

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF ESTABLISHING SWITCHED
ACCESS REVENUE REQUIREMENTS IN DOCKETS
TC04-106, TC04-107, TC04-111, TC04-120,
TC04-121, TC04-122, TC04-123, TC04-124,
AND TC04-125

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Transcript of Proceedings
September 27, 2005

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
BOB SAHR (by telephone), VICE CHAIRMAN
DUSTY JOHNSON, COMMISSIONER

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Sara Greff
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Jim Mehlhaff
Tina Douglas
Heather Forney
Pam Bonrud

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING
L I M I T E D

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2 OF THE STATE OF SOUTH DAKOTA
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5 ACCESS REVENUE REQUIREMENTS IN DOCKETS
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8 AND TCO4-125
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1 APPEARANCES BY TELEPHONE 2
2 Talbot Wieczorek
3 Colleen Sevold
4 Erin Jordahl
5 Doug Eidahl
6 David Chorzempa
7 Jeff Larson
8 Denny Law
9 Suzie Rao
10 Jeff Decker
11 Mike Bradley
12 Brian Everson
13 Marlene Bennett
14 Larry Hettinger
15 Peter Rasmussen
16
17 =====
18 TRANSCRIPT OF PROCEEDINGS, held in the
19 above-entitled matter, at the South Dakota State
20 Capitol, Room 412, 500 East Capitol Avenue, Pierre,
21 South Dakota, on the 27th day of September 2005,
22 commencing at 9:30 a.m.
23
24
25

1 CHAIRMAN HANSON: In the Matter of
2 the Establishment of Switched Access Revenue
3 Requirements in Dockets TC 04-106, 107, 111, 120,
4 121, 122, 123, 124, 125.
5 I'm going to ask if Commissioner Sahr is still
6 on the line with us.
7 VICE CHAIRMAN SAHR: Yes, I am.
8 CHAIRMAN HANSON: Good. And who
9 else do we have on the line with us at this time?
10 I don't want to run through the entire list and I
11 don't want you to all start talking, but I'm going
12 to ask you to do that anyway.
13 MS. BENNETT: This is
14 Marlene Bennett and Peter Rasmussen.
15 CHAIRMAN HANSON: Thank you.
16 MR. BRADLEY: This is Mike Bradley.
17 MR. LAW: Denny Law, Golden West.
18 MR. EID AHL: Doug Eidahl,
19 Vantage Point.
20 MR. LARSON: Jeff Larson, Santel.
21 CHAIRMAN HANSON: Anyone else with
22 us?
23 MR. CHORZEMPA: Dave Chorzempa
24 still, with AT&T.
25 MR. HETTINGER: Larry Hettinger,

1 Heartland Consulting.
2 CHAIRMAN HANSON: Thank you. Is
3 there anyone else? We appreciate you being with
4 us.
5 Excuse us just for a moment. It's been
6 questioned the grouping of these dockets. Staff,
7 would you care to give us an explanation of why
8 these are grouped the way they are.
9 MS. CREMER: Yes. Because I can.
10 No. Basically, I believe in number 3 you have the
11 ones -- I have to look here for a second to see.
12 MR. SENGER: Would you like some
13 help?
14 MS. CREMER: Yeah.
15 MR. SENGER: Dockets in item 3 are
16 all of the dockets which staff considered to be
17 substantially uncomplete. The items in -- or the
18 dockets in item 4 are the ones that staff has
19 considered to be substantially complete. The ones
20 in item 5 are the ones that staff has completed
21 their review and actually issued a memo to the
22 Commission. And then 6 would be -- is it the LECA
23 docket? Yeah. 6 would be the LECA docket. All of
24 those are '04s.
25 CHAIRMAN HANSON: Thank you very

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1 much, Keith. The question on item number 3 is
 2 shall the Commission grant intervention to
 3 Midcontinent Communications, MCI metro Access
 4 Transmission Services, LLC, and AT&T Communications
 5 of the Midwest?
 6 And who is first up on this item? Mr. Gerdes.
 7 MR. GERDES: Mr. Chairman, members
 8 of the Commission. I'm Dave Gerdes, and I
 9 represent Midcontinent Communications, and also for
 10 Brett Koenecke who is out of town, I'm representing
 11 MCI at this proceeding.
 12 We have filed petitions to intervene in all of
 13 these dockets. The arguments that we would make
 14 for intervention would be essentially the same
 15 arguments that we made before. That is that no
 16 prejudice derives from this application because
 17 the -- no final order has been entered in the
 18 dockets, number one. Number two, the discovery is
 19 not complete. And as was just indicated, they
 20 aren't apparently close to concluding discovery.
 21 And so if one would say that prejudice does derive
 22 from interventions late in discovery, then that
 23 argument would not apply in this case.
 24 Again, our argument is that this is a matter
 25 of significance. It is a matter of cost to both

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1 companies doing business in South Dakota and to
 2 their customers and that my client believes that it
 3 warrants the Commission to look at not only the
 4 Commission's cost model but also the way that these
 5 companies are complying with the cost model.
 6 So what I am saying is that there is a
 7 question with inputs and the character of the
 8 inputs and whether they are proper -- properly
 9 presented or properly inputted into the cost model.
 10 And then there's also a question of the
 11 construction of the cost model itself.
 12 I won't go -- plow that same ground again
 13 talking about the need to eliminate implicit
 14 subsidies and all of that. I think the Commission
 15 is aware of those arguments. But we believe that
 16 it would be a -- and certainly it's the old
 17 argument, you can either pay me now or pay me later
 18 in the sense that these companies' cost dockets
 19 under the -- cost studies, excuse me, under the
 20 philosophy that the Interveners have announced
 21 would eventually come under Commission scrutiny
 22 because we would be intervening whenever they come
 23 back again.
 24 But the point is they're here now, the dockets
 25 are not concluded, and that this process should go

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1 forward and that MCI and Midcontinent should be
 2 allowed to intervene.
 3 CHAIRMAN HANSON: Thank you. Is
 4 there anyone else wishing to give testimony on this
 5 item?
 6 MR. CHORZEMPA: This is
 7 Dave Chorzempa from AT&T. I'd echo Mr. Gerdes's
 8 statements. The only thing I wanted to add is it's
 9 been pointed out to me by somebody from AT&T
 10 listening on the phone I may have previously stated
 11 the prevailing LECA switched access rate is 7 cents
 12 a minute, and I want to correct it. I think it's
 13 14 cents a minute, to correct my mistake.
 14 Otherwise, I have nothing further to add.
 15 CHAIRMAN HANSON: Thank you. Is
 16 there anyone else wishing to give testimony on this
 17 item?
 18 MS. POLLMAN ROGERS: Thank you,
 19 Commissioners. Again, my name is Darla Pollman
 20 Rogers, and I represent LECA and also the LECs that
 21 have filed joint objections to granting these
 22 interventions.
 23 In the 2004 dockets if the Commission would
 24 allow I'd like to address all of them as opposed to
 25 separating them out in groups depending upon the

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1 progress of the case because I don't believe that
 2 that's an appropriate delineation under the
 3 Commission's rules.
 4 I think with regard to the 2004 dockets we
 5 have a much bigger issue with regard to prejudice.
 6 And, once again, regardless of how the deadline is
 7 established, it becomes a meaningless deadline if
 8 we can go on and on and on forever letting parties
 9 in.
 10 These petitions to intervene are well over a
 11 year old. And so these dockets have been pending
 12 for that amount of time. Some of them. Some of
 13 them are nearly completed. But I believe, I mean,
 14 at what point do you enforce a deadline and say
 15 this needs to be cut off at some point? Are we
 16 going to let them into the 2003? Are we going to
 17 let them into -- how long do you allow this to
 18 happen?
 19 I concur with one of the comments of staff
 20 that it is a balancing process. And when you look
 21 at prejudice or unfair prejudice, whichever way you
 22 would like to characterize it, it's a balancing
 23 process with what is the public interest balance
 24 here versus the prejudice.
 25 And I would submit in the 2004 dockets the

1 scale tips toward prejudice to the parties. I
 2 believe that's true for a couple of reasons.
 3 Number one, again, going back to the stated purpose
 4 of these -- at least one of the stated purposes of
 5 all of these interventions and that is to --
 6 according to AT&T try to come up with a statewide
 7 solution. We're talking about a process here. By
 8 granting the 2005 interventions you have fulfilled
 9 or achieved that purpose of the Interveners.

10 And so now to take it all the way back to 2004
 11 dockets, I think that's where the prejudice
 12 outweighs. Because we're not talking about just
 13 data requests from staff. If you allow Interveners
 14 in, you're also talking about additional discovery
 15 by additional parties.

16 And in particular for those companies that are
 17 either close to being finished with the process or
 18 in the middle or maybe have put in their first
 19 responses and have a second set pending, it doesn't
 20 matter their status. If you make them or subject
 21 them to further discovery by allowing new parties
 22 in to bring up new issues -- because some of the
 23 issues raised in these petitions are not part of
 24 the current dockets -- that is prejudicial to the
 25 parties, and that will undoubtedly delay this long

1 process even longer.
 2 I think that when you look at petitions to
 3 intervene and you do that balancing test the
 4 prejudice becomes -- the bar rises higher and
 5 higher I would say to meet the burden of showing
 6 that there's an overriding public interest here.
 7 Again, I think you have -- you have met that burden
 8 and achieved what the Interveners are seeking to
 9 achieve by allowing them to intervene in the 2005
 10 docket.

11 I don't think that it's appropriate to single
 12 out one portion of these companies to try to punish
 13 them for not responding in a more timely manner. I
 14 don't think that that's the test under the rules.
 15 And I think it's also important to note that the
 16 LECA situation and the member companies is a little
 17 bit unique because it's not like individual
 18 actions. It's a group action. And so every single
 19 one of those cost studies needs to be done before
 20 we can have a final rate in place for you to
 21 approve.

22 And so if you allow intervention in one docket
 23 or two dockets, any number of the '04 dockets, it
 24 affects all of them because the delay affects all
 25 of them. I think that's really important to note

1 in this case. If there's a delay in any of the '04
 2 dockets by allowing the Interveners to come in and
 3 pose a bunch of discovery, it affects all of them.

4 We need to -- we need to try to get the '04
 5 dockets done. And I think by allowing the
 6 intervention petitions we would be moving in the
 7 opposite direction, and, therefore, I would really
 8 urge you to deny the petitions to intervene in the
 9 '04 dockets.

10 CHAIRMAN HANSON: Thank you. Thank
 11 you. Are there questions? I'm going to break just
 12 a little bit with the routine because what you've
 13 just stated is really the crux of the entire -- the
 14 nucleus of the situation, the center of the gravity
 15 for me, and I'd like to hear from Mr. Gerdes on his
 16 response to what you just said.

17 MR. GERDES: Mr. Chairman.

18 CHAIRMAN HANSON: Yes.

19 MR. GERDES: And your question was?

20 CHAIRMAN HANSON: Well, Darla --
 21 excuse me, Ms. Rogers has put forth a pretty solid
 22 argument for me of her just -- her comments. I'm
 23 not going to try and regurgitate all of them. Her
 24 statements -- it does seem incredibly dilatory to
 25 me, 13 months after the filing. And at some point

1 when is a deadline a deadline?

2 MR. GERDES: Well, and I do tend to
 3 agree with the analysis that a deadline should be a
 4 deadline if it causes undue prejudice. And the
 5 question here is whether it causes undue prejudice,
 6 Mr. Chairman.

7 The first thing I'll say is they are
 8 collecting their rates now, the ones that they
 9 want. They're collecting them under an order
 10 letting the tariff go into effect subject to
 11 refund. So, I mean, they're not out any money.
 12 That's the first thing.

13 Secondly, my understanding -- originally we
 14 were just going to intervene in the '05 dockets.
 15 And in talking with staff we were told that there
 16 was a substantial amount of discovery that hadn't
 17 been done after one year. Now that tells me that
 18 those dockets are open, somebody's off somewhere
 19 languishing somewhere doing something. At least
 20 I've been involved in a lot of dockets before this
 21 Commission when we get our discovery done in
 22 30 days or 45 days.

23 And so for discovery to still be pending after
 24 a year it seemed to me that it was fair to us since
 25 we want to get our arms around the entire problem

1 if this -- this series of dockets is just simply
2 languishing, it would seem to me they are not going
3 to be prejudiced by us getting into it because they
4 haven't been responding to their discovery
5 requests. So we might as well get involved here as
6 well because this is also part of the problem.

7 So my response, Mr. Chair, would be, number
8 one, they're collecting the money they want. So
9 assuming that this tariff is approved, they're
10 whole. There's no problem there. No harm, no
11 foul.

12 And, secondly, since the dockets have not been
13 concluded, we believe that given the definition of
14 our mission, if you will, it seems to me that in
15 order for us to get around the whole group of LECA
16 dockets because of this every three year filing
17 phenomenon that we talked about, that this would be
18 a good way to get this resolved quicker, rather
19 than waiting for the next time these companies come
20 around and want to file their cost dockets.

21 So we would submit that there is no prejudice
22 and that this makes perfect sense to permit the
23 interventions that we've asked for.

24 CHAIRMAN HANSON: Thank you. Did
25 you have a question?

1 COMMISSIONER JOHNSON: When you're
2 done, yeah.

3 CHAIRMAN HANSON: I'll defer.
4 Commissioner Johnson.

5 COMMISSIONER JOHNSON: I have a
6 question for Ms. Rogers. And this may be -- this
7 question probably speaks more to my inexperience on
8 the Commission. So I'll apologize right off the
9 bat, and this may be slightly off topic.

10 But why the delay? Why are -- maybe staff
11 wants to answer it too. But if we're talking about
12 something that was filed in June, a number of them
13 filed in June, and we still have not even the
14 initial discovery taken care of, can you shed some
15 light on me? Is that typical? Is there a
16 particular holdup?

17 MS. POLLMAN ROGERS: I suppose to
18 get a fair answer, you know, we would have to ask
19 each company. I believe that there has been some
20 resistance to the length and scope of the staff
21 data request. In some instances I think that there
22 have been some meetings between them to try to
23 narrow the scope a little bit. Those did not
24 necessarily come to fruition.

25 Beyond that -- but, I mean, I think that

1 that's probably the source of the delay, just
2 because of the -- the daunting breadth of some of
3 the data requests. I believe that that's been part
4 of it.

5 Once again, I think I would have to reiterate
6 that as I read the rules for the grounds to allow a
7 late-filed intervention petition it does not depend
8 upon the status of the current dockets. And I
9 don't think that that's the test here, and I think
10 that we need to keep in mind that -- that's why I
11 don't think, again, this unique situation where
12 what happens with one docket affects all of the
13 2004 dockets.

14 But I think that the status is not the test.
15 And I think that the test is the public interest
16 and the miscarriage of justice, and I don't believe
17 that's been met.

18 COMMISSIONER JOHNSON: You don't
19 think that as the further along a docketed item
20 gets toward completion, that if you were to sort of
21 send that back to square one with granting
22 intervention, you don't think that creates more
23 undue prejudice? To me the progress really is
24 closely related -- at least in my mind as I'm
25 starting to think through it is closely related to

1 prejudice, undue prejudice.

2 MS. POLLMAN ROGERS: I think that it
3 can be. But the problem again in these dockets is
4 if you allow intervention in one of them and for
5 the company that's out there and basically approved
6 and ready to go, the goal -- they're all kind of
7 tied because you have to come up with a one final
8 LECA rate that is subject to your approval.

9 And so by granting it here it's going to
10 prejudice it here because of the delays of bringing
11 in new issues and new questions for the parties.

12 CHAIRMAN HANSON: Are you done?

13 COMMISSIONER JOHNSON: I am for
14 right now. Thank you.

15 CHAIRMAN HANSON: Are there
16 additional persons who wish to give testimony to
17 the Commission at this time on item number 4?
18 Excuse me. Item number 3.

19 COMMISSIONER JOHNSON: I guess I'd
20 have a question, Mr. Chairman. I'm not sure for
21 whom, whether it's our advisor, Commission counsel,
22 staff, parties. If there was some disagreement
23 over the breadth and scope of the discovery
24 requests, the data requests, I mean, how is that
25 resolved? Does the party come before the

1 Commission and say, hey, listen, we want to strike
2 down this data request? Does staff ask us to
3 compel the parties to file? Procedurally how is
4 that resolved?

5 MS. CREMER: I can take a shot at
6 that. And it is, as Ms. Rogers noted, by the time
7 we found out that they were having an issue with
8 the breadth and the scope I believe it was spring.
9 I think a lot of these data requests were filed
10 according to my notes in December of '04. The bulk
11 of those that have not responded, the data request
12 was sent in December. So it was probably April or,
13 you know, somewhere in there where we're starting
14 to find out that obviously they're not going to
15 respond.

16 And there were a couple of meetings and some
17 of which I was involved in and some I wasn't. And
18 part of it is you talk to the consultant and the
19 consultant says, well, we're just waiting for the
20 company. And you talk to the company and the
21 company says we're waiting for the consultant. So
22 you've got to -- again, depending on the company,
23 you would have to get fact specific.

24 Our goal is just to get these things done.
25 And so we were trying to work with them. It

1 obviously hit a point where that's not happening.
2 And so staff would have the option now of coming to
3 the Commission and saying, you know, we need these
4 matters answered and do it under a Motion to
5 Compel.

6 And we had discussed that at one point, and it
7 was about then that Mr. Gerdes contacted staff and
8 said, you know, we're looking to intervene so we
9 thought we'd see how this process played out. That
10 was probably about July I think when Dave first
11 contacted us. So it looks like a really long time
12 but -- and it has been.

13 COMMISSIONER JOHNSON: Thank you.
14 Mr. Chairman, this is Marlene Bennett with
15 Martin Group. I'd just like to clarify one thing
16 in reference to our initial meeting with staff in
17 reference to the data requests. We were in Pierre
18 and met with a couple of the staff members, and it
19 would have been a representation of eight of the
20 companies at that point in time that sat to discuss
21 the scope of the initial data requests we had
22 received.

23 CHAIRMAN HANSON: Thank you.

24 COMMISSIONER JOHNSON: Thank you fo
25 your patience, Mr. Chairman. I know this isn't

1 directly related to what we were talking about
2 today, but curiosity got the best of me. Thank
3 you.

4 CHAIRMAN HANSON: No problem.

5 VICE CHAIRMAN SAHR: Mr. Chairman,
6 this is Commissioner Sahr. I have a couple of
7 questions.

8 CHAIRMAN HANSON: Okay. Please go
9 ahead.

10 VICE CHAIRMAN SAHR: The first
11 question is for staff. Karen, if you could try to
12 quantify, how long are we along in the process?
13 So, for instance, if zero is we haven't really
14 started yet, 10 is the process is completed in
15 these dockets, where would you put us in that type
16 of range?

17 MS. CREMER: Well, two of the
18 dockets, which is 04 and 114, Harlan completed
19 those and got the memo to the Commissioners in
20 October of '04. And the process there has always
21 been generally the Commission waits until all of
22 them are in and then you approve them all in one
23 fell swoop and then you do the LECA dockets. So
24 those, you know, are sitting on your desk with two
25 memos completed.

1 MR. SMITH: Can I cut in here a
2 minute?

3 MS. CREMER: Sure.

4 MR. SMITH: With respect to what --
5 your answer is related all of the '04s, not merely
6 item 3.

7 MS. CREMER: Yes. I'm sorry. That
8 would be all of '04. And then there are five of
9 them where -- well, I'll let Harlan address where
10 he is. I've got them down as near completion.

11 MR. BEST: For docket 04-108 the
12 company has responded to the sixth set of data
13 requests. 112, Brookings, the company has the
14 sixth set of data requests is outstanding. 116,
15 Santel, the fifth set is outstanding. James Valley
16 responded to the fourth set today. Kennebec is --
17 has a third set that is outstanding. And
18 West River, Hazen, the initial data request I
19 mailed July 23 of '04, and they have yet to
20 respond.

21 CHAIRMAN HANSON: Excuse me. This
22 is Chairman Hanson. Excuse me just a minute. In
23 relationship to the question from Commissioner
24 Sahr, rather than going through exactly where each
25 one of these are, I believe he was just trying to

1 get an idea of approximately 1 to 10 where are we,
 2 10 being completed.
 3 And --
 4 VICE CHAIRMAN SAHR: Mr. Chairman.
 5 CHAIRMAN HANSON: We're talking
 6 about item number 4 now, and we need to get back to
 7 number 3.
 8 VICE CHAIRMAN SAHR: I think if I
 9 could just rephrase my question, I've been waiting
 10 for a break to do that. My question is, Karen, and
 11 it's item number 3.
 12 MS. CREMER: Okay.
 13 VICE CHAIRMAN SAHR: How far along
 14 are we? That's all I'm interested in at this point
 15 in time. Not every docket that's pending, just
 16 those in item number 3.
 17 MS. CREMER: Those I think with
 18 maybe one exception have had an initial data
 19 request and no response. And then initial data
 20 request in those went out in December of '04.
 21 VICE CHAIRMAN SAHR: Okay.
 22 Mr. Chairman, I have another question.
 23 CHAIRMAN HANSON: All right.
 24 Please.
 25 VICE CHAIRMAN SAHR: Karen, I'm

1 going to ask your perspective on this. Initially I
 2 thought, well, it's quite a ways down the road,
 3 these dockets were initially brought up and now I'm
 4 trying to -- you know, now it sounds like, well,
 5 although it's been some time, we're fairly early in
 6 the process.
 7 One of the things that I noticed that
 8 Ms. Rogers said was she talked about two issues
 9 coming into play. And I was trying to balance, you
 10 know, that these dockets may not have been -- or
 11 have not gotten too far along in the process
 12 with -- well, it's been quite a bit of time since
 13 intervention would have normally been closed.
 14 With Ms. Rogers, she talked about new issues
 15 coming on. I mean, in my mind aren't the issues
 16 the same? Are there really going to be any new
 17 issues if the requesting parties are granted
 18 intervention?
 19 I'm curious to see what your take on that
 20 would be. Obviously it brings in a new dynamic.
 21 You may have additional scrutiny of issues that are
 22 already out there or normally be separate anyway,
 23 but are there really new issues that would come up?
 24 MS. CREMER: Well, not to be
 25 flippant, but I'm not sure that there's anything

1 out there that Keith hasn't covered in his data
 2 requests that could be new. And so -- and, of
 3 course, that's been part of, you know, the LEC's
 4 problem. So I'm not sure what new issues could
 5 really arise.
 6 But maybe Dave Gerdes or, you know, their
 7 consultants maybe -- they haven't seen staff's data
 8 requests, of course, as far as I know. And so
 9 without them seeing that, I don't know if there
 10 would be any repetition or if they do have
 11 something different out there.
 12 VICE CHAIRMAN SAHR: Thank you,
 13 Mr. Chairman. I have no further questions at this
 14 time.
 15 CHAIRMAN HANSON: Thank you. And I
 16 need to state we will be losing our bridge at noon
 17 in about 26 minutes, our telephone bridge.
 18 Mr. Gerdes.
 19 MR. GERDES: I simply wanted to
 20 bring up the fact that we have to get in before we
 21 can see any of the data requests that are out there
 22 and that's part of our problem and has been part of
 23 our problem in materials of our experts finalizing
 24 their inquiry.
 25 CHAIRMAN HANSON: Thank you.

1 Ms. Rogers.
 2 MS. POLLMAN ROGERS: Thank you. I
 3 would just like to respond to my point concerning
 4 new issues. I drew that from two things. Number
 5 one, the issues today that were raised by the
 6 parties, the Petitioners to intervene, and that
 7 would be implicit subsidiaries. I don't believe
 8 those are issues in the current cost study dockets.
 9 In a footnote to AT&T's petitions to intervene,
 10 they alluded to raising in additional discovery
 11 requests the issues of whether or not the LECs
 12 impute or charge each other for their access
 13 charges. That is not an issue. Those are not
 14 issues in the current dockets. So those are new
 15 issues, and those would cause a further delay in
 16 the process.
 17 And I don't -- Mr. Gerdes said that they want
 18 to get their arms around the entire problem. And I
 19 believe that they are totally capable of doing that
 20 vis-a-vis their intervention in the 2005 dockets.
 21 I do not believe that they need to be granted
 22 intervention in these dockets to do that because
 23 we're dealing with the same rules and the same
 24 process in 2004 that we did in 2005.
 25 Furthermore, there is not any reason that if

1 these issues were still really important to them in
2 2004 they could have intervened in a timely manner
3 and for sure there would not have been this
4 additional prejudice to the LECs that are in the
5 2004 dockets.

6 CHAIRMAN HANSON: Thank you.
7 Mr. Gerdes, as long as you're standing, I would
8 like to ask you a question. I assume you wanted to
9 say something else.

10 MR. GERDES: Yes, sir. It's
11 probably the same thing.

12 CHAIRMAN HANSON: Why didn't you
13 attempt to intervene earlier?

14 MR. GERDES: Because the issue had
15 not been discussed among the people that got
16 involved. That's the reason.

17 CHAIRMAN HANSON: Okay.

18 MR. GERDES: And let me just make
19 one further point here. Talk about discovery
20 served in December of '04 not being answered
21 illustrates the point I want to make. And that is
22 that under the position that Ms. Rogers is taking,
23 one company in this joint filing process that
24 they're using every year and then on three-year
25 cycles for each company, one company can drag its

1 prejudice, an unfair prejudice. So that would be
2 my only point.

3 Staff delineated these by completed, nearly
4 completed, and not even touched. But if you would
5 like to let them in on all of them, you know, staff
6 would not have an objection there either. We just
7 thought maybe it would be easier. We could treat
8 the ones that are completed or near completed
9 similar to those that didn't file this year and
10 already have a rate.

11 So, you know, we thought if it would make it
12 easier on the LECs and keep it smaller, but if they
13 want them all in, that's fine with staff.

14 CHAIRMAN HANSON: What about the
15 argument that delay in one docket affects all the
16 dockets?

17 MS. CREMER: And, again, I'm not
18 sure -- I would agree with you that delay in one
19 delays them all, but they're not being -- there's
20 no unfair prejudice because they are getting their
21 money and they're getting the money that they want.

22 They are subject -- if ultimately the
23 Commission decides a different rate, that money
24 that they are currently collecting will have to be
25 refunded to the IXCs with interest. So at this

1 feet and, therefore, no one could intervene if
2 everybody else is finished and the one company
3 hasn't.

4 Or take it to the other side of it. Let's say
5 that they all drag their feet except one and
6 there's one finished. They're not prejudiced
7 because they're collecting their money here. But
8 yet they're holding up the show, so to speak, for
9 the thing to get finished. And so we would submit
10 that this really proves our point, and that is why
11 not let us in and let us get this thing taken care
12 of and resolved. They're getting their money.

13 CHAIRMAN HANSON: Thank you. Does
14 staff have a presentation for us?

15 MS. CREMER: I would just note again
16 that it's not -- it's not prejudice is not the
17 standard. It's unfair prejudice. And as
18 Mr. Gerdes just pointed out, they're getting their
19 money. And so for them to claim that they are
20 prejudiced in some manner flies in the face of
21 reality. They are not. The people -- who is being
22 prejudiced or when you do your weighing and your
23 balancing you have to look to the Interveners and
24 what they can bring to the table. And I think by
25 keeping them out, that now you may be talking

1 point they sit with all the money -- or, you know,
2 I mean, they are collecting the amount that they
3 want and so while there may be a delay, I'm not
4 sure that it cuts against them.

5 CHAIRMAN HANSON: When then does a
6 deadline mean anything that we give?

7 MS. CREMER: Well, and I was going
8 to answer that.

9 CHAIRMAN HANSON: It just simply
10 means as long as the docket has not yet been voted
11 on by the Commission, it's still available for
12 intervention regardless of how many deadlines or
13 what we've decided?

14 MS. CREMER: No. I believe there's
15 a deadline out there, and that's when you issue
16 your procedural schedule. And then you would have
17 a deadline in there for intervention, as well as
18 discovery, prefiled testimony, a hearing date.
19 That could be one of the things that's in your
20 procedural order is an intervention deadline.

21 Realistically, do we do that on every docket
22 that we open? No, we don't. We could. We could
23 put out a procedural schedule for everything, but I
24 think it would -- in 99 percent of the time it
25 would probably be a waste of administrative effort.

1 So, I mean, I understand their point, but on
2 the other hand there was never a Commission Order
3 deadline, which is what the rule requires.

4 CHAIRMAN HANSON: Thank you.
5 Further questions by the Commissioners?

6 Keith, do you have some presentation? I
7 assume not a question.

8 MR. SENGER: No. I would just like
9 to make a clarification. Of the dockets that we're
10 speaking of now, there was one that was a data
11 request, a data request issued in July and several
12 in October, November, and December. So it wasn't
13 just all in December. It was over a span of
14 several months.

15 CHAIRMAN HANSON: Thank you.
16 Further questions by the Commission? Is there a
17 Motion?

18 COMMISSIONER JOHNSON: Mr. Chairma
19 I know we're up against the clock here, but I would
20 request a five-minute recess. I had some questions
21 for counsel that I would like to ask.

22 CHAIRMAN HANSON: All right. And we
23 have just received word from our staff that they
24 were able to add another hour to the bridge so
25 that -- I didn't want to announce that earlier so I

31
1 as applicable to the whole subject matter in so far
2 as relevant to it because we've had intermingling
3 of discussion about '04 and various chunks of '04,
4 and I would like to have the record reflect that
5 all portions of the record insofar as they're
6 pertinent will be applicable to all of the items on
7 the agenda.
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1 figured people would say, oh, we have another hour.

2 MR. SMITH: I happen to know this
3 and you guys don't. Our reporter has an issue
4 at -- she has a dental appointment at noon.

5 (A short recess is taken)

6 CHAIRMAN HANSON: We are back on
7 record. Item number 3. Is there a Motion?

8 COMMISSIONER JOHNSON: Mr. Chairma
9 if it's acceptable to the other two Commissioners,
10 I would make a Motion under Telecommunications 3,
11 4, 5, and 6 the Commission deny the Motion to
12 Intervene by all parties.

13 CHAIRMAN HANSON: Just want to make
14 sure we're -- number 6 is the LECA?

15 COMMISSIONER JOHNSON: If any of the
16 Commissioners would like to break that out, I'm
17 fine voting on them separately, but that's my
18 Motion currently.

19 CHAIRMAN HANSON: I do not need it
20 broken out. I will second the Motion.

21 VICE CHAIRMAN SAHR: And I concur.

22 MR. SMITH: What I'd like to do is
23 because we've -- I don't know exactly how Cheri was
24 planning to do the transcripts. That the entirety
25 of the discussion that we've had today be treated

32
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 27th day of
11 September 2005, and that the attached is a true and
12 correct transcription of the proceedings so taken.
13 Dated at Pierre, South Dakota this 20th day
14 of October 2005.
15
16
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Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

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