

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

=====

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

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UTILITIES COMMISSION

**ORIGINAL**

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Transcript of Proceedings  
April 6, 2004

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
ROBERT SAHR, CHAIRMAN  
GARY HANSON, VICE CHAIRMAN  
JIM BURG, COMMISSIONER

COMMISSION STAFF

Rolayne Ailts Wiest  
John Smith  
Karen Cremer  
Greg Rislov  
Harlan Best  
Jim Mehlhaff  
Steve Wegman  
Tina Douglas  
Dave Jacobson  
Michele Farris  
Sue Schaefer  
Pam Bonrud

APPEARANCES

Darla Pollman Rogers  
Rich Coit  
David Gerdes  
Jeff Larson

ALSO PRESENT: Rod Bowar

Reported By Cheri McComsey Wittler, RPR

**PRECISION REPORTING**

**L I M I T E D**

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2 OF THE STATE OF SOUTH DAKOTA  
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20 GARY HANSON, VICE CHAIRMAN  
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35 APPEARANCES  
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37 Rich Coit  
38 David Gerdes  
39 Jeff Larson  
40 ALSO PRESENT: Rod Bowar  
41 Reported By Cheri McComsey Wittler, RPR  
42

3  
4 CHAIRMAN SAHR: In the Matter of  
5 Petitions For Suspension or Modification of  
6 47 U.S.C. Section 251(b)(2) of the Communications  
7 Act of 1934 as Amended in Dockets TC04-044, 045,  
8 046, 047, 048, 049, 050, 051, 052, 053, 054, 055,  
9 056, 060, 061, and 062.  
10 And the question is today shall the Commission  
11 grant intervention to any parties that may have  
12 filed in each respective docket and shall the  
13 Commission grant the petition for interim  
14 suspension of any obligation that may exist for a  
15 Petitioner to provide LNP until six months after  
16 entry of final order.  
17 Let's take the intervention question. And  
18 have we had anyone intervene?  
19 MS. CREMER: Thank you. This is  
20 Karen Cremer from staff. We have had Interveners.  
21 Western Wireless and SDTA have intervened in all of  
22 them, and Midcontinent has intervened in 044, 050,  
23 051, 054, 055, 056, 060, and 061.  
24 And staff would recommend granting  
25 intervention in all of those.  
26 CHAIRMAN SAHR: Thank you. Are  
27 there any changes or any opposition to those  
28 interventions?

1 APPEARANCES BY TELEPHONE  
2 Mary Sisak  
3 Ben Dickens  
4 Talbot Wieczorek  
5 Dan Wall  
6 Dan Davis  
7 Mary Lohnes  
8 Nancy Vogel  
9 Colleen Sevold  
10 Melissa Thompson  
11 Pamela Harrington  
12 JoAnne Hhrman  
13 Warren Vandestadt  
14 Rich Helsper  
15 Wayne Akland  
16 Todd Hansen  
17 =====  
18 TRANSCRIPT OF PROCEEDINGS, held in the  
19 above-entitled matter, at the South Dakota State  
20 Capitol, 500 East Capitol Avenue, Pierre, South Dakota,  
21 on the 6th day of April 2004, commencing at  
22 9:30 a.m.  
23  
24  
25

4  
5 MS. ROGERS: Mr. Chair, members of  
6 the Commission, I would -- it's my day to have fun,  
7 I guess, but I would respectfully urge the  
8 Commission not to grant intervention to  
9 Midcontinent in all of the dockets in which they  
10 have filed, with the exception of ITC.  
11 And, once again, I think that we need to focus  
12 on the rules governing intervention. When we look  
13 at 20:01:15:02 and 03, what is required is that the  
14 intervening party must show facts supporting the  
15 Petitioner's alleged interest in the proceeding and  
16 the Petitioner's position in the proceeding.  
17 And you as a Commission can grant intervention  
18 if, number one, the Petitioner shows that the  
19 Petitioner is specifically deemed by statute to be  
20 interested in the matter involved, which, of  
21 course, is not applicable here.  
22 Number two, that the Petitioner is  
23 specifically declared by statute to be an  
24 interested party. And, of course, that's not the  
25 case either.  
26 And, number three, that the Petitioner will be  
27 bound by and affected either favorably or adversely  
28 with respect to an interest peculiar to the  
29 Petitioner, as distinguished from an interest

1 common to the public or taxpayers.  
 2 Well, what interest does Midcontinent allege  
 3 in its petitions for intervention? First of all,  
 4 they allege that they're a certified  
 5 telecommunications carrier under the jurisdiction  
 6 of the Commission. They allege that they're a  
 7 local exchange carrier in US West's areas and in  
 8 rural exchanges in this state and that they have an  
 9 interest in preserving and maintaining local number  
 10 portability. I assume that would be in general.

11 And they allege that they have a direct  
 12 interest in the outcome as a local exchange carrier  
 13 and that any action of this Commission will  
 14 potentially have a direct financial impact upon  
 15 Midco and its ability to do business in this state  
 16 as well as affecting the viability of competition  
 17 in local exchanges.

18 I do not think that those interests rise to  
 19 the level of requirement of the rules.  
 20 Midcontinent is a certified telecommunications  
 21 carrier, but it is not certified in the exchanges  
 22 in the dockets to which I am objecting.

23 For example, in Sioux Valley's exchange it has  
 24 no direct interest in Sioux Valley because it's not  
 25 certified there.

1 When Midcontinent received its Certificate of  
 2 Authority from this Commission, and that was back  
 3 in September of 2000 -- and actually what happened  
 4 was that Midcontinent requested a transfer of the  
 5 Certificate of Authority from Midco Communications  
 6 and Sioux Falls Cable Television to Midco, and at  
 7 that point the Certificate of Authority granted by  
 8 this Commission for Midcontinent Communications  
 9 authorized it to offer local exchange services in  
 10 those areas in South Dakota where US West  
 11 Communications is the incumbent local exchange  
 12 carrier.

13 And in the future if they choose to provide  
 14 local exchange functions -- or local service in  
 15 other rural areas, they have to come back before  
 16 this Commission and request a Certificate of  
 17 Authority.

18 To date they have done that in one other  
 19 exchange, and that's in the Webster exchange, which  
 20 is in ITC's service area. So now when they say  
 21 that they are a local exchange carrier in US West's  
 22 exchanges and other local exchanges, that's not  
 23 true. They are not a carrier in any of the dockets  
 24 in which I am objecting.

25 There is no interest in preserving and

1 maintaining LNP. That can't be an interest of  
 2 theirs. They can't even request LNP in those  
 3 exchanges. They have no direct interest because,  
 4 again, they're not a LEC. They're not a local  
 5 exchange carrier.

6 There isn't an interest financially or  
 7 otherwise and all other interests that they've  
 8 alleged are interests that are common to the public  
 9 in general, and they are not specific to  
 10 Midcontinent.

11 I don't believe that this Commission should  
 12 grant intervention to Midco in any of the dockets  
 13 with the exception of ITC, and I do not object to  
 14 that one.

15 CHAIRMAN SAHR: Thank you.  
 16 Mr. Gerdes, would you care to comment?

17 MR. GERDES: Mr. Chairman, members  
 18 of the Commission, yes, thank you. I've never had  
 19 this happen before.

20 First of all, as Ms. Rogers admits,  
 21 Midcontinent is certificated as a local exchange  
 22 carrier but not -- and we would agree, not in all  
 23 of the areas of the companies that we've sought to  
 24 intervene in except ITC.

25 But that does not mean that tomorrow we would

1 not apply for those. Certainly we've already shown  
 2 that we intend to apply for rural telecommunication  
 3 areas because we've applied for and received  
 4 permission to do business in the Webster exchange  
 5 of ITC.

6 I believe it would be proprietary information,  
 7 which could be disclosed under a confidentiality  
 8 order, but I can tell you that there are plans to  
 9 enter other exchanges. And that, I think, alone is  
 10 sufficient to give Midcontinent a right to  
 11 participate in those dockets and in those exchanges  
 12 where they have a potential business interest.

13 To say that Midcontinent has to apply for and  
 14 receive authority to do business in an exchange  
 15 before they can talk about the local number  
 16 portability obligation of that carrier is  
 17 unrealistic because there very likely could be a  
 18 future interest in it.

19 The other thing that Ms. Rogers didn't mention  
 20 is that any one of those exchanges could, for  
 21 example, apply to do business as a CLEC in any  
 22 US West area. And if one of those rural carriers  
 23 became a CLEC in a Qwest area, the question still  
 24 remains would you -- would they be obligated to  
 25 provide LNP in the Qwest area.

1 Those are also legitimate concerns. And, of  
2 course, Midcontinent is certificated in most, if  
3 not all, of the Qwest exchanges. And if you look  
4 at it, these companies whose areas we've intervened  
5 in would have some relevance to that latter point.  
6 And for those reasons we would object -- or we  
7 believe that the intervention petitions are well  
8 taken.

9 MR. SMITH: Mr. Gerdes, does Midco  
10 have an actual business plan that includes time  
11 line or intention to roll out service into any of  
12 these other areas?

13 MR. GERDES: I believe that's  
14 proprietary information. Again, we would be happy  
15 to disclose it under a confidentiality disorder. I  
16 can't disclose it right now.

17 MR. SMITH: With respect to  
18 specifics, in general do they have an intention to  
19 expand into other locations, or is that proprietary  
20 too?

21 MR. GERDES: Yes, they do. And I'm  
22 working on an application right now.

23 MR. SMITH: Outside the Qwest area?

24 MR. GERDES: Yes.

25 VICE CHAIR HANSON: Mr. Chairman.

1 CHAIRMAN SAHR: Yes, Commissioner  
2 Hanson.

3 MS. ROGERS: I just wanted to  
4 clarify.

5 CHAIRMAN SAHR: Thank you. Please  
6 go ahead.

7 MS. ROGERS: My point is that  
8 Midcontinent is not now today a telecommunications  
9 carrier in the Petitioner's service areas to which  
10 I have objected. I did not state that they may  
11 never happen.

12 If at some point they become certificated in  
13 those areas, they may have standing at that point.  
14 But to say it speculatively on a go-forward basis  
15 or to say we may have an interest because we may  
16 CLEC in another area, that's not what's required  
17 under an intervention petition.

18 It's required that they have a specific,  
19 definite interest and standing, and I think that's  
20 lacking here.

21 MR. GERDES: Mr. Chairman, if I may  
22 just very briefly, we just heard a lot when we were  
23 talking about the last topic about you can't unring  
24 the bell once the bell is rung. And the same would  
25 be true for this question here, and certainly if

1 Midcontinent has a legitimate interest in a  
2 particular service area to say that they'd have to  
3 wait until they applied for it, I would submit is  
4 simply wrong-headed and it makes no logical sense.

5 CHAIRMAN SAHR: Thank you. I think  
6 we'll go to Commissioner Hanson next.

7 VICE CHAIR HANSON: Thank you. If I  
8 can remember my question. It's an interesting  
9 discussion that you're having.

10 The second point that you were making,  
11 Mr. Gerdes, pertaining to, for instance, one of the  
12 carriers coming in to your area and becoming a  
13 CLEC, wouldn't we at that time examine the LNP  
14 question anyway?

15 MR. GERDES: I believe that would be  
16 up to the Commission.

17 VICE CHAIR HANSON: But we'd have  
18 that opportunity then?

19 MR. GERDES: You would. That's  
20 true.

21 VICE CHAIR HANSON: Okay. So the  
22 point that you were making, I believe, was that we  
23 wouldn't have that opportunity.

24 MR. GERDES: I was making the point  
25 that if we were not able to participate in this LNP

1 proceeding, it is potentially possible that the  
2 opportunity would be lost to make an impact, if  
3 that company became a CLEC. It's sort of like the  
4 unring the bell argument that I made.

5 VICE CHAIR HANSON: But my point  
6 still is that at that juncture we would still be  
7 able to examine that question.

8 MR. GERDES: Commissioner Hanson,  
9 you would, but again -- and I realize that  
10 Ms. Cremer tells me that there's no precedent in  
11 administrative law, but nonetheless, once a  
12 precedent is established I've heard it said we did  
13 it before. And we'd just as soon be in on the  
14 first decision.

15 COMMISSIONER BURG: Can I follow up  
16 on that? Because I was going to have a similar  
17 question.

18 Isn't it conceivable that we would grant  
19 suspension, either permanent or temporary  
20 suspension of LNP requirement, because we didn't  
21 find a basis for it at this time and then at a  
22 future date when you decide to serve an area you  
23 can argue we need LNP to serve this area and come  
24 back and say now we will require the company to  
25 establish LNP procedure?

1 MR. GERDES: That's a very good  
 2 point, Commissioner Burg. And I agree that that  
 3 could be part of the proceeding. But, again, my  
 4 point is we've got this entire proceeding  
 5 specifically directed toward LNP going now, and it  
 6 seems to me it would place an unfair burden on  
 7 Midcontinent or any other potential CLEC if they  
 8 would have to redo the whole process a second time  
 9 when we've already got this opportunity now.

10 COMMISSIONER BURG: I really  
 11 disagree because I know when we get to the hearing  
 12 a real important part to me is going to be on the  
 13 benefit cost ratio. If there's going to be a huge  
 14 cost and we can't really see a benefit to this, I'm  
 15 going to be reluctant to put that cost on the  
 16 people of South Dakota.

17 However, if somebody comes in later and says  
 18 we can show a real strong benefit to now requiring  
 19 LNP, I'll be very open to that.

20 MR. GERDES: I believe that's  
 21 legitimately something that could take place in  
 22 this proceeding, and that's why we're intervening.  
 23 I mean, that would be one of the things the  
 24 Commission could take up.

25 MR. SMITH: Can I ask Ms. Rogers a

1 question? On that same point, though, let's  
 2 assume several of the states out there have -- the  
 3 orders that they have issued in these suspension  
 4 proceedings have been like two-year orders with  
 5 then the opportunity to continue year to year after  
 6 that with an item presumably until some difference  
 7 occurred.

8 Might it not -- let me ask you this. If this  
 9 Commission, for example, were to issue a three-year  
 10 suspension and Midco has somewhere in their  
 11 business plan an intention, for example, to enter  
 12 Santel's territory, would it be the position of the  
 13 parties that at that point someone could petition  
 14 to undo that suspension, or is that suspension what  
 15 it is for that three-year period?

16 MS. ROGERS: Well, I'm not sure that  
 17 I have the answer to that, but it would appear to  
 18 me at this point Midcontinent can't even request  
 19 LNP from these carriers. They have no standing, no  
 20 need. They can't even request it.

21 So it would appear to me that at such time as  
 22 they would -- if and when in their business plan or  
 23 whatever, they become eligible telecommunications  
 24 carriers or carriers within an area, say, Santel,  
 25 then if there was an order that said you have a

1 blanket three-year suspension, Santel, from  
 2 providing LNP, I think at the point when  
 3 Midcontinent has become a carrier in that exchange  
 4 and too requests LNP they could bring the issue  
 5 back in front of this Commission.

6 Because then they would have to show why it  
 7 would be in the best interests of all involved for  
 8 the Commission to reexamine its order. So I  
 9 suppose that's a possibility, yes.

10 CHAIRMAN SAHR: Ms. Rogers, I'm  
 11 reading 20:10:01:15.05, last clause, "Where by the  
 12 outcome of the proceeding the Petitioner will be  
 13 bound and affected either favorably or adversely  
 14 with respect to an interest peculiar to the  
 15 Petitioner as distinguished from an interest common  
 16 to the public or to the taxpayers in general."

17 Now if the LNP proceeding turns out that there  
 18 is not a requirement to offer number portability,  
 19 if I'm sitting there as Midcontinent, haven't I  
 20 just had a significant barrier to entry thrown in  
 21 the face of my potential business plans that I  
 22 might have -- that there would be standing based on  
 23 that?

24 Because I think clearly if the LNP petitions  
 25 are granted, they do have an interest that's

1 affected because it's going to be a lot harder for  
 2 them to enter into these markets. And I think that  
 3 is different than the public in general and the  
 4 taxpayers, and I think it's clearly contemplated to  
 5 allow a petition -- or intervention under those  
 6 circumstances.

7 MS. ROGERS: My response to that is  
 8 that they're not precluded from bringing that in  
 9 front of you and showing that interest if and when  
 10 they decide to enter the marketplace in any one of  
 11 these exchanges. They can file a petition at that  
 12 point. But they haven't even filed a request yet.

13 CHAIRMAN SAHR: But isn't it a  
 14 barrier to entry? I mean, you're putting up the  
 15 barrier now. I mean, that's the problem I see with  
 16 it. I think overarching throughout -- whether  
 17 you're talking about federal or state law, let's  
 18 make sure we're not setting up any sort of  
 19 artificial barriers to entry.

20 And I think there's a pretty good argument if  
 21 the LNP goes against Midcontinent and they're not  
 22 even allowed to participate, then they've had a  
 23 significant barrier to entry put in their way of  
 24 planned expansions, which they're clearly in the  
 25 process of doing right now, and that they should at

1 least have the opportunity to be heard at hearing.  
 2 And, you know, you very likely may beat  
 3 Mr. Gerdes on each and every case, but at least  
 4 he's had an opportunity and his clients had an  
 5 opportunity to make their argument to shut them out  
 6 and then to rule against them making it more  
 7 difficult for them to enter into individual  
 8 markets.

9 I can understand why, you know, your clients  
 10 may like that result, but strictly from a policy  
 11 standpoint and fairness standpoint under state and  
 12 federal law, I have a hard time seeing how allowing  
 13 an intervention into these matters is going to  
 14 disrupt things so much to make it that we should  
 15 take that black-and-white approach that you're  
 16 arguing.

17 MS. ROGERS: And with all due  
 18 respect, Commissioner Sahr, I don't know that I see  
 19 the outcome of these dockets, regardless of which  
 20 way they go, as necessarily being a barrier to  
 21 entry. We don't even know at this point what  
 22 you're going to decide ultimately.

23 So we're talking about a series of  
 24 speculations, and I don't think that meets the  
 25 requirement of the rule.

1 I mean, if we're really going to say that  
 2 somebody that does not have an interest today just  
 3 because they're in the telephone business, maybe at  
 4 some time could come in, couldn't we also continue  
 5 that to say that I may want to form a telephone  
 6 company at some time in the future so I want to  
 7 intervene?

8 Is there any limitation to intervening if  
 9 we --

10 CHAIRMAN SAHR: I think you'd have  
 11 to show that you qualify under the rule, which says  
 12 will be bound or affected either favorably or  
 13 adversely. And I think will be to me sounds like  
 14 it's contemplating a forward-looking process.

15 And I think clearly -- the problem is if I  
 16 don't even have a telephone company, then I am not  
 17 distinguished from an interest common to the public  
 18 or the taxpayers in general. So I think, no, you  
 19 would not be allowed to intervene in that because I  
 20 think the rule was written with that sort of  
 21 interest in mind.

22 It can't be just theoretical. I think a  
 23 telecommunications company that's currently up and  
 24 running and offering services with plans to build  
 25 out across the state, or Mr. Gerdes has indicated

1 CHAIRMAN SAHR: I think that cuts  
 2 the other way, though. We don't know what's going  
 3 to be decided. It could affect them. Therefore,  
 4 they have the interest peculiar to the Petitioner  
 5 as distinguished from the public in general.

6 MS. ROGERS: It can't affect them  
 7 now because of where they are now.

8 CHAIRMAN SAHR: Where does it say  
 9 that?

10 MS. ROGERS: Like I said, they can't  
 11 even request LNP at this point so they don't have  
 12 any interest in how you decide these decisions,  
 13 these dockets.

14 MR. SMITH: What if the suspension,  
 15 though, Darla, is for three years?

16 MS. ROGERS: Again, there's nothing  
 17 to stop them from coming in and asking the  
 18 Commission to reconsider a grant. If they put in a  
 19 request, maybe they'll decide they don't care about  
 20 LNP. I mean, I don't know. I don't know.

21 COMMISSIONER BURG: Just one comme  
 22 that I want to make. If we follow that argument,  
 23 though, couldn't I say -- wouldn't we say that  
 24 anybody could come in then because I may decide I  
 25 want to form a telephone company at any time?

1 plans to expand their service, is distinguishable  
 2 from the public and the taxpayers in general.

3 And I think in your theory I might form --  
 4 under your scenario the I might form a telephone  
 5 company person would be exactly the same as the  
 6 taxpayer or public in general, and they would not  
 7 be allowed to have standing in the case as opposed  
 8 to somebody who's currently offering service and  
 9 could very likely be affected by having a  
 10 significant barrier to entry put in their face.

11 COMMISSIONER BURG: So we're saying  
 12 anybody who offers a telecommunications service  
 13 would be eligible to intervene at this point.

14 CHAIRMAN SAHR: They would have to  
 15 meet the rule requirement. I don't think I would  
 16 go that far, but I think you'd have to look at the  
 17 individual circumstances and see if it meets the  
 18 definition of the rule.

19 COMMISSIONER BURG: I don't really  
 20 have a problem with whether they intervene or don't  
 21 intervene. I just feel we better leave enough  
 22 latitude in this decision to take into effect what  
 23 occurs. Because what I'm hoping occurs down the  
 24 road is we find cheaper ways to do it.

25 Because I believe we should have number

1 portability, but today I'm very questionable as to  
2 whether there's value because of the costs of doing  
3 it. Hopefully we make a decision in a way that  
4 when the market changes, when the technology  
5 changes, we will change to require number  
6 portability at a time when it is feasible.

7 CHAIRMAN SAHR: Well, and I --

8 COMMISSIONER BURG: So I guess I'm  
9 saying I don't think anybody's kept out of the  
10 process if they don't apply today just because it  
11 doesn't apply today.

12 CHAIRMAN SAHR: Well, and I think  
13 another -- obviously, we're going to have an ad hoc  
14 hearing between our next hearing, and it's probably  
15 going to be sooner rather than later.

16 There is the alternative. We can take the  
17 matter under advisement if the three Commissioners  
18 would think they would be better off having a  
19 chance to talk about it with the General Counsel  
20 and the advisers. I'm certainly not opposed to  
21 that, if that's what my fellow Commissioners would  
22 think is appropriate.

23 MS. CREMER: If I may.

24 CHAIRMAN SAHR: Yes.

25 MS. CREMER: I would just remind

1 withstanding Ms. Cremer's remarks, Commissioner  
2 Sahr makes some compelling arguments here. And  
3 it's interesting, as I think about this, it's  
4 almost a damned if you do, damned if you don't,  
5 Ms. Rogers, because why would you oppose their  
6 intervention into the process if they did not have  
7 some interest or some compelling interest at a  
8 future time that it would affect them?

9 MS. ROGERS: I don't think that the  
10 rule contemplates that you speculate as to what's  
11 going to happen. And, furthermore, there was  
12 nothing in Midcontinent's petition itself that said  
13 anything about entry into any areas. We're just  
14 speculating that's part of their business plan  
15 based on what Mr. Gerdes has said.

16 They are not a telecommunications carrier in  
17 our areas. I don't think --

18 VICE CHAIR HANSON: Wouldn't you  
19 agree that they have a different relationship than  
20 the public has simply by the standpoint that if  
21 they pursued this at a future time, that an action  
22 of us precluding them from participating at this  
23 time could adversely affect them?

24 MS. ROGERS: I don't think that you  
25 would preclude any of their rights at a future

1 everyone that the hurdle for intervention has  
2 always been extremely low. And I think we went  
3 through this argument a few years ago with SDTA or  
4 whatever they were known as before that where it  
5 was argued they really shouldn't be allowed to  
6 intervene in all the dockets they were allowed to  
7 because they were an organization and they didn't  
8 really have a peculiar interest and all of that and  
9 yet you allowed them to intervene.

10 I do believe that intervention here is okay  
11 because he has said they have a business plan, and  
12 they have intervened in a limited number of  
13 dockets. They just didn't intervene in all of them  
14 willy-nilly. So I believe that they do meet that  
15 very, very low standard of intervention.

16 And personally I don't have any interest in  
17 relitigating these each and every time. You know,  
18 if we have a three-year suspension, to me that  
19 means there's a three-year suspension and I don't  
20 want everybody coming back every couple of weeks or  
21 months and saying, well, now I want to go in. So I  
22 think we need to keep that in mind if we want to  
23 keep these hearings to a reasonable number.

24 CHAIRMAN SAHR: Commissioner Hanson.

25 VICE CHAIR HANSON: Thank you. Not

1 time.

2 VICE CHAIR HANSON: No. But from  
3 participating in this at this time.

4 MS. ROGERS: I don't believe that  
5 they have the standing as a party or any particular  
6 say in these dockets at this time because they are  
7 not telecommunications carriers in those areas.

8 CHAIRMAN SAHR: Ms. Rogers, if I  
9 may, does SDT offer telecommunications services in  
10 those areas? And the second question is, of  
11 course, can they request number portability?

12 MS. ROGERS: I don't believe that I  
13 objected to their intervention.

14 CHAIRMAN SAHR: Well, I'm just  
15 asking -- I'm asking the question. We grant the  
16 interventions, not the parties by either opposing  
17 or not opposing.

18 MS. ROGERS: What was your question?

19 CHAIRMAN SAHR: Is SDTA a  
20 telecommunications provider in these dockets in the  
21 areas in which these dockets are being contested  
22 right now?

23 MS. ROGERS: They are not. Their  
24 member companies are.

25 CHAIRMAN SAHR: Can they request

<p>25</p> <p>1 number portability?</p> <p>2 MS. ROGERS: They cannot. Again,</p> <p>3 their member companies are receiving those</p> <p>4 requests.</p> <p>5 CHAIRMAN SAHR: I understand that.</p> <p>6 And I think it's good we have them involved in the</p> <p>7 docket, but I don't think those two factors you</p> <p>8 bring up of Midcontinent are necessarily</p> <p>9 dispositive of the issue. At least you probably</p> <p>10 don't want it to be for SDTA.</p> <p>11 MS. ROGERS: Like I said, I'm not</p> <p>12 objecting to their intervention. Midcontinent on</p> <p>13 the other hand does not have member companies that</p> <p>14 either provide service or can request it in these</p> <p>15 areas. I think that's a distinction.</p> <p>16 CHAIRMAN SAHR: Thank you.</p> <p>17 COMMISSIONER BURG: I'm just going</p> <p>18 to make one other comment. I probably am going to</p> <p>19 support the intervention at this time if we were</p> <p>20 looking at postponing it because of another reason</p> <p>21 is they have the right to intervene in one docket,</p> <p>22 and I think these are going to be pretty well</p> <p>23 combined. I think we're going to have the same</p> <p>24 expert witnesses. We're going to have the same</p> <p>25 arguments.</p>	<p>27</p> <p>1 MR. WIECZOREK: Can I just interpose</p> <p>2 one issue here?</p> <p>3 CHAIRMAN SAHR: Go ahead.</p> <p>4 MR. WIECZOREK: 45 and 46 you have</p> <p>5 multiple companies filing under one petition, and</p> <p>6 their cost breakdown was given grouped together,</p> <p>7 not broken out individually.</p> <p>8 I do have a concern that that cost information</p> <p>9 should be immediately produced by the company, even</p> <p>10 if there's some argument there's some</p> <p>11 cross-ownership. Because, you know, there's a</p> <p>12 substantial difference in size between Golden West</p> <p>13 and Kadoka. And I am not saying that this was</p> <p>14 done, but the question I have is whether those were</p> <p>15 purposely grouped because one is so high and one is</p> <p>16 very low as a cost consideration.</p> <p>17 CHAIRMAN SAHR: I think we can go</p> <p>18 ahead and grant the interim suspensions but I think</p> <p>19 that's a legitimate request. I think there's some</p> <p>20 sort of minimal economic showing, and I think the</p> <p>21 companies have done a good job making that argument</p> <p>22 in the other cases.</p> <p>23 So I will ask Ms. Rogers to check with her</p> <p>24 client and as soon as possible file that</p> <p>25 information so we do have it as part of the record</p>
<p>26</p> <p>1 So if they can get into one, that gets them</p> <p>2 actually the arguments into all of them, the way it</p> <p>3 looks to me. So I don't think we'd accomplish that</p> <p>4 much.</p> <p>5 CHAIRMAN SAHR: I'm prepared to go</p> <p>6 ahead and make the motion that we grant</p> <p>7 intervention to Western Wireless, SDTA, and</p> <p>8 Midcontinent in the dockets in which they've</p> <p>9 requested intervention.</p> <p>10 VICE CHAIR HANSON: Second.</p> <p>11 COMMISSIONER BURG: And I will</p> <p>12 concur for the reason I just stated.</p> <p>13 CHAIRMAN SAHR: And then we have a</p> <p>14 second question, of course. Shall the Commission</p> <p>15 grant the petition for an interim suspension of any</p> <p>16 obligation that my exist for Petitioner to provide</p> <p>17 LNP until six months after entry of a final order.</p> <p>18 Unless there's any sort of additional</p> <p>19 information, I will go ahead and move that we grant</p> <p>20 the interim suspension until the Commission's final</p> <p>21 order.</p> <p>22 COMMISSIONER BURG: I'll second</p> <p>23 that.</p> <p>24 MR. WIECZOREK: Mr. Chairman?</p> <p>25 CHAIRMAN SAHR: Yes, Mr. Wieczorek.</p>	<p>28</p> <p>1 as well.</p> <p>2 VICE CHAIR HANSON: Mr. Chairman,</p> <p>3 with those comments and the comments of</p> <p>4 Mr. Wieczorek, I will vote to concur on the motion</p> <p>5 and with the understanding that my vote also</p> <p>6 reflects the fact that I relied upon the</p> <p>7 information to an extent that was provided to us on</p> <p>8 the costs.</p> <p>9 CHAIRMAN SAHR: Thank you.</p>




1       STATE OF SOUTH DAKOTA )  
 2                               :SS           CERTIFICATE  
 3       COUNTY OF HUGHES    )

4  
 5               I, CHERI MCCOMSEY WITTLER, a Registered  
 6       Professional Reporter and Notary Public in and for the  
 7       State of South Dakota:

8               DO HEREBY CERTIFY that as the duly-appointed  
 9       shorthand reporter, I took in shorthand the proceedings  
 10      had in the above-entitled matter on the 6th day of  
 11      April 2004, and that the attached is a true and  
 12      correct transcription of the proceedings so taken.

13              Dated at Pierre, South Dakota this 19th day  
 14      of April 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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