

TC97-142

KC/SW

DOCKET NO. TC97-142

In the Matter of

IN THE MATTER OF THE COMPLAINT
FILED BY RAYMOND AND GENENE
SAND DBA SAND CONSTRUCTION,
DALLAS, SD, AGAINST U S WEST
COMMUNICATIONS, INC. REGARDING
TELEPHONE LINE LOCATION

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
8/8 97	Received;
8/13 97	Recketed;
8/31 97	TC Fed. Filed;
9/17 97	Order Finding Probable Cause and Notice Requiring Answer;
10/7 97	Response to Complaint and Motion to Dismiss;
10/16 97	Order Admitting Lien for Attorney (William D. Heston) Richard C. Thompson;
11/7 97	Order for and Notice of Hearing;
11/13 97	Subpoena to Craig Smith;
11/13 97	Subpoena to Gary Heston;
11/17 97	Boyer, Murphy, McNeill & Dryfield; Notice of Appearance;
11/17 97	Order to Complainant which attached amended response to Complaint ^{and filed to Dismiss} ;
11/17 97	Memorandum in support of Motion to Dismiss;
11/25 97	Transcript of Hearing held on 11/18/97;
1/21 98	Final Order and Decision; Notice of Entry of Order;
1/21 98	Recket Closed

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	ORDER FINDING
BY RAYMOND AND GENE SAND D/B/A)	PROBABLE CAUSE AND
SAND CONSTRUCTION, DALLAS, SD)	NOTICE REQUIRING
AGAINST U S WEST COMMUNICATIONS, INC.)	ANSWER
REGARDING TELEPHONE LINE LOCATION)	TC97-142

On August 8, 1997, Raymond & Gene Sand d/b/a Sand Construction filed a complaint with the Public Utilities Commission (Commission) against U S WEST Communications, Inc. (U S WEST) regarding a telephone line location. "Our complaint is in reference to telephone line location and moving line for Project AIP 3-46-0048-21 Rapid City Regional Airport County Road Relocation, County Road C232, and Construct Runway 14 Safety Area, Pennington County. Bid date for this project was May 9, 1997. At that time or before, the affected utilities were aware that utility relocation would be necessary. A pre-construction meeting was held on May 30, 1997. U S WEST representative Dennis Serfling was present. Raymond Sand stated that he would like to begin the project as soon as possible—at least by June 9th. Dennis Serfling said U S WEST was waiting for cable to arrive for the fiber optic line move and that expected arrival was June 3, 1997, after which they would proceed to install it. Sand Construction notified One Call Notification shortly after the meeting as a precautionary measure. We were issued ticket #23361. The project owners' project paperwork was not completed as rapidly as expected; therefore, Sand Construction didn't begin work until June 16, 1997. The telephone line relocation work in the county road work area was not completed, we had no choice but to try to work around it....We submit that Sand Construction has suffered losses due to the delay in utility relocation by U S WEST. We request recovery of these losses from U S WEST."

Pursuant to ARSD 20:10:01:08.01 and 20:10:01:09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On September 9, 1997, at its duly noticed meeting, the Commission reviewed the complaint.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-13-1, 49-13-1.1, 49-13-4, 49-13-13, 49-13-14, 49-13-14.1, 49-31-3, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-12, 49-31-12.4, and ARSD 20:10:01:08.01 and 20:10:01:09. The Commission voted unanimously to find probable cause, it is therefore

ORDERED, that pursuant to ARSD 20:10:01:09, the Commission finds that there is probable cause of an unlawful or unreasonable act, rate, practice, or omission and that the complaint shall be forwarded to U S WEST and U S WEST shall file with the Commission its answer in writing within twenty (20) days of service of this order.

Dated at Pierre, South Dakota, this 17th day of September, 1997.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Nelma K. Kelbo

Date 9/17/97

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
Telephone 303 672-2718
Facsimile 303 256-7069
email: lmaez@uswest.com

Luke Maez
Legal Secretary

USWEST

RECEIVED

OCT 16 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

VIA OVERNIGHT DELIVERY

October 15, 1997

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

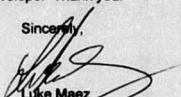
**Re: In The Matter of The Complaint Filed by Raymond and Gene Sand
d/b/a Sand Construction, Dallas, SD Against U S WEST
Communications, Inc. Regarding Telephone Line Location
Docket No. TC97-142**

Dear Mr. Bullard:

Enclosed for filing in the above-referenced docket is an original and ten (10) copies of the **Sixth Judicial Circuit Order Admitting William Heaston and Michael Thompson as Non-Resident Attorneys** for U S WEST Communications, Inc. to appear in this matter.

Please file stamp the enclosed extra copy of this letter and return to me in the enclosed self-addressed stamped envelope. Thank you.

Sincerely,



Luke Maez
Legal Secretary to
William P. Heaston

encl.

Bar 97-29

STATE OF SOUTH DAKOTA)
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

RECEIVED

OCT 16 1997

IN THE MATTER OF THE COMPLAINT FILED)
BY RAMOND AND GENE SAND D/B/A)
SAND CONSTRUCTION, DALLAS, SD)
AGAINST U S WEST COMMUNICATIONS, INC.)
REGARDING TELEPHONE LINE LOCATION)

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

DOCKET No. TC97-142

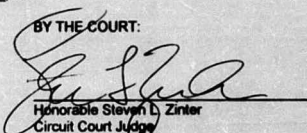
**ORDER ADMITTING
NON-RESIDENT ATTORNEY**

It is hereby

ORDERED that the Motion for Admission for William P. Heaston, a non-resident attorney, to appear on behalf of U S WEST Communications, Inc., before the Public Utilities Commission and this Court relating to this matter is granted.

Dated: October 6, 1997.

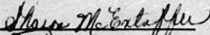
BY THE COURT:


Honorable Steven L. Zinter
Circuit Court Judge
Sixth Judicial Circuit

ATTEST:

Mary L. Erickson
Clerk of Courts

BY:

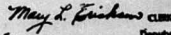

Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

OCT 06 1997


Clerk
By _____ Deputy

STATE OF SOUTH DAKOTA)
:
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

OCT 16 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT FILED)
BY RAMOND AND GENENE SAND D/B/A)
SAND CONSTRUCTION, DALLAS, SD)
AGAINST U S WEST COMMUNICATIONS, INC.)
REGARDING TELEPHONE LINE LOCATION)

DOCKET No. TC97-142

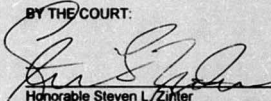
ORDER ADMITTING
NON-RESIDENT ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Michael C. Thompson, a non-
resident attorney, to appear on behalf of U S WEST Communications, Inc., before the
Public Utilities Commission and this Court relating to this matter is granted.

Dated: October 6, 1997.

BY THE COURT:


Honorable Steven L. Zimler
Circuit Court Judge
Sixth Judicial Circuit

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

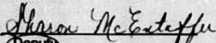
FILED

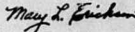
OCT 06 1997

ATTEST:

Mary L. Erickson
Clerk of Courts

BY:


Deputy

 CLERK
By _____ Deputy

(SEAL)

U S WEST, Inc.
1801 California Street, Suite 5100
Denver, Colorado 80202
Telephone 303 672-2718
Facsimile 303 295-7069
email lmaaz@uswest.com

Luke Maaz
Legal Secretary

USWEST

RECEIVED

OCT 08 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

VIA FACSIMILE & OVERNIGHT DELIVERY

October 7, 1997

FAX Received OCT 07 1997

Mr. William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

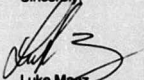
**Re: In The Matter of The Complaint Filed by Raymond and Genevieve Sand
d/b/a Sand Construction, Dallas, SD Against U S WEST
Communications, Inc. Regarding Telephone Line Location
Docket No. TC97-142**

Dear Mr. Bullard:

Enclosed for filing in the above-referenced docket is an original and ten (10)
copies of U S WEST Communications, Inc.'s **RESPONSE TO COMPLAINT and
MOTION TO DISMISS**.

Please file stamp the enclosed extra copy of this letter and return to me in the
enclosed self-addressed stamped envelope. Thank you.

Sincerely,



Luke Maaz
Legal Secretary to
Michael C. Thompson

encl.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED	)	ORDER FOR AND NOTICE
BY RAYMOND AND GENE SAND D/B/A	)	OF HEARING
SAND CONSTRUCTION, DALLAS, SD	)	
AGAINST U S WEST COMMUNICATIONS, INC.	)	TC97-142
REGARDING TELEPHONE LINE LOCATION	)	

On August 8, 1997, Raymond & Gene Sand d/b/a Sand Construction filed a complaint with the Public Utilities Commission (Commission) against U S WEST Communications, Inc. (U S WEST) regarding a telephone line location. "Our complaint is in reference to telephone line location and moving line for Project AIP 3-46-0048-21 Rapid City Regional Airport County Road Relocation, County Road C232, and Construct Runway 14 Safety Area, Pennington County. Bid date for this project was May 9, 1997. At that time or before, the affected utilities were aware that utility relocation would be necessary. A pre-construction meeting was held on May 30, 1997. U S WEST representative Dennis Serfling was present. Raymond Sand stated that he would like to begin the project as soon as possible—at least by June 9th. Dennis Serfling said U S WEST was waiting for cable to arrive for the fiber optic line move and that expected arrival was June 3, 1997, after which they would proceed to install it. Sand Construction notified One Call Notification shortly after the meeting as a precautionary measure. We were issued ticket #23361. The project owners' project paperwork was not completed as rapidly as expected; therefore, Sand Construction didn't begin work until June 16, 1997. The telephone line relocation work in the county road work area was not completed, we had no choice but to try to work around it....We submit that Sand Construction has suffered losses due to the delay in utility relocation by U S WEST. We request recovery of these losses from U S WEST."

At its regularly scheduled September 9, 1997, meeting, the Commission found probable cause of an unlawful or unreasonable act, rate, practice or omission and served the complaint on U S WEST. U S WEST filed its response on October 7, 1997.

The Commission has jurisdiction over this matter pursuant to SDCL 1-26-18, 1-26-19, 49-13-1, 49-13-1.1, 49-13-4, 49-13-13, 49-13-14, 49-31-3, 49-31-7, and 49-31-7.1, and ARSD 20:10:01:07.01 through 20:10:01:15.01 and 20:10:01:22.02.

The issues at the hearing are as follows: (1) whether U S WEST's actions in relocating the utility line were unlawful or unreasonable acts, rates, practices, or omissions; and (2) whether such actions caused the Sands to suffer damages.

A hearing shall be held at 1:30 P.M., on Tuesday, November 18, 1997, in Room 464, State Capitol, Pierre, South Dakota. It shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited

if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing the Commission may find that U S WEST's actions in relocating the utility line were an unlawful or unreasonable act, rate, practice, or omission. Based upon such a finding, the Commission may then find that such action caused the Sands to suffer damages which could be assessed against U S WEST. The Commission's decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

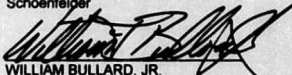
ORDERED that a hearing shall be held at the time and place specified above on the issues of whether U S WEST's actions in relocating the utility line were unlawful or unreasonable acts, rates, practices, or omissions and whether such actions caused the Sands to suffer damages.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 7th day of November, 1997.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>Selaine Kaebis</u>
Date	<u>11/7/97</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and
Schoenfelder


WILLIAM BULLARD, JR.
Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 13 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY RAYMOND AND GENENE
SAND D/B/A SAND CONSTRUCTION,
DALLAS, SD AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-142

SUBPOENA

TO: CRAIG SMITH
Div. of Aeronautics
Dept. of Transportation
Pierre, SD 57501

You are hereby commanded to appear at the Public Utilities Commission, 500 E. Capitol,
Room 464, Pierre, SD 57501, on Tuesday, November 18, 1997, at 1:30 p.m., then and there to give
testimony as a witness on the part of the U S West Communications, Inc. in said action pending
before said Commission between the above-named parties.

Dated this 13th day of November, 1997.



William Bullard, Jr., Executive Director
Public Utilities Commission of the State of South Dakota

(SEAL)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 13 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY RAYMOND AND GENENE
SAND D/B/A SAND CONSTRUCTION,
DALLAS, SD AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-142

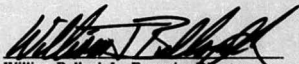
SUBPOENA DUCES TECUM

TO: GARY NORTON
Alliance of Architects and Engineers, Inc.
706 West Boulevard
Rapid City, SD 57701

You are hereby commanded to appear at the Public Utilities Commission, 500 E. Capitol, Room 464, Pierre, SD 57501, on Tuesday, November 18, 1997, at 1:30 p.m., then and there to give testimony as a witness on the part of the U S West Communications, Inc. in said action pending before said Commission between the above-named parties. You are hereby directed to bring with you at said time and place for identification, inspection and copying the following:

1. Your original handwritten notes and typewritten notes relative to the meeting that occurred on May 30, 1997 relative to the Rapid City Regional Airport, Project AIP 3-46-0048-21.
2. The original of a letter dated June 17, 1997 to the Alliance of Architects and Engineers from Gerald Sand.

Dated this 13th day of November, 1997.



William Bullard, Jr., Executive Director
Public Utilities Commission of the State of South Dakota

(SEAL)

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Joseph D. Murphy
Edward A. Greenfield
David J. Vukobrat
Gary J. Pugh
Vance R.C. Goldhammer
Thomas J. Wight
Terry R. Vukobrat
James R. Mahan
Douglas J. Hagg
Michael S. MacIntyre
Gregory S. Greenfield
Teresa A. Wight
Roger A. Sullivan
Christina A. Thompson
Lisa Hansen Mueni

Northwest Center, Suite 600
101 North Phillips Avenue
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618

Of Counsel
John R. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1920-1964)

November 17, 1997

William Bullard, Executive Director
S.D. Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

RECEIVED

NOV 18 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Sand Construction v. U S West Communications, Inc.
PUC #97-142
Our File No. 2104-97-142

FAX Received NOV 17 1997

Dear Mr. Bullard:

Please find enclosed the original and ten copies of our firm's Notice of Appearance, U S West's Motion to Amend Answer with attached Amended Response to Complaint and Motion to Dismiss and Memorandum in Support of Motion to Dismiss together with the original Certificate of Service.

Best regards,

Sincerely yours,

BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.


Thomas J. Welk

TJW/vjj
Enclosures

cc: Wally Eklund
Cameron Hoseck
Jon Lehner
William P. Heaston

RECEIVED

NOV 18 1997

BEFORE THE PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC
OF THE STATE OF SOUTH DAKOTA UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT FILED BY RAYMOND
AND GENENE SAND D/B/A SAND
CONSTRUCTION, DALLAS, SD
AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

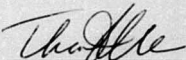
FAX Received NOV 17 1997

TC97-142

BOYCE, MURPHY, McDOWELL &
GREENFIELD's NOTICE
OF APPEARANCE

Notice is hereby given that the undersigned now appear as attorneys of record for U
S West Communications, Inc., in the above-captioned matter.

Dated this 17th day of November, 1997.



Thomas J. Welk
Tamara A. Wilka
BOYCE, MURPHY, MCDOWELL &
GREENFIELD, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605)336-2424

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS**

On May 30, 1997, a pre-construction meeting was held. During the meeting, Sand advised those in attendance, including U S WEST, that Sand wanted to begin the project by June 9, 1997. U S WEST informed Sand that it could not provide a firm start date because it was waiting for the fiber optic cable to arrive from its supplier but that the cable was expected to arrive on or about June 3, 1997.

The fiber optic cable did not arrive until June 10, 1997. The cable placement was completed on June 18, 1997. After placement of the fiber optic cable, U S WEST began the notification and approval processes necessary to complete a fiber throw. Although the process normally takes three weeks, U S WEST was able to escalate the process and complete the fiber throw on June 26, 1997.

Sand claims that it incurred damages (additional equipment rental, etc.) while waiting for U S WEST to complete the work. Sand has filed a complaint with the Commission pursuant to SDCL 49-13-1.

ARGUMENT

I. SAND HAS FAILED TO IDENTIFY ANY STATUTE OR TARIFF WHICH HAS BEEN VIOLATED

Sand Construction has filed a complaint with the Commission pursuant to SDCL 49-13-1. It provides, in relevant part:

Any person complaining of anything done or omitted by any telecommunications company . . . subject to the provisions of this title in contravention of the provisions thereof, may apply to the commission for relief. . . .

(emphasis added).

Sand has failed to cite any statute or tariff which has been violated. Thus, the complaint should be dismissed. See ARSD 20:10:01:11.01.

II. THERE IS NO CONTRACT

Four essential elements must exist to create a contract: (1) parties capable of contracting; (2) their consent; (3) a lawful object; and (4) sufficient cause or consideration.

SDCL 53-1-2. See also Great West Cas. Co. v. Bergeson, 550 N.W.2d 418, 421, 1996 SD 73 (S.D. 1996). In this case, both consent and consideration are lacking.

Under SDCL 53-3-3, there is no mutual consent to a contract "unless the parties all agree upon the same thing in the same sense." This is often referred to as a meeting of the minds. Without a meeting of the minds, there can be no contract. Garrett v. BankWest, Inc., 459 N.W.2d 833, 839 n. 4 (S.D. 1990). In this case, it is clear there was never a meeting of the minds. There is similarly no evidence that U S WEST received any consideration.

"Consideration is an essential element of a contract both under common law and by statute in South Dakota." Central Monitoring Service v. Zakinski, 553 N.W.2d 513, 516, 1996 SD 116 (S.D. 1996). Consideration is defined as:

Any benefit conferred or agreed to be conferred upon the promisor by any other person to which the promisor is not lawfully entitled, or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer as an inducement to the promisor, is a good consideration for a promise.

SDCL 53-6-1. U S WEST received nothing in exchange for placing and relocating the telephone lines from Sand. Thus, even if the Commission were to somehow find that there was a meeting of the minds, there can be no enforceable contract because there was no consideration.

III. EVEN IF THERE WERE A CONTRACT, THE COMMISSION LACKS JURISDICTION

The South Dakota Supreme Court recently examined the extent of the Commission's jurisdiction in Matter of Northwestern Public Service Co., 560 N.W.2d 925 (S.D. 1997). The

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case involved a request by Northwestern Public Service Company for a declaratory ruling with respect to the following issue:

Should Hub City be allowed to terminate the former Safeguard Metal Casting Division electric service agreement with Northern Electric Cooperative, Inc., and receive electric service from Northwestern Public Service Company for its total plant?

Northern Electric Cooperative intervened.

The case was submitted on stipulated facts and affidavits (regarding the intent of the parties to the Agreement). The Commission decided in favor of Northwestern Public Service. On appeal, the circuit court reversed the Commission's decision on the grounds that the Commission made a mistake of law and lacked authority to interpret or enforce a contract in a dispute between a consumer and a rural electric cooperative. The Supreme Court affirmed.

The Court found that the Commission's authority over a rural electric cooperative is different than its authority over a public utility. Northwestern Public Service, 560 N.W.2d at 929. The Court nevertheless observed that even though SDCL 49-34A-4 only applies to the Commission's relationship with public utilities, not rural cooperatives, it does not include contract interpretation as an authority or power of the Commission:

The [Commission] is not a court, and cannot exercise purely judicial functions. Application of Dakota Transportation, Inc., 67 S.D. 221, 291 N.W.2d 589, 594 (1940).

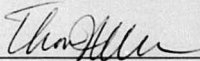
Id. at 930.

In this case, the Commission is again being asked to exercise a purely judicial function as to whether a contract existed between Sand and U S West. Because such functions exceed the Commission's jurisdiction, the complaint must be dismissed.

CONCLUSION

For all of the reasons stated above, U S WEST requests that the Commission grant its motion and dismiss the complaint.

Respectfully submitted this 17th day of November, 1997.



Thomas J. Welk
Tamara A. Wilka
BOYCE, MURPHY, MCDOWELL &
GREENFIELD, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605)336-2424

William P. Heaston
U S WEST Communications, Inc.
1801 California, Suite 5100
Denver, Colorado 80202
Telephone: (303) 896-0752

Attorneys for U S WEST
Communications, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 18 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT FILED BY RAYMOND
AND GENENE SAND D/B/A SAND
CONSTRUCTION, DALLAS, SD
AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

FAX Received NOV 17 1997

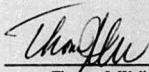
TC97-142

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 17th day of November, 1997 true and correct copies of Boyce, Murphy, McDowell & Greenfield's Notice of Appearance, U S West's Motion to Amend Answer with attached Amended Response to Complaint and Motion to Dismiss and Memorandum in Support of Motion to Dismiss were sent via fax to the following number at approximately 2:00 p.m.:

Wally Eklund
Johnson, Eklund, Nicholson & Dougherty
P.O. Box 149
Gregory, SD 57533

835-8742



Thomas J. Welk

JOHNSON, EKLUND, NICHOLSON,
PETERSON & FOX

LAWYERS

P.O. BOX 149

GREGORY, SOUTH DAKOTA 57533

TELEPHONE: (605) 835-8391

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November 19, 1997

RECEIVED

NOV 20 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OFFICE ALSO LOCATED AT

409 SOUTH SECOND AVENUE

P.O. BOX 1004

SIOUX FALLS, SOUTH DAKOTA 57102

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Thomas J. Welk
Boyce, Murphy, McDowell
& Greenfield, L.L.P.
PO Box 5015
Sioux Falls, SD 57117-5015

Ref: Sand Construction -vs- US West
PUC #97-142

Dear Counsel:

Genene Sand checked her daily log and found that the call to "One Call" was placed at 9:45 on June 8, 1997. She advised me that she also called the "One Call" number and talked with "Linda" in the administrative section who advised her that at the time of the call, Sand Construction was advised that the "location" would be began on June 11, 1997. "Linda" advised that the following list of companies and agencies were contacted:

US West
Golden West
Kaneb Pipeline
TCI Cable
Montana-Dakota Utilities
Black Hills Power
City of Rapid City

Should you want to check the accuracy of this information, please call the "One Call" number and ask for Linda.

Sincerely,

Wally Eklund

WAE/mys
cc: Sand Const

RECEIVED

NOV 25 1997

IN THE MATTER OF THE COMPLAINT FILED) SOUTH DAKOTA PUBLIC
BY RAYMOND AND GENESE SAND D/B/A) UTILITIES COMMISSION
SAND CONSTRUCTION, DALLAS, SD)
AGAINST U S WEST COMMUNICATIONS, INC.) TC97-142
REGARDING TELEPHONE LINE LOCATION)

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS: November 18, 1997
Room 464, Capitol Building
Pierre, South Dakota

PUC COMMISSION: Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

COMMISSION STAFF
PRESENT:

Rolayne Ailts Wiest
Karen Cremer
Harlan Best
Greg Rislov
Steve Wegman
Leni Healy

Reported by: Lori J. Grode, RMR

A P P E A R A N C E S

For U S West: Thomas J. Welk
P.O. Box 5015
Sioux Falls, SD 57117

For Sand Construction: Wally Eklund
P.O. Box 149
Gregory, SD 57533

EXHIBITS:

1 Complaint
2 Response to Complaint and Motion to Dismiss
3 Amended Response to Complaint, Motion to Dismiss
4 Chart
5 5A-C Progress Schedule
6 5-30-97 Notes (handwritten)
7 5-30-97 Notes (typewritten)
8 6-17-97 Letter for Correction of Minutes
9 6-17-97 Letter Request for Extension
10 6-20-97 Minutes
11 6-27-97 Minutes
12 7-11-97 Minutes
13 New Damage Calculations
14 Portions of Construction Contract
15 Notice to Proceed
16 U S West's Map
17 Tariff

WITNESSES:

Raymond Sand 12
Genene Sand 74
Douglas Stulken 84
Steve Wegman 95
Dennis Serfling 113
Gary Norton 145
Craig Smith 179

P R O C E E D I N G S

(EXHIBITS NO. 4-16 WERE MARKED FOR
IDENTIFICATION.)

CHAIRMAN BURG: I'll open the hearing in
TC97-142. I'll begin the hearing for Docket TC97-142,
In the Matter of the Complaint filed by Raymond and
Gene Sand doing business as Sand Construction,
Dallas, South Dakota, against U S West Communications
regarding telephone line location.

The time is approximately 1:30. It's about
1:45. The date is November 18, 1997; and the location
of the hearing is Room 464 of the State Capitol, Pierre
South Dakota.

I am Jim Burg, Commission Chair.
Commissioners Laska Schoenfelder and Pam Nelson are
also present.

I'm presiding over this hearing. This
hearing was noticed pursuant to the Commission's Order
For and Notice of Hearing issued November 7, 1997. The
issues at this hearing are as follows: One, whether
U S West's actions in relocating the utility line were
unlawful or unreasonable acts, rates, practices, or
omissions; and, two, whether such actions caused the
Sands to suffer damages.

All parties have the right to be present and

1 to be represented by an attorney. All persons so
2 testifying will be sworn in and subject to
3 cross-examination by the parties. The Commission's
4 final decision may be appealed by the parties to the
5 State Circuit Court and the State Supreme Court.

6 Rolayne Wiest will act as Commission
7 counsel. She may provide recommended rulings on
8 proceedings and evidentiary matters. The Commission
9 may overrule its counsel's preliminary rulings
10 throughout the hearing. If not overruled, the
11 preliminary rulings will become final rulings. And
12 I'll turn it over to Rolayne at this time to actually
13 conduct the hearing.

14 MS. WIEST: First, I'll take the appearance
15 of the party who's representing the Sands.

16 MR. EKLUND: My name is Wally Eklund. I'm an
17 attorney from Gregory, South Dakota.

18 MS. WIEST: U S West.

19 MR. WELK: Tom Welk from Sioux Falls
20 representing U S West Communications.

21 MS. WIEST: And staff.

22 MR. WELK: Karen Cremer for Commission staff.

23 MS. WIEST: First, I think what we need to do
24 is look at U S West's motions. The first motion was a
25 Motion to Amend the Answer. Is there any objections to

1 that motion?

2 MR. EKLUND: I guess I received it
3 yesterday. I don't have any objection to them amending
4 their answers.

5 MS. WIEST: Okay. Then the Motion to Amend
6 Answer is granted. The next motion is the Motion to
7 Dismiss. Mr. Welk.

8 MR. WELK: Thank you. U S West in its Answer
9 raised a Motion to Dismiss yesterday. We faxed it to
10 opposing counsel and to the Commission a Memorandum in
11 Support of Motion to Dismiss. And essentially the
12 Motion to Dismiss deals with several items, one of
13 which is legal in nature at this point in time; and
14 that has to deal with the jurisdiction of the
15 Commission.

16 The Commission is well aware of what the
17 jurisdictional aspect of the motion is. The word
18 jurisdiction from a lawyer's standpoint is essentially
19 the power of the Commission to hear this dispute. And
20 our contention is, Commissioners, that the Commission
21 does not have jurisdiction to hear this dispute. The
22 Commission's only granted jurisdiction is as that
23 stated by the legislature. And our contention is that
24 taking the allegations of the Complaint even being
25 true, yet asserts a contract claim that does not deal

1 with any of the jurisdictional statutes that are
2 provided to the Commission.

3 And our position is that Mr. Sand, if he has
4 a complaint, is something that should be brought in a
5 judicial forum and not before the Commission. The
6 Commission has certainly jurisdiction in a variety of
7 and a number of things over U S West, but essentially
8 this is a garden variety alleged contract dispute. And
9 we do not believe that the Commission has jurisdiction
10 in this garden variety alleged contract suit. And I
11 say alleged because I don't believe he even has a
12 contract suit.

13 But our position is that the Commission
14 shouldn't and cannot hear this matter because -- and I
15 also should indicate that it's the duty of the
16 Complainant to point out to the Commission, not the
17 Commission's duty to seek the record and the statutes
18 and the regulations for Commission. But the
19 Complainant has the duty to show you that you have
20 jurisdiction.

21 And then you must look at that issue
22 yourselves and determine whether you have the power to
23 determine this dispute. As far as I know, there's no
24 tariff or any statute that gives the Commission the
25 authority to adjudicate relocation of utility lines.

1 We can find no tariff. We can find no statute that
2 addresses this issue. And Mr. Sand and his company
3 should be pursuing this in another forum in front of
4 that.

5 We've also raised in our memorandum, which
6 will be a subject of a factual dispute, that there is
7 no contract that exists as a matter of law. That
8 obviously even what we have to do at this juncture,
9 Commissioners, is accept what was said as true by Mr.
10 Sand. And if you accept even what he says is true and
11 not even hear any facts what he -- it's difficult for
12 me to find out exactly what he's contending except to
13 say he had a delay in relocation. But his legal claim,
14 I'm assuming, as best can be determined, is some sort
15 of breach of contract that U S West said they would
16 relocate this cable by a certain date. I think that's
17 the best case he's got and that they failed to do
18 that.

19 And we believe that as a matter of law that
20 ought to be dismissed because, number one, there is
21 obviously no meeting of the minds that was shown by his
22 own pleadings and that there was no consideration given
23 to U S West. U S West, in order to have a contract,
24 one, has to have consideration, and that's not
25 necessarily limited to money. It can be a refusal to

1 do something. The law is broad as regard to
2 consideration. But there's been no proof that -- or
3 any allegation even that there is any consideration
4 that was given to U S West. U S West had no contract,
5 oral or written, with Sand Construction and was given
6 no consideration for any of the activities by Sand for
7 what was alleged to have supposed to have done.

8 So for those reasons we respectfully move the
9 Commission to dismiss the Complaint at this time.

10 MS. WIEST: Do you have any response,
11 Mr. Eklund?

12 MR. EKLUND: Yes. Certainly at the time this
13 Complaint was filed, the Sands were not represented by
14 counsel. I only recently came to represent them. It's
15 my understanding that at the time the Complaint was
16 filed, they did that on their own. The Complaint was
17 drafted by them and maybe doesn't conform to all the
18 legal niceties, but nonetheless I think it sets out the
19 facts in this matter fairly well. And this matter was
20 initially brought to the Commission and by the Sands
21 without counsel, and I think the Commission gave it
22 fair consideration and decided there was jurisdiction,
23 which is a decision that we happen to agree with.

24 Certainly the matter that is involved here
25 involves more than as Mr. Welk would try to pigeonhole

1 this in a contract dispute. U S West, as a public
2 utility in the state of South Dakota, does submit
3 itself to the jurisdiction of this body in a number of
4 ways, one of which is certainly under Chapter 49-7,
5 which is certainly involved here. We do believe that
6 there is a contract claim as well, but nonetheless
7 under 49-13-14.1, the language of that clearly provides
8 that a telecommunications company is subject to
9 provisions of this chapter; and if it does or permits
10 acts or things prohibited or fails to do things
11 required, that they are subject to the jurisdiction of
12 this body. That's 49-13-14.1.

13 Now, I didn't have an opportunity to respond
14 in writing to Mr. Welk's brief. It came into our
15 office by fax sometime after 2 o'clock yesterday. If
16 the Commission wants a written response to that, I can
17 certainly provide it. But I think there's clear
18 statutory decisional authority in the statutes I've
19 quoted and in the case law of this state, specifically
20 State ex rel Johnson versus Public Utilities
21 Commission, which is at 381 NW2d 226. I guess that
22 would be my response to Mr. Welk's motion.

23 MS. WIEST: Staff, do you have anything to
24 add?

25 MS. CREMER: Staff's only response would be

1 that the Commission could take the Motion to Dismiss
2 under advisement at this time, allow Mr. Sand to go
3 forward with his case, and at the close of his case in
4 chief counsel could then make any appropriate motions
5 or renew their Motion to Dismiss.

6 MS. WIEST: The way I view this Complaint is,
7 first, the Sands are essentially alleging that there is
8 an unreasonable delay in the relocation of the cable.
9 In response to Mr. Welk's statement that there's no
10 tariff, the service of relocating a U S West cable is
11 addressed in U S West's Exchange and Network Services
12 Tariff at Section IV, page 1, release 1, entitled
13 Construction Charges, specifically 4.1(b)(1)(C), which
14 refers to rerouting facilities already in place. Thus,
15 I would view the relocation of a cable as a
16 noncompetitive service that is provided by U S West.

17 And then the question is whether the
18 provisioning of that service was unreasonable based on
19 the facts of this case, and if unreasonable, whether
20 there are any damages that can be proved. I believe
21 the Commission certainly does have the jurisdiction to
22 determine whether the provisioning of a service was
23 unreasonable and certainly has the jurisdiction to
24 determine damages under 49-13. I would deny U S West's
25 motion.

1 Are there any opening statements by any of
2 the parties?

3 MR. WELK: Counsel, could we have that, what
4 you're reading from, introduced and put as Exhibit 17
5 in the record, please?

6 MS. WIEST: Yes. I have copies of the
7 tariff.

8 (EXHIBIT NO. 17 WAS MARKED FOR
9 IDENTIFICATION.)

10 MR. WELK: What cite specific of the tariff
11 did you cite?

12 MS. WIEST: 40.1(b) and number (1)(C).

13 MR. WELK: 4.1(b).

14 MS. WIEST: B, terms and conditions, number
15 (1)(C).

16 MR. WELK: And that's your -- is what we're
17 -- is the Commission's position on what jurisdiction
18 is based on?

19 MS. WIEST: In part, yeah. Do any of the
20 parties wish to make an opening statement?
21 Mr. Eklund?

22 MR. EKLUND: If the Commission wants
23 something in addition to the Complaint filed, I think
24 it fairly well sets out the position of the Sands as
25 far as an outline of their position. And certainly

1 they'll flesh that out in their testimony.

2 MS. WIEST: Mr. Welk.

3 MR. WELK: We'll waive opening statement.

4 Welk want to make a closing.

5 MS. WIEST: Ms. Cremer?

6 MS. CREMER: No.

7 MS. WIEST: Mr. Eklund, you may proceed.

8 MR. EKLUND: Call Ray Sand.

9 RAYMOND J. SAND,

10 called as a witness, being first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. EKLUND:

14 Q. Ray, would you give the Commission your full
15 name and your address, please?

16 A. Raymond J. Sand, Dallas, South Dakota.

17 Q. And you're one of the owners of Sand
18 Construction?

19 A. I and Genene.

20 Q. And Genene being your wife; is that correct?

21 A. Yeah.

22 Q. Ray, how long have you been in the
23 contracting business?

24 A. Since August of 1966.

25 Q. Tell the Commission generally what the nature

1 and scope of your contracting business is.

2 A. Well, basically we started out as terrace
3 builders, dams; advanced and worked on up into
4 landscaping and road work, earth, mainly earth work.

5 Q. Primarily are you involved in heavy earth
6 moving construction?

7 A. Yes.

8 Q. In approximately late spring of 1997 -- or
9 when did you become aware of the Rapid City Airport
10 improvement project?

11 A. Probably four days before the bid letting,
12 which was the 7th of May, I believe.

13 Q. Okay. Tell the Commission what the nature
14 and scope of the Rapid City Airport improvement project
15 was as far as your involvement. And you can go ahead
16 and use the map if you like, and that's Exhibit 4.

17 A. When we was notified that we was the low
18 bidder on the project, why, we had to figure out a
19 schedule that would fit the project. And in the
20 process we knew the telephone lines and everything was
21 in there, but in order to extend this runway out
22 approximately 350 feet, we had to move this county road
23 over. And the only way we could move the county road
24 over was to have the telephone removed, this fiber
25 optic line that went out around our work areas.

1 So we made up -- we had to have a schedule of
2 how we was going to do this project, so I and the
3 missus made up a schedule that we was to do the road
4 first. And we presented that, I believe, at the
5 preconstruction meeting.

6 Q. Did the contract itself actually call for
7 that phase of the construction to come very early?

8 A. That's the only way we could have done it.
9 Otherwise, we would have been building out on top of
10 the county road which would have interfered with the
11 traffic.

12 Q. Just so the Commission is familiarized
13 somewhat with Exhibit 4, what do the various features
14 of this show? The yellow line is what?

15 A. That's the outlying edge of the work limits
16 of the cut areas.

17 Q. Okay. And does this show the portion of the
18 runway? I guess it's --

19 A. The portion.

20 Q. -- 14?

21 A. We had to put right on -- it comes right down
22 into there.

23 Q. And that's commonly referred to as the safety
24 area --

25 A. The safety area.

1 Q. -- in the various letters and communication
2 that we've got?

3 A. Yeah.

4 Q. The county road that you were to construct,
5 where is that shown on Exhibit 4?

6 A. That goes right through here (indicating).
7 That's the new road all the way through.

8 Q. All right. And the old road, is that also
9 shown on the map?

10 A. Yes. That runs right over into the end of
11 the safety area (indicating) and goes back up and
12 around.

13 Q. Okay. The red line that you've placed on
14 Exhibit 4, what is that?

15 A. That's the telephone cable.

16 Q. That would be this fiber optic cable that
17 we're --

18 A. Yes.

19 Q. -- primarily concerned with?

20 A. That's the cable.

21 Q. Was there also another telephone line that
22 was involved in the construction area?

23 A. There was another one in this area -- no, it
24 would be right up in this area here, (indicating) I
25 believe, which was never removed either.

1 Q. What is the topography like here that
2 dictated the performance or how you were to perform
3 this contract?

4 A. In order to do this without interrupting
5 traffic, we intended to start on this end of the
6 project and use our dirt as we go heading to the
7 northeast.

8 Q. Was that one --

9 A. Because the old road, we was going to use it
10 for the detour, which it shows in the plans. That's
11 the detour. While we install these, the 48-- twin
12 48-inch pipe.

13 Q. When you talk about -- first of all, let me
14 back up a little bit. Was that one of the requirements
15 of the contract that traffic be kept moving through the
16 area?

17 A. If at all possible, yes.

18 Q. While the project was in process?

19 A. Yes.

20 Q. Okay. And then you mentioned twin 48-inch
21 pipe and you pointed to?

22 A. Right there. (Indicating).

23 Q. Okay. When you talk about twin 48-inch pipe,
24 I would understand that that's a reinforced concrete
25 tube 48 inches high?

1 A. Yes, diameter.

2 MR. EKLUND: Okay. Does anybody have any
3 questions of Ray about this project thus far?

4 A. The reason that we wanted to do it this way
5 is because there was so many cubic yards of borrow that
6 had to come into this road. There was not enough
7 unclassified excavation.

8 MR. WELK: I'm going to make an objection.
9 Mr. Sand, you have to let your attorney ask the
10 question and then you answer it.

11 THE WITNESS: Okay.

12 Q. All right. You're talking about a
13 substantial amount of borrow. Although this appears on
14 paper to be flat, this is far from anything but flat?

15 A. Right.

16 Q. There are areas of cut and fill?

17 A. Yes.

18 Q. Where are the areas of cut?

19 A. This is an area of cut all the way down to
20 these culverts. Then there's just a little trim
21 through here, and from there on it's all fill on this
22 side. This other side is cut all the way through to
23 approximately right in here. (Indicating.) This is
24 all cut, this whole thing.

25 Q. How deep of cuts are we talking about over

1 here in the, what I would call the, I guess, southwest
2 portion of the project?

3 A. On the southwest corner here there was over
4 20 feet cut on this in feet. I didn't -- might have
5 been more than that but I'd have to look.

6 Q. But quite a deep cut?

7 A. Yes.

8 Q. And then the middle of the project, what
9 would the fill be at its deepest point?

10 A. Oh, approximately 20 feet, I suppose, 18, 20
11 feet.

12 Q. Okay. Now, when you go into bidding a
13 project such as this, what do you try to achieve as far
14 as the use of your equipment?

15 A. You try to utilize your equipment so you
16 travel the least distance and accomplish the most
17 yardage.

18 Q. All right. Now, let's back up to the 30th of
19 May. At that time you had been out on the construction
20 site, as I understand it? You had seen the plans?

21 A. Yes.

22 Q. And you had developed your progress schedule
23 for the project; is that right?

24 A. We was in the process of it, yes.

25 Q. Okay. Now, Exhibit 5-A, 5-B, and 5-C, which

1 have been marked, as I understand it, 5-A, would have
2 been available at the preconstruction meeting; is that
3 right?

4 A. The schedule?

5 Q. Yes.

6 A. I believe it was. Yes, it was there.

7 Q. And at the preconstruction meeting was the
8 subject of this fiber optic line dealt with?

9 A. Yes, it was.

10 Q. And what was stated with respect to the fiber
11 optic line?

12 A. U S West's representative said that they
13 hadn't received the cable yet but he thought it would
14 be in on June 3rd. And as soon as the cable was in,
15 that they would proceed installing it.

16 Q. Okay. Was there any indication that that
17 could not be completed by the time you were to start
18 hauling dirt?

19 A. There was some indication of that because we
20 was going to start the 9th and then found out that we
21 was going to be delayed till the 11th. And we actually
22 didn't -- so I felt then that there should have been
23 enough time to have this installed, but we actually
24 never started the project until the 16th then. So I
25 thought -- felt that there was plenty of time.

1 Q. Okay. Now, at that time on the 30th was
2 there any notification given to U S West by you?

3 A. Not by me, not on the 30th.

4 Q. When did you first notify U S West?

5 A. At the preconstruction meeting.

6 Q. Okay. Which would --

7 A. Oh, that was the 30th, excuse me.

8 Q. Which would have been May 30th?

9 A. Yes, we discussed it verbally there.

10 Q. Okay. Now, when did you actually -- when did
11 you have your equipment on site and begin to construct
12 or haul dirt?

13 A. I'd have to refer back to my diaries for the
14 exact date, unless the missus could answer that.

15 Q. Do you have your diary here if you need to?

16 A. What day was it that we actually started?
17 That would be on the 16th, first day on the airport
18 job.

19 COMMISSIONER SCHOENFELDER: Excuse me, the
20 16th of what?

21 A. Of June.

22 Q. What was the situation with respect to the
23 fiber optic line or any other buried lines owned by U S
24 West at that time? Were they located?

25 A. They was not located at that time.

1 Q. Okay. Did you have conversations with them
2 about --

3 A. Locating the line?

4 Q. Locating the line.

5 A. Yes.

6 MR. WELK: I want to have an objection of
7 clarification. Are you saying the copper cable was not
8 located by June 16th?

9 A. Part of the copper cable was.

10 MR. WELK: I want them to note there's two
11 cables we're talking about here, the copper and the
12 fiber.

13 A. Yes, the copper -- the line that I was
14 talking about was the fiber optic and it was not
15 located.

16 Q. How did that affect your progress on the
17 project?

18 A. Well, we didn't dare do anything until we
19 knew where the cable was. So all we done was strip the
20 topsoil for the first couple days. And they did come
21 out and locate part of the cable down to approximately
22 into this area somewhere. (Indicating.)

23 Q. Show the Commission the area where the cable
24 was located.

25 A. Approximately Station 8, plus 50 or 900.

1 Q. Did you proceed then with work after that had
2 been located?

3 A. Yes. We started moving dirt alongside of
4 this cable. We could only work on the uphill side
5 because it laid along a fairly sharp, probably two by
6 one bank. We couldn't work below it at all. We had to
7 go clear around the end, all the dirt, haul the dirt
8 all around the ends. We couldn't come down off of the
9 slope like we should have been able to.

10 Q. When was the balance of the fiber optic cable
11 located?

12 A. Not until two, three days later when I told
13 them it had to be located. It was actually located, I
14 think, just before we started working on the twin
15 48's. They located the rest of it down in through
16 here, and then they did locate all the way on through.

17 Q. Were you able to move dirt on the project?

18 A. Not until we found that line.

19 Q. Okay. Were you able to move some dirt?

20 A. Stripping and things such as that.

21 Q. Did there come a point in time when you had
22 to suspend operations?

23 A. Yes.

24 Q. And when was that?

25 A. I knew you'd ask me these things. Do you

1 remember the day, Genene?

2 MR. WELK: I'm going to object.

3 MR. EKLUND: We're just trying to hurry it
4 along.

5 MR. WELK: If it's in the diary, that's
6 fine.

7 A. Do you have my list of notes there, Genene,
8 that I wrote down this morning? That was the 19th.

9 COMMISSIONER SCHOENFELDER: 19th of June?

10 A. Of June.

11 Q. So after starting the project -- you started
12 on the 16th -- you were able to work for about three
13 days and then suspended grading or dirt moving
14 operations?

15 A. It almost come to a complete stop, yes.

16 Q. On those three days what had you done?

17 A. Well, we moved what dirt we could up in this
18 area here and a little down in here and stripped the
19 rest of this, stripped most of this over in this area
20 what we could strip. Not knowing where the line was
21 for sure, it was almost impossible to haul any dirt.

22 Q. Okay. Is that an efficient way to pursue the
23 progress of this project?

24 A. Definitely not.

25 Q. And why not?

1 A. Because if you work on this end of the pile,
2 you get your men organized to work on this end and then
3 you send them down to work in here and you're not done
4 up here; every time you come back, you have to
5 reorganize and get those men to understand what their
6 duties are in this area. And it's the same way when
7 you go back down here, you have to reorganize.

8 Q. Okay. Does it -- did it have an effect on
9 the traffic flow and the intentions as far as
10 completing the project in an orderly manner?

11 A. To some degree, yes.

12 Q. Does it involve hauling dirt distances that
13 you would not otherwise haul it?

14 A. Absolutely.

15 Q. And can you show the Commission on the
16 exhibit how that affects your hauls?

17 A. Like I stated, we wanted to start on this end
18 and complete this road as far as this amount of dirt
19 would bring us down into this area. Then we wanted to
20 clean all this dirt out and bring a road from in here
21 and then dispose of our detour and fill in here, finish
22 filling in. That would have lessened the distance in
23 my borrow to some degree. I have a 2,500-foot haul on
24 my borrow dirt, and I definitely didn't want to haul it
25 clear to the west end of this project, southwest end,

1 which would have needed another 2,000 foot further to
2 haul it. That's why I wanted to haul this first beings
3 it was on the southwest corner and then finish directly
4 off the end of the runway with what borrow I needed to
5 complete.

6 Q. Okay. Did you end up making some, I guess
7 what I'd call extraordinarily long hauls?

8 A. No, we didn't because instead of completing
9 the road on schedule like I had it scheduled, we went
10 back to the borrow pit, stripped the borrow pit,
11 stripped what area we could in here on the ends of the
12 runway. And the line still hadn't been moved, so we
13 started hauling borrow down into the runway.

14 Q. How much time -- did this set you back behind
15 schedule in the contract?

16 A. Yes.

17 Q. And how far?

18 A. We made two schedules. Unclassified should
19 have been done by the 30th, I believe, of June; and it
20 wasn't completed until -- or we had to reschedule it,
21 and I think we run over approximately 15 days from what
22 we figured on.

23 Q. Does that cost additional money --

24 A. Absolutely.

25 Q. -- to your operation? Increase your

1 overhead?

2 A. Absolutely.

3 Q. At any time during the preconstruction
4 meeting was there ever an indication by any U S West
5 representatives as to the nature of this fiber optic
6 line?

7 A. Not at the preconstruction meeting. I was
8 informed there was a fiber optic line, but there was
9 never any mention of what all they carried.

10 Q. Did you later learn --

11 A. Yes.

12 Q. -- what it was?

13 A. Later on.

14 Q. And why was that?

15 A. I wasn't told by them, but I was told by the
16 inspector of the project.

17 Q. And what was your -- what is your present
18 understanding of the nature of that line?

19 A. I understand it has to do with the Air Force
20 base, Ellsworth; it has to do with all the credit card
21 and banking calls; also the Rapid City Airport; plus,
22 everyone else that's involved.

23 Q. When was the last of the line staked out, the
24 fiber optic line?

25 A. If I can find it. (Looking through diary.)

1 I don't know whether I can find it.

2 Q. Maybe I can ask it this way: When did you
3 begin moving dirt again after the 19th of June?

4 A. After the 19th? That was to move dirt on the
5 road?

6 Q. Yes.

7 A. I believe it was probably -- I believe it was
8 probably around the 23rd. I can't make too much of
9 this.

10 Q. According to documents filed, U S West
11 completed their switch-over to the new fiber optic line
12 on June 26th. Does that square with your recollection?

13 A. I believe that's probably right.

14 Q. Were you ever able to regain the construction
15 days lost?

16 A. No. There's no way of regaining them.

17 Q. Ray, why don't you take your seat there. I
18 want to identify some of these documents. If you would
19 pick up the marked documents Exhibit 5-A, 5-B, and
20 5-C. Would you tell the Commission what those are?
21 (Pause.) Ray, let's move on to a different subject.
22 We'll come back to that. Would you pick up Exhibits
23 5-A, 5-B, and 5-C and just tell the Commission what
24 those are?

25 A. These are progress schedules.

1 Q. And do you adjust those as you go along
2 through the project?

3 A. Yes, we do.

4 Q. 5-A, as I understand it, would have been the
5 initial one showing how you intended to begin and
6 pursue the project?

7 A. Yes.

8 Q. And that was at the preconstruction meeting
9 and available for inspection?

10 A. Right.

11 Q. What is 5-B then?

12 A. 5-B is the revised one.

13 Q. And that's dated what?

14 A. The 11th, I believe. Somehow it's got kind
15 of cut off in the copy machine.

16 MR. WELK: Wally, did you have a date that
17 you thought was accurate on that because it's cut off?

18 MR. EKLUND: I believe it would be June 20th
19 -- July 28th?

20 Q. And 5-C would be what? Okay. There are just
21 two.

22 MR. WELK: Pardon.

23 MR. EKLUND: There are just two. If I can
24 agree on that date, Counsel, it would be May 30th and
25 July 28th.

1 MR. WELK: If you tell my counsel that's what
2 it is, I believe you. So we take off 5-C then?

3 MR. EKLUND: Yeah, take out 5-B.

4 Q. Does that then show how you adjusted your
5 progress as a result of the failure to pursue this job
6 because of the line?

7 A. Yes.

8 MR. EKLUND: I'll offer those exhibits.

9 MR. WELK: No objection to 5-A and 5-C. And
10 I'm assuming 5-B has been withdrawn.

11 MR. EKLUND: 5-B is withdrawn. Is there any
12 objection to 4?

13 MR. WELK: No objection to 4.

14 MS. WIEST: Okay. I have exhibits 4, 5-A and
15 5-C being admitted, 5-B being withdrawn.

16 MR. WELK: As long as we're having this
17 conversation, is Exhibits 1, 2 and 3 also admitted?

18 MS. WIEST: Not yet. Any objection to 1, 2
19 and 3 from any of the parties? If not, 1, 2 and 3 will
20 also be admitted.

21 MR. EKLUND: I guess I would just so we could
22 get maybe the record straight early here, I would offer
23 the remainder of the exhibits down through 13.

24 MS. WIEST: Is there any objection to those
25 exhibits at this time?

1 MR. WELK: I have no objections through
2 Exhibits 6 through 10. I guess I would object to 10,
3 11 and 12 on foundation only to show who did the
4 minutes on these. I have the other people here for the
5 other minutes.

6 MS. WIEST: So you don't object to 6 through
7 9?

8 MR. WELK: No, I do not.

9 MS. WIEST: 6 through 9 are admitted. And
10 then the other Exhibits 10 through 12 you'll have to
11 establish foundation for those.

12 Q. Why don't you pick up exhibits 10, 11 and
13 12. Just generally, would you identify what exhibits
14 10, 11 and 12 are?

15 A. Agenda for progress meeting number one.

16 Q. And they're all identified as progress notes?

17 A. Yes, they are.

18 Q. And, to your knowledge, who prepares those?
19 Are those prepared by people from the architecture
20 firm?

21 A. From the architect's office, yes.

22 Q. And sometime after the meeting do you receive
23 copies of those for your files?

24 A. Yes, we do.

25 Q. And would those be kept, I guess, as part of

1 your records covering this Rapid City Airport
2 improvement project?

3 A. Yes.

4 MR. EKLUND: I guess for Mr. Sand's
5 standpoint, I would offer them.

6 MS. WIEST: Is there any objection?

7 MR. WELK: Just for purposes of the record,
8 may I inquire Mr. Sand who prepared these?

9 MS. WIEST: Okay.

10 MR. WELK: Mr. Sand, did you contend that
11 these minutes 10, 11 and 12 are true and accurate of
12 the events that are described?

13 A. I would have to read them all through to say
14 whether they was completely accurate or not, but
15 they're supposed to be.

16 MR. WELK: Well, I'm going to object still on
17 the basis of foundation. He has to attest to the
18 accuracy of the minutes. Merely because he has them in
19 his file doesn't satisfy the foundation.

20 MS. WIEST: Do you have any response,
21 Mr. Eklund?

22 MR. EKLUND: I guess I would just ask
23 Mr. Sand with respect to the continued problems and
24 delays caused by U S West and the failure to relocate
25 this line, do they document that problem accurately?

1 A. Yes.

2 MR. EKLUND: I'd re-offer them.

3 MS. WIEST: Well, I would sustain the
4 objection of these. He can't attest to the accuracy of
5 the records.

6 Q. Mr. Sand, with respect to Exhibit No. 8, will
7 you take that in hand? The second page of that, what
8 is that?

9 A. This is where I wanted the addendum put to
10 the preconstruction meeting minutes.

11 Q. Was this -- is Exhibit 8 a letter written by
12 you?

13 A. It was written by my wife.

14 Q. At your instruction?

15 A. Absolutely.

16 Q. And is that your -- does Exhibit 8, the
17 second page of it, set forth your understanding of the
18 conversations that occurred during the preconstruction
19 meeting with the U S West representative?

20 A. Yes. That's the way I understood it at the
21 preconstruction meeting.

22 Q. Mr. Sand, were you on the project on a daily
23 basis?

24 A. I tried to be out there every day if
25 possible, yes.

1 Q. What was the -- how would you characterize
2 the progress by U S West in relocating the line?

3 A. I thought it was very, very slow.

4 Q. What facts do you rely on to draw that
5 conclusion?

6 A. Well, if any specialist was putting in the
7 cable, they was in the process of working pretty much
8 from the time -- some days when we'd get there this
9 would -- they would be there -- it didn't take them too
10 many days to put the cable in. But when they went to
11 make the switch, U S West would probably work like, I
12 would say, from 11:00 to 2 o'clock and be gone. I
13 don't think that's trying to make the switch very
14 quickly on the line.

15 Q. Taking in hand Exhibit No. 13, have you and
16 your wife calculated the damages that were incurred as
17 a result of the delay in pursuing this contract?

18 A. This is the contract, or the document that
19 her and I prepared.

20 Q. And just so the Commission is informed, what
21 rates are used?

22 A. These are the state force account rates.
23 They are set up by the state and federal government.

24 Q. And are those calculations made in Exhibit 13
25 are those keyed to the hours worked or not worked on

1 particular days?

2 A. This is computed off of the hours that was
3 actually lost on the project.

4 Q. And what was the total amount of damages
5 incurred?

6 A. The total amount?

7 Q. Yes.

8 A. It's -- well, there's two figures here. I
9 don't know if there is a total on this sheet. Okay.
10 The total damages was \$33,342.89.

11 Q. Are these figures, are they broken down by
12 various pieces of equipment and various employees?

13 A. Yes, they are.

14 Q. And in the construction industry, in your
15 opinion, are those damages claimed fair and reasonable?

16 A. I felt that they were.

17 Q. Are there any damages included in that that
18 would not be related to the performance by U S West? I
19 mean did you put anything in there that might be
20 related to weather or--

21 A. No.

22 Q. -- outside forces?

23 A. No. We felt that we was being very fair when
24 we made this claim.

25 MR. EKLUND: I think that's all.

1 MS. WIEST: Those are all the questions you
2 have?

3 MR. EKLUND: I'll offer 13 again.

4 MS. WIEST: Is there any objection to Exhibit
5 13?

6 MR. WELK: Yes, I will object to Exhibit 13
7 for several reasons. First of all, Exhibit 13 is an
8 amendment to portions of the Complaint that have been
9 admitted into evidence. There's not been a material
10 change, but the original damages were \$31,625 and this
11 went up to 33,000. I will object on the grounds
12 there's insufficient foundation for the calculation
13 shown because these have nothing to do with the actual
14 loss. There are numbers out of some book that somebody
15 has. There isn't sufficient foundation for the type of
16 equipment as to the years and how that relates.

17 In addition, Exhibit 13, after the first two
18 pages, contains a certified payroll receipt that we
19 have not received and was never filed with the
20 Complaint. Exhibit 3 is the portion relating to some
21 of the scraper information that we have never seen
22 until today. And exhibit -- the last three pages are a
23 transmittal from a person by the name of Ed Rodgers
24 from the Department of Transportation regarding his
25 review of these numbers. Mr. Rodgers is not -- as far

1 as I know, is not going to be here to be able to be
2 cross-examined. And, therefore, I object on the
3 grounds of those last pages that are something by
4 Mr. Rodgers, not by this witness.

5 MS. WIEST: Do you have any response,
6 Mr. Eklund?

7 MR. EKLUND: Well, I think Mr. Sand is an
8 experienced construction company owner and is entitled
9 to express his opinion as to his losses. I think the
10 other matters that are submitted by Mr. Rodgers go only
11 to the weight and are submitted solely for the purpose
12 of establishing that these figures are not figures
13 snatched from thin air, but are based on experience and
14 in fact on rates accepted by the state of South Dakota
15 Department of Transportation for the use of similar and
16 like pieces of equipment.

17 MS. WIEST: I will grant in part the
18 objection. I don't believe that -- since Mr. Rodgers
19 isn't here, I don't believe that the Commission can
20 accept his statement, which would be the last three
21 pages of that exhibit. And the other statements of Mr.
22 Welk we will consider with respect to weight of the
23 other pages of the document for Exhibit 13. So it is
24 admitted with the exception of the last three pages.

25 MS. WIEST: Do you have any further questions

1 of Mr. Sand, Mr. Eklund?

2 MR. EKLUND: No.

3 MS. WIEST: Mr. Welk.

4 MR. WELK: Thank you.

5 CROSS-EXAMINATION

6 BY MR. WELK:

7 Q. Good afternoon, Mr. Sand. Mr. Sand, just so
8 we can paint kind of the big picture for the Commission
9 on this matter that you brought to the attention the
10 owner of the land of the project in question was whom?

11 A. Rapid City Regional Airport.

12 Q. And you were the primary dirt contractor for
13 the project; is that correct?

14 A. I was the primary contractor.

15 Q. The primary contractor. And your completion
16 date on this contract was to be September 30th, 1997;
17 is that correct?

18 A. That's correct.

19 Q. And how many cubic yards of dirt were you
20 going to move in connection with this project?

21 A. Approximately 240-some thousand cubic yards,
22 I believe.

23 Q. Was this for your company a large contract?

24 A. Not really, no.

25 Q. Was your company, from the period of June of

3 A. From what dates again?

7	A.	No. no.
---	----	---------

11 A. That's part of them.

17 A. Basically, yes.

20 A. I had an oral agreement.

23 A. At the preconstruction meeting.

24 Q. And tell the Commission what the oral
25 agreement that you contend existed with U S West.

1 A. Mr. Serfling and I was at the preconstruction
2 meeting. And he said that as near as he understood,
3 the cable would be in June 3rd, I believe. And as soon
4 as it came in, that they would proceed as quickly as
5 possible with the installation of the cable.

6 Q. And have you told the Commission the entire
7 agreement that you believe existed as a result of that
8 meeting on May 30th, 1997?

9 A. As near as I know, that's what the agreement
10 was, that he would install it as soon as possible.

11 Q. And so that was the agreement, that U S West
12 upon receipt of the cable, would install it as soon as
13 possible?

14 A. Yeah.

15 Q. That's your contention as to the agreement?

16 A. Well, as soon as the cable came in, that they
17 would install it, but it wasn't being installed.

18 Q. I just want to get your contention now.
19 Okay? And your contention, as I understand it, at this
20 meeting on May 30th, 1997, was that Mr. Serfling from
21 U S West said that the cable was anticipated to be
22 received around June 3rd, and when he received it he
23 would install it. Is that the agreement?

24 A. That was what was said.

25 Q. And what do you contend U S West failed to do

1 in connection with that alleged agreement?

2 A. Well, I don't think that -- I tried to call
3 several times and find out whether the cable came in or
4 not and what was happening or what the process was.
5 Nobody ever gave me any results. They never told me
6 whether the cable came in or didn't come in.

7 Q. Well, the cable is in and installed as of
8 June 26th; is that correct?

9 A. I believe so.

10 Q. So what I'm trying to find out about the
11 breach of the alleged agreement is are you contending
12 that they didn't install it quick enough upon receipt
13 of the cable? Is that your contention?

14 A. That's my contention.

15 Q. When you got the plans and specifications to
16 bid on this job, you knew that there was a copper cable
17 and you knew that there was a fiber optic cable, did
18 you not?

19 A. Yes.

20 Q. And you knew as an experienced contractor
21 that a fiber optic cable is a very important piece of
22 telecommunications equipment that carries traffic
23 telephone traffic?

24 A. That's true.

25 Q. And you know that the fiber optic cable in

1 transferring traffic has more traffic on it than a
2 copper cable, don't you?

3 A. Normally yes.

4 Q. Now, when you got the plans and
5 specifications, the date of completion of the job was
6 set by the owner not by U S West or you; is that
7 correct?

8 A. That's correct.

9 Q. So when you got the bid, you saw the plans
10 you, saw a completion date of September 30th, and you
11 know that there were two cables out there that had to
12 be relocated; correct?

13 A. Yes.

14 Q. Now, let's go back to the May 30th, 1997,
15 meeting and about what happened. Now, as I understand
16 it in talking to people, that this preconstruction
17 meeting, the purpose of that is to have the appropriate
18 contracting officials sit down with you, the federal,
19 the state government, U S West, any other utility
20 people, to talk about how the construction would
21 proceed?

22 A. That's correct.

23 Q. And at that meeting there were several
24 people; is that correct?

25 A. Yes.

1 Q. Now, we have an exhibit of the minutes.
2 There's two exhibits, Exhibit 6, which are handwritten
3 minutes, and Exhibit 7, which are typewritten minutes;
4 is that correct? You need to get those in front of
5 you. First of all, I'm going to ask about Exhibit 6.
6 You've never seen those before, have you?

7 A. No.

8 Q. Exhibit 7 did you see?

9 A. Yes.

10 Q. Now, those are notes that are typed up by the
11 engineer; is that correct?

12 A. That's correct.

13 Q. And just so the Commission knows, is that the
14 engineer gets paid to type up notes; is that correct?

15 A. I have no idea what they pay them for.

16 Q. You don't pay them, do you?

17 A. No.

18 Q. And U S West doesn't pay them; is that
19 correct?

20 A. I don't know.

21 Q. Don't you know there was an engineer on the
22 job?

23 A. Yes, I know there was an engineer there.

24 Q. And what is the purpose of the engineer in
25 this construction job?

1 A. To design and see to it that it proceeds in a
2 normal, efficient way.

3 Q. And this involved an airport, so it involved
4 also as an owner and also the state government in
5 making sure that all of the appropriate federal and
6 state regulations regarding an airport were complied
7 with; is that correct?

8 A. That's correct.

9 Q. And just to set the stage on the May 30th,
10 1997, meeting, the attendees at that meeting are found
11 on the fourth page; is that correct? It's the last
12 page in Exhibit 7. There's a list of people starting
13 there with Bob Rothermel, R-o-t-h-e-r-m-e-l; correct?

14 A. Yes.

15 Q. And Mr. Rothermel, he's representing the
16 Alliance of Architects and Engineers? He was the
17 engineer on this project; is that correct?

18 A. That's correct.

19 Q. And he was the overall engineer of the
20 project; is that correct?

21 A. That's the way I understood it.

22 Q. Now, Gary Norton, he's also with the Alliance
23 of Architects and Engineers? He was the project
24 engineer; is that correct?

25 A. That's the way I understood it.

1 Q. He's the person that had the day-to-day
2 responsibility from the engineering standpoint to
3 supervise; is that correct?

4 A. I suppose.

5 Q. Well, and then we have Mr. Douglas Stulken on
6 the bottom of the attendees, the Alliance of Architects
7 and Engineers. Again, he was the man who was on site
8 during your work?

9 A. Yes.

10 Q. So I just want to get the pecking order for
11 the engineers in order. There was Mr. Rothermel on top
12 overall; Mr. Norton, who had the responsibility of this
13 project on a day-by-day basis; but Mr. Stulken was the
14 man who was there day by day; is that correct?

15 A. Yes.

16 Q. Now, who did these minutes, Exhibit 7, do you
17 know?

18 A. Well, I believe Gary Norton.

19 Q. Now, I want you to turn to the last page
20 before the attendees and under subparagraph K it states
21 U S West stated they would probably be still working in
22 the area on June 16th, 1997, and that they needed to
23 coordinate the work with the contractor. They are
24 waiting for arrival of fiber optic cable for new line
25 relocation. Do you see that?

1 A. Uh-huh.

2 Q. You have to answer yes or no.

3 A. Yes.

4 Q. Now, are you telling this Commission that
5 Mr. Serfling did not tell this group of people that U S
6 West would be working on June 16th?

7 A. Repeat that.

8 Q. Is that a true and accurate statement, those
9 minutes?

10 A. I suppose it is, yes.

11 Q. So there's no question Mr. Serfling said
12 that; is that correct, which I read at subparagraph K?

13 A. Still be working in the area on June 16th, I
14 believe, would -- probably he did say that.

15 Q. Now, also in this minutes -- let's give a
16 little background to the Commission. In order for you
17 to start with a construction project, there needs to be
18 a formal document called a Notice to Proceed; is that
19 correct?

20 A. That's correct.

21 Q. That's the document that says you as the
22 contractor are authorized to commence work on the
23 project?

24 A. That's right.

25 Q. Now, Exhibit 15, do you want to get that in

1 front of you, please? Exhibit 15 is the Notice to
2 Proceed regarding this project; is that correct?

3 A. That's correct.

4 Q. And you accepted that Notice on June 11th; is
5 that correct?

6 A. That's correct.

7 Q. You wouldn't dispute this is a true and
8 accurate copy of the Notice to Proceed, would you?

9 A. No.

10 Q. And the Notice to Proceed states that you can
11 commence work on or before June 20th, 1997, and you're
12 to complete it on or before September 30th, 1997; is
13 that correct?

14 A. No.

15 Q. Well, I'm reading the first -- under the
16 paragraph it says you are hereby notified to commence
17 work in accordance with the agreement dated the 9th day
18 of June on or before June 20th, and you are to complete
19 the work on or before September 30th, 1997. Do I read
20 that accurately?

21 A. You read that accurately.

22 MR. WELK: I'd move for the admission of
23 Exhibit 15.

24 MS. WIEST: Any objections?

25 MR. EKLUND: No objection.

1 MS. WIEST: Exhibit 15 has been admitted.

2 Q. Well, you knew then on May 30th, 1997, that
3 U S West would be working on June 16th and that they
4 were going to have to order the fiber optic cable,
5 didn't you?

6 A. According to Dennis Serfling, I was told that
7 the cable was already ordered May 30th.

8 Q. And was expected to be received by June 3rd?

9 A. By June 3rd.

10 Q. And you were -- Mr. Serfling also told you,
11 though, that -- strike that. It was discussed during
12 this meeting of May 30th that the Notice to Proceed was
13 going to be on June 16th; is that correct?

14 A. No. It was going to proceed. We got our
15 Notice to Proceed the 11th, I believe.

16 Q. That's when you got that, but during the
17 meeting on May 30th -- look on the second page, number
18 11. It's Exhibit 7, Mr. Sand. Do you have that in
19 front of you?

20 A. I understood you to say 11.

21 Q. I'm sorry, I misspoke. I'm looking at
22 paragraph numbered 11 in Exhibit 7. Estimated
23 construction start-up.

24 A. Yes.

25 Q. June 16th, 1997, but if possible, Sand would

1 like to start the week before?

2 A. Yes.

3 Q. That's an accurate representation of what was
4 discussed?

5 A. Yes.

6 Q. Now, as I understand it, after you got these
7 minutes that have been received as Exhibit 7, you then
8 sent in Exhibit 8; is that correct, which is a letter
9 dated 6-17-97?

10 A. Yes.

11 Q. And you requested in this that the minutes
12 say, "That the U S West representative present at the
13 meeting agree that they would be delayed in completing
14 their work until the following Tuesday, June 3rd, when
15 they would receive the cable. U S West would then
16 proceed to install it and" -- is that "make the
17 switch"? My copy is somewhat obliterated. Is that
18 what your letter says?

19 A. I believe so.

20 Q. So you sent this in on the 17th day of June
21 1997; is that correct?

22 A. I believe so.

23 Q. When did you receive the typewritten minutes
24 that were Exhibit 7 before you sent this letter?

25 A. That I don't know. I can't recall that

1 date. But when I read them, I seen it wasn't in there.

2 Q. But you don't know when you got them from the
3 engineer and compared to what?

4 A. No. I'd have to go back through my records.

5 Q. And this letter that was written on 6-17
6 would have been basically the second day that you
7 started work; is that correct?

8 A. Yes.

9 Q. And according to your testimony, were you
10 being delayed at that point in time on 6-17?

11 A. No, but I suspected we would be.

12 Q. You weren't being delayed on 6-16 or 6-17, is
13 that your testimony, because you were doing stripping?

14 A. We was doing stripping and such as that.

15 Q. Well, if you weren't being delayed on 6-16
16 and 6-17, why are you claiming damages in Exhibit 13
17 for those dates?

18 A. Because we couldn't organize our men. It was
19 delaying us to an extent. Any time you have to work
20 around something, it delays the project.

21 Q. Exhibit 9 is another letter dated 6-17-97.
22 Tell me when you get that in front of you. That's a
23 letter you wrote, another letter you wrote on that
24 date; is that correct? Or is that your wife again?

25 A. That's my missus.

1 Q. Your wife is writing the second letter on
2 6-17. Was this written with your consent and
3 permission?

4 A. Yes.

5 Q. And this letter says that U S West has
6 delayed the project by failing to complete their work.
7 The problem is hindering the orderly progress. We
8 request a time extension for the period of delay and a
9 claim will follow for additional time and expense
10 caused by the delay.

11 A. Yes.

12 Q. So you were on the job two days and you were
13 already asking for an extension; is that correct?

14 A. That's correct, because we could see what was
15 happening.

16 Q. Did the engineers ever give you an extension?

17 A. I don't believe we ever did receive an
18 extension.

19 Q. Isn't it true you got all the work done on
20 the project before the completion date?

21 A. That is true.

22 Q. Isn't it true that you actually demobilized
23 and moved your equipment off the site somewhere around
24 September 10th, 1997?

25 A. That's true.

1 Q. So you finished the job ahead of what you
2 scheduled; is that correct?

3 A. That's correct.

4 Q. Were you paid all the monies that you were
5 due under the contract?

6 A. No.

7 Q. The monies that weren't paid, is that a
8 dispute with the owner at the current time?

9 A. Possibly will be.

10 Q. As I understand it, there is a dispute at the
11 current time because of the amount of dirt that was
12 moved?

13 A. That's right.

14 Q. So other than this dispute as to how much
15 dirt was moved, you received all your monies under the
16 contract?

17 A. No.

18 Q. Okay. Is there a withhold or some other
19 amount of money?

20 A. They're withholding 10 percent of the
21 contract plus the last estimate, yes.

22 Q. So the amount of this contract, I understand,
23 was approximately 400,000?

24 A. Yes.

25 Q. And how much have you received?

1 A. I can't tell you that off the top of my head.

2 Q. When you bid this job, did you and your wife
3 sit down and figure out what your anticipated profit
4 would be on the job?

5 A. Absolutely.

6 Q. And what was your anticipated profit?

7 A. I don't think that has any bearing on this
8 hearing.

9 MR. WELK: I would ask that -- he has asked
10 for damages. I'm entitled to probe whether he's made
11 profit or not profit on the job.

12 MS. WIEST: Can you answer the question?

13 A. Yes, I made a profit on the job.

14 Q. Well, what was your anticipated profit before
15 you bid the project?

16 A. More than what it is today.

17 Q. I understand that. I just want to get the
18 numbers out, see what it is.

19 A. I can't tell you the numbers. I'd be lying
20 if I could sit here.

21 Q. Can you give me a range?

22 A. No.

23 Q. Who would know that?

24 A. The bookkeeper possibly would.

25 Q. So all you know is that you anticipated a

1 profit? You don't know the amount of the profit? And
2 whatever you got today, you made a profit, but it's
3 less than what you anticipated?

4 A. Yes.

5 Q. Now, I want to go through some of your
6 damages on the Exhibit 13. Are you with me? Have you
7 got Exhibit 13?

8 A. Yes.

9 Q. Now, as I understand it, this is what you did
10 is you took this Blue Book of rates by the state and
11 you took those for operating expense; is that correct?

12 A. I believe so.

13 Q. And then you put an hourly rate for the
14 equipment, which is separate than the operating
15 expense; is that correct?

16 A. Yes.

17 Q. Now, these expenses that you got out of this
18 book, do they have any relationship to the actual
19 operating cost that you experienced on this job?

20 A. Fairly close, yes.

21 Q. Do you track your operating expenses on a
22 piece of equipment during the job?

23 A. Most of the time.

24 Q. Do you keep records for the Komatsu,
25 K-o-m-a-t-s-u, crawler and to determine whether your

1 operating expense was \$21.00 (sic) on this job?

2 A. You usually figure that at the end of the
3 year. Total hours.

4 Q. So you go back at the end of the year, figure
5 out how many hours the machine operated, then work
6 backwards; is that correct?

7 A. Well, you have to have a basis to start with
8 somewhere.

9 Q. But have you done a separate calculation on
10 the Komatsu crawler to see whether your actual
11 operating expense is 21 bucks? (hours)

12 A. Pretty close.

13 Q. You have done that?

14 A. Well, I have estimated them, yes.

15 Q. And have you done that? Have you done actual
16 review of your records to substantiate that your actual
17 operating expenses for all that equipment are what is
18 listed on the first page of Exhibit 13?

19 A. I would say that all the operating expenses
20 are actually higher than what we have listed here. The
21 actual operating expense of each piece of equipment
22 would cost you more to operate it than what we have
23 listed here.

24 Q. And as operating expenses what do you include
25 in there?

Q 144.225.75
1 A. I believe it's fuel, and repairs, grease,
2 oil.

3 Q. Now, as to the age of this equipment and
4 depreciation, I'm looking at the page -- basically I
5 think it's the fifth page of your Exhibit 13. Are
6 those the years of the machinery?

7 A. As close as we can come to them according to
8 their serial numbers, yes.

9 Q. So the Komatsu crawler was a 1985; is that
10 correct?

11 A. That's when I bought it. That's what it was
12 considered to be.

13 Q. Right. Now, is all the equipment that you've
14 listed in your damages, have you paid for that
15 equipment? It's not leased?

16 A. No. Well, there's a sheepsfoot that's leased
17 here, yes.

18 Q. You've got to tell me what a sheepsfoot is.

19 A. Item seven.

20 Q. What is it?

21 A. It is a roller, sheepsfoot roller.

22 Q. Okay. A compactor?

23 A. Yes.

24 Q. So that was the only piece of equipment that
25 was not leased -- or, excuse me, that was leased; is

1 that correct?

2 A. I believe so.

3 Q. And all of the equipment that you've listed
4 on Exhibit 13, the first two pages, did it sit at the
5 job site from June 16th until it was demobilized in
6 September?

7 A. Yes.

8 Q. And it never went any other place and never
9 had no other place to go to?

10 A. No.

11 Q. Yes or no?

12 A. No, had no other jobs.

13 Q. Had no other jobs. So it sat there from June
14 16th to September 30th with no other place to go?

15 A. That's right. They was on the job.

16 Q. Now, you put in when you did the expenses for
17 the hourly raise for the equipment. I'm looking at the
18 Komatsu crawler, and I'm over in the column that says
19 54.28 per hour times 30. Do you see that?

20 A. Yeah.

21 Q. Now, the 54.28, that's the cost of the
22 equipment versus the operating expense?

23 A. Yes.

24 Q. Now, the 30, as I understand it from your
25 explanation, for those days of June 16th, 17, and 18,

1 you took ten hours per day times three days, 30 hours?

2 A. That's right.

3 Q. And then you totaled all these up and you
4 divided it by two; is that right?

5 A. That is the way the state tells you to do it,
6 yes.

7 Q. Why do you divide by two?

8 A. That's the way they want it done.

9 Q. So this is the methodology the state would
10 do? They gave you the operating hourly rate and divide
11 by two?

12 A. Yes. This is stand-by time, stand-by rate.

13 Q. Now, the bottom of the first page of Exhibit
14 13 talks about no production stand-by rates. Now, what
15 is the difference between the top of the exhibit and
16 the bottom of the exhibit?

17 A. Because the top one is production cut to
18 one-half, these three days' operating expenses. The
19 bottom is --

20 Q. Excuse me.

21 A. Is separating expense, hourly rate.
22 Evidently these -- now what was your question again?

23 Q. I'm trying to figure out the difference, sir,
24 between the top and the bottom.

25 A. The top was production cut by half. The

1 bottom of it was cut 100 percent on these two
2 machines. They were never run.

3 Q. So were the machines on the top half of
4 Exhibit 13, the first page, were they running for other
5 parts of the job?

6 A. Half of the time.

7 Q. Half of the time?

8 A. Probably.

9 Q. And these two on the bottom were sitting
10 idle?

11 A. Yes.

12 Q. All right. You didn't divide on the bottom
13 half -- you did divide the bottom half by two as well
14 consistent with your methodology?

15 A. Yes.

16 Q. Now, going to the next page, all right, that
17 you just put some different dates on that on the top of
18 page two. You put the dates June 19th, 20, and 23rd;
19 correct?

20 A. Yeah.

21 Q. You took the same types of methodologies we
22 just went through and then multiplied those; is that
23 right?

24 A. Yep.

25 Q. Now, on the labor costs on page two,

1 apparently someone took the payroll for the week of
2 6-21 and then you added two weeks together and then
3 added a 25 percent overhead and then divided by two?
4 Is that what you did?

5 A. I believe that's what we're told to do.

6 Q. You have a 25 percent overhead in your
7 company?

8 A. In labor?

9 Q. Well, I don't know what 25 percent overhead
10 means so you have to tell me.

11 A. On the labor.

12 Q. You have a 25 percent overhead?

13 A. On a payroll. You got to add all your
14 insurance and all that in. All the unemployments.
15 This is just the exact payroll.

16 Q. I understand you took the payroll and added
17 25 percent on top of it?

18 A. For administration and everything else, for
19 the insurance and all of that, yes, that goes along
20 with that.

21 Q. Well, are the following two pages of the
22 payroll, is that what was used to calculate the payroll
23 in this case?

24 A. Yep.

25 Q. And you also included 12 hours, it looks like

1 to me, of your time, or several hours during this
2 period, 12 hours a day in your labor; is that right?

3 A. In my labor.

4 Q. In this labor calculation you included 12
5 hours each day for you as the owner/supervisor and then
6 you put 25 percent on top of that; is that right?

7 A. That's probably about right.

8 Q. You're not part of the overhead?

9 A. I believe I'm entitled to wages the same as
10 my employees.

11 Q. So you don't consider yourself part of the
12 overhead then in your calculation?

13 A. No. I always figured that I was the owner
14 and I shouldn't be charged overhead.

15 Q. Now, you've also added these at the end. And
16 you've got this category of lost job continuity,
17 \$10,000. Now, tell the Commission how you came up with
18 that.

19 A. Any time that you start a project and you
20 have to switch from one end, to the middle, to the
21 other end, to the borrow pit, every time you make that
22 switch, it costs money. You've got to reorganize your
23 men every time.

24 Q. Can you tell me how you calculated \$10,000?

25 A. By the loss of production.

1 Q. How did you do that?

2 A. Because when they should be hauling ten loads
3 an hour they get three.

4 Q. How did you try to calculate \$10,000? Can
5 you explain as a formula like you did the others?

6 A. I really didn't have a formula on it. I
7 could see how much lost time we was getting moving back
8 and forth from one end of the project to the other.

9 Q. So you can't explain how you calculated the
10 \$10,000?

11 A. Well, all right. We moved from here down the
12 road. From there we go to the other end, we strip,
13 then we go back out to the borrow pit. Every time I
14 move, I lose time in moving those equipment and got to
15 establish the pattern of work every time we move from
16 one end to the other.

17 Q. I'm not disputing that. Can you just tell me
18 how you calculated \$10,000 came out even? I mean is
19 there some calculation you went through?

20 A. I just kind of lump-summed it off, yes.

21 Q. So you just kind of --

22 A. And I thought I gave them the benefit of the
23 doubt.

24 Q. Was your profit on the job going to be more
25 than \$33,000?

1 A. I hope to.

2 Q. When you bid it you thought it was going to
3 be more than 33; is that correct?

4 A. Oh, yes.

5 Q. Is it more than 33 after you're done now?

6 A. I believe so.

7 Q. And when you consider the profit, do you
8 consider all your wages and materials and equipment in?

9 A. As expenses?

10 Q. Yes.

11 A. Absolutely.

12 Q. So all of the same calculations that you went
13 through for U S West, you went through those same
14 calculations to determine your profit on the job. Is
15 that what you are telling us?

16 A. Not the exact same calculations.

17 Q. What did you change for determining your own
18 profit versus what you're trying to charge U S West?

19 A. As far as the wages and all of that, yes, I
20 go through all of that; and I need a 25 percent
21 overhead cost incurred.

22 Q. So your profit, as I understand, on this job
23 is more than the amount of money that you're charging
24 U S West trying to say that they owe; is that correct?

25 A. Well, I hope to, yes.

1 Q. As of today is it or not?

2 A. As of today I don't have all the final
3 payments on the project.

4 Q. When you were doing this project, Mr. Sand,
5 did Mr. Wegman from the PUC come out?

6 A. Yes.

7 Q. And when did he come out to the job?

8 A. Oh, my.

9 MS. WIEST: Do you want to take a break? Can
10 we just take a break for a few minutes?

11 (AT THIS TIME A SHORT RECESS WAS TAKEN.)

12 MS. WIEST: Let's go back on the record.

13 Mr. Welk.

14 MR. WELK: Thank you.

15 Q. Mr. Sand, during the break did you have an
16 opportunity to consult your diary as to when Mr. Wegman
17 came out to the project to see you?

18 A. He was there the 20th.

19 Q. 20th day of June 1997?

20 A. Right.

21 Q. You had a conversation with him on that day?

22 A. That's right.

23 Q. During that conversation with Mr. Wegman, did
24 you threaten to cut the fiber cable that day?

25 A. I said I probably should just haul it off.

1 Q. Did you threaten to cut it that day?

2 A. Well, that would be cutting it.

3 Q. So the answer to my question is yes?

4 A. Yes.

5 Q. And did you have equipment on that day, large
6 scrapers driving over the top of the fiber cable?

7 A. I believe -- let me look. No, I didn't, not
8 20th.

9 Q. My last questions deal with Exhibit 14 and
10 that's the contract portion if you want to get that in
11 front of you, the second page. It has 106 on the
12 bottom of it. And the third full paragraph where it
13 states, "It is further understood and agreed that the
14 contractor shall, upon the execution of the contract,
15 notify the owners of all utility services or other
16 facilities of his or her plan of operations. Such
17 notification shall be in writing addressed to the
18 person to contact as provided hereinbefore in this
19 subsection and the subsection titled restoration of
20 surfaces disturbed by others of this section. A copy
21 of each notification shall be given the engineer." Did
22 you write -- did you send any written notice to
23 Mr. Serfling about your operations?

24 A. No, I did not.

25 MR. WELK: I have nothing further.

1 MS. WIEST: Ms. Cremer, do you have any
2 questions?

3 MS. CREMER: No, I don't.

4 MS. WIEST: Commissioners?

5 CHAIRMAN BURG: Yeah, I have a couple, three
6 here. What did you find out at the preconstruction
7 meeting as far as the moving of the U S West cable?

8 A. What did I find out? Well, I understood as
9 soon as the cable was received, which was supposed to
10 have been in on the 3rd, that it would be installed
11 just as soon as possible.

12 CHAIRMAN BURG: And then going to that, the
13 last question Mr. Welk asked you, it was understood
14 that you notified the owners of all utility services.
15 Why did you not do that part of the contract?

16 A. Because the utilities and everything was
17 there, and they was notified verbally at the
18 preconstruction meeting.

19 CHAIRMAN BURG: Go ahead.

20 A. I thought that would be sufficient.

21 CHAIRMAN BURG: Did you have any
22 responsibilities for the moving of that or contracting
23 to have that cable moved?

24 A. None.

25 CHAIRMAN BURG: How was that handled?

1 A. It was evidently handled between the airport
2 board and the telephone company, I suppose.

3 CHAIRMAN BURG: Did you have any contact with
4 the airport board when it wasn't being moved when it
5 should have?

6 A. I called one time, yes.

7 CHAIRMAN BURG: And what was their response?

8 A. Not to call them again. I was supposed to do
9 everything through Bob Rothermel.

10 CHAIRMAN BURG: Who is Bob Rothermel?

11 A. He is the head architect of Alliance of
12 Architects.

13 CHAIRMAN BURG: Did you contact him then?

14 A. He was the one that told me not to be calling
15 him also. Yes, he was contacted.

16 CHAIRMAN BURG: Was there -- to your
17 knowledge, was there any kind of a contract between U S
18 West and either the airport board or the architect?

19 A. I have no idea about that, no.

20 CHAIRMAN BURG: So you don't know how the
21 moving of the cable was handled?

22 A. No.

23 CHAIRMAN BURG: If I recall your original
24 request from us, you indicated that you requested a
25 line locate; is that correct?

1 A. Yes, we did.

2 CHAIRMAN BURG: When did you do that, do you
3 remember?

4 A. I can't remember the exact date. I would
5 have to go back through the diary.

6 CHAIRMAN BURG: Did you request that of U S
7 West or of One Call?

8 A. We -- I called One Call, and they called me
9 back before they sent the job number out, I believe.
10 And it was a lady by the name of Sharon. And I was
11 hauling the Komatsu cat to the project. I was going
12 under the underpass at Presho. And she said that,
13 "Your project has been checked out. You can go ahead
14 and dig. There's nothing in the road." When I got to
15 Rapid City, Excavating Specialists was working on the
16 fiber optic, putting a pipe or something under the
17 road. And I knew immediately that nothing had been
18 done because the gasoline had never been located. The
19 telephone had never been located, and all of the REA
20 was still setting there.

21 CHAIRMAN BURG: What's your responsibility
22 once you contact One Call?

23 A. It seems to me that my responsibility is to
24 see to it that the lines are removed whether One Call
25 has anything to do with it or not.

1 CHAIRMAN BURG: You know, I'll ask somebody
2 else later on the One Call question because I think
3 there's some responsibility that it locate it at a
4 certain time. But you indicated to me it took a period
5 of how long? Or in your previous testimony, how long
6 to get the complete locate done?

7 A. Oh my, we go back to these dates again.

8 CHAIRMAN BURG: Well, if you just want to
9 estimate. I'm not --

10 A. Well, I'd say it probably took -- this would
11 be an estimate -- five to six days before they got all
12 -- everything located and I don't think they got it
13 all located because that part of the copper cable was
14 located down through the bottom and -- but it had never
15 been located on through the cut because it was -- they
16 was supposed to have lowered it and it was. And then
17 they finally hired a contractor to come out and dig
18 down and find it and remove a ped up there. But I was
19 finally told by Mr. Babbe that if we hit the cable,
20 that the U S West would stand the expense. Go ahead
21 and cut it if it was necessary.

22 CHAIRMAN BURG: Did you do that?

23 A. No. Fortunately, we didn't cut it.

24 CHAIRMAN BURG: And did you -- you said it
25 took, you're estimating, five days to get the locate

1 finished; is that right?

2 A. I suppose something in there.

3 CHAIRMAN BURG: During that time where that
4 was not getting done -- I wasn't quite clear when you
5 were talking. Was the fact of not having the locate,
6 not the moving cable, but not just having the locate
7 causing inconvenience and longer routes?

8 A. Well, beings it wasn't located, we went ahead
9 and stripped with the idea that we wouldn't get deep
10 enough or drive over it or damage it in any way.

11 CHAIRMAN BURG: That's true, you stripped.
12 But did the fact that you could not cut deeper in that
13 because --

14 A. Yes.

15 CHAIRMAN BURG: -- you didn't know the
16 location cause inconvenience?

17 A. Yes.

18 CHAIRMAN BURG: Was this a state project or?

19 A. This was a city project, through the city of
20 Rapid City.

21 CHAIRMAN BURG: City of Rapid City. And then
22 you spent quite a bit of time talking about the
23 overhead amount. Is this a standard amount that the
24 Blue Book offers you the same as the other prices?

25 A. That, you would have to talk to my wife

1 about.

2 CHAIRMAN BURG: Okay. I just have a
3 question. Do you intend to call her?

4 MR. EKLUND: Yes.

5 CHAIRMAN BURG: Thank you. Okay. That's all
6 I have.

7 MS. WIEST: Any other questions?

8 COMMISSIONER SCHOENFELDER: I need to know
9 you referenced someone by the name of Mr. Babbe. Who
10 does he work for?

11 A. U S West. Is that not his correct name, Mike
12 Babbe? He is supposedly the engineer for -- the
13 construction engineer of U S West.

14 COMMISSIONER SCHOENFELDER: And he told you
15 to go ahead and cut the cable?

16 A. This was the copper cable because --

17 COMMISSIONER SCHOENFELDER: Okay. There's a
18 lot of difference.

19 A. Yes, all kinds of cables.

20 COMMISSIONER SCHOENFELDER: Yeah, but --

21 A. Not this.

22 COMMISSIONER SCHOENFELDER: Who does the
23 copper cable connect to, do you know?

24 A. It was U S West.

25 COMMISSIONER SCHOENFELDER: Yeah, but what

1 kind of --

2 A. It was a small line. It went out to, I don't
3 know, four or five farms, or ten farms or something. I
4 don't have no idea.

5 COMMISSIONER SCHOENFELDER: Okay. Thank
6 you.

7 MS. WIEST: Any other questions from the
8 Commissioners? Any redirect, Mr. Eklund?

9 REDIRECT EXAMINATION

10 BY MR. EKLUND:

11 Q. I guess as long as Mr. Welk referred to the
12 contract -- I've introduced part of it. Is the order
13 of work -- is there a section in the contract that
14 specifically sets forth the order of work as far as
15 phase one of this project?

16 A. Yes.

17 Q. And what is that?

18 A. Fence removal and installation, temporary
19 fence, including excavation, of -- well, let's see
20 here. Am I on the right thing?

21 Q. I think this is phase one.

22 A. Yeah, yes, fencing and installation of
23 temporary fence, relocate County Road C-232.

24 Q. And that's the county road that we've been
25 talking about here?

1 A. That's the one that has to be done as soon as
2 -- that's in the contract that that's the most
3 important part of it.

4 Q. And this is the bid package that you get when
5 you bid on this?

6 A. That's right.

7 Q. And that's what?

8 A. The bid and specs and everything.

9 Q. Counsel took Exhibit 14 out of -- and I
10 assume U S West would have had a copy of that bid
11 package so they would have known about the project. Is
12 that your understanding?

13 A. That's the way it was put into the
14 preconstruction meeting, yes.

15 MR. EKLUND: That's all.

16 MS. WIEST: Any other questions of this
17 witness?

18 MR. WELK: I just have one.

19 RE-CROSS-EXAMINATION

20 BY MR. WELK:

21 Q. When was the copper cable, do you know, cut
22 over?

23 A. That would be when we was up there along the
24 runway.

25 Q. The copper was cut over before you started on

1 June 16th, wasn't it?

2 A. Cut over, what do you mean?

3 Q. Well, it was moved?

4 A. No, the copper cable was never moved.

5 Q. But it was cut over from where you could do
6 the work?

7 A. No.

8 Q. Are you telling me the copper cable
9 interfered with your work?

10 A. We thought it would, yes.

11 Q. But did it?

12 A. Luckily, no. It was deep enough we didn't
13 cut it, but we hauled the dirt off the top of the
14 copper cable.

15 MR. WELK: I have nothing further.

16 CHAIRMAN BURG: I do have one other I want to
17 clarify. The scope of your contract was to move the
18 county road and do the airport extension as well?

19 A. Yes.

20 CHAIRMAN BURG: You had the whole contract?

21 A. Yes.

22 CHAIRMAN BURG: Okay. Thank you.

23 MR. EKLUND: Now, just so there's no mistake,
24 there is a phase two that he did not have.

25 A. Yes, there's phase one and phase two.

1 Another contractor got phase two, but it was on the
2 opposite end of the airport.

3 CHAIRMAN BURG: But you had everything we see
4 on the -- up here everything traced in yellow; is that
5 right?

6 A. Yes.

7 COMMISSIONER SCHOENFELDER: But for
8 excavation and dirt only, or did you do the actual
9 paving of the road and that sort of thing?

10 A. We done the gravel and installation of the
11 pipe. There was no paving on this road. It's county
12 road.

13 COMMISSIONER SCHOENFELDER: Okay. What about
14 the runway?

15 A. No, the runway was just an extension,
16 overshot safety zone.

17 MS. WIEST: Any other questions of this
18 witness? If not, thank you. You may call your next
19 witness.

20 MR. EKLUND: We would pick up here in
21 chronological fashion. I'll call Genene.

22 **GENENE SAND,**

23 called as a witness, being first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. EKLUND:

2 Q. Okay, Genene, would you identify yourself?

3 A. I am Genene Sand, co-owner of Sand
4 Construction and bookkeeper.

5 Q. Okay. And have you been in the construction
6 business the same length of time as Ray?

7 A. Yes, I have.

8 Q. Did you get into it at the same time he did?

9 A. Although he has had a lot more years than I
10 have because he's been doing this since he was fifteen
11 years old and I've only been working with it since I
12 married him.

13 Q. And when was that?

14 A. In 1962.

15 Q. You indicated that you're also the bookkeeper
16 of Sand Construction?

17 A. Yes.

18 Q. And did you participate in the preparation of
19 Exhibit No. 13?

20 A. I prepared the figures.

21 Q. Tell us, Genene, the methodology adopted by
22 yourself and your co-owner for the calculation of these
23 damages.

24 A. Well, originally I wanted to prepare
25 something showing what particular pieces of equipment

1 were used certain days and what -- and show the loss of
2 production for those pieces of equipment. And so I
3 utilized my work diary and our certified payroll sheets
4 to come up with the equipment as to how it was being
5 used those particular days.

6 Q. Okay.

7 A. And, any way, I used originally the force
8 account rates from the Blue Book that were in effect
9 about 1993. And I used those operating expenses and
10 hourly rates as set down by the DOT.

11 Q. Now, Exhibit 13, were those updated from
12 1993?

13 A. Yes, since I had originally used figures from
14 1993, I thought it would be best to show the new
15 figures from the 1997 data request Blue Book as to how
16 they compared to what I originally submitted using 1993
17 data request. And so I just re-did the justification
18 here. And as you can see using the new 1997 figures,
19 it wasn't a whole lot of difference. Originally I had
20 losses of 33,300 -- no, not originally. Originally I
21 believe I had losses of, say, 31,000-some odd dollars.
22 And when I revised it using the latest 1997 figures, I
23 came up with 33,000-some odd dollars. So there wasn't
24 a whole lot of difference. And I was just trying to
25 show here that the figures I used to begin with were

1 reasonable.

2 Q. How do you calculate the overhead figure for
3 Sand Construction? Is that based on experience over
4 the years?

5 A. The overhead figure that is used in here, the
6 25 percent on labor, is a standard figure that is used
7 in figuring force account rates for the DOT. You have
8 the right to add 25 percent for bonding, insurance, and
9 other overhead figures. So they just let you use a
10 standard 25 percent for that, and that's what I did. I
11 just completely followed their rules on stand-by.

12 Q. Okay.

13 A. Equipment losses.

14 Q. So that isn't necessarily a figure that's
15 peculiar to Sand Construction. That's an industry-wide
16 figure in South Dakota?

17 A. Right.

18 Q. And in preparing these calculations, I think
19 you've testified that you correlated those with the
20 entries in your day book, or your diary as you might
21 call it?

22 A. That's right, that's right.

23 Q. So the loss of production figures are actual
24 and not estimated?

25 A. No, they're not estimated at all. They're

1 quite accurate.

2 MR. EKLUND: That's all.

3 MS. WIEST: Mr. Welk.

4 MR. WELK: I just have a couple questions on
5 the numbers.

6 CROSS-EXAMINATION

7 BY MR. WELK:

8 Q. Are you telling this Commission that during
9 the time that this equipment was sitting from June to
10 September out there that you actually lost this amount
11 of money? Is that what you're telling the Commission?

12 A. No. I'm telling you just what I have down on
13 paper here, that on June 16th, 17, and 18th, production
14 was cut to one-half on those three days on those
15 particular pieces of equipment.

16 Q. But that equipment, Mrs. Sands, sat there
17 from June 16th to September 10th and had no other place
18 to move; isn't that correct?

19 A. We wouldn't have wanted it to move
20 elsewhere. We were doing this project.

21 Q. That's my point. So it sat there for past
22 June 16th all the way through September 10th; is that
23 correct?

24 A. Of course it sat there -- it didn't just sit
25 there. We were using it a lot of days.

1 Q. But there was no other place that you could
2 have used that equipment because your husband testified
3 this is the only job that was going that needed that
4 equipment at that time; is that correct?

5 A. Well, it is correct in a way. We had this
6 job to do and we were using the equipment on this job.
7 It could have gone elsewhere. It isn't that we didn't
8 have other work to do. We did have other private work
9 and so forth that we could have done, yes.

10 Q. I thought your husband told me during his
11 testimony that there were no other jobs that they
12 had --

13 A. No other large jobs.

14 Q. -- to use this equipment?

15 A. No other large jobs, but we always have small
16 pieces of work to do at all times.

17 Q. Well, you mobilized this equipment from
18 Da'las to Rapid City, which is how far a distance?

19 A. 230 miles.

20 Q. And that's a significant expense to move that
21 equipment this size out there, is it not?

22 A. Yes, it is.

23 Q. What's the cost to mobilize the equipment
24 from Dallas to Rapid City to move this equipment out?

25 A. Well, on a piece of equipment, you could

1 figure it's going to cost from three and a half to
2 \$4.00 a mile, minimum.

3 Q. Does that include the transportation, the
4 labor, the fuel, everything?

5 A. May not be quite all of it, but I think it's
6 pretty close.

7 Q. It's a significant cost to mobilize it?

8 A. Yes.

9 Q. That would be \$3.00 per mile for each piece
10 of equipment?

11 A. Three to \$4.00 a mile.

12 Q. For each piece of equipment?

13 A. Right.

14 MR. WELK: Thank you.

15 MS. WIEST: Do you have any other questions,

16 Mr. Welk?

17 MR. WELK: No.

18 MS. WIEST: Ms. Cremer?

19 MS. CREMER: No.

20 MS. WIEST: Commissioners?

21 CHAIRMAN BURG: Just one. When you
22 originally planned this construction project, what
23 completion date did you anticipate?

24 A. As we showed in our original schedule of
25 progress, we estimated that we should be done by

1 approximately -- I believe it shows approximately
2 September 15th on that schedule. At that time that was
3 as close of an estimate as we could figure.

4 CHAIRMAN BURG: But what I guess I'm getting
5 at is you did finish by that date as was testified
6 before?

7 A. We did.

8 CHAIRMAN BURG: And you said that -- you
9 know, you said you had to transport your equipment that
10 far. If you would have been finished with that
11 equipment out there, would you have had to transport it
12 back to Dallas to use it again or that vicinity?

13 A. We would have had to transport it back to the
14 next job, wherever it might be.

15 CHAIRMAN BURG: And could you have moved to
16 those jobs sooner if you would not have had the holdup
17 due to the moving of the cable, any pieces of
18 equipment?

19 A. Well, we still claim that the moving of the
20 cable delayed us from at least one to one and a half
21 weeks.

22 CHAIRMAN BURG: And those --

23 A. And if we wouldn't have been delayed those
24 one to one and a half weeks, yes, we would have been
25 out of there one and a half weeks sooner.

1 CHAIRMAN BURG: Is that the basis for the
2 loss, at least part of the basis for the loss you're
3 claiming is that if you could have been out there a
4 week to a week and a half sooner, you could have been
5 making money at another project?

6 A. Sure.

7 CHAIRMAN BURG: Is that part of what you're
8 claiming here?

9 A. I haven't given that a whole lot of thought.

10 CHAIRMAN BURG: That's all I have.

11 MS. WIEST: Any other questions from the
12 Commissioners?

13 COMMISSIONER NELSON: What was the
14 anticipated profit?

15 A. The anticipated profit on this project? We
16 estimated approximately 30 percent.

17 COMMISSIONER NELSON: So how many dollars?

18 A. Approximately 120,000.

19 COMMISSIONER NELSON: Thank you.

20 MS. WIEST: Do you know the exact date that
21 you notified One Call to locate the facilities in this
22 area?

23 A. Pardon?

24 MS. WIEST: Do you know the date that you
25 notified One Call?

1 A. I'm not positive. From memory, I would say
2 -- I don't have that information with me, but I think
3 possibly around June 11th.

4 MS. WIEST: Thank you.

5 A. I don't have that in my diary, but in my mind
6 that is about when I called them. Now, I might be
7 wrong.

8 MS. WIEST: Any other questions?

9 A. I know I did it as soon as possible.

10 MS. WIEST: Mr. Eklund, do you have any
11 redirect?

12 MR. EKLUND: Yes.

13 REDIRECT EXAMINATION

14 BY MR. EKLUND:

15 Q. Why do you say June 11th? Do you have
16 something that you tie that too?

17 A. That is just my recollection of the events in
18 my mind. I might be entirely wrong. Maybe it was the
19 week before. Just seems like it was a Wednesday. But
20 I can look that information up, but I'm sorry I didn't
21 bring it. I do have a record of my calls to One Call.

22 CHAIRMAN BURG: Can we ask for that as a late
23 exhibit?

24 MS. WIEST: Yes. Can you furnish that as a
25 late-filed exhibit?

1 A. Sure.

2 MR. EKLUND: We can.

3 MS. WIEST: Do you have any other questions,

4 Mr. Eklund?

5 Q. I guess would One Call have a record of
6 that? Because you state that you were issued a ticket
7 of number 23361 as a result of that apparently.

8 A. Right, right.

9 MR. EKLUND: That's all.

10 MS. WIEST: Any other questions of this
11 witness? Thank you. Do you have any further
12 witnesses, Mr. Eklund?

13 MR. EKLUND: I would call Doug Stulken.

14 DOUGLAS STULKEN,

15 called as a witness, being first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. EKLUND:

19 Q. Mr. Stulken, would you give us your name,
20 please?

21 A. Douglas Stulken.

22 Q. And give us your address and your
23 occupation.

24 A. I live at 532 Fox Road Court in Rapid City,
25 and I'm presently the on-site observer for Alliance

1 Architects.

2 Q. Were you involved in that capacity with
3 regard to the Rapid City Airport improvement project
4 and specifically phase one?

5 A. Yes.

6 Q. What were your duties in that regard,
7 generally?

8 A. Generally we was running soil tests and
9 observing what was going on and this kind of a person
10 to get. I kept track of what was going on out there in
11 the field. If I wasn't involved, I didn't write it
12 down.

13 Q. Were you on the job site on a daily basis?

14 A. On a daily basis.

15 Q. And when did this grading project begin?

16 A. I think I have to really look at my notes.
17 But I think I first arrived on the job on June 16th or
18 just when Ray started.

19 Q. Okay. And generally, as I understand it, you
20 are the eyes and ears for the engineering and
21 architectural firm?

22 A. Yes.

23 Q. And you were also present here during the
24 testimony of Mr. and Mrs. Sand today?

25 A. Yes.

1 Q. And you have experience in the construction
2 industry?

3 A. Well, I've been with it for ever since about
4 1956.

5 Q. And what sort of construction are you
6 familiar with?

7 A. Well, I did work for the highway department
8 of South Dakota. I have been in my own construction
9 business of building houses myself, and I worked for
10 twenty-nine years for the Soil Conservation Service
11 which involved a little bit of everything.

12 Q. Do you have some expertise in observing the
13 process and continuity of dirt moving projects?

14 A. This has been one of the bigger things of
15 what I've done in my life, pipe lines, and so on, so
16 forth.

17 Q. How did the presence of this fiber optic
18 cable and the inability to Sand Construction to cut
19 through that area affect the progress in this project
20 from your observations?

21 A. Well, through my observations, I really don't
22 know how to really. It did slow it down. They had to
23 work around it quite a big extent. I don't really know
24 what fully how Ray had everything planned out. I fully
25 didn't know how U S West had their thing planned out

1 either. I wasn't involved in their planning.

2 Q. You knew what the requirements of the
3 contract were, though, did you not?

4 A. Yes, I did.

5 Q. And what order of progression did that call
6 for or require in the completion of this project?

7 A. Well, they was supposed to really start and
8 build the road first and then go to the second area
9 afterwards.

10 Q. Was he able to follow that plan through?

11 A. Well, it was pretty tough. He did his best
12 but it was tough.

13 Q. Were there some of the portions of the plan
14 that were not synchronized in that fashion?

15 A. Yes. He started hauling onto safety area
16 before he should have been, I felt anyway. We got into
17 a rocky area up there that we could not haul it on the
18 road because you couldn't get anybody to drive down the
19 road. And we started hauling that into the safety
20 area. I really didn't want to see him start there when
21 he did.

22 Q. So had Mr. Sand observed your recommendation,
23 would he have lost even more time than he did?

24 A. Well, I really don't know how to answer that
25 one if he would have planned something different. But

1 the way he would have, the way he went on, he probably
2 would have.

3 Q. In your observation did he do the best that
4 he could to minimize time lost given the circumstances?

5 A. Well, really, I really can't answer that 100
6 percent because I didn't know what 100 percent what his
7 job -- how he had things planned out. I was just there
8 to observe. But it did slow him down.

9 Q. You were on the job site daily. Would you be
10 there from the time Sands started work until they shut
11 down for the day?

12 A. No. I arrived at generally at about 8:15
13 when he would started probably at 7:00, and I usually
14 left at 4:00 o'clock, and he worked till 5:00.

15 Q. Were you there on site during the time the
16 fiber optic cable was physically installed and during
17 the time it was being switched?

18 A. I wasn't there all the time, no. I was there
19 part of the time.

20 Q. Now, you were representing the architects and
21 engineers on this. Did U S West keep you advised as to
22 their progress in switching or the hours being worked
23 in switching the fiber optic?

24 A. No, they didn't.

25 Q. From your observations, what kind of hours

1 did they work?

2 A. Well, they usually showed up --

3 MR. WELK: I will object. You mean the
4 people out there, or the central office of people, or
5 the scheduling, or what are you talking about?

6 MR. EKLUND: People on site.

7 MR. WELK: Okay. That's all right.

8 MR. EKLUND: That's where he's at.

9 A. They generally -- I wouldn't say generally --
10 showed up somewhere around between 9:00 and 10:00 and
11 they were gone by 2:00.

12 Q. What about the location of the fiber optic
13 cable, when, to your recollection, was it located?

14 A. They located that first section, to my
15 recollection, was about the third day in and after they
16 started working.

17 Q. That was the section of cable down here in
18 this?

19 A. Down in the lower part.

20 Q. When was the rest of the cable located?

21 A. They potholed one there by the pipe. I would
22 really have to look back at my notes and see when they
23 put the pipe in, otherwise, I have no knowledge where
24 they located anything else. I wasn't on site.

25 Q. Was the failure to locate the cable, the

1 balance of the cable at the point in time when the
2 first section of cable was located, an impediment to
3 the grading progress?

4 A. Well, now, would you state that again?

5 Q. Well, did it impede Sand Construction from
6 completing their contract by virtue of the fact that
7 the majority of the cable wasn't located?

8 A. It appeared that it did slow them down.

9 MR. EKLUND: That's all.

10 MS. WIEST: Mr. Welk.

11 CROSS-EXAMINATION

12 BY MR. WELK:

13 Q. Mr. Stulken, do you have any background to
14 talk about what it takes to cut over a fiber cable?

15 A. No, I don't.

16 Q. Do you have any idea what it takes besides
17 putting the cable in the ground to switch it over?

18 A. I have some idea, yes.

19 Q. Do you know what they have to do in the
20 central office?

21 A. No, I don't.

22 Q. Do you know how they have to schedule a
23 cut-down, a cutover?

24 A. No, I don't.

25 Q. Now, your boss was who on this job?

1 A. Bob Rothermel.

2 Q. All right. And he was the overall. And what
3 was Mr. Norton as relative to you?

4 A. Well, generally I visited with him
5 periodically and turned my reports into him.

6 Q. So you would turn your daily reports in to
7 Mr. Norton, and then Mr. Norton would turn them in to
8 Mr. Rothermel; is that correct?

9 A. That's correct.

10 MR. WELK: I don't have anything further.

11 MS. WIEST: Ms. Cremer.

12 MR. WELK: I have nothing.

13 MS. WIEST: Commissioners?

14 CHAIRMAN BURG: I just have one. As the
15 architect, what was your company's responsibility to
16 see that the cable was moved? Was there any?

17 A. I have no idea. I don't get involved in
18 that.

19 CHAIRMAN BURG: So as the on-site observer,
20 you did not have anything to do with what U S West was
21 required?

22 A. No, no, I didn't have to.

23 MS. WIEST: Any other questions from
24 Commissioners? Any redirect?

25 REDIRECT EXAMINATION

1 BY MR. EKLUND:

2 Q. Mr. Stulken, you were one of the attendees at
3 the preconstruction meeting, were you not?

4 A. Yes.

5 Q. Were any of these other time sequences
6 regarding the function of the central office or the
7 delay in switching this fiber optic cable over made
8 apparent at that preconstruction meeting?

9 A. None other than what Ray said, that I know
10 of.

11 Q. Did any of Mr. -- I'm probably murdering his
12 name -- Serfling, close enough, did he mention anything
13 about a two to three-week period after installation to
14 get it cut over, switched?

15 A. I had no correspondence with him so.

16 MR. EKLUND: That's all.

17 MS. WIEST: Any further questions of this
18 witness?

19 COMMISSIONER NELSON: I have one. At the
20 preconstruction meeting, what was the anticipated date
21 that you thought U S West was going to be laying --
22 would have the cable and start on it?

23 A. June 3rd.

24 COMMISSIONER NELSON: You expected, too, that
25 on June 3rd would be the date that it would be there?

1 A. This is what was said.

2 COMMISSIONER NELSON: Okay. Thank you.

3 CHAIRMAN BURG: And then to follow up on that
4 for me, was there -- they were to begin it on June 3rd,
5 they indicated. Did they indicate how long it would
6 take to accomplish that?

7 A. No, they didn't.

8 MS. WIEST: Any other questions of this
9 witness?

10 MR. WELK: Yeah, I do.

11 RECROSS-EXAMINATION

12 BY MR. WELK:

13 Q. Would you get Exhibit 7 in front of you,
14 please? Would you turn to item K under number 20?
15 Mr. Norton, from your firm, took these minutes; is that
16 correct?

17 A. That's correct.

18 Q. And was it your recollection that
19 Mr. Serfling stated there that U S West would probably
20 be still working in the area June 16th and they needed
21 to coordinate their work and they are awaiting for the
22 arrival of fiber optic for the new line relocation?

23 A. Yes.

24 Q. So you fully expected U S West would still be
25 working on this on June 16th; correct?

1 A. Yes, I would say they probably would.

2 Q. And you know the cable didn't come in on June
3 3rd, didn't you?

4 A. No, I didn't.

5 Q. Do you know what day the cable came in?

6 A. No, I don't.

7 MR. WELK: I have nothing further.

8 MS. WIEST: Any other questions of this
9 witness? If not, thank you. Do you have any other
10 witnesses?

11 MR. EKLUND: I've got one question, if we
12 could back up here.

13 MS. WIEST: Go ahead.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. EKLUND:

16 Q. Relating to this preconstruction minutes,
17 this statement by Mr. Serfling that they would be
18 working on June 16th, did that indicate to anyone -- or
19 was there any suggestion to anyone that that would
20 preclude Mr. Sand from working?

21 A. I didn't feel it would.

22 MR. EKLUND: Okay. That's all.

23 MS. WIEST: Any other questions? If not,
24 thank you. Do you have any other witnesses,
25 Mr. Eklund?

1 MR. EKLUND: Just Mr. Wegman.

2 STEVE WEGMAN,

3 called as a witness, being first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. EKLUND:

7 Q. Please give us your name, please.

8 A. My name is Steve Wegman.

9 Q. And your occupation and address?

10 A. I'm an analyst for the South Dakota Public
11 Utility Commission, State Capitol Building, Pierre,
12 South Dakota.

13 Q. Your name has been brought up here before.
14 Did you have occasion to conduct an investigation as
15 part of your job sometime in June of 1997 of this Rapid
16 City Airport improvement project?

17 A. On June 17th I received an inquiry from the
18 Governor's Office from Susan Stonebeck as regarding a
19 telephone cable belonging to U S West at the end of a
20 runway in Rapid City, South Dakota, which kind of
21 piqued my curiosity why is this cable at the airport
22 runway.

23 Q. Did you find as to whether or not that
24 information was accurate?

25 A. Later on the 17th of June I called Leni Healy

1 in the office and asked her if she had some information
2 about a cable locate at the Rapid City Airport. And
3 from that we had found that a contractor, Sand
4 Construction, was working in the area; and we were
5 trying to ascertain some information as what the
6 problem is.

7 Q. Okay. Did you go further then?

8 A. Sure. On June the 18th we contacted U S West
9 to set up a meeting with Dennis Serfling in regards to
10 the project to find out from the company side what's
11 going on, because we were kind of confused as to the
12 project. I was working on some other thing in the
13 Rapid City area, and my time was booked from Wednesday
14 through Thursday. My first available time was Friday
15 morning on June the 20th.

16 Q. And I guess I'm a little confused. Did you
17 meet with Mr. Serfling then on the 18th?

18 A. I met with Mr. Serfling on June 18th in Belle
19 Fourche, South Dakota, at the U S West building.

20 Q. What did you learn there?

21 A. From there found out that he was at the
22 preconstruction meeting and they had a conversation on
23 doing a relocate. And the indication I got from
24 Mr. Serfling that U S West probably wasn't very clear
25 in its explanation on a fiber locate. What I was

1 curious about is what kind of cable we were talking
2 about. And at that time I learned that it was the
3 backbone fiber of the cable system to U S West. In
4 other words, it's the only -- it takes care of all the
5 traffic as far as telephone bank card transfers, things
6 like that, for the entire Black Hills. It's the peak
7 of the tourist season, and the Commissioners are very
8 concerned about any type of cable breaks or cable
9 failures.

10 Q. Okay. Did you then do an on-site
11 investigation?

12 A. On June the 20th I had called Ray Sands and
13 set up a meeting with him for 9:00 a.m. -- excuse me,
14 it was actually June 19th I had called Sands to set up
15 a meeting with him on Friday on site at 9:00 a.m. at
16 the job site.

17 Q. Okay. Backing up just a little bit, you
18 indicated that Mr. Serfling had made a statement to you
19 that there had been unclear on something?

20 A. He had been in contact with Mr. Sand quite a
21 bit during that week. And that U S West had made the
22 indication -- or Mr. Serfling had made the indication
23 to me that if any -- if they were having a problem in
24 communication, it was on the fiber optics; that a
25 couple of things took place: One, that the cable was

1 going to be placed. And he went on further to put in
2 place was that in the ground or operational. Mr. Sand
3 -- one would conclude that Mr. Sand was -- could have
4 been confused with that. The second part with that is
5 that I had asked Mr. Serfling has anybody explained to
6 anyone at the job site that this is the backbone fiber
7 system and it does take a long time to cut those over?
8 This particular cable is 24-pair. It has one spare.
9 And if I remember the inventory sheet on it, and it has
10 to be cut over hot, and it would be in the evening
11 time, and there's a certain amount of protocol it
12 takes. So it's not just a normal cutover of copper.
13 These are very, very delicate to deal with.

14 Q. Okay. Did you, from your meeting with
15 Mr. Sand, gain some insight as to what his
16 understanding was?

17 A. Well, his understanding was that the job was
18 going to be completed by early part of June. And I
19 can't remember if it was June 3rd or June the 16th, but
20 prior to my being on the job site on June 20th. He was
21 expecting to be moving dirt in an orderly fashion at
22 that point.

23 Q. What was the status of his progress on June
24 20th when you were there, if you know?

25 A. Well, June 20th I remember meeting with him

1 at about 9 o'clock on the morning at the job site, and
2 we were at the bottom part of the hill. And at that
3 point they had not started -- they had the two twin
4 48-inch pipes installed. I met with Mr. Sand, had a
5 conversation; and went up to the top of the hill around
6 maybe around 10:30, talked to the U S West fiber
7 supplies people. They kind of stepped me through the
8 cutover procedure on the fiber. Later around 11
9 o'clock Bob Rothermel from the Alliance, along with the
10 airport manager, stopped in there. We had a
11 conversation. And by around noon I went down to the
12 bottom part of the hill on the 20th, and Mr. Sand by
13 that time had started covering part of the pipe up with
14 a variety of different equipment. So he was working at
15 the job site, but I can't tell you is this his normal
16 work speed or whatever, but they were doing some
17 activity on the site.

18 Q. Okay. When you say the bottom of the hill,
19 maybe you can point out --

20 A. The bottom of the hill is exactly where the
21 twin tubes are.

22 Q. That's --

23 A. Right there. (Indicating) And where the U S
24 West fiber supplies people, the ones I had talked to,
25 there was one crew in this proximity over here. But

1 the crew -- or the person I had talked to at the top of
2 the hill is where the red line at the top of the hill
3 was at.

4 Q. When you were out there on June 20th,
5 Mr. Sand had indicated that this area of the fiber
6 optic cable had been located and flagged at some point
7 in time. Was that apparent during your visit?

8 A. It was flagged, but it could have been marked
9 even better because he did have equipment running in
10 the job site area down in there.

11 Q. Okay. I guess the next question I was going
12 to ask you was any of the rest of this area located or
13 flagged?

14 A. To the best of my knowledge, no, it was not.

15 MR. EKLUND: That's all.

16 MS. WIEST: Mr. Welk.

17 CROSS-EXAMINATION

18 BY MR. WELK:

19 Q. Mr. Wegman, when you went out there June
20 20th, did Mr. Sand threaten to cut the cable?

21 A. Yes, he did.

22 Q. What did he do? What did he say?

23 A. He said if he went out there with a shovel
24 and just cut the cable, U S West would get it located
25 -- excuse me, get it removed much quicker.

1 Q. What did you say to that?

2 A. I kind of informed him that this cable is
3 very important and his insurance company probably
4 wouldn't cover it.

5 Q. Did you see any equipment going over the
6 line, the fiber line?

7 A. That day there was quite a bit of equipment
8 moving over it.

9 Q. What did you see? What equipment did you see
10 moving over the fiber?

11 A. I remember a crawler and a scraper because he
12 was covering the twin pipes at that time and so he did
13 need to have fill dirt from somewhere. I didn't really
14 take an inventory of the equipment, but I did note
15 there was a crawler and a scraper and a blade involved.

16 Q. When you had the conversation with Mr. Sand,
17 did he tell you that he was advised at the
18 preconstruction meeting that U S West would be working
19 in the area at least on June 16th?

20 A. He had made the indication that U S West
21 would have cable installed in the early part of June.

22 Q. My question was did he indicate that he had
23 knowledge it would be past June 16th?

24 A. He didn't express that to me, no.

25 Q. Now, this conversation you had with

1 Mr. Serfling, who was there besides you and

2 Mr. Serfling?

3 A. Would have been the central plant person. We
4 were in the pickup truck.

5 Q. Did you take any notes of that conversation?

6 A. No, I didn't.

7 Q. And tell me again what you say Mr. Serfling
8 said.

9 A. He had said that U S West should have
10 explained in better detail or more detail the
11 importance of the fiber optics and the length of time
12 on how long it was going to take to get it cut over.

13 Q. You knew that this was not a matter of just
14 putting in a wire in the ground and cutting it over the
15 next day, didn't you?

16 A. That's correct.

17 Q. You've had some experience in construction?

18 A. Yes.

19 Q. And you know that this takes a deal of time
20 to schedule the cut-down, the central office, and all
21 the customers that have private facilities on the line,
22 don't you?

23 A. Yes. And one other thing that -- one you
24 have to work into your risk analysis on this when
25 you're doing a cutover is the weather because you have

1 to have a very sterile environment or free from any
2 dust on the fiber so it isn't going to impact it, or
3 mud. The other item that fits into here when you do
4 cut a fiber optic line it has tension on it, and there
5 is a potential for that line to fracture up to two
6 miles either side of where you're going to make that
7 physical cut because you are going to introduce a cut
8 on that to that piece of glass.

9 Q. Mr. Wegman, are you aware of any interruption
10 of service whatsoever what the fiber line was cut?

11 A. No.

12 Q. And it was cut over on June 26th?

13 A. As I understand as the process started
14 there's a procedure that it goes through. I was under
15 the impression it was June 24th it started, and it was
16 completed the following Thursday.

17 Q. So as far as this dispute we have today,
18 we're really talking about a period of time of June
19 16th when they were mobilized to June 26th when the
20 cutover took place?

21 A. Correct.

22 MR. WELK: That's all I have.

23 MS. WIEST: Ms. Cremer?

24 MS. CREMER: Yes.

25 CROSS-EXAMINATION

1 BY MS. CREMER:

2 Q. Steve, you testified you knew it was a
3 critical cable. But when did you find out that this
4 was the backbone?

5 A. When I was in Belle Fourche talking to
6 Mr. Serfling.

7 Q. And up to that point you had no idea of what
8 kind of cable it was?

9 A. I did not know if it was a piece of -- I did
10 not know if it was a power cable or telephone cable or
11 what type it was; just knew that it belonged to U S
12 West.

13 Q. And when you talked to Mr. Sand, did he
14 understand the critical nature of this cable when you
15 talked to him on Friday morning?

16 A. I was under the impression Friday morning he
17 did not realize that this was the backbone fiber in
18 Western South Dakota; that it's more than just a fiber
19 optic line.

20 Q. What led you to believe that?

21 A. Basically it's just kind of -- I had asked
22 him, you know, some basic questions about it. And he
23 said, well, it just goes to Rapid City. And I asked
24 him what type of traffic, if he knew what was carried
25 on it and it's important in the system.

1 MS. CREMER: That's all I'd have.

2 MS. WIEST: Commissioners?

3 CHAIRMAN BURG: Do I -- from your
4 recollection and your observation, is there basically
5 two parts that they said was a hold-up, a delay? Was
6 part of it a delay due to lack of locate? Could you
7 tell that when you were out there?

8 A. Part of it was due to was locate. Mike
9 Gosline had made -- in a conversation I had with him on
10 site with my phone, that if he wanted the Sands to --
11 if Sands wanted to locate, they would come out and hand
12 locate the rest of the fiber optic line.

13 CHAIRMAN BURG: What was -- that was on the
14 20th?

15 A. That was on the 20th.

16 CHAIRMAN BURG: And they had had no
17 indication that was necessary before that time?

18 A. It's hard for me to tell that.

19 CHAIRMAN BURG: But what about --

20 A. Sands was very frustrated at that time.

21 CHAIRMAN BURG: What was Mr. Sand's feeling
22 of when the locate would take place?

23 A. He would have liked to have had it a lot
24 sooner. Actually, he would have liked to have the
25 cable out of there.

1 CHAIRMAN BURG: That's true. How about the
2 locate?

3 A. The locate? On Friday he was -- I said, "Do
4 you want me to have U S West come out and hand locate
5 it?" He said, "No." He was just kind of shut down for
6 the time being.

7 CHAIRMAN BURG: Did you have an indication
8 from him when he thought the locate should have been or
9 should be completed?

10 A. No, I don't.

11 CHAIRMAN BURG: The second part of the delay,
12 was that due to the lack of movement of the cable
13 itself?

14 A. That's correct.

15 CHAIRMAN BURG: Did you get any indication in
16 your conversation with Mr. Serfling as to what he had
17 indicated would be their time schedule to Mr. Sand?

18 A. What he had indicated to me was that he
19 probably didn't explain the critical nature of the
20 fiber optic location of doing the cutovers on it.

21 CHAIRMAN BURG: But how about the timing of
22 that movement in the preconstruction meeting?

23 A. The impression that I had gotten is that he
24 did not explain that thoroughly enough.

25 CHAIRMAN BURG: Did you have the feeling that

1 he knew what the dates would be?

2 A. He probably knew that the 16th wasn't the
3 correct date.

4 CHAIRMAN BURG: And did you get an indication
5 that they had in any way indicated that the 16th would
6 be a correct date?

7 A. No, I did not.

8 CHAIRMAN BURG: Okay. What's the
9 responsibility of a contractor once they've notified
10 One Call?

11 A. Typically on a fiber line, One Call locates
12 the line. If it's a fiber optic line, they are
13 supposed to -- according to the U S West rules that
14 they have, in essence, is to do a hand locate to make
15 sure the cable is exposed by hand where the excavation
16 is supposed to take place.

17 CHAIRMAN BURG: Did you get an indication
18 from Mr. Sand as to when they contacted One Call?

19 A. It was the early part of June.

20 CHAIRMAN BURG: And after you contacted One
21 Call, what's One Call's responsibility then as far
22 as --

23 A. 48 hours.

24 CHAIRMAN BURG: To have the locate within 48
25 hours?

1 A. Correct.

2 CHAIRMAN BURG: Did that occur?

3 A. Probably parts of it, yes. I can't really
4 address this part of it. I wasn't there.

5 CHAIRMAN BURG: But you were there on the
6 20th?

7 A. I was there on the 20th, but they had not
8 located the upper portion of the fiber line.

9 CHAIRMAN BURG: And the responsibility once
10 it's One Call is to have the entire area located in 48
11 hours, is that what you said?

12 A. It's 48 hours before the excavation work
13 takes place.

14 CHAIRMAN BURG: They have to notify?

15 A. Right.

16 CHAIRMAN BURG: And once that 48 hours is up,
17 then what options does the contractor have?

18 A. That I'd have to go back.

19 CHAIRMAN BURG: I guess what I'm getting at
20 is we've had a lot of problems with One Call. We've
21 worked a lot on getting those rules, and there's
22 certainly responsibilities once you call One Call so
23 that the contractor can do their job. What I'm trying
24 to find out here were those met?

25 A. That, I did not look into that portion of

1 it. There were probably missed commitments in there
2 with One Call.

3 CHAIRMAN BURG: And you've testified that the
4 upper portion was not located?

5 A. That's correct.

6 CHAIRMAN BURG: And this was how many days
7 after they had called in to locate?

8 A. This would have been at least seven days.

9 CHAIRMAN BURG: From the time you observed
10 it?

11 A. Correct.

12 CHAIRMAN BURG: That's all I have.

13 COMMISSIONER SCHOENFELDER: I want to follow
14 up on that further. Do you know of your own knowledge
15 when One Call was called and whether the locate was
16 made within 48 hours?

17 A. I don't know that correctly.

18 COMMISSIONER SCHOENFELDER: Okay.

19 A. All I have is what the parties have told me.

20 COMMISSIONER SCHOENFELDER: My next question
21 is do you have any knowledge in a project of this size
22 whether the fact that it's a bid project and the
23 companies were all supposedly -- that were affected
24 were supposedly at this preconstruction meeting, would
25 that offset whether One Call would be involved or not?

1 I don't know this. I'm going to ask other witnesses
2 the same question. What's the responsibilities then of
3 One Call in this type of a situation which is larger
4 than if I go out to plant a tree; right?

5 A. Correct.

6 COMMISSIONER SCHOENFELDER: And are there
7 other responsibilities here? I need to know that some
8 way or another, and if you don't know, say no and I
9 will find out somewhere else.

10 A. That, I don't know.

11 COMMISSIONER SCHOENFELDER: Thank you.

12 MS. WIEST: From the time that the fiber
13 optic cable was delivered, which may be June 10th,
14 1997, until the time the fiber throw was completed on
15 June 26th, 1997, is that an unreasonable length of time
16 for installing that fiber?

17 A. It could be. It depends on the scheduling
18 process U S West uses. Typically this is -- on other
19 experiences that we've had where things have been done,
20 this is a fast -- this was a fast-track job
21 comparatively. U S West worked as fast as they could.
22 When you're doing a fiber cutover, you can only do
23 certain processes. You have to remember there is two
24 splices being done. There is only one spare in this
25 bundle. And the work has to be surgically clean.

1 They're working outside Western South Dakota, subject
2 to the elements. So in for getting them to cut over,
3 plus you have to notify the customers on each of those
4 lines of traffic called over, I'm really amazed they
5 got it done as fast as they did.

6 MS. WIEST: Do you have knowledge of what it
7 takes for approval processes necessary to complete?

8 A. According to the tariff they have filed with
9 the Commission, it's three weeks.

10 MS. WIEST: And so they did that in less than
11 three weeks?

12 A. That is correct.

13 MS. WIEST: Who did you talk to from U S West
14 on June 20th?

15 A. Mike Babbe, Mike Gosline. Mr. Gosline, Mr.
16 Babbe, and one of the cable suppliers up on top of the
17 hill. I didn't get his name. And what I did is I
18 interviewed him on what takes over in a cutover and
19 what are some of the risks what could hold this project
20 up. And Mr. Sand led me to believe U S West worked
21 overtime on Saturday and Sunday. I think I talked to
22 Mr. Lehner also.

23 MS. WIEST: What cable were they splicing at
24 that time?

25 A. They were preparing to splice the fiber optic

1 line, both at the north and south end, which would be
2 at the top end of the map and at the bottom end.

3 MS. WIEST: Any other questions from the
4 Commissioners? Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. EKLUND:

7 Q. These potential problems are things that
8 certainly would have been known to U S West at the time
9 of the preconstruction meeting, wouldn't they?

10 MR. WELK: Objection. This is not U S West's
11 witness. You can ask a U S West witness, not this
12 witness that.

13 MR. EKLUND: Go ahead.

14 MS. WIEST: Sustained. Any other questions,
15 Mr. Eklund?

16 Q. Would any of the potential problems that you
17 discussed with any of the U S West people have been
18 problems that would have been unusual or unique only to
19 this project?

20 A. Cutting over copper wire is much easier to do
21 than fiber optics. So in doing fiber, it's going to
22 take a good technician precision and a clean work
23 environment to have a suitable cutover.

24 Q. I guess did this particular project pose any
25 unique or unusual problems in the area of fiber optic

1 splicing?

2 A. Not any more than anything else in South
3 Dakota.

4 MR. EKLUND: Okay. That's all.

5 MS. WIEST: Any further questions of this
6 witness? If not, thank you. Do you have any further
7 witnesses, Mr. Eklund?

8 MR. EKLUND: That's all.

9 MS. WIEST: Mr. Welk?

10 MR. WELK: We would call Mr. Serfling.

11 **DENNIS SERFLING,**

12 called as a witness, being first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WELK:

16 Q. Would you please state your name.

17 A. Dennis Serfling.

18 Q. Would you spell your name for the Court
19 Reporter.

20 A. S, as in Sam, e-r-f, as in Frank, l-i-n-g.

21 Q. Mr. Serfling, by whom are you employed?

22 A. U S West Communications.

23 Q. And what is your business address?

24 A. 612 Mount Rushmore Road, Rapid City, South
25 Dakota.

1 Q. And what is your title?

2 A. Design engineer.

3 Q. How long have you been employed by U S West
4 Communications?

5 A. Approximately thirty-seven years.

6 Q. That would include Northwestern Bell prior to
7 U S West?

8 A. Yes.

9 Q. And what has been your experience in that
10 thirty-seven years?

11 A. Well, different aspects. I was in
12 construction for a while, installation and maintenance,
13 business office, engineering, installation foreman for
14 a little bit in Mobridge, and back in engineering where
15 I've been probably twenty-seven, twenty-eight years
16 now.

17 Q. Now, you said you are a design engineer.
18 What is the function of a design engineer?

19 A. Well, there's numerous things that we do, but
20 our main function is to design buried plant to serve
21 new housing areas, new developments, line extensions in
22 the rural road project, relocations, just general
23 design of outside plant.

24 Q. And you were the contact prior to
25 construction by U S West regarding the airport project

1 in Rapid City; is that correct?

2 A. That's correct.

3 Q. And were you asked to prepare just a simple
4 map showing the Commission where the cables were
5 located and where they were going to be moved from?

6 A. Yes, I was.

7 Q. All right. And that's been marked as Exhibit
8 16, the smaller Exhibit 16. And I'm going to -- the
9 witness is putting up a larger version of Exhibit 16 up
10 on the easel, but copies have been furnished to the
11 Commission. Now, Exhibit 16 that you're putting up
12 there -- and you can get the small one in front of you
13 -- that's not intended to be drawn to scale, is it?

14 A. No, it is not. It's just a rough sketch of
15 more or less what was required or what was existing and
16 what was proposed on the airport project in Rapid City.

17 Q. All right. Before we talk about what
18 happened in the construction, let's just talk about the
19 way the facilities were placed before the
20 construction. Why don't you show us what were the
21 cables that were out there before the project began.

22 A. With the existing runway, of course, it
23 stopped at this location. (Indicating) We had an
24 existing 25-pair cable that served the rural area to
25 the north and east of the airport that was mainly

1 residential service. The existing County Road C-232
2 come across and ended up going into the rural area
3 again to the northeast of the airport. And then we had
4 a fiber cable which come about to the west boundary
5 line of the airport across County Highway C-232 and was
6 placed in the road ditch along County Road C-232 going
7 up toward Wall.

8 Q. And let's just talk about what the traffic
9 was that was on the existing fiber. What traffic was
10 being carried on there?

11 A. Well, there would be numerous different
12 traffic. It carried all of the toll facilities from
13 Rapid City east. Private line services from numerous
14 different companies would have been carried on it. It
15 also served the AT&T tour at Computa, (sp) which would
16 have had numerous private line services on it. So it
17 was a pretty heavy-trafficed fiber cable.

18 Q. Let's talk about how you got involved in this
19 project. First of all, there was some testimony that
20 when the bid project was put together that somehow U S
21 West got the bid specifications on the project. Did
22 they?

23 A. We, back probably -- and this is going to be
24 an estimate because I'm not real sure. But the first
25 part of May, probably somewhere around the first, we

1 received some preliminary plans on a proposed runway
2 extension at the Rapid City Regional Airport, which was
3 scheduled to be let sometime in 1997. At that time we
4 did some preliminary investigation to see what was
5 going to be involved and see if we were going to have
6 to relocate any facilities at that time.

7 Q. And was there a decision made that there was
8 going to have to be a relocation?

9 A. Yes. We heard probably around the, oh, I
10 would say 8th of June -- or of May, excuse me, that the
11 bid had been let; and we proceeded to issue a job from
12 our office to relocate the existing exchange and fiber
13 cable to clear the proposed project of the runway
14 extension.

15 Q. What happened then after that order was cut?

16 A. We issued it from our office after we had --
17 well, originally we had contracted with a paramount
18 design engineering firm that does some engineering work
19 for us to do the design work on the relocation. After
20 they had done the preliminary work, we issued the
21 project from our job on May 13th it went out of our
22 office.

23 Q. And what would -- what was being requested to
24 be done on May 13th?

25 A. Relocating the existing exchange cable that

1 was going to be in conflict with the proposed 350-foot
2 addition on the end of the runway and relocating the
3 existing fiber cable to the north of the proposed
4 County Road C-232, which was planned to be moved to the
5 northwest to clear the addition to the runway.

6 Q. So that order was issued and then what other
7 -- did you get a copy of the actual bid specifications
8 and the contract package?

9 A. No, we do not get that.

10 Q. And you typically wouldn't get that, would
11 you?

12 A. No, we would not.

13 Q. And in a typical project, would it proceed
14 like it did in this case, that you would show up at a
15 preconstruction conference?

16 A. Yes, it would.

17 Q. And just tell the Commission -- I mean
18 generally you've gone to a lot of these preconstruction
19 meetings, haven't you?

20 A. Yes, I have.

21 Q. And the function of U S West at that point in
22 time is to talk just about utility relocations?

23 A. That's correct.

24 Q. All right. So you attended this meeting on
25 May 30th, 1997; is that correct?

1 A. That is right.

2 Q. All right. And who was running the meeting?

3 A. Gary Norton with Alliance of Architects was
4 in on the meeting and a Craig Smith from the DOT here
5 in Pierre was also conducting the meeting.

6 Q. How long were you at the meeting?

7 A. Probably totally 30 minutes at the most.

8 Q. And who did the talking while you were at the
9 meeting?

10 A. Craig Smith with the DOT did the majority of
11 the talking at the beginning of the meeting due to the
12 fact that he had a conflict with another schedule. So
13 to start with he covered some of the things that were
14 going to be required of the contractor at that time,
15 particular project, which took a good share of the
16 first 20, 25 minutes, I assume, and then it got into
17 utility relocation.

18 Q. All right. During the first 20 or 25
19 minutes, was there any discussion made of when the
20 Notice to Proceed was going to be made?

21 A. Yes, there was. Raymond Sand had indicated
22 he would like to start around June 9th, but after
23 discussion, it was decided that they would probably not
24 get final approval until the 16th of June.

25 Q. So at that meeting you had been led to

1 believe that the Notice to Proceed would not be issued
2 until June 16th?

3 A. That's correct. I figured no construction
4 would be starting until June 16th.

5 Q. All right. After Mr. Smith talked about --
6 and he's here and he can explain what he did at that
7 point in time. The subject did then come up at that
8 meeting about the U S West facilities that needed to be
9 relocated?

10 A. Yes, it did.

11 Q. What were the questions asked and by whom
12 regarding utility relocation? And then I'm going to
13 ask for your responses.

14 A. Well, Raymond Sands, of course, wanted to
15 know about telephone relocation. I had checked before
16 the preconstruction meeting to find out what our
17 construction department's schedule looked like as far
18 as cable arrival. I had called, and they had told me
19 that it was tentative that the cable would ship June
20 3rd. And as soon as they got the cable, they had a
21 contractor lined up to start placing it. And as soon
22 as it got placed, they would get on to splicing it as
23 soon as they possibly could.

24 Q. Who told you the cable would arrive around
25 June 3rd?

1 A. Construction liaison person out of Huron who
2 coordinates job contracting for U S West and field
3 construction.

4 Q. What did you state to the people present
5 about the relocating of the U S West facilities?

6 A. I just stated to them that the cable was
7 scheduled to ship June 3rd; that as soon as we got it
8 we would be placing the facility. As soon as we got it
9 placed and everything was ready, we would get it
10 spliced. Also made the statement that it was buried.
11 Very probable that we would still be in conflict as of
12 the 16th of June.

13 Q. The Notice to Proceed date?

14 A. Yes.

15 Q. And that is all you stated?

16 A. That's about all that was said in the
17 meeting. Utilities were excused, and they went on with
18 other details of the contract.

19 Q. After the meeting there were minutes that
20 were prepared and sent that have been marked as Exhibit
21 7. Did you get those minutes?

22 A. Yes, I did.

23 Q. And you were -- since you were an attendee,
24 you got those minutes; is that correct?

25 A. Yes.

1 Q. And do you believe the minutes accurately
2 stated what you said at the meeting?

3 A. Yes, I did.

4 Q. And when did the cable arrive?

5 A. The cable actually arrived 6-10 of '97, so it
6 was delayed roughly, well, five to seven days probably.

7 Q. Did you ever find out the reason why it
8 didn't arrive until then?

9 A. No. And cables ship and ship dates, really I
10 don't get involved with.

11 Q. Is this cable that has to be especially
12 manufactured?

13 A. Yes, it does.

14 Q. Just to tell the Commission, I mean, is this
15 a matter of just, you know, calling up a warehouse and
16 "send us a fiber cable"?

17 A. Fiber would be a special order cable which
18 normally requires a longer period of time to get than
19 what a factory copper cable would get. Our copper
20 cables, the majority of the time we have reels on hand
21 in yards in Denver, other places, where we can get
22 cut-to-order pieces, where fiber we would have to order
23 direct from the factory.

24 Q. In regard to the copper cable, was that
25 relocated and before June 16th?

1 A. Yes, I believe it was.

2 Q. Relocated and was it up and running by June
3 16th?

4 A. As far as I know it was.

5 Q. So the only issue became the fiber cable?

6 A. The fiber cable was the main concern for
7 Mr. Sand that was in conflict with his grading
8 operation.

9 Q. So from June 10th when the cable arrived to
10 it was cut over on June 26th?

11 A. That is correct.

12 Q. And would you agree with Mr. Wegman that that
13 was a fast-track switchover?

14 A. That was very fast, yes.

15 Q. Would you agree with his characterization
16 that normally there's a three-week period of time
17 that's allowed for that?

18 A. There's a three-week window that we're
19 supposed to allow for cutover of fiber cable.

20 Q. All right. Just tell the Commission, if you
21 will, what you have to do to relocate a fiber cable.

22 A. Well, in this particular operation, of
23 course, we placed the new cable out around, which was
24 done by a contract. That is proposed fiber, the dotted
25 line.

1 Q. When was that placed?

2 A. That was placed June 18th.

3 Q. From June 10th to -- and how many days did it
4 take to place?

5 A. I believe it took about two days.

6 Q. So the placement occurred on June 16th -- or
7 17th and 18th?

8 A. Yes.

9 Q. What was the holdup between the date it
10 arrived June 10th and June 16th and 17th when the
11 placement began?

12 A. Well, the placement was handled by a general
13 contractor that we have, who is Weil (sp)
14 Construction. Excavating Specialists are their
15 subcontractors for the Black Hills area. They were
16 tied up with other projects. I'm sure they didn't have
17 all the equipment right available when the second cable
18 come in. It probably took Excavating Specialists a
19 couple days to get things lined up to get the cable
20 placed. That would have been a portion of the delay.

21 Q. So all right. From when it got placed from
22 June 18th to the switchover on June 26th, what has to
23 be done?

24 A. Well, the ends of the new fiber, of course,
25 would have to be prepared. On this particular end

1 which is down here toward Rapid City, there happened to
2 be an existing vault because that was a taper where a
3 fiber goes into the airport new terminal. So there was
4 slack stored at that location, but in order to make a
5 fiber someplace you need slack to have the availability
6 to work on it. And up on the far end that goes toward
7 Wall, they had to expose the existing fiber back this
8 way toward Rapid City. They probably went 50, 60 feet,
9 laid the existing new fiber back along paralleled the
10 old fiber, made the opening, and then of course would
11 have to fuse each fiber as they cut them simultaneously
12 on both ends.

13 Q. We heard this testimony today about people
14 being out there from 11:00 to 2:00. Would that have
15 been consistent with what the work practices would have
16 been for the fiber?

17 A. Really U S West construction really didn't
18 have anything to do with this operation until the cable
19 was placed and the splicing was ready to go.
20 Excavating Specialists would have placed the new
21 fiber. Excavating Specialists would have dug the
22 pits. The only splicing that U S West -- the only work
23 U S West would have had would have been on the existing
24 25-pair cable here. I believe Mr. Sand said there was
25 a terminal in the road or something that they had to

1 relocate. They would have probably had to make a
2 25-pair splice at this point during the daytime. Other
3 times possibly when Steve was out there he had
4 indicated they were preparing ends to get ready to
5 splice. That's really all they would have had
6 available to them until the actual throw of the fiber,
7 which was done at night.

8 Q. And that requires a scheduling of all of the
9 customers' facilities' central office people to make
10 sure the cut is done at a time where there would be
11 less traffic on there?

12 A. Yeah, that's correct. Not only do they have
13 to schedule their splicers to work the night hours, but
14 central office people have to be available to turn down
15 the circuits when they're ready to cut them. And we
16 have to get releases from different companies, AT&T,
17 anybody that has special circuits riding on those
18 fibers, we have to get a release from before we can cut
19 them.

20 Q. And so as of June 26th there was a cutover of
21 the new fiber; is that correct?

22 A. Yes. I think it was completed June 26th.

23 Q. Was there any interruption of service for any
24 customers?

25 A. No.

1 Q. Now, do you at any time tell Mr. Sand either
2 on May 30th or any other date the exact date when the
3 cutover was going to occur?

4 A. No, I did not.

5 Q. And why wouldn't you do that?

6 A. There's too many variables as far as when
7 cable was going to arrive, when construction would get
8 the job scheduled, when splicing availability would be,
9 when we could get releases on circuits. The only date
10 that I had mentioned to Mr. Sand was the June 3rd ship
11 date for the cable, and that was the one that I got
12 from our construction coordinator.

13 Q. And you told at the meeting that you heard
14 when it was going to be a Notice to Proceed that June
15 16th, you figured at least you would still be working
16 at that point in time?

17 A. Yes, I did.

18 Q. Now, for the Commission's benefit, you have
19 other projects that you've got to relocate cables,
20 don't you, from time to time other than this project?

21 A. Oh, yes.

22 Q. And you coordinate with the contractors and
23 work around their schedules and yours, don't you?

24 A. Yes, we do.

25 Q. And that there are many variables that one

1 has to deal with in a construction project, not only
2 with U S West facilities and contractors are and
3 employees are doing, but also what the contractor's
4 employees and phase work are doing; correct?

5 A. That's correct.

6 Q. In your opinion, was this cutover that was
7 done in an expeditious manner?

8 A. Yes, it was.

9 MR. EKLUND: I'll object to that. It's
10 self-serving.

11 MS. WIEST: Overruled.

12 Q. All right. Let's talk about the cost to U S
13 West. How much did it cost to relocate these
14 facilities?

15 A. I believe the total cost to relocate was
16 somewhere in the neighborhood of \$23,000.

17 Q. That's for the copper and the fiber?

18 A. That's correct.

19 Q. Did anybody get sent a bill for this?

20 A. No, they did not.

21 Q. If there had been a particular -- I mean why
22 didn't someone get a bill for this?

23 A. Well, being we're in public right-of-way when
24 we apply for a county application to place cable within
25 road right-of-way, it stipulates in our application

1 that Welk relocate at our expense if the county is
2 going to rebuild a road and we are in conflict with
3 that proposed plan.

4 Q. U S West, in its relocation processes, does
5 it ever enter into any written or oral contracts with
6 anybody to relocate utilities?

7 A. No.

8 Q. You just sit down, coordinate it with the
9 contractor and get it done; is that correct?

10 A. That's correct.

11 Q. Let's talk about -- because there's been some
12 questions today, and I don't know whether you know any
13 of the answers because I'm sure the Commissioners are
14 going to ask this issue about the locating of the
15 cable. Do you have any personal knowledge about the
16 One Call and when the relocations are made?

17 A. I really don't know a lot about One Call.
18 All I know is, of course, we contract our locates with
19 UL. I guess other than that, Mr. Sand, when I talked
20 to him and he was having problems, I don't recall if he
21 ever mentioned that he was having problems with
22 locates. But I really couldn't refer him to a local
23 person because he gets a release number and unless he
24 has that release number, they're going to come back and
25 claim he is liable for a cut cable if he cuts one.

1 Q. I don't understand what you just said. What
2 do you mean a release number?

3 A. Well, when he calls One Call, they will give
4 him a number that is in his report that indicates to
5 him -- and it's for their record, for One Call's
6 record, that this individual had called, requested a
7 locate. And if they go out and locate and mislocate or
8 whatever, the first thing they will ask Raymond Sand
9 for is his ID number which they give him.

10 Q. Well, under the terms of the contract, and
11 it's 14, he was to contact you regarding all the
12 relocation of these facilities; is that correct?

13 A. I would be the contact for U S West if he had
14 some questions or problems. If I could not help him, I
15 could get him to the right person within our company.

16 Q. Did he ever contact you and inform you about
17 any problems with the location of cable?

18 A. No, I never heard about locations. He did
19 call me a couple times wondering what the status of the
20 job was as far as relocating the fiber.

21 Q. What did you tell him?

22 A. I think -- I'm not even sure if I talked to
23 him. I think both times he ended up maybe getting my
24 recorder. I referred him to Mike Babbe, and I think
25 Mike Babbe went out and visited with Raymond.

1 Q. And Mike Babbe would have been the
2 construction guy for U S West?

3 A. That is correct. He would be more involved
4 with this scheduling of the project.

5 MR. WELK: I have nothing further.

6 MS. WIEST: Mr. Eklund?

7 CROSS-EXAMINATION

8 BY MR. EKLUND:

9 Q. Did you ever return any of Mr. Sand's calls?

10 A. I did not personally. I think he called me
11 twice.

12 Q. Now, this three-week time lag that's
13 apparently in a tariff that your company has filed,
14 that's a time lapse or lag that's well known to you in
15 the telephone business as far as doing the switchover
16 on fiber optic cable, isn't it?

17 A. It's a normal time frame that it takes us to
18 get rescheduled as far as scheduling people at night,
19 getting releases for special services, getting people
20 available to turn circuits down and retest them after
21 they're spliced and back up and running. It's just
22 pretty much a normal time frame.

23 Q. That was well known to you at the time of the
24 preconstruction meeting, was it not?

25 A. Well, yes, that a normal interval is three

1 weeks.

2 Q. Was there any mention by you to any of the
3 people present at that preconstruction meeting of that
4 time interval?

5 A. No, there was not.

6 Q. Now, you had been out on the project site,
7 had you not, before the preconstruction meeting? You
8 went out and looked at the general lay of the land?

9 A. Yes, I did.

10 Q. And so I would understand that at that time
11 you knew where this fiber optic cable lay?

12 A. Oh, yeah.

13 Q. And I assume anticipated that until such time
14 as there was a complete switchover, it was going to be
15 a significant hindrance to that project, the grading?

16 A. Not knowing what his schedule was, I wouldn't
17 know that.

18 Q. Well, you knew -- you obviously knew he
19 couldn't relocate the county road until that fiber
20 optic cable was switched over?

21 A. That's true.

22 Q. That was pretty much the point of the entire
23 project, wasn't it?

24 A. Of relocating the fiber, yes.

25 Q. And moving the county road was by far the

1 largest part of the grading?

2 A. Probably, I guess. I would not know that
3 from myself because I never really researched it that
4 much.

5 Q. But, nonetheless, you didn't make any mention
6 of that three-week period that they could likely -- now
7 let me make sure I understand this. Let me back up.
8 Is that three-week period after the installation -- I
9 mean the physical laying of the cable is complete?

10 A. When they're ready to splice.

11 Q. Okay.

12 A. But they could probably start the procedure
13 -- if they knew the cable was here and were going to
14 place it starting today, they could start the procedure
15 to get people scheduled and that in an earlier time
16 frame.

17 Q. I guess what I'm trying to understand is does
18 that three-week period take into consideration the
19 laying of the cable or not?

20 A. It could.

21 Q. But maybe not?

22 A. Maybe not. I do not know what their splicing
23 procedure is because I'm not involved on the splicing
24 side of the --

25 Q. Would you agree with Mr. Wegman's

1 characterization of his conversation with you that
2 there may have been some misunderstanding created at
3 the preconstruction meeting by your statement?

4 A. Not that I remember, but it's possible.

5 Q. Now, is this the only drawing your company
6 would have of this?

7 A. Oh, no. That's strictly a display. We would
8 have a detailed work print of what is being done, plus
9 we would have the same set of plans that they've got
10 right there for cuts and relocation and so forth.

11 Q. And you motioned over here towards Exhibit 4?

12 A. Yeah, over towards Exhibit 4. I mean we
13 would have pretty much that same set of plans.

14 Q. When would you have received that?

15 A. I guess I definitely wouldn't know.

16 Q. Would it have been in May?

17 A. Yeah, it would have been May. It would have
18 been first part of May, maybe even last part of April.

19 Q. So you would have well known at least three
20 weeks ahead of the preconstruction meeting what was
21 involved as far as the grading?

22 A. Oh, yes.

23 Q. The location of your cable?

24 A. Yes.

25 Q. And the relocation?

1 A. That's true.

2 MR. EKLUND: That's all.

3 MS. WIEST: Ms. Cremer?

4 MS. CREMER: None.

5 MS. WIEST: Commissioners?

6 COMMISSIONER SCHOENFELDER: I have several.
7 Are you planning on continuing this, or are you going
8 -- I think we're scheduled for tomorrow morning, are
9 we not?

10 (A DISCUSSION WAS HELD OFF THE RECORD.)

11 COMMISSIONER NELSON: I have a couple
12 questions but I'm willing to wait.

13 COMMISSIONER SCHOENFELDER: Go ahead.

14 COMMISSIONER NELSON: There was some
15 discussion today here about which employees were
16 arriving at 9:00 or 10:00 and leaving at 2:00. I
17 wasn't sure if they were U S West employees or if they
18 were subcontractors of U S West, or if you were saying
19 that they were U S West employees and that they had a
20 different kind of a job description there for that day
21 so the usual 8:00 to 5:00 kind of deal wouldn't be the
22 standard here. Could you clarify?

23 A. I would have no idea. I wouldn't have any
24 idea what employees were there. I do not run the
25 employees. I strictly do the engineering portion.

1 COMMISSIONER NELSON: Except that Mr. Heaston
2 asked you the question -- Mr. Welk, he asked you about
3 the employees and the strange work schedule, too, so
4 you answered the question for him. So which employees
5 were you talking about when you answered his question?

6 A. Well, when I was talking about possibly the
7 9:00 to 2:30, that would have been U S West employees
8 doing what they could at that time because there was
9 nothing there of any work substance that would require
10 anyone there for an extended period of time until they
11 were ready to splice the fiber cable. If they were
12 driving U S West trucks, which I guess I assumed that's
13 what they were talking U S West employees.

14 COMMISSIONER NELSON: Okay. Was the
15 relocation of the -- and moving in the fiber actually
16 done by -- they were done -- it was actually done by
17 subcontractors, not actual U S West employees; is that
18 right?

19 A. That's correct.

20 COMMISSIONER NELSON: Do you remember telling
21 Mr. Wegman that you thought that you weren't maybe very
22 specific or clear enough about times and time lines in
23 the preconstruction meeting?

24 A. No, I guess I don't.

25 COMMISSIONER NELSON: Would you tell me what

1 you feel the purpose of the preconstruction meeting is?

2 A. Well, it's a two-fold situation. It's for
3 the contractor to find out what the utility schedule is
4 for cable relocation, power relocation, gas relocation,
5 whatever happens to be involved in the project. Plus,
6 it's a chance for utilities to find out what their
7 schedule is as far as start date and these things so
8 that we can somewhat schedule our work to meet what
9 their schedule is as far as work on the project.

10 COMMISSIONER NELSON: Do you feel that you
11 had a good idea of the work schedule that Mr. Sand had
12 envisioned for this project at that meeting?

13 A. Well, I guess the thing that I envisioned was
14 he was going to start on the 16th; and I was aware that
15 he was going to start on the 16th.

16 COMMISSIONER NELSON: Did you know at the May
17 30th meeting that the fiber cable wouldn't be relocated
18 and cut over until June 26th?

19 A. No, I did not.

20 COMMISSIONER NELSON: Did you know if June
21 26th wasn't the date, did you have any date in mind?

22 A. Not at all.

23 COMMISSIONER NELSON: Why didn't you return
24 Mr. Sand's calls yourself?

25 A. Due to the fact that the questions that I

1 felt he was going to have as far as relocation I would
2 not be able to give him the answer as far as the date
3 because I would not know that. Mike Babbe or the
4 construction people would be the ones that would be
5 involved as far as cable shift, when it was due to
6 arrive, when the contractor was going to place.

7 COMMISSIONER NELSON: Why did they send you
8 to the preconstruction meeting if you don't know those
9 things? I mean what -- maybe that's not the
10 appropriate question. I'm trying to get at what
11 expertise that you lend to -- they chose you to go to
12 the preconstruction meeting versus the other people
13 that returned Mr. Sand's call.

14 A. Well, we are involved at the beginning before
15 the construction department gets involved due to the
16 fact that we get the road plans. We are the ones that
17 design the relocation of the fiber cable or the
18 exchange cable, whatever is involved. So we are
19 probably as familiar with it as anyone at the time of
20 the preconstruction meeting.

21 COMMISSIONER NELSON: You're familiar in
22 terms of that you know you what the scope of the
23 project, is but you don't know any of the details about
24 what could probably happen?

25 A. Other than the information we get from --

1 well, like I called our construction department to try
2 and get a date as far as when the fiber cable was going
3 to be delivered.

4 COMMISSIONER NELSON: I think that takes care
5 of my questions. Thank you.

6 CHAIRMAN BURG: You indicated that you were
7 aware that Mr. Sand wanted to start on the 16th; is
8 that correct?

9 A. That's what he had indicated, yes.

10 CHAIRMAN BURG: In your estimation, was he
11 going to be -- because of your utilities, was he going
12 to be able to operate in that area on the 16th?

13 A. He would be able to operate in a portion of
14 that area. I'm not just sure, you know, where. In
15 right exactly where the fiber cable is, no, he would
16 not be able to operate in there.

17 CHAIRMAN BURG: And you did not indicate that
18 to him at that preconstruction meeting though, that by
19 the 16th he would not be able to operate in that area?

20 A. Well, I had indicated that on the 16th it was
21 more than probable U S West would still be in the area
22 with relocation.

23 CHAIRMAN BURG: But I mean that was the
24 extent of the conversation?

25 A. That was about the extent of the

1 conversation.

2 CHAIRMAN BURG: But you didn't make any
3 indication when U S West was to be completed at that
4 point?

5 A. No.

6 CHAIRMAN BURG: As a matter of fact, but you
7 did not indicate that you had three weeks after the
8 cable was laid before you even had to do a cutover by
9 tariff either?

10 A. No.

11 CHAIRMAN BURG: Seems like a pretty weak
12 preconstruction meeting is the way it looks to me in an
13 overall sense. I'm not sure how anybody would know for
14 sure what they could do. That's all I have.

15 COMMISSIONER SCHOENFELDER: Mr. Serfling, you
16 say you're a design engineer. Do you have a degree in
17 engineering?

18 A. No, I do not.

19 COMMISSIONER SCHOENFELDER: Because I need to
20 know. I just wanted to know because I know that in U S
21 West some people working in the engineering department
22 aren't necessarily engineers.

23 A. No, I do not.

24 COMMISSIONER SCHOENFELDER: Thank you. You
25 talked about the time for the fiber optic cable order

1 and there's none on hand and it's so special. But
2 isn't it really true that in this industry fiber is not
3 a specialty any more that you're laying a lot of it and
4 you must have some kind of a rotating kind of things to
5 where you have an inventory of some kind or some kind
6 of a standing order? I mean it's not so special that
7 you only order exactly what you need for where you need
8 it because I understand U S West is laying cable all
9 over 14 states. And you certainly must have some cable
10 available if you have a couple weeks notice, do you
11 not? What's the time frame? Give me some ideas here.

12 A. I really would not know. It would be pure
13 speculation on my part as far as what the time frame
14 would be required for ordering fiber.

15 COMMISSIONER SCHOENFELDER: But you must have
16 some experience. You must have done this before.

17 A. Well, if the factory would have it on hand,
18 the job was issued the 13th of May. And I'll just use
19 this as an example. So it was probably distributed to
20 our construction department on, say, the 15th of May.
21 When I called to find out what the delivery date of the
22 fiber was, they said it was supposed to ship June 3rd.
23 So if it went out the middle of May to the third of
24 June, that would be about a two-week turnaround; right.

25 COMMISSIONER SCHOENFELDER: But what's been

1 your experience in the past? Because I know in the
2 Rapid City area this is not the first time that
3 something has been delayed because of cable from U S
4 West. So what I mean is you couldn't bring anything to
5 this preconstruction meeting that said, gee, we might
6 have problems with delivery of this cable?

7 A. I had no indication of that from our
8 construction people when I talked to them.

9 COMMISSIONER SCHOENFELDER: But what has
10 happened in the past? What has your past experience
11 with cable delivery been?

12 A. Well, all cable copper and fiber has not been
13 good.

14 COMMISSIONER SCHOENFELDER: Okay. So but you
15 couldn't have told them that at the preconstruction
16 meeting?

17 A. I had no indication of that. I could have
18 told them that, but I would not have known that for a
19 fact that it was going to be a delay.

20 COMMISSIONER SCHOENFELDER: But you're not
21 subject to the contract so, you know, I just thought
22 that for information -- to throw information out there
23 for people you were trying to do business with, it
24 might have been helpful. With your subcontractor, the
25 subcontractor is your contractor that -- the person

1 that plows that fiber in the ground; right?

2 A. That's correct.

3 COMMISSIONER SCHOENFELDER: And so they're
4 responsible to you and so that makes U S West
5 ultimately responsible for their performance; is that
6 not correct?

7 A. That is correct.

8 COMMISSIONER SCHOENFELDER: Okay. So when
9 you say it was a subcontractor, it's really your --
10 it's U S West's responsibilities, am I right?

11 A. That's true.

12 COMMISSIONER SCHOENFELDER: And I think you
13 testified to the One Call where Mr. Welk asked you
14 about it's really not -- you don't do the locates. You
15 have a subcontractor that does the locates and that
16 Mr. Sand would have needed to have called the One Call?

17 A. Yeah.

18 COMMISSIONER SCHOENFELDER: I need to know
19 how that works, so if you know more than what you
20 answered Mr. Welk, I need more information.

21 A. I really can't. I honestly can't because I
22 do not know how One Call works, I really don't.

23 COMMISSIONER SCHOENFELDER: I don't know
24 whether it's relevant in this case or not, but Mr. Welk
25 asked you a question about the cost for relocation.

1 And I don't know that that has any relevancy, but the
2 cost for relocation out of right-of-ways, how does that
3 compare to the cost of buying easements across private
4 land?

5 A. You mean on the initial installation?

6 COMMISSIONER SCHOENFELDER: Any time.

7 A. Private land would probably run us about
8 \$3.00 a rod for an easement, where a county road ditch
9 is --

10 COMMISSIONER SCHOENFELDER: Free?

11 A. Free.

12 COMMISSIONER SCHOENFELDER: Until you have to
13 relocate?

14 A. Until we have to relocate.

15 COMMISSIONER SCHOENFELDER: But that's one of
16 the privileges you have is to use the right-of-way and
17 that's why you use it, is it not?

18 A. Yes, it is.

19 COMMISSIONER SCHOENFELDER: Thank you.

20 CHAIRMAN BURG: That just prompted one
21 question. Did you locate this in the road ditch of the
22 new grade?

23 A. No, it's on private right-of-way.

24 CHAIRMAN BURG: Did you have to get
25 right-of-way?

1 A. We got right-of-way from the city of Rapid
2 City.

3 CHAIRMAN BURG: That was city property?

4 A. Yes.

5 CHAIRMAN BURG: Thank you.

6 MS. WIEST: Any redirect?

7 MR. WELK: No.

8 CHAIRMAN BURG: Any further witnesses?

9 MR. WELK: Yes. We have Mr. Norton here and
10 Mr. Smith also. Hopefully they will be relatively
11 brief. Mr. Gary Norton, we would call him.

12 **GARY NORTON,**

13 called as a witness, being first duly sworn,
14 was examined and testified as follows:

15 **DIRECT EXAMINATION**

16 BY MR. WELK:

17 Q. Would you please state your name.

18 A. Gary Norton.

19 Q. Where do you live?

20 A. Rapid City, South Dakota.

21 Q. By whom are you employed?

22 A. Alliance of Architects and Engineers.

23 Q. And what is Alliance of Architects and
24 Engineering or Engineers?

25 A. Consulting firm in the architectural and

1 engineering fields.

2 Q. Are you a professional engineer?

3 A. Yes, I am.

4 Q. You're licensed in what field?

5 A. Civil engineering.

6 Q. And your firm, how many licensed professional
7 engineers do you have?

8 A. Three.

9 Q. And was your firm the architect engineers on
10 this airport project we've been discussing today?

11 A. Yes, we were.

12 Q. What were your duties and responsibilities
13 regarding this job?

14 A. I was a design engineer as well as the
15 project engineer. I was responsible for designing and
16 assisting the project manager in the design of the
17 project and the writing of the plans and
18 specifications.

19 Q. Did Mr. Stulken report to you?

20 A. I wouldn't say it's reporting. He would hand
21 me his logs. I would be the one that would sign off
22 and review them. We're a small firm so he generally
23 talked to both Bob and I.

24 Q. You were the one that was seeing if there was
25 any problems in the job based on the logs?

1 A. I was generally the first line, so to speak.
2 If I could handle it, I would handle it tell. If I
3 couldn't, I would take it to the project management
4 level.

5 Q. We have had marked as Exhibit 6 some
6 handwritten notes for the 5-30-97 meeting. Is that
7 your handwriting?

8 A. Yeah, it is.

9 Q. You were the person who made the notes at the
10 5-30-97 meeting?

11 A. Yes.

12 Q. In a typical construction project like this,
13 is it the responsibility of the engineer to take the
14 notes or the architect?

15 A. As long as I've been involved, yes.

16 Q. And so you're the key person to take notes
17 and then you distributed them to the attendees?

18 A. Correct.

19 Q. So Exhibit 6, these were your handwritten
20 notes, and then you went back to your office and had
21 them typed up as Exhibit 7; is that correct?

22 A. Yeah. Bob Rothermel would have looked
23 through them, corrected English and stuff like that,
24 and would have added any additional notes that he may
25 have taken.

1 Q. You heard Mr. Serfling describe the
2 preconstruction meeting and where it started with
3 Mr. Smith making a number of statements about the
4 background and safety and what was required. Is that
5 substantially correct according to your recollection?

6 A. Yeah.

7 Q. Why don't you tell the Commission then -- you
8 wrote the notes, you were there -- what your -- what
9 you heard was that the statements made by Mr. Serfling
10 about what U S West was going to do with regarding the
11 relocating of the cable.

12 A. The only really thing that we got into it was
13 -- on the, you know, level that I had heard was that
14 U S West had to go out there and relocate, and they
15 would most likely be out there by still June 16th when
16 the Notice to Proceed was assumed to be completed.
17 There was permits to be obtained from the county and
18 things like that that looked like they would delay the
19 Notice to Proceed.

20 Q. So everybody knew at that meeting on May 30th
21 that there was going to be some delay because of U S
22 West. Is that a fair statement?

23 A. To the best of my recollection, yeah.

24 Q. I mean you're the engineer that's sitting
25 there listening to this. Did you know that on June

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1 16th U S West was still going to be out there working?

2 A. That's what I would have had to assume based
3 on the notes I took, yes.

4 Q. Now, we've had some questions asked by the
5 Commissioners about the responsibilities of various
6 parties here. Let's try to set this stage on the
7 construction contract. Now, when you had this meeting,
8 whose responsibility is it to coordinate with U S
9 West? Is it yours? The contractors? Whose
10 responsibility is it?

11 A. It's the contractors.

12 Q. And so you look to him to say you two
13 companies work it out essentially; is that correct?

14 A. That's correct.

15 Q. And do you get involved in the middle of that
16 coordination?

17 A. The only thing we do is we invite the parties
18 to the preconstruction meeting so they can see
19 face-to-face, know who they need to talk to and who
20 they need to correlate with.

21 Q. Did you write the plans and specifications
22 for the job?

23 A. I assisted Bob with it, yes.

24 Q. And there was a completion date of September
25 30th?

1 A. Yes.

2 Q. And that was essentially going to start from
3 sometime in June to September 30th; is that correct?

4 A. That's correct.

5 Q. Now, when you set the June 30th or the
6 September 30th date, was the utility relocation a
7 factor in that?

8 A. In the overall scheme, not really. We felt
9 it was just another utility that the contractor would
10 have to work with the phone company to get moved out of
11 the way.

12 Q. And tell us in laymen's terms really what is
13 he doing for the contract in this case? Tell us on the
14 end of the runway, what's he have to do there?

15 A. Okay. That red spot right here, there was
16 FAA requirements for extending the safety area, and
17 that's what we did. So he had to fill a substantial
18 amount of fill at the end here, possibly 40 feet, maybe
19 even 50 in spots in this area. And then as Mr. Sand
20 stated before, you can't do that without relocating the
21 county road to fill over it, so we had to relocate the
22 county road.

23 Q. Now, you can sit down again. We've heard a
24 couple times here this difference between borrowed dirt
25 and unclassified. What do those terms mean?

1 A. Unclassified excavation is generally dirt
2 that needs to be cut with a scraper and hauled within
3 the work limits of the area. And the borrow excavation
4 is material that's taken, I think Ray said, like 2,500
5 feet up the runway where they go up and cut it out and
6 haul it down and place it in the fill there.

7 Q. Did you have any concerns it was going to
8 take two, three weeks, four weeks to relocate the
9 utility for U S West and Ray Sands?

10 A. I guess four weeks may have caused a concern,
11 but couple, three weeks really, you know, it was the
12 coordination thing that we generally put on the
13 contractor and the phone company.

14 Q. Well, do you believe that as you look at the
15 job was there a problem of getting the progress done
16 when it was supposed to get done?

17 A. Not in our opinion, no, not initially.

18 Q. Well, Mr. Sand is writing a request for an
19 extension the day after he starts the project; is that
20 correct? That was Exhibit?

21 A. We got a letter on the 17th, yes.

22 Q. That was Exhibit 9. Is that a letter you got
23 from the Sand Construction about the request for
24 extension?

25 A. Yes.

1 Q. Is that unusual to get a request for
2 extension the day after starting a job?

3 A. It's unusual in my experience. I haven't had
4 it happen before. I don't know.

5 Q. Was an extension given?

6 A. At that time, no, we didn't formally address
7 that one would be given.

8 Q. This problem with the telephone relocation by
9 June 26th and the project, it was a non-issue; is that
10 correct?

11 A. Based on the progress meeting, yeah, it had
12 been completed and everything was out of the way.

13 Q. And so after this relocation had to be done,
14 there was substantial work that had to be done in the
15 area, didn't there, besides where the relocated cable
16 was going to be?

17 A. Oh, yeah.

18 Q. Were you concerned that there was any delay
19 from U S West about relocating this around June 16th
20 for a couple weeks?

21 A. From our standpoint, no, we didn't. We
22 didn't get concerned because we looked at the overall
23 scope of the job. And, you know, we had asked Ray at
24 progress meetings whether he could still make it; and
25 he said, you know, if he put forth extra effort, yeah,

1 he still felt that he could probably make it, still
2 keeping in mind that he had requested the week.

3 Q. And so how it ended up, the project was
4 completed before the due date; is that correct?

5 A. He was substantially complete before the
6 September 30th, yes.

7 Q. Would you agree with the characterization
8 that he mobilized the equipment at least around
9 September 9th or 10th?

10 A. Based on the review of Doug's logs, he states
11 that equipment is moving out on those days, yes.

12 Q. Was there any damages or penalties that were
13 assessed on Mr. Sand's company at any time?

14 A. No.

15 Q. Did the contract provide any liquidated
16 damages provisions if he hadn't been done by September
17 30th?

18 A. Yes.

19 Q. Do you know what those were?

20 A. No. They would be in the spec book. I don't
21 know what they are.

22 Q. But none were ever imposed?

23 A. No.

24 Q. Were these liquidated damages provisions ever
25 even threatened at any time?

1 A. Not to my knowledge, no.

2 MR. WELK: I don't have any other questions.

3 MS. WIEST: Mr. Eklund.

4 CROSS-EXAMINATION

5 BY MR. EKLUND:

6 Q. Mr. Norton, there isn't any question, is,
7 there but that the location of this line was an
8 impediment to Mr. Sand in the orderly completion of
9 this project?

10 A. Not being out there day to day, I can only
11 say that I know that Ray was upset about it; and he
12 firmly believed that it was delaying him.

13 Q. Caused longer hauls?

14 A. I never really got into a big discussion with
15 him over that until he just said that. But I'm sure if
16 he had to go to the borrow area, it would have been
17 longer hauls.

18 Q. Mr. Stulken was the Engineers and Architects
19 man on site?

20 A. He was our construction observer.

21 Q. And he's experienced in the construction
22 industry, isn't he?

23 A. He's worked for -- yeah, he has experience,
24 that he stated earlier.

25 Q. That's why you hired him?

1 A. I don't know why we hired him. I didn't hire
2 him.

3 Q. I caught this when you testified. You said
4 you thought it was just another utility. That's in
5 reference to U S West and this cable that you knew was
6 on site.

7 A. No. What I mean is whenever you hear the
8 word fiber optic, everybody gets spooked right from the
9 get-go because, you know, they're sensitive lines.
10 What I meant as the engineering firm we generally do
11 not get involved in the coordination of the contractor
12 and the utility. It's up to them to sit down and hash
13 out who's going where, when they're going where, how
14 they're going.

15 Q. Well, in the spec books you've structured how
16 this project is to proceed, haven't you?

17 A. We outline steps.

18 Q. And one of the first steps is a relocation of
19 that county road, isn't it?

20 A. I have to look at the spec, but if it's in
21 there, that's what it is, yeah, if it's in the list.

22 Q. Well, on page 24, first item in phase one is
23 fence removal and installation of a temporary fence.
24 Number two is relocate county road.

25 A. If it's in there, that's what it is.

1 Q. And there's a reason for that, isn't it? The
2 reason being if you try to extend the runway, you're
3 not going to be able to get the traffic through there
4 because you're going to cover up the old road?

5 A. I did not write that section of it.

6 Q. Well, is that the reason?

7 A. I didn't write it so I don't know what his
8 reasoning was to make the steps. We generally don't
9 dictate what they do so -- Bob wrote that, not me.

10 Q. Well, sequencing contract obligations of
11 Mr. Sand was to keep traffic moving on that road or
12 through that area?

13 A. He had several obligations, which included
14 coordinate with the phone line too.

15 Q. And there was no mention of his not being
16 able to take out that old county road for perhaps a
17 period of three weeks?

18 A. I don't know. Can you ask me again?

19 Q. When you issue a Notice to Proceed, doesn't
20 that indicate to the contractor that he can take over
21 that area within the limits of the contract and proceed
22 to do his work?

23 A. Yeah.

24 Q. And as a responsible architect or engineer he
25 should know -- or you should advise him of potential

1 impediments to his progress, shouldn't you?

2 A. That's why we put on the plans and in the
3 specs that he needs to coordinate with the phone
4 company about the fiber optic line.

5 Q. Did you at any time tell Mr. Sand -- or did
6 you know of the critical nature of this fiber optic
7 cable?

8 A. We stated in the preconstruction meeting --
9 it states on the notes as soon as U S West stated
10 they'd probably be in the area, we immediately said
11 contracting needs to coordinate with it because we know
12 it's a sensitive thing. They need to coordinate.

13 Q. It doesn't say it's sensitive, does it?

14 A. I say we knew it was a sensitive nature so
15 they need to coordinate.

16 Q. Did you tell Mr. Sand that it was sensitive?

17 A. I just assumed he knew fiber optic was
18 sensitive.

19 Q. With respect to the Exhibit No. 8, have you
20 got that in front of you?

21 A. Yeah.

22 Q. The letter written by Mr. Sand on June 17th,
23 1997, regarding corrections of the minutes, did you
24 ever indicate to Mr. Sand that his understanding or
25 interpretation was incorrect?

1 A. No. I give them the opportunity to add on
2 what they feel might have been missing a thing in the
3 meeting, but it does not alter my notes.

4 Q. Did anybody else that that was distributed to
5 ever give an indication that that understanding was
6 incorrect?

7 A. Not to my recollection, no.

8 Q. And that would include U S West you
9 distributed a copy of that to?

10 A. It's on the list. We distributed to
11 everybody on the list.

12 MR. EKLUND: That's all.

13 MS. WIEST: Ms. Cremer?

14 MS. CREMER: I have nothing.

15 MS. WIEST: Commissioners?

16 CHAIRMAN BURG: Yeah. When was Mr. Sand
17 awarded the contract?

18 A. When?

19 CHAIRMAN BURG: Yes. What was the date he
20 was awarded the contract?

21 A. I'm looking for the Notice to Proceed.

22 MR. WELK: 15.

23 A. Okay. The agreement is the 9th day of June.

24 CHAIRMAN BURG: Was that when he was awarded
25 the contract?

1 A. That is -- I believe that's -- I believe
2 that's the date of when the council approves and
3 accepts the bid.

4 CHAIRMAN BURG: You had the precontract
5 meeting prior to the reading of the contract?

6 A. No. If I could look at my file, I could
7 probably find when the Notice of Award was.

8 MR. EKLUND: Let me help here.

9 A. The form I just got says -- okay, the owner.
10 The Notice of Award was signed by the owner on the 21st
11 of May.

12 CHAIRMAN BURG: So he was aware of the
13 contract on the 21st of May?

14 A. Yes.

15 CHAIRMAN BURG: What was the contract period
16 that he had to construct at the awarding at the time he
17 won the bid?

18 A. He has a completion date of September 30th,
19 and generally it's two to three weeks is not uncommon
20 to get their bond back and all that, get all the
21 signatures to finalize their paperwork. This just
22 gives them the award.

23 CHAIRMAN BURG: When he got the award, what
24 did that award indicate he should have as a start date
25 that he could start his work?

1 A. It didn't indicate. We don't indicate at
2 that time. That gives him the assurance that he's been
3 awarded so he can get the bonding, and we have to get
4 the bond and insurance information back. And once we
5 get that back, then we sign it, review it, look at it,
6 and then we go through the Notice to Proceed.

7 CHAIRMAN BURG: Yeah, the Notice to Proceed.
8 Now, in order to finish by a date which you have
9 indicated he would have had a penalty if he hadn't
10 finished, he had to have to know when he had a start
11 time. When is his start time?

12 A. Well, he's awarded -- he knows when the bid
13 is open. And I guess it's just common understanding
14 that's about a three-week turnaround because of the
15 bonding. They know they have to get the bonds to us.
16 There's a certain sequence. He won't do the bonds
17 until he knows he has the job, and that's the
18 agreement.

19 CHAIRMAN BURG: And of course he can't
20 fulfill the agreement until given he's given you the
21 bonds?

22 A. That's right. We have to review and make
23 sure he gets the insurance requirements and the
24 bonding.

25 CHAIRMAN BURG: When did that occur?

1 A. He would have -- I'm sure there's a signed
2 copy of the Notice of Award. We would have sent that
3 shortly after this 21st. He would acknowledge the
4 Notice of Award, then he would start the process of
5 getting the bonds together.

6 CHAIRMAN BURG: But when had he satisfied
7 everything he had needed to be able to start
8 construction?

9 A. Okay. The Notice to Proceed is his official
10 -- it states he must start on or about or before this
11 time.

12 CHAIRMAN BURG: I understand. We had that.
13 But when had he satisfied everything he needed to be
14 able to start the contract? Because from what I
15 understand, the Notice to Proceed was delayed by other
16 than Mr. Sand; is that correct?

17 A. Yeah, that was made -- he was made aware of
18 that during the preconstruction meeting.

19 CHAIRMAN BURG: Because I understand at the
20 preconstruction meeting he indicated he would have
21 liked to begin work on the 9th; is that correct?

22 A. I believe so, yes.

23 CHAIRMAN BURG: But you've said there's other
24 things, and evidently he had met all of his
25 requirements at that point. Would that be accurate?

1 A. I think so, yeah.

2 CHAIRMAN BURG: But you've indicated, well,
3 we can't let you proceed until the 16th. We have got
4 some other things to clear up; right?

5 A. Well, they have to get a county permit and
6 stuff like that, yes.

7 CHAIRMAN BURG: What I don't understand is
8 how can he be held to the September 20th date when he
9 was not allowed to start when he wanted to start? And
10 you've indicated and he indicated he asked for an
11 extension when there were other things that held him
12 up. Now, you didn't act on the extension; correct?

13 A. He did not ask for an extension based on the
14 normal delay of getting the insurance and the Notice to
15 Proceed.

16 CHAIRMAN BURG: No, that's exactly right.
17 That wasn't his problem. The extension was because of
18 other problems; correct?

19 A. It was because he felt he was being held up
20 by the phone company.

21 CHAIRMAN BURG: And I would presume he was
22 also held up by your order to proceed because he
23 indicated he wanted to start on the 9th and other
24 clearances that you needed were not available yet;
25 correct?

1 A. I really can't answer that because he didn't
2 state any objections to start at that date at the
3 preconference. I don't see anywhere that he would be
4 upset about the --

5 CHAIRMAN BURG: You indicated that he
6 completed by the date, by the 20th?

7 A. He was substantially complete by September
8 30th, yeah.

9 CHAIRMAN BURG: Do you know if he had to
10 exert extra effort to be complete by then?

11 A. I can only go by what Ray has said. He did
12 not mobilize any more equipment into the job, no.

13 CHAIRMAN BURG: But you don't --

14 A. But he said he would have to move things, you
15 know, faster and do things to catch up.

16 CHAIRMAN BURG: And that might be overtime
17 and --

18 A. Yeah. I don't really know. I don't know.

19 CHAIRMAN BURG: So but are you testifying you
20 don't know whether he had to exert extra time or not?

21 A. He didn't haul in any more equipment or
22 anything like that. So whether he normally works
23 12-hour days like a lot of contractors do, or he
24 normally works 8, I don't know. So I don't know if he
25 exerted any overtime.

1 CHAIRMAN BURG: You indicated you don't know
2 either way whether he had to exert extra time or not?

3 A. I don't know if he worked overtime or not,
4 no.

5 CHAIRMAN BURG: That's all I have.

6 COMMISSIONER NELSON: I have a couple. Walk
7 me through the bid process. When you deal with public
8 bodies, they usually have to take bids. At the time of
9 the bid, do they usually not have to provide the
10 bonding?

11 A. They have to provide a bond on the bid.
12 That's a different bond than once he gets the job.
13 That's so if he's low bird, he bales out -- well, no,
14 that's later. This is a bid bond. This is saying if
15 you're low bird, you would agree to do the job. So if
16 he backs out, they have the right, I guess, to go after
17 his bond before that can bid.

18 COMMISSIONER NELSON: Get the money. So are
19 you saying that you require the bid bond at the time of
20 the bid?

21 A. Of the bid they only require a performance.

22 COMMISSIONER NELSON: Performance bond of
23 that?

24 A. Yes, when he's awarded it.

25 COMMISSIONER NELSON: And so he's not free to

1 start on his project until after he has the performance
2 bond; right? I thought that's what I heard you say.

3 A. Well, he has to get -- it's kind of a, like I
4 say, he has to deal with city entities. He has to get
5 council approval. Okay? Then the Notice of Award, we
6 send that out once he agrees to accept his bids. Then
7 when he returns that and acknowledges it, then we
8 request all the insurance information, all that, then
9 we get that back from him. We review it, make sure
10 it's right, the owner approves it, then they sign the
11 contract. Then the Notice to Proceed goes out once all
12 the paperwork has been satisfied.

13 COMMISSIONER NELSON: So but is it standard
14 practice that he can't start on his project until after
15 all the paperwork is done?

16 A. Oh, yeah, yeah.

17 COMMISSIONER NELSON: And did we decide what
18 date the paper work was done?

19 A. We usually -- oh, did we decide?

20 COMMISSIONER NELSON: Do you know what it is,
21 because I thought Jim asked?

22 A. No, I don't know when we got his bonds in.
23 I'm not sure if that's in these files.

24 COMMISSIONER NELSON: And you said that there
25 were liquidated damages in this contract.

1 A. They allowed for it, it allowed for it.

2 COMMISSIONER NELSON: Do you know if the
3 contract had liquidated damages allowed?

4 A. We have not assessed any.

5 COMMISSIONER NELSON: That's not the question
6 though. The question is did the contract specify that
7 there would be liquidated damages at some amount?

8 A. Yes.

9 COMMISSIONER NELSON: Do you know what that
10 is?

11 A. No. It would be in the spec book.

12 COMMISSIONER NELSON: Maybe I should ask
13 somebody else that then.

14 MR. WELK: We can get it out of the spec book
15 and add it to the contract exhibit we already got.

16 COMMISSIONER NELSON: I'd be interested in
17 the number. You know, you said that it was just
18 another utility. Did you know that the cable was the
19 backbone fiber cable for in the Rapid area?

20 A. Well, I'd like to clarify like I said to
21 him. What I mean, I know fiber optics are -- we all
22 know going in it was fiber optic. It's a sensitive
23 thing. We don't really -- I don't overly concern
24 myself as to what it carries. We found out -- I don't
25 know -- exactly know what I found out. I don't know,

1 but I know somewhere along the project I found out that
2 it was all -- I was told it carried a bunch of bank
3 information and stuff like that.

4 COMMISSIONER NELSON: So is it fair to say
5 you really didn't know how important a cable this was
6 or how much more difficult it might be to switch this
7 cable?

8 A. I had no idea how long it would take to
9 switch the cable over.

10 COMMISSIONER NELSON: Or the significance of
11 that being a backbone cable for the -- you just thought
12 it was just an ordinary fiber optic cable that's always
13 a little sensitive?

14 A. No, we knew that the -- that's why I wrote in
15 the contract I knew the contractor would have to take
16 care and coordinate with U S West to get it moved and
17 that it would take careful coordination to do it.

18 COMMISSIONER NELSON: That's a different
19 question than whether or not this is just ordinary
20 fiber optic cable or if this was more important fiber
21 optic cable because it was the backbone --

22 A. Okay.

23 COMMISSIONER NELSON: -- of Rapid City.

24 A. I don't really concern myself too much with
25 what it carries so, no, I couldn't know during the

1 bidding about what it carried.

2 COMMISSIONER NELSON: And so is it safe to
3 assume, then, you also didn't know that it was going to
4 take -- that they have this three-week window?

5 A. No.

6 COMMISSIONER NELSON: And you didn't keep
7 that in mind when you established the time lines that
8 the contractor was going to have to meet?

9 A. No.

10 COMMISSIONER NELSON: Or when you were asked
11 about extensions or because of the delays or anything
12 like that, you didn't consider that aspect?

13 A. We did not consider the aspect of the
14 three-week fiber optic move, no. At least not that I'm
15 aware of. Bob Rothermel, I don't know if he would have
16 had other conversations.

17 COMMISSIONER NELSON: Do you believe after
18 the preconstruction meeting that -- or were you aware
19 at the time you left the preconstruction meeting on the
20 31st that Mr. Sand would not be able to be doing
21 substantive work in the area on the 16th because U S
22 West was going to be there?

23 A. I knew that he would have to work with that
24 other entity.

25 COMMISSIONER NELSON: That's not the

1 question. The question is when you left the
2 preconstruction meeting, did you know that Mr. Sand
3 would not likely be able to do any substantive work on
4 his project because U S West had said they were going
5 to be in the area? Or were you under the assumption
6 that he would be able to do his meaningful work in that
7 area despite the fact that they would both be working
8 in the area?

9 A. I did not know at that time where Sand
10 Construction would start his construction specifically,
11 so I would not be able to know whether they would be in
12 conflict when he got on the right-of-way or not because
13 I did not know where he would start specifically.

14 COMMISSIONER NELSON: Isn't it a part of that
15 bid, the specs or whatever?

16 A. Well, yeah, the road is almost 2,000 feet
17 long and we say he has to move the road. And in his
18 schedule he just gives unclassified excavation, but
19 exactly what stations, what side of the road, when he's
20 going to start on that, that's up to him. That's his
21 means and methods and techniques.

22 COMMISSIONER NELSON: Well, since you took
23 notes at the meeting and you were sitting there, did
24 you leave that meeting with the impression that both U
25 S West and Sand Construction would be able to be doing

1 substantive work in the area? Or maybe I should
2 rephrase it. Did you believe that Sand Construction
3 would be unable to do their substantive work because U
4 S West was in the area?

5 A. I could only speculate to know what the
6 substantive work would be. I knew there was potential
7 for conflict because they both had to be at that spot
8 in some point.

9 COMMISSIONER NELSON: There's a whole
10 difference between two people working in an area. Now
11 the question is part of the reason you have a
12 preconstruction meeting is so that people can
13 coordinate their projects and we eliminate all these
14 problems. However, when -- I guess the question I want
15 to know is when Mr. Sand left that meeting, he felt
16 that he would be able to be working in the area and
17 that maybe U S West was going to be something that
18 would allow him, knowing that the project specifically
19 said that one of the first things he had to do is
20 relocate the road. Now, so when you left that meeting,
21 did you know or did you assume that they would both be
22 able to work in that area?

23 A. It's difficult for me to answer that not
24 knowing what's in Ray's -- you know, what Ray intended
25 to do at what time specifically. That's why in the

1 meeting when it was brought up that they could still be
2 in the area, we said they need to coordinate because we
3 didn't know where he intends to be day-to-day and where
4 U S West intends to be day-to-day, so I can't -- he had
5 a big area to go. I didn't know where he was going to
6 go exactly.

7 COMMISSIONER NELSON: Except that -- okay, if
8 I buy that, and you say that because it was a big area
9 you didn't know his relocation of the road. I'm trying
10 to get at whether or not a reasonable person at this
11 meeting would have left assuming that they could work
12 compatibly in the area or not.

13 A. Okay. I guess this is my opinion about the
14 preconstruction meeting. Okay? We could spend a lot
15 of time sitting there with Ray and U S West's
16 representative, which happened to be Dennis, at the
17 time discussing what they were going to be day-to-day
18 to coordinate that one specific item. So we don't
19 really generally sit there, from what I've been
20 involved, and go to every person and work out every
21 detail as to who's going where, how much conflict there
22 would be, how much time there's going to be. That's
23 where we say they need to get together. The contractor
24 needs to get with these guys and they need to work out
25 their problems, their conflicts, and their schedules to

1 progress in a timely manner to get the job done by
2 September 30th.

3 COMMISSIONER NELSON: Well, I guess, frankly,
4 Mr. Norton, I think that when I was on the school board
5 we built three elementary schools and did renovations
6 at four major junior highs. And when I served on the
7 Urbanized Development Commission dealing with
8 transportation and road planning, we had
9 preconstruction meetings on a lot-of-time basis.

10 And, frankly, this is the most unusual
11 preconstruction meeting I've ever been at. The least
12 amount of information about the specifics of a project
13 were relayed to people involved in it. And it seems
14 that, generally speaking, architects that you hire, be
15 it the school board or the Department of Highways and
16 Transportation hire you people to sort of coordinate
17 this project to help iron out some of these
18 difficulties. You say you didn't even know how
19 important a fiber optic cable we're talking about. It
20 was just a utility. It was just an ordinary, you know,
21 sensitive fiber optic cable, when it was maybe, as
22 Mr. Wegman testified, the backbone cable for the whole
23 Rapid City area. And there's quite a difference in
24 that.

25 And so I guess I'm somewhat frustrated with

1 the preconstruction meeting and exactly how we
2 eliminated any problems here by having it.

3 A. Well, we have a big project. It's not just
4 this county road and this phone line to be moved. It's
5 a big airport project. It was with safety issues, FAA
6 requirements, and all sorts of things other than just
7 one phone line to mess with. So we had to go through
8 all the paperwork requirements and everything. We
9 tried to cover as much as we can. But I can't sit up
10 there and dictate to the contractor and to U S West
11 when they'll move the line, how they'll move the line,
12 and how they'll coordinate. That's why we leave it to
13 them and give it to them while they're bidding, saying
14 you need to get with these guys to work this problem
15 out because there will be a conflict. So we try to
16 work out what we can. If there's questions brought up
17 at the meeting concerning it, if questions are asked
18 of, you know, from the contractor, does he have any
19 questions, if he would have brought up questions of the
20 fiber optic line and everything, they would have been
21 addressed.

22 COMMISSIONER NELSON: Would you say that the
23 liquidated damages were -- probably the purpose of the
24 liquidated damages is to provide a financial incentive
25 to get things done expeditiously, and part of the

1 reason that you have the liquidated damages is to make
2 sure in especially public projects like major moving of
3 major roads or those kinds of things, to make sure that
4 the public is the least inconvenienced as possible?
5 Would you say that that's a significant factor and one
6 of the reasons why we have liquidated damages and
7 highway projects in airports?

8 A. I would have to say my understanding of
9 liquidated damages is to have a means for the owner to
10 recoup costs generally in the engineering and
11 administration of a project for the overrun because our
12 contracts -- the contractor doing stuff for a certain
13 amount of time. It allows the owner a means to get
14 reimbursed for the overrun and the extra time and the
15 administration that would be involved in that.

16 COMMISSIONER NELSON: Isn't part of the
17 reason you have liquidated damages in the public works
18 is so the work gets done with the least inconvenience
19 with the public?

20 A. I'm not -- I guess I don't interpret them
21 that way. I don't think they're that much -- they're
22 generally not so substantial, I guess, to -- I never --
23 I don't see it that way, I guess, is all I can say.

24 COMMISSIONER NELSON: How long have you been
25 a -- you've been a professional licensed engineer?

1 A. I've been a professional licensed engineer it
2 will be a year in January.

3 COMMISSIONER NELSON: Thank you.

4 MS. WIEST: Any redirect?

5 MR. WELK: No. I just want to move, before I
6 let him go, that Exhibit 14. Has that been offered and
7 received?

8 MS. WIEST: No.

9 MR. WELK: I'd offer Exhibit 14, which is the
10 contract. And I won't have any objection to adding
11 whatever Commissioner Nelson wants to that exhibit, at
12 least put in the record what the liquidated damages is.

13 MS. WIEST: Can we get that portion? Do you
14 have those pages?

15 MR. EKLUND: It's page 21 in the contract.

16 MS. WIEST: We'll get that added to that
17 exhibit.

18 MR. WELK: Thank you. So I'd move for
19 admission of Exhibit 14.

20 MS. WIEST: Any objection to 14?

21 MR. EKLUND: No.

22 MS. WIEST: If not, that's been admitted.

23 MR. WELK: Move admission Exhibit 16, the
24 map.

25 MS. WIEST: Any objection?

1 MR. EKLUND: No.

2 MS. WIEST: If not, that's been admitted.

3 MR. WELK: I don't have any further
4 questions.

5 MS. CREMER: Has 17 been admitted?

6 MS. WIEST: No.

7 MR. WELK: I thought that was the
8 Commission's kind of introduced exhibit. I'll move for
9 the admission of Exhibit 17.

10 MS. WIEST: Any objection? If not, it's
11 admitted.

12 CHAIRMAN BURG: Just a clarification. Ten,
13 11, and 12, were those ever admitted?

14 MR. EKLUND: I'm sorry, what is 17?

15 MS. WIEST: 17 is the copy of the tariff.

16 CHAIRMAN BURG: What is 10, 11, 12?

17 MS. WIEST: They were denied.

18 CHAIRMAN BURG: They were all denied?

19 MS. WIEST: Yes. And then we'll have a
20 late-filed exhibit on documentation on contacting One
21 Call. That would be 18. You may call your next
22 witness.

23 MR. WELK: Mr. Smith.

24 MR. EKLUND: Just a moment.

25

FURTHER CROSS-EXAMINATION

BY MR. EKLUND:

Q. With respect to Exhibits 10, 11 and 12, are those progress reports that you authored, Mr. Norton?

A. I could only recall now that generally Bob and I both took notes, but I took the primary notes and I was in attendance based on the attendance list on 10 and 11. That was on the attendance list attached to 12. But I checked back in my file. No, I'm sorry, it's on the front. Never mind. I was not at that one so I would not have written those notes.

Q. Those would be documents prepared in the ordinary course of business by A & E?

A. By our firm, yeah.

MR. EKLUND: I'll re-offer them.

MS. WIEST: Any objection?

MR. WELK: Not to 10 and 11 because he was there.

MS. WIEST: Okay. We will admit 10 and 11.

Q. Also with respect to the May 30, 1997, meeting Mr. Sand presented at that, did he not, his progress schedule, which has previously been introduced as Exhibit 5-A? That was one of the requirements of the contract, wasn't it, that he have that available at that meeting?

1 A. I'm not sure it was a requirement of the
2 contract. I know it was a request by Bob. I'm not
3 sure if it's in the spec. It usually is though.

4 Q. That was there, wasn't it, detailing exactly
5 what his dates for performance and what he intended to
6 do?

7 A. I believe so.

8 MR. EKLUND: That's all.

9 MR. WELK: Just one quick.

10 REDIRECT EXAMINATION

11 BY MR. WELK:

12 Q. Did U S West ever get a copy of Exhibit 5-A?
13 Is that your testimony?

14 A. Boy, I don't know if they would have got it.
15 I know he submitted it to Bob.

16 Q. That wouldn't have been typical that U S West
17 would have got Exhibit 5-A?

18 A. I don't believe he brought enough copies for
19 everybody, no.

20 MR. WELK: That's all I have.

21 MS. WIEST: Thank you. Next witness.

22 MR. WELK: Mr. Craig Smith. In fairness to
23 Mr. Smith, I had him come at 1:30 and I asked him if he
24 could bring some other work, but I apologize to having
25 him wait all day.

CRAIG SMITH,

called as a witness, being first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELK:

Q. Will you state your name, please?

A. Craig Smith.

Q. And by whom are you employed?

A. South Dakota Department of Transportation.

Q. Are you a licensed professional engineer?

A. I am.

Q. And how long have you been licensed?

A. Oh, twenty-seven years.

Q. And in what field of engineering are you
licensed?

A. Civil.

Q. And what are your duties and responsibilities
with the Department of Transportation?

A. I am responsible for assisting in the
planning and development of airport projects, which
includes reviewing architectural agreements,
engineering agreements, all the way through reviewing
plans and specs for compliance to state and federal
regulations, and also construction inspection and
reviewing final reports.

1 Q. And how long have you been in that position
2 for the state of South Dakota with regard to airport
3 projects?

4 A. Twenty-three years.

5 Q. You've sat here all day and listened. I'd
6 like for you to tell the Commission what your function
7 is in regard to this Rapid City project.

8 A. Well, our function is to insure that state
9 and federal requirements are met primarily in the
10 construction specifications and dimensions so basically
11 that the plans and specifications as set forth are met
12 during construction.

13 Q. Do you go out and inspect the project from
14 time to time?

15 A. I sometimes when opportunity provides I do
16 make interim inspections, but I do assist at all final
17 inspections on all airports.

18 Q. Do you get copies of progress reports about
19 if there's any problems with the job?

20 A. I do.

21 Q. And who do you look to as the state of South
22 Dakota when these airport projects are being
23 constructed to solve the construction problems?

24 A. Well, the consultant engineer is retained by
25 the sponsor the city and with the responsibility of the

1 construction administration of the project, so
2 basically we look at the consultant engineer.

3 Q. And is it in your view, in your experience in
4 20-some years, it's the engineer or architect that does
5 the minutes of the meetings?

6 A. That's correct.

7 Q. Now, were you involved in the early planning
8 of this project? Where did you come into it? Where
9 does the state of South Dakota Department of
10 Transportation come into this project?

11 A. We come in at the early stages when FAA maybe
12 makes an inspection of the airport and made the
13 requirement. In this particular case that they wanted
14 the runway safety area extended.

15 Q. You were sitting in the audience when another
16 witness was testifying and you wanted to offer some
17 information regarding the contracting process; is that
18 correct?

19 A. Right.

20 Q. Would you tell the Commission what you wanted
21 to indicate about how these awards are made through the
22 city and how the Notice to Proceed occurs?

23 A. Well, after bid opening, naturally they have
24 to have concurrence by the city of Rapid City because
25 they sign the grant. They actually get the money. So

1 it's the contract -- the contract is between the city
2 and the contractor. Once that happens, then when the
3 award is made officially to the contractor, the
4 consultant will send him contract documents to
5 complete, which they basically sign the contract and
6 get his performance in payment bonds. And the reason I
7 interrupted was the fact that I think it was
8 Commissioner Nelson that said -- well, or someone, or
9 Commissioner Burg said, do you hold a preconstruction
10 conference ahead of signing the contract. We do to
11 expedite it. We did in this project. We -- just to
12 expedite the project, we did it in this case.

13 Q. And is it just the purpose that you wanted to
14 get the project done?

15 A. Yes, get it started.

16 Q. All right. This meeting on May 30th, then, I
17 heard some of the testimony, as you've been here today,
18 as far as what's relevant today. You were the person
19 at least during the first 30 minutes or so conducting
20 the meeting?

21 A. The agenda that you see is generic. It has
22 worked in almost all cases. The only time that you'll
23 see any additional items on the agenda is a very, very
24 complex project like maybe a construction of runway at
25 Rapid City or large Air Cargo at Sioux Falls or large

1 project like at Aberdeen. The agenda itself normally
2 works, and there is ample opportunity for everybody
3 that's at that meeting to ask questions and that's why
4 it's there. If we went into detail, we would be there
5 as long as we are today and longer if we went into
6 detail. The idea is to get everybody together and to
7 communicate. We like to see a win-win situation when
8 we're spending taxpayers' money. And this is -- we
9 like to keep everybody informed. And the intent is
10 there.

11 Q. Well, when you left that meeting, what was
12 your understanding? You heard Mr. Serfling's
13 testimony; you heard Mr. Norton. What was your
14 understanding when you left this meeting about the
15 relocation of the U S West cables?

16 A. I guess to me there was probably no deadline
17 of when that was going to be completed.

18 Q. And is that typical when you leave these
19 construction meetings?

20 A. Well, as stated earlier, we leave that
21 responsibility to the contractor and the utility
22 company. They're the people that have to work it.

23 Q. And you don't sit around these
24 preconstruction meetings and talk about when the cable
25 is going to be relocated?

1 A. No.

2 Q. Did you understand when you left that meeting
3 that U S West would be working after the Notice to
4 Proceed?

5 A. I think my recollection is, yes, they would
6 be.

7 Q. So you knew that. And how they would work
8 together and whether Mr. Sand would go forward during
9 certain parts of the sequencing of the work, those are
10 matters that are left to the contractor and the
11 utility?

12 A. True, correct.

13 Q. All these reports as you went through the
14 project and at least got the reports and did the
15 inspection, were you aware there was any problems with
16 the project?

17 A. Not serious problems. Normally we get
18 involved when it is quite serious. The airport
19 management and the consultant engineers are advised to
20 give us a call and get us involved.

21 Q. Was there any involvement that you had in
22 this project?

23 A. Regarding the relocation?

24 Q. The utility.

25 A. No.

1 Q. So you didn't believe, based on your
2 experience, this was any serious concern to the
3 project?

4 A. Not from the information that I had.

5 MR. WELK: I have nothing further.

6 MS. WIEST: Mr. Eklund.

7 CROSS-EXAMINATION

8 BY MR. EKLUND:

9 Q. Well, as far as you're concerned, then, how
10 many yards of dirt were to be moved in this project?

11 A. Oh, I think there's -- remember, I'm
12 responsible for all the projects in South Dakota and
13 carry the numbers around. They told me in engineering
14 school when I went, they said if you're not sure, look
15 it up. Don't ever make a false statement until someone
16 checks it. And I would guess what we're looking at,
17 what were we, a couple hundred thousand yards?

18 Q. I think Mr. Sand testified to 240,000 yards
19 in this project.

20 A. Okay.

21 Q. Just about all of that is somewhere in the
22 neighborhood of that fiber optic cable, isn't it?

23 A. I would have to look at the plans a little
24 bit closer to make a statement like that.

25 Q. Well, it stands to reason that if I

1 understand this blue line is the cable and the black
2 line is adjacent to it and off to the southeast is the
3 existing county road. And that county road was to be
4 obliterated, wasn't it, as part of the project?

5 A. True.

6 Q. So it stands to reason they couldn't very
7 well do much on the project until something happened
8 with that fiber optic cable, could they, the dirt
9 contractor?

10 A. Well, from what is shown here, one would
11 assume that.

12 Q. Yeah. And even if you looked at the detailed
13 plan, you would assume -- make the same assumption,
14 wouldn't you?

15 A. Well, I think you have to go look and see
16 where the amount of dirt, you know, that they were
17 working with as far as the unclassified excavation from
18 the borrow and how much dirt they had to put in the
19 safety area how they coordinate the work. We try not
20 to tell the contractor on how to operate because no two
21 contractors operate alike. And as soon as you do tell
22 them how to do it, you probably run the cost up. But
23 normally a contractor has its own ideas.

24 Q. Well, in this instance the bid specifications
25 did tell the contractor what his sequence of operations

1 were to be, did they not?

2 A. We stated that, but if the contractor wants
3 to change that, he has the option.

4 Q. Well, what else was he going to do?

5 A. I'm not a contractor. I'm not in that
6 business.

7 MR. EKLUND: That's all.

8 MS. WIEST: Ms. Cremer?

9 MS. CREMER: I have nothing.

10 (AT THIS TIME A SHORT RECESS WAS TAKEN.)

11 MS. WIEST: Commissioners have any questions
12 of this witness?

13 CHAIRMAN BURG: Yeah, I have a couple. Is
14 the architect the spokesman or consultant for the city?

15 A. Yes, he is hired by the city.

16 CHAIRMAN BURG: So he should be representing
17 and making sure they're getting their money's worth and
18 the taxpayers are, too, right?

19 A. That's right.

20 CHAIRMAN BURG: Do you review the contract
21 specs? Is that part of your job?

22 A. Yes.

23 CHAIRMAN BURG: Did you review these?

24 A. Yes.

25 CHAIRMAN BURG: Did you feel that the

1 description -- or were you aware, let me say, of the
2 importance of the fiber optic cable and the difficulty
3 of moving it?

4 A. No.

5 CHAIRMAN BURG: Do you think the specs made
6 that clear to the contractor?

7 A. Well, to answer it another way, we rely --
8 Commissioner Burg, we rely on the contractor when he
9 bids the project. I believe in this project we had a
10 pre-bid meeting maybe two weeks, at least ten days
11 ahead of the bid; and we asked the contractors to
12 attend that meeting and to have input as to the
13 importance of the -- if there's any changes in the
14 plans and specifications. And that's something we have
15 started to insure, well, to avoid situations like it.

16 CHAIRMAN BURG: Was U S West at that meeting,
17 at that pre-bid meeting?

18 A. I can't say. I don't recall that I was able
19 to meet it because of the weather, but I'm quite sure
20 the pre-bid meeting was held.

21 CHAIRMAN BURG: So you're satisfied that the
22 contract -- that the architect in this case gave
23 adequate information as far as the utilities in the
24 specs?

25 A. Well, it's hard for me to answer that without

1 having what happened at the pre-bid because we try to
2 cover that at that time, Commissioner Burg.

3 CHAIRMAN BURG: I guess the thing that I'm
4 trying to get to here is what's the responsibilities of
5 the architect in preparing the bid?

6 A. Well, he has to certify that they meet
7 federal and state standards. That's --

8 CHAIRMAN BURG: And aren't they responsible
9 to make sure that everything involving that bid is
10 basically considered?

11 A. Well, they have to certify the plans and
12 specifications, I'll put it that way.

13 CHAIRMAN BURG: What if there's a conflict
14 between the contractor and the utility? I mean what
15 we've heard here today is the utilities are just
16 something that's there. It's up to the contractor to
17 make sure they get done. They do have certain specs
18 they have to meet and they have a time frame they have
19 to get it done in. What if the utilities hold them
20 up? He's going to make a utility move because there's
21 no contract between that utility and the contractor.

22 A. It's difficult for me to answer that because
23 in all my years of working with airports, we haven't
24 had a problem like this.

25 CHAIRMAN BURG: How about highways? Do you

1 work with highways too?

2 A. At one time I did, and that's twenty-three
3 years ago.

4 CHAIRMAN BURG: Did you work with utilities
5 when that occurred?

6 A. No, I did not.

7 CHAIRMAN BURG: I'm just trying to figure
8 out, you know, who settles these conflicts, if there is
9 a difference when it occurs. Because it looks to me
10 like the contractor is being held responsible that
11 everybody else does everything when they should and yet
12 they have no leverage.

13 A. And I think that's the reason we had One Call
14 got initiated to try to resolve some of these.

15 CHAIRMAN BURG: Do you think -- you heard the
16 discussion in this do you think One Call worked
17 adequately here?

18 A. I have not reviewed -- Commissioner Burg, I
19 have not reviewed any of the information regarding One
20 Call.

21 CHAIRMAN BURG: That's all I have.

22 MS. WIEST: Any other questions from the
23 Commissioners?

24 COMMISSIONER NELSON: I have one. If someone
25 had -- you said one of your primary roles is to make

1 sure the state and federal regulations and
2 specifications and standards are lived up to. If
3 someone wanted to deviate from the specifications, who
4 would give that authority?

5 A. Depending on what the deviation was,
6 Commissioner Nelson. If it was in the specifications,
7 we would send it probably to the Airport District
8 Office in Bismarck and then would go to the region; and
9 if it was critical enough, it would go to Washington.
10 But we do not have too many modifications to our
11 specifications.

12 COMMISSIONER NELSON: Well, let's say we were
13 talking about in the area of changing in the time lines
14 and the work schedule. Who would -- when the
15 construction company, Sand Construction, were to ask
16 for an extension because of delays, who would make that
17 final decision --

18 A. Well --

19 COMMISSIONER NELSON: -- whether or not they
20 should or shouldn't get it?

21 A. We'd all be involved. The state would and
22 the sponsor. The sponsor would be involved to make
23 that determination. It would be based on what the
24 request was, what it entailed. We have granted time
25 extensions.

1 COMMISSIONER NELSON: Who would be granting
2 the -- deciding whether or not assessing the liquidated
3 damages?

4 A. We would probably meet -- the state would
5 meet with the city and the architect and review all the
6 documentation, the facts leading up to the request, and
7 make a determination based on the facts.

8 COMMISSIONER NELSON: After sitting here all
9 day and listening to all the stuff now, does it seem
10 like there was adequate information about the fiber
11 optic cable and how long it was going to take to do all
12 this?

13 A. In response to that, Commissioner Nelson, the
14 statement that was made at the preconstruction
15 conference that there was no determination, exact
16 determination, of when that cable was going to be
17 converted or available, I should say converted, when
18 the work was going to be done, that is the time when we
19 have contractors, if they're at a meeting or
20 subcontractors, they get busy right at our meetings.
21 We don't make a part of our meetings to work out some
22 details for scheduling. And I'll relate this in Sioux
23 Falls where we did the Air Cargo. We had like, I don't
24 know, I think there was like 40 people involved in that
25 project. We used the same agenda. We added a few

1 things. But after the meeting was over, the air in the
2 conference room in the airport was buzzing because the
3 contractors were talking to the subcontractors and
4 already working that out amongst themselves. We can't
5 get involved and dictate when they're going to do those
6 things because soon as you do, you accept part of the
7 responsibility and that's not one of our charges.

8 COMMISSIONER NELSON: Okay. Thank you.

9 CHAIRMAN BURG: This just prompts one short
10 one. Somebody indicated that the utilities were
11 dismissed after the short brief explanation from that
12 preconference meeting, from that preconstruction
13 meeting.

14 A. Right.

15 CHAIRMAN BURG: If they were dismissed, how
16 could they take place?

17 A. The contractor -- like I stated before, the
18 contractor has the responsibility to contact that
19 utility company. He has to work with them. We've had
20 projects where we've had electrical contractors, they
21 had a separate schedule on airport project. And we
22 state that cooperation is necessary, and that's all we
23 get. You know, we say you have to work with that
24 lighting contractor. It's a separate schedule. He may
25 get done with his paving on a large project and yet

1 that lighting has to be done very soon in order to open
2 the runway at night. So we expect it. And I don't
3 know what details happens after that but normally the
4 projects are completed on time.

5 COMMISSIONER SCHOENFELDER: Well, if you
6 expect it, then why don't you require it?

7 A. It is required.

8 COMMISSIONER SCHOENFELDER: Well, expect and
9 require are two different words in my vocabulary. In
10 this preconstruction conference notes it says --
11 explain this to me. Craig Smith emphasized to the
12 contractor that no work shall be performed within 50
13 feet of the local or without prior approval and 24-hour
14 notice to the FAA. Is that totally to do with FAA, or
15 is it something else? I don't understand.

16 A. It's part of their instrument landing
17 system. And the localizer sends out a beam so the
18 plane can guide you through the fog and inclement
19 weather. And if you get close to it, you may disturb a
20 signal and it will malfunction. So that was the reason
21 you had to be notified and work around that. And FAA
22 wanted to be out there and basically monitor your work,
23 Ray, when you're working in that area.

24 COMMISSIONER SCHOENFELDER: That's how you
25 know that it's not violated if the FAA sends people out

1 there to watch it?

2 A. Yes. And they check the signal make sure
3 it's accurate after construction is completed.

4 COMMISSIONER SCHOENFELDER: Thank you.

5 A. You're welcome.

6 MS. WIEST: Any more questions from the
7 Commissioners? Any redirect, Mr. Welk?

8 MR. WELK: No, thank you.

9 MS. WIEST: Thank you. Do you have any
10 further witnesses, Mr. Welk?

11 MR. WELK: No, I do not.

12 MS. WIEST: Do you have any witnesses, Ms.
13 Cremer?

14 MS. CREMER: No, I do not.

15 MS. WIEST: Do you have any rebuttal
16 witnesses, Mr. Eklund?

17 MR. EKLUND: No.

18 MS. WIEST: Okay. Thank you. Let's go off
19 the record. Do any of the parties or the Commissioners
20 want briefs on this matter?

21 (A DISCUSSION WAS HELD OFF THE RECORD.)

22 MR. EKLUND: Okay. Well, I don't think
23 certainly that any amount of impassioned plea is going
24 to have much of an effect on you folks' ears, but I
25 think it's pretty apparent to me from this situation

1 that the attitude of U S West in this proceeding is the
2 same one that they had during the preconstruction phase
3 and during the preconstruction meeting. That this is
4 just no big deal.

5 And when the circumstances surface that
6 really the movement of their line is the critical
7 portion of this construction project, they made no
8 mention of that at the preconstruction meeting or
9 thereafter. They seem to take the attitude that the
10 Sands could adjust their schedule to work around U S
11 West's schedule, whatever it might be, scheduling
12 people to work at night or the switching process. None
13 of this was described to either the architect, who it's
14 apparent to me didn't have the full appreciation of
15 this or anybody else. The one company with that kind
16 of specialized knowledge was U S West, and they didn't
17 see fit to address that issue apparently any more than
18 about five minutes at a preconstruction meeting. And
19 they led Mr. Sand to believe that this cable would be
20 delivered, be installed, and he could go ahead with the
21 project unimpeded.

22 Now, that's not the way it worked. He was
23 given a Notice to Proceed. I think a Notice to Proceed
24 is the owner's certification through their architects
25 and engineers that that contractor can go on the

1 project and do what he needs to do to complete it.
2 Now, certainly there can be some coordination with
3 other entities such as utility companies and things
4 like that. But in this case he has no input in any
5 coordination. He has heavy, expensive equipment and
6 labor on site to do the job; and they can't use it
7 efficiently. I think that's apparent from both what
8 Mr. Sand said and what from what Mr. Stulken says, and
9 everybody else seems to talk around that. Well, he
10 went in there; he did the job as best he could, but in
11 so doing it cost him money.

12 Now, when in calculating these damages they
13 used rates established by the Department of
14 Transportation. Sure, counsel can sit over here and
15 say, well, he didn't have any other jobs. Well, no big
16 jobs, but they could keep that equipment moving. And
17 that really misses the point, too, that when he goes
18 out to that job, they devote this equipment to that job
19 to do it and to use it efficiently; and when they can't
20 do 'hat, it costs money. He may have made a profit on
21 this job. I submit that's besides the point. They
22 have to make a profit to stay in business. If they
23 don't make a profit, then they're out of business. And
24 the people of the state of South Dakota are really in
25 trouble when they come to find responsible contractors

1 to do these jobs. I think the Sands have been
2 conservative in calculating their damages, and nobody
3 really seemed to question those other than maybe some
4 potshots at them.

5 But I think U S West does have a duty, not
6 only statutorily, but I think when they show up at a
7 preconstruction contract like this, they used the rates
8 based in the state of South Dakota for free. That's
9 really their consideration for this. They get that
10 benefit. They have all sorts of other benefits that
11 they get. They get to charge the public based on rates
12 set by the Commission. And so when it comes down to
13 costing \$23,000 to move that, you could bet someplace
14 along the line they're going to figure that in their
15 rates. And that's what I have.

16 MS. WIEST: Mr. Welk.

17 MR. WELK: Thank you. I re-urge, again, the
18 Commission to look at the jurisdiction they have over
19 this matter. A tariff is introduced, Exhibit 17; and I
20 respectfully submit that does not have any application
21 to this matter. That has to deal with a customer
22 relocation.

23 And I know you don't want to hear this, but I
24 have to make this argument for my client anyway. You
25 don't have the ability -- the legislature has not given

1 you the authority that every time there's a telephone
2 line involved, that you have jurisdiction and the power
3 to decide the dispute. I know you don't want to hear
4 that, but that's what the law is. This is a classic
5 contract claim, and it ought to be in the courts, and
6 we ought to be arguing about what we heard today. And
7 I would suggest to you that you do not have
8 jurisdiction over this matter. This is a contract
9 matter, if anything, between these two parties. We've
10 all glossed over the jurisdiction very easily, but you
11 have to look at it. You have a responsibility to see
12 what is your jurisdiction in this matter, and they have
13 to point that out. And this tariff does not provide,
14 in my opinion, the jurisdiction for this Commission.

15 Also, as a matter of classic contract law,
16 all right? I mean one principle of law that we know,
17 and you've seen this through the briefs. The story
18 does not get any better than what came out of Mr.
19 Sand's mouth. They cannot assert a position in this
20 case better than what Mr. Sand said. And he said, "We
21 had" -- and I asked him specifically. "We had this
22 kind of oral agreement that they put the cable in and
23 there really wasn't a time frame." And I would submit
24 respectfully to you as a matter of law that is not
25 sufficient to constitute consent under the law.

1 In order to have a contract -- and I put it
2 in the brief -- there are four major things, but one of
3 them is consent that you agree to do something in a
4 specific time. There wasn't that. And you didn't hear
5 that from any witness today that there was consent.
6 There's also no consideration for a contract. U S West
7 got paid 23,000 bucks. There was no consideration that
8 went back and forth.

9 Now, that's the law in regard to contracts,
10 and that's the law you have to apply if you're going to
11 apply contract law. You know the issue about damages
12 in the law, you got to have an actual loss. It is
13 undisputed on this record there was no loss. Now, if
14 he would have moved this equipment to other jobs, I
15 might be sitting here agreeing to that. He testified
16 that equipment sat there, was going to sit there all
17 summer. There has to be an actual loss. What loss was
18 suffered? He can put all these numbers down and make
19 these calculations, but what is the actual physical
20 loss? And that has not been shown on this record, and
21 that came out of his mouth. I didn't make that up.
22 That's what he said.

23 He has the burden to show that. You have the
24 jurisdiction. He has the burden to show that the
25 contract existed and all the elements. And I

1 respectfully submit that he has not. And I
2 respectfully request that the complaint be dismissed.

3 MS. WIEST: Do you have any closing, Ms.
4 Cremer?

5 MR. WELK: No.

6 MS. WIEST: The Commission will take this
7 under advisement.

8 (THE HEARING CONCLUDED AT 6:30 P.M.)

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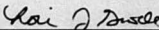
1 STATE OF SOUTH DAKOTA)
2 COUNTY OF HUGHES)
3

4 I, Lori J. Grode, RMR, Notary Public, in and
5 for the State of South Dakota, do hereby certify that
6 the above hearing, pages 1 through 201, inclusive, was
7 recorded stenographically by me and reduced to
8 typewriting.

9 I FURTHER CERTIFY that the foregoing
10 transcript of the said hearing is a true and correct
11 transcript of the stenographic notes at the time and
12 place specified hereinbefore.

13 I FURTHER CERTIFY that I am not a relative or
14 employee or attorney or counsel of any of the parties,
15 nor a relative or employee of such attorney or counsel,
16 or financially interested directly or indirectly in
17 this action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal of office at Pierre, South Dakota, this
20 24th day of November 1997.

21
22 
23 Lori J. Grode, RMR
24
25

91444-26-22222

NEXT

DOCUMENT (S)

DISREGARD

BACKGROUND

TC97-142

8/8/97	1	Complaint	Raymond Sand	X	X	
10/7/97	2	Response to Complaint and Motion to Dismiss		X	X	
11/17/97	3	Amended Response to Complaint and Motion to Dismiss		X	X	
	4	sketch of plans & specs		X	X	
	5A	Progress Schedule		X	X	
	B	"		with drawings		
	C	"		X	X	
	6	5-30-97 hand written typewritten		X	X	
	7	5-30-97 notes		X	X	
	8	6-17-97 letter to the court		X	X	
	9	6-17-97 req. for deposition		X	✓	
	10	6-20-97 minutes		X	X	
	11	6-27-97 minutes		X	X	
	12	7-11-97 minutes		X		
	13	more damage calculation		X	admit 1st page	X last 3 pages
	14	Portions of Complaint & K	incidentally pg 21	X		
	15	notice to produce		X	X	
	16	USW map		X	X	
	17	USW tariff		X	X	
	18	1 eagle ticket		X	X	

PLEASE TYPE OR PRINT CLEARLY

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

TC97-142

RECEIVED

AUG 08 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

COMPLAINT

Complainant(s): (The party filing the complaint)		Respondent(s): (The person or company complained against)	
Name	Raymond & Genene Sand dba Sand Construction	Contact Person	Dennis Serfling
Address	RR 3, Box 30A	Company	US WEST COMMUNICATIONS
City, State, Zip	Dallas, S. D. 57529	Address	612 Mt. Rushmore Road
Work Phone	(605)923-7197	City, State, Zip	P.O. Box 100 Rapid City, S.D. 57709
Home Phone	(605)835-9308	Work Phone	(605)394-4582
Cellular Phone	(605)222-2071	Cellular Phone	
Fax	(605)835-9308 or (605)923-7197	Fax	

If the Complainant is represented by an attorney, please list the attorney's name, address, telephone number and fax number below:
If Complainant is not represented by an attorney, please leave blank:

The facts giving rise to my complaint:

Our complaint is in reference to telephone line location and moving line for Project AIP 3-46-0048-21 Rapid City Regional Airport County Road Relocation, County Road C232, and Construct Runway 14 Safety Area, Pennington County.

Bid date for this project was 5/9/97. At that time or before, the affected utilities were aware that utility relocation would be necessary. A pre-construction meeting was held on 5/30/97. US WEST representative Dennis Serfling was present. Raymond Sand stated that he would like to begin the project as soon as possible--at least by June 9th. Dennis Serfling said US WEST was waiting for cable to arrive for the fibre optic line move and that expected arrival was 6/3/97 after which they would proceed to install it.

Sand Const. notified One Call Notification shortly after the meeting as a precautionary measure. We were issued ticket #23361.

The project owners' project paperwork was not completed as rapidly as expected; therefore, Sand Const. didn't begin work until 6/16/97. The telephone line relocation work in the county road work area was not completed, we had no choice but to try to work around it. A fibre optic line runs up the slope, starting at the southwest end of the project and runs on through the project, including another critical area in the middle of the project where we had to install 268 LF of 48" reinforced concrete pipe. With this barrier in place

NOTE: Please attach additional pages, if necessary, to which may pertain to your complaint.

ENCLOSURE

to enclose copies of any bills or other documents

SEE COMPLAINT FACTS, PAGE TWO

I ask that the Commission order the Respondent to (What do you think the Commission should do?)

We request that the Commission order the Respondent to pay the losses due to the delay in utility relocation. We request that the Commission order the Respondent to pay the attorney's fees and costs of these losses from the Respondent's pocket. We request that the Commission order the Respondent to pay for justification of these losses.

Signature of Complainant

Signature of Attorney

Signature of Complainant Raymond Sand Date 8-7-97

State of South Dakota
County of Pennington

On this 8th day of August, 1997, before me, the undersigned, a Notary Public in and for the State of South Dakota, personally appeared Raymond Sand, known to me to be the person whose name is subscribed to the foregoing instrument, and who duly acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Notary Public

(SEAL)
My commission expires

any orderly progression of our work was destroyed. We couldn't build our slopes right because the line ran through them. We were hauling dirt 1000' rather than the 100' it normally would have taken. We had four scrapers or earthmovers on the project (2 TS 14s & 2 Cat 637s). We couldn't use the 637s because we would have had to cut the line in order to find enough dirt to haul. As of 6/19/97 we couldn't haul any more dirt with the line in the way. This left three employees with nothing to do. Our pipe crew had begun installation of the 48" RCP 6/17/97. No line location through the affected area was marked. Raymond Sand, project supt. & owner of Sand Const. called US WEST representative Dennis Serfling with no results; therefore, he called Alliance of Architects & Engineers, engineers for the project, also Brad Hagen of Rapid City Regional Airport Board, the Public Utilities Commission, and Governor Janklow. Eventually Mike Babbe of US West had Excavating Specialists come out and identify the line, but couldn't give us an exact depth. The delay in identification of the line and resulting confusion made a two day job take 4 1/2 days. The three employees from the dirt crew also helped with the pipe as there was nothing else for them to do. The four man pipe crew was adequate without additional help. Pipe installation was completed 6/23. Mike Babbe of US West told Raymond Sand they would finish relocating lines 6/24. We couldn't continue to wait. Our dirt crew started hauling from the borrow area the morning of 6/24, even though we would have preferred to finish the unclassified excavation first. US West completed their line relocation on 6/26. Therefore, on 6/27 our dirt crew went back to hauling unclassified excavation. In South Dakota every hour of every work day counts because of weather unpredictability. The more than 1 1/2 week delay has run our job into rainy weather. July 3 was our scheduled completion for the county road. By July 8 we had the road up to grade, but frequent rains have delayed finishing & surfacing. Additional maintenance expense has resulted plus loss of job continuity.

• Justification of Losses--Page 1

Note: Equipment rates are from 1993 BlueBook

LOSS OF PRODUCTION--EQUIPMENT DOWN-TIME:

June 16,17,18 Ten hours per day X three days = thirty hours per piece
Production cut to one half

Description	Operating Expense	Hourly Rate
Komatsu Crawler	24.10 Hr.	54.48 Hr.x30= 1634.40
D8H Cat Crawler	24.10 Hr.	54.48 Hr.x30= 1634.40
TS14B Scraper	40.90 Hr.	109.09 Hr.x30= 3270.70
TS14B Scraper	40.90 Hr.	109.09 Hr.x30= 3270.70
Cat 140G Blade	13.70 Hr.	41.80 Hr.x30= 1254.00
JD 770BH Blade	13.70 Hr.	41.80 Hr.x30= 1254.00
JD 4630 Tractor	9.20 Hr.	16.22 Hr.x30= 486.60
Kewanee Commercial Disc		5.54 Hr.x30= 166.20
Cat Sheepsfoot Roller	10.25 Hr.	44.65 Hr.x30= 1339.50
Total :		\$14310.50
Divided by one-half :		\$7155.25

Amount due=

June 16,17,18,19,20,23 NO PRODUCTION STANDBY RATES USED

Description	Operating Ex.	Hourly Rate	Standby Rate W/O Operating Expense
Cat 637 C Scraper	68.85	130.61	61.76 x 60= 3705.60
Cat 637 C Scraper	68.85	130.61	61.76 x 60= 3705.60
Total :			\$7411.20
Standby Rate is Divided by two:		Amount due=	<u>\$3705.60</u>

Justification of Losses--Page 2

LOSS OF PRODUCTION--EQUIPMENT DOWN-TIME, cont.

June 19,20,23

NO PRODUCTION

Description	Operating Ex.	Hourly Rate	Standby Rate W/O Operating Ex.
Komatsu Crawler	24.10	54.48	30.38 x 30= 911.40
TS14B Scraper	40.90	109.09	68.19 x 30=2045.70
TS14B Scraper	40.90	109.09	68.19 x 30=2045.70
D8H Cat Crawler	24.10	54.48	30.38 x 30= 911.40
Cat 140 G Blade	13.70	41.80	28.10 x 30= 843.00
JD 770 BH Blade	13.70	41.80	28.10 x 30= 843.00
Cat Sheepsfoot Roller	10.25	44.65	34.40 x 30=1032.00
JD 4630 Tractor	9.20	16.22	7.02 x 30= 210.60
Kewanee Comm. Disc	5.54	5.54	5.54 x 30= 166.20
Total :			\$9009.00
Standby Rate is Divided by two:		Amount due=	<u>\$4504.50</u>

LABOR COSTS:

Our payroll for the week ending 6/21/97 was \$4306.76 and for the following week ending 6/28/97 it was \$5629.94. We submit that due to the disrupted work schedule we suffered a loss of one half of the manhour production we should have had or:

$$\$4306.76 + \$5629.94 = \$9936.70 + 25\% \text{ overhead or}$$

$$\$2584.18 = \$12520.88 \text{ divided by two} = \underline{\underline{\$6260.44.}}$$

SUMMARY OF CLAIMS:

EQUIPMENT DOWN-TIME, LOSS OF PRODUCTION -----	\$7155.25
	\$3705.60
LABOR COSTS _____	\$4504.50
	\$6260.44
LOSS OF JOB CONTINUITY _____	\$10000.00
TOTAL LOSSES CLAIMED:	<u>\$31625.79</u>

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FAX Received OCT 07 1997

RECEIVED

OCT 08 1997

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

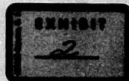
IN THE MATTER OF THE COMPLAINT)
FILED BY RAYMOND AND GENE SAND)
D/B/A SAND CONSTRUCTION, DALLAS,)
SD AGAINST US WEST COMMUNICATIONS,)
INC. REGARDING TELEPHONE LINE)
LOCATION)

RESPONSE TO COMPLAINT
and
MOTION TO DISMISS
TC97-142

Pursuant to the September 17, 1997, Order of the South Dakota Public Utilities Commission ("Commission") in this docket and pursuant to ARSD 20:10:01.11:01, U S WEST Communications, Inc. ("U S WEST") provides the following Response to Complaint and Motion to Dismiss in this matter:

A. FACTUAL RECITATION

1. On or about May 9, 1997, U S WEST was notified of a construction project ("project") at the Rapid City Regional Airport which involved the placement and relocation of telephone lines, both copper and fiber optic cable.
2. On May 13, 1997, U S WEST issued a job order to facilitate this project.
3. On May 20, 1997, U S WEST placed an order with its suppliers for the copper cable, fiber optic cable and other material needed for this project.
4. On May 23, 1997, the copper cable was delivered to U S WEST.
5. On May 29, 1997, a contractor for U S WEST began placement of the copper cable.



6. On May 30, 1997, a representative of U S WEST attended a pre-construction meeting. According to the Complaint, the complainant notified the meeting attendees that he would like to begin the project by June 9, 1997.

7. The U S WEST representative informed the complainant that no firm start date could be provided because U S WEST was waiting for the fiber optic cable to arrive from its supplier. The U S WEST representative advised the complainant that the fiber optic cable was expected to arrive on or about June 3, 1997.

8. On June 10, 1997, the fiber optic cable was delivered to U S WEST.

9. On June 18, 1997, the copper and fiber optic cable placement was completed.

10. After placement of the fiber optic cable, U S WEST began the notification and approval processes necessary to complete a fiber throw. This process normally takes three (3) weeks. In this case, U S WEST escalated the process and completed the fiber throw in significantly less time. The fiber throw was completed on June 26, 1997.

B. AFFIRMATIVE DEFENSES

1. This Complaint does not involve the provision of telephone services to the complainant. Accordingly, the Commission lacks jurisdiction pursuant to SDCL 49-13-1 to adjudicate this matter.

2. U S WEST did not make any commitment to the complainant regarding when the installation of the copper cable or fiber optic cable would be completed.

3. The delay in installation, if any, was caused by the complainant and/or other parties for whom U S WEST is not liable.

4. The delay in installation, if any, was caused in part by construction restrictions placed upon U S WEST by other parties, including but not limited to airport security.

5. Upon receipt of necessary materials, U S WEST completed installation within a reasonable period of time.

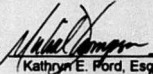
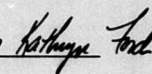
6. The damages sustained by the complainant, if any, were caused by the complainants' own negligence and/or failure to mitigate their damages.

WHEREFORE, U S WEST, having responded to the Complaint, respectfully requests that the Complaint against U S WEST be dismissed in its entirety.

DATED this 7th day of October , 1997.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By:  for 
Kathryn E. Ford, Esq.
William P. Heaston, Esq.
Michael C. Thompson, Esq.
1801 California Street, Suite 5100
Denver, Colorado 80202
(303) 672-2810

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT)
FILED BY RAYMOND AND GENENE SAND)
D/B/A SAND CONSTRUCTION, DALLAS,)
SD AGAINST US WEST COMMUNICATIONS,)
INC. REGARDING TELEPHONE LINE)
LOCATION)

DOCKET NO: TC87-142

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF _____)

AFFIDAVIT OF MIKE BASSE

I, MIKE BASSE, do hereby swear, depose and state that:

- 1 I am over the age of 18, of sound mind, and have personal knowledge of the matters set forth in this affidavit.
- 2 I have been employed by U S WEST Communications, Inc. for nearly twenty-five years. My current job title is Construction Manager and my business address is U S WEST Communications, Inc., 1627 Creek Dr., Rapid City, SD 57701.
- 3 On June 18, 1997, I received notice that the copper and fiber optic cable placement for the Rapid City Regional Airport project was complete.
- 4 I then made the appropriate request to initiate the notification and approval processes necessary to conduct a fiber throw. A fiber throw involves the activation of new fiber and deactivation of old fiber. Because this process may result in temporary loss of service, advance customer notification is required. This notification and approval process generally takes approximately three weeks.

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5. U S WEST completed the fiber throw on June 26, 1987.

FURTHER, AFFIANT SAYETH NOT.

Mike Babbe

Mike Babbe

SUBSCRIBED AND SWORN to before me this 7th day of October, 1987.

Wanda Rikpatrick

Notary Public

My Commission Expires:

10-19-03

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT)
FILED BY RAYMOND AND GENENE SAND)
D/B/A SAND CONSTRUCTION, DALLAS,)
SD AGAINST US WEST COMMUNICATIONS,)
INC. REGARDING TELEPHONE LINE)
LOCATION)

DOCKET NO: TC87-142

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF BENNINGTON)

AFFIDAVIT OF DENNIS SERFLING

I, DENNIS SERFLING, do hereby swear, depose and state that:

1. I am over the age of 18, of sound mind, and have personal knowledge of the matters set forth in this affidavit.
2. I have been employed by U S WEST Communications, Inc. for thirty-seven years. My current job title is field engineer and my business address is U S WEST Communications, Inc., 812 Mount Rushmore Rd., Rapid City, SD 57709.
3. On or about May 9, 1997, I was notified of a tentative construction project at the Rapid City Regional Airport which would involve the placement and relocation of in-ground facilities including copper and fiber optic cable.
4. Shortly after learning of the tentative construction project, I requested Paramount Design, Inc. to determine the current facilities location and what changes would be needed if the tentative construction project were approved.
5. Between May 9 and May 13, 1997, I learned that the Rapid City Regional Airport construction project has been approved.
6. On May 13, 1997, a job order was placed to initiate this project.
7. On May 30, 1997, I attended a pre-construction meeting at which various issues were discussed including utility placement. I recall Mr. Raymond Sand stating that he would like to begin the project on June 9, 1997. At that time, I informed Mr. Sand

444.2235

- NOTARY PUBLIC
JULIE A. HANCOCK
SOUTH DAKOTA

Rena Seyfina

SUBSCRIBED AND SWORN to before me this 6th day of October, 1997.

John A. Hanson

My Commission Expires:

February 6, 2005

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing RESPONSE TO COMPLAINT AND MOTION TO DISMISS of U S WEST Communications, Inc. was facsimile filed on the 7th day of October, 1997, to the following:

William Bullard, Jr. - Facsimile: (605) 773-3809
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

and an original and 10 copies were sent by overnight delivery to the same address.

Additionally, a true and correct copy was deposited into the United States mail, postage prepaid, addressed to the following:

Raymond and Genene Sand
RR 3, Box 30A
Dallas, SD 57529

U S WEST Communications, Inc.



RECEIVED

NOV 18 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**IN THE MATTER OF THE
COMPLAINT FILED BY RAYMOND
AND GENENE SAND D/B/A SAND
CONSTRUCTION, DALLAS, SD
AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION**

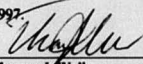
FAX Received NOV 17 1997

TC97-142

MOTION TO AMEND ANSWER

U S WEST Communications, Inc. ("U S WEST") moves, pursuant to ARSD 29:10:01:16, for leave to file the attached Amended Response to Complaint and Motion to Dismiss to clarify on page 2, paragraph 2, that U S WEST's answer contains as affirmative defenses failure of consideration and lack of consent.

Dated this 17th day of November, 1997.



Thomas J. Welk
Tamara A. Wilka
BOYCE, MURPHY, MCDOWELL &
GREENFIELD, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605)336-2424

William P. Heaston
U S WEST Communications, Inc.
1801 California, Suite 5100
Denver, Colorado 80202
Telephone: (303) 896-0752

Attorneys for U S WEST Communications, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE
COMPLAINT FILED BY RAYMOND
AND GENE SAND D/B/A SAND
CONSTRUCTION, DALLAS, SD
AGAINST U S WEST
COMMUNICATIONS, INC.
REGARDING TELEPHONE LINE
LOCATION

TC97-142

AMENDED RESPONSE TO
COMPLAINT and MOTION TO
DISMISS

Pursuant to the September 17, 1997 Order of the South Dakota Public Utilities Commission ("Commission") in this docket and pursuant to ARSD 20:10:01.11:01, U S WEST Communications, Inc. ("U S WEST") provides the following Amended Response to Complaint and Motion to Dismiss in this matter.

A. FACTUAL RECITATION

1. On or about May 9, 1997, U S West was notified of a construction project ("project") at the Rapid City Regional Airport which involved the placement and relocation of telephone lines, both copper and fiber optic cable.
2. On May 13, 1997 U S WEST issued a job order to facilitate this project.
3. On May 20, 1997 U S WEST placed an order with its suppliers for the copper cable, fiber optic cable and other material needed for this project.
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5. On May 29, 1997 a contractor for U S WEST began placement of the copper cable.



6. On May 30, 1997 a representative of U S WEST attended a pre-construction meeting. According to the Complaint, the complainant notified the meeting attendees that he would like to begin the project by June 9, 1997.

7. The U S WEST representative informed the complainant that no firm start date could be provided because U S WEST was waiting for the fiber optic cable to arrive from its supplier. The U S WEST representative advised the complainant that the fiber optic cable was expected to arrive on or about June 3, 1997.

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10. After placement of the fiber optic cable, U S WEST began the notification and approval processes necessary to complete a fiber throw. This process normally takes three (3) weeks. In this case, U S WEST escalated the process and completed the fiber throw in significantly less time. The fiber throw was completed on June 26, 1997.

B. AFFIRMATIVE DEFENSES

1. This Complaint does not involve the provision of telephone services to the complainant. Accordingly, the Commission lacks jurisdiction pursuant to SDCL 49-13-1 to adjudicate this matter.

2. U S WEST did not make any commitment to the complainant regarding when the installation of the copper cable or fiber optic cable would be completed (lack of consent). U S WEST did not receive any consideration from Sand in exchange for placing and relocating the telephone lines. Thus, no contract existed as a matter of law.

3. The delay in installation, if any, was caused by the complainant and/or other parties for whom U S WEST is not liable.

4. The delay in installation, if any, was caused in part by construction restrictions placed upon U S WEST by other parties, including but not limited to airport security.

5. Upon receipt of necessary materials, U S WEST completed installation within a reasonable period of time.

6. The damages sustained by the complainant, if any, were caused by the complainants' own negligence and/or failure to mitigate their damages.

WHEREFORE, U S WEST having responded to the Complaint, respectfully requests that the Complaint against U S WEST be dismissed in its entirety.

Dated this 17th day of November, 1997.



Thomas V. Welk
Tamara A. Wilka
BOYCE, MURPHY, MCDOWELL &
GREENFIELD, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605)336-2424

William P. Heaston
U S WEST Communications, Inc.
1801 California, Suite 5100
Denver, Colorado 80202
Telephone: (303) 896-0752

Attorneys for U S WEST Communications, Inc.

3333
4444
2222
6666
4444
2222

NEXT

DOCUMENT (S)

DISREGARD

BACKGROUND

EXHIBIT

4



100 50 0 100 200

NEW ALIGNMENT
OF BARBED WIRE
FENCE

OBLITERATE
GRAVEL FIELD
ENTRANCE
(INCIDENTAL TO
GRADING WORK)

PROPOSED
FIELD ENTRANCE

PROPOSED
16' GATE

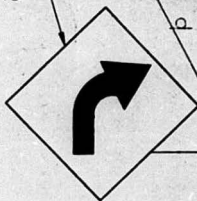
PROPOSED
FIELD
ENTRANCE

PROPOSED 24" RCP CULVERT
(SEE SHEET 23)

STA.
END
RE

30+00

RELOCATE EXISTING
SIGN (SEE NOTE
THIS SHEET)



LIMITS OF
CONSTRUCTION

30+50
ROAD
LOCATION

PT 29+41.82

W1-2R

EXISTING 24" RCP CULVERT
(TO BE RETAINED)
(SEE SHEET 23)

EXISTING GATE

NEW ALIGNMENT
OF BARBED
WIRE FENCE

POST

OBLITERATE
FIELD ENTRANCE

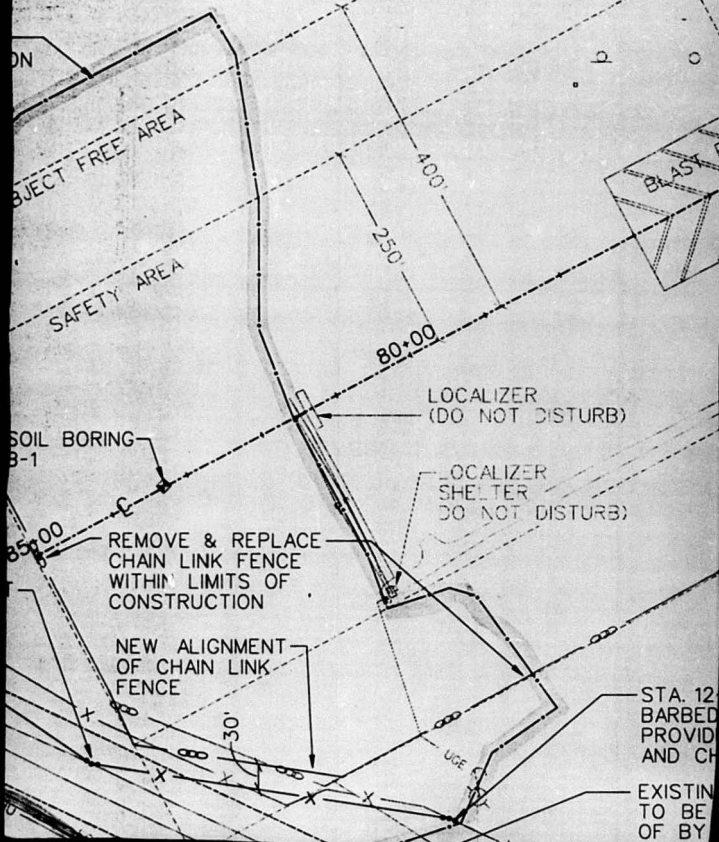
SOIL BORING
B-2

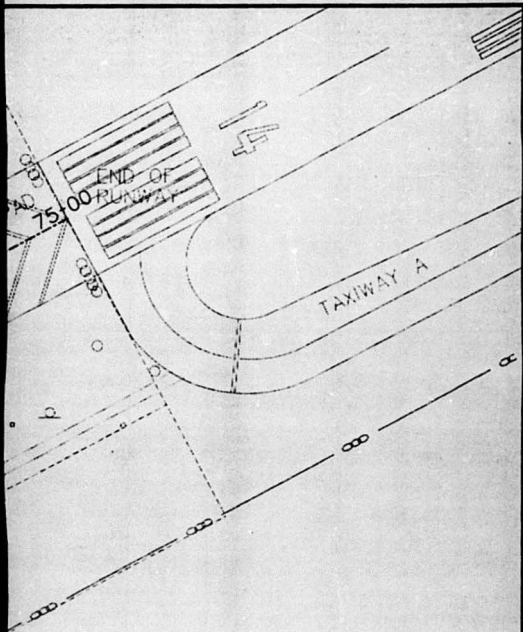
3-POS
PANEL

PI 23+21.67
L = 1309.08'
 $\Delta = 44^\circ 07'13''$
R = 1700.00'

50'

20+00





00, 215' RIGHT - TIE BACK INTO EXISTING
WIRE FENCE WITH A 3-POST PANEL.
A 30 FOOT LANE BETWEEN BARBED WIRE
MAIN LINK FENCE

G TWIN 48" CMP CULVERTS
REMOVED AND DISPOSED
THE CONTRACTOR

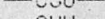
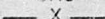
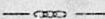
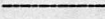
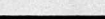
TO GRADING WORK

DRN BY: K. BRENNAN
SCALE: AS SHOWN
DATE: 04/14/97
JOB NO: 96-588
FILE: 588FES01.DGN
REVISIONS:

RAPID CITY REGIONAL AIRPORT
AIP NO. 3-46-0048-21
RAPID CITY, SOUTH DAKOTA

THE CONTRACTOR SHALL COORDINATE THE FENCING OPERATIONS ALONG THE SOUTH SIDE OF THE COUNTY ROAD WITH AIRPORT OPERATIONS. THE AIRPORT PROPERTY OUTSIDE THE CHAIN LINK SECURITY FENCE IS BEING USED FOR THE GRAZING OF LIVESTOCK.

LEGEND

	SURFACE DRAINAGE
	LIMITS OF CONSTRUCTION
	TELEPHONE
	FIBER OPTIC TELEPHONE
	UNDERGROUND ELECTRIC
	OVERHEAD ELECTRIC
	FENCE, BARBED WIRE
	FENCE, CHAIN LINK
	TRANSFORMER
	LIGHTS
	SIGN
	POWER POLE
	ANCHOR
	BOUNDARY LOT 5 RC
	AIRPORT SUBDIVISION NO. 1
	PROPOSED EASEMENT

T = 688.92
Da = 03° 22' 13"

FT. EASEMENT

LIMITS OF
CONSTRUCTION

PROPOSED
COUNTY ROAD C232

PC 16.2

PROPOSED 48" RCP CU
(SEE SHEET 22)

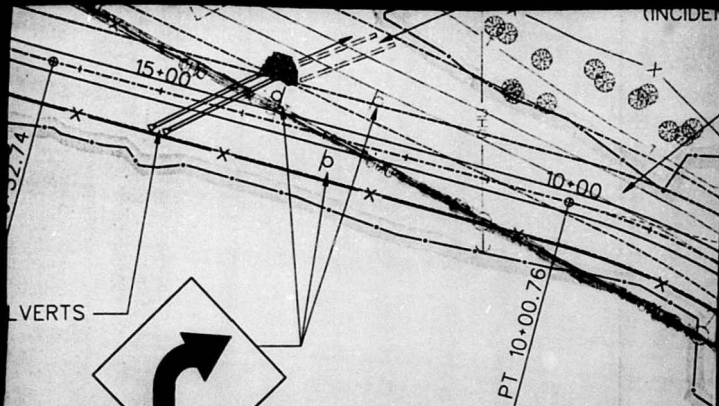
STA. 3+00, 83' LEFT TO STA. 31+00, 50' LEFT -
REMOVE, SALVAGE AND RESET THE BARBED WIRE
FENCE ALONG A LINE, 51 FEET LEFT OF THE NEW
ROAD ALIGNMENT CENTER LINE.

ST. 12+00, 215' RIGHT TO STA. 25+00, 225'
RIGHT - TEMPORARILY REMOVE EXISTING
BARBED WIRE FENCE. RESET THE FENCE
FOLLOWING THE GRADING OPERATION TO
THE LOCATION SHOWN ON THIS SHEET.

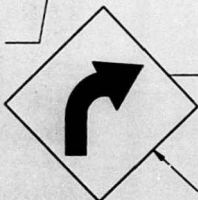
STA. 12+50, 60' RIGHT - REMOVE, SALVAGE
AND RELOCATE EXISTING CURVE SIGN ONTO
NEW ROAD ALIGNMENT, STA. 13+00, 18' LEFT

STA. 21+00, 185' RIGHT - REMOVE, SALVAGE AND
RELOCATE EXISTING CURVE SIGN ONTO NEW
ROAD ALIGNMENT, STA. 13+50, 18' RIGHT

(INCIDENT)



VERTS



W1-2R

RELOCATE EXISTING
SIGN (SEE NOTE
THIS SHEET)

AIRPORT
PROPERTY LINE

ITAL TO GRADING WORK)

EXISTING
COUNTY ROAD C232
(OBLITERATE)

PI 6+10.82
L = 881.37'
 $\Delta = 63^\circ 07' 24''$
R = 800.00'
T = 491.43'
Da = $07^\circ 09' 43''$

STA. 1+50
BEGIN ROAD
RELOCATION

PC 1+19.39

FENCING & PERMANENT SIGNING LAYOUT
PHASE I



SHEET

9

OF

38

PROGRESS SCHEDULE

RAPID CITY AIRPORT

AIP 83-46-0048-21

DATE: 5-30-97

DESCRIPTION	MAY 20 Days		JUNE 20 Days		JULY 20 Days		AUGUST 20 Days		SEPT 20 Days	
	5-31	6-30	7-31	8-31	9-30	10-31	11-30	12-31	1-31	2-28
MOBILIZATION										
SIGNING										
TEMPORARY FENCING										
Stripping Topsoil Install RCP										
UNCLASSIFIED EXC.										
OBLITERATE ROAD										
CRUSHED AGG. BASE										
PLACING TOPSOIL										
RIPRAP AND FILTER FABRIC										
REMOVE CHAIN LINK FENCE & GATE										
REMOVE & RESET CL B FENCE										
BORROW EXC.										
SEEDING, FERT., MULCH & Bales										

SAND CONSTRUCTION
PAVING AND SEWER SAND

DALLAS, SOUTH DAKOTA 57128
(605) 835-9300

P.O. BOX 226



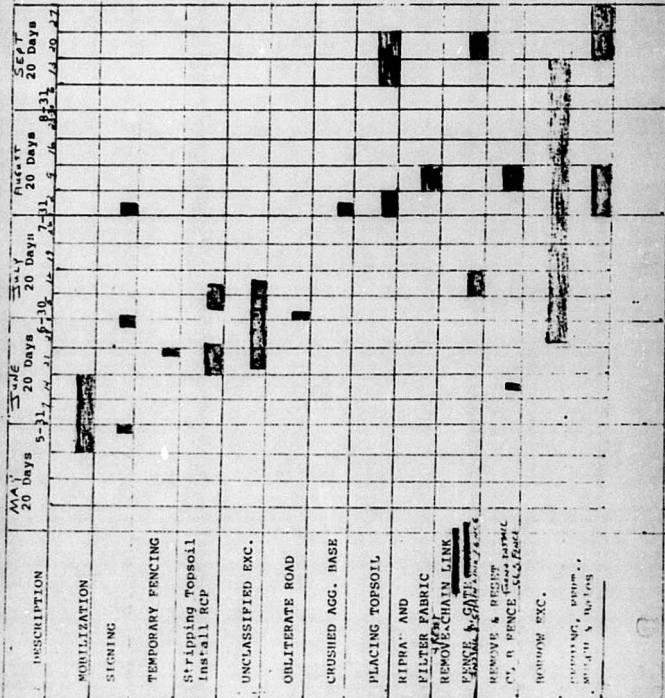
PROGRESS SCHEDULE

RAPID CITY AIRPORT AIP 83-46-0048-21

DATE: 7-10-77

SAND CONSTRUCTION RAYMOND AND GENEENE SAND

P.O. BOX 228
DALLAS, SOUTH DAKOTA 57439
(605) 835-5308



PROGRESS SCHEDULE

RAPID CITY AIRPORT

AIP 93-46-UU66-21

UNCLAS

DESCRIPTION	MAY 20 Days		JUNE 20 Days		JULY 20 Days		AUGUST 20 Days		SEPT 20 Days	
	5-31	6-30	7-31	8-31	9-30	10-31	11-30	12-31	1-31	2-27
MOBILIZATION										
SIGNING										
TEMPORARY FENCING										
Stripping Topsoil Install RCP										
UNCLASSIFIED EXC.										
OBLITERATE ROAD										
CRUSHED AGG. BASE										
PLACING TOPSOIL										
RIPRAP AND FILTER FABRIC										
REMOVE CHAIN LINK FENCE & GATE										
REMOVE & RESET CL B FENCE										
BORROW EXC.										
SEEDING, FERT., MULCH & Bales										

ALLIANCE OF
ARCHITECTS &
ENGINEERS

JUL 28 1997

RECEIVED

U.S. SOUTH DAKOTA STATE
(605) 556-4998

SAND CONSTRUCTION
RAILROAD AND GROUND SAND

File Copy
Job # 93-46
PC to: C&A, Inc.

57 16:41 SAND CON

11:00 AM 7/27/97

PHASE I PRE-CONSTRUCTION MTH

5-10-97

1:15 pm

- CRAIG WENT THROUGH HIS OUTLINE
- CRAIG STATED ALL CORRESPONDENCE SHALL HAVE ASDR
- BOB R. REVIEWED GENERAL SCOPE OF WORK FOR PHASE I.
- ~~CRAIG CONTINUED~~
- BOB R. REVIEWED INT 3 OF THE PLANS.
 - PRINTED OUT STAGING & BARRICADE AREA
 - " " THAT ACCESS ROAD WOULD NEED TO BE TEMPORARILY INSTALLED & PUT ATTACHED AS PER PLANS.
- BOB R. STATED ADE TO DO ALL CONSTRUCTION STARTING INCLUDING REMOVING AREA, ETC.
- IT WAS ADDRESSED THAT CONTRACTOR NEEDS TO MAINTAIN TEMPORARY SECURITY FENCING @ ALL TIMES.
- IT WAS ADDRESSED BY CRAIG THAT NO WORK IS ALLOWED WITHIN 50' OF ILS w/o PRIOR APPROVAL AND 24 HOUR NOTICE. IT WAS MENTIONED BY FMA THAT THEY WOULD PROBABLY NEED TO TAKE ILS OUT OF SERVICE IN MORNING & PUT BACK IN SERVICE @ NIGHT.
- CRAIG STATED THAT ALL VEHICLES MUST HAVE FLAS & VEHICLES. WHITE & ORANGE CHECKERS

8144
UNCLAS
- CRAIG STATED THAT CONTRACTOR MUST MAINTAIN
FREQ. CONTACT W/ TOWNS @ ALL TIMES.

- JUNE 4TH @ BADGE MEETING @ 2:00 P.M.

- CRAIG S. EXPRESSED THE NEED FOR THE
CONTRACTOR HAS TO MAINTAIN INST. CONTROL

- CRAIG SMITH

- COVERED PG. 2 OF AGENDA

- STATED FRA HAS FINAL APPROVAL

- IT WAS STATED THAT NOTICE TO PROCEED COULD
NOT BE ISSUED UNTIL JUNE ~~20TH~~ 16TH.

- US WEST STATED THAT THEY WOULD BE POSSIBLY
STILL WORKING ON MOVING CABLE @ THIS TIME.

- CRAIG S. DISCUSSED THE WEEKLY PROGRESS FORM
TO BE FILLED OUT BY AAR + SIGNED BY AAR
+ CONTRACTOR

- TSS HAD QUESTION ON SIGNING + THAT AAR
CALLED FOR NON-REFLECTIVE. BOB R. STATED
THAT REFLECTIVE WOULD BE OK

FOUNT OPPORTUNITY

- CHARGES STATED WAGE RATES & EMPLOYMENT POSTERS ARE TO BE PLACED IN A CONSPICUOUS & WEATHER PROOF BOARD ON PROJECT SITE.
- PAYROLLS TO BE SUBMITTED WEEKLY INCLUDING SUBCONTRACTORS FOR AFE REVIEW. CAN BE TURNED INTO CASH BY AFE @ END OF JOB.
- ~~FROM~~ FEO FORM 100 WAS TALKED ABOUT BY CHARGE AS PER SPEC.
- CHARGE S. GAVE AFE & CONTRACTOR COPY OF "CONSTRUCTION CONTRACT IDENTIFICATION DATA" FORM ~~AND~~ CONTRACTOR MUST SUBMIT TO APPROPRIATE AGENCIES. SUBCONTRACTORS MUST ALSO FILL THIS FORM OUT.
- WORK BEING PERFORMED BY WIFE WAS ADMITTED BY BOB R. & WIFE REPRESENTATIVE.
 - WIFE EXPECTED THAT COORDINATION w/ CONTRACTOR WOULD BE NEEDED.
- COORDINATION WITH US WEST ^{WILL} ~~WILL~~ ALSO BE REQUIRED.
- CONTRACTS & BONDS. ^{READY TODAY BY SAND. BUT} ~~ARE GIVEN TO AFE BY SAND~~ ^{SAND} ~~SAND~~ THE BONDS ARE ALREADY DATED AND THEY HAVE TO BE RE-DATED ON OR AFTER THE DATE THE CONTRACT IS SIGNED.

314425
- SAND WILL RE-SUBMIT BOND INFO TO THEIR BONDING
COMPANY TO DEED + RESUBMIT BONDING FORMS.

PRECONSTRUCTION MEETINGS

PHASE I CONSTRUCT RUNWAY 14 SAFETY AREA + COUNTY ROAD
AIP 3-46-0048-21
RELOCATION
DANFORD CITY REGIONAL AIRPORT

ATTENDANCE

<u>NAME</u>	<u>REPRESENTING</u>
Bob Rothermel	Alliance of Mich. + Eng's
Darryl A. Rota	" " "
Johnny Francis	Rainbow Tract
John Montgomery	Rainbow Tract
Mike Montgomery	Rainbow Tract
Scott Nash	FAA - AF
Dennis Sorfling	US WEST Communication
Terry L. Roselano	Traffic Safety Services, Inc.
Thomas A. Rota	3RD CONSTRUCTION
George Rota	3rd const.
John R. Rota	Sand Creek
Leary D. Smith	SANTA FE / Puma
DOUG STULKEN	AAR
By Leary, owner	

PRE-CONSTRUCTION CONFERENCE NOTES

RAPID CITY REGIONAL AIRPORT, AIP 3-46-0048-21

Time: 1:15 p.m. (MDT) Date: 5/30/97

Location: Rapid City Regional Airport Conference Room

Project Description: Phase I - Construction (Extension) of the Runway 14 Safety Area and Relocation of County Road C232.

Attendance Roll/Introduction of Attendees

See attached sheet.

Minutes of Meeting Kept by Alliance of Architects and Engineers (AAE)

1. Contractors

Sand Construction, Dallas, South Dakota

2. Contract Required Sequencing, Air Traffic (See Item 10)

3. Proposed Timing

Contractor wants to start as soon as possible. Issue of Notice to Proceed not expected until June 16, 1997. Completion of all work on or before September 30, 1997

4. Engineer/Sponsor Coordinating Authority

Alliance of Architects and Engineers -
Project Manager - E. Dallas Wasserburger, PE/LS
Project Engineer - Robert A. Rothermel, PE
Design Engineer - Gary Norton, PE
Construction Observer - Doug Stulken

Rapid City Regional Airport
Executive Director - Bill Bacon
Operations Officer - Brad Hagen
Director of Maintenance - David Lepine

5. FAA/Sponsor Relationship

6. Sponsor Problems That May Delay Notice to Proceed

The signing of the Construction Permit by County Planning/Highway Department.

Notice to proceed anticipated to be issued not later than June 16.

7. Construction Sequence to Proceed

1. Clearing and Grading

2. Excavation and Foundation

3. Construction of Runway Extension

4. Construction of Taxiway Extension

5. Construction of Safety Area

6. Construction of Roadway

7. Construction of Fencing

8. Construction of Signs

9. Construction of Lighting

10. Construction of Drainage

11. Construction of Utilities

12. Construction of Final Grading

13. Construction of Final Inspection

14. Construction of Final Report

15. Construction of Final Approval

16. Construction of Final Construction

17. Construction of Final Completion

18. Construction of Final Acceptance

19. Construction of Final Release

20. Construction of Final Payment

21. Construction of Final Closeout

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266. Construction of Final Construction

h. Open Trenches, Backfill, Settlement

Contractor shall follow construction safety plan.

i. Dust Control and Environment Factors

Contractor shall be responsible to keep dust levels down so dust does not affect navigation equipment.

j. Sanitary Facilities

Contractor to provide.

11. Estimated Construction Start-Up

June 16, 1997, but, if possible, Sand Construction would like to start the week before (June 11±).

12. Role of Resident Engineer

a. Testing and Test Report File

Testing will be performed by AAE and Maxim Technologies, Inc. Files will be kept at offices of AAE and Maxim.

b. Report of Deficiencies and Corrections

AAE shall report and document any detected deficiencies and action taken to correct the deficiency.

c. Record Keeping

AAE to keep weekly log (provided by State) and daily logs.

d. Diary Including Weather, Progress, Equipment, Construction Staff Including Supervisory, Hours Worked, Materials Delivered, Instructions to Contractor and Record of Principal Visitors

Items to be included in AAE records.

e. Maintenance of As-Built Drawings

AAE will maintain a record set of drawings.

Final copies to be given to Craig Smith with State and to Rapid City Regional Airport.

f. Construction Progress and Inspection Report (FAA Form 5370-1)

AAE to prepare weekly. AAE and Contractor must sign.

13. Construction Progress and Inspection Report (FAA Form 5370-1)

AAE shall report and document any detected deficiencies and action taken to correct the deficiency. AAE stated that

14. Construction Progress and Inspection Report (FAA Form 5370-1)

15. Construction Progress and Inspection Report (FAA Form 5370-1)

AAE shall report and document any detected deficiencies and action taken to correct the deficiency. AAE stated that

16. Construction Progress and Inspection Report (FAA Form 5370-1)

AAE shall report and document any detected deficiencies and action taken to correct the deficiency. AAE stated that

17. Construction Progress and Inspection Report (FAA Form 5370-1)

AAE shall report and document any detected deficiencies and action taken to correct the deficiency. AAE stated that

18. Construction Progress and Inspection Report (FAA Form 5370-1)

AAE shall report and document any detected deficiencies and action taken to correct the deficiency. AAE stated that

19. Construction Progress and Inspection Report (FAA Form 5370-1)

AAE shall report and document any detected deficiencies and action taken to correct the deficiency. AAE stated that

16. Wage Rates, Reports, Posters (FAA)

a. Minimum Wage Rates

To be posted in conspicuous location, weather-proof and on job site.

b. Employee Classification and Payroll

As per wage rate and specs.

c. Review of Payrolls by Sponsor

AAE to review payroll.

17. Civil Rights Requirements - AC 150/5100-15

a. MBE & WBE

As per plans and specs.

b. Equal Employment Opportunity

Proper posters given to Contractor that must be posted on job site. Contractor must comply with page 64 of specs, Section IX. Contractor must submit Form EEO to the appropriate agencies.

c. Certification of Nonsegregated Facilities

Contractor to submit proper form.

18. List of Subcontractors, Superintendents

Contractor to submit to AAE as soon as possible.

19. Prime Contractor Superintendent

Contractor to submit to AAE as soon as possible.

20. Other Items

a. AIP number shall be used on all correspondence.

b. AAE reviewed general scope of work.

c. AAE reviewed sheet 3 of plans and pointed out staging area, access roads, and the fact that Contractor would need to place asphalt millings on access road as noted on the plans.

d. AAE will provide staking including the borrow area (as per specifications).

Contractor shall be responsible to maintain temporary security fencing at all

Contractor shall ensure that all necessary permits shall be performed within 50' of

Contractor shall be responsible to take localizer "off-line" in

Contractor shall be responsible to maintain constant radio contact

Contractor shall be responsible for ensuring the contractors to get their people

Contractor shall be responsible to obtain all necessary permits prior to

Contractor shall be responsible to mark the area on June 16, 1997 and

Contractor shall be responsible to be sent to Craig Smith on a weekly basis

Contractor shall be responsible to submit "Corporate Identification Data" form and submit

Contractor shall be responsible to submit to the Office of Contractor.

Contractor shall be responsible to ensure safety fence performed.

8
1
4
4
2
5
2
5
2

PRE-CONSTRUCTION CONFERENCE ATTENDEES

RAPID CITY REGIONAL AIRPORT, AIP 3-46-0048-21

Time: 1:15 p.m. (MDT) Date: 5/30/97

Location: Rapid City Regional Airport Conference Room

Project Description: Phase I - Construction (Extension) of the Runway 14 Safety Area and Relocation of County Road C232.

NAME	REPRESENTING
Bob Rothermel	Alliance of Architects and Engineers
Gary Norton	Alliance of Architects and Engineers
Johnnie Francis	Rainbow Ind.
Dale Montgomery	Rainbow Ind.
Mike Montgomery	Rainbow Ind.
Scott Nash	FAA/AF
Dennis Serfling	US West Communications
Terry L. Roseland	Traffic Safety Services, Inc.
Gene D. Sand	Sand Construction
Raymond Sand	Sand Construction
John R. Sand	Sand Construction
Craig Smith	Aero - SD DOT, Pierre
Douglas Stulken	Alliance of Architects and Engineer

TRANSMITTAL LETTER

OUR PROJECT #: 96-588

DATE: 6/19/97

TO: All Attendees of Phase I Preconstruction Meeting
See attached list.

ATTN: To Whom It May Concern

RE: Rapid City Regional Airport Improvements Phase I
AIP 3-46-0048-21, 1997



706 West Boulevard
Rapid City, SD 57701
605-342-9470
FAX 605-342-2377
E-MAIL: alliance@rllnw.net

WE TRANSMIT:

☒ herewith	☐ in accordance with your request
☐ hand delivered	☐ under separate cover via pickup
☒ mailed	

FOR YOUR:

☐ approval	☒ review and comment	☐ distribution
☐ use	☒ information	☒ record
☐ signature	☐ per request	☐

THE FOLLOWING:

☐ drawings	☐ specifications	☐ payment request
☐ info	☐ shop drawings	☒ other

REMARKS:

Enclosed is a copy of a letter received from Sand Construction regarding the pre-construction meeting notes. Please review this letter and attach it to the pre-construction meeting notes previously distributed by our office. Should you have any further questions, concerns or comments, please address them in a letter to our office.

ALLIANCE OF ARCHITECTS AND ENGINEERS

Gary A. Norton, PE

COPIES TO: See attached list.

9144.26.264

9144.26.264

9144.26.264

9144.26.264

Raymond and Genevieve Sand
d/b/a SAND CONSTRUCTION
d/b/a SAND TRUCKING
P.O. Box 226 ARS, Box 304
DALLAS, SOUTH DAKOTA 57529

(605) 835-9308

ALLIANCE OF ARCHITECTS & ENGINEERS
706 WEST BOULEVARD
RAPID CITY, S. D. 57701

File Copy 829
Job # 96-588
PC to: Dir, Geny

DATE

6-17-97

SUBJECT PRECONSTRUCTION MEETING MIN

PLANS # ARD 3-46-0048-21

RAPID CITY REGIONAL AIRPORT

RECEIVED

JUN 18 1997

ATTN: BOB RUTHERMEL, PE

ALLIANCE OF
ARCHITECTS &
ENGINEERS

THIS IS WRITTEN NOTICE REGARDING THE CONVERSATION you AND RAY
SAND HAD TODAY. RAY REQUESTED THAT THE 5/30/97 PRE-CONSTRUCTION
MEETING MINUTES SHOULD SAY THAT THE US WEST REPRESENTATIVE PRESENT AT
THE MEETING AGREED THAT THEY WOULD BE DELAYED IN COMPLETING
THEIR WORK UNTIL THE FOLLOWING TUESDAY, JUNE 3RD, WHEN THEY WOULD
RECEIVE THE CABLE. US WEST WOULD THEN PROMISE TO INSMUL IT AND
AKE THE SWITCH.

THANK you.

CC: AIRPORT BOARD,

CRAIG SMITH, ADMINISTRATIVE ENGR.

SIGNED

James D. Sand

☐ PLEASE REPLY ☐ NO REPLY NECESSARY

CO-DIRECTOR - SAND TRUCKING

PRE-CONSTRUCTION CONFERENCE ATTENDEES

RAPID CITY REGIONAL AIRPORT, AIP 3-46-0048-21

Time: 1:15 p.m. (MDT) Date: 5/30/97

Location: Rapid City Regional Airport Conference Room

Project Description: Phase I - Construction (Extension) of the Runway 14 Safety Area and Relocation of County Road C232

NAME	REPRESENTING
Bob Rothermel	Alliance of Architects and Engineers
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Mike Montgomery	Rainbow Ind.
Scott Nash	FAA/AF
Dennis Serfling	US West Communications
Terry L. Roseland	Traffic Safety Services, Inc.
Gene D. Sand	Sand Construction
Raymond Sand	Sand Construction
John R. Sand	Sand Construction
Craig Smith	Aero - SD DOT, Pierre
Douglas Stulken	Alliance of Architects and Engineer

Raymond and Genene Sand
d/b/a SAND CONSTRUCTION
d/b/a SAND TRUCKING
P.O. Box 226 R13, G-13-A
DALLAS, SOUTH DAKOTA 57529

(605) 835-9308

TO

ALLIANCE OF ARCHITECTS & ENGINEERS
706 WEST BOWLING
RAPID CITY, S.D. 57701

File Copy OK
Job # 44-587
PC to: John

DATE 6-17-97

SUBJECT UTILITY DELAY

PROJ. & ASP 3-46-0048-21

RAPID CITY, S.D. 57701

RECEIVED

JUN 19 1997

ATTN: ROBERT ROTHENGL, PE

ALLIANCE OF
ARCHITECTS &
ENGINEERS

US WEST TELEPHONE CO. HAS DELAYED THIS PROJECT BY FAILING TO
COMPLETE THEIR WORK. THIS PROBLEM IS HANDICAPPING THE ORDINARY
PROGRESSION OF THIS PROJECT.

WE REQUEST A TIME EXTENSION FOR THE PERIOD OF DELAY AND A
CLAIM WILL FOLLOW FOR ADDITIONAL TIME AND EXPENSE CAUSED BY
SUCH DELAY.

THANK YOU.

CC: AIRPORT BOARD

CRAIG SMITH, ARCHITECT & ENGR.

☐ PLEASE REPLY ☐ NO REPLY NECESSARY

SIGNED

John Smith
Co. owner



Date: 6-20-97 Time: 1:30 P.M.
96-588

SEE ATTACHED SHEET

- 1) All contract documents have been completed and submitted
- 2) Bulletin Board has been posted on job site in staging area and the appropriate wage rate and employment posters have been placed.
- 3) Weekly certified payrol's should be coming from the contractor within the next week.
- 4) Status of radios is OK. David Lepine stated that once the contractor began to be up in the air operations area he wants to meet with them once more to review safety procedures and radio communication procedures. Sand Construction did not have any problem with this request.

- 1) In accordance with the Contractors Construction Schedule submitted earlier at the Pre-construction Meeting, he has begun work on the relocation of County Road C232 (June 11, 1997) and intends to complete that task before beginning the grading operations on the Safety Area. Sand has installed the 24 inch RCP and at present is installing the 48 inch RCP. The grading operation to date has been concentrated on the section of C232 from Station 0+00 to 14+00. The majority of fill material is coming from the hillside left of centerline, Station 2+00 to 5+00. Much of the topsoil has also been stripped left of centerline from 21+00 to the end.
- 2) Sand Construction (contractor) said progress was slow due to the problems with US West and their moving of the fiber optic cable. West River Electric has relocated the majority of their line.
- 3) It was stated by Alliance of Architects and Engineers (AAE) that the gentleman from the Public Utilities Commission (PUC) was not optimistic that the PUC would have much control over the construction activities of US West.
- 4) Contractor stated that they had been in contact with the US West offices in Denver, Colorado concerning this issue (Mike Gosline: 1-800-242-8153).
- 5) Contractor intends to try and finish the grading work up to the twin culverts if the fiber optic line situation gets resolved and moved.

4. PROBLEMS WHICH IMPEDE PLANNED PROGRESS

- 1) The relocation of the fiber optic telephone lines by US West is taking much longer than the contractor anticipated and according to the contractor, is affecting their progress.
- 2) Contractor stated they are approximately one (1) week behind their schedule. AAE asked if they could make the time up during the contract period. Sand Const. said that once time is lost you never get in back without additional costs.
- 3) AAE asked contractor if they were concerned about meeting the contract completion date of September 30, 1997. The contractor said they were concerned due to the delays with the fiber optic line, but they would adjust their schedule and make the time up if possible.

5. SUBMITTALS

- 1) Shop drawings for concrete pipe have been reviewed by AAE and have been returned to the contractor.
- 2) AAE stated that they had been approached by the gravel surfacing supplier and that they wanted to supply a different material than specified. AAE stated that they had requested a submittal of the gradation and type of material wanted as the substitute. Once the tests and sample have been submitted and review the Engineer will determine whether it is acceptable to use that material.

7. MAINTENANCE OF PROGRESS SCHEDULE AND MEASURES TO REGAIN PROJECTED SCHEDULES

- 1) Contractor will attempt to adjust his work to meet the contract completion date. However, contractor stated they have "lost" approximately a week and are not sure if the time can be made up.
- 2) Contractor is being allowed, at his request, and the approval of Airport personnel, to place a temporary gate (barbed wire or better) on the north-east side of the existing chain link fence. The contractor requested this so he could haul from the borrow to continue with the grading work on the county road. By allowing this the contractor should be unaffected by US West until the fiber optic has been completed. The borrow site and haul roads have been staked by AAE survey staff and is ready for grading operations.

8. COORDINATION OF PROJECTED PROGRESS WITH OTHER CONTRACTORS

- 1) Contractor having conflicts with US West in the relocation of their fiber optic telephone lines.
- 2) Morris Construction is expected to mobilized to Phase II of the project before or on Monday. Contractor said they would work with Morris to the degree necessary to get Morris' equipment past on the county road.
- 3) It was mentioned at this meeting the AAE needed to contact Morris Construction concerning the status of the radios and that Morris needs to still get a radio from the Airport personnel and submit the new one to Airport Operations.

9. PROPOSALS

- 1) None at this time

10. APPLICATION FOR PAYMENT

- 1) Contractor must have their estimate of quantities to AAE by the end of the day on Monday 6-23-97.
- 2) AAE has to review, prepare and have signatures on the payment application by end of Tuesday for submittal to Brad Hagen by Wednesday 6-25-97.
- 3) Contractor was given a copy of the deadline dates that must be followed by AAE and Airport Operations. The contractor must have his quantities to AAE at least 2 days prior to earliest dates shown on the schedule.

11. OTHER BUSINESS

- 1) Roadway approach to temporary gate on east side of fence (entrance to staging area) must be removed upon completion of the project.
- 2) Once contractor begins hauling material from borrow area he must move his staging area and all equipment to the staging area as shown on the plans.
- 3) AAE reminded everyone that the access road into the staging area has been move closer to the fence. Everyone was already aware of this and had no problems with it.
- 4) The asphalt millings are still available to the contractor if he needs them to stabilize his temporary roads.
- 5) Contractor was reminded that they must pull all the fence with extreme care to avoid damage since the plans state the intent is to re-use all of the chain link and barbed wire materials.
- 6) AAE asked if the contractor had any questions or concerns about the staking. The contractor stated he had no questions or concerns at this time.
- 7) Airport personnel would like to look at moving Gate 19 to the east. They said they wanted to address this further at some point later in the contraction.
- 8) AAE stated that compaction tests using the Troxler Nuclear Densometer would begin on the material that the contractor has finished placing and working.
- 9) Contractor was told he may have copies of the Troxler Tests, but it would take a day or so since the copies would need to be made at the office of AAE. Contractor said he had no problem with this as long as AAE's Construction Observer could tell him (and show if the contractor wishes) the results of the tests (i.e. pass or fail).
- 10) AAE stated that additional proctors may need to be taken as conditions dictate and that AAE will take them as needed. It was stated that Maxim Technologies would be doing the proctors and may also be out performing density tests if needed.
- 11) Brad Hagen expressed to the contractor the need to follow the chain of command as spelled out in the plans and specifications (Construction Safety Plan note number 13, plans sheet 5). He stated that Sand Construction should address all concerns to AAE in writing and that AAE would handle the problems and involve the appropriate people and agencies as needed. Brad said this would help eliminate potential confusion and miscommunication. Contractor said he understood Brad's concern and would adhere to the requirements and work through the engineer.

- 0144
25
271
- 12) David Lepine emphasized again the importance that the contractors people understand the safety and security requirements. David said he would notify the tower of impending activity by Sand Construction in the borrow site, along the north side of Runway 5/23, and along the east side of Runway 14 to the north end of the main runway. David said he would like to meet with the contractor and his key people on Monday (or when they begin operation within fenced area) to review safety, security and radio procedures. The contractor stated no objection to this request.
 - 13) AAE stated to contractor that they must keep in mind that they must follow "Best Management Practices" for sediment and erosion control. Contractor stated he understood he needed to do this.
 - 14) AAE stated they would cross-section the topsoil piles to establish topsoil removal quantities. However, it was stated that the contractor needed to shape-up the piles in a manner that they could be cross sectioned. The contractor agreed he needed to shape up the stockpiles.

END MEETING NOTES

NEXT MEETING: FRIDAY JUNE 27, 1997 @ 1:30 PM

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PROGRESS MEETING NO. 1
for
RAPID CITY REGIONAL AIRPORT IMPROVEMENTS, PHASE I
AIP 3-46-0048-21
6/20/1997

ATTENDEES	REPRESENTING
1. Gary A. Norton	Alliance of Architects and Engineers
2. Raymond Sand	Sand Construction
3. Genene Sand	Sand Construction
4. Brad Hagen	Rapid City Regional Airport
5. Douglas Stulken	Alliance of Architects and Engineers
6. Robert Rothermel	Alliance of Architects and Engineers
7. David Lepine	Rapid City Regional Airport
8.	
9.	
10.	
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PROGRESS MEETING NO. 2
for
RAPID CITY REGIONAL AIRPORT IMPROVEMENTS, PHASE I
AIP 3-46-0048-21

Date: 6-27-97

Time: 1:30 p.m.

96-588

1. SIGN-IN / INTRODUCTIONS

SEE ATTACHED SHEET

2. OLD BUSINESS

- 1) USWEST finished moving the fiber optic line in the county road work area on 6-26-97.
- 2) USWEST has another line to move at the north end of the runway adjacent to the chain link fence. Sand Construction feels this line is slowing his progress.

3. REVIEW OF WORK PROGRESS/PROJECT STATUS

- 1) Sand Construction is working on the county road re-alignment. They are able to cut and finish the work on the county road now that the fiber optic line has been moved.
- 2) Sand Construction states that they are approximately 1 to 1 1/2 weeks behind of their schedule. They stated they are trying to get back on schedule and finish by September 30, 1997.
- 3) Sand Construction is concerned about not having enough or having too much topsoil at the completion of the project. They asked what would be done in each of these cases. It was stated that adjustments can be made if the amount of topsoil was known. Ray Sand stated that he has been keeping track of the amount of topsoil. It was further stated that in the airport runway area the grades are more critical and need to be as per the plans. However, some adjustments in the grades on the road shoulders, slopes and ditches could be made to account for extra or a shortfall of topsoil. It was stated that the grades in the ditches must be maintained to ensure adequate drainage.
- 4) Sand Construction asked where they could place their topsoil stockpiles. Brad Hagen stated that they could stockpile the topsoil adjacent to the eastern fence. Brad stated that the piles could not exceed 10' in height. Ray Sand did not have a problem with the location or height limit of the stockpiles.

4. PROBLEMS WHICH IMPEDE PLANNED PROGRESS

- 1) Sand Construction stated that the phone line next to the chain link fence may impede their progress.
- 2) Sand Construction will call USWEST to see if it has been moved and spliced.

5. SUBMITTALS

- 1) Sand Construction submitted Aggregate Base Course and Class 2 RipRap shop drawings from Pete Lien and Sons.
- 2) Ray Sand reviewed and signed the shop drawings on site during the meeting.

7. MAINTENANCE OF PROGRESS SCHEDULE AND MEASURES TO REGAIN PROJECTED SCHEDULES

- 1) Sand Construction stated again that they are 1 to 1 1/2 weeks behind schedule and that they will do their best to get back on schedule.

8. COORDINATION OF PROJECTED PROGRESS WITH OTHER CONTRACTORS

NONE

9. PROPOSALS

NONE

10. APPLICATION FOR PAYMENT

- 1) The first payment application was submitted last week to the owner.
- 2) The contractor was informed that they should get payment on or around July 23, 1997.

11. OTHER BUSINESS

- 1) Brad Hagen mentioned that any time the contractor has people in the Air Operations Area they must have someone at the radio at all times. The contractor acknowledged Brad's concerns and stated that they would make sure to have somebody at the radio at all times when they are working in the Air Operations Area.
- 2) Sand Construction wants to discuss getting extra compensation for the rocks (cobbles) that are in the borrow area material. It was stated that this could be discussed at a later date. Sand Construction did not have a problem with discussing it at a later date.
- 3) Sand Construction wants all correspondence to go to the following address until the project completion:

Sand Construction
16 Oak Road
Box Elder, SD 57719-2208 Phone # (605) 923-7197

- 0144-2275
- 4) Ray Sand asked if they could continue to use the temporary north gate for their daily access. Brad Hagen stated that it was preferred that they use the gate on the east side as per the plans. It was stated that they were allowed to use the north gate during this period so they could continue to proceed in their work due to the delay in the fiber optic moving. However, they must now use the east gate as per the construction safety plan. Ray said he had no problem with this, he just thought he would ask. Brad further stated that the north gate is to be used only for direct access to the borrow area when they need to haul from it.

PROGRESS MEETING NO. 2
for
RAPID CITY REGIONAL AIRPORT IMPROVEMENTS, PHASE I
AIP 3-46-0048-21

ATTENDEES	REPRESENTING
1. Gary A. Norton	Alliance of Architects & Engineers
2. Brad Hagen	Rapid City Regional Airport
3. Genene Sand	Sand Construction
4. Douglas Stulken	Alliance of Architects & Engineers
5. Dallas Wasserburger	Alliance of Architects & Engineers
6. Rick Schurger	Maxim Technologies, Inc.
7. Raymond Sand	Sand Construction

0144:20275

AGENDA FOR PROGRESS MEETING NO. 3
for
RAPID CITY REGIONAL AIRPORT IMPROVEMENTS, PHASE I
AIP 3-46-0048-21

Date: July 11, 1997 Time: 1:30 PM
96-588

1. SIGN-IN / INTRODUCTIONS

The following people were present at the meeting:

Genene Sand
Ray Sand
Doug Stulken
David Lepine
Bob Rothermel

2. OLD BUSINESS

No meeting was held on July 4th, 1997.

Lepine informed us that rattlesnakes have been found on the airport property so everyone working on the project should be cautioned to be careful.

Fiber optic telephone cable has now been relocated and is out of the way of the Contractor. We all understand that there is still a buried 25 pair telephone cable at the northeast corner of the safety area but Sand has been told by Mike Babbe, of US West, that this line is less important and will be relocated when and if the Contractor disturbs it.

3. REVIEW OF WORK PROGRESS/PROJECT STATUS

Ray Sand has now almost completed the majority of the grading work on the county road. He said he has been checking the grades and thinks he is close to dirt grade and ready for the Alliance to check and/or set grades for the top of subgrade. He has requested that the Alliance set grade stakes and/or blue top for the road centerline and shoulders and also grade stakes in the road ditches. Arrangements have been made to have the Alliance surveyors check the road grades beginning on Tuesday of next week.

Contractor has now removed all the major cut material from the county road and safety area including the extra 3,300 CY in the safety area directed by the Engineer and as requested by Airport Operations per letter dated July 10, 1997. Genene Sand presented a letter at meeting stating that they would remove the additional 3,300 CY± as requested but wanted \$1.11/CY instead of at \$0.80 because Sand's felt the dirt was close to the borrow site and therefore justified the \$1.11/CY unit price. Rothermel pointed out that the additional cut area was in the safety area adjacent to the

original cut area and not even close to the borrow area. Therefore the extra material removed should be paid as Unclassified Excavation.

4. PROBLEMS WHICH IMPEDE PLANNED PROGRESS

None of the parties in attendance could foresee any problems that would impede the construction progress other than the always potential rainy weather. The underground telephone cable that crosses the safety area is fairly deep according to Mike Babbe at the phone company. Therefore the existing line within the grading operations will only be relocated if the Contractor disturbs it during the grading work. This plan was acceptable to all parties.

There was discussion about the lack of traffic control in the opinion of the Engineer and Bill Anderson, the County Engineer. The Sand's were reminded of the requirement and told by Rothermel that the Contractor would have to provide acceptable traffic detouring or signing to direct traffic through the construction traffic on the county road. Sand Construction has received letters from both the Alliance and the Pennington County Highway Department expressing this concern and requirement to correct the problem before further work is done on the road. The Contractor is responsible for maintaining traffic on the road.

5. SUBMITTALS

A shop drawing had been reviewed by Gary Norton at the Alliance and corrected to reflect the proper gradation for gravel surfacing. Pete Lien had submitted a gradation for gravel cushion which was not acceptable per discussions with the County Engineer. Bill Anderson at the County wanted assurances that enough PI (clay) was in the gravel material to insure the gravel surfacing would bind together. Rothermel will verify that Lien understands what we want for the road surfacing.

6. MAINTENANCE OF PROGRESS SCHEDULE AND MEASURES TO REGAIN PROJECTED SCHEDULES

Ray Sand thought he still might be a little behind schedule (1 week+) but would try to make the time up if at all possible. The grading and compaction effort is going good. The in-place moisture of the borrow material is at or near optimum so little effort has been necessary thus far to work, mix and compact the fill material.

7. COORDINATION OF PROJECTED PROGRESS WITH OTHER CONTRACTORS

The scheduling has gone well with Sand's fencing contractor. Rainbow has removed existing fence and installed temporary fence when necessary. Temporary fence is now being installed along the south side of the county road in preparation for the grading work in the safety area the first of next week.

8. PROPOSALS

The extra grading work (3,300 CY cut) in the safety area will be added to the project and reflected in a future change order and adjustment in the contract.

9. APPLICATION FOR PAYMENT

The next payment request is due to Brad Hagen's office on July 23.

10. OTHER BUSINESS

An FAA safety inspection will be held next Wednesday or Thursday, July 16 or 17, so the Contractor needs to be sure to display flags and lights on his equipment.

Contractor should notify the Engineer when topsoil piles are ready to measure. The quantity of topsoil is necessary so the grades of the subgrade can be adjusted if necessary so that when all the topsoil is replaced the final grades (ditches and slopes) will match the design grades.

Contractor was reminded that the designated staging area is to be used for storage and parking of all equipment and not along the county road, which is now being done by the Contractor. The security fence needs to be secured and maintained (locked) by Contractor. Sand Construction should maintain daily communication with the Tower when working in the safety area.

Page 1

Sand Construction
Raymond and Geneva Sand
RR 3, Box 28A
Dallas, S.D. 57009-0013

Justification of Losses, Revised (Using Force Account Rates or Bluebook
Dataquest 1997 Department of Transportation
See attached memorandum)

LOSS OF PRODUCTION--EQUIPMENT DOWN-TIME:

June 16,17,18 Ten hours per day X three days=thirty hours per piece

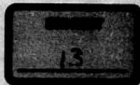
Description	OPERATING EXPENSE	PRODUCTION CUT TO ONE HALF THESE THREE DAYS: Hourly Rate
Komatsu Crawler	21.00	54.28 Hr.x30= 1628.40
D8H Cat Crawler	30.15	75.20 Hr.x30= 2256.00
TSL4B Scraper	43.65	103.27 Hr.x30= 3098.10
TSL4B Scraper	43.65	103.27 Hr.x30= 3098.10
Cat 140G Blade	14.30	35.85 Hr.x30= 1075.50
JD 770BH Blade Ripper & Scarifier	16.70	46.13 Hr.x30= 1383.90
JD 4630 Tractor	9.20	16.22 Hr.x30= 486.60
Kewanee Commercial Disc		5.54 Hr.x30= 166.20
Cat Sheepfoot Roller	17.00	38.64 Hr.x30= 1159.20
Total:		\$14352.00

Divided by one-half (Production cut to one half) Due: \$7176.00

NO PRODUCTION: STANDBY RATES USED (To determine standby rate, operating
expense is subtracted from the hourly rate and the answer is
divided by two.)

June 16,17,18,19,20,23

Description	Operating Expense	Hourly Rate	Standby Rate W/O Operating Ex.
Cat 637C Scraper	84.75	179.17	94.42 Hr x 60= 5665.20
Cat 637C Scraper	84.75	179.17	94.42 Hr x 60= 5665.20
Total:			\$11330.40
Divide by Two:			Amount due: <u>\$5665.20</u>



Page 2

JUSTIFICATION OF LOSSES, REVISED
LOSS OF PRODUCTION--EQUIPMENT DOWN-TIME, CONT.

NO PRODUCTION

June 19, 20, 23

Description	Operating Ex.	Hourly Rate	Standby Rate W/O Operating Ex.
Komatsu Crawler	21.00	54.28	33.28 x 30 = 998.40
TS14B Scraper	43.65	103.27	59.62 x 30 = 1788.60
TS14B Scraper	43.65	103.27	59.62 x 30 = 1788.60
D8H Cat Crawler	30.15	75.20	45.05 x 30 = 1351.50
Cat 140G Blade	14.30	35.85	21.55 x 30 = 646.50
JD 770 BH Blade	16.70	46.13	29.43 x 30 = 882.90
Cat Sheepsfoot Roller	17.00	38.64	21.64 x 30 = 649.20
JD 4630 Tractor	9.20	16.22	7.02 x 30 = 210.60
Kewanee Comm. Disc		5.54	5.54 x 30 = 166.20
Total:			\$8482.50
Divide by two:		Amount due:	<u>\$4241.25</u>

LABOR COSTS: (See certified payrolls attached)

Our payroll for the week ending 6/21/97 was \$4306.76 and for the following week ending 6/28/97 it was \$5629.94. We submit that due to the DISRUPTED WORK SCHEDULE we suffered a loss of one half of the manhour production we should have had or: $\$4306.76 + \$5629.94 = \$9936.70 + 25\% \text{ overhead or}$
 $\$2584.18 = \$12520.88 \text{ divided by two} = \underline{\$6260.44}.$

SUMMARY OF CLAIMS:

EQUIPMENT DOWN-TIME, LOSS OF PRODUCTION-----	\$7176.00
	\$5665.20
LABOR COSTS-----	\$4241.25
	\$6260.44
LOSS OF JOB CONTINUITY-----	\$10000.00
TOTAL LOSSES CLAIMED:	<u>\$33342.89</u>

Sand Construction
Payroll and General Bond
P.O. Box 30A
Dallas, S.D. 57009-0030

NEXT

DOCUMENT (S)

DISREGARD

BACKGROUND

1990

THE

CONTACT

1) Reporting trucking firms are required to identify the "Adjacent Upper Tier Contractor". All other reporting contractors exempt.
2) Full mailing address required on first report that is employee is listed. "General Delivery" is not acceptable.
3) If employee performed more than one class, use a separate line for each.

SAND CONSTRUCTION

RAYMOND AND GENE SAND



EQUIPMENT DATA:

 RR3, Box 30A
 DALLAS, SOUTH DAKOTA 57529
 (605) 835-9308

- | | TYPE | MAKE | YR | FUEL | HP | ACCESSORIES |
|----|---|---------|------|------|-----|--|
| 1. | CRAWLER-DOZER | KOMATSU | 1985 | D | 275 | St. Dozer, EROPS Cab, powershift, tilt, multishank hydr'l ripper |
| | S/N D85A-18 27721 | | | | | |
| 2. | CRAWLER-DOZER | CAT | 1976 | D | 300 | EROPS, powershift, tilt, S8dozer |
| | S/N D8H46A27638 | | | | | |
| 3. | SCRAPER-TS14C | TEREX | 1991 | D | 175 | 185FRT Rear Repowered w/Cummins engines 1993, Were originally 1976 models but DOT classified them as 1991 models due to the new engines, Rear diff. lock, push-pull, EROPS, cab, artic., twin-eng. |
| | S/N 97SHT0386 | | | | | |
| | CAPACITY--18-25 CY plus sideboards | | | | | |
| 4. | SCRAPER-TS14C | | | | | |
| | S/N 97SHT0388 | | | | | |
| | (ALL OTHER INFO. SAME AS SCRAPER ABOVE) | | | | | |
| 5. | MOTORGRADER | CAT | 1978 | D | 150 | Powershift, artic., EROPS CAB, 14' moldbd., sideshift, tip |
| | S/N 140G 72V2696 | | | | | |
| 6. | MOTORGRADER | JD | 1991 | D | 172 | Powershift, artic, EROPS CAB, 14' moldbd, Rear ripper, sideshift, tip, frt. scarifier, A/C |
| | S/N 770EH 534139 | | | | | |
| 7. | SHEEPSFOOT | CAT | 1988 | D | 80 | Padfoot roller, EROPS, selfpropelled, 4 cyl perkins eng. |
| | S/N CP 433B IMG-00134 | | | | | |
| 8. | SCRAPER | CAT | 1975 | D | 640 | EROPS, powershift, twin eng., artic., cushion hitch, diff. lock |
| | S/N 637C 65M624 | | | | | |
| | CAPACITY--30 CY | | | | | |
| 9. | SCRAPER | | | | | |
| | S/N 637C 65M611 | | | | | |
| | (ALL OTHER INFO. SAME AS SCRAPER ABOVE) | | | | | |

THIS DATA SHEET WAS FAXED TO ED RODGERS,
 DOT OPERATIONS OFFICE.



SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

FAX TRANSMITTAL

TO Sand Construction
(NAME)

835-9308

PHONE (NUMBER)

FROM

Ed Rodgers
(NAME)

DOT operations
(OFFICE)

NUMBER OF PAGES
(INCLUDING THIS COVER SHEET)

3

835-9308

(TELECOPIER NUMBER)



THIS INFORMATION WILL ALSO BE
SENT BY MAIL

11-14-97

(DATE)

IF NOT PROPERLY RECEIVED PLEASE CALL
(605)773-3265 3571

Rev

(NAME)

MESSAGE: _____

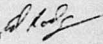
TO TRANSMIT TO THE DEPARTMENT CALL:
(605)773-3921

**Department of Transportation****Division of Operations**

700 Broadway Avenue East
Pierre, South Dakota 57501 2586 (605)773-3704 (maint/prop)
Fax: (605)773-3921 (605)773-3571 (const)

MEMORANDUM

TO: Wally Eklund, Legal Counsel for
Sands Construction (Raymond Sands & Genene Sands Owners)
RR 3 Box 30A
Dallas, SD 57529

FROM: Ed Rodgers, PE 
Safety Finals Engineer

DATE: November 14, 1997

SUBJECT: Force Account Rates for Project AIP 3-46-0048-21
Rapid City Regional Airport County Road Relocation, County Road C232

Standby rate is the hourly rate less operating cost divided by 2

I have reviewed the following list of equipment rental rates for the force account work on the above referenced project and found them to be reasonable and customary. Note that where supplied horsepower, model number, equipment age, etc. varied from that available in the bluebooks, the bluebook information was used. Bluebook information is the most current offerings from Dataquest 1997 utilizing Volumes I, II, or III as per standard DOT practices

EQUIPMENT DESCRIPTION	YEAR	OPERATING EXPENSE	HOURLY RATE
Crawler Tractor, Komatsu D85A-18, 220HP, EROPS, Powershift, Straight Tilt	Discontinued 1983	\$21.00	\$54.28
Crawler Tractor, Cat D8K, 300HP, EROPS, Powershift, Angle	1976	\$30.15	\$75.20
Scraper, Terex TS14C, 14-20cy, 154HP Front, 136HP Rear, EROPS	1991	\$43.65	\$103.27

Motorgrader, Cat 140G, 150HP, Powershift, Articulated, EROPS, 12' Moldboard,	1978	\$14 30	\$35.85
Motorgrader, JD 770B-H, 155HP, Powershift, Articulated, EROPS, 12' Moldboard,	1991	\$14 75	\$40.54
Roller, Self Propelled Pad Foot, Cat 433B, EROPS, Powershift, 80HP (Info not available Use Cat 815 Powershift 55 5"X38" Front & Rear Wheel, 170HP)	1988	\$17 00	\$38.64
Scraper, Cat 637E, 450HP, EROPS, Powershift, Dual Engine, 30CY	1975	\$84 75	\$179 17
Motorgrader Rear Ripper, 3 shank	1991	\$1 45	\$3 89
Motorgrader Front Scarifier, 11 shank	1991	\$0 50	\$1 70

The hourly rates shown include operating expenses. Operating expenses include: a) the cost of labor and parts needed for routine, daily servicing of the equipment; b) the cost of operating expendables such as fuel, lubricants, filters, etc., and c) the cost of extraordinary operating expendables.

Operator's wages are not included in the Estimated Operating Expense.

cc Bill Nevin - DOT Legal Counsel
Craig Smith - DOT Air, Rail, and Transit Engineering Supervisor
Bob Rothemel - Alliance of Architects & Engineers - Rapid City
Brad Hager - Rapid City Airport Manager
Tom Welk - US West Legal Counsel

NEXT

DOCUMENT (S)

DISREGARD

BACKGROUND

CIC JOB NO. 609

Exh 14



**PHASE I
CONSTRUCT (EXTEND)
RUNWAY 14 SAFETY AREA
and RELOCATE COUNTY ROAD C232**

**PHASE II
CORRECT ILS CRITICAL AREA
AT RUNWAY 32**

**RAPID CITY REGIONAL AIRPORT
AIP PROJECT NO. 3-46-0048-21, 1997**

**City of Rapid City,
South Dakota**

96-588

April, 1997



706 West Boulevard

Rapid City, SD 57701

605-342-9470

FAX 605-342-2377

E-MAIL alliance@alliance.com

To the extent that such public or private utility services, FAA, or NOAA facilities, or utility services of another governmental agency are known to exist within the limits of the contract work, the approximate locations have been indicated on the plans and the owners are indicated as follows:

US West Communications
Dennis Serfling
612 Mt. Rushmore Road
PO Box 100
Rapid City, SD 57709
(605) 394-4582
For Locates: One-call 1-800-781-7474

West River Electric Association
Dan Muth
3250 East Highway 44
Rapid City, SD 57701
(605) 393-1500

MDU
703 Kansas City Street
Rapid City, SD 57701
(605) 355-4036

It is understood and agreed that the owner does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the work. Any inaccuracy or omission in such information shall not relieve the Contractor of his/her responsibility to protect such existing features from damage or unscheduled interruption of service.

It is further understood and agreed that the Contractor shall, upon execution of the contract, notify the Owners of all utility services or other facilities of his/her plan of operations. Such notification shall be in writing addressed to THE PERSON TO CONTACT as provided hereinbefore in this subsection and the subsection titled RESTORATION OF SURFACES DISTURBED BY OTHERS of this section. A copy of each notification shall be given to the Engineer.

In addition to the general written notification hereinbefore provided, it shall be the responsibility of the Contractor to keep such individual owners advised of changes in his/her plan of operations that would affect such owners.

Prior to commencing the work in the general vicinity of an existing utility service or facility, the Contractor shall again notify each such owner of his/her plan of operation. If, in the Contractor's opinion, the owner's assistance is needed to locate the utility service or facility or the presence of a representative of the owner is desirable to observe the work, such advice should be included in the notification. Such notification shall be given by the most expeditious means to reach the utility owner's PERSON TO CONTACT no later than two normal business days prior to the Contractor's

commencement of operations in such general vicinity. The Contractor shall furnish a written summary of the notification to the Engineer.

The Contractor's failure to give the two day's notice hereinabove provided shall be cause for the Engineer to suspend the Contractor's operations in the general vicinity of a utility service or facility.

Where the outside limits of an underground utility service have been located and staked on the ground, the Contractor shall be required to use excavation methods acceptable to the Engineer within 3 feet (90 cm) of such outside limits at such points as may be required to ensure protection from damage due to the Contractor's operations.

Should the Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, he shall immediately notify the proper authority and the Engineer and shall take all reasonable measures to prevent further damage or interruption of service. The Contractor, in such events, shall cooperate with the utility service or facility owner and the Engineer continuously until such damage has been repaired and service restored to the satisfaction of the utility or facility owner.

The Contractor shall bear all costs of damage and restoration of service to any utility service or facility due to his/her operations whether or not due to negligence or accident. The contract owner reserves the right to deduct such costs from any monies due or which may become due the Contractor, or his/her surety.

70-16 FURNISHING RIGHTS-OF-WAY. The Owner will be responsible for furnishing all rights-of-way upon which the work is to be constructed in advance of the Contractor's operations.

70-17 PERSONAL LIABILITY OF PUBLIC OFFICIALS. In carrying out any of the contract provisions or in exercising any power or authority granted to him by this contract, there shall be no liability upon the Engineer, his/her authorized representatives, or any officials of the Owner either personally or as an official of the Owner. It is understood that in such matters they act solely as agents and representatives of the Owner.

70-18 NO WAIVER OF LEGAL RIGHTS. Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of final acceptance. Such final acceptance, however, shall not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or stopped from recovering from the Contractor or his/her surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill his/her obligations under the contract. A waiver on the part of the Owner of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

SPECIAL CONDITIONS

SC-1. TIME FOR COMPLETION AND LIQUIDATED DAMAGES.

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning, rate of progress, and the time for completion of the work to be done hereunder are essential conditions of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced within fifteen (15) calendar days after the date of issuance of the effective date of the notice to proceed and all work shall be completed as follows:

PHASE I: September 30, 1997

PHASE II: September 30, 1997

The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified.

It is expressly understood and agreed by and between the Contractor and the Owner that the time for completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

If the work embraced by this contract is not completed on or before the dates set for completion, the actual damages for the delay will be impossible to determine and in lieu thereof, the Contractor shall pay the Owner as fixed, agreed, and liquidated damages according to the schedule of liquidated damages as follows:

SCHEDULE OF LIQUIDATED DAMAGES

Original Contract Amount		Amount of Liquidated Damages Per Working Day Or Calendar Day
From More Than	To and Including	
\$ 0	\$ 25,000	\$ 50.00
25,000	50,000	100.00
50,000	100,000	200.00
100,000	500,000	300.00
500,000	1,000,000	400.00
1,000,000	2,000,000	500.00
2,000,000		600.00

Whatever sums may be due the Owner as liquidated damages for delay may be deducted from payments due the Contractor or may be collected from the Contractor or the Contractor's surety.

SPECIAL CONDITIONS

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SCHEDULE OF LIQUIDATED DAMAGES

Original Contract Amount		Amount of Liquidated Damages Per Working Day Or Calendar Day
From More Than	To and Including	
\$ 0	\$ 25,000	\$ 50.00
25,000	50,000	100.00
50,000	100,000	200.00
100,000	500,000	300.00
500,000	1,000,000	400.00
1,000,000	2,000,000	500.00
2,000,000		600.00

Whatever sums may be due the Owner as liquidated damages for delay may be deducted from payments due the Contractor or may be collected from the Contractor or the Contractor's surety.

NOV-11-97 TUE 10:06

THE ALLIANCE

FAX NO. 6053422377

11:51 26. 11 NOV
P.14

NOTICE TO PROCEED

To: Sand Construction
PO Box 226
Dallas, South Dakota 57529

PROJECT Description: Rapid City Regional Airport Improvements, AIP 3-46-0048-21
Rapid City, South Dakota
Phase I - Construction (Extension) of the Runway 14 Safety Area, which included the placement of embankment and the realignment and reconstruction of a portion of county Road C232

You are hereby notified to commence WORK in accordance with the Agreement dated the 9th day of June, 1997, on or before June 20, 1997, and you are to complete the WORK on or before September 30, 1997.

By [Signature]

Title President

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by Sand Construction this 11 day of June, 1997.

Raymond and Gertie Sand

aka Sand Construction

By [Signature]

Title OWNER

The Contractor commenced work on June 11, 1997.

[Signature]
Owner Representative

END OF NOTICE TO PROCEED

PLS
REVIEW

N

Existing
Concrete

Proposed
Buried Cable

Proposed
24 Pair
Fiber

Existing Bur Cable
24 Pair
Fiber
and
East of Airport

Existing
Road

300'
Proposed
Fiber

Proposed Road
Centerline C-232

Fiber cable is main fiber
Toll cable
serving east
of Rapid City. This is
24 Pair.

U S WEST COMMUNICATIONS, INC.

Exchange and Network Services Tariff

SECTION 4

Page 1

Release 1

State of South Dakota

Issued: 11-5-93

Effective: 12-5-93

4. CONSTRUCTION CHARGES

4.1 GENERAL

A. Description

The rates and charges specified in other sections of this Tariff provide for the furnishing of facilities and equipment where plant facilities or equipment are available or when the construction of facilities and equipment does not involve unusual costs to provide.

When the construction or furnishing of facilities involves costs which are excessive in relation to the revenues to be received, construction charges are to be made to cover the excess costs involved. Such charges are in addition to the rate for the services involved and any service connection, mileage or other charges which may be applicable.

B. Terms and Conditions

1. Special construction charges apply (except where specified in other sections of this Tariff) when one or more of the following conditions exist:
 - a. The facilities to provide service are not available and at the request of the customer, the Company constructs facilities where there is no other requirement for the facilities and no expected future reuse by another customer.
 - b. At the request of the customer, the Company constructs facilities of a type or in a manner other than that which the Company would otherwise utilize to provide the facilities.
 - c. At the request of the customer, the Company constructs facilities on a route other than the route the Company would normally utilize or to reroute facilities already in place.
 - d. Facilities are not available and at the request of the customer, the Company expedites construction of facilities at a greater expense than would otherwise be incurred.
 - e. Facilities are not available and at the request of the customer, the Company constructs temporary facilities. "Temporary" is defined as any location where in the judgment of the Company, it is apparent the location is removable or the need for the facilities is for a limited time period.

U S WEST COMMUNICATIONS, INC.
Exchange and Network
Services Tariff

SECTION 4

Page 2

Release 1

State of South Dakota
Issued: 11-5-93

Effective: 12-5-93

4. CONSTRUCTION CHARGES

4.1 GENERAL

B. Terms and Conditions (Cont'd)

2. Special construction charges are those estimated costs that are in excess of the costs that would be incurred under conditions other than those listed above. Costs include material, supplies, engineering, labor, supervision, transportation, rights-of-way and overhead for placing and removal of facilities and equipment less estimated net salvage and plant betterment.
3. The customer may furnish labor such as trenching and backfilling to reduce special construction charges. Where any portion of the construction is furnished by the customer, it must conform to the specification of the Company. All customer supplied construction shall be the responsibility of the customer, and the Company shall not be responsible for damages, injury, or harm arising out of or due to such customer construction, whether incurred by the customer or others. Upon completion of customer supplied construction, the facility shall be delivered to, owned by, and be maintained by the Company. The customer shall execute appropriate documentation to evidence and acknowledge the release of the Company, the responsibility of the customer, and the ownership of the customer supplied facility.
4. Application of special construction charges is variable and each situation must be judged on its individual circumstances.
5. Construction charges are payable at the time application for service is signed or when a bill is rendered, at the option of the Company.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	FINAL ORDER AND
BY RAYMOND AND GENENE SAND D/B/A)	DECISION; NOTICE OF
SAND CONSTRUCTION, DALLAS, SD)	ENTRY OF ORDER
AGAINST U S WEST COMMUNICATIONS, INC.)	
REGARDING TELEPHONE LINE LOCATION)	TC97-142

On August 8, 1997, Raymond & Genene Sand d/b/a Sand Construction filed a complaint with the Public Utilities Commission (Commission) against U S WEST Communications, Inc. (U S WEST) regarding a telephone line location. "Our complaint is in reference to telephone line location and moving line for Project AIP 3-46-0048-21 Rapid City Regional Airport County Road Relocation, County Road C232, and Construct Runway 14 Safety Area, Pennington County. Bid date for this project was May 9, 1997. At that time or before, the affected utilities were aware that utility relocation would be necessary. A pre-construction meeting was held on May 30, 1997. U S WEST representative Dennis Serfling was present. Raymond Sand stated that he would like to begin the project as soon as possible—at least by June 9th. Dennis Serfling said U S WEST was waiting for cable to arrive for the fiber optic line move and that expected arrival was June 3, 1997, after which they would proceed to install it. Sand Construction notified One Call Notification shortly after the meeting as a precautionary measure. We were issued ticket #23361. The project owners' project paperwork was not completed as rapidly as expected; therefore, Sand Construction didn't begin work until June 16, 1997. The telephone line relocation work in the county road work area was not completed, we had no choice but to try to work around it....We submit that Sand Construction has suffered losses due to the delay in utility relocation by U S WEST. We request recovery of these losses from U S WEST."

At its regularly scheduled September 9, 1997, meeting, the Commission found probable cause of an unlawful or unreasonable act, rate, practice or omission and served the complaint on U S WEST. U S WEST filed its response on October 7, 1997.

By order dated November 7, 1997, the hearing was set for 1:30 P.M., November 18, 1997, in Room 464, State Capitol, Pierre, South Dakota. The hearing was held as scheduled. The issues at the hearing were as follows: (1) whether U S WEST's actions in relocating the utility line were unlawful or unreasonable acts, rates, practices, or omissions; and (2) whether such actions caused the Sands to suffer damages.

At its December 18, 1997, meeting, the Commission unanimously voted to find that U S WEST had not committed an unlawful or unreasonable act.

Based on the evidence and testimony of record, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I

On August 8, 1997, Raymond & Genene Sand d/b/a Sand Construction filed a complaint with the Commission against U S WEST regarding a telephone cable relocation. Exhibit 1. Sand Construction was awarded the bid to move a county road and to extend a runway at the Rapid City Regional Airport. Tr. at 13. Mr. Sand contended that U S WEST breached an oral agreement by not installing fiber cable quickly enough after U S WEST had received the cable. Tr. at 40.

II

The completion date on the contract was September 30, 1997. Tr. at 37. The project was completed by September 10, 1997. Tr. at 51. During the project, Sand Construction did not have any other projects. Tr. at 38.

III

The Notice to Proceed stated that Sand Construction could commence work on or before June 20, 1997. Exhibit 15. Work was commenced on June 16, 1997. Tr. at 20.

IV

In order to complete the project, U S WEST had to move a 25-pair cable and a fiber cable. Tr. at 115-116. U S WEST became aware of the project around May 1, 1997. Tr. at 116-117. A project to relocate the existing cable was issued by U S WEST on May 13, 1997. Tr. at 117.

V

A pre-construction meeting was held on May 30, 1997. Tr. at 118-119; Exhibit 7. Dennis Serfling, design engineer for U S WEST, and Mr. Sand were present at the meeting. Tr. at 119. At the meeting, Mr. Serfling stated that the fiber optic cable was tentatively scheduled to be shipped by June 3, 1997. Tr. at 121. He also stated that the fiber cable would probably not be in place by June 16, 1997, which was the anticipated construction start date. Tr. at 119-121.

VI

The cable actually arrived on June 10, 1997, and installation was complete on June 26, 1997. Tr. at 123. The 25-pair cable was relocated by June 16, 1997. Tr. at 122-123.

VII

Steve Wegman, analyst for the Commission, testified that the placement of the fiber cable was a "fast-track job" and that he was "amazed they got it done as fast as they did." Tr. at 110-111. Generally, a three week period is allowed for cut-over of a fiber cable. Tr. at 123.

VIII

Although there was a question of whether the entire cable was marked or located (Tr. at 108), Mr. Serfling, who was the contact person for U S WEST, stated that he never heard from Mr. Sand that there was a problem with cable location. Tr. at 130. In addition, when Mr. Sand was asked if he wanted the cable hand-located, he said no. Tr. at 106.

IX

U S WEST received the cable on June 10, 1997, and completed the relocation by June 26, 1997. The Commission finds that this is a reasonable amount of time for a cable relocation. The Commission further finds that U S WEST did not promise that the relocation would be completed by June 16, 1997, and, in fact, had told Mr. Sand that the fiber cable would probably not be relocated by June 16, 1997. Therefore, U S WEST did not commit an unlawful or unreasonable act in relocating the cables.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL 1-26-18, 1-26-19, 49-13-1, 49-13-1.1, 49-13-4, 49-13-13, 49-13-14, 49-31-3, 49-31-7, and 49-31-7.1, and ARSD 20:10:01:07.01 through 20:10:01:15.01 and 20:10:01:22.02. Further, the relocation of cable is a noncompetitive service covered under U S WEST's Exchange and Network Services Tariff, Section 4, Page 1, Release 1.

II

Based on the evidence of record, the Commission concludes that U S WEST did not commit an unlawful or unreasonable act in the relocation of cables for the Rapid City Regional Airport construction project.

It is therefore

ORDERED, that the Commission finds that U S WEST did not commit an unlawful or unreasonable act concerning the relocation of cable for the Rapid City Regional Airport construction project.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 21st day of January, 1998. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 21st day of January, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By

William Kaska
Date: 1/22/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner