THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA SOUTH DAKOTA PUBLIC UTILITIES COMMISSION IN THE MATTER OF THE COMPLAINT FILED BY CHARLENE LUND ON BEHALF CT02-013 OF SDCASAA, PIERRE, SOUTH DAKOTA, AGAINST MCIWORLDCOM AND OWEST CORPORATION REGARDING UNAUTHORIZED BILLING FOR SERVICES \_ \_ \_ \_ \_ \_ \_ \_ \_ Transcript of Proceedings OR**IGIN**A June 13, 2002 BEFORE THE PUBLIC UTILITIES COMMISSION, JIM BURG, CHAIRMAN PAM NELSON, VICE CHAIRMAN ROBERT SAHR, COMMISSIONER COMMISSION STAFF Rolayne Ailts Wiest John Smith Karen Cremer Kelly Frazier Greg Rislov Mary Healy Harlan Best Keith Senger Dave Jacobson Michele Farris Heather Forney Mary Giddings Sue Cichos Debra Elofson

Reported By Cheri McComsey Wittler, RPR



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12       Just Bills, Charlene's on the phone.         13       CHARLENA DURC: Were requesting         14       Doug state         15       Conserts Just, Consert Just, Conserts Just, Conserts Just, Conserts	10		1	hearing?
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13     Distance Texas, Understander, Comparison     12     CHARRANN BURG: We're requesting       14     Constance Texas, Understander, Constance     13     Constance Texas, Understander, Constance       14     Status Crease     14     Constance Texas, Understander, Constance     14       15     Status Crease     14     MR. REDDES: Mr. Chairman, members       16     Barry Status     16     Of the Commission, my name is Dave Gerdes, and I       17     Marry Status     18     The motion which we have filed is that given       18     Barry Status     18     The motion which we have filed is that given       20     Same Cohere     19     the fact that South Dakota CAS is apparently a       21     Same Cohere     19     the fact that South Dakota CAS is apparently a       22     Same Cohere     19     the fact that South Dakota CAS is apparently a       23     Reported By Cheri MeCommery Wittler, NR     22     previously set precedent that a corporation cannot       24     25     Constation     25     to either require the Compliant to secure counsel       24     Chevy Gervence, TEXEC Constating     2     to represent it before the Compliant to secure counsel       25     Chevy Gervence, Texecomer     2     to represent it before the Compliant to secure counsel       36     Chevy Bervence, Texecomer </th <th>12</th> <th>PAM NELSON, VICE CHAIRMAN</th> <th>  11</th> <th>MS. HEALY: Charlene's on the phone.</th>	12	PAM NELSON, VICE CHAIRMAN	11	MS. HEALY: Charlene's on the phone.
14     Constitution WARP     13     counsel. MCI. Excuse me. Okay. I guess I washt       15     Karm Graws     14     reading it that way.       16     Karm Graws     16       17     Mary Maxy     16       18     Karm Graws     16       19     Mary Maxy     16       10     Karm Graws     16       14     Graws Jacobian     17       15     Karm Graws     18       16     Graws Jacobian     17       17     Mary Maxy     18       20     Mary Maxy     18       21     Mary Maxy     18       22     Mary Maxy     18       23     Reported By Cheri McComrey Wittler, KWR     22       24     23     In The motion which we have filed is that given that a corporation cannot represent itself, and that this Commission has the previously set precedent that indicates that in a corporate entity must be represent itself and that this Commission has the company this Mary Maxima       24     Mary Maxima     24       25     Contains Marking Company Maxima       26     Mary Maxima       27     Contains the Company Maxima       28     Mary Maxima       29     Mary Maxima       20     Mary Marking Marking Company Maxima       21     Mary Marking	13		12	•
10       John Status       14       reading it that way.         10       Weilly Tester       15       MR. GEDES: Mr. Chairman, members         11       Barry Backing       15       MR. GEDES: Mr. Chairman, members         12       Status Serges       16       17       The motion which we have filed is that given         12       Mark Barges       19       The motion which we have filed is that given         20       Mary Dedings       19       The motion which we have filed is that given         21       The motion which we have filed is that given       10         22       Reported By Cheri Motoscory Wittler, RFR       20       nonportic corporation, a corporation cannot         23       Reported By Cheri Motoscory Wittler, RFR       22       24       26         24       De represented by a lawyer and thus the motion is       25       to either require the Complainant to secure counsel         1       Appresented By Cheri Motoscory Wittler, RFR       2       4       to represent it before the Commission at the         24       De represented by a lawyer and thus the motion is       2       to either require the Complainant to secure counsel         25       Chard Gearmer, TELEC Communications       4       2         3       Staten Steast, Mather Stateneron       3 <th>14</th> <th></th> <th></th> <th></th>	14			
10       MeLy Treater Wary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary Mary	15	John Smith		
17       Mary Hary Bath Bases       16       of the Commission, my name is Dave Gerdes, and I represent MCIWorldCom in this matter.         18       Dave Bacebace Mary Liddage       17       Tepresent MCIWorldCom in this matter.         19       Michel Forther Mary Liddage       18       The motion which we have filed is that given motion which we have filed is that motion which we have filed is that motion which we have filed we have filed motion which we have filed we have filed mo		Kelly Frazier	1	
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10       Michaile Farris Mathematics Propertion Networks of the state Particles       18       The motion which we have filed is that given the fact that South Dakota CASA is apparently a nonprofit corporation, a corporation cannot         22       23       Reported By Check McCosesey Wittler, BSR       20       nonprofit corporation, a corporate entity must 20         23       Reported By Check McCosesey Wittler, BSR       22       previously set precedent that indicates that in a 23         24       Deresented by a lawyer and thus the motion is 25       24       be represent itself, and that this Commission has 25         25       Charly Coverney, TELEPHONE       2       1       to represent it before the Commission at the 25         26       Charly Coverney, TELECHONE       2       1       to represent it before the Commission at the 25         3       Pressent it before the Commission at the 25       2       1       to represent it before the Commission at the 25         4       Charly Coverney, TELECHONE       2       1       to represent it before the Commission at the 25         5       Ford With Sector       Sector       Sector       Charle Advection         6       The Size Consulting 20       5       position?         7       The Size Consulting 20       5       position?         8       Cocopration Michar Strepresenting 20 <t< th=""><th></th><th>Keith Senger</th><th></th><th>· •</th></t<>		Keith Senger		· •
20       Mary Cladkings Description       19       the fact that South Dakota CASA is apparently a nonprofit corporation, a corporation cannot represent itself, and that this Commission has         21       20       nonprofit corporation, a corporation cannot represent itself, and that this Commission has         22       22       23       contested case matter that a corporate entity must be represented by a lawyer and thus the motion is to either require the Complainant to secure counsel         24       23       contested case matter that a corporate entity must be represented by a lawyer and thus the motion is to either require the Complainant to secure counsel         2       Cladge casewance, TEEC consulting Cladge casewance, Mathericas Entrey Company Keen Rusemaps, Midwenticas Entrey Company Keen Rusemaps, Midwenticas Entrey Company Cladge casewance, New Company Keen Rusemaps, Midwenticas Entrey Company Cladge casewance, New Company State of the Complaint.       2         3       Source Casewance, New Company State of the Complaint Complaint.       2       4         4       Casewance, New Company State of the Complaint.       4       CHAIRMAN BURG: Does staff have a corporate entity would be the practice of law or, as we discovered this morning, by a parallel who is basically Helping or assisting an attorney who is licensed in the state.         10       TRANGENEF or FROCEEDINES, hald in the south Dakots, on the 13th day of Jun		Michele Farris		•
21       Debra Elofsen         22       Reported By Cheri McGenzey Wittler, RFR         23       Reported By Cheri McGenzey Wittler, RFR         24       25         25       26         26       27         27       Reported By Cheri McGenzey Wittler, RFR         28       28         29       29         20       Context Computing Structure (Isolf, and that this Commission at the comporter entity must be represented by a lawyer and thus the motion is to either require the Complainant to secure counsel         1       Approxamence By TELEPHONE       2         2       Candy Georemone, TELEC Consulting Wendal Anarud, TELEC Computing Structure (Isolf, and that the Complainant to secure counsel       4         3       Guard Structure, McAdmerican Energy Company Structure (Isolf, Article Computation Structure)       3         4       Callem Serval, McAdmerican Energy Company Structure, McCall Structure, McCall Structure, Mark Structure, McCall Structure, McCal			1	5
22       23       Reported By Cheri McComey Wittler, RFR       21       represent itself, and that this Commission has previously set precedent that indicates that in a contested case matter that a corporate entity must be represented by a lawyer and thus the motion is to either require the Complainant to secure counsel         1       ADDEXAMMEDE BY TELEBRONE       2       4         24       25       2       4         25       Chady Grosmenor, FELC Consulting       4         2       Wandal Answerian Theory Company       5         3       Gravenor, FELC Consulting       1         4       Marry Hinker, Machen Theory Company       3         5       Marry Hinker, Middentinent Tommingt Company       3         5       Marry Hones, Middentinent Communications       5         6       Marry Hinker, Middentinent Communications       6         7       Transferrer of PROCEDINGS, held in the       1         10       TRANSCRIPT OF PROCEDINGS, held in the       12         11       TRANSCRIPT OF PROCEDINGS, held in the       12         12       TRANSCRIPT OF PROCEDINGS, held in the       12         13       above-matiled matter, at the South Dakets State       14         14       Capital, Room 412, 900 Eat Capital Answer, Pierre,       15         15       South			1	
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25     24     be represented by a lawyer and thus the motion is to either require the Complainant to secure counsel       1     APPEARANCES BY TELEPHONE     2       2     Chady Greevencer, TELED Consulting     4       3     Grading Greevencer, TELED Consulting     4       4     Maren distancian, Theory Company     5       4     Maren distancian, Theory Company     5       5     Michaerican, Theory Company     5       6     Colleen Berold, Owest Corporation     6       7     Teamy With, Arec     5       6     Colleen Berold, Owest Corporation     6       7     Teamy With, Arec     5       7     Teamy With, Arec     5       8     Year Nickerian, Tency Company     4       10     Collean Berold, Owest Corporation     6       7     Teamy With, Arec     6       11     Transverifting, 021 Consulting     7       9     Daniel Waggoner, Torch Asseria     7       10     Charlame Lond, Compliant     9       11     Transverifting, 021 Consulting     9       12     TRANSCRIPT OF FROCEEDINGS, held in the       13     show-emilied matter, at the South Dakota State       14     Capital, Rom 422, Soo Best Capital Avenue, Pierre,       16     at 1:30 p.m.	23	Reported By Cheri McComsey Wittler, RPR		
25       to either require the Complainant to secure counsel         1       APPERANCES BY TELEPHONE       2         2       Charly Georemone, TELEC Consulting       4         3       Susan Stewart, Middencianan Energy Company       3         4       Diamate Stewart, Middencianan Energy Company       3         5       Kubenciana Energy Company       3         6       Colleen Sevold, Quest Corporation       6         7       Telef Consulting       6         6       Colleen Sevold, Quest Corporation       6         7       Telef Consulting       6         8       Tro Stamon, Middontinet Communications       7         9       Daniel Magoner, Touch America       7         10       Charlene Lond, Complainant       7         11       TEXEC Consulting       8         12       TRANSCRIPT OF PROCEEDINGS, held in the       7         13       above-entitle matter, at the South Dakota State       10         14       Capital, Root 12, 500 East Capital Avenue, Pierre,       11         15       South Dakota, on the 13th day of June 2002, commending       15         16       at 1:30 p.m.       16       Charlene Aut 1/Ve done on         18       at 1:30 p.m.	24			
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1       ADDERANCES BY TELEPONE       1       to represent it before the Commission at the fearing on this matter or if CASA fails or refuses         2       Wendel Amerud, TELEC Consulting       2       to represent it before the Commission at the hearing on this matter or if CASA fails or refuses         3       Scara Stewart, Midmerican Energy Company       3       to do so, to dismiss the Complaint.         4       Mary Organ, TELEC Consulting       2       hearing on this matter or if CASA fails or refuses         5       Kyle White, Black Hille FiberCom       4       CHAIRMAN BURG: Does staff have a         6       Colleen Sould, Quest Corporation       6       MR. FRAZIER: Yes. I would agree         7       Jaff Camon, Guest Corporation       6       MR. FRAZIER: Yes. I would agree         7       Mary Ohners, Midomitants Communications       7       that appearance before the Commission for a         8       Ton Simmons, Midomitant the function for Simminations       7       that appearance before the commission of a see discovered this morning, by a parallel who is         10       Intermediation for PROCEEDINGS, held in the       11       licensed in the state.         13       south Dakota, on the 13th day of June 2002, commencing       14       there if you're a legal entity here in the state and not just an individual representing yourself, it would be the practice of law, and that would be my recommendation. <th></th> <th></th> <th>25</th> <th>to either require the Complainant to secure counsel</th>			25	to either require the Complainant to secure counsel
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a       Charlis Ogden, TERC Consulting       2       hearing on this matter or if CASA fails or refuses         4       Mary Soreanon, Midmerican Energy Company       3       to do so, to dismiss the Complaint.         5       Linn Evens, Black Hills FiberCom       4       CHAIRMAN BURG: Does staff have a         6       Colleen Sevold, Quest Corporation       5       position?         7       Tammy Wilks, Quest Corporation       6       Corporation (Gammications Butter Griffing Quest Corporation Charling Communications Butter Griffing Quest Corporation       7         9       Daniel Wagoner, Touch America       9       corporate entity would be the practice of law or, as we discovered this morning, by a parallel who is         10       Charlien Lund, Coegulainant       10       basically helping or assisting an attorney who is         11       Icensed in the state.       11       11         12       TRANSCRIFF OF PROCEEDINGS, held in the       13       above-entitled matter, at the South Dakota State       13         14       Capitol, Room 412, 500 East Capitol Avenue, Pierre, 15       5       South Dakota, on the 13th day of June 2002, commencing       15         18       at 1:30 p.m.       16       at 1:30 p.m.       17       16         19       20       Mary LUND: Yes. Thank you,       21       Chairman Burg. Of course, I wou				
3       Suzan Stevart, MidAmerican Energy Company Karen Misenga, MidAmerican Energy Company Linn Provas, Black Hills FiberCom Gotty Witz, Mide Gotty Hitz, Mide Gotty Hitz		APPEARANCES BY TELEPHONE Cindy Grosvenor, TELEC Consulting	1	4
SLine Torner, Black Hills FiberComACHAIRMAN BURG: Does staff have a5Kyle Witte, Mick Hills FiberCom5position?6Colleen Sevold, Quest Corporation6MR. FRAZIER: Yes. I would agree7Tammor, Mideontinent Communications7that appearance before the Commission for a8Toos Simons, Mideontinent Communications7as we discovered this morning, by a parallel who is9Daniel Waggoner, Tooch America9as we discovered this morning, by a parallel who is10Charlene Lund, Coeplatiant9as we discovered this morning, by a parallel who is11TRANSCRIPT OF PROCEEDINGS, held in the1112TRANSCRIPT of PROCEEDINGS, held in the1113above-entitled matter, at the South Dakota State1314capitol, Room 412, 500 East Capitol Avenue, Pierre,1415south Dakota, on the 13th day of June 2002, commencing1516at 1:30 p.m.1617171820MS. LUND: Yes. Thank you,1920MS. LUND: Yes. Thank you,20212021222122212223242424	2	APPEARANCES BY TELEPHONE Cindy Grosvenor, TELEC Consulting Wendel Aanerud, TELEC Consulting Charlie Ogden, TELEC Consulting	1	4 to represent it before the Commission at the
5       mary Wite, Astr       5       position?         6       Collens Sevoid, Qvest Corporation       6       MR. FRAZIER: Yes. I would agree         7       Tammy Wike, Qvest Corporation       6       MR. FRAZIER: Yes. I would agree         8       Ton Simons, Midcontlinent Communications       7       that appearance before the Commission for a         9       Daniel Wagoner, Touch America       8       corporate entity would be the practice of law or,         10       as we discovered this morning, by a parallel who is       11         11       Intervention       9       as we discovered this morning, by a parallel who is         12       TRANSCRIPT OF PROCEEDINGS, held in the       11       11         13       above-entitled matter, at the South Dakota State       12       But either way the research that I've done on         14       Capitol, Room 412, 500 East Capitol Avenue, Pierre,       13       at 1:30 p.m.       14         16       at 1:30 p.m.       16       at 1:30 p.m.       17         18       Capitol, Room 412, 500 East Capitol Avenue, Pierre,       16       would be the practice of law, and that would be my recommendation.         19       20       20       10       17       16       Would be the practice of law, and that would be my recommendation.	2	APPEARANCES BY TELEPHONE Cindy Grosvenor, TELEC Consulting Wendel Aanerud, TELEC Consulting Charlie Ogden, TELEC Consulting Suzan Stewart, MidAmerican Energy Company		4 to represent it before the Commission at the hearing on this matter or if CASA fails or refuses
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Case Co	mpress		
	5		7
1	and which outlines South Dakota Law 20:10:1 doesn't	1	To add the requirement that business
2	indicate anywhere that the consumer complainant	2	complainants need an attorney would really deter
3	need an attorney to appear at a hearing. You know,	3	the complaint process, and it would prevent people
4	if you allow this motion to be granted, nonprofits	4	from coming forward with their complaints.
5	and other business entities would be treated	5	Secondly, regarding the Blendar (phonetic)
6	differently than residential consumer complainants	6.	case that Mr. Gerdes is citing, I was the analyst
7	who don't need a lawyer.	7	in that matter so I recall that very clearly where
8	So I think that there has been a history of	8	the Commission required that I-Link (phonetic) had
9	allowing complainants to come forward without an	9	to have an in-state counsel. It could not get by
10	attorney.	10	with their out-of-state counsel in handling that
10	CHAIRMAN BURG: Response,	11	complaint. It was to make sure that their lawyer
12	Mr. Gerdes.	12	was a state lawyer as opposed to someone from out
13	MR. GERDES: Well, Mr. Chairman,	13	of state.
14	Ms. Lund puts her finger on the answer to her own	14	So really that's a whole different matter than
15	contention and that is that consumer complaints	15	what we're talking about here.
16	brought by an individual can represent themselves.	16	COMMISSIONER SAHR: Ms. Lund, it may
17	Any one of us can go into court and represent	17	be a little off track. I'm just curious. Did you
18	ourselves.	18	check to see if any attorney would take this pro
		19	bono if necessary?
19	But, legally speaking, a corporation is a	20	MS. LUND: We would not. And we
20	separate entity, and that entity must be		
21	represented by an attorney. And that is supported	21	have several lawyers on our board of directors.
22	by the authority that we have mentioned in our	22	I'm not going to approach this would be
23	motion. First of all, the statute SDCL 16-16-1	23	completely out of line to have to have a consumer
24	I've cited five cases from other states that have	24	be represented by a lawyer in order to appear
25	all held the same thing, and that is a corporate	25	before the Commission.
	6		8
1	entity must be represented by a lawyer because it	1	It would just be a complete setback in the
2	is the corporate entity is not an individual and	2	consumer complaint process that if you're a
3	it represents more than an individual's rights and	3	business entity or a residential entity that a
4	duties under the law.	4	lawyer would need to be appointed. That would just
5	And then thirdly this Commission has in a	5	be such a setback.
6	Docket that I cited in my motion required a	6	COMMISSIONER SAHR: Well, this
7	nonresident attorney not admitted to practice	7	morning we told a business they couldn't appear
8	law has held that a nonresident attorney not	8	unless they had an attorney, and actually we were
9	admitted to practice law may not represent a	9	temporarily wrong on that because they had
10	corporate entity, and that's the functional	10	paralegals. We did do that this morning.
11	equivalent of what we have here.	11	MS. LUND: It's not outlined in your
12	And so while I agree with Ms. Lund that a	12	formal complaint brochure information and, you
13	consumer can represent themselves, a corporation is	13	know, I read through what laws were listed there
14	not a consumer.	14	too and I didn't see where it was any requirement
15	MS. LUND: I have a response to	15	in order for a consumer to come forward or a person
16	that.	16	representing a consumer's business.
17	CHAIRMAN BURG: Okay.	17	CHAIRMAN BURG: This appears to me
18	MS. LUND: By granting this motion	18	to be purely a legal position. I mean, the law is
19	consumers would be separated into business	19	pretty clear. I don't know that we have any
20	complaints and consumer complaints and residential	20	latitude to determine one way or the other on it.
20	complainants, and then they would be treated	21	I would ask for any recommendation from our
22	differently. So I really, you know, hope that the	22	counsel, though.
23	Commission considers this action because I think it	23	MR. SMITH: Thank you, Mr. Chairman.
23	would be a major setback for consumers if this were	23	I, like you, no matter what we might wish the law
24	granted.	24	to be at least based upon the opinions of the
<u></u>	Branco.	20	

Page 5 to Page 8

1       Attorney General that are outstanding at this point       1       thing, though. I do encourage Ms. Lund to try to         2       In time, the plain reading of the statute, I guess,       2       contact and see if an attorney would take it on a         3       and the implication actually from the statute we       3       pro bono basis, and on a nonprofit organization I         4       dealt with this morning regarding the use of       4       think there is a profity good chance that might         6       paralegias (deary implies that if it weren't for       5       occur.         8       that statute, even they couldn't appear on behalf       6       But short of that we're in a difficult         7       of the entity. But       7       situation where case law and statutes tie our         8       MS. LUND: // elike to point out to       6       But short of that we're in a difficult         9       the Commission that you've had many, many       9       10         10       businesses come forward with complaints about their       10       10         11       phone service or whatever, formal complaints about their       10         12       they have not been required to have an attorney.       13         13       That was from my three and a half years of       14         14       working at the Commissio	Case Co			11
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7         of the antity, But, Total (like to point out to a)         7         situation where case law and statutes tie our bands.           8         MS, LUND; If diflice to point out to b)         8         her Commission is sourch and many, many pictures or whatewer, formal complaints where they have not beer required to have an attemp.         12           11         phone service or whatewer, formal complaints where they have not beer required to have an attemp.         12           13         Thet was from my three and a half years of they have not beer required to have an attemp.         13           14         working at the Commission as an analyst and the complaint specialist.         16           14         working at the Commission as an analyst and the complaint specialist.         16           15         complaint specialist.         17           16         complaint specialist.         18           17         thick complaints be imade by bulainsesse in the sense the complaint specialist.         17           18         complaint specialist.         18           29         proceeding gets to the formal ide of it, that is, proceeding gets to the formal ide of it, that is, proceeding set there must be a lawyer representing a comparate on ty.         28           24         comparate on ty.         24         of THE FILE/OND SiONT 2000000000000000000000000000000000000				
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24       corporate entity.       24         25       CHAIRMAN BURG: I guess the question       25         10       1       THE PUBLIC UTILITIES COMMISSION       1         1       that comes to me is if this is - if this is a fact       2       OF THE STATE OF SOUTH DAKOTA       1         2       of law, why did it come to us for a decision? I       3       Immen, especially not being a lawyer.       1       Immen, especially not bein	22	requires $\cdot\cdot$ we believe the law requires and clearly		
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10       1       THE PUBLIC UTILITIES COMMISSION       1         1       that comes to me is if this is - if this is a fact       2       OF THE STATE OF SOUTH DAKOTA         2       of law, why did it come to us for a decision?       1       THE PUBLIC UTILITIES COMMISSION         3       mean, especially not being a lawyer.       3       IN THE MATTER OF THE ANALYSIS         4       COMMISSIONER SARR: Well, Mr. Gerdes       5       INTO QWEST CORPORATION'S         5       raised it as an issue as part of the case.       6       OF THE THE COMMUNICATIONS ACT         6       MR. GERDES: I mean, this is raised       7       Transcript of Proceedings         7       as an issue as part of the case.       0       OF THE THE PUBLIC UTILITIES COMMISSION, UTILITIES COMMISSION, ID PAM NELSON, VICE COMOUNICATIONS ACT         10       fail to get a lawyer, that the case be dismissed       9       11       BEFORE THE PUBLIC UTILITIES COMMISSION, ID PAM NELSON, VICE CHAIRMAN         11       CHAIRMAN BURG: Okay. Anything       11       JIN BURG, CHAIRMAN       11         12       else?       12       ROBERT SAHR, COMMISSIONER         13       I guess feeling that the law is very clear on       13       COMMISSIONER SAHR: Mol Will         14       this part, I'm going to move to grant the       14       Keily Frazier	24	corporate entity.		
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17       lawyer or if their lawyers refuse, then we have to       17       Harlan Best         18       take up whether we would dismiss the case or not.       18       Michele Farris         19       COMMISSIONER SAHR: And I will       19       Mary Giddings         20       second that motion.       20       Debra Elofson         21       COMMISSIONER NELSON: And I'll       21       APPEARANCES         22       concur.       22       Linden R. Evans, Black Hills FiberCom         23       CHAIRMAN BURG: Okay. The motion       23       Gary Witt, AT&T         24       has been granted to MCI in CT02-013.       24       Reported By Cheri McComsey Wittler, RPR		, ,		Greg Rislov
18       take up whether we would dismiss the case or not.       18       Michele Farris         19       COMMISSIONER SAHR: And I will       19       Mary Giddings         20       second that motion.       20       Debra Elofson         21       COMMISSIONER NELSON: And I'll       21       APPEARANCES         22       concur.       22       David A. Gerdes, Midcontinent Communications         23       CHAIRMAN BURG: Okay. The motion       23       Gary Witt, AT&T         24       has been granted to MCI in CT02-013.       24       Reported By Cheri McComsey Wittler, RPR				Harlan Best
19       COMMISSIONER SAHR: And I will       19       Heather Forney Mary Giddings Sue Cichos         20       second that motion.       20       Debra Elofson         21       COMMISSIONER NELSON: And I'll       21       APPEARANCES David A. Gerdes, Midcontinent Communications         22       concur.       22       Linden R. Evans, Black Hills FiberCom Todd Lundy, Qwest Corporation         23       CHAIRMAN BURG: Okay. The motion       23       Gary Witt, AT&T         24       has been granted to MCI in CT02-013.       24       Reported By Cheri McComsey Wittler, RPR		-		Dave Jacobson
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21     COMMISSIONER NELSON: And I'll     21     APPEARANCES David A. Gerdes, Midcontinent Communications       22     concur.     22     Linden R. Evans, Black Hills FiberCom Todd Lundy, Qwest Corporation       23     CHAIRMAN BURG: Okay. The motion     23     Gary Witt, AT&T       24     has been granted to MCI in CT02-013.     24     Reported By Cheri McComsey Wittler, RPR				Sue Cichos
22     concur.     21     David A. Gerdes, Midcontinent Communications       23     CHAIRMAN BURG: Okay. The motion     22     Linden R. Evans, Black Hills FiberCom       24     has been granted to MCI in CT02-013.     24     Reported By Cheri McComsey Wittler, RPR       25     COMMISSIONER SAHR: Lwould say one     24				
23     CHAIRMAN BURG: Okay. The motion     23     Todd Lundy, Qwest Corporation       24     has been granted to MCI in CT02-013.     24     Reported By Cheri McComsey Wittler, RPR       25     COMMISSIONER SAHR: Lwould say one     24				David A. Gerdes, Midcontinent Communications
23     CHARMAN BORG: Okay. The motion     23     Gary Witt, AT&T       24     has been granted to MCI in CT02-013.     24     Reported By Cheri McComsey Wittler, RPR       25     COMMISSIONER SAHR: I would say one			22	
24 Reported By Cherl McComsey Wittler, RPR			23	
		-	24	Reported By Cheri McComsey Wittler, RPR
	25	COMMISSIONER SAFR: I WOULD SAY ONE	25	

Case C	ompress	
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Case Comp			AE
	13		15
1	CHAIRMAN BURG: TC01-165, In The	1	That cite comes from the Ameritech - Michigan
2	Matter of the Analysis Into Qwest Corporation's	2	order at paragraph 397.
3	Compliance With Section 271(C) of the	3	By failing and refusing to make the terms and
4	Telecommunications Act of 1996.	4	conditions of these agreements available to other
5	Today shall the Commission grant AT&T's motion	5	carriers, Qwest has discriminated against some
6	to reopen the proceedings? Also shall the	6	CLECs and given preference to others. This relates
7	Commission grant Touch America's position to	7	directly to the question of whether Qwest's local
		8	markets are truly open. In other words, is a
8	intervene? And, if so, shall Commission grant		
9	Touch America's position to reopen the issues?	9	discriminatory entry determination a sign of an
10	I think we will take those one at a time as	10	open market and whether Qwest's local markets will
11	they are. AT&T's motion to reopen the proceedings.	11	remain open after a grant of 271 authority.
12	Gary, are you taking this?	12	This is clearly germane to the examination of
13	MR. WITT: Good afternoon, members	13	Qwest's Section 271 application. Also by failing
14	of the Commission. Yes, my name is Gary Witt, and	14	and refusing to make these terms and conditions
15	I am handling this. If I may, I'll proceed.	15	available to other carriers, Qwest has undermined
	<b>a 1 1</b>	16	
16	CHAIRMAN BURG: Sure.		the collaborative process which it asked for and
17	MR. WITT: AT&T has in this instance	17	received here. The Eschelon agreement is a perfect
18	submitted a motion to reopen proceedings here based	18	example of this, and there's further discussion of
19	in large part on the existence of secret unfiled	19	that agreement in my motion.
20	agreements which Qwest has entered into across its	20	But essentially here we have a situation in
21	14-state territory.	21	which Qwest in the midst of a collaborative process
22	As our motion points out I'll try not to	22	has engineered a separate private deal for one CLEC
23	repeat anything in our motion, but this is the	23	and in that deal Qwest promised to focus on the
		23	
24	result of an extensive investigation which occurred		needs of this one CLEC and in exchange the CLEC
25	and is ongoing in the State of Minnesota.	25	promised to remain silent during this collaborative
	14		
1	14 These agreements all relate to interconnection	1	Drocess 16
1	These agreements all relate to interconnection	1	process.
1 2 2	These agreements all relate to interconnection terms and conditions, and they are all subject to	1 2 2	process. In other words, while Qwest was collaborating
3	These agreements all relate to interconnection terms and conditions, and they are all subject to the filing requirements of 251 and 252 of the	1 2 3	process. In other words, while Qwest was collaborating with some CLECs publicly, it was also being, I
3 4	These agreements all relate to interconnection terms and conditions, and they are all subject to the filing requirements of 251 and 252 of the Federal Telecommunications Act. By failing and	3 4	process. In other words, while Qwest was collaborating with some CLECs publicly, it was also being, I guess, more collaborative with others privately.
3	These agreements all relate to interconnection terms and conditions, and they are all subject to the filing requirements of 251 and 252 of the Federal Telecommunications Act. By failing and refusing to file these agreements Qwest has	3 4 5	process. In other words, while Qwest was collaborating with some CLECs publicly, it was also being, I
3 4	These agreements all relate to interconnection terms and conditions, and they are all subject to the filing requirements of 251 and 252 of the Federal Telecommunications Act. By failing and	3 4	process. In other words, while Qwest was collaborating with some CLECs publicly, it was also being, I guess, more collaborative with others privately.
3 4 5	These agreements all relate to interconnection terms and conditions, and they are all subject to the filing requirements of 251 and 252 of the Federal Telecommunications Act. By failing and refusing to file these agreements Qwest has	3 4 5	process. In other words, while Qwest was collaborating with some CLECs publicly, it was also being, I guess, more collaborative with others privately. Clearly this does not promote the overall
3 4 5 6 7	These agreements all relate to interconnection terms and conditions, and they are all subject to the filing requirements of 251 and 252 of the Federal Telecommunications Act. By failing and refusing to file these agreements Qwest has violated federal law. Violations of federal law are directly pertinent to this Commission's	3 4 5 6 7	process. In other words, while Qwest was collaborating with some CLECs publicly, it was also being, I guess, more collaborative with others privately. Clearly this does not promote the overall collaboration which was supposed to have occurred, but instead it undermines it.
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1	may have at this point.	1	to be filed.		
2	CHAIRMAN BURG: I'm going to turn	2	The second point I would like to talk about is		
3	this discussion over to Rolayne Wiest, who was the	3	in light of this ambiguity what is Qwest doing to		
4	Hearing Officer. I intended to do that before we	4	try to remove this issue from the table while the		
5	started, but I'm to it at this time.	5	FCC is going to be looking at this very standard.		
6	Rolayne.	6	What is Qwest doing to resolve on a going forward		
7	MS. AILTS WIEST: I did have a	7	basis that there isn't going to be any doubt as to		
8	couple of questions of AT&T before we go on to	8	its compliance with any one standard under 252.		
9	Qwest.	9	And, thirdly, I'd like to talk about the 271		
10	My first question to AT&T is, is AT&T aware we	10	implications of this issue. First, Section 252(a)		
11	never closed the proceedings to begin with?	11	of the Telecom Act does require the filing of		
12	MR. WITT: Your Honor, yes, I am.	12	"interconnection agreements." Those		
13	And the fact of the matter is what we are kind of	13	interconnection agreements that are negotiated		
14	hoping here is that I styled this as a motion to	14	among the parties are subject to a 90 day approval		
15	reopen the proceedings in view of the fact that I	15	standard.		
16	was uncertain really as to the status of the record	16	Now the Act does not define what an		
17	in those proceedings.	17	interconnection agreement is. It doesn't say that		
18	Mainly what we are interested in doing is	18	all agreements between ILECs and CLECs must be		
19	allowing additional evidence in. And I don't want	19	granted, simply that interconnection agreements		
20	to just present that evidence and then be told, you	20	must be filed under the 90-day approval process.		
21	know, you're too late. I would rather ask the	21	And I would suggest that the 90-day approval		
22 23	permission of the Commission in order to proceed.	22 23	process is also very important in trying to		
	MS. AILTS WIEST: And then a second	23 24	interpret the kinds of agreements that are		
24 25	question, is AT&T aware that the Commission asked	24 25	"interconnection agreements" and the other kind of agreements that don't necessarily have to be filed		
20	these questions of Qwest at the 271 hearing and	25			
	18		20		
	requested that all of those agreements be filed	1	under 252(a).		
2	with the Commission?	2	Now Qwest has its view and its understanding		
3	MR. WITT: Now that I was not aware	3	of what Section 252(a) requires and it comes from		
4		4	the language of 252(a) itself. And we believe that		
5	MS. AILTS WIEST: Are you aware that	5 6	all the agreements that we're in full compliance to the extent that we have filed agreements with the		
	Qwest filed them today? MR. WITT: No. Obviously, no, I'm	0	Commission there within 252(a). To the extent		
8	not aware that they filed them today. I haven't	8	there are other agreements we have with the CLECs,		
9	been there.	9	those are not within the filing requirements of		
10	MS. AILTS WIEST: And I believe	10	252(a). But at the very least there's tremendous		
11	Eschelon is one of the agreements that was	11	ambiguity as to what the standard is.		
12	included. I have not had an opportunity to go	12	AT&T is basing a large part of its motion upon		
13	through all of them.	13	the Minnesota proceedings. Well, the expert that		
14	Go ahead, Qwest.	14	the Minnesota Department of Commerce retained there		
15	MR. LUNDY: Thank you. Todd Lundy	15	has stated in testimony that the FCC rules really		
16	appearing on behalf of Qwest.	16	do not define what is an Interconnection Agreement		
17	l'd generally like to make three points during	17	that is within 252(a).		
18	my presentation. First I'd like to talk a little	18	And in promulgating or proposing his standard		
19	bit more about this issue, what kind of agreements	19	he had to look at different policies. He had to		
20	are out there and what particular legal standard is	20	create his own standard that he proposed to the		
21	at issue when we're talking about agreements that	21	Commission.		
22	ILECs enter into with CLECs and that, quite	22	In other words, there was no definitive		
23	frankly, there's a large amount of ambiguity as to	23	standard out there today that says, yes, this type		
24		24	of agreement with a CLEC is an Interconnection		
25	•	25	Agreement, this agreement is not.		
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	21	4	23
1	And there are agreements out there with CLECs	1	uniformity in terms of what standard eventually
2	that ILECs have generally. For instance,	2	comes out is very important.
3	settlement agreements that resolve past disputes,	3	An agreement that an ILEC may enter into in
4	agreements that go to very what I would call	4	South Dakota which is the same as an agreement in
5	granular or minor details of how the businesses	5	Minnesota, there should be the same filing
6	interrelate with each other, agreements as to how	6	requirement that applies to each of those. And
7	to improve provisioning processes.	7	that really should be a national standard, what
8	And there's testimony again in Minnesota,	8	Verizon or Bell South must file under the standard
9	which AT&T is relying upon, where CLEC witnesses	9	should be the same for all ILECs throughout the
10	said, yes, there are certain agreements ILECs have	10	nation.
11	with CLECs that don't fall with 252 and we don't	11	We believe that this is a federal act, it's a
12	believe that comes with the 90-day approval	12	federal statute. The FCC is the agency that's been
13	process, such as an agreement between service	13	in power to interpret what that federal statute
14	managers, how to maybe more efficiently provision a	14	means. So I believe that this question as to where
15	service or settlement agreement that resolves a	15	the line should be drawn is before the correct
16	past dispute.	16	body.
17	But the point of this discussion is that	17	The second thing that Qwest has done is it has
18	before anyone could say that Qwest is in violation	18	announced new policies and commitments while the
19	of Section 252(a), this Commission or another	19	FCC is looking at this issue, again, to remove any
20	Commission would have to determine what that	20	doubt that Qwest is going to be in compliance with
21	standard is. And so far the FCC has not told us	21	anyone's reasonable interpretation of what that
22	what is that standard under 252(a).	22	standard is going to be.
23	Mr. Witt is correct that the lowa board did	23	And those policies have been expressed in a
23	come out with a tentative conclusion. The Arizona	24	letter from our Steven Davis, senior vice-president
25	staff has also made recommendations to its	25	for policy and law, that's been filed with the
2.5		20	
	22		24
1	Commission.	1	state commissions including this one. And I'll
2	What's interesting about the Arizona	2	read from this policy statement.
3	recommendation is they applied a very broad	3	Mr. Davis, he has stated that "Qwest will file
4	standard, but even under that very broad standard	4	all contracts, agreements, or letters of
5	approximately 1 out of the 4 agreements that we did	5	understanding between Qwest Corp and CLECs that
6	submit for their review said it came within the	6	create obligations to meet the requirements of
7	Section 252(a) filing requirements, which means the	7	Section 251(b) or (c) on a going-forward basis. We
8	other three quarters in their view under, again, a	8	believe that commitment" this is the standard he
9	very broad standard did not.	9	just referred to "goes well beyond the
10	They also stated in their recommendation	10	requirement of Section 252(a). However, we will
11	there's no evidence Qwest did not act in good faith	11	follow it until we receive a decision from FCC on
12	in terms of trying to understand what the standard	12	the appropriate line drawing in this area. Unless
13	was and how they have filed their agreements.	13	requested by this Commission, Qwest does not intend
14	So in light of these ambiguities what is Qwest	14	to file routine day to day paperwork or for
15	doing on a going forward basis to take this issue	15	specific services or settlements of past disputes
16	off the table. And it's done a number of things.	16	that do not otherwise meet the above definition."
17	The first is Qwest filed back in October a	17	Although Mr. Davis does not mention in his
18	petition for declaratory ruling with the FCC asking	18	letter, we are also very willing to meet with the
19	for a substantive ruling as to what is the	19	staffs if we have agreements where there's
20	guideline under 252(a), what is a "Interconnection	20	ambiguity upon which side of the line this
21	Agreement" that is subject to the 90 day filing	21	particular agreement may fall, we will be willing
22	requirement.	22	to submit the agreement to the staffs and work with
23	Opening comments were filed May 29, 2002.	23	them under seal, if necessary, to get some guidance
23	Reply comments under a revised schedule are due, l	23	as to whether a particular agreement needs to be
25	believe, June 20, next week. And we believe that	25	filed with the state Commission under the 90-day
20	Delieve, Julie ZO, Hext week. And we believe tildt	<u></u>	mod with the state commission under the 30-udy

25         1         state Commission has not reviewed all the relevant evidence and testimory to decide what the cost should be / would suggest not.           2         address a couple op sints raised by ATST.         2         should be / would suggest not.           3         address a couple op sints raised by ATST.         5         should be / would suggest not.           4         address a couple op sints raised by ATST.         5         should be / would suggest not.           6         I believe the algobian and in that (west extered into an agreement which has been filed with the Correlation and in return for that         6         W.D. West setter has sub off the supresent, what it are is in the rems of that           9         Exchedin was believe the term was silenced in the 271 proceedings.         1         state that be the correlation of this states that have been granted 271 actionary withing represent, what it are is in the rems of that         1         states that have been granted 271 actionary withing:           10         will agree to create an implementation plan, that is how two companies are to work together to disputes. and they also will work together to disputes. and they also will work together to the correlation may the scheding and working with 3         1         states that have been granted 271 actionary with states that web end provision gronoses and the scheding and working with 3         2           10         that that scheding was not have to ready and its tate meating and working with 3         2         5         2     <	Case C	Case Compress				
2         In light of that, what are the 271         2         evidence and testimory to decide what the cost           3         implications of this issue? First Id like to         3           4         address a couple of points raised by XI&T,         5           5         particularly the Eschelon agreement that it was cooperating         5           6         Ibelieve the largement that it was cooperating         7           8         more fully with Eschelon and in return for that         9           9         Eschelon was I believe the term was silenced in the         9           10         Well, that agreement, what it ags is that Qwart and Eschelon         10           11         two two comparies are to work together to         10           12         the Commission, if you read the terms of that         12           13         well agree ment which has been filed with         11           14         the Commission, if you read the terms of that         12           15         is how two comparies are to work together to         13         of what that standing is is that a barrine to 211           14         well agree ment is sub a barrine to 211         Iwould suggest not.         14           15         is how two comparies are to work together to         15         is how two comparises are out to teologing.		25		27		
3       implications of this issue? Frail for like to address a ouple of points raised by AT&T,       3       should he? I would suggest not:         4       address a ouple of points raised by AT&T,       4       So what are the 221 implications of this         5       particularly the Eschelon agreement.       5       issue? Again, the polcies as amounced by         6       The enter into an agreement that it was cooperating area fully with Eschelon and in return for that       8       Mr. Dawis letter bas taken the proper         9       Eschelon was I believe the term was silenced in the 271 proceedings.       10       assurances of 252(a) regardless of what kind of         11       Well, that agreement that it ways is that Qwest and Eschelon agreement, what it says is that Qwest and Eschelon advelop a multi-state interconnection Agreement.       11       Is the wild agreement advest of that advelop a multi-state interconnection Agreement.         10       evelop a multi-state interconnection Agreement.       12       Is the viscon agreement.       12         11       hew change for the Eschelon agreement.       12       Is the state the level Cos and the case and the saw and the eschere in advert be 210 and 250 molection.       12         12       would aggest to advert by aggested duite strongly that they clocking thadvert by advel by advelop a multi-state advert by advect is meetin	1	filing requirement.		state Commission has not reviewed all the relevant		
4     address a couple of points raised by AT&T,     4     So what are the 271 implications of this       5     particularly the Eschelon are prevent.     5       6     I befieve the alligations are that Qwest     6     Mr. David's left has taken the issue of the       7     entered into an agreement that it was cooperating     7     Eable until the FCC rules ont. Agran, I believe       8     more fully with Eschelon and in return for that     8     Her CO is the body to address what is the proper       9     Eschelon was I believe the term was silenced in the     9     standard there is going to be.       11     Walt, fad agreement, what it was is hat Qwest and Eschelon     10     is the unified agreement is used. Not badress       13     west, set as a implementation plan, that     11     is the unified agreement issue and resolution       14     will agree to creats an implementation plan, that     14     I would suggest not. There's been about 12 or 13       14     well as suggest a work together to     15     states that have been granted 2.1 aubordy without       15     in exchange for that Eschelon says they wont     20     Co in its Geargia, Louisian or der       20     then Eschelon has every ability to say we have no     10     The FCC in its Geargia, Louisian or der       21     the ask well o geargin adverking with a 22     So 211 has been granted zbeenta nuling by the	2	In light of that, what are the 271		evidence and testimony to decide what the cost		
5       particularly the Exchain agreement.       5       issue? Again, the policies a samonced by         6       I believe the allegations are that Qwest       6       Mr. Davids letter has taken the issue off the         7       antered into an agreement. That it was cooperating       7       table until the FCC rules on it. Again, I believe         8       more fully with Excession in return for that       8       the FCC is the body to address what is the proper         9       Eschelon vas i believe the term was silenced in the       9       standard under Section 252(a). There is the         11       Wall, that agreement which has been filed with       11       12       Is the unitid agreement is issue and resolution         12       is how two companies are to work together to       13       is the unitid agreement is Eachelon say with aget services awell as to how to resolve         13       isputes. And they also will work together to       16       states that have been granted CLES to settle         14       would suggest there's nothing wrong with       12       states that have been granted CLES to settle         15       isputes. And they also will work is meeting       20       The FCC in its Georgia. Louidiasuna order         12       the tervision services and the avery working itsues.       20       The FCC in its Georgia. Louidiasuna order         21       theat, that whe	3	implications of this issue? First I'd like to	3.	should be? I would suggest not.		
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8         more fully with Eschelon and in return for that         8         the FCC is the body to address what is the proper standard under Section 252(a). There is the 10           9         Eschelon was i believe the term was silence in the 21 Well, that agreement, which has been field with 12         10         saturances of 25(a). There is the 10         11           11         Well, that agreement, what is ays is that Qwest and to provision services as well as to how to resolve 11         11         11         11         11           12         or yow is on services as well as to how to resolve 13         12         13         13         14	6	I believe the allegations are that Qwest		Mr. Davis's letter has taken the issue off the		
9     Eschelon was I believe the term was silenced in the 271 proceedings.     9     standard under Settlog       11     Well, that agreement which has been filed with 12     the commission, if you read the terms of that 13     12     the commission, if you read the terms of that 13     12       13     agreement, what it says is that Qwest and Eschelon 14     11     12     the unfield agreement siscue and resolution of what that standard is, is that a barrier to 271?       14     works use as well as to how to resolve 15     14     I would suggest not. There's been about 12 or 13       16     provision services as well as to how to resolve 16     17     I would suggest not. There's been about 12 or 13       16     provision services as well as to how to resolve 17     16     provision services. Not be 18       17     develop a multi-state interconnection Agreement. that 19     10     cases or resolve provisioning is uses.       20     oppose the 271 application.     21     suggestad quit strongly that they're looking 16       21     Well, I suggest there's nothing wrong with 22     22     16     FCC or the state commission as to what the 252(a)       23     And whenever Qwest :	7	entered into an agreement that it was cooperating	7	table until the FCC rules on it. Again, I believe		
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17       disputes. And they also will work together to       17       privy to what Verizon or SBC does, I would assume         18       develop a multi-state interconnection Agreement.       18       that they are working with their CLEOs to settle         19       In exchange for that Eschelon says they won't       19       cases or resolve provisioning issues.         20       coppose the 271 application.       20       The FCC in its Georgia, Louisian order         21       Well, I suggest there's nothing wrong with       21       suggested outers stabion with the CLECs to settle         21       that, that when Qwest is meeting and working with a       22       forward to Bell South cooperating on a         22       the 251 and 252 needs of Eschelon. And if it is,       25       So 271 has been granted absent a ruling by the         23       CLE cand trying to develop a multi-state       28         24       then Eschelon has every ability to say we have no       1       FCC or the state commissions as to what the 252(a)         25       the Schelon to improve the schelon to improve the for provisioning processes and the services there, the provisioning processes and the services there, the provisioning processes or one CLEC and not for another. So if we provisioning processes, those go to the same level.       7       Six states have looked at the exact         36       That is, a company like Eschelon to improve our       1       notion	16		16	the FCC finally deciding this issue. Not being		
18       develop a multi-state Interconnection Agreement.       18       that they are working with their CLECs to settle cases or secolise provisioning issues.         19       in exchange for that Eschelon says they won't       19       cases or secolise provisioning issues.         20       oppose the 271 application.       20       The FCC in its Georgia, Louisiana order suggested quite strongly that they're looking forward to Bell South cooperating on a business-to-business fashion with the CLECs to resolve provisioning problems.         21       Well, I suggest there's nothing wrong with a 23       CLEC and trying to develop a multi-state       23         22       thereconnection Agreement, that Qwest is meeting and working with a 25       26       28         23       then Eschelon has every ability to say we have no 2       1       So 271 has been granted absent a ruling by the 252(a) states have looked at the exact         3       And whenever Qwest as the testimory in 2       3       Six other state commissions as to what the 252(a) states have looked at the exact         4       Minnesota stated and was not rebutted, when Qwest thre, the 2       7       every state that has ruled: Colorado, Montana, 8         7       processes for all CLECs rise to the same level.       7       every state that has ruled: Colorado, Montana, 8         8       That is, a company like Qwest cart have a 1       8       Nebtraska, North Dakota, Wyomining, and Iowa. 4	17	disputes. And they also will work together to	17	privy to what Verizon or SBC does, I would assume		
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23       CLEC and trying to develop a multi-state       23         24       Interconnection Agreement, that Qwest is meeting       24         25       the 251 and 252 needs of Eschelon. And if it is,       25         26       26         27       and whenever wastlity to say we have no       1         28       FCC or the state commissions as to what the 252(a)         3       And whenever Qwest as the testimony in       3         4       Minnesota stated and was not rebutted, when Qwest       4         5       works with a company like Eschelon to improve the       5         6       provisioning processes and the services there, the       7         7       process for one CLEC and not for another. So if we       8         9       process for one CLEC and not of ranother. So if we       9         11       provisioning processes, those go to the benefit of       11         12       all CLECs, again a pro 271 interest.       12         13       I would suggest that even if Eschelon did not       13         14       participate in 271, does that in any way impinge       14         15       what this Commission and other state commissions       15         16       have done in 271? 77 has been a very       16         17	21		21	suggested quite strongly that they're looking		
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	25	docket in a particular state, does that mean that	25	chance to review what Qwest has filed would AT&T be		

Case Co	ompress		
	29		31
1	satisfied if they were able to supplement - let's	1	MR. WITT: And I believe I would
2	say, for instance, they notice certain documents or	2	concur in that. And I think that's an appropriate
3	agreements are missing that they feel are	3	approach.
4	pertinent. Would that satisfy AT&T?	4	CHAIRMAN BURG: The question I have,
5	MR. WITT: If I understand the	5	Mr. Witt, also is were you not aware of these
6	question correctly, would a summary type of	6	agreements before the actual hearing we held?
7	briefing or additional proceedings to allow some	7	MR. WITT: Your Honor, we were
8	analysis of these agreements in the context of 271	8	certainly aware of them, but the I hate to say
9	be appropriate from AT&T's perspective. And I	9	this. We simply have a resource problem here. We
10	think that's correct.	10	don't have enough people to adequately, well,
11	Essentially what we are looking for is an	11	shepherd it, for lack of a better word, this kind
12	opportunity to make certain that, number one, these	12	of information into the hand of the Commission.
13	agreements to the extent that we are able to get	13	And for that I have to apologize. We don't
14	them into the light of day reach the light of day	14	have the same resources on a regional level that
15	and, number two, that these agreements are	15	Qwest does. And we simply couldn't get that
16	considered in the context of 271.	16	information together in a timely manner.
17	We believe as I indicated, we believe that	17	CHAIRMAN BURG: But if we would
18	they are extremely germane to any examination of	18	grant your request, how do we know you're going to
19	Qwest's 271 application.	19	have resources to come take care of it then?
20	COMMISSIONER SAHR: Well, here's the	20	MR. WITT: Well, that is a good
21	way I look at it is the Commission had requested	21	question, and I would respond by saying that if you
22	that Qwest filed these agreements, and apparently	22	give us enough of a briefing schedule, enough time,
23	they have done so today. And in my mind what we	23	we will be able to, number one, examine these
24	want to make sure is we have everything in front of	24	agreements and, number two, provide some analysis
25	us that should be part of the record and that's	25	of those agreements in the form of briefs.
20	, 		
			32
	pertinent to this case.		CHAIRMAN BURG: Let me ask also
2	I don't know if what I would be interested	2	this: The list of states that was mentioned that
3	in is if you review the Qwest filing and you think	3	you filed in in the other hearings, did you
4	that it's neglected to include certain agreements,	4	actually have somebody there in the hearing in any
5	l certainly would encourage you and any of the	5	of those?
6	other parties to point that out and to, you know,	6	MR. WITT: 1'm sorry. 1 don't quite
7	file something along those lines.	7	understand.
8	And I'm wondering if the idea is to get these	8	CHAIRMAN BURG: The list of states
9	agreements before the Commission, which I think	9	that we just heard that you filed this same kind of
10	that's why we wanted them, to find out what's here	10	request in
11	and be able to look at them and be able to give	11	MR. WITT: Yes.
12	them our independent review, with AT&T if you could	12	CHAIRMAN BURG: And then he
13	look at the Qwest documents if it's all there,	13	indicated it was denied. Do you disagree with
14	do you need to reopen the record?	14	that?
15	l guess that's my question is you can brief it	15	MR. WITT; No.   don't take issue
16	or you can address it, but if it's all there, do we	16	with the fact that this motion has been denied in
17	need to reopen the record?	17	several states. The problem well, the response
18	In other words, you look at what Qwest files	18	that I would have to that, however, is that in
19	and the other parties do too, see if there's	19	those states where the matter is not closed, and I
20	anything missing, add it in there, and then we go	20	think South Dakota may indeed fall into this
21	to briefing on that issue. I think that might be	21	category, where the record is either not closed or
22	the most expedient way to address this issue	22	where it was viewed as convenient to leave it open
22 23	without having to necessarily go beyond that unless	23	to accept these documents, they've been willingly
24	after we review the documents we think there's need	24	accepted into the record by different commissions
25	for additional hearing and additional testimony.	25	and, in fact, some commissions are actively
-0	ior additional hearing and additional testimoly.		

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	1	pursuing separate investigations.	1	did have to glean from the policies or the laws how		
	2	A good example is the state of Washington and	2	you would interpret Section 252(a) in order to come		
	3	also the state of New Mexico and obviously the	3	up with the standard they came up with.		
	4	state of Minnesota.	4	And they do come up with about a four-part		
	5	CHAIRMAN BURG: I guess the question	5	test, four-part standard for Section 252(a). That		
	6	I was having, though, is in any of those states	6	four-part test isn't found in any rule, statute, or		
	7	that were listed where they were requested and	7	opinion. We kind of disagree with that standard		
	8	denied, in any of those states did you have an	8	because of the language of 252(a) itself.		
	9	active participant at the hearings?	9	But I would respectfully disagree that there's		
	10	MR. WITT: Oh, yes.	10	clarity in any of the existing law as to where the		
	11	CHAIRMAN BURG: Did you not bring	11	standard should be.		
	12	these into the body of the hearing	12	MS. CREMER: But did they fine you?		
	13	MR. WITT: Well, to the extent that	13	MR. LUNDY: They did not.		
	14	we were able to do so let me just mention to the	14	MS. CREMER: Did they say they'd		
	15	extent we were able to do so during, for example,	15	fine you next time if you do it again?		
	16	the public interest portion, which I think is the	16	MR. LUNDY: They stated first		
	17	place where these agreements really belong, we	17	they gave us 20 days in order to request a hearing		
	18	definitely did that.	18	in terms of whether or not we wanted to bring		
	19	However, the agreements in many instances cam	19	additional factual issues to their attention before		
	20	to light several months after the hearings	20	the order becomes final.		
	21	occurred. And I'm thinking specifically of Oregon	21	The second thing that they did is they said		
	22	and several other states as well. So to a large	22	under this standard that we've promulgated we		
	23	extent the reason that this was that this motion	23	request that Qwest provide these within 60 days		
	24	has been denied in other states has been because,	24	under the standard that they talked about, and if		
	25	well, frankly, there's been a rush to grant Qwest's	25	we didn't comply with their request to provide it		
		34		36		
;	1	271 application.	1	within 60 days, then it was contemplated that fines		
	2	And if that's the context in which these other	2	may be appropriate.		
	3	commissions have viewed this motion as interfering	3	MS. CREMER: Yeah. I don't know if		
	4	with their timetable or with Qwest's timetable,	4	they contemplated it. I think they were pretty		
	5	then I have seen commissions deny it based on that	5	serious.		
	6	as well.	6	COMMISSIONER NELSON:   guess		
	7	CHAIRMAN BURG: Okay. Thank you.	7	don't see it as that ambiguous either. If other		
	8	MS. CREMER: I had a question of	8	companies if all of the provisions that are		
	9	Qwest. And I just read that Iowa order quickly,	9	available to the one company are supposed to be		
	10	but I thought they didn't find it to be ambiguous.	10	available to another company and you don't ever		
	11	MR. WITT: That's correct, your	11	have to file all the agreements that are out there,		
	12	Honor.	12	I mean, how does one know if you're making		
	13	COMMISSIONER SAHR: Did you switch	13	everything for everybody that everything you're		
	14	companies?	14	offering to somebody is then available to all?		
	15	MS. CREMER: This was Karen Cremer	15	So I don't find that to be ambiguous.		
	16	from staff, and I was just asking Qwest I thought	16	MR. LUNDY: Your Honor, it goes to		
	17	they fined Qwest. If they didn't fine you this	17	the exact subject matter of the agreement itself.		
	18	time, didn't they say they would fine you next	18	For instance, some of these agreements are		
	19	time?	19	settlements of past disputes.		
	20	MR. LUNDY: A couple of answers to	20	If we compromise with CLECs in terms of a		
	21	your questions. First, in terms of standard, I	21	particular billing dispute and they say one party		
	22	believe lowa said the standard does not appear in	22	owes \$50 and we say it's \$20 and we compromise at		
1	23	the act.	23	35, that kind of settlement of that dispute, is		
	24	And then as you walk through the opinion, they	24	that really a "Interconnection Agreement" that's a		
	25	do formulate their standard. In other words, they	25	description of the terms relevance that it should		

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1	be made available and the rates applicable to each	1	she needs for briefing and maybe in her
2	of those.	2	circumstances it might not be any additional time.
3	Or we agree that if you have a dispute, your	3	MS. AILTS WIEST: First of all, does
4	senior vice-president can call our senior	4	Midco have any comments?
5	vice-president to talk about that issue. Does that	5	MR. GERDES: Yes. Excuse me.
6	have a close enough nexus to the term	6	Mr. Chairman, members of the Commission,
7	interconnection or the term of a network element	7	Dave Gerdes, representing Midcontinent
8	such that it has to be filed under 252(a). It's	8	Communications.
9	where that line is drawn where I think there is a	9	We haven't seen the agreements, of course, and
10	fair amount of ambiguity.	10	would like to have an opportunity to look at them.
11	And certainly if we have a product out there	11	And we would like to have some additional briefing
12	that we are offering to CLECs and we describe that	12	time as well.
13	product and we have a rate for that product that	13	I don't know how big a stack the agreements
14	we're going to charge, yes, those are the kinds of	14	are, but if it's a big stack, we'd need some time
15	agreements or interconnection agreements that	15	to look at them. Offhand, I'd say 10 days would be
16	definitely have to be filed under 252(a) and have	16	fine to extend the briefing schedule, if that is
17	to be made available to other CLECs.	17	what it is.
18	But as to some of these other agreements,	18	I do also want to state Midcontinent's
	•	19	
19 20	they're agreements but are they truly	20	position on the merits of the motion. Right now we
20	interconnection agreements or terms of	20	don't know what's in these agreements, but as a
	interconnection. I don't think that line has been	21	matter of principle, Midcontinent believes that
22	clearly drawn quite yet.	22	Section 271 requires nondiscriminatory
23	MS. AILTS WIEST: Did Black Hills		interconnection and the ability of any carrier to
24	FiberCom have any comments on the motion?	24	opt in to any other Interconnection Agreement.
25	MR. EVANS: Our comments will be	25	Obviously, if we don't know about those
	38		40
1	very brief. First I would have a question this	1	agreements, if we don't have any ability to review
2	is Linn Evans speaking.	2	and decide whether or not to opt into a particular
3	I have a question whether or not all of the	3	arrangement, then we have not been given the full
4	agreements in this particular filing will be	4	range of rights that we're entitled under
5	disclosed to the parties that have intervened in	5	Section 271.
6	this matter.	6	And I'm a little bit disturbed if I understood
7	Does the Commission give us guidance on that	7	Mr. Lundy correctly. If I understood him
8	in terms of our briefing, et cetera?	8	correctly, it seemed to me he was saying if they're
9	MS. AILTS WIEST: I believe you were	9	negotiating a multi-state Interconnection
10	sent a copy of everything, but some are claimed as	10	Agreement, it somehow is exempt from the filing
11	confidential.	11	requirements under 271, and we would not agree with
12	MR. EVANS: Okay. 1 assume those	12	that, if that's what he was saying.
13	are sent in the mail apparently today?	13	That all having been said, it's our position
14	MS. AILTS WIEST: 1 believe so.	14	that if the Commission believes that there are some
15	MR. EVANS: Thank you. We would	15	special deals out there that were offered to some
16	like to have time to review those prior to the	16	but not all, that the matter should definitely be
17	briefing schedule, and I believe our brief is due	17	taken up by the Commission as a matter of the
18	June 21.	18	public interest portion of the 271 inquiry.
19	Would it be appropriate to discuss perhaps a	19	We don't know whether that is, in fact, the
20	continuance or some kind of extension on the	20	case. We're just simply saying if the Commission
21	briefing schedule?	21	believes that to be the case, we would urge the
22	MS. AILTS WIEST: How much?	22	motion to be granted.
23	MR. EVANS: Depending on what we see	23	MS. AILTS WIEST: Ms. Cremer.
24	for the filing, I would ask for maybe 10 days. And	24	MS. CREMER; The record probably
25	perhaps Ms. Cremer could tell us what she thinks	25	doesn't need to be reopened in a technical sense in
20	periapa ma, oronier obulu ten da milat ane tininka		

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1	that it was never closed. And they have somehow	1	So I believe 10 days wouldn't be unreasonable		
2	submitted I too haven't had time to look at it.	2	to extend the briefing schedule. So that would be		
3	I don't know how big it is.	3	my recommendation.		
4	I've read what you have in front of you, but I	4	COMMISSIONER SAHR: 10 days from		
5	haven't looked at the contracts. I have no idea.	5	today?		
6	I assume Mr. Gerdes and Black Hills and AT&T will	6	MS. AILTS WIEST: No. From the date		
7	not get theirs as they were stuck in the mail until	7	that they originally because they were due the		
8	Monday.	8	21st.		
1	-	9	COMMISSIONER SAHR: From the 21st.		
9	So if you're looking to extend the briefing	10			
10	time, I think you need to count from Monday forward		Is that enough time for the that will take you		
11	as opposed to from today forward.	11	through July 1, which is, what, a Monday		
12	MS. AILTS WIEST: Anything further	12	MS. CREMER: Do you have a calendar		
13	from AT&T?	13	on you, Dave?		
14	MR. WITT: No, your Honor. Other	14	MS. AILTS WIEST: Let's just make		
15	than we do disagree with Mr. Lundy's	15	them due July 1.		
16	characterization of the collaboration that's	16	MS. CREMER: That's a Monday. Okay.		
17	occurred here, and the fact is that a private	17	CHAIRMAN BURG: I had one further		
18	agreement, irrespective of how collaborative it is,	18	question for Mr. Lundy. One thing that kind of		
19		19	bothered me as you were going through the procedure		
20	And in addition I would say that at one point	20	by which you determined to file or not to file, I		
21	Mr. Lundy indicated that settlement agreements	21	mean, it looks to me like that puts it solely in		
22	should not be considered as part of this filing	22	the minds of Qwest to determine what is filed and		
23		23	not filed.		
		23	How do we know what wasn't decided to be filed		
24	-				
25	just one or two of those <u>c</u> arriers on different	25	or wasn't decided to be brought to our attention so		
	42		44		
1	terms than the others, then there has been	1	we can make that determination?		
2	discrimination that's occurred.	2	MR. LUNDY: The question that was		
3	Whether that discrimination goes forward in	3	asked of us a few weeks ago in terms of what		
4	time or backward in time, it still has occurred.	4	documents to be filed is what agreements or terms		
5	So we would say that that's an incorrect analysis	5	of interconnection have you not filed. And as we		
6	of the Qwest's analysis is incorrect here with	6	say in our response, we understand that to mean		
7	respect to that.	7	you know, we believe we filed everything we had to		
8	I have nothing further unless there are	8	be filed but in the interest of disclosure we'll		
9	further questions.	9	give you all the documents we have with CLECs		
10		10	certified in South Dakota that were not filed.		
11	•	11	So you have before you all the agreements with		
12		12	CLECs certified here that have not been filed.		
	•				
13		13	CHAIRMAN BURG: That's not really		
14	•	14	what I was referring to because I assumed that. I		
15	5. t 5 j	15	thought you were talking about going forward.		
16		16	MR. LUNDY: Right. On a		
17	, .	17	going forward basis where there may be ambiguity in		
18		18	terms of the agreements that may or not be close to		
19	But I would recommend the Commission do exten	19	the line, we would be working with the Commission		
20	) the briefing schedule because reading back through	20	staff to say we have this particular agreement,		
2	· · ·	21	Commission, we don't think it's a 252(a) agreement		
2		22	but here it is, can you give us some guidance.		
2		23	CHAIRMAN BURG: So are you going to		
2	• •	24	submit every agreement for observation by the		
2		25	staff?		
<u> </u>					

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1	MR. LUNDY: Any agreement that comes	1	the intervenor and staff brief due July 1.		
2	remotely close to the standards, yes.	2	COMMISSIONER SAHR: I'll make the		
3	CHAIRMAN BURG: That's my problem.	3	motion we extend the briefing schedule 10 days, and		
4	Your idea of remotely closely and somebody else's	4	if there are other agreements out there the parties		
5	might be different. The thing is it's always hard	5	can ascertain that aren't filed, I would certainly		
6	to deal with what you don't know is out there. And	6	encourage them to point that out on the briefing		
7	that's why, I mean, I'm not sure this is the time	7	schedule.		
8	or place or even in the hearing, but I think that's	8	But a 10-day extension seems appropriate, and		
9	something that we need to work on in going forward	9	certainly if the parties haven't looked at this		
10	is, yes, I think these are supposed to be offered	10	very much yet, if there's a lot in there that		
11	to everybody once they come out there and the only	11	requires an additional briefing of time, then they		
12	way they're going to know is if they're filed with	12	could always ask for an additional extension as		
13	the Commission because that's the central place	13	well.		
14	where they get that knowledge.	14	CHAIRMAN BURG: I'll second.		
15	And if you're the one who's determining	15	COMMISSIONER NELSON: I'd concur.		
16	whether it's filed, well, what did not get filed	16	MS. AILTS WIEST: The second		
17	and somebody might have wanted to use, nobody's	17	question is shall the Commission grant Touch		
18	going to know about. And that bothers me.	18	America's petition to intervene?		
19	MR. LUNDY: I think at the beginning	19	Touch America. Who's representing		
20	of this process when working with the state	20	Touch America?		
20	commissions we can say here are the sets of	21	MR. LEBRUN: Mr. Chairman, my name		
21	-	22	is Gene Lebrun. I'm with the law firm of		
22	documents, here are sets of agreements, how would	22			
23	you like to treat those, and then when we get	23	Lynn, Jackson, Schulz & Lebrun in Rapid City, and		
24	guidance on the particular state staffs as to how	24	we represent Touch America. I don't know if		
20	to do that we will know better on a going-forward	20	Daniel Waggoner was joining us by phone or not. He		
	46		48		
1	basis where the line can be drawn.		didn't know if he was going to be able to.		
2	So we'll basically be providing everything or	2	Dan, are you on? Apparently he is not.		
3	at least a form of everything that we might have	3	Touch America has filed actually two matters.		
4	and say is this something you're interested in	4	One is the petition to intervene and second one is		
5	under the 90-day standard, yes or no, and then	5	a motion to reopen some issues.		
6	we'll be able to go forward and draw the lines a	6	We recognize that the motion to intervene has		
7	little better.	7	been filed after the deadline that was set by this		
8	CHAIRMAN BURG: Anyway, that's	8	Commission. But the Commission's own rule		
9	something I think we need to determine, but that	9	20:10:01:15:02 permits a late filing when the		
10	was some concern I had as I heard your comments.	10	denial of the petition is shown to be detrimental		
11	MS. AILTS WIEST: Does the	11	to the public interest or to be likely to result in		
12	Commission have a motion?	12	a miscarriage of justice.		
13	COMMISSIONER NELSON: I would move	13	We would submit that the very heart of		
14	to deny the AT&T motion to reopen proceedings for	14	Touch America's petition goes to the public's		
15	the reasons that Rolayne Wiest stated earlier.	15	interest and concerns relating to examining and		
16	CHAIRMAN BURG: I'll second.	16	improving Qwest's 271 application.		
17	COMMISSIONER SAHR: And I will	17	The issue, of course, is Qwest's compliance		
18	concur.	18	with 271 and 272 of the Telecommunications Act of		
19	Do we need to do anything on the briefing	19	1996. Touch America has filed complaints with the		
20	schedule?	20	FCC that raise critical questions concerning		
21	MS. AILTS WIEST: 1 would.	21	Qwest's current and future compliance with these		
22	CHAIRMAN BURG: Yeah. We should.	22	provisions of the Telecommunications Act.		
23	MS. AILTS WIEST: Make another	23	Touch America's petition to intervene		
24	motion. If you would care to, my other part would	24	identifies certain activities of Qwest that this		
25	be to extend the briefing schedule 10 days and have	25	Commission should examine. We're not attempting to		

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1	relitigate here what's been litigated before the	1	previous issue?			
2	FCC or the district court in Colorado.	2	MR. LEBRUN: I have been assured			
3	Rather, Touch America wishes to bring forward	3	that we would meet whatever briefing schedule			
4	to this Commission important factual information	4	CHAIRMAN BURG: 1 mean, in other			
5	that should be considered by the Commission. The	5	words you're not asking to open the formal part of			
6	FCC has now determined that it will decide the IRU	6	the hearing or the			
7	Complaint on its merits. Therefore, it is	7	MR. LEBRUN: It's my understanding			
8	appropriate to present issues relating to it in	8	that the hearing has never really been closed, but			
9	this 271 proceeding.	9	I was told we would meet the briefing schedule.			
10	There are 271 application checklist matters.	10	CHAIRMAN BURG: But, I mean, you can			
11	These are those checklist matters, and they are	11	do it through briefs and not cross-examination.			
12	relevant in this state's proceedings. The facts to	12	MR. LEBRUN: I believe that's			
13	be considered we think are outlined clearly in our	13	correct. I'm only in this about a week now.			
14	petition and I will not go through them here again.	14	That's my understanding.			
15	But part 2 of the petition identifies Qwest's	15	COMMISSIONER SAHR: Just so we're			
16	history on anti-competitive action and unlawful	16	straight on that, you're not talking about			
17	behavior. Part 3 of the petition is where Qwest	17	introducing evidence? You're just talking			
18	addresses the lift fiber IRUs, the fact that they	18	MR. LEBRUN: I'd have to find that			
19	violate nondiscriminatory safeguards. And part 3	19	out for sure, Commissioner. I'm not that familiar			
20	is where Touch America believes that Qwest offers	20	with what they intend to do, but I'll find that			
21	lift fiber IRU as interLATA services in violation	21	out for you and get back to you.			
22	of Section 271.	22	COMMISSIONER SAHR: That's a pretty			
23	Therefore, we would submit that the failure to	23	significant			
24	have factual issues thoroughly explored would	24	MR. LEBRUN: I understand.			
25	indeed be detrimental to the public interest and	25	COMMISSIONER SAHR: If you're			
	50		52			
1		4				
	would result in a miscarriage of justice.	2	looking at filing some sort of friend of the court			
23	Therefore, we would petition the Commission to	3	type of brief, that's not going to necessarily			
4	permit Touch America to intervene at this time.	4	throw the proceedings out of whack. If we're			
	MS. AILTS WIEST: Any questions?	I _	looking at having to reopen the proceeding, get all			
5	CHAIRMAN BURG: One question I have	5	the parties come back to Pierre, that starts to get a bit more burdensome.			
6	is what prevented you from intervening in a normal	6	a bit more burdensome. MR. LEBRUN: 1 understand. 1 will			
	manner?	8				
8	MR. LEBRUN: Commissioner Burg, that was the first question I asked the fellow who	9	found out. I can't give you a specific answer to that because I don't know.			
9	•	10	MS. AILTS WIEST: Any other			
11	matter. First, I really didn't understand it	11	questions? Qwest.			
12	•	12	MR. LUNDY: Thank you. There are			
13		13	three basic reasons we would request the Commission			
14	•	14	to deny the motion of Touch America.			
15	6	15	5			
16	,	16	First, it's untimely. This is an issue that			
17		17	Touch America raised with the FCC in its complaint			
18		18	back in February of this year. It also raised			
19		10	issues regarding this with the North Dakota Commission in 2001, the latter part of 2001.			
20		20	And now they're asking us today after weeks of			
2	2 2	20	· • •			
1		21	hearings, approximately a month ago in which every			
2	2	23	issue with the exception of I believe the OSS issues have been heard. There's been full			
1	÷ ,	23				
2		24	testimony. We're now in a briefing schedule trying			
2	procedure similar to what we talked about with the	20	to prepare briefs.			

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	53		55
1	There's nothing in the record right now	1	go into the record, that's going to be completely
2	regarding any of the facts that Touch America's	2	different than right now they appear to be
3	talking about. I think it would be very difficult	3	allegations, and I don't see that anybody's made a
4	for the parties to brief something that isn't in	4	factual determination.
5	the record. And I think that at this late hour to	5	And so I guess the way I read it was that
6	reopen everything that's been done is quite	6	Touch America was asking the Commission to make a
		7	factual determination, which in order to do that
	untimely.	8	
8	There's nothing in the motion to suggest why		we're going to have to have witnesses and bring
9	there couldn't have been intervention or testimony	9	everybody back.
10	submitted several weeks ago. Certainly they were	10	But I'll wait to have Mr. Lebrun check with
11	aware of these issues in the latter part of last	11	his client and see what exactly it is they think
12	year and certainly when they filed their complaint	12	they're going to put in through a brief. If that
13	with the FCC back in February.	13	can be done, I guess staff wouldn't oppose it, as
14	The second reason is is that this really is	14	long as they can meet the briefing schedule.
15	not the best forum to decide these issues. This is	15	l guess at this point I don't really have a
16	a complaint that's been filed with the FCC. They	16	recommendation.
17	have taken it up. The FCC has invoked its own	17	COMMISSIONER NELSON: Well, it seems
18	jurisdiction to decide a federal issue.	18	hard for me to believe they aren't going to be
19	And I would suggest that it is before Touch	19	presenting any evidence. And so are you saying
20	America's chosen forum and I believe the correct	20	that we should defer making any decision until
21	one considering the federal issues that have been	21	Mr. Lebrun finds out if he's going to present any
22	raised by the petitioner.	22	evidence or not?
22		23	
	Thirdly, these are not local service issues		MS. CREMER: Yeah. I guess I was
24	under Section 251 or 251. My understanding is the	24	going to ask that question, and then he did just
25	primary issue, the primary complaint, has to do	25	get involved last week. But that's my main concern
	54	1	56
] 1	with whether an IRU constituted a violation of	1	here is we haven't held the OSS hearing. It's not
2	restrictions upon interLATA services and there	2	as though we're on fast track anyway.
3	isn't allegations regarding any of the local	3	COMMISSIONER NELSON: We could
4	services that are at issue under the 14-point	4	always do ad hoc to address that issue.
5	checklist, the public interest issues, or the QPAP.	5	MS. CREMER: You know, people really
6	Finally we also have other states that have	6	want to litigate it, bring it back and we'll
7	ruled on this in a relatively short time frame.	7	litigate it.
8	believe counsel is correct that this was a	8	COMMISSIONER SAHR: I'm open to any
9	region-wide filing made early last week. Five	9	suggestion. The only question I have is if we're
10	states have denied the motion.	10	
		11	all in agreement that we're not going to allow
11	Washington, Iowa, Nebraska, North Dakota, and		additional evidence, then why don't we just say
12	Minnesota have denied Touch America's motion, and	12	they can and I'm just saying if. If we all are
13	we request that the Commission do the same here.	13	in agreement they could file a friend of the court
14	MS. AILTS WIEST: Any questions of	14	brief, then maybe that's where we're at and we
15	Qwest?	15	don't need to handle it today.
16	Black Hills FiberCom, do you have any	16	Now if we're still open to additional
17	comments?	17	evidence and maybe we're not at that point, but
18	MR. EVANS: No, we don't have any	18	if we're looking at a situation where we're going
19	comments on this issue. Thank you.	19	to just say that if they're going to put in
20	MS. AILTS WIEST: Midcontinent,	20	evidence, that we're not going to allow it, then
21	Mr. Gerdes?	21	think we need to dispose of this today and say they
22	Commission staff.	22	can file a friend of the court brief but we're not
23	MS. CREMER: The same concern I had	23	going to allow them to reopen the record for
24	with I can't remember if Commissioner Burg or	24	factual or evidentiary type issues.
25	who raised it, but if these are facts that need to	25	MS. AILTS WIEST: Did you have

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	57	4	59
1	anything further, Mr. Lebrun?		I'd move to deny the petition.
2	MR. LEBRUN: I guess I would request	2	COMMISSIONER SAHR: And I'll second.
3	that you give me an opportunity to check with my	3	Are we also, though, on that motion - Jim, in your
4	client to see if there are any facts and if there	4	motion are we saying that they cannot file a friend
5	are, if they would identify them for me as clearly	5	of the court brief?
6	as they can so I can tell you what they are.	6	CHAIRMAN BURG: Well, we'd have to
7	They may not require testimony. They may be	7	allow intervention for them to file; right?
8	documents. I don't know. But I would request at	8	COMMISSIONER SAHR: Well, they could
9	least that opportunity before you make the final	9	brief the facts before us already.
10	determination of whether or not we can present	10	COMMISSIONER NELSON: That's not the
11	anything in the way of facts and I do appreciate	11	issues they're raising.
12	the opportunity to file the amicus and that type of	12	COMMISSIONER SAHR: Well, I don't
13	brief as well.	13	know what issues they intend to raise. We have to
14	COMMISSIONER SAHR: Well, if we're	14	wait for the brief to actually know that.
15	going to wait, though, on the factual	15	CHAIRMAN BURG: Can they do that
16	determination, I think we should probably wait	16	without intervention at any time?
17	on I don't know if we should wait on the amicus	17	MS. AILTS WIEST: This is a new
18	or go ahead and rule on that.	18	issue. I guess we've never handled any kind of
19	Because we're abutting a briefing schedule.	19	friend of the
20	And I hate to have an attorney doing an amicus for	20	COMMISSIONER SAHR: I guess it may
21	nothing.	21	not be friend of the court. It may be a late brief
27	MS. AILTS WIEST: Well, my	22	for intervention.
22 23	recommendation is to deny the petition to	23	MS. AILTS WIEST: Then I would say
23	intervene. I mean, their second sentence here	23	if you would take my recommendation and deny their
25		25	
25	says, "and order reopening issues to receive		petition to intervene, then they shouldn't be
	58		6
1	evidence vital to finalizing the Commission's	1	allowed to do any briefing. That was my I mean,
2	decision."	2	that was how mine was ··
3	Touch America, I believe, filed this last	3	MR. LEBRUN: Mr. Chairman, my
4	fall. These issues came up a number of months ago,	4	understanding if the Commission follows basically
5	and I don't see any reason why they could not have	5	the civil rules of procedure, we would not be able
6	intervened sooner.	6	to file the friend of the court brief without
7	I realize we allow late interventions, but I	7	permission of the Commission.
8	don't believe we allow interventions after the	8	CHAIRMAN BURG: Right. That's what
9	hearing during the late stages of the briefing	9	l assumed, and I recognized that in my motion.
10	schedule. And I don't see how they could even file	10	COMMISSIONER SAHR: And I'll second
11	a friend of the court brief or amicus brief at this	11	the motion in that form.
12	point without putting any evidence because when I	12	COMMISSIONER NELSON: And I'd
13	look through the record although AT&T brought it up	13	concur.
14	in their public interest testimony and they	14	CHAIRMAN BURG: Okay. Was there any
15	never put their public interest testimony in so l	15	other questions?
16	don't think there's anything in there about these	16	MS. AILTS WIEST: No. 1 think the
17	issues with Touch America.	17	next question is
18	So I would recommend denying the intervention	18	CHAIRMAN BURG: Is moot; right?
19		19	· •
	today.		MS. AILTS WIEST: Yes.
20	CHAIRMAN BURG: With that, I will	20	
21	move we deny the intervention of Touch America. I	21	
22	don't see how they can bring anything meaningful to	22	
23	it without us opening it for evidence and	23	
24	cross-examination and anything. So I think that's	24	
25	the reason I'm going to do that.	25	

ase C	ompress		
1	61 THE PUBLIC UTILITIES COMMISSION	1	63 STATE OF SOUTH DAKOTA )
2	OF THE STATE OF SOUTH DAKOTA	2	:SS CERTIFICATE
3		3	COUNTY OF HUGHES )
4	IN THE MATTER OF THE FILING	4	
5	FOR APPROVAL OF AN AMENDMENT TO AN INTERCONNECTION AGREEMENT TC02-035	5	I, CHERI MCCOMSEY WITTLER, a Registered
6	BETWEEN QWEST CORPORATION AND MIDWEST WIRELESS COMMUNICATIONS,	6	Professional Reporter and Notary Public in and for the
7	LLC AND SWITCH 2000, LLC	7	State of South Dakota:
8		8	DO HEREBY CERTIFY that as the duly-appointed
9	Transcript of Proceedings June 13, 2002	9	shorthand reporter, I took in shorthand the proceedings
10		10	had in the above-entitled matter on the 13th day of
11	BEFORE THE PUBLIC UTILITIES COMMISSION,	11	June 2002, and that the attached is a true and
	JIM BURG, CHAIRMAN	12	correct transcription of the proceedings so taken.
12	PAM NELSON, VICE CHAIRMAN ROBERT SAHR, COMMISSIONER	13	Dated at Pierre, South Dakota this 25th day
13		14	of June 2002.
14	Rolayne Ailts Wiest John Smith		u June 2002.
15	Karen Cremer Kelly Frazier	15	
16	Greg Rislov Mary Healy	16	
17	Harlan Best Keith Senger	17	
18	Dave Jacobson Michele Farris	18	Cheri McComsey Wittler, Notary Public and
19	Heather Forney Mary Giddings	19	Registered Professional Reporter
20	Sue Cichos Debra Elofson	20 21	
21		22	
22		23	
23		24	
24	Reported By Cheri McComsey Wittler, RPR	25	
25			
	62		
1	CHAIRMAN BURG: TC02-035, In The		
2	Matter of the Filing For Approval of an Amendment	ļ	
3	to an Interconnection Agreement Between Qwest		
4	Corporation and Midwest Wireless Communications,		
5	LLC and Switch 2000 LLC.		
6	Today shall the Commission approve the		
7	proposed amendment.		
8	Anything from Qwest on that amendment? Kelly.		
9	MR. FRAZIER: This appears to be a		
10	standard amendment, Commissioners, and was properly		
11	filed, the proper time frame has passed, there's		
12	been no intervention, and I would recommend		
13	approval.	1	
14	COMMISSIONER NELSON: I would move		
15	that the Commission approve the proposed amendment		
16	in the tariff agreement requested in TC02-035.	1	
17	COMMISSIONER SAHR: Second.	1	
18	CHAIRMAN BURG: Concur.		
19			
20			
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PRECISION REPORTING, LTD.

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			63
1	STATE OF SOUTH DAKOTA	)	
2		:SS	CERTIFICATE
3	COUNTY OF HUGHES	)	
4			
5	I, CHERI MC	COMSEY WITTLER, a	Registered
6	Professional Reporter	and Notary Public	in and for the
7	State of South Dakota	:	
8	DO HEREBY C	ERTIFY that as the	duly-appointed
9	shorthand reporter, I	took in shorthand	the proceedings
10	had in the above-enti	tled matter on the	13th day of
11	June 2002, and that t	he attached is a t	rue and
12	correct transcription	of the proceeding	s so taken.
13	Dated at Pi	erre, South Dakota	this 25th day
14	of June 2002.		
15			
16			
17	(	Their Mc Con	Marcine 1
18		heri McComsey Witt otary Public and	
19		egistered Professi	onal Reporter
20			
21			
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23			
24			
25			

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