas. It's my belief that
 14 the last time I looked at the study area definition, it
 15 said that a study area is that telephone company's
 16 holdings within a single state. So I don't know how it
 17 would apply across the state line then, and I'm just
 18 not sure so I would like your interpretation.
 19 MR. ROSELLI: I'll be frank with you. I'm
 20 not sure how it would apply across state lines either,
 21 Commissioner Schoenfelder. I think there's some
 22 ambiguity in that regard.
 23 COMMISSIONER SCHOENFELDER: Then my next
 24 question is if I recall right from the complaints in
 25 that area, I believe that the Valentine Exchange, the

1 customers in South Dakota have a 605 area code as
 2 opposed to whatever area code it would be on the
 3 Nebraska side.
 4 MR. ROSELLI: That's probably correct.
 5 COMMISSIONER SCHOENFELDER: And so they're
 6 within the South Dakota LATA, would I not be correct?
 7 MR. ROSELLI: I'm not frankly sure where the
 8 LATA -- I think that is correct, they do have a 605
 9 area code.
 10 COMMISSIONER SCHOENFELDER: As far as I know,
 11 in that area the LATA boundary is the state boundary.
 12 MR. ROSELLI: That's probably correct.
 13 COMMISSIONER SCHOENFELDER: I don't know how
 14 that could affect your study area and I don't even know
 15 perhaps if you even need this.
 16 MR. ROSELLI: I don't know for sure either.
 17 But I think knowing what I know of the FCC and dealing
 18 with the FCC, I think it's very likely that they are
 19 going to ask for this and that they're going to deem
 20 South Dakota an affected state commission.
 21 COMMISSIONER SCHOENFELDER: They're going to
 22 what? They do that all the time. You don't need to
 23 worry about them saying we're ineffective. They do
 24 that all the time.
 25 COMMISSIONER NELSON: He said affected.

1 MR. ROSELLI: Ineffective and an affected.
 2 COMMISSIONER SCHOENFELDER: But I do share
 3 some of staff's concerns about what's happening on the
 4 South Dakota side of that exchange.
 5 MR. ROSELLI: And I can understand that. And
 6 I guess I would put to you this is the inappropriate
 7 method to deal with it. It seems like if there are
 8 service quality issues, they're obviously -- they've
 9 been addressed in four dockets that you previously
 10 considered, dockets which remain open and dockets, I
 11 presume, the Commission and staff are free to
 12 "reactivate" if they need to to deal with those
 13 issues.
 14 Moving forward, Citizens has indicated it's
 15 willing to file certification in South Dakota. Seems
 16 to me those are the forums where those types of issues
 17 should be dealt with. The issue concerning the Part 36
 18 study area waiver really has nothing do with those
 19 service quality issues.
 20 It seems to me ample jurisdiction to deal
 21 with them one way or the other, but it seems to me this
 22 is an attempt to leverage an issue that has nothing to
 23 do with service quality issue, to address an issue that
 24 really does not pertain to the request the parties have
 25 made with regard to the non-objection.

1 CHAIRMAN BURG: Anything else, Darla? We've
 2 interrupted you a couple times.
 3 MS. ROGERS: That's fine. I'm here to answer
 4 any further questions and, like I said, tell you of our
 5 willingness to come forward to tell you hopefully on an
 6 informal basis or whatever you require. But we really
 7 would request you move forward with the non-objection
 8 letter.
 9 CHAIRMAN BURG: Any other comments? My
 10 feeling is if we go forward with the hearing, it has to
 11 be on the basis that we may or could deny. If we deny,
 12 from what I've heard today, it sounds like to me we've
 13 put these people in a worse position. The study area
 14 change looks to me like it will benefit the people.
 15 I think we still have all the authority to
 16 require service update improvements, whatever we may be
 17 with the knew company as well as the other. And,
 18 again, the longer I think we deny the ability to
 19 purchase or to have this included, the longer we deny
 20 justice to these people because it's left in limbo. I
 21 don't see the advantage we get from holding a hearing.
 22 So I guess, let's see, I would move we do approve.
 23 MS. WIEST: The only question is staff's
 24 motion.
 25 CHAIRMAN BURG: The only question is staff's

1 motion. I would move we deny staff's motion at this
 2 time.
 3 COMMISSIONER SCHOENFELDER: Well, I'm going
 4 to second it. I have a hard time with this one, but I
 5 do believe that in another area because this is -- this
 6 does not say that we're going to do anything at all
 7 with the letter. All we're doing is denying staff's
 8 motion, so we still have to address the letter.
 9 And it would be my position that in the
 10 letter to the FCC that I would voice concerns about
 11 service quality in that exchange, that foreign exchange
 12 that comes into South Dakota, and then I would fully
 13 retain the right to if -- the statutory right to say
 14 that there's not adequate service there, that we'd find
 15 someone else to serve those customers if Citizens
 16 doesn't provide the adequate service that I believe
 17 should be there.
 18 So I think we have the right remedy there if
 19 we want to use it. So I'm going to second the denying
 20 staff's motion but I do it with a lot of concern.
 21 COMMISSIONER NELSON: And since she doesn't
 22 support it wholeheartedly, I'm going to dissent because
 23 I'm not sure that we shouldn't have been involved in
 24 the past in foreign exchanges. Because I think you can
 25 interpret the statute the other way, too, and it might

1 send a message if there's not unanimity on such a
 2 controversial issue.
 3 CHAIRMAN BURG: I just want to add whether or
 4 not we have the authority to review it on that, I do
 5 not see holding that hearing and delaying this change
 6 to from a company that does not desire to serve as
 7 we've seen over and over and over to this company serve
 8 these people any better.
 9 I think it's time we tried to move forward,
 10 get a different company, hold their feet to the fire,
 11 use the authorities that we have, work with the company
 12 to get the kind of service people should have. And I
 13 think a hearing will only delay that and probably not
 14 accomplish.
 15 So the denial of staff's motion to hold a
 16 hearing is granted, and I mean it is denied in 00-068
 17 on a two to one decision.
 18 MR. ROSELLI: This is Phil Roselli one last
 19 time. Just a follow-up matter. I guess I need to
 20 inquire now that staff's motion has been denied, where
 21 does the letter go of the letter request as far as
 22 process at this point?
 23 MS. WIEST: I assume that will be placed on
 24 the next agenda.
 25 CHAIRMAN BURG: Right.

1 STATE OF SOUTH DAKOTA)
 2)
 3 COUNTY OF STANLEY)
 4 I, Lori J. Grode, Registered Merit Reporter,
 5 Registered Profession Reporter and Notary Public in and
 6 for the State of South Dakota:
 7 DO HEREBY CERTIFY that the above hearing
 8 pages 1 through 74, inclusive, was recorded
 9 stenographically by me and reduced to typewriting.
 10 I FURTHER CERTIFY that the foregoing
 11 transcript of the said hearing is a true and correct
 12 transcript of the stenographic notes at the time and
 13 place specified hereinbefore.
 14 I FURTHER CERTIFY that I am not a relative or
 15 employee or attorney or counsel of any of the parties,
 16 nor a relative or employee of such attorney or counsel,
 17 or financially interested directly or indirectly in
 18 this action.
 19 IN WITNESS WHEREOF, I have hereunto set my
 20 hand and seal of office at Pierre, South Dakota, this
 21 1st day of June 2000.
 22 Lori J. Grode, RMR/RPR
 23
 24
 25

1 MS. CICHOS: May 30.
 2 CHAIRMAN BURG: May 30 is the next Commission
 3 meeting and it can be applied in that time for action.
 4 MR. ROSELLI: Okay. Thank you.
 5 (The hearing concluded at 4:00 p.m.)
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