

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING BY
WWC LICENSE CO., INC. D/B/A
CELLULARONE FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS
CARRIER IN OTHER RURAL AREAS

TC03-191

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Transcript of Proceedings
March 15, 2004

ORIGINAL

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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
Karen Cremer
Greg Rislov
Harlan Best
Heather Forney
Pam Bonrud

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MAR 31 2004

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

APPEARANCES
Darla Pollman Rogers
Rich Coit

ALSO PRESENT
Randy Houdek

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
L I M I T E D

APPEARANCES BY TELEPHONE

Ben Dickens
Talbot Wieczorek
James Blundell
Mark Ayotte
Jim Cremer

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the Foss Building,
523 East Capitol Avenue, Pierre, South Dakota, on the
15th day of March 2004, commencing at 3 o'clock p.m.

1 CHAIRMAN SAHR: This is the time and
2 place of the South Dakota Public Utilities
3 Commission Ad Hoc Meeting, In the Matter of the
4 Filing by WWC Holding Company, Inc., Doing Business
5 as Cellular One for Designation as an Eligible
6 Telecommunications Carrier in Other Rural Areas.

7 And the questions today are shall the
8 Commission grant the Intervener's Motion to Compel
9 Discovery and shall the Commission grant the
10 Intervener's Motion to Expand Procedural Schedule.

11 And I am Bob Sahr, Chairman of the Commission,
12 and with me here in Pierre is Jim Burg and on the
13 telephone line from snowy Sioux Falls, South Dakota
14 is Vice Chairman Gary Hanson.

15 I know that the parties had been working and
16 narrowing some of the issues throughout the day,
17 and I guess I will look to one of the Interveners
18 to tell us, I think, both the Interveners' motions
19 and let us know maybe what has been resolved and we
20 can go forward with the parts that haven't reached
21 consensus.

22 MS. ROGERS: If I may lead off,
23 Commissioner Sahr. Can they hear me? My name is
24 Darla Pollman Rogers, and I in conjunction with the
25 other attorneys represent the Interveners in this

1 Docket. I would like to introduce and present with
2 us today either via telephone or in person are
3 James Cremer from Aberdeen, South Dakota. He's
4 representing James Valley. Rich Coit is here
5 today. And he's appearing from SDTA. Ben Dickens
6 is on the line, and he is associated with me in
7 this case and we represent --

8 MR. WIECZOREK: Commissioner Sahr,
9 I'm sorry, I can't hear Ms. Rogers.

10 CHAIRMAN SAHR: I think we have one
11 mike here so we'll move it across the table if
12 someone will be nice enough to help me out here.

13 (Discussion off the record)

14 MS. ROGERS: My name is
15 Darla Pollman Rogers, and for the people on line
16 can you hear me now?

17 MR. WIECZOREK: Yes.

18 MS. ROGERS: I in conjunction with
19 the other attorneys present or on the telephone
20 represent the Interveners in this Docket.
21 James Cremer of Aberdeen is representing
22 James Valley, who's an Intervener. Rich Coit, who
23 is here in person, is representing SDTA.
24 Ben Dickens is associated with me, and he is -- we
25 are representing Golden West, Vivian Venture,

1 Tri-County, and SDTA.

2 A point of clarification for the purposes of
3 today's hearing. There were originally two other
4 intervening parties in this Docket. Intervener
5 Alliance and Split Rock Telephone Company have
6 withdrawn their intervention as individual
7 companies, and I believe that Motion has just been
8 filed.

9 And Intervener West River Telecommunications
10 Cooperative of Hazel, North Dakota will also be
11 filing a Motion to withdraw their individual
12 company intervention. I also represent them. And
13 so I will be filing that Motion on their behalf.

14 Both of these companies continue to support
15 the position and arguments of SDTA of whom both are
16 members.

17 Presenting oral argument today will be
18 Ben Dickens on the Motion to Expand the Procedural
19 Schedule, and James Cremer and myself will also
20 fill in with any additional arguments. And then
21 Rich Coit will present argument first on the Motion
22 to Compel with Mr. Cremer and myself providing
23 follow-up as needed.

24 I don't know that you can really say that we
25 have resolved any of the issues beyond the fact

1 that as Interveners we are clarifying what we are
2 asking the Commission to do today by way of the
3 exact dates. They are different than what was
4 presented in the initial Motion because we didn't
5 really know when this hearing was going to be
6 scheduled.

7 So I will let Mr. Dickens explain that as he
8 proceeds to argue the Motion to expand the
9 procedural schedule. Ben?

10 MR. DICKENS: Yes.

11 MS. ROGERS: We're ready.

12 MR. DICKENS: Okay.

13 MS. ROGERS: That was the hand-off.

14 MR. DICKENS: Thanks so much. Good
15 afternoon, Chairman Sahr and Vice Chairman Hanson
16 and Commissioner Burg.

17 As Ms. Rogers mentioned, I'm going to be
18 arguing the Motion to Expand the Procedural
19 Schedule. Basically, we've asked for the ability
20 to have some additional discovery questions be
21 limited in scope, and we've asked for the ability
22 to address the answers that are raised in those
23 discovery questions and in any supplemental answers
24 that we continue to receive from Western Wireless
25 from the Interrogatories and data requests we've

1 already served and our surrebuttal testimony that
2 is scheduled for later date.

3 And I'll walk through the exact dates that
4 we're requesting after I've covered the reasons
5 that we would like these dates extended.

6 As is set forth, I think, pretty clearly in
7 our Motion to Expand the Procedural Schedule, we're
8 relying on two significant FCC and Joint Board
9 decisions that were issued, one by the FCC and one
10 by the Federal State Joint Board, says the
11 procedural schedule was adopted in this case on
12 February 13.

13 The first is the Virginia Cellular order by
14 which the FCC designated an ETC -- a cellular
15 company for ETC status in Virginia. The second is
16 the Joint Board recommended decision that was
17 issued by three FCC Commissioners and a number of
18 State Commissioners, all of whom serve on the
19 Federal State Joint Board that was convened for the
20 purposes of addressing ETC designations by the
21 state and the FCC and the pretty fast growth that
22 has occurred in the Universal Service Fund.

23 Those orders represent significant changes on
24 FCC law and policy as to competitive ETC
25 designations. They're both directly on point with

1 the work that you have to do in this case and that
2 the parties have to do as well. And I'll address
3 both decisions separately.

4 In Virginia Cellular, the FCC granted in part,
5 as I mentioned earlier, ETC designation to a
6 cellular carrier in Virginia and it denied ETC
7 status to that carrier as well and engaged in a
8 fact-intensive inquiry regarding the existing and
9 future coverage of that wireless carrier and
10 engaged in an inquiry, very fact-specific, on the
11 underlying incumbent LEC's ability to continue to
12 provide service throughout the service area.

13 It found that the ETC designation for the
14 wireless carrier in one area could "potentially
15 undermine the ILEC's ability to serve the entire
16 study area because of a cost and population density
17 examination that the FCC made for the area where
18 the ETC" -- excuse me, "the cellular carrier wanted
19 ETC status." That was paragraph 35 of the Virginia
20 Cellular order.

21 In the Joint Board recommended decision the
22 Federal State Joint Board was composed of three FCC
23 Commissioners, as I mentioned earlier, and State
24 Commissioners. You may recall Commissioner
25 Schoenfelder was the Joint Board member in the past

1 on one of these Joint Boards.

2 The Federal State Joint Board members
3 addressed the explosive growth of the Universal
4 Service Fund that the FCC's been concerned about
5 for some time, due in large part to wireless
6 carriers getting ETC status.

7 There's some language about wireless carriers
8 contributing to the growth of the fund in paragraph
9 67 of the recommended decision.

10 The FCC Joint Board recommended decision found
11 that the State Commissions should, "conduct
12 rigorous reviews of ETC applications, including
13 fact-intensive analysis." It noted that the public
14 interest inquiry by the state should not rely upon
15 "generalized benefit competition."

16 It listed six factors the state should
17 consider as part of the public interest inquiry,
18 their details on page 5 of the Motion to Expand the
19 Procedural Schedule that we filed. I'll go through
20 very briefly.

21 The state should consider the adequacy of
22 financial resources of the ETC applicant. The ETC
23 applicant's commitment to provide supportive
24 services throughout the service area of the
25 incumbent ILECs, the formal build-out plan where

1 the competitive ETC does not have facilities. It
2 should consider the competitive ETC's emergency
3 power resources that it has available. It should
4 examine what consumer protection requirements
5 should be applied or which are offered by a
6 competitive ETC and it should examine -- they
7 should examine the amount of local usage that
8 should be offered.

9 Equally, if not more important, however, the
10 Joint Board recommended that the FCC go to a
11 primary line or a single connection methodology of
12 distributing universal services for -- currently it
13 goes to all lines of the incumbent LEC and the
14 competitive ETC. Because of the growth of the
15 fund, the Joint Board is recommending that only
16 primary lines be eligible for Universal Service
17 funding.

18 That is a very radical change -- if the FCC
19 adopts it, it's a very radical change in the way
20 Universal Service receipts are distributed. It can
21 have profound public policy consequences, and I'll
22 get into that in a minute.

23 In any event, Western Wireless says that
24 neither of these decisions change the public
25 interest inquiry, and they could not be more wrong.

1 It's useful to see how Western Wireless itself
2 characterizes the public interest standard in the
3 role of the FCC before the Virginia Cellular
4 decision was ever issued. In the verified petition
5 they filed in this case that kicks off the Docket,
6 they've got a heading entitled Public Interest
7 Determination Applicable To Rural Telephone Company
8 Areas.

9 And I'm reading beginning on paragraph 13.
10 Paragraph 12 has got a little bit of history in it
11 about prior proceedings. Paragraph 13 begins, "The
12 Commission has determined that the public interest
13 analysis under 47 U.S.C. 214(e)(2)," which is the
14 ETC designation for the statute, "should balance
15 consumer benefits from increased competition
16 against any proven detrimental impact from the
17 preservation and advancement of Universal Service,"
18 and they cite to the Commission's early order.

19 Paragraph 14, "The public interest
20 determination required under Section 214(e) of the
21 Act depends on whether the proposed universal
22 service offering will promote competition, and, if
23 so, whether consumers will ultimately realize
24 benefits related to competition, these services
25 provided. The express purposes of the act in this

1 regard are as follows," and they quote from the
2 act. "To promote competition and reduce regulation
3 in order to secure lower prices and higher quality
4 services for American telecommunications consumers
5 and encourage the rapid deployment of new
6 telecommunications technology." I'm omitting the
7 citations.

8 Paragraph 15, "Competition in the
9 telecommunications industry is in a general matter
10 in the public interest in the hallmark of the
11 competitive marketplace is the maximization of
12 consumer choice. It is also clear that the public
13 interest is served where there is a reasonable
14 expectation that competition may have beneficial
15 impacts for consumers."

16 Paragraph 16, "As it applies for the
17 designation of additional ETC in an area served by
18 a rural telephone company, the public interest
19 necessarily must focus on the benefits of
20 competition to the rural consumer," and I'm
21 omitting the citation to the Western Wireless order
22 that the Commission earlier."

23 Paragraph 17, "The Commission must also apply
24 the public interest factor in a way that advances
25 universal services contemplated by the act.

1 Congress gave the FCC responsibility to create
2 rules and policies for the preservation and
3 advancement of universal service. States must
4 respect and defer to those FCC determinations.
5 States cannot use a public interest standard to
6 affect a result contrary to FCC directive." The
7 FCC, for example, is directed that a state cannot
8 deny an application because the CMRS provider may
9 not meet, "the regulatory requirements that govern
10 ILECS, including privacy, marketing, service
11 provisions, and service quality requirements, as
12 well as carrier's last resort obligations. The
13 Commission must always remain consistent with the
14 act and FCC directives as it makes the public
15 interest determination under Section 214(e)."

16 Let me read you now what the FCC says in the
17 Virginia Cellular case about competition's role in
18 determining the public interest.

19 This is paragraph 4 of the case we cited in
20 our papers. "While we await a recommended decision
21 from the Joint Board, we acknowledge the need for a
22 more stringent public interest analysis for ETC
23 designation in rural telephone company service
24 areas. The framework enunciated in this order
25 shall apply to all ETC designations for rural areas

1 seeking further action by this Commission. We
2 concluded that the value of increased competition
3 by itself is not sufficient to satisfy the public
4 interest test in rural areas. Instead, in
5 determining whether a designation of competitive
6 ETC and a rural telephone company service area is
7 in a public interest, we weigh numerous factors,
8 including the benefits of increased competitive
9 choice, the impact of multiple designations on the
10 Universal Service Fund, the unique advantages and
11 disadvantages of competitive service offering, any
12 commitments regarding quality of telephone service
13 provided by competing providers, and the
14 competitive ETC's ability to provide the supportive
15 services throughout the designated service area
16 within a reasonable time frame.

17 If you further read Sections 28 -- excuse me,
18 paragraphs 28 through 39 of Virginia Cellular, and
19 I will not read them to you today, you will see
20 that the FCC significantly changed its public
21 interest inquiry not -- it significantly changed
22 its public interest inquiry by focusing on
23 additional factors other than just competition to
24 justify ETC status. You may remember that
25 Western Wireless is arguing that this case did not

1 affect the public interest approach in the FCC.

2 Commissioner Adelstein's concurring statement
3 further demonstrates that fact. He says, "I am
4 pleased, however, that this Commission has been
5 willing to strengthen the public interest test
6 pending the Joint Board recommendation."

7 Western Wireless has also argued that the
8 Joint Board's recommended decision is not really
9 relevant in this case. It argues that the order is
10 merely advisory, and it should not result in the
11 loss of revenues from rural ILECs because it will
12 be held harmless under the recommendation. That's
13 at page 7 of their opposition to our motion.

14 Paragraph 70 is the recommended decision that
15 I talked about a minute ago repeats that claim.
16 Let me quote what paragraph 70 says. "To the
17 extent that a competitive ETC replaced an incumbent
18 ETC as the primary connection provider, the
19 competitive ETC would receive support for providing
20 the connection. In addition, rural carriers would
21 no longer be insulated from the effects of
22 universal service competition because they would
23 lose proline support to the extent they lose
24 primary connections."

25 It is true that the Joint Board was concerned

1 about the effect that this will have on rural
2 telephone companies, and they discussed two or
3 three alternatives in order to mitigate that impact
4 but it made clear in paragraph 70 that those
5 measures are transitional. The rural ILECs will
6 not be held harmless as Western Wireless claims, if
7 the FCC ultimately adopts a primary line approach
8 in a way that stops the uncontrolled growth and the
9 universal service fund.

10 On top of that, the Joint Board's
11 recommendation -- excuse me. On top of that, the
12 Joint Board's recommendation would change this
13 Commission's prior analysis that it engaged in when
14 it granted Western Wireless ETC status to begin
15 with.

16 In your October 18, 2001 order part of the
17 balancing test that the Commission engaged in was
18 whether ILECs would be hurt by Western Wireless's
19 designation as an ETC, and it found that because of
20 the way that the mechanism existed then, that ILECs
21 would not be hurt. And that clearly is a clear and
22 present threat under the Joint Board's recommended
23 decision.

24 In sum, both of these decisions are directly
25 on point, and they couldn't be more relevant.

1 Virginia Cellular moves the FCC public interest
2 analysis away from the benefits of competition,
3 which were relied on by this decision in its
4 earlier Western Wireless decision and by the FCC in
5 its earlier ETC decision, but they're moving away
6 from that clearly.

7 The Joint Board's recommended decision has a
8 better chance than not of being adopted. Most
9 Joint Board decisions are adopted by the FCC. They
10 don't always adopt 100 percent of them, but they
11 defer to the FCC Joint Boards for a reason. And
12 the legislative history that Western Wireless puts
13 in their Motion indicates that the FCC places
14 substantial weight on those decisions.

15 Finally, the Joint Board decision is likely to
16 be in effect during a period Western Wireless is
17 operating as an ETC if you approve their ETC
18 designation petition. And you ought not to wear
19 blinders to that fact like Western Wireless wants
20 you to do.

21 I know as a regulatory Commission you often
22 sit in the role of looking at a test year, for
23 instance, where utilities like an electric company
24 is asking for a rate increase and something happens
25 outside the test year but you know for a certainty

1 that it's either going to happen -- the utility's
2 going to experience this change in circumstance or
3 is likely to.

4 And regulatory commissions routinely take
5 cognisance of those realities that will be
6 operating during the period that their decision is
7 effective.

8 Against the reality that these decisions
9 affect the public policy framework that we find
10 ourselves in, we would like to point out what we
11 want, what we would like the Commission to do.

12 Given the fact that today is the testimony due
13 date and that argument was scheduled today, we
14 propose that we file our direct testimony tomorrow,
15 March 16.

16 We have some additional discovery which is
17 mainly prepared that is raised by the Virginia
18 Cellular and the Federal State Joint Board
19 recommended decision. We would propose that we
20 file that the day after tomorrow, Wednesday,
21 March 17.

22 We would propose that Western Wireless's
23 answers to our discovery be due March 31, two weeks
24 later.

25 We would propose that Western Wireless's reply

1 testimony be filed April 5, that our surrebuttal
2 addressing any matters that arise out of the
3 answers to discovery that we would file the day
4 after tomorrow and any supplemental answers --
5 Western Wireless just gave us some supplemental
6 answers this last Friday, but any further
7 supplemental answers and answers from the discovery
8 that we would like permission to file the day after
9 tomorrow, that those matters would be addressed in
10 our surrebuttal testimony, which we propose would
11 be filed April 16.

12 We would not propose that the hearing date in
13 the case be changed, and we would not propose that
14 the Commission's order issue any later as a result
15 of these testimony dates.

16 So, in conclusion, I'd say that the Commission
17 has got a pretty heavy public policy charge to
18 decide in this case. The FCC has found and the
19 Joint Board decision has found that because of the
20 new environment with the growth in a number of
21 carriers and, quite frankly, the primary line
22 recommendation, that incumbent LECs in some
23 circumstances may not be able to serve all the
24 people in their territory.

25 And we think that in order to decide this case

1 on the fullest possible record, that you should
2 allow, we respectfully suggest, us to ask this
3 limited set of data requests that we have put
4 together that is focused on these two decisions,
5 and the public policy matters that are discussed in
6 them.

7 We think that that's a very fair balance. It
8 will not delay the Commission's decision in this
9 case, nor will it delay the hearing date.

10 Thank you very much for your attention.

11 CHAIRMAN SAHR: Thank you. Do we
12 have any other Interveners that want to add
13 anything to --

14 MR. COIT: I would just -- this is
15 Rich Coit. I would just like to clarify one thing
16 with regard to the proposal on the filings.

17 One thing that we would also like to be able
18 to do in our surrebuttal is address, if need be, if
19 necessary, address some of the additional discovery
20 that we just received on Friday. We haven't had
21 the chance to really review that stuff and look to
22 see whether our direct testimony has to be revised
23 in any great degree.

24 And given the fact we are proposing we would
25 file our direct tomorrow, I'm not sure we can do it

1 within our direct testimony.

2 CHAIRMAN SAHR: Would you be
3 proposing to do that then on the April 16 date?

4 MR. COIT: Yeah.

5 MS. ROGERS: Mr. Cremer, did you
6 have anything that you wanted to add?

7 MR. CREMER: Yes, I do. I am
8 relatively new to this area of law, but I did go
9 back and look at the original decisions in this
10 matter and AT&T made application status --
11 (Inaudible).

12 CHAIRMAN SAHR: Mr. Cremer, this is
13 Bob Sahr. You're breaking up when you're coming
14 through the line. So if you're on a speaker phone,
15 maybe you could pick up and talk directly into the
16 mouth piece because we do have a court reporter
17 here in Pierre.

18 MR. CREMER: I'm not on a speaker
19 phone. Is that better?

20 CHAIRMAN SAHR: Much better.

21 MR. CREMER: As I said, I went back
22 and reviewed the South Dakota Supreme Court
23 decision in the GCC matter, of which Western
24 Wireless was the parent, and it seemed to me that
25 that case is of some good guidance in how we should

1 look at the application of these broad criteria
2 from both Virginia Cellular and the Joint Board
3 decision.

4 In the South Dakota Supreme Court case you all
5 probably recall that the PUC in that case decided
6 that in order to get ETC status the applicant had
7 to provide service prior to designation.

8 Well, our Supreme Court said that was wrong,
9 that instead you didn't have to provide service
10 prior to designation, but to get to that decision
11 and to the part of the argument that Western
12 Wireless made, it went to the FCC and sought a
13 declaratory ruling that the PUC's decision was
14 incorrect.

15 In fact, the PUC did enter an order saying
16 that the PUC's decision was contrary to how they
17 would have ruled, but they refused to issue a grant
18 of order in the case.

19 But Western Wireless argued that that somehow
20 was binding for authoritative position for a
21 South Dakota Supreme Court to use in ruling on the
22 appeal.

23 That seems to me very similar to what we have
24 here. We've got, in effect, nonbinding decisions
25 from Virginia Cellular and the FCC which broaden

1 the criteria which our new discovery request
2 addressed.

3 Now should we be allowed to explore these
4 expanded criteria areas in discovery? And I think
5 we should. And what's the direction that we would
6 get from the Supreme Court? Well, our Supreme
7 Court said that although the FCC decision in the
8 attempt of Western Wireless to get a preemptive
9 ruling in the very first go-round here was not
10 binding, that our Supreme Court still is to give,
11 in their words, highly deferential review to the
12 agency's interpretation of statutes its
13 administered.

14 Well, I think that's what we have here. We've
15 got a direction from the FCC and Virginia Cellular
16 that I think is highly -- that this Commission
17 ought to give highly deferential review to, which
18 would say we've got broadened criteria. Therefore,
19 let us conduct discovery with respect to that
20 broadened criteria to allow you to make an
21 appropriate decision here.

22 That also seems to be a practical way to
23 resolve this because if we are allowed to conduct
24 the discovery on the broadened criteria and you
25 ultimately decide those are the correct criteria to

1 use, the discovery's been done and you can make the
2 ruling.

3 If you ultimately decide that the broadened
4 criteria are not appropriate but we conducted the
5 discovery anyway, we haven't lost anything and the
6 time lines have not been extended. However, if we
7 were to lose that decision before you and we appeal
8 that and our Supreme Court says you should have
9 looked at the broadened criteria, we come back to
10 square one again.

11 So it seems to me, the practical matter, we
12 ought to be able to conduct discovery with respect
13 to the broadened criteria and then ultimately you
14 decide whether or not that criteria's going to
15 apply but at least we've done the discovery.

16 That's all I have to add to Ben's remarks.

17 CHAIRMAN SAHR: Thank you. Any
18 other Intervener that cares to appear? If not, why
19 don't we go to Western Wireless.

20 MR. AYOTTE: Thank you,
21 Commissioner. This is Mark Ayotte on behalf of
22 Western Wireless, and I appreciate the opportunity
23 to address some of these comments in the
24 Intervener's Motion.

25 First and foremost, I guess we are encouraged

1 by the Intervener's proposal to keep the hearing
2 date that's currently scheduled, to keep that firm,
3 irrespective of any other adjustments to the
4 procedural schedule.

5 As the Commissioners are probably aware, this
6 petition was filed on November 4 and Western filed
7 its direct testimony on December 30. And we
8 certainly want to use our time wisely and to build
9 a complete record for your consideration, but I
10 think we're encouraged by the fact that there would
11 be no further delay in this proceeding.

12 Contrary to some of the remarks of the
13 Interveners, however, I'd like to just note a
14 couple of things. First of all, the scope of this
15 proceeding has not broadened and has not changed in
16 light of either the Virginia Cellular or the
17 Joint Board's recommended decision.

18 The standards for designation of Western
19 Wireless as a federal ETC are the same today as
20 they were when we filed the petition and, in fact,
21 are the same as when the Commission first granted
22 ETC status. Those standards are set forth in
23 Section 214(e) of the Act, and the FCC rules and
24 decisions.

25 And the issue in terms of the Commission

1 determining that it's in the public interest, that
2 public interest standard, in order to designate
3 Western as an additional ETC, that's the same
4 public interest standard that's always been in
5 place. So the scope of this proceeding hasn't been
6 broadened and has not changed, and the Intervener's
7 rights are not going to be impaired at all under
8 the Commission's rule, even without any further
9 change to the procedural schedule.

10 I would like to, however, just address a
11 couple of things that Mr. Dickens mentioned
12 relative to Virginia Cellular and the Joint Board's
13 recommended decision, which really forms the basis
14 for the Intervener's request.

15 And I assure you I'm not going to read
16 sections of either the Virginia Cellular or the
17 Joint Board's recommended decision. But, notably,
18 what Mr. Dickens was referring to relative to
19 Virginia Cellular was a reference to where the FCC
20 denied, in part, the granting of ETC designation to
21 Virginia Cellular. And if you look at that portion
22 of the order that he referenced, it was denied due
23 to the FCC's unwillingness to redefine the service
24 area requirements for that portion of Virginia
25 where they did not designate Virginia Cellular.

1 That's an issue that has to do with the
2 redefinition of the service area requirement where
3 you have a population density analysis and the
4 like. That was why they denied designation in that
5 one wire center for the one incumbent LEC. It's
6 because Virginia Cellular couldn't meet one of its
7 criteria because the FCC chose not to redefine the
8 service area requirement for the one LEC.

9 That's not an issue in this case. Western
10 Wireless has not sought to redefine the service
11 area requirement. All of the rural LECs where
12 we're seeking designation Western provides service
13 throughout the study areas of all of those rural
14 LECs. So Mr. Dickens's reliance on that portion of
15 Virginia Cellular is really misplaced.

16 Secondly, with respect to -- well, unrelated
17 to that I would simply note, if you haven't
18 already, it's good reading in terms of Virginia
19 Cellular. Most notably what the FCC did in
20 Virginia Cellular is they designated Virginia
21 Cellular as the competitive ETC, and they did so in
22 a manner which, frankly, is quite consistent with
23 the public interest analysis that the South Dakota
24 Commission has already employed or employed back in
25 its October 2001 order.

1 So they didn't change the public interest
2 standard. They perhaps applied it differently than
3 some state commissions have. It doesn't just rely
4 on competition for the sake of competition -- and
5 again I won't reiterate and read to you the
6 sections of Western's petition as Mr. Dickens did.

7 I'm not sure why he did that because the
8 allegations in the petition that we alleged were
9 really based on the Commission's prior order is
10 what you've already determined. And, as I say,
11 it's not based solely on competition. It involves
12 the public interest, the balance of benefit and
13 harms to the consumer. And I think if you read the
14 Virginia order, that's the exact same framework and
15 analysis that the FCC was employing.

16 So although Virginia Cellular, based on the
17 facts of the Virginia Cellular case, may have
18 applied the public interest standard somewhat
19 differently, it really isn't a change in the
20 standard. It certainly doesn't warrant a further
21 change or modification to the procedural schedule
22 that we already have.

23 Related to that, the reliance on the Joint
24 Board recommended decision as a basis for modifying
25 the procedural schedule here is truly misplaced.

1 As we set forth in our responsive brief, the Joint
2 Board's recommended decision that was issued on
3 February 27 is just that. It's a recommended
4 decision.

5 It doesn't affect any change in existing law.
6 It has no legal effect and will not have any legal
7 effect unless, until, or whenever the FCC might
8 initiate a rule-making proceeding and might take
9 any action on it.

10 Notably, the six factors that are identified
11 in the Joint Board recommended decision that
12 Mr. Dickens alluded to, those six factors are
13 identified by the Joint Board as a recommendation
14 for the adoption of permissible guidelines that
15 would govern ETC qualification proceedings. And
16 most notably, a suggestion that the FCC take
17 additional comments on some of these recommended
18 guidelines, which in the end would be nonbinding on
19 state commissions.

20 It really is a mistake to suggest that the
21 Joint Board recommended decision has any real
22 effect whatsoever because it does not. And,
23 similarly, their recommended changes in funding
24 methodologies and primary line connection
25 restrictions and so forth, you know, really have to

1 be taken in the proper context in that, number one,
2 they're not motivated solely as the result of
3 wireless ETCs, but the Joint Board has recommended
4 a number of different proposed funding
5 considerations, none of which has any of the detail
6 flushed out.

7 And if you look at the proposed primary line
8 restriction, that restriction itself would still
9 have to deal with the hold harmless -- or holding
10 the rural LECs harmless from any loss of support,
11 the upshot of which is if you look at the
12 recommended decisions, it provides some suggestive
13 framework to the FCC for their possible
14 consideration on changes to universal service
15 funding policies and is really no different than
16 the Joint Board has been doing over the years.

17 But the key point is none of the joint boards
18 recommended -- none of the provisions in the Joint
19 Board's recommended decision has any legal effect
20 at all. It does not change the current state of
21 the law, which the Commission is required to apply.
22 You can't base your decisions on possible changes
23 in the future. And, notably, if there is any such
24 change in the future, those rules, those changes,
25 are going apply to all ETCs, and that's just the

1 way the program is set up and the way it's
2 administered.

3 So, ultimately, I kept sort of waiting -- I
4 was waiting to hear what the Interveners were
5 asking for, and I guess my response is this. You
6 know, if the Interveners need another day or two to
7 file their direct testimony, that's fine. I mean,
8 we did supplement our responses to some of their
9 discovery last Friday. I think it only fair that
10 they, you know, take a day or two to look at those
11 responses to determine whether they want to
12 effectuate any changes in their testimony.

13 If they want a couple of days to do that, you
14 know, we're fine with that, assuming that we get an
15 equal extension in terms of the filing of our
16 rebuttal testimony.

17 What I really think this is all about,
18 Commissioners, is not so much expanding and
19 modifying the procedural schedule to accommodate a
20 couple of days here or there as this is really
21 about the Interveners wanting to launch another
22 round of discovery.

23 And that much we oppose. And we oppose that
24 because the parties initially agreed to some
25 simultaneous single round of discovery requests.

1 That happened. We got bombarded with service
2 requests and we did our best to respond and we'll
3 take up any objections in the subsequent Motion.

4 But additional discovery requests that are
5 based upon the Joint Board's recommended decision
6 is where we really have a problem with it.

7 Commissioner Sahr, you had asked earlier on in
8 terms of any update and discussions and so forth.
9 I did have some preliminary discussions this
10 morning with Mr. Coit in an attempt to try to work
11 through some of these issues. And we didn't get
12 very far, I'm sorry to say. But Mr. Coit was kind
13 enough to at least share with me a preliminary
14 draft -- I'm not holding him to it, but a
15 preliminary draft of some of this possible
16 additional discovery.

17 I haven't had a chance to review it in detail,
18 but that which I saw is directly related to the six
19 factors that Mr. Dickens identified in the Joint
20 Board's recommended decision and the ones that are
21 noted on page 5 of their Motion. They're wanting
22 to seek discovery on factors relating to the
23 adequacy of Western's financial resources, the
24 commitment to provide the support and services
25 throughout the service areas, build-out plans, how

1 we remain functional, emergencies, consumer
2 protection requirements, and amounts of local usage
3 that ETCs should offer.

4 And, again, you have to look at these in the
5 proper context. These were some of the factors
6 that the Joint Board has identified and suggested
7 to the FCC that they possibly consider in some
8 future rule-making proceeding in terms of
9 establishing these permissive and nonbinding
10 guidelines governing ETC qualifications.

11 They're not requirements under the current
12 state of the law. They will not be requirements
13 for the purposes of ETC designation unless or until
14 the FCC takes action to codify them as such, and as
15 a result we're going to oppose and we're going to
16 object to those discovery requests as being
17 completely beyond the scope of this proceeding.

18 And, you know, if we're going to be right back
19 here arguing, you know, further motions to compel,
20 then, you know, we'd ask for the Commission's
21 clarification right now. But additional discovery
22 based upon the Joint Board's recommended decision
23 which doesn't change existing law ought not to be
24 permitted.

25 As far as the other changes in the schedule, I

1 think those are all sort of driven by, you know,
2 this ultimate question that the Interveners really
3 want another round of discovery based on the Joint
4 Board's recommended decision and that's where I
5 think the Commission ought to draw the line.

6 Let's not forget Western Wireless is the
7 applicant here. We have the right -- we have the
8 responsibility to put on our case. We have the
9 burden to show that we meet the requirements for
10 ETC designation. You know, I'm a bit surprised
11 that the Interveners are so anxious to sort of
12 start advocating that we ought to really prove up
13 based on some of these nonbinding factors, and as a
14 result I suspect that this whole discovery exercise
15 is very burdensome -- you know, designed to be
16 burdensome, designed to be expensive to Western and
17 ultimately designed to sort of cause further delays
18 in the schedule.

19 So we're happy to accommodate a few nips and
20 tucks in terms of, you know, changing the dates for
21 filing testimony. The original dates were
22 established when we were advocating for an earlier
23 hearing date in April. The hearing date was
24 ultimately scheduled in May so we've got a couple
25 of weeks there to work with. And we're happy to

1 work with the Interveners so that, you know, we can
2 all do a good job to build a good record and file
3 good testimony for the benefit of the Commission.

4 But doing so for the purposes of permitting
5 additional discovery on the Joint Board recommended
6 decision ought not to be allowed. I'm happy to
7 answer any further questions, but we would
8 otherwise suggest that the Motion be denied.

9 CHAIRMAN SAHR: Thank you. Staff.

10 MS. CREMER: Thank you. This is
11 Karen Cremer from staff. This is a legal call on
12 behalf of the Commission, and staff would have no
13 opinion as to the granting of the Motion.

14 However, I would say that the issues raised in
15 the Virginia case, they will need to be addressed,
16 and that can be done through discovery and prefiled
17 testimony or it will be done at the hearing and I
18 think that will certainly add time to the hearing.

19 CHAIRMAN SAHR: Are you getting
20 feedback on the line, or can you hear us okay?
21 Hello? Is anyone still on the line?

22 (Discussion off the record)

23 CHAIRMAN SAHR: Karen, we were
24 interrupted because of a phone problem, and I
25 believe you were partway through your statement.

1 Do you want to pick up --

2 MS. CREMER: Right. I will just
3 start again. Staff believes this is a legal call
4 on the part of the Commission, and staff would have
5 no opinion. However, staff would state that the
6 issues raised in the Virginia case will need to be
7 addressed.

8 It's our belief it will need to be addressed
9 one way or the other. And that can be done through
10 discovery and prefiled testimony, or it will be
11 done at the hearing, in which case the hearing will
12 become expanded in time.

13 And that would be staff's comment.

14 CHAIRMAN SAHR: Thank you.
15 Mr. Dickens, do you have anything to add?

16 MR. DICKENS: Very, very briefly,
17 Mr. Chairman. Thank you.

18 CHAIRMAN SAHR: And I would ask
19 everybody and I appreciate for the most part
20 everyone's staying on the merits of the Motion to
21 Expand Discovery, and I realize though that a lot
22 of the -- not the expanded -- to expand the
23 procedural schedule. And I realize some of that
24 inherently involves discussing what will be legal
25 issues at hearing.

1 So I appreciate that and would ask everyone,
2 though, as much as possible to stick to the merits
3 of whether or not to expand the procedural
4 schedule.

5 Thank you. Mr. Dickens.

6 MR. DICKENS: Thank you,
7 Mr. Chairman. Let me begin by picking up where
8 Mr. Ayotte ended. Let me assure the Commissioners
9 and the staff and, in fact, Western Wireless that
10 our discovery is not drafted for any purposes of
11 harassment or delay or to cost Western Wireless
12 money.

13 It sits on two pages. That's it. We think
14 it's very important to have the answers to those
15 questions. They're aimed at the six factors
16 identified by the recommended decision of the Joint
17 Board. That is not hypothetical stuff.

18 Three of the FCC Commissioners recommended
19 those decisions or three members from the Federal
20 State Joint Board. All of them recommended that
21 those conditions be considered by the state.
22 That's a majority of the Commission. So it's very
23 unlikely the Commission is not going to adopt at
24 least that part of the recommendation. As I said,
25 it's two pages long, two pages.

1 Contrary to Mr. Ayotte's assertion, Virginia
2 Cellular did change the FCC public interest
3 analysis or approach, however you want to wordsmith
4 it. I'll read you two sentences by Commissioner
5 Adelstein and his concurring remarks, and then I'll
6 be finished with my rebuttal as it is.

7 He says, "I believe this order establishes a
8 better template for the ETC designation process
9 that is a significant improvement from past
10 Commission decisions and that more fully embraces
11 the statutory public interest mandates. I expect
12 that state commissions also will find the template
13 that we adopt here to be useful in their
14 deliberations of ETC requests."

15 So I think that these two decisions do alter
16 the public interest analysis. It's historically
17 been relied upon by the FCC and which was relied on
18 by the South Dakota PUC in the first Western
19 Wireless case, which pretty much stopped at the
20 competition -- the public interest benefits from
21 competition.

22 The Virginia Cellular case expands that. The
23 Federal State Joint Board recommends a number of
24 other factors. We respectfully request that you
25 allow us to file this very limited set of discovery

1 to explore those factors because we think that the
2 FCC's decision that we're discussing will be
3 effective during the period that Western Wireless
4 is operating as an ETC in these additional areas if
5 you grant their petition.

6 Thank you very much.

7 CHAIRMAN SAHR: Thank you.

8 Mr. Ayotte.

9 MR. AYOTTE: Very briefly. We can
10 address any impact on Virginia Cellular through the
11 party's testimony and through posthearing briefs
12 and whether it has an impact or not.

13 The state Commission is still directed to make
14 a public interest determination based on the
15 evidences of the hearing. I think this whole
16 Motion -- and Mr. Dickens confirmed it. This whole
17 Motion is about them wanting to serve, you know,
18 some additional discovery that is based directly on
19 the six factors in the Joint Board's recommended
20 decision.

21 That decision -- I don't care if it has three
22 Commissioners supporting it or not. That decision
23 is advisory. It is of no legal effect. It will
24 not have any legal effect unless, until, or
25 whenever, if at all it is adopted by the FCC. So

1 to permit discovery on a number of suggested
2 considerations that don't reflect a current state
3 of the law should be denied.

4 MR. COIT: Mr. Chairman, can I make
5 just one comment?

6 CHAIRMAN SAHR: Go ahead.

7 MR. COIT: I would just like to
8 respond, I guess, on this Federal State Joint Board
9 decision issue and the comments that Mr. Ayotte
10 made with respect to the standard.

11 I mean, to sit today and say that the standard
12 somehow hasn't changed, that we're somehow under
13 the same standard, I really have a hard time
14 accepting that, given the fact if you look at
15 Virginia Cellular and you look at the Joint Board
16 decision, Virginia Cellular basically said very
17 clearly that we're dealing with a more stringent
18 test, and the Joint Board referenced it as a more
19 rigorous test.

20 So to sit here today and say that the standard
21 hasn't changed in light of those two orders, even
22 though one is a recommended decision, it's a
23 recommended decision supported unanimously with
24 respect to those additional standards by every
25 member of that Joint Board.

1 And I think that if the Commission is truly
2 interested in making a decision that's consistent
3 with the public interest, the idea of completely
4 ignoring the Federal State Joint Board decision as
5 well as the comments in the Joint Board decision
6 about primary line and how that might figure in to
7 the future process for distributing universal
8 service support, to me that's irresponsible.
9 Because the law is changing, and you need to be
10 cognizant of how the law is changing and how that
11 may affect -- how these areas are going to be
12 affected and how these consumers are going to be
13 affected.

14 So in light of that all of that, I find it
15 hard to see how you can make a decision that truly
16 considers the public interest and that is
17 consistent with the public interest if you don't
18 take into account those things that are in the
19 Federal State Joint Board decision.

20 CHAIRMAN SAHR: Thank you. Any
21 questions or comments from Commissioners or
22 advisers?

23 (No audible response)

24 CHAIRMAN SAHR: Seeing none, this is
25 a --

1 VICE CHAIR HANSON: Hello,
2 Mr. Chairman?

3 CHAIRMAN SAHR: Sorry. I'm pausing
4 here.

5 Do you have questions, Commissioner Hanson?

6 VICE CHAIR HANSON: (Inaudible) --
7 Mr. Chairman.

8 CHAIRMAN SAHR: Could you speak a
9 little more loudly. We have a court reporter here,
10 if you could.

11 VICE CHAIR HANSON: Are you looking
12 for a Motion or just looking for questions?

13 CHAIRMAN SAHR: Just looking for
14 questions.

15 VICE CHAIR HANSON: I have a
16 question of Mr. Coit, if I may. Would you -- I was
17 not at first concerned about whether we were
18 launching another round of discovery, but in light
19 of the statements that have been made pertaining to
20 not extending the decision date or the hearing
21 date, et cetera, however, I am curious you said
22 that you could address some additional discovery.

23 Now in your earlier testimony were you stating
24 at that time that there was additional discovery
25 you wanted to make, or are you stating that you

1 have -- (Inaudible) -- piece of discovery and
2 wanted to make a -- (Inaudible) --

3 (Discussion off the record)

4 VICE CHAIR HANSON: Are you stating
5 that you have additional discovery you wish to make
6 or that you have additional points you would like
7 to make after having gone through some discovery?

8 MR. COIT: I actually am saying
9 both, Mr. Hanson, Commissioner Hanson. Number one,
10 we just received some discovery information last
11 Friday that actually I didn't even get a chance to
12 go through until yesterday, and we had all of our
13 direct testimony drafted pretty much ready for
14 filing today, obviously.

15 So there's some of that information that we
16 just received that we need to review and we need to
17 be given an opportunity to look at that and address
18 that in testimony. So, yes, number one, we're
19 asking for the ability to address some discovery
20 that we just received.

21 We are also asking for the right to put in
22 some additional discovery that relates to some
23 certain standards -- some minimum standards that
24 were set forth in the Federal State Joint Board
25 decision. So I think the answer to your points is

1 yes and yes.

2 VICE CHAIR HANSON: Mr. Chairman, if
3 I could continue.

4 CHAIRMAN SAHR: Yes. Go ahead.

5 VICE CHAIR HANSON: Mr. Coit, are
6 you, in light of what you have just stated, of the
7 opinion that we will not delay the hearing date or
8 the decision process and still allow an opportunity
9 for rebuttal information?

10 MR. COIT: Yeah. I think that, you
11 know, our intention would be to file our direct
12 testimony -- and I'm not sure if I'm answering your
13 question right here, but our intention would be to
14 file our direct testimony tomorrow and then be
15 given some leeway in our surrebuttal testimony to
16 address anything new that may come up through the
17 discovery information that, you know, we haven't
18 received yet or we haven't had a chance to review
19 yet.

20 And is that correct, Darla?

21 MS. ROGERS: Commissioner Hanson,
22 we're not here asking this Commission to delay the
23 hearing date or its decision. I think in our
24 proposal we've allowed enough time to allow us to
25 both file additional discovery requests and then

1 have an opportunity to respond to the answers in
2 those additional discovery requests and also
3 respond to any information that has come up in the
4 supplemental responses we just received in our
5 proposal. And we are not asking for a delay in the
6 hearing date.

7 VICE CHAIR HANSON: And that will
8 still provide opportunity for those who wish to
9 make -- excuse me for speaking slowly but when
10 there's a court reporter I tend to speak slowly.
11 An opportunity for those who wish to dispute your
12 presentation, the opportunity or time to gather
13 such information that they need?

14 MR. COIT: I would say yes. And if
15 you look at the schedule that's there now and even
16 the last testimony date that we're proposing,
17 there's still some time between the time that we
18 would file our final surrebuttal and the date of
19 the hearing. And if there was concern about the
20 ability of the other party to refute anything new
21 that may come up, we're certainly willing to
22 accommodate that in any way that you feel is
23 appropriate.

24 MS. ROGERS: In addition to the
25 hearing process itself.

1 MR. COIT: Yeah. In addition to the
2 hearing itself.

3 VICE CHAIR HANSON: So you are
4 saying that the discovery that you may need -- that
5 you are considering entering into, it would not be
6 your intention from the standpoint that you
7 wouldn't need to go through a protracted process?

8 MR. COIT: I would hope not, but,
9 you know, I can't guarantee that at all, I guess,
10 you know, whether they're going to object to the
11 questions or not answer some and answer others.
12 And obviously, you know, a lot of it would depend
13 on that.

14 VICE CHAIR HANSON: However, you
15 would certainly have some idea if there was going
16 to be an objection from information that you might
17 have --

18 MR. COIT: Yeah. If we could agree
19 or if it were -- if we could make sure if we were
20 going to get any objections, we got them early
21 enough in the process, then hopefully we could
22 address any of those without delaying the hearing.

23 That is one thing I -- you know, Mr. Dickens
24 made clear and I myself want to make clear. It's
25 not our intention to delay the hearing in this

1 matter. We've got some time currently between the
2 date of the last testimony filing and the hearing,
3 and we feel that it is important that we get some
4 information with regard to some of these other
5 criteria.

6 We feel we should be able to present some
7 information related to those other criteria, and
8 that's the reason that we want the additional
9 discovery.

10 VICE CHAIR HANSON: Thank you,
11 Mr. Chairman.

12 MR. AYOTTE: Mr. Chairman, this is
13 Mark Ayotte. Could I have an opportunity to
14 briefly address that point?

15 CHAIRMAN SAHR: If Commissioner
16 Hanson wants you to, you may.

17 MR. AYOTTE: Okay.

18 VICE CHAIR HANSON: That would be
19 fine.

20 MR. AYOTTE: Thank you, Commissioner
21 Hanson. As we will soon see when we discuss the
22 Motion to Compel, Western certainly has no desire
23 to delay this proceeding, and it wants to make sure
24 that we have a complete and adequate record for the
25 Commission's decision.

1 You know, we've responded to numerous
2 information requests already, which although we
3 stated objections as to their relevancy or lack
4 thereof in this proceeding, we nevertheless sought
5 to provide as much responsive information as was
6 possible, even if we thought that the information
7 itself would not be admissible at the hearing or
8 not lead to the discovery of any further admissible
9 evidence.

10 I don't think that's the case here. And I
11 want to make it clear. I'm not prejudging because
12 I haven't seen any final information requests. But
13 the draft of the information request that Mr. Coit
14 provided to me is a reiteration directly out of the
15 Joint Board, you know, recommended considerations
16 which aren't the law and which, frankly, I'm not
17 even sure that we would have the ability to respond
18 because we don't know what information the Joint
19 Board is contemplating.

20 I'll give you a for instance here. One of the
21 items suggested by the Joint Board for
22 consideration would be the adequacy of the
23 financial resources of the competitive ETC
24 applicant. With respect to that factor -- and, of
25 course, the Interveners would like to inundate us

1 with discovery as to Western's financial resources,
2 and, you know, we have no question or problem in
3 terms of providing -- we're a publicly traded
4 company. All of that information is publicly
5 available.

6 But the difficulty is this. The Joint Board
7 has recommended for consideration not only the
8 consideration of adequacy of financial resources,
9 for example, as a standard, but they further have
10 suggested that it's necessary then to develop a
11 standard by which you can judge that.

12 So you can't just take these standards that
13 have been identified by the Joint Board and say
14 this is the state of law because in many
15 instances -- and this ties directly back to what
16 the Interveners want to do discovery on. In many
17 instances what the Joint Board is saying is you
18 ought to consider this and you ought to seek
19 further comment in terms of how we develop such a
20 standard.

21 What is the standard for saying you've got
22 adequate financial resources or not, for example?
23 So, you know, I don't want to prejudge a dispute
24 but based on the preliminary questions that I saw,
25 Western will continue to do its best to be

1 responsive to all information requests, but I can
2 assure you there will be objections and we're going
3 to be right back here arguing over these things,
4 and the primary basis is going to be this isn't the
5 law, the Joint Board's recommendation does not set
6 forth any standards or factors which are binding
7 upon this Commission or are even of any legal
8 effect.

9 So we want to be cooperative here, but at the
10 same time I want to be realistic. Thank you.

11 CHAIRMAN SAHR: Thank you. Any
12 other questions or comments?

13 COMMISSIONER BURG: Yes. I have a
14 couple. Mr. Ayotte, you keep saying that there's
15 no legal obligation, but if this Commission
16 determines that those recommendations of the Joint
17 Board and three Commissioners are in the public
18 interest in South Dakota, do you see any reason we
19 could not use them?

20 MR. AYOTTE: Depending upon how you
21 use them, Commissioner. I mean, the public
22 interest is not a defined standard. I mean,
23 it's -- but it is also not without limits.

24 COMMISSIONER BURG: I mean, I'm
25 convinced from all the discussions I've heard these

1 are issues that are going to be addressed at one
2 time or another, and since it's right now, this is
3 in front of us, I personally think that the more
4 information we can get, the better system we can
5 develop in South Dakota.

6 CHAIRMAN SAHR: All right. Any
7 other questions or comments? Ms. Wiest?

8 MS. WIEST: The only point I was
9 going to make is even if the Joint Board had not
10 come out with these recommended guidelines, what
11 would have prevented the Commission from
12 considering anything that they had come up with,
13 any of these things relating to their financial
14 resources and capability and commitment?

15 Don't we define the public interest?

16 MR. DICKENS: This is Ben Dickens.
17 These particular factors, I believe that you would
18 have the statutory right under the Texas public
19 utilities cases decided down the Fifth Circuit -- I
20 guess the effective Joint Board's decision is
21 they're recommending to the state that you pick
22 these particular six factors, which you're right
23 and I think you'd have the right to use those
24 factors anyway.

25 CHAIRMAN SAHR: Thank you. All

1 right. Any other questions or comments?

2 (No audible response)

3 CHAIRMAN SAHR: Seeing none, I think
4 we've clearly seen that there is a desire to go
5 forward with the hearing on the scheduled date, and
6 I appreciate the Petitioner and Interveners staying
7 focused on that.

8 And as I hear the arguments that are being
9 raised, I'm beginning to wonder if three days are
10 going to be enough. And I would urge everyone to
11 look at your Monday and Friday of that week and
12 maybe pencil that in as well. And we'll see how
13 that shakes out.

14 The issue of whether or not to compel the
15 discovery really I think at this point in time
16 comes down to giving the Interveners an opportunity
17 to prepare the best possible case they can.

18 And I'm mindful of some of the arguments
19 raised by Western Wireless. And I certainly think
20 if any of this was objectionable, that they do have
21 the right to raise that. And I will assure you I
22 will do everything I can to keep this on procedural
23 schedule and not see a delay in the hearing.

24 At the same time, though, we do have a couple
25 of fairly significant -- we can argue about what

1 the extent of their import should be, but we have a
2 couple of fairly significant decisions that have
3 come down in January and February of this year, and
4 it certainly would help establish a better record,
5 at least the opportunity to make a better record
6 and give a fair discovery schedule, if we were to
7 make sure that any of the issues that any of the
8 Interveners feel may be appropriate to bring in
9 from these decisions were able to be addressed.

10 So with that in mind, I would move that we
11 grant the Motion to Expand the Procedural Schedule
12 pursuant to Mr. Dickens' proposed dates.

13 Do I need to run through those?

14 MS. WIEST: Would you want to add
15 April 23 as a response time for Western Wireless?
16 If they're bringing up additional information in
17 their surrebuttal based on the new discovery, I
18 would think that the Western Wireless should have
19 an opportunity to respond to that, and that would
20 be April 23.

21 CHAIRMAN SAHR: I think we can grant
22 it with the -- in accordance with Mr. Dickens'
23 request with the caveat or the addition that we
24 grant the response date of April 23 if necessary.
25 And also I would grant Mr. Coit's request to file

1 any sort of additional response that he needs to on
2 the proposed April 16 date as well.

3 And, again, I do want to emphasize, though,
4 that I think if anything is objectionable, it
5 certainly could be objectionable because it may not
6 be relevant. Although, I think we all know that
7 what is allowed in discovery isn't necessarily
8 what's allowed at a hearing.

9 I would encourage, though, if Western Wireless
10 felt that anything was inappropriate to respond to,
11 they certainly have the right to file that. And I
12 also would request that the parties continue to be
13 mindful of the early May hearing dates that we
14 already have set.

15 COMMISSIONER BURG: I'll second the
16 Motion.

17 VICE CHAIR HANSON: I will concur.

18 CHAIRMAN SAHR: Thank you. And now
19 let's go ahead then and take up the Intervener's
20 Motion to Compel Discovery.

21 Mr. Coit.

22 MR. COIT: Thank you. Mr. Chairman,
23 Commissioners, and staff, I will keep this brief.
24 I outlined I think fairly well in our Motion to
25 Compel our arguments supporting some of the

1 discovery requests that have not been answered.

2 I should point out that, as I mentioned
3 earlier, we did receive some supplemental discovery
4 responses late Friday. I have not had the chance
5 to go through in detail all of that stuff, but I'm
6 hopeful that, you know, that's going to take care
7 of some of these issues.

8 What I'd like to do just basically right now
9 is kind of give the Commission maybe a status
10 report on these requests that are here in reference
11 to the Motion to Compel as to whether they've been
12 answered or the objection still stands that Western
13 Wireless has registered.

14 The Interrogatory No. 1, I guess, is the first
15 one, and that one was responded in part by Western
16 Wireless in their initial responses, but they did
17 not provide any specific information as to the
18 amount of support they're receiving in existing
19 study areas on a study area basis.

20 We'd ask for an amount with any study area
21 received and then also per line amounts received.
22 What we received was basically total amounts. I
23 think, if I recollect correctly, we received the
24 total amount for South Dakota for the period of
25 time that they've -- two different numbers for

1 annual numbers.

2 And they were broken down, I think, either by
3 two study area codes or three. They've got the
4 Pine Ridge designation and designation in other
5 areas in South Dakota.

6 And the objection that Western Wireless had
7 still stands, and they have not provided any
8 additional information there as of yet. And we do
9 challenge the objection. We also challenge the
10 claim, I guess, that they don't have that
11 information.

12 To me I guess I can't understand why they
13 would not have the information because of the fact
14 that when they filed for USF I'm assuming they have
15 to provide some lines within the individual study
16 areas in order to get the right universal service
17 amounts from USAC.

18 I don't believe that they would report lines
19 on a state-wide basis excluding Pine Ridge because
20 how would USAC then determine the support per line
21 that they're going to pay.

22 So, you know, it may be that USAC doesn't
23 publish the information broken down by service area
24 or study area for the CLECs. They do do that for
25 ILECs but, you know, that's -- it doesn't mean to

1 me that they don't have the information because it
2 seems to me that they've got to file some lines
3 somewhere that are service area specific.

4 We also believe it's relevant just because of
5 the fact that, you know, what we're -- probably,
6 you know, what you'll see when you see our direct
7 testimony is one of the claims that we are making
8 is the fact that we don't believe that they are
9 committed to providing service throughout the
10 service area.

11 We also have a lot of questions as to, you
12 know, if you're going to indicate a promise that
13 you're going to provide service throughout the
14 service area, the standard now is that you do it
15 within a reasonable period of time.

16 And we have questions in that area, and we
17 feel that, you know, their past -- the past USF
18 received and what they've done with the USF moneys
19 and whether they've spent the USF moneys in the
20 areas they've already been designated is relevant
21 to this process and what they're going to do if
22 they receive designation in these other areas.

23 The next question that I will go to is
24 Interrogatory No. 2. And we did receive on Friday
25 some clarification here, but actually the

1 clarification has me probably even more confused.
2 Interrogatory No. 2 dealt with asking for a list of
3 subscribers and number of phones or handsets.

4 The reason we requested handsets or phones is
5 that USF is paid on a handset or phone basis. We
6 asked for the number of subscribers and handsets in
7 these areas where they're asking for designation.
8 One of the criteria under the Virginia Cellular
9 case in the Federal State Joint Board decision is
10 what is the impact going to be on the Federal
11 Universal Service Fund.

12 And in order to determine the impact on the
13 Federal Universal Service Fund as a result of this
14 designation we need handset information as to the
15 current number of handsets that would qualify for
16 USF in these areas.

17 So initially we just got the subscriber
18 information, and we didn't get the handset
19 information so we referenced the handset
20 information in the Motion to Compel. Should we
21 have gotten back to Western Wireless and said where
22 is the handset information? Yeah. Maybe we should
23 have done that. We didn't.

24 Believe me, time has not been real prevalent
25 over the last few weeks trying to get ready for all

1 of this. But we did get some handset information
2 on Friday, but I'm really confused by the handset
3 information that we got because the handset
4 information that I received, the subscriber numbers
5 and the handset numbers are identical in all of
6 these areas. And I don't know what that means.

7 It was information that was submitted as some
8 supplemental discovery, and the handset and
9 subscriber information's identical. So to me right
10 now I'm not sure if that one's answered or not.

11 Interrogatory No. 4 we'd ask for detailed
12 information on high cost support amounts as to, you
13 know, how they've spent the money that they've
14 already received. And I'm not going to get into
15 much of an argument here.

16 The fact of the matter is we think it's
17 relevant again because it's related to the tests
18 that are set forth in Virginia Cellular. Virginia
19 Cellular calls for a balancing of cost and
20 benefits. How they've spent the money in the past
21 certainly determines, you know, whether there was
22 any benefit as a result of those designations, and
23 we think that's relevant to how they may spend the
24 money in the future.

25 So we feel that it is relevant and that

1 they're not right in objecting to it on relevancy
2 grounds.

3 Interrogatory No. 5, again, that deals with
4 cellular towers constructed since January 1, 1999.
5 You might ask what's the relevance of the
6 January 1, 1999 date. We picked that date because
7 the first hearing in this case was back in December
8 of '98, I believe, and in that hearing we heard a
9 lot about commitments that Western Wireless had to
10 provide service throughout the areas where they
11 were seeking designation.

12 So we felt going back to that date was
13 justifiable because that was the date that they
14 came -- you know, just before that they came to the
15 Commission, and they started indicating that they
16 were committed to providing service throughout
17 these areas.

18 So we've asked for some information that will
19 give us some idea as to, you know, the amount of
20 investment, the amount of additional cellular plant
21 that they've put into South Dakota. And we do feel
22 that it is relevant, and we would like them to
23 answer those questions.

24 Interrogatory No. 6, we got some additional
25 information from them, and that information is

1 actually referenced in Gene DeJordy's --
2 Mr. DeJordy's affidavit. And I'm not exactly sure
3 what we have at this point. We're still reviewing
4 that. I'm a little bit concerned because there's
5 some reference to the information being based on
6 assumptions and not being factual information as to
7 the tower ERP and watts and type of antenna
8 utilized and so forth.

9 They're claiming it's very burdensome for them
10 to do a site by site analysis. So they've given us
11 some data, but it's apparently based on assumptions
12 and not each individual situation with respect to
13 each tower location. So that one we have gotten
14 some information. I'm not exactly sure whether
15 that's all we need or not.

16 The other thing relating to this -- let's see.
17 We had some information on some backup, which is
18 Interrogatory what?

19 CHAIRMAN SAHR: 9.

20 MS. ROGERS: That was also part of
21 Interrogatory No. 6. I think we asked for
22 auxiliary and backup power.

23 MR. COIT: That was it. We feel
24 that's relevant because it's related to service
25 quality, and service quality is certainly one of

1 the standards that's been discussed in both the
2 Virginia Cellular order -- I think it's discussed
3 in the Virginia Cellular order, and it certainly is
4 discussed in the Joint Board's recommended
5 decision.

6 Interrogatory No. 7 related to cellular towers
7 that they plan to construct within the next two
8 years. We have not received any of that. And they
9 object to any information regarding build-out
10 plans. And we feel that that's not appropriate.
11 Certainly that relates to, again, the cost benefit
12 analysis that's set forth in Virginia Cellular.

13 And if you're not willing to indicate, you
14 know, to the extent to which you're going to expand
15 your coverage, put down additional cell towers to
16 do that, how do you make any analysis as to what
17 the benefit is?

18 I mean, in order to measure benefits and
19 costs, you've got to look at both sides of the
20 equation, and we don't believe that you can really
21 make an evaluation of the benefits without looking
22 at what they intend to do so to build out the
23 areas. So we do believe that's relevant, and we
24 would like to continue to seek that information.

25 Let me see here. Interrogatory No. 9, we are

1 apparently going to receive the information we
2 requested. They've agreed to provide some of that
3 information. As of right now I don't believe that
4 we have that information, but they have agreed to
5 supplement that.

6 Interrogatories 10 and 11, we've asked again
7 for some information that would allow us to get a
8 better idea of the history of Western Wireless's
9 investment in South Dakota. And, again, we feel
10 that's relevant in looking at the issue of whether
11 they truly are committed to provide service
12 throughout these areas.

13 And with that, I'm sorry that I went on as
14 long as I did.

15 CHAIRMAN SAHR: Thank you. I
16 thought you went pretty fast.

17 Mr. Ayotte.

18 MR. AYOTTE: Thank you. I'll try to
19 be equally as brief and responsive. And we'd
20 certainly refer the Commission to our written
21 response.

22 With respect to each of those Interrogatories,
23 just a couple of prefatory remarks. First, I think
24 it's important that the Commission looks carefully
25 at what information is being requested.

1 As I said previously, our approach to
2 responding to the Intervener's discovery requests
3 that were voluminous -- our approach was to try to
4 be as accommodating and responsive as we can, even
5 if we thought that something was otherwise
6 objectionable.

7 Secondly, I would ask that the Commissioners
8 when they review the specific information requests
9 that are the subject of the Motion to Compel, I
10 think it appropriate to keep in mind that the
11 Interveners ought not to be permitted to relitigate
12 the first case. Because many of their requests and
13 the requested information is really historical in
14 nature and it relates to areas and information
15 where Western has already been designated as an
16 ETC, it is not appropriately limited to the new
17 areas where Western Wireless is being -- is seeking
18 to be designated as an ETC and seeking to
19 demonstrate satisfaction of the criteria with
20 respect to the new areas, the areas that are
21 subject to this petition.

22 So in that regard and with that framework in
23 mind, when you look at Interrogatory No. 1,
24 Subparts C and D, they're seeking the amounts of
25 high cost support that Western has already received

1 in the areas where it's already been designated as
2 an ETC. And that information is not relevant to
3 any issue in this proceeding.

4 And, furthermore, we have provided it despite
5 that -- we have provided to the Interveners all of
6 the information that we can provide to them
7 relative to how much universal service support
8 Western has already received in those areas where
9 we've already been designated.

10 I mean, that information is available from
11 USAC and Mr. Coit can be confused or otherwise
12 challenge the claim we don't have the information
13 on a per study area basis, but as set forth in the
14 DeJordy affidavit, we simply don't. We provide our
15 line count to USAC based on a study area basis.
16 But in our line count we don't state nor do we know
17 how much universal service support on a per line
18 basis is being received by the incumbent LEC.

19 USAC undertakes to remit to us a single
20 payment and a single report. We have two study
21 areas in South Dakota, one for the Pine Ridge
22 reservation and the other is our study area code
23 where we've already been designated. We don't get
24 the information from USAC in terms of the amount of
25 support received for each individual service area

1 or study area. We simply don't have it.

2 And we have provided -- we have objected to
3 this Interrogatory as being beyond the scope of
4 this proceeding, but we have also provided to the
5 Interveners the aggregate amount of universal
6 service support, all the information that we have.

7 We really can't be compelled to provide
8 something that we don't have with respect to
9 Interrogatory No. 1, and there's no additional
10 information available.

11 With respect to Interrogatory No. 2, again, we
12 have supplemented our response. We have given to
13 them both the number of subscribers as well as the
14 number of phones that we have in each of the areas
15 where we're seeking designation. The numbers
16 happen to be the same. Mr. Coit's not sure if
17 we've answered it. We've answered it.

18 With respect to Interrogatory No. 4, again,
19 this is another example where the Interveners
20 apparently want to start litigating issues that are
21 not relevant in this proceeding because the
22 information all relates to our use of high cost
23 support amounts in the areas where we've already
24 been designated. We haven't received any universal
25 service support amount for the areas which are the

1 subject of this proceeding because we haven't been
2 designated yet.

3 And this whole line of inquiry is something
4 which the Commission takes up on an annual basis
5 for all ETCs when they provide the annual
6 certification to USAC and the FCC regarding the
7 proper use of support for carriers that have been
8 designated. It's the federal standards under
9 254(e) and the FCC's rule.

10 Again, that information is not relevant to our
11 satisfaction of the ETC criteria in order to be
12 designated in the new areas because it's only after
13 we're designated are we going to receive universal
14 service support and then be subject to the
15 Commission's determination and certification on our
16 use of the support. It's a post designation review
17 process.

18 Again, despite the objection and lack of
19 relevancy to them, we have provided to the
20 Interveners information regarding our universal
21 service support amounts that we received in 2003
22 and the projections for 2004. We've provided to
23 them information regarding our expenditures of
24 funds received in South Dakota, and ultimately it
25 shows that we had considerably higher expenses than

1 receipts of universal service support.

2 But beyond that, we have tried to be
3 responsive to their request for information to the
4 extent we have it. But the scope of this
5 proceeding does not include an inquiry into our
6 compliance with 254(e) and those universal service
7 support amounts that we've received in the areas
8 where we've already been designated.

9 With respect to Interrogatory No. 5, we have
10 objected to that one because that question itself
11 asks us to identify the number and the location of
12 our cellular towers as of January 1 of 1999. And
13 what the network looked like on January 1, 1999 is,
14 frankly, not relevant and will not lead to the
15 discovery of any admissible evidence as it relates
16 to what does our network look like today and what's
17 our ability to provide the supportive services in
18 the areas where we're seeking designation.

19 This question, however, doesn't ask that part.
20 It asks to go back to January 1 of 1999 and to try
21 to capture a snapshot throughout the entire State
22 of South Dakota in terms of what our network looked
23 like at that time.

24 It's simply immaterial in terms of the service
25 areas where we're seeking ETC designation in this

1 proceeding.

2 With respect to Interrogatory No. 6, again,
3 they're asking all sorts of network technical
4 information regarding all of our cellular towers
5 within the entire State of South Dakota on its
6 face. It's not limited to the areas where we're
7 seeking ETC designation.

8 We did provide to them information that was
9 readily available to us with respect to our cell
10 tower locations and height information. We
11 provided that all on a confidential basis. And
12 with respect to the further information that
13 they're seeking, we've tried again to be as
14 responsive as we can be, notwithstanding the
15 relevancy and the burdensome nature of the request.
16 And that's really set forth in the affidavit of
17 Gene DeJordy.

18 In order for us to provide the information
19 that they're requesting it would require Western
20 Wireless to do a site by site review and audit of
21 each of its cell towers throughout the entire State
22 of South Dakota. Again, not limited to the areas
23 where we're requesting designation.

24 Despite that, we have provided some general
25 information regarding all of our towers, regarding

1 the ERP, and the types of antennas that at least
2 were on the cell sites because the network is
3 always undergoing constant changes and, you know,
4 dates regarding the antennas.

5 We provided our standards regarding the
6 auxiliary power at the cell sites. We've provided
7 information regarding those specific cell sites
8 that have backup generators on site. We've noted
9 that all of our cell sites have a minimum of
10 four-hour backup, that we have the ability to
11 provide emergency power to a cell site through
12 other backup generators that could be made
13 available.

14 And the fact of the question is they're not
15 raising any question regarding the reliability of
16 the network itself. They're simply asking a
17 variety of information which is either not limited
18 to the areas where we're seeking designation or
19 we've provided them with as much information as we
20 possibly can.

21 With respect to Interrogatory No. 7 and their
22 request for a specific build-out plan, we've
23 objected to that. We are not required to submit
24 any investment or build-out plans. That's not a
25 requirement for ETC designation.

1 I further note that Mr. Coit relies upon that
2 in terms of wanting to know what the build-out
3 plans are to evaluate the benefits in the cost and
4 whether we'll be using universal service support
5 properly. Use of universal service support under
6 Section 254(e) in the FCC's rules is not limited to
7 just building towers.

8 The standard is that you use the support for
9 the provisioning, maintenance, and upgrading of the
10 facilities used to provide the supportive services.
11 But we're not limited to using the support for just
12 network build-out, and we're not required to
13 provide build-out plans as part of being designated
14 as an ETC.

15 With respect to Interrogatory No. 9, I think
16 that one is moot. We have agreed to provide the
17 requested materials. The reason we didn't before
18 is we hadn't signed the confidentiality agreement.
19 Now that we have, we're happy to provide that
20 information.

21 Finally, with respect to Interrogatories
22 No. 10 and 11, we kind of take those up together
23 because they really relate to similar types of
24 requests. Again, they're asking first for total
25 dollars invested throughout the entire State of

1 South Dakota from 1999 through 2003.

2 Interrogatory No. 11 makes that same request,
3 but it is limited to just the service area covered
4 by this petition, again, for each of the years 1999
5 through 2003.

6 We've objected on the grounds of relevance in
7 part because Western was not an ETC during 1999,
8 2000, and virtually all of 2001. We did provide
9 the information responsive to Interrogatory No. 10
10 for the year 2003, which is Interrogatory No. 10,
11 being our total dollars invested throughout the
12 entire State of South Dakota.

13 With respect to the corresponding requests
14 that say give us the dollars invested within this
15 particular service area, the fact is we don't have
16 that information readily available. We don't track
17 our investment dollars and our capital expenditures
18 with reference to a study area of a rural LEC.

19 We have done our best to produce information
20 that is responsive for 2003, but we simply can't
21 track any capital expenditures with reference to a
22 particular rural LEC study area. Discovery should
23 not be used to compel a party to produce
24 information that it doesn't otherwise have.

25 And the balance of the requests being beyond

1 the years -- or prior to the time that Western has
2 been designated is simply not relevant.

3 CHAIRMAN SAHR: Thank you. Staff.

4 (Discussion off the record)

5 MS. CREMER: Thank you. Staff just
6 recently received the Interrogatories and the
7 answers so we haven't had time to fully review
8 those. However, what I have looked at briefly
9 seems to go to the sorts of questions staff was
10 going to ask at the hearing because it goes back
11 again to that Virginia case.

12 And that's basically what we are using to seek
13 information at the hearing. And so staff has been
14 relying on that. And I thought that a number of
15 the questions that the Interveners did ask did go
16 directly to that. Thank you.

17 CHAIRMAN SAHR: Thank you. And I
18 want to thank all of you for really staying focused
19 on each of the individual issues and not getting
20 too far afield. We appreciate that.

21 Mr. Coit, I could hear a recurring pattern in
22 Western Wireless's objections, and that's one that
23 relates to whether or not things that are either
24 historical or not relating to the areas that are
25 currently on the table.

1 It seems to be what's coming up over and over
2 again. And I'd like you to just briefly respond to
3 both of those issues.

4 MR. COIT: Thank you, Chairman Sahr.
5 I guess first just generally it seems to me it's
6 just our view that past practice certainly should
7 be somewhat indicative of future practice. So, you
8 know, that's a general, you know, basis for
9 questions that we ask relating to, you know, what
10 has occurred historically. We do believe that's
11 relevant.

12 You know, what you're talking about when
13 you're talking about a commitment -- I mean, how do
14 you gauge that commitment? How do you know when
15 somebody promises to do something whether they're
16 truly going to do it? If past practice isn't
17 something that you can look at there, how do you
18 gauge it at all?

19 So to us that is relevant, and that's one of
20 the reasons we've asked the questions.

21 When the first hearing was going on and
22 certainly that process -- through the whole
23 process, I mean, there was a lot of talk about
24 coverage. It was all in the context of whether
25 they had to provide service, you know, throughout

1 the service area immediately, and we all know what
2 happened to that issue.

3 And we know now that they don't have to
4 provide service immediately, but they have to
5 provide it within a reasonable period of time. And
6 the Federal State Joint Board and Virginia
7 Cellular, they talk about a commitment, and they
8 talk about a capability.

9 The questions that we ask relate to capability
10 and commitment. But I also think there's another
11 thing that you should keep in mind, and this goes
12 directly to some claims that Western Wireless is
13 making in this case. And in Mr. Blundell's direct
14 testimony he has said, "Western Wireless concluded
15 only those study areas where its existing and
16 future network reaches at least 85 percent of the
17 population in each wire center within the study
18 area."

19 Some of the analysis that we've done, we don't
20 believe that. We don't believe that that is a
21 claim that is supported by the facts.

22 So the questions that we ask with respect to
23 towers and so forth, even though, you know, this
24 statement is made in the context of those
25 particular service areas where they are seeking

1 designation, the fact of the matter is is that we
2 have a right to test this statement. And we're
3 asking for information that permits us to test this
4 statement.

5 So we're asking for information that's
6 specific to these areas where they're seeking
7 designation and also that's specific to their past
8 practice. And so those are the reasons that we're
9 seeking this information. We think it's relevant.
10 We think whether they are committed is a question
11 that is a valid question.

12 CHAIRMAN SAHR: Thank you.

13 Mr. Ayotte, do you care to respond?

14 MR. AYOTTE: Very briefly,
15 Commissioner. With respect to Mr. Coit's comments
16 and the standard for responding to service requests
17 within a reasonable period of time, that's nothing
18 new out of Virginia Cellular.

19 That's the standard that the FCC articulated
20 in their declaratory order back in 2000 based on
21 the South Dakota Commission's decision where they
22 gave us that guidance. It's not a new standard.
23 And, again, to the extent that's relevant, it is
24 only relevant in the areas where we are seeking
25 designation.

1 All of these questions -- the vast majority of
2 these questions that are the subject of their
3 Motion to Compel relate to areas where we've
4 already been designated, and to that extent it's
5 beyond the scope of this proceeding.

6 Mr. Coit wanted to know how does the
7 Commission know that we'll do what we say we'll do,
8 and it seems to me the answer is quite simple. You
9 have an annual certification process where you've
10 already certified that Western Wireless is doing
11 what it says it will do relative to its commitment
12 to provide service.

13 And if there's some question regarding our
14 noncompliance with our commitments in the areas
15 where we've already been designated, then bring it
16 up in the context of another proceeding. File a
17 compliant. We'll have a hearing. We'll see if
18 Western Wireless is meeting its commitment.

19 But that doesn't make us fair game for
20 discovery in this proceeding with respect to our
21 request to be designated in these new areas.

22 CHAIRMAN SAHR: What about the areas
23 that are not -- that are the subject of this
24 proceeding?

25 MR. AYOTTE: Yes. I think the areas

1 that are the subject of this proceeding, you know,
2 defines the proper scope of any request. Then you
3 have to look at what information is being asked
4 relative to those areas.

5 CHAIRMAN SAHR: Thank you. Any
6 other questions or comments?

7 COMMISSIONER BURG: I'd just like to
8 follow up on that one real quick. But you've
9 objected to the build-out plan being presented, and
10 isn't that referring to the areas we're talking
11 about?

12 MR. AYOTTE: That would refer to --
13 well, part of the build-out plan is referring to
14 the areas where we're seeking designation, yes.

15 COMMISSIONER BURG: But you've
16 objected to furnishing that; right?

17 MR. AYOTTE: Yes.

18 COMMISSIONER BURG: So why would
19 that not be relevant?

20 MR. AYOTTE: Well, because it's not
21 a criteria for designation. The question is what
22 is your ability to serve throughout the areas which
23 you are designated, and what are your commitments
24 to provide service to customers within those areas
25 once you've been designated.

1 COMMISSIONER BURG: Well, I think
2 your build-out plan is directly relevant to that.
3 I guess I'd just make a general comment is I've
4 found that every question that was requested would
5 assist me in determining whether ETC should be
6 granted in this case, and I do think past practice
7 is important.

8 CHAIRMAN SAHR: Commissioner Hanson,
9 do you have any questions? Commissioner Hanson,
10 are you on the line?

11 VICE CHAIR HANSON: Can you hear me
12 all right?

13 CHAIRMAN SAHR: Now we can. Thank
14 you.

15 VICE CHAIR HANSON: Thank you. I'm
16 curious on Interrogatory No. 7, can that be more
17 specific as far as their build-out plan in this
18 area only or -- I apologize. My computer is down.
19 It had some changes made to it while I was away and
20 -- (Inaudible) -- software on it, and I have not
21 been able to obtain most -- I'm doing it all from
22 memory.

23 Item No. 7 I do not recall whether it was
24 specific to build-out plans for all of the cell
25 towers in South Dakota or just for certain areas.

1 MR. COIT: It is specific to the
2 areas referenced in their current application is
3 what it says.

4 MR. AYOTTE: Well, it's not, Rich.
5 If you read the Interrogatories, you want a listing
6 of the cell towers --

7 MR COIT: Oh, I see. You're right.

8 (Discussion off the record)

9 MR. AYOTTE: I think I said
10 something like that's not correct, Rich.

11 MR. COIT: And you are right.

12 VICE CHAIR HANSON: This is
13 Gary Hanson. That is the portion that I have some
14 challenges with. I certainly believe that there's
15 legitimate requests here for information.

16 However, I'm challenged to accept that
17 information provided is not a part of the areas.
18 That just doesn't seem relevant. So I'm curious if
19 there's some type of -- (Inaudible) -- then I have
20 one other question prior to that.

21 CHAIRMAN SAHR: Gary, the court
22 reporter was unable to hear your last part. I
23 think you said something along the lines of and
24 you're curious whether or not Greg, Rolayne, Karen,
25 would have any guidance on that, and certainly I

1 will let it be known that I'm going to -- I believe
2 we should take these issues under advisement.

3 And also it certainly sounds like Mr. Coit
4 just received some of these on Friday, and in the
5 next couple of days might have the opportunity to
6 review a few of these Interrogatories that may have
7 already been answered and we could at least take
8 those off the table, so to speak.

9 So, just so you know, Mr. Commissioner Hanson,
10 my inclination would be to take these under
11 advisement, be able to review them with our
12 attorneys and advisers and discuss them in more
13 detail and see if during that time period if
14 Mr. Coit might determine whether or not a couple of
15 those answers are sufficient from his standpoint.

16 VICE CHAIR HANSON: Thank you. That
17 will save me from asking additional questions at
18 this time.

19 MS. ROGERS: If I could just make
20 one comment, Chairman Sahr. I don't have any
21 problem -- we don't have any problem with you
22 taking this under advisement.

23 But just in general I would remind the
24 Commission that I don't really feel that any of the
25 questions that have been proposed here are onerous

1 or out of line. And you have to remember that what
2 is allowable in discovery is not necessarily going
3 to be admissible at the hearing.

4 And so Western Wireless can't step into your
5 shoes and make those determinations now. Their job
6 is to answer the questions and then you, as the
7 Commissioners, have to sort out what you determine
8 is or is not relevant and admissible at the
9 hearing.

10 And so if you just kind of keep that framework
11 in mind as well, I think that that might be
12 beneficial as you take it under advisement.

13 CHAIRMAN SAHR: Thank you. And with
14 that, I am going to move that we take the
15 Intervener's Motion to Compel Discovery under
16 advisement, and I would propose that we look at
17 having a hearing on Friday to rule on those issues.

18 And also I would ask Mr. Coit if after you've
19 had the chance to review this -- and realizing you
20 received some of this on Friday, today is Monday,
21 you were getting prepared for the hearing and so on
22 and so forth -- if there are some that you feel
23 have been satisfied, please let us know as soon as
24 possible so we can take those off the table.

25 MR. COIT: I will do that in

1 writing.

2 CHAIRMAN SAHR: And I appreciate
3 everyone -- their patience for the phone problems,
4 and also I appreciate the fact that all of the
5 attorneys stayed on the issues at hand and didn't
6 get too far afield.

7 So thank you very much, and with that, we will
8 stand adjourned.

9 (The hearing concluded at 5 o'clock p.m.)
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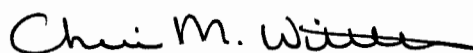
CERTIFICATE

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 15th day of
11 March 2004, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 30th day
14 of March 2004.

15
16
17 

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21
22
23
24
25

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