

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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)
IN THE MATTER OF THE)
PUC AGENDA MEETING)

) TC98-155
) TC98-176
) TC98-187
) TC99-112
)

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS:

January 18, 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
Heather Forney
Keith Senger
Leni Healy
Martin Bettmann
Shirleen Fugitt
Sue Cichos
Bill Bullard

Reported by:

Lori J. Grode, RMR

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A P P E A R A N C E S

Colleen Sevold, U S West

Richard D. Coit, SDITC

Darla Rogers, TC99-112, Venture and Sully Buttes

Appearances by Telephone:

Thomas Welk, U S West

P R O C E E D I N G S

1
2 CHAIRMAN BURG: This is Jim Burg, Chairman of
3 the Commission. Let the minutes show that
4 Commissioners Schoenfelder and Nelson are also
5 present. I'll do roll call at this time.

6 (Roll call.)

7 CHAIRMAN BURG: Thank you. The first item on
8 the agenda is approval of the minutes of the Commission
9 meeting held on January 6, 2,000. Shirleen, were there
10 any corrections or additions.

11 MS. FUGITT: They were just faxed out this
12 morning, but there's been no changes.

13 CHAIRMAN BURG: Okay. Is there a motion for
14 the minutes?

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

17 COMMISSIONER SCHOENFELDER: Second.

18 CHAIRMAN BURG: I'll concur. The minutes
19 have been approved as filed. Consumer issues status
20 report on consumer utility inquiries and complaints
21 recently received by the Commission. Leni.

22 MS. HEALY: Thank you, Chairman Burg. So far
23 this year the Commission has received 77 consumer
24 contacts, 65 of those have involved telecommunications
25 where again slamming is leading our issues. There were

1 seven electricity contacts, most of those were
2 disconnections. There were five natural gas contacts
3 on a variety of issues, and so far this year we've
4 informally resolved 17 complaints.

5 CHAIRMAN BURG: Any questions or comments for
6 Leni's report? Thank you, Leni.

7 The first item on the agenda is TC98-155, in
8 the matter of the complaint filed by Loretta Spear,
9 Hill City, South Dakota, against U S West
10 Communications, Incorporated, regarding updating
11 lines.

12 Today, shall the Commission grant the request
13 for reconsideration and how shall the Commission
14 proceed?

15 I think, Leni, do you have anything to add on
16 that as staff person?

17 MS. HEALY: No, I don't. I believe Miss
18 Spears is on the line.

19 CHAIRMAN BURG: Right. But do we have
20 questions for Miss Spears? Is that the procedure? Do
21 you have anything to add at this time, Miss Spears?

22 MS. SPEARS: Well, we have had some problems
23 again. And I'm hoping it isn't an indication of no
24 greater things than starting up again.

25 In December we had two calls, long distance

1 calls from California, that I would be talking on the
2 phone with my daughter-in-law and all of a sudden the
3 transmission would quit and then we'd receive a dial
4 tone and she would have to call me back.

5 And in January we were starting to get those
6 little short beeping rings again and when you pick up
7 the phone, it's dial tone. Other than that, the
8 service has been good. I mean I just hope this isn't a
9 harbinger of something that's about to begin again.

10 CHAIRMAN BURG: Thank you. The question
11 before us today is U S West's request for
12 reconsideration. Also, U S West, do you want to
13 comment on your request?

14 MR. WELK: Mr. Chairman, this is Tom Welk.
15 Our petition was filed in September of '99. No answer
16 was given by the staff within the time required by your
17 regulations.

18 We also filed a Motion to Take Judicial
19 Notice Contemporaneously with the Petition that I know
20 was not on the hearing, but we requested that the
21 Commission take certain notice of certain proceedings
22 before it.

23 And so I have nothing further to add than
24 what's in the papers. It would be redundant to go over
25 all the arguments. And so we ask that the petition be

1 granted and that the order of the Commission be
2 withdrawn in its entirety and reconsidered in light of
3 our argument.

4 CHAIRMAN BURG: Ms. Cremer, do you have
5 anything on behalf of staff?

6 MS. CREMER: Staff, when he filed, didn't
7 find anything of merit worth replying to. The rule
8 refers to may file an answer. We didn't believe it
9 merited an answer, so therefore we have nothing.

10 CHAIRMAN BURG: And so the question we have
11 yet is reconsideration. Do you have any comments at
12 all, Rolayne? Do you have a motion?

13 MS. WIEST: I would recommend that in light
14 of the fact that there was a claim filed and discovery
15 filed, and I believe staff has filed some questions on
16 the plan, I would recommend that the Commission go to a
17 hearing on the plan on the cost recovery and to get any
18 further information as to the complainant's current
19 service since the last hearing on the record.

20 And in light of that additional hearing, then
21 I would recommend that the Commission defer any action
22 on the request for reconsideration.

23 CHAIRMAN BURG: Any comments? If not, I will
24 move that we do go to hearing on the issues as
25 recommended by counsel and that we take -- we defer the

1 decision on reconsideration.

2 COMMISSIONER NELSON: I'd second.

3 COMMISSIONER SCHOENFELDER: Concur.

4 CHAIRMAN BURG: Okay.

5 MR. WELK: Mr. Chairman, this is Mr. Welk.

6 Can I get a ruling on my Motion to Take Judicial
7 Notice?

8 MS. WIEST: No, we're deferring that also.

9 CHAIRMAN BURG: That will also be deferred.

10 I will move that the determination on -- what was the
11 question?

12 COMMISSIONER NELSON: Taking judicial notice.

13 CHAIRMAN BURG: Taking judicial notice also
14 should be deferred. We should probably have that on
15 the record.

16 COMMISSIONER NELSON: I'd second. I thought
17 we could just defer.

18 CHAIRMAN BURG: Well, item number 3, TC98-176
19 and CT99-002, in the matter of the complaint filed by
20 Randy Kieffer, Sturgis, South Dakota, against U S West
21 Communications, Incorporated, regarding telephone
22 service outages and inadequate service; and 99-002, in
23 the matter of the complaint filed by Randy Kieffer,
24 Sturgis, South Dakota, against U S West Communications
25 regarding service problems.

1 Today, the Commission requests an update from
2 the parties concerning the complainant's service.

3 Mr. Kieffer, do you want to discuss your
4 service since the last time we had a hearing?

5 MR. KIEFFER: The last time that you had the
6 hearing we've had -- the phone has been out once or
7 twice, that I know of, and we've called in work orders
8 on it. The most frustrating part about it is usually
9 the phone goes out like on a Friday evening when we
10 find out and try to call somebody and they won't send
11 nobody out until Monday morning to repair the line.
12 That's the frustrating part of it at this point.

13 And, additionally, we still haven't gotten no
14 caller ID and that was requested before previously. I
15 don't know if they're ever going to update the lines
16 where we can get the appropriate phone services that
17 we're entitled to for what we're paying, just like the
18 rest of the people in the country.

19 As far as the phone working, yeah, it has
20 been working the majority of the time other than
21 getting repair out there to work on weekends or
22 holidays. We don't have no support out in the country.

23 CHAIRMAN BURG: How many times have you had
24 disruption of service since that last hearing?

25 MR. KIEFFER: Probably about twice, I think,

1 I know that I've called in. I don't know of any other
2 times it may have been out, but we haven't come across
3 it.

4 COMMISSIONER NELSON: At our last meeting you
5 mentioned that you had problems with your computer.
6 How is that working out? Did you get them resolved?

7 MR. KIEFFER: Yeah, it's working. It's slow,
8 that's all. It's not fast, but it's working.

9 COMMISSIONER SCHOENFELDER: Does it drop you
10 off the network? I'm sorry, this is Commissioner
11 Schoenfelder.

12 MR. KIEFFER: I haven't had that happen.

13 COMMISSIONER SCHOENFELDER: So it's working?
14 So if I ask you if your service was better off now than
15 it was when you first filed your complaints, what would
16 your answer be?

17 MR. KIEFFER: Repeat the question, please.

18 COMMISSIONER SCHOENFELDER: If your service
19 is better now than it was when you filed your
20 complaints, what would your answer be?

21 MR. KIEFFER: It's not better yet as far as
22 I'm concerned for service.

23 COMMISSIONER SCHOENFELDER: You mean you're
24 still having that many outages? Because I thought you
25 just said --

1 MR. KIEFFER: When we have an outage, we
2 can't get nobody to come work on the weekend. That's
3 what I'm saying.

4 COMMISSIONER SCHOENFELDER: But before that
5 didn't you have a lot more outages?

6 MR. KIEFFER: Oh, yes, right.

7 COMMISSIONER SCHOENFELDER: So if the
8 question is, is your service better now than what it
9 was about when you first started the complaint process,
10 would your answer be yes or no?

11 MR. KIEFFER: Yes, it would be yes as far as
12 the number of outages.

13 COMMISSIONER SCHOENFELDER: And if I recall
14 right, your computer, you couldn't get the computer to
15 hardly work at all before. Is that true?

16 MR. KIEFFER: I've changed servers. Well, I
17 changed servers right about the same time we had the
18 hearing the last time.

19 COMMISSIONER SCHOENFELDER: And the modem?

20 MR. KIEFFER: No, modem is fine.

21 COMMISSIONER SCHOENFELDER: Okay.

22 MR. KIEFFER: Nothing wrong with the modem.

23 COMMISSIONER SCHOENFELDER: Okay. Thank
24 you.

25 MR. KIEFFER: The problem is not being able

1 to have Caller ID and some services that we should
2 have, like the rest of the people that pay the normal
3 service charge, and we can't get weekend repair service
4 out there when it does.

5 CHAIRMAN BURG: Both times it went down it
6 was on a weekend?

7 MR. KIEFFER: I can't say that for sure. I
8 know one time it was.

9 CHAIRMAN BURG: What was the nature of the
10 outage at that time?

11 MR. KIEFFER: I have no idea.

12 CHAIRMAN BURG: No, I mean you just totally
13 lost service, or was it --

14 MR. KIEFFER: Right, uh-huh.

15 CHAIRMAN BURG: Leni, do you have anything?
16 Your analyst from staff, do you have anything to add?

17 MS. HEALY: No, I have no further update.

18 CHAIRMAN BURG: Camron.

19 MR. HOSECK: No.

20 CHAIRMAN BURG: Excuse me, I forgot, I wanted
21 to take U S West first. U S West, do you have any
22 responses to anything Mr. Kieffer or anybody else has
23 said?

24 Colleen, do you want to respond to the outage
25 that was reported and how it was handled?

1 CHAIRMAN BURG: Ed Peters?

2 MR. WELK: Is Colleen there?

3 MS. SEVOLD: Yes, I'm here. This is Colleen
4 from U S West. And I did check Mr. Kieffer's repair
5 for his last call in to our repair service. I believe
6 it was on October 2nd, which was a Saturday. We
7 repaired it on October 3rd, which was a Sunday.

8 CHAIRMAN BURG: What was the nature of that
9 outage from the company's standpoint?

10 MS. SEVOLD: The repair report that I saw
11 just said repair, you know, no -- customer called in,
12 no dial tone. Repaired, that's all it said. So I
13 can't tell what you we did, but the customer had no
14 dial tone when he called in.

15 COMMISSIONER SCHOENFELDER: Colleen, can you
16 tell me if you never go out on weekends or do you
17 charge extra?

18 MS. SEVOLD: No, we don't charge extra. In
19 fact, for these cases there's never any charge to the
20 customer.

21 COMMISSIONER SCHOENFELDER: Well, I thought
22 so.

23 MS. SEVOLD: But we always have a supervisor
24 on duty. They are always alerted to these, and the
25 supervisor makes the decision. But I know in this case

1 we went out on Sunday.

2 COMMISSIONER SCHOENFELDER: Okay. And you
3 don't remember the other time?

4 MS. SEVOLD: That's the last one I looked
5 up. The other one prior to that was like sometime in
6 August.

7 COMMISSIONER SCHOENFELDER: Thank you.

8 CHAIRMAN BURG: Mr. Kieffer, do you have any
9 dispute with what she just said?

10 MR. KIEFFER: Well, yeah. I did get ahold of
11 the supervisor and what I was told, I would have to
12 wait until Monday. That's what I was told by the
13 supervisor, so they've got a problem there.

14 CHAIRMAN BURG: But did you, in fact, get it
15 fixed?

16 MR. KIEFFER: I went to work on Sunday, and I
17 asked them to give us a phone call when they got the
18 phone working and they never did that, so I don't know
19 if the phone just started working on its own or they
20 actually did go out and fix it.

21 CHAIRMAN BURG: And are you saying there was
22 one that they did not refer to since between August and
23 today?

24 MR. KIEFFER: I can't tell you that for
25 sure. I don't remember the particulars. I think there

1 was one. I think there was one other outage that we
2 had. I can't remember the particulars on that one.

3 CHAIRMAN BURG: Okay. This would just be an
4 item for an update. I believe we have that. Unless
5 somebody has anything else to add, we'll move on to
6 item number four.

7 * * * * *

8 CHAIRMAN BURG: Next item under
9 telecommunications, TC98-187, in the matter of the
10 petition for an order directing U S West Communications
11 to file updates to its exchange and network services
12 catalog, access service catalog, advanced
13 communications service catalog, and private line
14 transport catalog.

15 The question being today what is the
16 Commission's decision, and this is just a decision
17 issue.

18 COMMISSIONER NELSON: Okay. I would move
19 that the Commission find as follows with respect to the
20 issue of whether updates to the tariffs in the catalog
21 shall be filed as paper copies with the Commission:

22 The Commission finds that U S West has
23 offered to furnish the Commission with paper copies of
24 all tariff and catalog changes that it posts on its Web
25 site within 30 days of the effective date of that rate

1 change or service offering is acceptable -- is an
2 acceptable solution.

3 And, two, with respect to the issue of
4 whether U S West is required to submit for pre-approval
5 its tariffs and catalogs regarding the granting of
6 discounts, incentives, services, or other business
7 practices necessary to meet competition, the Commission
8 finds that U S West is not required to submit them for
9 pre-approval.

10 The Commission recognizes that this allows
11 U S West to make the initial determination of whether a
12 tariff or catalog change is necessary to meet
13 competition. However, the Commission finds that the
14 Commission staff, other interested persons, or the
15 Commission on its own motion may open a docket to
16 determine whether the tariff or catalog change or
17 addition is necessary to meet competition.

18 And, three, with respect to the issue of how
19 new services are classified, the Commission finds that
20 if U S West does not request a different classification
21 for interLATA new products and finds that service is
22 not functionally required to provide local exchange
23 service or remain classified as noncompetitive pursuant
24 to Docket F-3743.

25 With respect to promotions that last ninety

1 days or less, U S West shall inform the Commission of
2 the beginning and ending date of the promotion in
3 accordance with the public notice requirement of SDCL
4 49-31-86.

5 CHAIRMAN BURG: I think I will second that
6 motion.

7 COMMISSIONER SCHOENFELDER: I'm going to
8 concur.

9 CHAIRMAN BURG: And I would also move that
10 the Commission sustains the objections of Mr. Best's
11 deposition as not admitted as an exhibit.

12 COMMISSIONER SCHOENFELDER: I'll second.

13 COMMISSIONER NELSON: And I'd concur.

14 CHAIRMAN BURG: Okay. That concludes the
15 decision on TC98-187.

16 * * * * *

17 CHAIRMAN BURG: TC99-112, in the matter of
18 the joint application of U S West Communications,
19 Incorporated, and Sully Buttes Telephone Cooperative,
20 Incorporated, and Venture Communications, Incorporated,
21 regarding the sale by U S West of its Sisseton
22 Telephone Exchange to Sully Buttes Telephone
23 Cooperative, Incorporated, and Venture Communications,
24 Incorporated.

25 Today how shall the Commission proceed? Do

1 we want --

2 MS. ^{Wiest}~~CREMER~~: I asked for this to be on, and
3 why I questioned the parties and staff is I noticed
4 when I was going through the application, it is
5 application for sale of a telephone exchange, but at
6 the end of it they do state that they're requesting
7 amendment of the COA and they're requesting ETC
8 status.

9 And my concern was is that those two issues
10 should be best dealt with in separate dockets as
11 opposed to this proceeding.

12 With respect to the COA, there are different
13 time schedules with respect for local exchange that
14 were supposed to be either six to 120 days. This
15 docket is on a six months' time schedule, I believe,
16 and the ETC, I believe that would be something of a
17 prospective grant of ETC status. I had a problem with
18 that also.

19 CHAIRMAN BURG: Does either U S West or Sully
20 Buttes have any comment?

21 MS. ROGERS: We would not object to this.

22 MR. WELK: This is Tom Welk on behalf of U S
23 West. Rolayne, are you suggesting these dockets be
24 opened up concurrently, or that this docket has to be
25 completed first?

1 MS. WIEST: I believe that this docket would
2 be completed first and those other dockets could be
3 opened if the Commission does indeed grant approval of
4 the sale closer to a time period in which the sale of
5 the exchange would actually occur.

6 MR. WELK: I guess I defer to Sully Buttes,
7 if they have any issue with that because they're the
8 ones that are attempting to purchase the exchange.

9 CHAIRMAN BURG: Tom, you were not able to
10 hear Darla spoke but not into the microphone, that they
11 didn't have an objection, but I'll let her speak for
12 herself.

13 MS. ROGERS: I just want to make sure. Darla
14 Rogers representing Sully Buttes. So, Rolayne, you're
15 stating that the certificate of authority should be a
16 separate procedure after this docket is --

17 MS. WIEST: Right. And I don't know what
18 your time frame is. And I just wanted to bring this up
19 because I questioned whether they should be done within
20 the sale of exchange docket, and if not, it wouldn't be
21 better to do these in separate dockets.

22 Usually after the Commission in the past has
23 approved sales, there's still a time period between
24 when that sale is actually finalized, if I remember
25 correctly. And I was bringing it up for discussion if

1 somebody could tell me good reason why it should be.

2 But I thought I should bring it up before
3 people filed prefiled testimony and did all that work
4 in case those two issues really shouldn't be part of
5 this docket at this time.

6 MS. ROGERS: So you would request us to file
7 a separate petition?

8 MS. WIEST: Right.

9 MS. ROGERS: And is there a reason that it
10 couldn't be done at the same time, it would have to be
11 later?

12 MS. WIEST: Then I would only say it's a
13 question of timing, you know, and I'm not sure how far
14 ahead usually staff would go with a petition to amend a
15 certificate of authority. I had more problems with the
16 ETC designation because we do have some precedent about
17 doing prospective ETC granting of ETC status.

18 MS. ROGERS: You know, our only concern is I
19 mean even when we conference-called about the procedure
20 schedule in this case to try to get it done as
21 expeditiously as possible, you know, as it is, we're
22 looking at a hearing date now probably in April
23 sometime. And so then, you know, if we're looking at
24 separate applications on these issues after that, we
25 would just like to get it done as quickly as possible.

1 MS. WIEST: And I would ask staff if they had
2 any ideas on those issues or if they had any problems
3 with going ahead on all the issues?

4 MS. CREMER: I think ETC is going to have to
5 wait because that's factual and so you're going to have
6 to have sold the exchange, I think, before you're going
7 to be able to take evidence on the ETC, would be my
8 take on it.

9 And when we amend the COA, Harlan, I guess my
10 question here -- I couldn't find that they had a COA.
11 I didn't know who I should be looking under, and I
12 wasn't sure maybe these were grandfathered in or who
13 exactly the COA is.

14 MR. BEST: I'm not sure who the applicant is
15 here, whether it's Sully Buttes or Venture since
16 Venture is now as of 1/1/2000 part of Sully Buttes.
17 But either way, they would have to file under our
18 administrative rule to amend the COA.

19 MS. WIEST: My concern was we have changed
20 the statutes with respect to local exchange companies'
21 certificates and that's under the six and 120 days, and
22 I didn't want those time lines to be violated either
23 since this is on like a six-month time frame.

24 So does staff see any problem with separating
25 those and you can discuss with the parties then about,

1 you know, time schedule for their separate certificate
2 of authority. I'm not saying it has to be after the
3 sale.

4 MS. CREMER: The most helpful thing would be
5 just to get your prefiled in because we're not sure on
6 a lot of it and that's our problem all along. So once
7 you get your prefiled in, I think maybe we can answer
8 some of those questions.

9 CHAIRMAN BURG: When we discussed -- we had
10 the same question, though, of who will be the
11 purchasing company now, because you said either you
12 said or --

13 MS. ROGERS: When we first started this
14 process, of course, the acquisition by Sully Buttes of
15 Ventures Telephone had not been completed and had not
16 been approved by U S West. So the original, you know
17 -- again, this has been going on for some time, but
18 the original negotiations and contract were between
19 Venture and U S West.

20 Well, then since then, Sully Buttes has
21 acquired the rest of Venture's telephone assets and it
22 has been approved by U S and we've notified you of
23 that. So when we came to doing the application or the
24 petition for approval, we put it in both of the names
25 and hopefully because that would cover either way.

1 But the current plan at this time, again
2 depending on how all the regulatory approvals comes
3 down, would be that it will end up with Sully Buttes.

4 CHAIRMAN BURG: That was one of the questions
5 for loan reasons, which is the reason we told Venture
6 it was created in the first place. Will that apply in
7 this one, that the loan authorities will want you to
8 keep it separate for a period of time? Now, perhaps
9 that won't be true. That's why I think as we go
10 forward, if that would be clarified, that will help the
11 decision making at that time.

12 MS. ROGERS: We'll make sure we do that. And
13 the situation has changed a little bit since the last
14 go-around with regard to the lending arrangements. We
15 have a lien accommodation now and so it should be the
16 goal is for it to end up in Sully Buttes.

17 Now, whether we can achieve that depending
18 how everything goes here, I guess we'll see.

19 CHAIRMAN BURG: So, Rolayne, do you have
20 anything we need to do?

21 MS. WIEST: I guess at this point I wanted to
22 address those concerns and let the parties know because
23 I didn't want anybody to go to extra work if they
24 didn't have to. The parties can talk to staff or among
25 themselves and decide how they would like to proceed

1 because I do see potential problems.

2 CHAIRMAN BURG: You're not recommending to us
3 to make a decision they have to file separately?

4 MS. WIEST: No. The parties can certainly go
5 forward with this. I just wanted to say that there
6 might be some problem.

7 CHAIRMAN BURG: This was on for just a
8 question of how the Commission shall proceed and we
9 have an update.

10 (The hearing concluded at 2:40 p.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 23, 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 February 2000.

22 
23 _____
Lori J. Grode, RMR/RPR

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25