

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION  
OF JAMES VALLEY COOPERATIVE  
TELEPHONE COMPANY FOR SUSPENSION  
OF INTERMODAL LOCAL NUMBER  
PORTABILITY OBLIGATIONS

TC04-077

IN THE MATTER OF THE PETITION OF  
CHEYENNE RIVER SIOUX TRIBE TELEPHONE  
AUTHORITY FOR SUSPENSION OR MODIFICATION  
OF 47 U.S.C. SECTION 251(B)(2) OF THE  
COMMUNICATIONS ACT OF 1934 AS AMENDED

TC04-085

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Transcript of Proceedings  
July 20, 2004

**ORIGINAL**

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

COMMISSION STAFF  
Rolayne Ailts Wiest  
John Smith  
Karen Cremer  
Greg Rislov  
Harlan Best  
Dave Jacobson  
Michele Farris  
Tina Douglas  
Heather Forney

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UTILITIES COMMISSION

APPEARANCES

Darla Pollman Rogers

Reported By Cheri McComsey Wittler, RPR, CRR

**PRECISION REPORTING**

**L I M I T E D**

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APPEARANCES BY TELEPHONE

Colleen Sevold  
Melissa Thompson  
Marv Sorenson  
Gene Harrison  
Talbot Wieczorek  
Tom Kleve  
Joe Schuele  
Mary Lohnes  
James Cremer  
Tammy Aberle

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TRANSCRIPT OF PROCEEDINGS, held in the  
above-entitled matter, at the South Dakota State  
Capitol, Room 412, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 20th day of July 2004, commencing  
at 9:30 a.m.

1 CHAIRMAN SAHR: Next item, No. 2 on  
2 our agenda, is TC04-077, In the Matter of the  
3 Petition of James Valley Cooperative Telephone  
4 Company For Suspension of Intermodal Local Number  
5 Portability Obligations.

6 And the question today, if a settlement has  
7 been reached, shall the Commission dismiss and  
8 close the docket?

9 And the parties here are James Valley and  
10 Western Wireless; is that correct?

11 MS. WIEST: And Midcontinent.

12 CHAIRMAN SAHR: And Midcontinent.  
13 Anyone appearing on behalf of either of those three  
14 entities?

15 MS. CREMER: Jim Cremer from James  
16 Valley.

17 MR. WIECZOREK: Talbot Wieczorek  
18 from Western Wireless.

19 CHAIRMAN SAHR: Thank you. Mary, I  
20 know you're on the line for Midcontinent.

21 Mr. Cremer, do you want to go ahead and  
22 proceed?

23 MR. CREMER: I think the parties  
24 have reached a written stipulation consistent with  
25 the oral stipulation that was entered on June 22.

1 That written stipulation has been circulated to all  
2 parties. All parties have approved the written  
3 stipulation, although it has not yet been signed.

4 I also provided to Rolayne a copy of the  
5 stipulation and proposed order approving it, and I  
6 would ask the Commission to approve the stipulation  
7 and enter the order once you receive the actual  
8 written stipulation.

9 CHAIRMAN SAHR: Thank you.

10 Mr. Wieczorek, anything to add?

11 MR. WIECZOREK: No, Mr. Chairman.

12 The stipulation has been agreed to. It just needs  
13 to be circulated. I also believe there has been a  
14 tentative or potential order provided by Mr. Cremer  
15 that staff has had a chance to review.

16 CHAIRMAN SAHR: Thank you.

17 Ms. Lohnes?

18 MS. LOHNES: No, we do not oppose --  
19 (Inaudible).

20 CHAIRMAN SAHR: You broke up, Mary.  
21 You started saying we do not oppose, I believe. We  
22 do have a court reporter here in the room. She  
23 needs you to speak up as loudly as you can so we  
24 can hear you clearly. Could you please restate  
25 what you said.

1 MS. LOHNES: Certainly. We would  
2 agree with the settlement that has -- (Inaudible).

3 CHAIRMAN SAHR: We lost you after we  
4 agree with the settlement. Do you have anything  
5 else to add beyond that?

6 MS. LOHNES: No, I don't.

7 CHAIRMAN SAHR: Thank you. Any  
8 comments from staff?

9 Ms. Wiest?

10 MS. WIEST: Yes. I know that the  
11 Commissioners just received this right before the  
12 hearing, the meeting today, so I'm not sure if  
13 you're prepared to have any questions about this  
14 today.

15 One of the issues that came up and is -- I'll  
16 just point out is reflected in the proposed order  
17 is that -- the question is how do we deal with  
18 non-Interveners. And that is actually spelled out  
19 in paragraph 5 of the actual stipulation, and what  
20 would happen is that any non-Intervener is subject  
21 to the same terms and conditions as are laid out  
22 here for both -- it would be wireless would be  
23 subject to the same wireless and then wireline  
24 would be subject to paragraph 3 conditions and then  
25 the wireless or wireline carrier could petition the

1 Commission for modification of that.

2 And talking about going forward with respect  
3 to what the suspension or modification would be,  
4 the way I see it is that I think if the Commission  
5 would agree with this type of stipulation is  
6 that -- and I don't know that you want to actually  
7 enter the order that they've proposed here. We  
8 usually write our own orders.

9 But the way I could see it is that the  
10 Commission would actually enter an order that would  
11 modify LNP requirements consistent with the terms  
12 and conditions of the stipulation. And the reason  
13 that you might want to look at doing it that way is  
14 that I think it's possible the FCC could come out  
15 with some future orders that may not necessarily be  
16 consistent with what the parties have agreed to in  
17 the stipulation, and that is the direct connection  
18 with James Valley. And I think if you had an order  
19 out there that stated that this was the  
20 modification of LNP requirements consistent with  
21 the stipulation, then that may have the effect of  
22 binding any other future wireless providers who  
23 want to enter -- who give a bona fide request.

24 I see that as one of the main issues, I guess.  
25 And, like I said, you just got it so it is possible

1 that you may want to just review it further and  
2 consider it at the next meeting, or if you're  
3 prepared to go forward with it today, that's fine.  
4 At this point I have no problems recommending  
5 approval of the stipulation. As far as the order  
6 goes, I would think you'd want to review that and  
7 see if that's the type of language that you want in  
8 that and if you think that you want to put an order  
9 that says that you're modifying LNP requirements  
10 for future wireless or wireline carriers who want  
11 LNP.

12 And the other point I was going to point out  
13 is that if you look at 2E, the term of the  
14 agreement is for three years. And so how I would  
15 read it is that since the term of the stipulation  
16 is for three years, any order that you put in  
17 approving the stipulation and any order that you  
18 may put in stating that the stipulation is really a  
19 modification of LNP requirements, that would also  
20 only be good for three years and after three years  
21 I guess LNP, you know, would be implemented and the  
22 parties would have to negotiate any future terms  
23 and conditions on their own.

24 CHAIRMAN SAHR: Thank you.

25 Questions or comments from Commissioners or

1 advisers?

2 COMMISSIONER BURG: Well, I agree  
3 with Rolayne. I think we can go ahead and  
4 approve -- (Inaudible).

5 CHAIRMAN SAHR: Jim, we have a court  
6 reporter in the room, and she needs to be able to  
7 transcribe what you're saying so could you please  
8 attempt to speak more loudly and clearly so that  
9 she can get that on the record.

10 COMMISSIONER BURG: I agree with  
11 Rolayne that we can probably approve it today but  
12 wait to write the order -- (Inaudible).

13 CHAIRMAN SAHR: Jim, we lost you  
14 about midway into your third sentence.

15 COMMISSIONER BURG: I'll just say  
16 I'll move approval then.

17 VICE CHAIR HANSON: Second.

18 MR. SMITH: Can I ask a question on  
19 this?

20 CHAIRMAN SAHR: Please go ahead.

21 MR. SMITH: Again, I haven't had  
22 much time to look at this thing, but is this  
23 stipulation in any way conditional upon a  
24 Commission's approval of a particular order form --

25 MR. CREMER: John, Jim Cremer. It



1 is not. I think Rolayne's comments are  
2 appropriate. What we have proposed in the order I  
3 think takes care of her concerns, and I think once  
4 you have drafted an order I think it would be  
5 appropriate to circulate it back to the parties in  
6 the event that the order isn't consistent with the  
7 intent of the parties in the stipulation, although  
8 what Rolayne said I think is consistent with what  
9 we want to do. I think once we see the order, that  
10 would resolve these issues.

11 So it might be appropriate to approve the  
12 stipulation subject to recirculation of the order  
13 so that the parties if we have objections to the  
14 language in the order could raise objections at  
15 that time.

16 MR. SMITH: Jim, let me ask you a  
17 question about that. If that is the case, do we  
18 actually gain anything by approving that  
19 stipulation today, or should we attempt to put  
20 together an order that meets Ms. Wiest's concerns  
21 and then if -- because is it possible -- is it at  
22 least possible that there might be some effect on  
23 what you've stipulated to?

24 MR. CREMER: I think there is a  
25 possibility. I don't think it's going to be a

1 problem so it might make sense to defer this until  
2 the proposed order is circulated.

3 CHAIRMAN SAHR: And I do have some  
4 questions. Procedurally to me the question today  
5 is if the settlement has been reached shall we  
6 dismiss and close the docket. Now we're talking  
7 about approving a stipulation and we're talking  
8 about approving an order that the parties put  
9 together and have put forward before this  
10 Commission perhaps with modification, perhaps not.

11 I wonder if procedurally we're ready to act on  
12 this. And I certainly applaud the parties for  
13 getting this together. At the same time I believe  
14 the paperwork came in this morning; is that  
15 correct?

16 MS. WIEST: Yes. I would agree. I  
17 think that it did come in -- I just got it at  
18 9 o'clock, and I handed it out. So I could  
19 certainly understand if the Commission would like  
20 to defer this, both the stipulation and any  
21 possible order. And because I think it's something  
22 that needs to be thought through.

23 I mean, this is just my opinion and the  
24 question is whether you really want to put in the  
25 order which has the language about what you're

1 doing is you're really modifying LNP requirement  
2 for non-Intervenors. So I have no problem with  
3 holding this off until the next Commission meeting.

4 CHAIRMAN SAHR: Mr. Cremer and  
5 Mr. Wieczorek and Ms. Lohnes and, again, I do  
6 commend your efforts in getting this before the  
7 Commission, but I think it's important that we take  
8 a careful look at this and review it and try to  
9 follow -- I guess make sure that we're following  
10 our own docketed items as far as what the issues  
11 are at hearing.

12 Is there a problem with us waiting until our  
13 next scheduled meeting, and certainly if there  
14 is -- and I think that's August 17. If there is, I  
15 certainly would not be opposed to doing an ad hoc  
16 meeting sometime later this week and taking care of  
17 it with that. Because I don't want to see the  
18 agreement fall apart for failure of the Commission  
19 to move on this in a timely fashion.

20 At the same time, I do think it's important to  
21 look at the stipulation, to discuss the potential  
22 order and to make sure that procedurally we're not  
23 running afoul of our own agenda. So is there a  
24 problem with giving us a few days to look at this  
25 and would you be willing to wait until the

1 August 17 hearing or would you prefer to just see  
2 this get taken care of this week if possible?

3 MR. CREMER: Mr. Chairman, I don't  
4 have a problem with continuing this. If the  
5 Commission has an opportunity to look at it before  
6 August 17 and you want to do an ad hoc, that's fine  
7 with me. If you don't and want to continue until  
8 the 17th, I don't have an objection to that.

9 CHAIRMAN SAHR: Mr. Wieczorek.

10 MR. WIECZOREK: I have no objection  
11 to finishing until the 17th, Mr. Chairman. I  
12 looked at the James Valley filing. It wasn't made  
13 until April so based on the decision time line  
14 under the statute you have plenty of time even if  
15 we continue it until the 17th.

16 CHAIRMAN SAHR: Ms. Lohnes, can you  
17 speak on behalf of Midcontinent?

18 MS. LOHNES: We're fine continuing  
19 it.

20 MR. SMITH: As I understand it,  
21 Cheyenne River isn't ready to go today either, are  
22 they? So we're going to be hearing this again on  
23 the 17th.

24 MS. ROGERS: Yes. Thank you. And  
25 I may actually be the fly in the ointment because I

1 think I was the one who started raising these  
2 concerns about what's going to be the real effect  
3 on other wireless carriers that did not intervene.  
4 With regard to CRST we don't have final language  
5 even on the stipulation. I think we have a basic  
6 agreement, but I think we need to explore even with  
7 Rolayne and staff a little bit more how we're going  
8 to handle this in the order.

9 And I do have, you know, some other drafted  
10 language that we can look at and some other  
11 potential ways to address this. But we would  
12 prefer that on behalf of CRST that you defer this  
13 and that we explore it a little bit more.

14 CHAIRMAN SAHR: With that in mind,  
15 I'm going to dissent to Commissioner Burg's Motion,  
16 and I think we need to take a little bit more time  
17 to look at this and make sure procedurally we're in  
18 the right spot. Again, I don't want to take so  
19 much time to see this throw off any of the  
20 potential agreements because I'm a firm believer if  
21 the parties come up with something that's good for  
22 them and the consumers, we're all better off.

23 MS. ROGERS: CRST has no intention  
24 of walking away from the agreement. It does not  
25 jeopardize the agreement from our perspective, and

1 I would assume that would be true for Western  
2 Wireless as well.

3 MR. WIECZOREK: That's true for  
4 Western Wireless.

5 CHAIRMAN SAHR: So procedurally we  
6 have a Motion by Burg, a second by Commissioner  
7 Hanson, and a dissent from myself.

8 COMMISSIONER BURG: I will withdraw  
9 my Motion. I think it's better to look at it.

10 VICE CHAIR HANSON: Mr. Chairman,  
11 I'm very comfortable after reading the document  
12 that I've seen, but after hearing Mr. Cremer's  
13 statements I'm comfortable in withdrawing my  
14 second.

15 CHAIRMAN SAHR: So do we have a  
16 substitute or second Motion then from anybody?

17 COMMISSIONER BURG: I think just a  
18 deferment; right?

19 CHAIRMAN SAHR: Then I will move  
20 that we defer TC04-077 and TC04-085.

21 COMMISSIONER BURG: I'll second.

22 VICE CHAIR HANSON: Concur.  
23  
24  
25

1 STATE OF SOUTH DAKOTA )

2 :SS

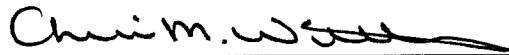
CERTIFICATE

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 20th day of  
11 July 2004, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 2nd day  
14 of August 2004.

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