

1 THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF SOUTH DAKOTA

3 =
4 IN THE MATTER OF THE PETITION FOR
ARBITRATION ON INTERCONNECTION AGREEMENTS
5 IN DOCKETS TC06-036, TC06-037, TC06-038,
TC06-039, TC06-040, TC06-041 AND TC06-042

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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Transcript of Proceedings

August 8, 2006

9 BEFORE THE PUC COMMISSION

10 Chairman Robert Sahr
11 Vice-Chair Dusty Johnson
11 Commissioner Gary Hanson

12 COMMISSION STAFF

13 John Smith
Rolayne Wiest
14 Harlan Best

ORIGINAL

APPEARANCES

TALBOT J. WIECZOREK,
17 GUNDERSON, PALMER, GOODSELL & NELSON,
Attorneys at Law, P.O. Box 8045,
18 Rapid City, South Dakota 57709,
appearing on behalf of WWC License LLC;

PAUL M. SCHUDEL,
WOODS & AITKEN LAW FIRM, Attorneys at Law,
301 South 13th Street, Suite 500,
Lincoln, Nebraska 68508,
appearing on behalf of Golden West Companies;

RICHARD D. COIT,
23 Executive Director and General Counsel,
 South Dakota Telecommunications Association,
24 P.O. Box 57, Pierre, South Dakota 57501,
 appearing on behalf SDTA.

Reported by Carla A. Bachand, RMR, CRR

1 TUESDAY, AUGUST 8, 2006

2 CHAIRMAN SAHR: On the addendum under
3 telecommunications, the next items are, number one, in the
4 matter of the petition for arbitration of interconnection
5 agreements in Dockets TC06-036, 06-037, 06-038, 06-039, 06-040,
6 06-041 and 06-042. The question in these dockets is, shall the
7 commission grant the motion to suspend the procedural schedule?
8 Ms. Wiest, I think we will jump to you on this.

9 MS. WIEST: I believe Golden West filed that motion so
10 I think we would go to Mr. Schudel.

11 MR. SCHUDEL: Thank you, Ms. Wiest, Mr. Chairman,
12 members of the commission. This is Paul Schudel. Thank you
13 for this opportunity to discuss this motion with you. The
14 motion seeks the approval of the commission to suspend the
15 procedural order which you entered on June 9th and have that
16 suspension effective August 1 while the pendency of the motion
17 for reconsideration of your order to transfer these dockets to
18 the OHE. The rule time for Western Wireless to respond to the
19 motion for reconsideration is 20 days. Yesterday I had
20 occasion to dialogue with one of Western Wireless's counsel,
21 and I believe Mr. Wieczorek is on the line. My understanding
22 is that perhaps Western Wireless is not objecting to this
23 motion, so perhaps I should pause and let him state his
24 position.

25 CHAIRMAN SAHR: Thank you. Mr. Wieczorek, are you on

1 the line?

2 MR. WIECZOREK: It's WWC's position that we won't
3 object to the suspension, but we want to make it clear that in
4 agreeing to any suspension, we are not agreeing to continuing
5 the deadline for decision making in these proceedings.

6 MR. SCHUDEL: If I may, Mr. Chairman, that was my
7 understanding, based upon my dialogue, and my comment would be
8 that in looking at the commission's agenda and its scheduling
9 of future meetings, I noted that your next meeting was
10 scheduled for the 23rd of this month, and I believe that the
11 rule time for the response to the motion for reconsideration
12 would run on August 17th. We would certainly be prepared to
13 request a setting, if mutually convenient to the commission and
14 counsel, on the 23rd and then to proceed with our argument at
15 that time, and obviously your decision and that depending on
16 the outcome of that, we would understand that there would be a
17 probable further conference between all concerned parties with
18 regard to the procedural schedule, at which time we could
19 address Mr. Wieczorek's comment and any other concerns about
20 the schedule, if that would be acceptable.

21 MS. Wiest: Would staff have a position?

22 MS. GREFF: Staff has no position on these issues.

23 MS. Wiest: I guess I have a problem with it. My
24 question is, given that Western Wireless is not -- does not
25 want to extend the final deadline for the commission decision,

1 which I believe is December 31st, I'm just trying to figure out
2 if we start postponing the filing of testimony and those kind
3 of things, how are we supposed to fit all of this in prior to
4 December 31st?

5 MR. SCHUDEL: I assume that was Ms. Wiest speaking.

6 MS. Wiest: Yes, I'm sorry.

7 MR. SCHUDEL: I think your point is well-taken and I
8 would submit that whether or not this motion is granted, that
9 there is a genuine issue posed as to whether the 12-31-06
10 currently scheduled terminus of this series of cases can be
11 met, given the prospect of the Office of Hearing Examiners
12 conducting the hearing, having to produce their proposed
13 findings of fact and law and having the commission thereafter
14 review and take action to issue its final decision. And I
15 simply don't have a pat answer for your question, other than to
16 say that I believe that the first step is to dispose of the
17 motion for reconsideration. There are other pending motions
18 that directly impact the scope of testimony that any of the
19 parties may be filing and I would respectfully submit that the
20 proper administration of this case would at least support a
21 short suspension until such time that the reconsideration can
22 be dealt with.

23 MS. Wiest: But see, my problem is that I understand
24 when you are saying that we possibly can't get this done by
25 December 31st, 2006, but these are federal statutory deadlines.

1 The parties have agreed to waive that statutory deadline, which
2 I think was August 25th, but barring the parties agreeing to a
3 further waiver, I think I'm kind of bound by the December 31st,
4 and so if I start -- the commission starts, you know, giving
5 parties more time to file testimony and all of those kind of
6 things, I just don't see how we are supposed to get this done
7 by December 31st, and I believe, as Mr. Wieczorek has stated,
8 he is not agreeing to continue that December 31st deadline.

9 MR. SCHUDEL: Certainly he can speak for himself, but
10 that is clearly what he said as of today. Whether or not that
11 is subject to any future modification will remain to be seen, I
12 trust. So at this time I don't want to repeat my comments, but
13 I would just say that it is simply a fact right now that we do
14 not have a final order as to whether the OHE or whether the
15 commission will ultimately conduct the hearing. We have
16 significant motions that are pending that again need to be
17 addressed as early as possible, and those have a direct impact
18 on the scope of our testimony, and I can only say again that
19 the parties are requesting that at least we complete that phase
20 of the case, that is, to dispose of the reconsideration and
21 then address comprehensively the scheduling after we have that
22 decision in hand.

23 MS. Wiest: Given whatever way the commission decides
24 on the motion for reconsideration, how would that even affect
25 the testimony? You are saying your testimony is affected by

1 your other pending motions. How would it be affected by
2 whether the commission grants or denies the motion for
3 reconsideration? You are still filing testimony whether it's
4 with OHE or whether it's before us.

5 MR. SCHUDEL: Well, there would be three points I
6 would offer in that regard. Number one, we have a motion to
7 dismiss a number of the pending issues. That motion speaks for
8 itself. Mr. Wieczorek has not yet had the opportunity to file
9 his response thereto, but it addresses I think at least five or
10 six of the pending issues. If that were granted, there would
11 be no need to file testimony on those.

12 Secondly, there is a motion to admit the record in the
13 CT05-001 case. The last day of the hearing on that was
14 yesterday. There would be considerable elimination of
15 duplication I would submit if that motion is granted,
16 duplication of testimony. And finally, as a pragmatic matter,
17 I would simply observe, and others I'm sure will have a comment
18 on this, that the tenor and the scope of testimony I believe
19 will need to be significantly different if these cases are
20 presented to an expert agency and its staff or are presented to
21 an Office of Hearing Examiners that are hearing these on a
22 first impression basis. I just think each one of those
23 considerations weighs heavily into, as I have described before,
24 the proper administration of this case and it plays in favor of
25 suspending the schedule at least until we know who is going to

1 hear the case.

2 MS. Wiest: Do you have anything to add, Mr.
3 Wieczorek, about how we are supposed to get this case done by
4 December 31st if we start suspending the procedural schedule
5 today?

6 MR. WIECZOREK: I understand the concern that it's
7 going to be a tight time frame, but we are not in the position
8 we are going to waive that deadline. I think where we will be
9 stuck on is very short time frames for briefing. I don't agree
10 with all the comments Mr. Schudel made, but I believe they go
11 mostly to his other motions. This procedurally has kind of
12 forced us into a position that there are issues that need to be
13 resolved before -- probably before testimony gets filed. It's
14 my understanding they would like the resolution of the
15 reconsideration because they might provide more background in
16 their testimony. While I'm not sure that's necessary going to
17 the hearing officers to provide significantly more background
18 or actually any additional, since the witnesses are going to be
19 present at the hearing. We are deferring to their concerns in
20 granting the extension, but just wanted to make clear we are
21 not agreeing to an extension of the deadline. What it results
22 in is we are going to have to run fairly hard once everything
23 is finalized.

24 MS. Wiest: What I would say to everyone is if the
25 commission were to grant this motion to suspend the procedural

1 schedule, all I would do is I would be warning the parties that
2 time frames between the time that you are filing your initial
3 testimony, when you are filing your rebuttal testimony, time
4 frames for briefing, all of that is going to be compressed in
5 order that the OHE, if it continues to be with OHE, has
6 sufficient time to make its proposed findings and in order that
7 the commission has sufficient time to actually make a final
8 decision on this. If the parties are willing to live with
9 those compressed time limits, that's up to them.

10 MR. SCHUDEL: I think the only final comment I could
11 offer is simply that if one reviews the commission's order of
12 June 9th, that order and the procedural schedule established
13 therein did not contemplate and has no mention made of a
14 referral of this matter to the OHE, so it seems to me that the
15 procedural schedule is going to have to be readdressed, and
16 indeed, as I think you are aware, there have been multiple
17 letters issued preliminarily by the OHE indicating the need for
18 a procedural conference. So it doesn't seem like that the need
19 to readdress the procedural schedule is a particularly new
20 matter that is only raised by the presentation of the motion
21 that's under consideration.

22 MS. WIEST: I guess given -- this is just with my
23 caution that all these time frames will be compressed, whether
24 it stays with OHE or whether it stays with us. Then I believe
25 the commission could grant the motion to suspend the procedural

1 schedule.

2 MR. COIT: If I could -- this is Richard Coit with
3 SDTA. I would just like to express our support for the
4 comments of Mr. Schudel. No question some of the motions that
5 are pending affect the scope of the testimony. The tenor of
6 the testimony definitely may be different depending on
7 ultimately where this case ends up and I think it would be
8 incredibly difficult and maybe to a large degree kind of a
9 waste for the preparation of initial testimony without having
10 an answer to some of those questions. So we would appreciate
11 the commission's careful consideration. Thank you.

12 CHAIRMAN SAHR: Questions or comments from
13 commissioners or advisors.

14 COMMISSIONER HANSON: Ms. Wiest, I was trying to get
15 somewhat of an idea of your comfort level with this after your
16 very last comment.

17 MS. Wiest: I guess my point is that I am just warning
18 the parties that to the extent that time limits are going to be
19 compressed in this, it's going to be compressed on their end.
20 It's not going to be compressed on our end. And if everybody
21 was willing to live with that, then fine, I would recommend
22 that you can grant their motion to suspend the procedural
23 schedule.

24 VICE-CHAIR JOHNSON: So we would just repeat that once
25 more for good measure and the time lines would be compressed on

1 their end and not on our end.

2 MS. Wiest: That's correct.

3 VICE-CHAIR JOHNSON: The commission doesn't have any
4 interest in running afoul of federal statutory deadlines.

5 MS. Wiest: That's correct.

6 CHAIRMAN SAHR: So we see the accident coming, but we
7 hope to remain innocent bystanders.

8 MS. Wiest: Yeah. In fairness to the parties, it is
9 possible that OHE will set a different procedural schedule, I
10 don't know. I would assume that they would have kept the
11 schedule at least with respect to the testimony and those
12 things.

13 CHAIRMAN SAHR: Well, I would make a motion to the
14 effect of staff's recommendation.

15 COMMISSIONER HANSON: Second.

16 VICE-CHAIR JOHNSON: And I will concur with the motion
17 to suspend the procedural schedule.

18 (Whereupon, the proceedings were concluded at 11:40
19 a.m.)

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C E R T I F I C A T E

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this transcript represents a true and accurate transcription of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on
this the 9th day of August 2006.

Carla A. Bachand

Carla A. Bachand, RMR, CRR
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2012.