

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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OCT 25 2004

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF PETITIONS FOR  
SUSPENSION OR MODIFICATION OF  
47 U.S.C. SECTION 251(B)(2) OF  
THE COMMUNICATIONS ACT OF 1934  
AS AMENDED IN DOCKETS TC04-025,  
TC04-038, TC04-044, TC04-045,  
TC04-046, TC04-047, TC04-048,  
TC04-049, TC04-050, TC04-051,  
TC04-052, TC04-053, TC04-054,  
TC04-055, TC04-056, TC04-060,  
TC04-061, TC04-062, AND TC04-084

**ORIGINAL**

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Transcript of Proceedings  
September 22, 2004

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

COMMISSION STAFF  
Rolayne Ailts Wiest  
John Smith  
Sara B. Harens  
Harlan Best  
Pam Bonrud

APPEARANCES

Darla Pollman Rogers, Petitioners  
Richard Coit, SDTA

Reported By Cheri McComsey Wittler, RPR, CRR

**PRECISION REPORTING**  
**L I M I T E D**

APPEARANCES BY TELEPHONE

- Mary Lohnes
- Denny Law
- Pat Mastel
- Mary Sisak
- Jerry Heiberger
- Joe Schuele
- Talbot Wieczorek
- Doug Eidahl
- Jim Adkins

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TRANSCRIPT OF PROCEEDINGS, held in the  
 above-entitled matter, at the South Dakota State  
 Capitol, Cactus Conference Room, 500 East Capitol  
 Avenue, Pierre, South Dakota, on the 22nd day of  
 September 2004, commencing at 11:30 a.m.

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1 CHAIRMAN SAHR: It is Wednesday,  
2 September 22, 2004 at approximately 11:30 a.m., and  
3 this is the time for the South Dakota Public  
4 Utilities Commission Meeting, and we have one item  
5 on our agenda for this ad hoc meeting.

6 Here in Pierre at the PUC offices are  
7 Commissioner Jim Burg and myself, Chairman  
8 Bob Sahr, and joining us via telephone is  
9 Commissioner and Vice Chairman, Gary Hanson. So we  
10 have all three Commissioners present.

11 (Discussion off the record)

12 CHAIRMAN SAHR: Why don't we go  
13 ahead and ask the counsels to indicate that they  
14 are -- if they're here -- I guess if they're here,  
15 they're here, but to indicate who they're  
16 representing. And we'll start here in Pierre.

17 MS. POLLMAN ROGERS: Darla Rogers,  
18 and I am representing all of the Petitioners with  
19 the exception of Santel.

20 Mr. Coit: Richard Coit,  
21 representing SDTA.

22 MS. WIEST: Rolayne Wiest,  
23 representing staff.

24 CHAIRMAN SAHR: And then on the  
25 phone line, Mary Lohnes, you're not an attorney,

1 but you're there on behalf of Midcontinent?

2 MS. LOHNES: Correct.

3 CHAIRMAN SAHR: Ms. Sisak and  
4 Mr. Dickens.

5 MR. DICKENS: We're representing,  
6 Mr. Chairman, the parties along with Ms. Rogers and  
7 additionally the City of Brookings.

8 CHAIRMAN SAHR: Thank you.  
9 Mr. Wieczorek.

10 MR. WIECZOREK: I am here on behalf  
11 of Western Wireless, Mr. Chair.

12 CHAIRMAN SAHR: And do we have  
13 anyone else representing any of the parties?

14 COMMISSIONER BURG: No  
15 representative for Santel?

16 MR. SMITH: Ben Dickens. Also I'd  
17 note that Jim Adkins, you're on the phone as well.

18 MR. ADKINS: Yes, I am.

19 MS. POLLMAN ROGERS: He's from  
20 Brookings. I did not call Jeff Larson, but I'm  
21 sure I would be authorized to appear on behalf of  
22 Santel as well.

23 CHAIRMAN SAHR: Okay. And I  
24 apologize if that was a bit cumbersome, but I think  
25 we do need it noted in the record. The first and

1           only item on the agenda is the Matter of the  
2           Petitions for Suspension or Modification of  
3           47 U.S.C. Section 251(b)(2) of the Communications  
4           Act of 1934 as Amended in Dockets TC04-025, 038,  
5           044, 045, 046, 047, 048, 049, 050, 051, 052, 053,  
6           054, 055, 056, 060, 061, 062, and 084.

7           And the question today is what is the  
8           Commission's decision in these Dockets. And I have  
9           a Motion, and I will warn everyone that it's a  
10          little bit lengthy. I'm going to go ahead and read  
11          that.

12          I move that in each of the LNP Dockets we  
13          grant a suspension pursuant to SDCL 49-31-80 and  
14          47 U.S.C. Section 251(f)(2) of the requirements  
15          imposed by 47 U.S.C. Section 251(b)(2),  
16          SDCL 49-31-81, and the FCC's implementing rules and  
17          orders on each of the Petitioner rural local  
18          exchange carriers to provide intramodal local  
19          number portability to requesting wireline carriers  
20          until the later of December 31, 2005 or until six  
21          months after a bona fide request for LNP has been  
22          received by the local exchange carrier.

23          Specifically this Motion applies to suspend  
24          intramodel LNP obligations for the Petitioners in  
25          Docket Nos. TC04-025, TC04-038, TC04-044 through

1 056, TC04-060 through 062, and TC04-084.

2 With respect to the Dockets in which  
3 Midcontinent Communications intervened and has not  
4 withdrawn, I further move as follows: In Docket  
5 No. TC04-054 Interstate Telecommunications  
6 Cooperative, Inc. shall continue to provide LNP on  
7 an interim basis to Midco in the Webster Exchange  
8 throughout the suspension period employing one or  
9 more transitional number portability measures as  
10 defined in the settlement agreement filed in  
11 Docket No. TC03-192 or such other method to which  
12 the parties shall agree.

13 ITC shall provide such interim LNP to Midco in  
14 the Waubay Exchange when Midco has established a  
15 direct trunk connection with ITC in the Waubay  
16 Exchange and an Interconnection Agreement has  
17 become effective between the parties either through  
18 mutual agreement or arbitration. ITC and Midco  
19 shall also proceed with negotiations in good faith  
20 in accordance with their existing Interconnection  
21 Agreement regarding whether an economically  
22 reasonable solution that conforms to  
23 47 C.F.R. 52.23(a) can be found for implementing  
24 local number portability on a permanent basis in  
25 the Webster and Waubay Exchanges following

1 December 31, 2005.

2 With respect to Dockets Nos. TC04-038,  
3 TC04-044, TC04-050, TC04-051, TC04-055, and 04-060,  
4 the remaining dockets in which Midco remains an  
5 intervening party, Midco is not presently certified  
6 to provide local exchanges services within the  
7 territory of the Petitioner rural LECs. At such  
8 time as Midco applies for a Certificate of  
9 Authority to provide local exchange services in  
10 such areas Midco may also petition the Commission  
11 for a lifting of the suspension with respect to  
12 interim intramodal number portability and the  
13 Commission will consider such requests in  
14 connection with its actions on the application for  
15 Certificate of Authority.

16 Lastly, I'd like to offer some thoughts on  
17 this Motion and the action we took earlier with  
18 respect to intermodal LNP. First, I want to  
19 emphasize that a key factor for me in deciding to  
20 grant suspensions through December 31, 2005 is the  
21 importance placed by both federal and state law and  
22 by this Commission on maintaining universal  
23 service. This means maintaining critically  
24 important essential service in high-cost  
25 low-population density areas served by the rural

1 local exchange carriers in South Dakota.

2 Maintaining this universal service to our  
3 rural residents simply takes precedent over the  
4 competition or any nonessential services such as  
5 LNP. I think this is reflected in  
6 Chairman Powell's letter to NARUC emphasizing that  
7 State Commissions exercise their authority  
8 carefully to protect the small rural LECs.

9 A second important factor for me was the  
10 evidence demonstrating the significant  
11 uncertainties that still attend LNP implementation.  
12 These include the unresolved regulatory issues of  
13 responsibility for transport, routing, and rating  
14 issues and porting interval. Other uncertainties  
15 include whether significant demand for LNP will  
16 really be demonstrated in rural areas, whether LNP  
17 is really a pivotal factor in affecting the  
18 customer's purchasing decision for an alternative  
19 service and cost issues. It is my hope that a  
20 substantial measure of additional clarity will be  
21 forthcoming within the next year on these issues.

22 Lastly, I want to emphasize that I at least am  
23 not basing my decision at this point on a firm  
24 conviction that LNP should never be implemented in  
25 rural areas of South Dakota. After we see what





1 happens at the FCC over the next year and after  
2 we've had an opportunity to review the experience  
3 with LNP in areas where it's been implemented,  
4 we'll be in a better position to assess whether the  
5 benefits of LNP to rural residents are likely to  
6 justify the costs of rural telcos and their members  
7 and customers. That is an essential reason  
8 underlying my support for suspension of a finite  
9 duration at which time we can revisit the issue  
10 with hopefully more definite information available  
11 then for us to base a decision on whether the  
12 suspension should be continued for some or all of  
13 the Petitioners.

14 That said, I want to reiterate what I said  
15 when we voted on intermodal LNP. I think it is  
16 important for the parties to continue to explore  
17 whether reasonable and economically justifiable  
18 solutions can be found for LNP implementation at  
19 least in some of the more viable rural service  
20 areas. I also think further thoughts should be  
21 given to a study panel to address the problems in a  
22 structured manner. I'd recommend that the  
23 Commission consider directing the staff to  
24 participate in such a process, and I invite the  
25 parties to these proceedings to initiate

1 discussions to that end with the Executive Director  
2 of the Public Utilities Commission.

3 COMMISSIONER BURG: I'll second the  
4 Motion. I agree with most of the comments that  
5 were made as well. I think that we need to take  
6 this one step at a time. I think we need to do the  
7 interim -- I definitely feel that Midcontinent has  
8 the right to provide the service, but if we can  
9 find an interim method of accomplishing that that  
10 saves money for the companies, that's the way that  
11 we should go, especially until we see how this is  
12 going to evolve.

13 And on the rest of it I believe that we will  
14 see technological improvements. I think we will  
15 see new switch upgrades that will make some of this  
16 possible and that we should take this one step at a  
17 time rather than instigate some huge costs that we  
18 may or may not recover those costs from.

19 VICE CHAIR HANSON: Hanson concurs.

20 CHAIRMAN SAHR: And I want to thank  
21 everyone once again for participating in the  
22 process, and I think the parties really brought a  
23 lot to this. And I want to thank staff also for  
24 their efforts and certainly our General Counsel and  
25 advisers as well.

1           If you have any questions about the Motion,  
2 please don't hesitate to contact our office. It  
3 was quite lengthy, and we may even be able to get  
4 you a copy of it, if you'd like that, or be able to  
5 e-mail it out to everybody. I assume most of the  
6 attorneys were probably taking notes as fast as  
7 they could, and it may be something where a contact  
8 with our office could save you some time in writing  
9 this up and attempting to translate exactly what we  
10 said. So please don't hesitate to contact our  
11 office.

12           And with that, the hearing will be -- or the  
13 meeting will be adjourned, and we can go off the  
14 record.

15                           (The proceedings are concluded)

1 STATE OF SOUTH DAKOTA )

2 :SS

CERTIFICATE

3 COUNTY OF HUGHES )

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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 22nd day of  
11 September 2004, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 25th day  
14 of October 2004.

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