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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT FILED
BY WWC LICENSE LLC AGAINST GOLDEN
WEST TELECOMMUNICATIONS COOPERATIVE,
INC., VIVIAN TELEPHONE COMPANY, SIOUX
VALLEY TELEPHONE COMPANY, UNION TELEPHONE
COMPANY, ARMOUR INDEPENDENT TELEPHONE
COMPANY, BRIDGEWATER-CANISTOTA INDEPENDENT
TELEPHONE COMPANY AND KADOKA TELEPHONE
COMPANY REGARDING INTERCARRIER BILLINGS

CT05-001

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Transcript of Proceedings
July 11, 2006

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BEFORE THE PUC COMMISSION

Chairman Robert Sahr
Vice-Chair Dusty Johnson

COMMISSION STAFF

ORIGINAL

John Smith
Rolayne Wiest
Harlan Best

APPEARANCES (continued on next page)

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appearing on behalf of WWC License LLC;

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Attorneys at Law, P.O. Box 280,
Pierre, South Dakota 57501,
appearing on behalf of Golden West Companies;

Reported by Carla A. Bachand, RMR, CRR

1 APPEARANCES (cont.)

2 RICHARD D. COIT,
3 Executive Director and General Counsel,
4 South Dakota Telecommunications Association,
5 P.O. Box 57, Pierre, South Dakota 57501,
6 appearing on behalf SDTA.

7 Reported by Carla A. Bachand, RMR, CRR

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1 TUESDAY, JULY 11, 2006

2 CHAIRMAN SAHR: The next item is under consumer
3 complaints and on this one we are going to have a court
4 reporter, so anyone who is on the phone line, I would just urge
5 you to speak so that she can take an accurate record. It is
6 CT05-001 in the matter of the complaint filed by WWC License
7 LLC against Golden West Telecommunications Cooperative, Vivian
8 Telephone Company, Sioux Valley Telephone Company, Armour
9 Independent Telephone Company, Bridgewater-Canistota
10 Independent Telephone Company and Kadoka Telephone Company
11 regarding intercarrier billings, and the question today is
12 shall the commission grant the motion to substitute corrected
13 exhibit. And I believe this is WWC's motion, so we will hear
14 first from Mr. Wieczorek. Good morning.

15 MR. WIECZOREK: Thank you, Mr. Chairman. Tal
16 Wieczorek for WWC License LLC. The short motion I filed was
17 for a correction to an exhibit that's in the process -- the
18 hearing is still ongoing, we have one more day of testimony
19 scheduled for the 7th of August. The correction had to do with
20 the explanation of how the calculations were done on the spread
21 sheet and have been consistent throughout that column G had
22 been used to calculate recip comp credits, but then the actual
23 formula used in the spread sheets used column J. My motion
24 notes that it makes about a \$10,000 difference in the
25 calculations on the spread sheet in total when you total all

1 companies.

2 Late Friday I received an objection to the exhibit or
3 substituting the exhibit from the Golden West Companies and
4 from SDTA, a joint objection, and I want to address those
5 issues, Mr. Chairman. Primarily I'd like to address first
6 their argument that somehow the interconnection agreement
7 shouldn't be read. Through the plain read, quite frankly, in
8 Section 4 of the appendix, I think it should be remembered that
9 the only measured traffic in the interconnection agreement is
10 that traffic that WWC actually delivers to the ILECs. Those
11 minutes, then, everything else is derived from those minutes.
12 In deriving that, in deriving a recip comp credit, rather than
13 tracking actual traffic delivered back to WWC, the ILECs and
14 WWC came up with a formula and the formula is clear that you
15 use the total amount of minutes delivered. There is an
16 accusation under part seven of the objection that somehow WWC
17 doesn't get double billing or double credit. That's just
18 totally incorrect. The only thing they get is that formula and
19 they get that recip comp offset.

20 It should also be remembered that under section --
21 under actually the definition of local traffic, local traffic
22 is different as defined for the ILECs and defined for WWC, so
23 the way this boils down is you have an established formula, the
24 formula clearly says for all minutes delivered, this is how you
25 figure, you use those minutes to figure the recip comp. It

1 doesn't say all minutes of what's ultimately derived as local
2 traffic for the ILEC is used, it says all minutes. That's what
3 our explanation of the formula said all the way throughout and
4 it was never contested.

5 Then the Golden West Companies say because of the way
6 the testimony came in, it doesn't appear that -- it appears
7 that our testimony conflicts with the revised exhibit. The
8 only thing I can say to that is the testimony is not exactly
9 clear as to how it was coming in. If you look to page -- a
10 section not cited in the transcript by the Golden West
11 Companies, which is the top of page 45, Mr. Williams deferred
12 to the summary page that shows all the calculations as being
13 how the calculations were done. Later then in the testimony,
14 there is some question about what he's referring to. I would
15 propose to the commission if one reads the language in whole,
16 it's clear that what Mr. Williams is talking about in some
17 sections is just traffic being delivered and calculated to
18 what's due Golden West.

19 For example, one of the sections they cite talks about
20 his calculating the recip comp credit, but it doesn't say what
21 minutes he's using for that. Later there is one citation where
22 it appears he might be implying that you use the minutes
23 delivered minus interMTA, but frankly from the record, it's not
24 clear as to where he is citing and referring to. I believe the
25 record has always been clear that the formula sheet as we have

1 provided as part of the exhibit has been consistent and we
2 should be allowed to substitute this exhibit.

3 You know, if anything, on the transcript, what it
4 would really be is potentially a waiver argument, that we
5 somehow waived our interpretation of the contract. The problem
6 I guess I have with that is if you read the contract as a
7 whole, what Golden West is arguing in their objection is you
8 have to insert words in the formula for Golden West to have
9 their interpretation of the contract. Now, I think the
10 contract is fairly plain on its face, it walks through the
11 formula, it uses total minutes delivered and that's what the
12 contract says. That's what our exhibit intended to do and we
13 should be allowed to submit the corrected exhibit so the
14 commission knows what the final number is as we proposed.

15 With that I would take any questions that the
16 commission might have.

17 CHAIRMAN SAHR: Thank you. I'll look to see. We may
18 hold questions, Mr. Wiczorek, until after we have heard from
19 all the parties and staff. So thank you very much. I
20 appreciate the presentation. It appears we have a couple of
21 the other parties to the matter at the mike here in Pierre, so
22 I'll look to Ms. Rogers first. And we found out last week when
23 we were -- or I guess it was a week and a half ago when we were
24 going through the Big Stone hearings that that particular mike
25 needs to be relatively close to you to pick it up for the folks

1 listening in on the Internet, so if you don't mind keeping it
2 relatively close to you and obviously anyone else who is using
3 the witness mike, that would be a big help. So thank you very
4 much, Ms. Rogers. Good morning.

5 MS. ROGERS: Good morning. Thank you, Commissioner
6 Sahr and Johnson. We are asking the commission to deny the
7 motion presented by Western Wireless and there are basically
8 three reasons for our request that you deny the motion.

9 First of all, we would submit to you that it is the
10 spread sheets that are incorrect -- I'm sorry, the spread
11 sheets are correct. It's the explanation of benefits that are
12 actually incorrect and so if there's going to be a substitution
13 of incorrect exhibits here, it is the explanation page that
14 should be substituted. And I base this on a couple of things.
15 First of all, the agreement itself supports the spread sheets
16 as they were introduced at trial. We do not believe that you
17 can read Section 4 of Appendix A in a vacuum. You have to read
18 an appendix in the context of the agreement itself and those
19 portions of the agreement that actually refer to that appendix.
20 And per said reading, Appendix A, Section 4, applies to local
21 traffic or intraMTA traffic, and I would refer you specifically
22 to Sections 2.1, 5.1, 5.11 and 5.12 of the agreement.

23 The testimony of Mr. Williams or presented by Mr.
24 Williams at the hearing supports the interpretation of the
25 agreement and that is that the appendix and Section 4 applies

1 to local or intraMTA traffic and that's the way the original
2 spread sheets have been calculated. Mr. Williams explained
3 that the interMTA minutes are, quote, netted out from the total
4 terminated minutes.

5 CHAIRMAN SAHR: I'm sorry, did we have someone join
6 the meeting?

7 COMMISSIONER HANSON: Yes. Hello, Mr. Chairman, this
8 is Gary Hanson.

9 CHAIRMAN SAHR: Good morning, Gary. Thank you.

10 MS. ROGERS: Good morning, Commissioner Hanson. This
11 is Darla Rogers and I'm presenting argument asking the
12 commission to deny Western Wireless's motion to substitute
13 evidence in docket CT05-001.

14 COMMISSIONER HANSON: Excuse me, I apologize. I have
15 been attempting to get through to the meeting so that I could
16 vote on issues that were before the commission earlier. I'm
17 going to simply listen on the Web site, then, to the rest of
18 the arguments and won't impose further on you. Thank you, and
19 I apologize for the interruption.

20 MS. ROGERS: Thank you, Commissioner Hanson. I was
21 just trying to bring you up to speed on where we were in this
22 proceeding.

23 COMMISSIONER HANSON: Thank you, Darla. Bye.

24 MS. ROGERS: As I just mentioned, the testimony
25 presented by Mr. Williams at the hearing supports the

1 interpretation as I have explained in the agreement and as do
2 the original spread sheets. Mr. Williams explained that the
3 interMTA minutes are netted out from the total terminated
4 minutes and the recip comp rate was applied to the net minutes.
5 That's his testimony.

6 So column J, according to Mr. Williams's explanation
7 at the hearing, represents the residual, and again this is his
8 testimony. In other words, J is total minutes minus interMTA
9 minutes terminating to the network. From there, you can
10 calculate column L and from those minutes you follow the
11 calculation formula in Section 4 of Appendix A.

12 So the evidence as presented in the record from
13 Western Wireless supports the correctness of the spread sheets,
14 and in fact if you go to the spread sheets themselves and you
15 do the calculations in the manner explained by Mr. Williams,
16 you will find that the spread sheets are correct and in fact
17 the recip comp credit calculations are figured on the
18 reciprocal compensation minutes for the intraMTA minutes and
19 not on total minutes. So the evidence at the hearing supports
20 the spread sheets as they were introduced.

21 Now, WWC or Western Wireless did not ask for this
22 particular interpretation of Section 4 of Appendix A at the
23 time of the hearing. To grant this motion is in essence
24 allowing WWC to substitute a new interpretation of Appendix A,
25 Section 4, that is contrary to the position WWC presented at

1 the hearing without allowing Golden West companies or SDTA to
2 refute said evidence. That is why we are asking the commission
3 to deny the motion. If the motion is amended to request
4 correction of the explanation pages, we would not have an
5 objection to that because it's the explanation pages that we
6 believe are incorrect. They do not conform to the exhibits or
7 to the evidence that was presented. But to the motion as
8 stated, we object and we ask you to deny the motion for the
9 reasons I've outlined. Thank you.

10 CHAIRMAN SAHR: Thank you very much, and I think you
11 mentioned it before, you are representing Golden West and the
12 Golden West Companies?

13 MS. ROGERS: Yes, I'm representing the Golden West
14 Companies. I'm sorry, I probably didn't mention it.

15 CHAIRMAN SAHR: I was just making sure so I know who
16 goes next and who might be up. It looks like Mr. Coit is in
17 the on-deck circle. Good morning.

18 MR. COIT: Thank you, Chairman Sahr, Commissioner
19 Johnson, staff. I am representing today the South Dakota
20 Telecommunications Association, as I did in the prior
21 proceedings in this case. We would concur in the opposition to
22 this motion to substitute corrected exhibit. I would like to I
23 guess explain what we see as the issue here. It does very much
24 appear to us that Western Wireless or Alltel is attempting to
25 insert a new issue or even claim into the case. What they are

1 effectively trying to do, it appears, is obtain compensation at
2 the recip comp rate on interMTA minutes which are effectively
3 long distance minutes.

4 It's interesting that they are trying to obtain
5 compensation on those minutes because I don't believe they
6 charge any access charges on long distance traffic to any other
7 carriers. InterMTA traffic is long distance traffic. We have
8 never compensated wireless companies for that traffic. They
9 don't charge access to any other companies for that traffic.
10 So it seems like they are adopting or trying to urge an
11 interpretation of the contract that is not really consistent
12 with any of their past practices. It's certainly not
13 consistent with how these agreements have been interpreted and
14 applied by the companies, and I would indicate all of the SDTA
15 companies, as far as I know, none of them have, to my
16 understanding, taken this approach with respect to interMTA
17 minutes.

18 So it certainly seems like a new issue and I would
19 agree with Ms. Rogers' comments, that you have to look at that
20 appendix and the language in the appendix in the context of the
21 other provisions in the agreement, and the provisions in the
22 agreement provide for reciprocal and symmetrical compensation
23 for local traffic and what they are trying to do is obtain
24 compensation at the recip comp rate for interMTA traffic which
25 doesn't even flow into that local traffic recip comp regime.

1 So it certainly seems like it's a new claim and if
2 they are allowed to substitute these corrected exhibits, we
3 should then have the ability to present further argument,
4 evidence, if we feel necessary, on this issue, because it is a
5 new issue, and when the commission closed the hearing the last
6 time a month or so ago, two months ago, it was my understanding
7 that the only evidence that was going to be allowed afterwards
8 was evidence dealing with the matters that were raised by Mr.
9 Musick. And this is a new issue that certainly Mr. Musick
10 didn't address and it hasn't been addressed in any other prior
11 proceedings in this matter. So we would concur and we would
12 ask that the commission deny the motion. Thank you.

13 CHAIRMAN SAHR: Thank you very much. PUC staff.

14 MS. WIEST: This is Rolayne Wiest representing
15 commission staff. Staff does not object to having the
16 corrected exhibit come in. I would just note that during
17 discovery we did ask the question whether column G should be
18 changed to column J and Western Wireless said no and actually
19 repeated their position that they have today. So as far as
20 staff is concerned, we don't see it as a new position, but the
21 one thing that I would just note is that I don't think that the
22 commission has to actually make any type of interpretation of
23 the contract to decide the issue. The point is that Western
24 Wireless can put in their numbers based on their interpretation
25 and Golden West of course can put in their numbers based on

1 their interpretation, so I don't think you need to decided to
2 what your interpretation of the contract is. And for those
3 reasons, we do not object.

4 CHAIRMAN SAHR: Thank you. Any questions or comments
5 from commissioners or advisors? Mr. Smith.

6 MR. SMITH: I probably should direct this to you, Tal,
7 Mr. Wieczorek. You have characterized this as a corrected or a
8 substituted exhibit. I mean, might it not be prudent to just,
9 if you want this to be in the record, just have it as another
10 exhibit that demonstrates another potential interpretation of
11 the contract? I mean, it looks from that record testimony of
12 Ron Williams that his explanation of the mechanics of this
13 pretty clearly matches the exhibit as you currently have it in
14 the record. At least it looks that way on its face.

15 MR. WIECZOREK: A couple things I would say, Mr.
16 Smith. I think that's legitimate that you could put it in as
17 just an extra numbered exhibit showing that calculation. As to
18 Mr. Williams's testimony, it appears that the testimony, two
19 things, is that the correct calculations are as set forth in
20 the calculations on page two of that exhibit and then later in
21 his testimony it could clearly be implied he's saying no, you
22 use J, that there was some confusion that he even had on that
23 exhibit.

24 If I can get a little leeway in responding to your
25 question and also kind of incorporating and responding to

1 something Mr. Coit just said, I think the argument that this is
2 a payment of interMTA back to WWC is totally incorrect. You
3 have here an established formula that calculates how to
4 determine what the local number should be. Now, the fact that
5 it includes all minutes doesn't mean we are getting compensated
6 for interMTA minutes at all. It's simply a calculation of how
7 the parties, in an arm's length transaction, clearly came up
8 with here is how you calculate local minutes, and it's
9 especially important, and I think it should be looked at, if
10 you look at the local traffic definition, an inter -- what's
11 defined in the contract as an interMTA call for an ILEC may be
12 a local call when delivered back to a CRMS carrier, and I think
13 Vivian is probably the primary example where you have an MTA
14 that cuts through the middle of it.

15 The ILEC takes the position if I call from one side of
16 that MTA to the other, even though I'm within Vivian all the
17 way, that's an interMTA call. However, if you read the
18 definition of local call for CMRS carrier, if someone from
19 Vivian calls me across an MTA line, that's a local call as
20 defined under the contract. To say that we are trying to get
21 billing for an interMTA call I think is totally incorrect. I
22 think this is the formula to establish an arm's length
23 transaction, and I appreciate you giving me some leeway in
24 responding to that and I guess the bottom line of my response
25 is that I wouldn't have an objection to have it as a separate

1 exhibit and allow then the argument as to what the actual
2 contract says on its face and how it should be interpreted.

3 CHAIRMAN SAHR: Any other commissioner questions,
4 advisor comments or questions? Hearing none, do we have a
5 motion?

6 VICE-CHAIR JOHNSON: I have a question, if that's --
7 now that that's sort of out of order but if you will allow it,
8 Mr. Chairman.

9 CHAIRMAN SAHR: Absolutely.

10 VICE-CHAIR JOHNSON: I would ask what the other
11 parties feel with regard to Mr. Smith's suggestion to allow
12 another exhibit at this time.

13 MS. ROGERS: I believe that it is within your
14 discretion to do that. If, however, you do allow them, WWC, to
15 present a new exhibit at this stage in the proceeding, then I
16 believe that the Golden West Companies and SDTA should have an
17 opportunity, and staff, if they choose, should have an
18 opportunity to also present some evidence on this new exhibit
19 and this apparently new interpretation of the agreement,
20 because I think that the issue here is the exhibit that they
21 are asking to substitute is contrary to the record as it stands
22 now.

23 I think the testimony of Mr. Williams is very clear as
24 far as -- he says point blank the first thing you do is you
25 separate out the interMTA minutes. It's very clear from his

1 testimony that the exhibits, the spread sheets that were
2 entered into the record are consistent with the way he walks
3 you through those spread sheets and the way he calculates the
4 recip comp formula in the agreement.

5 So if now they want to submit to you a different
6 interpretation of that, I think it's in your discretion, I
7 think you would have to consider whether or not is there new
8 evidence or is there something new that comes up that would
9 account for the change in their evidence as presented at the
10 hearing and what they want to present now, and are you
11 justified in opening the record on that basis? If you do so, I
12 believe we should also have an opportunity to present evidence
13 to refute the interpretation that they are now asking be made
14 to the corrected or the new exhibit.

15 MR. COIT: If I may, I would concur with that. I look
16 at this, and it seems to me that really what's going on here is
17 they have discovered a new issue and they want this commission
18 to make a decision on this issue because it's going to affect
19 probably compensation that is owed by or being paid by all of
20 the companies, and I suspect that if they get the commission
21 decision that they want on this, then there will be new issues
22 raised with respect to all the contracts that are there.

23 It seems to me that it's somewhat unfair at this point
24 in this process, as late as we are in this process, for them to
25 have the ability to raise an entirely new claim based on an

1 interpretation of the contract. With respect to your question,
2 I do believe that in fairness, it should be a substituted or a
3 new exhibit that we should have the ability to present some
4 evidence or rebuttal on, because we have not had that
5 opportunity yet.

6 VICE-CHAIR JOHNSON: Ms. Rogers, Mr. Coit, did either
7 of you have any comments regarding staff's comments, that this
8 issue was raised during the hearing and that Golden West stated
9 a position at that time that's consistent, not Golden West,
10 rather WWC stated a position at that time that's consistent
11 with what they brought forward this morning?

12 MS. ROGERS: I believe my response to that,
13 Commissioner, is that I don't think the record is unclear, and
14 I think that the problem in this exhibit is the explanation of
15 benefits. I think that the spread sheets and the testimony at
16 the hearing are consistent and so to allow a correction now
17 would be to make the exhibits inconsistent with the testimony.
18 So I think the point is the record was made and the exhibits,
19 the spread sheet portions of the exhibits support the record
20 and I think that's the important point here.

21 Just speculating for a minute, if we had not allowed
22 or if you had not left the record open for additional testimony
23 and rebuttal to Mr. Musick's testimony, we wouldn't be facing
24 this issue. The record -- the evidentiary portion of the
25 hearing would be closed and it would have to either be

1 addressed in briefing or dropped by Western Wireless or there
2 would have to be a motion to reopen the record to determine
3 whether it should be changed. And I think that now, because
4 the record is open for this limited purpose, I don't think that
5 this is a proper issue to be brought in this form of motion.
6 That's why we have asked that it be denied as it's been
7 presented.

8 MR. COIT: And in response to your question, I am not
9 aware of the point that or the information that Talbot brought
10 up in terms of Golden West's response. I don't know anything
11 about that, but that's my view, I guess.

12 VICE-CHAIR JOHNSON: This sure sounds like an issue
13 for the Office of Hearing Examiners to me. Mr. Chairman,
14 that's all I have.

15 CHAIRMAN SAHR: Thank you. Any other questions,
16 comments, opinions? Do we have a motion? Apparently we do
17 not. I will move that we grant the motion to substitute the
18 corrected exhibit.

19 VICE-CHAIR JOHNSON: And I would dissent.

20 CHAIRMAN SAHR: Do you have a substitute motion?

21 VICE-CHAIR JOHNSON: I don't know that it will do any
22 good.

23 CHAIRMAN SAHR: You never know.

24 VICE-CHAIR JOHNSON: I would move that we deny the
25 motion to allow the substituted exhibit and I would just note I

1 think this is -- this seems to go a little bit beyond a simple
2 calculation change, and I am a little uncomfortable opening up
3 new evidence. I don't know that -- I don't know that Mr.
4 Wieczorek's arguments have been so compelling that I feel that
5 we need to allow in new information at this time.

6 CHAIRMAN SAHR: And I will dissent. I think staff
7 stated it well. I think the more information the commission
8 has before it, it's only beneficial for us in making our
9 decision. We can always give it the weight that it deserves
10 and review it accordingly. So I am going to, not surprisingly,
11 dissent on that issue and I also think it's pretty much in line
12 with the testimony that was given at the hearing. So with
13 that, we have a one-one split and the commission is unable to
14 take action on CT05-001.

15 VICE-CHAIR JOHNSON: Mr. Chair, from a procedural
16 standpoint, is it appropriate to bring this back up at the next
17 commission meeting when we have an odd number of commissioners?

18 CHAIRMAN SAHR: I will look to our general counsel for
19 advice on what we do in a stalemate position.

20 MR. SMITH: Well, I think what you have is you have
21 got two motions that have died for lack of a second and so
22 there is no motion on the table. I think we are effectively in
23 a nondecided position until it's brought up again. And the
24 thing is with a hearing on this scheduled for August 7th, so
25 bottom line is, either you can elect to have -- schedule some

1 kind of ad hoc proceeding and decide this in advance, and I
2 guess the reason for doing that is, again I didn't bring this
3 up, but another issue here is the parol evidence rule with
4 respect to this, as to whether or not -- whether there is an
5 issue with that. I'm beginning to believe this proceeding will
6 never end. But otherwise we do have the hearing scheduled for
7 August 7th and we could decide, the commissioners could decide
8 it at the outset of that proceeding if you want to do it that
9 way.

10 CHAIRMAN SAHR: Well, to probably point out the
11 obvious, WWC has the motion to substitute and right now it is
12 not substituted, so I think at this point in time failure of
13 the commission to be able to take action today is a failure to
14 grant the motion at this point in time, and I think you are
15 absolutely right, it can be taken up either via ad hoc or at
16 the August 7th hearing, I suppose. But I think there may be
17 some issues of fairness to all the parties involved where they
18 may want to know a little bit what to expect to have happen on
19 August 7th and they may want to make arguments beforehand. So
20 my inclination would be to --

21 (Brief telephone interruption.)

22 CHAIRMAN SAHR: My inclination would be to try to set
23 up some type of ad hoc at a point in time where we have three
24 commissioners present and participating.

25 VICE-CHAIR JOHNSON: Is a motion to table the motion

1 in order or is no further motion necessary?

2 CHAIRMAN SAHR: I don't think we need a further
3 motion. I think the filing remains there and the commission
4 will at some later point in time either take action or not take
5 action, because if we fail to take action, I think the status
6 quo favors Golden West and SDTA's position and not WWC's. I
7 thank all the parties for their participation this morning.

8 (Whereupon, the proceedings were concluded at 10:10
9 a.m.)

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