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1 **SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**  
2 **UTILITIES COMMISSION**  
3 OF THE STATE OF SOUTH DAKOTA

4 ----- )  
5 )  
6 IN THE MATTER OF THE ) CT00-043  
7 ) TC00-012  
8 PUC AGENDA MEETING ) TC98-183  
9 )  
10 ----- )

11 HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

12 PROCEEDINGS: March 14, 2000  
13 10:00 A.M.  
14 Room 468, Capitol Building  
15 Pierre, South Dakota

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

19 COMMISSION STAFF  
20 PRESENT: Rolayne Ailts Wiest  
21 Karen Cremer  
22 Camron Hoseck  
23 Harlan Best  
24 Gregory A. Rislov  
25 David Jacobson  
Michele Farris  
Keith Senger  
Leni Healy  
Martin Bettmann  
Shirleen Fugitt  
Heather Forney  
Sue Cichos  
Bill Bullard

Reported by: Lori J. Grode, RMR, RPR

ORIGINAL

A P P E A R A N C E S

For US West: Colleen E. Sevold  
125 South Dakota Avenue  
Sioux Falls, SD 57194

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

## Appearances by Telephone:

For U S West: Alex Duarte  
Thomas J. Welk

For Sprint: Andrew Jones

For FirstTel: Julie Steffen  
Sue Weiske

For DTG: Barb Berkenpas

P R O C E E D I N G S

CHAIRMAN BURG: I'll call the meeting to order. This is Commissioner Jim Burg. Let the record show Commissioners Schoenfelder and Nelson are also present.

The first item of business is approval of the minutes of the Commission meeting held on February 11th and 29th.

Shirleen, were there any corrections or additions?

MS. FUGITT: No, there were none.

COMMISSIONER NELSON: I'd move approval of the minutes.

COMMISSIONER SCHOENFELDER: Second.

CHAIRMAN BURG: And I will concur. And before we get on with the other business, I have a job that's always a real pleasure. (Not Transcribed.)

Let me quick go down the list of people.

(Roll Call.)

CHAIRMAN BURG: Thank you. First we will go to consumer issues, the status report on consumer utility inquiries and complaints recently received by the Commission.

MS. HEALY: Thank you, Chairman Burg. So far this year the Commission has received 449 consumer

1 contacts. 91 of those were since our last meeting. Of  
2 the 91 contacts, 86 involve telecommunications where  
3 the chief issue continues to be slamming.

4 There were three electricity contacts. Those  
5 were mostly disconnections. There were two natural gas  
6 contacts, where the issues were disconnection and a  
7 rate increase. So far this year the Commission has  
8 informally resolved 194 complaints.

9 CHAIRMAN BURG: Any questions for Leni or  
10 comments? If not, thank you very much, Leni. The  
11 first item of business we're postponing to 11:00  
12 o'clock because that person couldn't join until that  
13 time. So we'll go to item number three.

14 \* \* \* \* \*

15 CHAIRMAN BURG: 13, CT00-043, In the Matter  
16 of the Complaint Filed by Marvie Tschetter, Huron,  
17 South Dakota, Against FirstTel, Incorporated, Regarding  
18 Billing Dispute and Delayed Release of Services.

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

23 And, Marvie, I believe, yes, you're on the  
24 phone. Do you want to explain to us what happened in  
25 this case, Miss Tschetter?

1 MS. TSCHETTER: Certainly. I should make  
2 certain that it is not just Marvie Tschetter that's  
3 filing the complaint, it's actually on behalf of the  
4 company Basec.Net.

5 I'm going to review the history of what  
6 happened here after a letter I sent to Chet Jones and  
7 Julie Steffen of Advanced Communications, FirstTel, on  
8 Wednesday, February 23rd.

9 The issue originally stems from a past PUC  
10 complaint, unfortunately, which was against U S West  
11 and FirstTel. And the resolution of that complaint,  
12 part of it was that in the future when Basec.Net had  
13 any service problems related to the facilities, that we  
14 would work through the provider of that service. So  
15 if, in fact, my service provider was FirstTel and I had  
16 a facilities problem, I would need to go back through  
17 FirstTel.

18 Unfortunately, FirstTel, not being the  
19 provider of the facility but really reselling U S West,  
20 what happened is that many times I would have to go  
21 through FirstTel as a middle man in order to talk to U S  
22 West, which, in fact, I could not do, talk to U S West  
23 because I, quote, "was not their client."

24 As a result of that agreement, which I honor,  
25 it was not in the best interests of Basec.Net to

1 continue to do business with FirstTel. So I contacted  
2 U S West and a Win Back process was initiated. This  
3 was initiated in March.

4 As part of this complaint there is an E-mail  
5 from U S West and the account manager I was working  
6 with, Sherry Boyer (sp), in March alluding to that.  
7 There is also a contract signed with U S West dated  
8 June 9th that says all of my lines were to go back to  
9 U S West.

10 In fact, I did work with Tony Boyer and  
11 Sherry Boyer, my U S West account reps, on this process  
12 returning all of my facilities, my numbers, everything,  
13 back to U S West. This was a fairly extensive  
14 process. I continue to get billed from FirstTel.

15 When I receive those bills, I did two  
16 things: One, I discussed the bills with my U S West  
17 representative, Tony Boyer, stating that I'm continuing  
18 to get bills from FirstTel. What should I do? I was  
19 consistently reassured that I need not do anything  
20 because as part of the Win Back process, U S West  
21 informs FirstTel that I am a U S West customer and that  
22 those billings should no longer continue.

23 I continued to receive bills; I continued to  
24 talk to U S West. I sent FirstTel one letter in  
25 September. I know I sent something before that, but I

1 sent a letter in September telling them that I do not  
2 -- do no longer have those lines. I did not pay any  
3 of those FirstTel bills. Again, I continually talked to  
4 U S West and said am I going to have a problem? I was  
5 reassured no.

6 Last month -- excuse me, I then did receive  
7 some communication from Advanced Communications, who is  
8 part of FirstTel, or bought FirstTel or whatever. And it  
9 was from their recovery group stating that these were  
10 the amounts owed. If I had questions, problems with  
11 that, I needed to call this number. I did call that  
12 number. I talked to a Stacy from Advanced  
13 Communications. I explained the situation to her.

14 She agreed to work the issue and, in fact, I  
15 sent her a three-ring binder probably three to four  
16 inches thick showing all of the bills that I had  
17 received, the errors in those bills, et cetera. I  
18 encouraged Stacy to call my U S West representative and  
19 for them to work the issue and resolve it. I did not  
20 hear back from Stacy on this. I assumed she was  
21 working the issue.

22 One day about a month ago all of my phone  
23 lines in my office were taken down. I had absolutely  
24 no service. When I called U S West on this, they found  
25 that in fact they had dropped the ball on those phone

1 numbers and those were still with FirstTel.

2           When I called FirstTel, I was placed to the  
3 recovery group. The recovery group no longer employed  
4 Stacy. They had no documentation of the information  
5 that I had sent her, and they told me that as far as  
6 they were concerned, I owed them \$123,000 approximately  
7 and that unless I paid that amount, I could not restore  
8 my services.

9           They were not willing to discuss the  
10 situation that there was some errors here. The only  
11 way that I could get my service restored was to pay  
12 them \$40,000, which I did do. That \$40,000 was paid in  
13 agreement that what they would do is audit my bill, all  
14 of my phone numbers should remain intact until  
15 resolution was made.

16           Unfortunately, that did not happen. FirstTel  
17 Advanced Communication then took down my 800 numbers.  
18 On an average, Basec.Net received 20 to 30 sign-ups per  
19 day. Those sign-ups are taken over 800 numbers and our  
20 market expansion numbers which are placed throughout  
21 the phone books.

22           I called FirstTel. They would not talk to  
23 me. I was supposed to talk to the recovery group. The  
24 recovery group would not talk to me. She simply wanted  
25 their money. The only way that I was able to get any

1 attention from FirstTel was to file the PUC complaint.

2 At that point Chet Jones and Julie Steffen  
3 talked to me and basically told me that this was the  
4 first they knew that there was a problem. They had not  
5 received the three-ring binder, they didn't know  
6 anything about it.

7 So I sent the three-ring binder, a copy of  
8 this, again to Chet. He called me with a conference  
9 call with himself, Julie Steffen and Janna. Basically  
10 they told me that it was my fault that I had not called  
11 them to disconnect the services. They didn't know  
12 anything about it. Yet in the same conversation Chet  
13 says, you know, when you were a customer you called me  
14 every week. Well, that's true. We had several  
15 issues. And he had not heard from me from an extended  
16 period of time. That's because I had not been their  
17 customer.

18 I have phone bills from U S West that I have  
19 been paying for the lines that FirstTel has also been  
20 billing me for. I am not disputing the fact that  
21 because U S West dropped the ball on all five office  
22 lines and 800 numbers that I owe FirstTel that money.  
23 But the \$40,000 should more than adequately cover those  
24 lines.

25 To date, my 800 numbers have been

1   reinstalled.   None of my market expansion numbers in  
2   the state are active.   I have not heard back from  
3   FirstTel other than a call from Chet saying this is  
4   really a mess and we need to work the issue.   I have  
5   talked to my U S West representative.   They've assured  
6   me that U S West in the Win Back process did everything  
7   that they could and did properly to take all of the  
8   phone numbers back.

9                   Again, FirstTel said it was my problem and I  
10   needed to rectify it, although I do not have  
11   information as to what U S West was billing FirstTel and  
12   what FirstTel was supposed to be paying U S West.  
13   That's not my responsibility.   Nor was it my  
14   responsibility, according to U S West, to inform  
15   FirstTel I was no longer a customer, that that was part  
16   of the Win Back process.

17                   CHAIRMAN BURG:   Is that it?

18                   MS. TSCHETTER:   That's it.   You follow all  
19   that?

20                   CHAIRMAN BURG:   I'm not sure I do.   First of  
21   all we'll go to who's taking that?   Sue Weiske, are  
22   you?

23                   MS. WEISKE:   It's Sue Weiske, Your Honor.   I  
24   think from FirstTel's perspective we view the facts a  
25   little bit differently.   But if I could take a moment

1 and explain who we are today.

2 FirstTel was purchased November 19 from  
3 Advanced Communications Group, and I'm both general  
4 counsel of the holding company that purchased FirstTel  
5 as well as FirstTel.

6 I don't think I know you, Chairman, but I  
7 know I've appeared before your Commission a number of  
8 years ago on behalf of MCI Communications.

9 Having said that, I apologize that the  
10 customer feels she needed to file a complaint to get  
11 our attention, but let me assure you, she has our  
12 attention. Julie Steffen is the South Dakota manager  
13 from FirstTel and actually has been working this account  
14 with me through the weekend.

15 The first fact that I think is important to  
16 appreciate is that Basec.Net has a five-year contract  
17 with FirstTel. That contract was signed on February  
18 26th, 1997. It is a five-year term and in the contract  
19 it requires 30 days' written notice of termination.

20 We checked all of our records and we have  
21 confirmed with U S West that the first time that  
22 Basec.Net switched from FirstTel back to U S West in a  
23 Win Back program was February 14th, 2,000.

24 Unfortunately, we don't know of any  
25 three-ring binder that was ever received. We do have

1 one now and we're looking at it. But because we have a  
2 contract that requires written notice of termination  
3 and because we have a verification of a switch for  
4 February 14th, there is unfortunately still the issue  
5 of unpaid amounts on a number of the phone lines.

6 And as the customer indicated, we are a  
7 reseller. So to some extent we are at the mercy of U S  
8 West if they do something correctly or if they do  
9 something incorrectly.

10 When you look at those various service lines  
11 for the service received up until February 14, 2000, of  
12 this year, we are owed \$99,000. And that with already  
13 receiving a payment of \$40,000, 40,027.76. So  
14 obviously we wanted the customer to be satisfied.

15 If she prefers and her business prefers to be  
16 at U S West, we understand that, but our concern is  
17 that at this point as a start-up and we are still a  
18 start-up CLEC, we're owed a great deal of money by this  
19 particular ISP.

20 I would ask that you consider doing something  
21 here as well as holding it over for probable cause that  
22 might be a little bit different, but I think that what  
23 would really be effective here is if we could get the  
24 customer, FirstTel, U S West, and staff on a call. I  
25 would like to still try to resolve these issues to the

1 satisfaction of everyone. And I think that's difficult  
2 to do if we're not all talking to each other.

3 And part of the difficulty here has been, I  
4 believe, U S West making assertions to the customer in  
5 a Win Back situation that they can't really do in terms  
6 of past due amounts from this customer to ourselves  
7 related to the five-year term of the contract. Thank  
8 you, Commissioner.

9 CHAIRMAN BURG: Ms. Tschetter, you said that  
10 U S West admitted some problems in what, in how they  
11 handled it?

12 MS. TSCHETTER: Commissioner I have a  
13 contract that I signed June 9th, 1999, with U S West  
14 stating that all of my numbers were to be transferred  
15 back to them.

16 CHAIRMAN BURG: Did you say that at a later  
17 date they admitted that they were not all transferred?

18 MS. TSCHETTER: That is correct. But only,  
19 sir, five local office numbers.

20 CHAIRMAN BURG: I guess the only thing I'm  
21 getting at, do you have a complaint against U S West  
22 for that?

23 MS. TSCHETTER: Those numbers, I guess I'm  
24 not willing to file a complaint against U S West. And  
25 as I told Mr. Jones, I'm willing to pay for those as

1 long as those get switched back. But those five local  
2 numbers, sir, do not total \$50,000 neither.

3 CHAIRMAN BURG: Okay.

4 MS. TSCHETTER: And in terms of this February  
5 14th issue, U S West has told me that they have copies  
6 of the letters and the faxes that they sent to FirstTel  
7 back in June of 1999 informing them of this  
8 disconnect. I have not seen those, but that is what I  
9 have been told.

10 CHAIRMAN BURG: Heather, do you have any  
11 comments on this?

12 MS. FORNEY: Staff would just recommend a  
13 finding of probable cause at this time.

14 CHAIRMAN BURG: I'm not sure I want probable  
15 cause. I'm confused. I will move for probable cause  
16 in CT00-043.

17 MS. WEISKE: Chairman, is it possible we  
18 could try to set up a settlement call that would  
19 include staff?

20 CHAIRMAN BURG: Call staff and determine that  
21 among you.

22 MS. WEISKE: Who exactly would I call?

23 MS. FORNEY: Heather Forney.

24 COMMISSIONER SCHOENFELDER: I'm going to  
25 concur in the probable cause.

1           CHAIRMAN BURG: Probable cause has been found  
2 in CT00-043. And I think you understand what this  
3 means; right, Marvie?

4           MS. TSCHETTER: Yes, I do. I still have a  
5 concern, Commissioner Burg, in that I still have one,  
6 two, about eight market expansion numbers that are  
7 still disconnected. And I am losing a considerable  
8 amount of business because those are in the yellow  
9 pages throughout the state.

10          CHAIRMAN BURG: And are they supposedly --  
11 are they lines provided by U S West now?

12          MS. TSCHETTER: At this point I couldn't tell  
13 you who does provide them.

14          CHAIRMAN BURG: Is it your --

15          MS. TSCHETTER: We're supposed to be provided  
16 -- these are market expansion numbers. The original  
17 number was supposed to be provided by U S West. This  
18 is one of those that was the ball was dropped.

19          CHAIRMAN BURG: That's what I was going to  
20 say. Regardless of what your argument might be with  
21 FirstTel, I'm confused as to why U S West is not  
22 providing you with the lines you've contracted for.

23          MS. TSCHETTER: As I understand it, since  
24 they dropped the ball and FirstTel is saying that I owe  
25 the \$99,000, FirstTel will not release the numbers.

1           CHAIRMAN BURG: Okay. That's just part of  
2 the whole issue. We'll have to just move forward on  
3 it.

4                           \* \* \* \* \*

5           CHAIRMAN BURG: TC00-012, In the Matter of  
6 the Filing by U S West Communications, Incorporated,  
7 for Approval of Revisions to its Exchange and Network  
8 Service Tariff. Today, shall the Commission approve  
9 the proposed tariff?

10           Okay. Who's taking that? Are you taking  
11 that for U S West, Colleen?

12           MS. SEVOLD: Yes, I am, Chairman Burg. This  
13 filing is just requesting some language change. It's  
14 not changing the rates at all, but we're just trying to  
15 clarify when the \$1.00 service charge for operator  
16 assistance applies. So we've just divided it into  
17 partially assisted operator calls, which it does not  
18 apply for, and fully assisted, which it does apply  
19 for. So it's clearly just a language change.

20           CHAIRMAN BURG: And the partially -- in the  
21 partial ones is there any charge at all?

22           MS. SEVOLD: There is a charge but not the  
23 additional operator assistance charge.

24           CHAIRMAN BURG: Any other questions for  
25 Colleen? Heather, you have this one as well?

1 MS. FORNEY: I do. Staff would recommend  
2 approval of the tariff changes.

3 CHAIRMAN BURG: Anybody else have any  
4 questions or comments? If not, I will move to approve  
5 the tariff changes.

6 COMMISSIONER NELSON: Seconded.

7 COMMISSIONER SCHOENFELDER: Concur.

8 CHAIRMAN BURG: Tariff changes have been  
9 approved in TC00-012.

10 \* \* \* \* \*

11 CHAIRMAN BURG: We go back to item number two  
12 on the agenda, this is TC98-183. First of all, I need  
13 to ask, Mr. Peters, are you on the phone? Ed Peters,  
14 are you on the phone? Tom Welk?

15 MR. WELK: Yes, I am, Mr. Chairman.

16 CHAIRMAN BURG: Do you know if Ed is going to  
17 be on?

18 MR. WELK: I thought he was, and I left a  
19 message this morning after I talked to Shirleen that  
20 this matter was going to be deferred to 11:00 so I gave  
21 him, you know, the deferral notice and we thought he  
22 was going to be on.

23 CHAIRMAN BURG: We had an indication that he  
24 was going to join at 11:00 but so far he hasn't. I  
25 don't know, can we proceed without Ed Peters?

1 MS. WIEST: Sure.

2 CHAIRMAN BURG: TC98-183, In the Matter of  
3 the Complaint filed by Sheryl L. Klein, Valentine,  
4 Nebraska, against U S West Communications,  
5 Incorporated, Regarding Poor Service and Request to  
6 Have Lines Updated.

7 Today, staff has asked to put this on the  
8 agenda for an update and how shall the Commission  
9 proceed?

10 Ed Peters, are you on now?

11 MR. PETERS: Yes, I am.

12 CHAIRMAN BURG: Thank you. You just joined  
13 us. First of all, I guess we will get a response from  
14 Sheryl Klein. Sheryl, do you want to explain to us  
15 what the situation has been since the last time we  
16 met?

17 MS. KLEIN: Okay. In recent months,  
18 beginning this year 2000, in early January we noticed  
19 we were having problems getting on line, meaning on the  
20 Internet, getting on line and staying on the line,  
21 being able to do research, do business on the  
22 Internet.

23 I sent some E-mails communications to our  
24 Internet provider, and I've sent some copies up there  
25 to your office, and basically going back and forth with

1 communications. We're still having trouble with our  
2 Internet service coming through.

3 Our latest communication from our Internet  
4 provider dated -- we received a note from them dated  
5 March 9th from the Internet system manager, and you  
6 have a copy -- yes, you have a copy of that. We have  
7 been experiencing physical problems with the line is  
8 what the Internet system manager was indicating.

9 So we don't know what's going on technically  
10 speaking but we do know that we're having significant  
11 problems with Internet connection. It's been something  
12 that's really been pronounced the last several months.

13 CHAIRMAN BURG: Has your service -- has your  
14 other service for your voice line and that been okay?  
15 Have you had any interruptions in that?

16 MS. KLEIN: That has overall been  
17 satisfactory. My husband has noted in our log back in  
18 early January a couple phone calls that January 4th and  
19 January 5th that involve some static. At that time we  
20 were told by U S West they replaced a card and the  
21 noise level has improved. So at this point in time our  
22 regular voice communications is satisfactory.

23 CHAIRMAN BURG: Thank you. Mr. Peters, do  
24 you want to comment on what she -- what her analysis  
25 has been?

1           MR. PETERS: Thank you, Mr. Chairman. The  
2 Internet connection obviously uses various parts of  
3 telecommunications network which include both the U S  
4 West network and, to my understanding, the ISP is not  
5 local, although they have a local number, so they would  
6 be a long distance facility from the Valentine Exchange  
7 to the location of the ISP. And then of course the  
8 amount of equipment that the ISP has will impact the  
9 quality of Internet connection.

10           It sounds like from all of the facts that we  
11 have received that the problem is not with the local  
12 phone service as manifested by the fact that the voice  
13 grade service is satisfactory, but the problem with  
14 access to the ISP itself.

15           I don't have a history of what the ordering  
16 process has been with the ISP when they place orders  
17 for additional lines into their server or what the  
18 problems are with getting those lines installed simply  
19 because we don't have order numbers.

20           So all I can say is with respect to this  
21 particular original complaint, which is local service,  
22 that that part of the problem has been corrected, that  
23 the customer is getting good local service; and it  
24 sounds at this point that the problem really is with  
25 getting additional lines into the ISP itself.

1                   COMMISSIONER SCHOENFELDER: I have a  
2 question. Mr. Peters, I have in front of me -- this is  
3 Commissioner Schoenfelder -- something from the system  
4 manager to Milton and Sheryl Klein. And it says the  
5 new equipment is there and ready to go. Unfortunately,  
6 U S West said they would install our lines on the 9th  
7 of February and this deadline came and went with no  
8 lines being installed. After many more calls to U S  
9 West to find out what is going on, they told us they  
10 moved our install date back to February 29th.

11                   Tell me what kind of equipment and what type  
12 of lines need to be installed? Why would that make it  
13 better? I want to know more about that.

14                   MR. PETERS: Well, Commissioner, I just  
15 received that information yesterday. And I believe  
16 Colleen Sevold is on here as well. She tried to  
17 research what is going on with that part of it. And,  
18 again, we don't have order numbers, so we don't know  
19 what's going on there.

20                   But, generally speaking, when you have an  
21 Internet service provider that has a lot of customers  
22 calling in, they have to have a lot of ports into their  
23 server to accommodate what a number of customers could  
24 be on line at any given time. If they don't have  
25 enough communication facilities, lines, per se, into

1 their server, then customers will be getting busy  
2 signals, which is what Mrs. Klein has indicated she's  
3 incurring.

4           So in this case they have probably ordered  
5 additional lines. It sounds like they have ordered it  
6 from U S West. I don't know where the ISP is located.  
7 I can't verify that they're in our service area. I  
8 don't know whether it's local lines into their -- you  
9 know, that they want to put into a long distance  
10 network to get to their server. I wish I could answer  
11 your question more succinctly, but I simply don't have  
12 the facts.

13           COMMISSIONER SCHOENFELDER: You don't know  
14 what the new equipment is either other than perhaps  
15 they've ordered lines?

16           MR. PETERS: I would assume it is their new  
17 equipment associated with their server and their ISP  
18 network and that they want more local access into that  
19 equipment. But, again, I simply haven't had time to  
20 research this since we discussed this information  
21 yesterday.

22           COMMISSIONER SCHOENFELDER: Well, refresh my  
23 memory here a little bit. As I go back to the original  
24 hearing, should the facilities that U S West has there  
25 in that area now be able to support this type of

1 Internet service?

2 MR. PETERS: Is that a question you're asking  
3 me?

4 COMMISSIONER SCHOENFELDER: Yes, sir.

5 MR. PETERS: We provide local voice grade  
6 service and that is the way the billing has been set  
7 up, the rates have been set up around U S West  
8 providing voice grade service.

9 New technology has come along since that  
10 network was established where people want to be able to  
11 get into the Internet. I certainly understand they  
12 would want to do that, but the service as it was  
13 originally set up and the rates which were set up to  
14 recover our costs were associated with voice grade  
15 service. So we provide adequate voice grade service.

16 I already stated that the service has been  
17 good. We simply don't have the technology out there,  
18 given the vast distances between our central office and  
19 where the Kleins live, for us to provide a truly data  
20 service out there. All we can provide is voice grade  
21 service.

22 And to the extent that they choose to use it  
23 for Internet access through a modem, they're certainly  
24 allowed to do that. But our network was not  
25 necessarily designed for a data network.

1           COMMISSIONER SCHOENFELDER: But that really  
2 wasn't my question. My question really was could it or  
3 should it be able to support the Internet service that  
4 they're using it for now, whether how it was designed?  
5 I just want to know if it could support that.

6           MR. PETERS: Well, the analog carrier that we  
7 have out there, although many customers are able to get  
8 Internet access over the analog carrier, it was not  
9 designed for data network, so it is not necessarily  
10 designed for that purpose.

11          COMMISSIONER SCHOENFELDER: No, but could be  
12 used for that purpose?

13          MR. PETERS: Yeah, they can use it for that  
14 purpose. But the speed and the quality of the service  
15 is going to be whatever they experience because the  
16 network has not been designed explicitly to that  
17 standards.

18          COMMISSIONER SCHOENFELDER: Thank you.

19          CHAIRMAN BURG: Colleen, did you have a  
20 comment?

21          MS. SEVOLD: No, I didn't. I was just going  
22 to answer any question.

23          CHAIRMAN BURG: Any response, Miss Klein?

24          MS. KLEIN: Well, our problem is actually  
25 twofold. I have mentioned that getting on and getting

1 frequent busy signals, that's one problem. But another  
2 problem is when one is on the line and invariably every  
3 session where we're on line we get dropped, meaning the  
4 connection with the server was terminated, was ended,  
5 and that's also frustrating.

6 Now, again, I'm not the technical expert  
7 here, but what is that problem due to?

8 CHAIRMAN BURG: Does your ISP provider have  
9 any answers for that?

10 MS. KLEIN: The only thing is the most recent  
11 E-mail where we received, dated March 9th, we have been  
12 experiencing physical problems with the line. I  
13 haven't got anything, any elaboration on that. They  
14 seem to be pointing fingers at U S West.

15 As a matter of fact, on their communication  
16 dated February 17th, it said we're doing what we can  
17 with U S West, which does include formal complaints to  
18 the Public Service Commission, presuming that's  
19 Nebraska. So I don't know how to answer your  
20 question.

21 CHAIRMAN BURG: Where does your provider come  
22 out of, by the way?

23 MS. KLEIN: Out of Lincoln.

24 CHAIRMAN BURG: Okay. Camron.

25 MR. HOSECK: Mr. Chairman, members of the

1 Commission, so that there's no mistake as to what  
2 staff's position is on this matter, under South Dakota  
3 law the definition of local exchange service, the term  
4 voice grade is not as a matter of law in South Dakota  
5 contained in that definition.

6 And so it is our position that U S West's  
7 responsibility transcends basic voice grade service and  
8 it does extend to this type of service.

9 MR. PETERS: Mr. Chairman, I would remind the  
10 Commission that the FCC does not agree with that  
11 position.

12 CHAIRMAN BURG: And is it correct,  
13 Mr. Hoseck, that if anything above voice grade under  
14 South Dakota law was provided, it would have it would  
15 be recoverable by U S West.

16 MR. HOSECK: No, I'm not taking that position  
17 at all. I think it's basic service.

18 CHAIRMAN BURG: We've had this one a long  
19 time. What do we want to happen with it?

20 MS. KLEIN: To whom is that question posed?

21 CHAIRMAN BURG: Probably not to you. Sorry.  
22 Just whoever has an answer, I guess. I'm not sure  
23 where to go from here, in all honesty on my part.  
24 Staff have a recommendation?

25 MR. HOSECK: Mr. Chairman, members of the

1 Commission, given the history of this case and the  
2 length of time that has gone on, you know, we felt that  
3 it was only proper that the Kleins be given the  
4 opportunity to explain the problem that they're having,  
5 which from all appearances has not been solved.

6 If you recall, when this matter was last  
7 discussed, and if my recollection is correct, the  
8 Commission deferred any final action on this, wanting  
9 to see how, for instance, this would react under  
10 moisture conditions, which had not been occurring in  
11 the neighborhood of where this line lies.

12 I don't know if the Commission wants to let  
13 the matter pend further because really that question  
14 probably has not been answered, unless there is a  
15 correlation between moisture and the present situation  
16 that the Kleins are experiencing. That might be one  
17 consideration that you would --

18 MR. WELK: Mr. Chairman, this is Tom Welk.  
19 May I speak?

20 CHAIRMAN BURG: Yes, Tom.

21 MR. WELK: Mr. Chairman, I have a couple  
22 comments to make. We have made extensive filings, as  
23 you know, in other dockets that U S West does not have  
24 to provide service other than voice grade. And we made  
25 those positions. We've set them forth in the docket

1 that we've done out in the Hills with Mrs. Spears. We  
2 know these are significant policy issues.

3 But you have a complaint right now and what  
4 started this was the voice grade complaint. U S West  
5 has expended a great deal of time and effort. And now  
6 you have an oral admission today, you have a written  
7 admission that I have in front of you, that the Kleins'  
8 voice grade service is fine.

9 And so now we're in an Internet issue and  
10 we're in a policy issue. And I think that the Kleins  
11 understand that this is a significant policy issue.  
12 But under the current status of the law, U S West does  
13 not have to provide anything other than voice grade  
14 service, which now is conceded to have been done.

15 So we respectfully request that you close the  
16 dockets because we have satisfied the complaint and all  
17 that we can do at this time, unless you want to proceed  
18 to a different policy level which will start talking  
19 about costs.

20 CHAIRMAN BURG: Thank you. I don't know.

21 MS. WIEST: Well, I mean at this point I  
22 guess we don't actually know what's causing the  
23 problems with the Internet, as far as busy signals and  
24 being cut off. We don't have any record before us as  
25 to if that's a problem with the Internet service

1 provider or with the lines being provided by U S West.

2 And so I think maybe we would like more  
3 information from U S West because they said they didn't  
4 have an order number as to whether those additional  
5 lines had been installed. Is that possible that that  
6 will improve this service for the Internet? I think  
7 those are some questions that we need to look into.

8 COMMISSIONER SCHOENFELDER: But I would also  
9 submit, Mr. Chairman, that we still -- maybe they've  
10 had significant moisture down there, but I'm still not  
11 satisfied, that I want to make sure that the voice  
12 grade portion of the lines work.

13 And then I also don't necessarily agree with  
14 Mr. Welk that we haven't at least addressed the policy  
15 issue in this docket, and I may leave that for another  
16 time. However, I want to make sure that the voice  
17 grade portion of the service is running well.

18 And so I'm not willing to close this docket  
19 yet. I'm not going to be willing to close the docket  
20 until I'm sure the people down there are getting the  
21 kind of service they need.

22 CHAIRMAN BURG: Your request is to leave the  
23 docket open?

24 COMMISSIONER SCHOENFELDER: At this  
25 particular time left open. And I want more reports

1 like Commission counsel suggested as to what's causing  
2 the problem down there. And the other issue, the  
3 policy issue will go forward with it another time,  
4 perhaps another docket, but it's not off the table  
5 either.

6 CHAIRMAN BURG: Okay. This one was put on  
7 the agenda for an update. We have that update and that  
8 will conclude.

9 MR. WELK: I have one further. This is Tom  
10 Welk. Why do we have to get materials the day before a  
11 hearing? The materials have been in the Commission's  
12 office since February 28th. At least I see some of the  
13 letters. And we get this the day before and then we're  
14 asked to respond?

15 Now, I don't know why U S West -- they have  
16 the numbers Colleen Sevold and Ed Peters and why can't  
17 we deal with this cooperatively and the company be  
18 contacted? We can be prepared. But this is totally  
19 unfair to put it on the docket, fax us something the  
20 day before and then ask us for an explanation. Would  
21 you like to be treated that way?

22 And we've gone out of our way it seems. This  
23 is to me -- this has got to work both ways. The Kleins  
24 have to give us an opportunity to respond; the  
25 Commission has got to give us an opportunity. And I'd

1 object to the way the whole thing has been set up. And  
2 then we get a fax in -- I was over in Okiboji, Iowa,  
3 taking a deposition yesterday. How can we possibly  
4 respond?

5 CHAIRMAN BURG: I believe that's why it was  
6 just on for an update. I don't think any action has  
7 been taken any way on it, so you will have a chance to  
8 respond now that you have them, whatever is convenient  
9 for you.

10 MR. WELK: Can't we set up a line of  
11 communication before something gets on a docket, the  
12 company is advised as to what the problem is and we get  
13 a chance to respond?

14 MS. KLEIN: May I respond to that, Mr. Welk?  
15 I clearly recollect at earlier hearings Mr. Peters  
16 emphatically contend that U S West was not at all  
17 obligated to do anything above voice grade service so  
18 the thought certainly occurred to me back in January to  
19 call and complain to U S West, but I chose not to do so  
20 because I didn't think that was something U S West was  
21 willing to entertain.

22 So I went through our Internet service  
23 provider and contacted the Public Utilities  
24 Commission. I hear you now saying that you guys are  
25 open to investigating this, which is just wonderful.

1           MR. WELK: No, I said our position is very  
2 clear, Mrs. Klein. My point is we have our position.  
3 It's been stated on the record. But if it goes beyond  
4 what our position is, I think as a courtesy the  
5 Commission and you owe the company an obligation a  
6 chance to investigate to see what's on. This might be  
7 something wrong with your ISP. We don't know, but at  
8 least give us a chance to look into it.

9           MS. KLEIN: Well, we've been working with the  
10 ISP and they've been communicating with U S West  
11 through Nebraska and they've expressed clearly their  
12 frustration. Where else do I turn to, sir?

13          MS. SEVOLD: This is Colleen Sevold. And I  
14 will tell you what I found out so far after I did get  
15 this yesterday is this ISP is out of Nebraska I think  
16 it's called Internet Nebraska. They are not a U S West  
17 customer.

18          So they apparently have been communicating to  
19 their reseller, who we do not know who that is, and  
20 that's what I need to find out, and then we can  
21 determine whether the lines have been installed, that  
22 the only thing we have for them are several final  
23 bills, but we do not have them as a customer.

24          CHAIRMAN BURG: Okay. Well, it was on for an  
25 update. I think we got that update, and we will leave

1 it pending and see what more updates we can have and if  
2 there's any solutions that can be found.

3 MR. PETERS: This is Ed Peters. If I could  
4 just ask, I'm a little bit confused as to what the  
5 Commission would expect on a going forward basis given  
6 the fact that it's clear that the Internet problem is  
7 not associated with the local lines. It may be  
8 problems with getting into the Internet provider  
9 because there's not lines installed in Lincoln,  
10 Nebraska, but that has nothing to do with the local  
11 service in Valentine.

12 And Mrs. Klein has indicated that the service  
13 is good. We're in March. We're out of the winter  
14 months. You know, unless we plan on going through  
15 another winter to see what things do in a season when  
16 there's more snow and rain than we've experienced this  
17 winter, I don't see where this is going to get cleared  
18 until a year from now.

19 CHAIRMAN BURG: Thank you.

20 COMMISSIONER NELSON: That's one of the  
21 things we're looking at is I don't think -- I don't  
22 agree with Mr. Peters that we know that it's U S West's  
23 lines or what lines they are. That's what we're trying  
24 to find out what the problem with the lines is. I  
25 don't think you know that and we don't know that.

1           MR. PETERS: Well, I'm telling you as a  
2 technical expert that the problem with getting busy  
3 signals and not being able to get into the ISP, and the  
4 only thing this ISP would know is what they're doing  
5 for lines getting into their location in Lincoln is  
6 that that is not -- has nothing do with the local  
7 service from our central office out to Klein's.

8           COMMISSIONER NELSON: I don't think until we  
9 really look into the specifics that we really can know  
10 for sure that's true. I would concede that possibly  
11 that might be the reason, but it might not be the  
12 reason either. There are other things that might cause  
13 that that could be your problem.

14           MR. HOSECK: Mr. Chairman, I think in light  
15 of the Chair's comments earlier, that you know we  
16 should continue this matter and get whatever  
17 information U S West is capable of providing in an  
18 evidentiary form so the Commission can properly  
19 consider it. And we are really sitting here  
20 speculating at this point in time. I think we're  
21 wasting everybody's time at a time.

22           CHAIRMAN BURG: I agree. We have the  
23 update. We'll treat it as such and wait for the next  
24 episode, I suppose. Thank you very much.

25           Does anybody else have any other business?

1 If not, that concludes the Commission hearing.

2 (The hearing concluded at 11:21 a.m.)

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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 35, 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 29th day of March 2000.

22

  
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Lori J. Grode, RMR/RPR

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