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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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IN THE MATTER OF THE APPLICATION
OF QWEST CORPORATION TO RECLASSIFY
LOCAL EXCHANGE SERVICES AS FULLY
COMPETITIVE

TC03-057

ORIGINAL

= = = = =

Transcript of Proceedings
August 4, 2003

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BEFORE THE PUBLIC UTILITIES COMMISSION,
ROBERT SAHR, CHAIRMAN
GARY HANSON, VICE CHAIRMAN (by telephone)

COMMISSION STAFF

Rolayne Ailts Wiest
John J. Smith
Karen Cremer
Kelly Frazier
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Tina Douglas
Bonnie Bjork
Pam Bonrud

APPEARANCES

Brett Koenecke
Darla Rogers

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING

L I M I T E D

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2 OF THE STATE OF SOUTH DAKOTA
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6 OF QWEST CORPORATION TO RECLASSIFY
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33 APPEARANCES
34
35 Brett Koenecke
36 Darla Rogers
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38 Reported By Cheri McComsey Wittler, RPR

1 APPEARANCES BY TELEPHONE
2
3 David Saville
4 Susan Travis
5 Tom Welk
6 Larry Toll
7 Ben Dickens
8 Matthew McCaulley
9 Cindy Grosvenor
10 Wendell Aanerud
11 Mary Lohnes
12 Tom Simmons
13 John Coleman
14 Kyle White
15 Doug Eidahl
16 Christi Dewitt
17 John Burke
18 Tim Goodwin
19
20 =====
21
22 The following is a TRANSCRIPT OF PROCEEDINGS,
23 held in the above-entitled matter, at the South Dakota
24 State Capitol, Room 412, 500 East Capitol Avenue,
25 Pierre, South Dakota, on the 4th day of August 2003,
26 commencing at 2:30 p.m.
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1 CHAIRMAN SAHR: TC03-057, In the
2 Matter of the Application of Qwest Corporation to
3 Reclassify Local Exchange Services as Fully
4 Competitive. And the question today is shall the
5 Commission grant Qwest's motion to strike and
6 exclude testimony?
7 Mr. Welk.
8 MR. WELK: Mr. Goodwin is going to
9 argue the motion, Mr. Chairman.
10 CHAIRMAN SAHR: Mr. Goodwin.
11 MR. GOODWIN: Thank you,
12 Mr. Chairman. I don't think I announced my
13 attendance on the call earlier so I certainly
14 understand.
15 CHAIRMAN SAHR: It may have been
16 hard to get a word in edgewise.
17 MR. GOODWIN: There were a few
18 opportunities. Be that as it may, I will proceed.
19 I won't go over each witness with each
20 testimony in connection with the motion that we've
21 filed. I'll leave that for the Commission to
22 review.
23 Also we have received only two responses to
24 our motion, and that is from Black Hills and also
25 from WorldCom or MCI. Neither of those responses

1 actually contested, at least with respect to what I
2 would call the irrelevant testimony or what they
3 have called the public interest testimony. They
4 have not argued that the testimony that we have
5 identified in the motion actually applies to
6 statutory criteria. They just say it's relevant
7 anyway.
8 So we'll address the principle of the motion
9 rather than the specifics because there's no
10 specific testimony that they've pointed out that
11 this is relevant for this reason because it applies
12 to this statutory criteria.
13 What their responses were focused on in terms
14 of the substantive identification of the testimony
15 is on our price squeeze issue, and I'll address
16 that first.
17 In relation to both issues of price squeeze
18 and relevance, our argument is based on the fact
19 that this statute exclusively lists the criteria.
20 It doesn't say this is 49-31-3.2 and the criteria
21 are listed in a mandatory fashion. It doesn't say
22 the Commission may consider among other factors or
23 shall consider among other things and then list
24 five factors.
25 The language is very clear, that the

Commission in determining how telecommunication service is to be classified "shall consider" and then the five factors are listed. There's no additional criteria or an option for additional criteria to be listed.

Moreover, the statute does not permit any conditions to be placed on the granting of a certificate -- or, excuse me, of the application for fully competitive service.

What it does say in the first sentence of 49-31-3.2, it says, "The Commission, after Notice of Hearing shall waive," and again that's mandatory language, "eliminate, or modify any of its rules or orders affecting telecommunications services if it finds that a telecommunication service is a fully competitive service."

That can only mean one thing if you give effect to every word of that statute, and that is that after an application such as Qwest in this proceeding is acted upon and granted, if that's the end result, then there is a mandatory set of actions that the Commission must take then to make sure that its orders are consistent with its classification as fully competitive. It does not permit, as WorldCom's response would seem to

suggest, that there can be additional orders or additional conditions or additional modifications in a forward looking manner to any order of the Commission.

Now that has relevance in terms of the price squeeze in that that is the recommended solution by Mr. Stacey who testifies on behalf of several of the interveners in this case. And to a certain extent Mr. Best, who has testified on behalf of that.

They argue that, well, there should be a condition placed on Qwest in that it should not be allowed to price below a certain floor. Mr. Stacey articulates this is a price squeeze. We've gone through this and submitted discovery to find out, well, what is the revenue part of this. Because the price squeeze is how much does the wholesale unit of services, whether that's true UNEs or UNE-Ps or some combination of UNEs and facilities, whether that cost that Qwest charges is greater than the revenue that could be generated from the purchase of those services by CLECs.

Now in Black Hills' response it's very telling because they simplify it down to just Qwest's wholesale price versus Qwest's retail price. And

they said that's how the price squeeze would exist, and they say on the second page of their response this is because CLECs could not set a competitive retail rate without losing money on each customer.

I think it's fairly axiomatic whether they lose money on each customer is dependent upon their whole revenue picture. And, indeed, there is no single rate equivalent on the retail side to the wholesale products of UNE, whether those are aggregated in the limited portion or whether you have the UNE-P platform.

I mean, at the initial level you have a choice of whether you supply using those UNE products, either 1-FR or 1-FB type services. In addition, once those are purchased and once those network elements are purchased and a CLEC has a retail customer, they get access revenue. That's both originating and terminating access.

In addition, they can sell features associated with the switching, such as custom calling, call forwarding, call return, caller ID. Moreover, it provides a platform, if you will, for the CLEC to sell additional services that aren't necessarily local exchange services, but they have a greater opportunity in platform to sell those, like voice

mail and toll, if it's associated -- if the CLEC is associated with an interexchange carrier.

Like, for example, MCI -- one of the interveners is WorldCom -- does have a toll provider so they have the opportunity to gain that revenue as well. So you can't line it up one for another. And that's why when the witnesses talk about price squeeze testimony the revenue question is so important.

And we've been through this on the discovery side. WorldCom's response is, well, we've responded to all the discovery. Now that's a little bit disingenuous, and part of that is because, I think, of mistake of mind. And, that is, we never sent WorldCom that precise and disputed discovery request on the price squeeze issues that we dealt with the last time we were before the Commission on this matter.

That doesn't change -- the fact that they didn't get those discovery requests and didn't object to them is really of no moment because the reason we object to that testimony on price squeeze is because there is no foundation for it because we don't have this additional evidence of any of the revenue side of the price squeeze argument.

1 And so whether they received these discovery
2 requests, responded to them, objected to them or
3 not, they don't have foundation for that testimony.

4 Now on the public interest or irrelevant type
5 of testimony that we have identified throughout,
6 and this is largely categorized by the testimony
7 that says, well, Qwest doesn't take advantage of
8 the current regulatory freedoms that it has, Qwest
9 isn't investing enough in the exchanges that we
10 serve, Qwest doesn't have good service, those types
11 of complaints that are littered throughout the
12 intervenor's testimony.

13 And if you look at the factors, there's five
14 and specific limited factors which the Commission
15 may -- or shall consider, and no more may they
16 consider in responding and valuating Qwest's
17 application. We filed this motion to limit the
18 hearing, and we don't want to spend four days on
19 listening to this additional testimony when it
20 doesn't help the Commission any. It doesn't
21 advance the ball any towards getting the Commission
22 where it needs to in relation to these five --
23 (Inaudible).

24 So we ask that the Commission examine the
25 testimony that we've referenced and the arguments

1 that we've made and exclude the testimony that
2 doesn't relate to the statutory criteria and
3 exclude also the price squeeze testimony because
4 not only does it not relate to statutory criteria
5 but it is unsupported by adequate foundation.

6 Now one thing I'd like to clear up before I
7 turn the argument over to my opponents is that
8 Mr. Evans noted that there was a mistake, I guess,
9 in the designation of Mr. White's testimony in
10 Appendix A, which we attached to the motion, which
11 identified the summary of the testimony we seek to
12 exclude.

13 And he is correct because the third set of
14 testimony that we seek to exclude is identified as
15 pages 13, line 8 through 14, line 16, and that
16 should begin at page 13, line 18, not 8. So there
17 should be a 1 in front of that 8. So it should
18 read from 13, line 18 to page 14, line 16.

19 And with that clarification, I have nothing
20 further.

21 CHAIRMAN SAHR: Thank you. MCI
22 WorldCom.

23 MS. TRAVIS: This is Susan Travis
24 and Tom Dixon couldn't be here today so I kind of
25 disagree with what Qwest is saying. Qwest and

1 staff brought up the public interest argument, and
2 public interest is really an undefined -- it's a
3 broad area. So we feel like we are entitled to
4 respond to their public interest statements.

5 As far as having the price squeeze, we feel
6 like price squeeze is important and it's relevant
7 in this case. It's because of Qwest's market power
8 and how the market may hold prices close to cost,
9 which is part of the criteria that was listed in
10 the statute.

11 And on the additional conditions we feel like
12 Mr. Gates and Mr. Best's recommendations and
13 modifications to the rules and orders that the
14 Commission could choose is relevant to this because
15 the Commission has the power to grant Qwest's
16 application.

17 So I feel like because that question in the
18 discovery was not presented to WorldCom, we should
19 be able to submit our testimony and have it heard,
20 even though other companies, I guess, did not
21 respond to that.

22 CHAIRMAN SAHR: Thank you. And,
23 Ms. Travis, I should also note that Brett Koenecke
24 is here in Pierre, and I don't know -- are you
25 appearing on behalf of MCI WorldCom?

1 MR. KOENECKE: I had planned on it,
2 but I don't know that I need to any longer,
3 Mr. Chairman. Thank you.

4 CHAIRMAN SAHR: Thank you.
5 Black Hills.

6 MR. WHITE: Yes, Mr. Chairman. This
7 is Kyle White. Linn Evans is not able to join us
8 today. I'd like to have the opportunity to visit
9 about the issues before us.

10 Is that acceptable?

11 CHAIRMAN SAHR: Why don't you go
12 ahead.

13 MR. WHITE: Okay. With regards to
14 the issue of price squeeze, we did point out that
15 we believe the price squeeze issue is simply
16 defined as the difference between the wholesale
17 price that is available for these competitive -- or
18 these local exchange services versus the Qwest
19 retail price.

20 And we believe that it should not be dependent
21 upon a competitor's ability to be competitive based
22 solely upon their ability to market and attract
23 customers for services that have already been
24 defined fully competitive by the Commission today
25 including with -- (Inaudible) -- access services,

1 voice mail, caller ID, and other features.

2 The issue really before the Commission is can
3 these services, these local exchange services, be
4 defined as fully competitive and will there be
5 price squeeze, thrift, associated with Qwest having
6 their application granted.

7 In relation to my testimony, what I have
8 attempted to do is to recognize for the Commission
9 that there are really two definitions in the
10 statute. Unfortunately, I don't have those before
11 me.

12 But Qwest is relying solely on the definition
13 of fully competitive services. But my recollection
14 is that in the definition of noncompetitive
15 services there is a provision that says they may be
16 those services that are such that they require
17 continued regulations, and it was the --
18 (Inaudible).

19 So that's why I provided testimony with
20 regards to the characteristics of Qwest's behavior
21 in other jurisdictions and also a recognition that
22 these are essential services for customers in the
23 State of South Dakota. Qwest has been in monopoly
24 position.

25 So I believe the question the Commission has

1 before it is a two-part question, one, is there
2 competition that exists; two, even if that
3 competition exists, are these services ones that do
4 not require regulation.

5 So that's basically our position. We would
6 request that the Commission not approve Qwest's
7 petition.

8 CHAIRMAN SAHR: Thank you. Staff.

9 MS. CREMER: Thank you. The
10 Commission's mandate is found in both statute and
11 case law, and that's the protection of public
12 interest. So I believe that even if Qwest had not
13 injected the public interest argument into this
14 matter, that the Commission was to always consider
15 public interest. And I believe WorldCom addresses
16 that very well in their brief.

17 Mr. Best's recommendation should not be
18 stricken, and he should be allowed to testify as to
19 his recommendation as he is an expert witness. His
20 recommendation is based upon his education and
21 experience. Qwest can always cross-examine
22 Mr. Best as to the basis of his recommendations so
23 there's no prejudice to them. The Commission need
24 only give it the weight they feel it deserves.

25 We believe that the Commission should deny

1 Qwest's motion.

2 CHAIRMAN SAHR: Thank you.

3 MR. GOODWIN: Mr. Chairman,
4 Mr. Goodwin, if I might have a little rebuttal.

5 CHAIRMAN SAHR: Yes. You bet. Go
6 ahead.

7 MR. GOODWIN: Some of the
8 interveners as well as staff have raised the issue
9 of this public interest. Now first it's not a
10 statutory criteria of the Commission's regulations
11 to require an application for classification as
12 fully competitive to include a statement as to why
13 the granting of the application would be in the
14 public interest.

15 Now I would argue that that requirement was
16 met in this case for the application, but just
17 because it is required to be contained in the
18 application, does not mean it is relevant -- those
19 kinds of criteria are relevant to the determination
20 by the -- (Inaudible).

21 CHAIRMAN SAHR: Mr. Goodwin, if you
22 can hear us, we can't hear you. Mr. Goodwin, we
23 lost you there.

24 MR. GOODWIN: Okay. I'll try to
25 pick up where I think I was when the noise began.

1 CHAIRMAN SAHR: Rewind about a half
2 a minute.

3 MR. GOODWIN: Okay. We're not
4 trying to argue, nor would we ever, that the
5 Commission should grant our application even if it
6 were established to be against the public interest.
7 But I think the statutory criteria defined the
8 public interest in this case.

9 Moreover, a lot of this testimony as to
10 whether, you know, Qwest -- what Qwest's behavior's
11 been in other jurisdictions, the DSL testimony,
12 whether they take advantage of existing
13 regulations, et cetera, is irrelevant even to the
14 so-called public interest criteria, which we
15 believe is extra statutory and outside the criteria
16 that you are supposed to apply in this case.

17 So in summary we think the statutory criteria
18 established how the Commission is supposed to
19 evaluate the public interest in this case.

20 CHAIRMAN SAHR: Thank you.

21 Mr. Eidahl, I only skipped you because you hadn't
22 filed a response, but did you want to comment?

23 MR. EIDAH: Actually Darla Rogers
24 will be responding for us on this matter.

25 CHAIRMAN SAHR: The same thing would

1 go for Darla, and I think we have Matt McCaulley on
2 the line as well. At this point I would give
3 either one of you the chance to respond.

4 MR. MCCAULLEY: Mr. Chairman, this
5 is Matt McCaulley. If I could have just a brief
6 moment or two.

7 CHAIRMAN SAHR: Yes. Go ahead.

8 MR. MCCAULLEY: Prairie Wave did not
9 submit a brief. We feel this issue has been
10 adequately briefed by Black Hills and MCI WorldCom
11 so we'd just like to join in the arguments they set
12 forth in those briefs. And just one -- as I see
13 it, one of the core issues here as staff has
14 pointed out is whether or not the Commission is
15 solely limited to those five factors set forth in
16 the Subsection 3.2.

17 I'll just point out, Mr. Chairman, members of
18 the Commission, the statute says "shall consider"
19 but it does not say shall only consider or shall
20 exclusively consider, and if I believe the
21 legislature wanted the Commission to only consider
22 those five factors, exclusive of everything else,
23 the legislature would have said so.

24 So I think interpreting or looking at 3.2 in
25 the whole scheme of the regulatory authority given

1 to the Public Utilities Commission, certainly the
2 public interest can be considered, and I think at
3 least as to Prairie Wave and the testimony that
4 Qwest seeks to strike certainly is relevant under
5 the public interest part of the analysis of this.

6 So Prairie Wave would also ask that Qwest's
7 motion to strike be denied as to Prairie Wave.
8 Thank you, Mr. Chairman.

9 CHAIRMAN SAHR: Thank you.
10 Ms. Rogers or Mr. Koenecke.

11 MR. KOENECKE: Thank you,
12 Mr. Chairman. I should respond on behalf of
13 Midcontinent as well as perhaps WorldCom.
14 Midcontinent is one of the targets of this motion
15 as well.

16 I'm a little bit struck here. I feel like
17 Qwest is like the guy who runs an ad in the paper
18 saying I was liabled in last week's paper and half
19 of the people who didn't see it the first time now
20 have seen it the second time. We've spent perhaps
21 an inordinate amount of time on this testimony.

22 I think the Commission not only should
23 consider, as Mr. McCaulley said, but I think it has
24 to consider the public interest. I don't think
25 that the description of the five factors as being

1 limiting and restrictive that the Commission can
2 only consider those factors is the correct reading
3 of this statute at all.

4 And, finally, I think the Commission should
5 and will give the testimony that's sought to be
6 stricken here the weight which it deserves. The
7 question goes more to weight than relevancy. The
8 weight is there. It's been offered substantially,
9 and we think that the testimony sought to be
10 stricken here should be considered for those
11 reasons. Thank you.

12 CHAIRMAN SAHR: Thank you.

13 Ms. Rogers.

14 MS. ROGERS: Thank you, Chairman
15 Sahr. I concur with the comments that already have
16 been made. I too do not construe 49-31-3.2 to be
17 as limiting as Qwest is arguing in this case.

18 The Public Utilities Commission is a public
19 body charged with looking after the public interest
20 of all the citizens of South Dakota. And I think
21 that you can never turn your back on that duty, and
22 I don't think that the list in that particular
23 statutory section would ever take away your ability
24 to always consider public interest.

25 I would also concur that I think you have the

1 full ability to give the testimony as it comes in
2 the weight that it deserves, and if you believe it
3 does not go to any of the issues in the docket, you
4 can certainly disregard it. But I think you have
5 that discretion, and I think that Qwest's motion
6 should be denied. Thank you.

7 CHAIRMAN SAHR: Thank you. Did I
8 miss anybody else? Thank you.

9 Mr. Goodwin, I just have a couple of questions
10 for you. And the first one would be what some of
11 the other parties have raised is a question of
12 "shall consider" under 49-31-3.2.

13 What makes you think that that's an exclusive
14 list and that the Commission could not consider
15 other factors, and particularly in light of the
16 fact that there are three categories where service
17 could be classified, noncompetitive, emerging, and
18 fully competitive?

19 MR. GOODWIN: Certainly. I think
20 that the other two categories -- or, I guess, the
21 emerging competitive is really combined into 3.2,
22 but the noncompetitive criteria are not before no
23 application to have this service classified as
24 noncompetitive.

25 Moreover, specifically looking at the

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1 language, I think if the legislature wanted to say
2 this was not an exclusive list, they would not have
3 used mandatory language. In other words, there's
4 so many other phrases that could easily have been
5 used, for example, may consider among other things
6 or shall consider among other things, but none of
7 those are listed here. It is "shall consider"
8 standing by its self and then five factors.

9 If those alternate wordings could have been
10 inserted into the statute, we believe that the
11 legislature intended those five factors to be
12 controlling here. And the issue of noncompetitive
13 is not really joined in this case, although
14 certainly as we've always argued, that's always on
15 the table. If we are deemed fully competitive, the
16 Commission can come back and say we think now after
17 certain events or certain facts have changed that
18 we need to revisit that, those factors would be
19 applied at that time and not at this time.

20 The division between the two types of
21 applications and proceedings are made clear by the
22 fact that the criteria are for the two separate
23 sets of applications or proceedings.

24 CHAIRMAN SAHR: Just a follow-up
25 question on that. If someone were able to come in

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1 and prove that either the entire state or certain
2 markets were noncompetitive, wouldn't that be
3 relative to whether or not it was fully
4 competitive?

5 It's a bit of a Catch-22, isn't it? Why isn't
6 making sure that the services are properly
7 classified -- and looking at all three categories,
8 I don't see how that would be nonrelevant because
9 if someone could come in and show that there's
10 areas or the entire state was noncompetitive, I
11 think they could make a pretty good case that it
12 shouldn't be fully competitive.

13 MR. GOODWIN: Two parts,
14 Mr. Chairman. First is that I think there's a new
15 issue here, and one that you've kind of
16 interjected, and that's on an exchange-by-exchange
17 basis. And perhaps that's an issue for another
18 time, but I don't think either of the statutes
19 permit a classification on an exchange-by-exchange
20 basis.

21 But be that as it may, those issues may be
22 somewhat in play. However, I think we have to deal
23 with the statute as it is sitting before us. And
24 the statute that's sitting before us is a well
25 considered statute and a scheme considered by the

23

legislature, and I think we should follow it.

CHAIRMAN SAHR: Thank you. And then
just one more follow-up question is a number of the
parties have argued that even if this evidence were
allowed to come into play, that Qwest could always
argue relevancy or have some other objection.

What harm would you see to letting the
evidence come in and then having the parties --
other parties be able to argue or make whatever --
or allow Qwest then to make an objection to that?

MR. GOODWIN: I think the harm is
just that it's essentially futile and wastes the
Commission's time and all the parties' time. When
we have four days set up for these hearings next
week, and I think we should make every effort to
conserve that time and make sure that it is spent
on matters that are going to ultimately inform and
assist the Commission's consideration of the
application, and to the extent that we're talking
about extraneous matters, that's just not time well
spent, regardless if the testimony is just totally
discounted, as we believe that it should be.

If it's going to end up being totally
discounted, why not have it discounted in advance
so that our time spent at the hearing is more

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efficiently spent on the key criteria that the
Commission will be using to evaluate the
application.

CHAIRMAN SAHR: Thank you. Vice
Chairman Hanson, do you have any questions?

VICE CHAIR HANSON: I might have
some comments when you're ready for a motion, but,
no, I don't have any questions.

CHAIRMAN SAHR: Any questions from
counsel?

MR. SMITH: No.

CHAIRMAN SAHR: I think the issue is
an important one and one that I'd like to have a
little more time to reflect upon. So my motion
would be to take this under advisement, and
especially considering that we do not have one of
the Commissioners present, I certainly would like
to give him the opportunity to review the record
and participate in this issue as well.

So at this point in time my motion would be to
take the matter under advisement and to rule on it
at a later date.

VICE CHAIR HANSON: Chairman Sahr,
my inclination -- I will certainly second that. My
inclination right now, and I'll reflect with you on

1 any additional information -- discussion that you
2 wish to have with the information that we have
3 looked at up to this juncture.

4 My inclination is to support Qwest's motion to
5 strike and to exclude testimony. I'm a bit
6 frustrated with the duration of this and the
7 difficulty of getting to the meat of the issue and
8 deciding the meat of the issue.

9 Certainly it appears to me, at least
10 regardless of the avenue that we take, everyone
11 will have and has had adequate opportunity to
12 provide the Commission with information we need to
13 make a proper decision.

14 And as much as I get frustrated with red tape
15 and bureaucracy, I don't want to become part of --
16 I don't want the PUC to be viewed certainly and I
17 don't want to have the brakes on as a Commission as
18 we thoughtfully examine the issues.

19 And as much as that may appear to be the case
20 at times, certainly the parties -- and I don't mean
21 to give an attorney joke here, but certainly the
22 attorneys and the parties are assisting the PUC in
23 every effort of not being dilatory but certainly
24 drawing things out to the extent that it's
25 extremely difficult to get to the meat of the issue

1 and to decide what ultimately needs to be decided.

2 So I'll look forward to a decision and to
3 moving along more quickly here. And certainly,
4 Mr. Chairman, that's no reflection on you
5 whatsoever. The concern I have is that we have
6 second motions for protective orders, we have just
7 one order -- request after the next and
8 stipulations and motions to strike and on and on
9 and on.

10 It just gets to a point where we stack so many
11 things on top of each other I'm a bit frustrated,
12 and I perhaps am frustrated with the parties more
13 than anything else here. Thank you, Mr. Chairman.

14 CHAIRMAN SAHR: Thank you. And that
15 was a second; is that correct?

16 VICE CHAIR HANSON: That's correct.

17 CHAIRMAN SAHR: Thank you. And I
18 should note that I don't believe that anything that
19 would be related to this either by Qwest or by the
20 other parties is anything that should delay the
21 hearing or cause any undue hardship.

22 I think basically all we're figuring out is
23 what gets put on the scales of justice and what
24 weight's going to be given to that. So I don't
25 think there should be anything that should affect

1 the ability for the Commission to go forward and
2 handle this in a speedy manner. I think it's just
3 one additional motion that we need to look at,
4 consider, and take care of one or the other before
5 hearing.

6 MS. CREMER: If I may, this
7 is Karen Cremer.

8 CHAIRMAN SAHR: Yes.

9 MS. CREMER: I do know WorldCom,
10 when I spoke to them, their witnesses are coming
11 from out of state so they need to make travel
12 arrangements for Mr. Stacey and Mr. Gates.

13 Do you know when you were going to be issuing
14 that decision? The hearing begins next Tuesday.

15 CHAIRMAN SAHR: I assume their
16 witnesses are coming -- are they coming either way?

17 MS. CREMER: No. I believe if you
18 struck their testimony or large portions of it, you
19 know, there was going to be -- that, I don't know.

20 I do know in talking to them there was some
21 issue about who would come, both -- you know, there
22 would be that. So that was the only thing that I
23 was wondering, if you knew when.

24 CHAIRMAN SAHR: Well, I appreciate
25 that being brought to our attention and we

1 certainly are always appreciative of people's
2 travel schedules. At the same time, we need to
3 move forward in an appropriate manner, and I think
4 it's something where we do need to reflect on this
5 and take it under advisement.

6 And certainly I think from the oral arguments
7 today that we've got a little bit more information
8 to act on. So while I appreciate that, I can't
9 without talking to the other Commissioners say when
10 this will be taken care of. I'm sure we'll move as
11 quickly as possible. So we'll keep that in mind.

12 Anything else?

13 (The hearing concluded at 3:05 p.m.)
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1 STATE OF SOUTH DAKOTA)
2 :SS CERTIFICATE
3 COUNTY OF HUGHES)
4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 4th day of
11 August 2003, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 6th day
14 of August 2003.

15
16
17
18 _____
19 Cheri McComsey Wittler,
 Notary Public and
 Registered Professional Reporter
20
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22
23
24
25

1 STATE OF SOUTH DAKOTA)

2 :SS

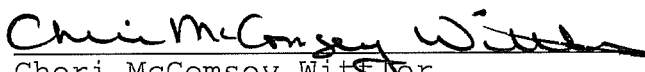
CERTIFICATE

3 COUNTY OF HUGHES)

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6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:

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11 August 2003, and that the attached is a true and
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14 of August 2003.

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16
17 
18 Cheri McComsey Wittler,
19 Notary Public and
Registered Professional Reporter

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