BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF REVISIONS AND/OR ADDITIONS TO THE COMMISSION'S SWITCHED ACCESS RULES CODIFIED IN ARSD 20:10:27 THROUGH ARSD 20:10:29	))))))	Docket No. RM05-002

VERIZON'S PROPOSED REVISIONS TO THE COMMISSION'S SWITCHED ACCESS RULES

The existing rules governing the intrastate switched access rates that local exchange carriers ("LECs") may charge other carriers for originating and terminating intrastate long distance calls[1] are outdated, unduly complicated and unnecessary in today's competitive telecommunications market. This regulatory regime has permitted independent LECs' access rates to persist at unreasonably high levels; in fact, intrastate switched access rates in South Dakota are among the highest in the nation. These carriers' rates clearly are not "fair and reasonable," as state law requires.[2] Verizon[3] urges the Commission to establish a rule that limits the amount that local exchange carriers may charge.[4]

Rather than propose detailed revisions to the Commission's voluminous switched access regulations, Verizon proposes to replace the existing access charge rules with a single, administratively efficient requirement. Specifically, all LECs (including competitive local exchange carriers or "CLECs") should be precluded from charging

[1] ARSD 20:10:27 through 20:10:29.
[2] SDCL § 49-31-4.
[3] The Verizon companies participating in this filing are the wholly-owned subsidiaries of Verizon Communications Inc. that operate in South Dakota, including MCI Communications Services, Inc. and MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services (collectively, "Verizon").
[4] The Commission commenced this rulemaking on December 14, 2005, to consider revisions and/or additions to the Commission's switched access rules ("Order Opening Docket"). Parties filed opening comments in February and May of 2006.

intrastate switched access rates that are higher than the access rates of the Regional Bell Operating Company ("RBOC") operating in South Dakota, Qwest Corporation ("Qwest"). Verizon offers simple text for such a new rule in Section II.B. below.

Verizon also requests that the Commission immediately establish a procedural schedule to promptly consider Verizon's proposed revisions.

DISCUSSION

I. Background

The current rules that the Commission utilizes to prescribe the methods for establishing ILEC intrastate switched access rates are outdated. They were adopted almost 15 years ago, well before local competition was authorized in South Dakota, and before passage of the federal Telecommunications Act of 1996, which ushered in a new era of competition and technological innovation in telecommunications. The rules have not been adjusted to conform to changes in national access charge policy and the marketplace.[5]

The competitive landscape has changed remarkably since 1993, when the rules were established. Today, communications competition comes from many non-traditional sources, including cable, wireless, and Internet-based services such as e-mail and VoIP. There is now a single, all-distance communications market that does not differentiate between technologies or platforms. Because not all of the competitors in this environment operate under the same regulatory regime and do not all pay access charges or do not pay the same rates, traditional wireline carriers are often at a pricing disadvantage in the market. The Commission's access charge rules have not been

[5] Comments of Midcontinent Communications ("Midcontinent"), February 6, 2006, at 7.

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changed to reflect these changed market conditions, and instead produce access rates that harm the competitive market and consumers in South Dakota.

The current ratemaking methodology in ARSD 20:10:27 through 20:10:29 results in incumbent LEC ("ILEC") intrastate switched access rates that are excessive by any measure. Independent LECs in South Dakota charge rates higher than those of their counterparts in any other state in the 14-state Qwest region.[6] This is so even after the Commission approved, in December 2006, a stipulation resolving a series of cost study dockets and setting the intrastate switched access rate that members of the Local Exchange Carriers Association ("LECA") could charge.[7] The LECA access rates have increased steadily – by up to 60% over the past decade[8] – resulting in, as AT&T explained, intrastate access charges that are among the highest in the nation.[9] Most independent LECs in South Dakota currently charge $0.125 per minute for both originating and terminating switched access.[10] This is *more than double* Qwest's comparable usage-based switched access rate (which is less than $ 0.06 per minute).[11]

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[6] *Id.* at 8.

[7] *See, e.g., In the Matter of the Establishment of Switched Access Rates for the Local Exchange Carriers Association*, Order Approving Settlement Stipulation and Order Approving Tariff Revisions, TC05-096 (Dec. 28, 2006) and related dockets. The parties to the Stipulation acknowledged the pendency of this proceeding and agreed "to proceed in good faith and with reasonable dispatch" into this rulemaking docket.

[8] Information available to Verizon indicates that LECA's originating switched access rate (for carrier common line, local switching and transport) was $0.0776 per minute in June 1996. The current charge is $0.125 per minute. The LECA terminating switched access rate increased from $0.0971 to $0.1447, nearly a 50% jump, between June 1996 and August 2004.

[9] Comments of AT&T Communications of the Midwest, Inc. ("AT&T"), May 26, 2006, at 3.

[10] *See* LECA, Inc. Tariff No. 1, 23[rd] Revised Page 17-1 and 23[rd] Revised Page 17-4.

[11] Because LECs have different rate structures and their access customers purchase different combinations of access rate elements, reviewing a LEC's average access revenues per minute ("ARPM"), based on billings to Verizon, is a valid way to quantify the "real world" impact of the ILEC's access rates. This ARPM analysis takes into account all of the relevant access rate elements that are billed on a per-minute of use basis, so it provides a more holistic analysis than a review of a single rate element. This analysis indicates that the ARPM for Qwest is **[trade secret begins ________ trade secret ends]**. Under Qwest's access tariff, the total charge for usage-based rate elements that a carrier that connects directly to a Qwest end office would pay (i.e., carrier common line, local switching, and interconnection charge) is $0.051711. A carrier that connects only through Qwest's tandem would pay additional usage-based charges (for tandem switching and tandem-switched transport), which would result in a total per minute access charge

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Rates of this magnitude on their face violate the "fair and reasonable" requirement of SDCL § 49-31-4.

II. Intrastate Switched Access Rates Must Be Reduced to Promote Competition and Enhance Consumer Welfare.

A. There Is No Policy Reason to Continue to Allow Independent LECs to Charge Disproportionately High Access Rates.

The initial comments of other parties demonstrate that excessive intrastate access fees are harmful to consumers and discourage infrastructure development.[12] As the Federal Communications Commission ("FCC") has repeatedly observed, economically efficient competition and the consumer benefits it yields cannot be achieved as long as carriers seek to recover a disproportionate share of their costs from other carriers, rather than from their own end users.[13] The FCC emphasized that such irrational access rate structures "lead to inefficient and undesirable economic behavior."[14] One anti-consumer result of inefficient rate structures is suppression of demand for the services of other carriers that must bear the costs. Another is reduced incentive for local entry by firms that might be able to provide service more efficiently than the LEC.[15] By raising the

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of $0.059663 in the shortest mileage band, assuming tandem facility mileage of one mile. Depending on an interexchange carrier's mix of direct end office and tandem connections, the per-minute usage charges the company would pay under Qwest's tariff would fall within this range.

[12] *See, e.g.*, Comments of Midcontinent and AT&T, *supra.*

[13] *See generally Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (May 31, 2000) ("*CALLS Order*"); *Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report & Order in CC Docket No. 96-45, and Report & Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) ("*MAG Order*"); *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) ("*CLEC Rate Cap Order*").

[14] *CALLS Order*, at ¶ 129.

[15] *Id.*, at ¶ 114.

price of a necessary input to other carriers, the cost, and therefore price, of those carriers' services are artificially elevated.

With specific regard to relatively small, rural carriers, the FCC has found that rationalizing their switched access rates will enhance incentives for interexchange carriers ("IXCs") to originate service in rural areas and will foster facilities-based competition for residential subscribers in those areas.[16] South Dakota consumers are denied these benefits today because of the small carriers' excessively high access rates. For example, interexchange carriers must pay as much as $0.25 per minute in access charges on intrastate calls that are originated by a consumer in one rural ILEC's territory and that terminate to a customer in another ILEC's territory. In order to cover these costs, IXCs are compelled to charge intrastate long distance rates in South Dakota that are many times higher than their normal rates (*e.g.*, $0.05/minute) for interstate long distance calls.[17]

Moreover, the situation is compounded by the requirement that IXCs charge uniform prices on all routes where they offer intrastate interexchange service.[18] Because of the confluence of these two factors – the requirement to charge uniform long distance rates statewide and the tremendous disparity between access charges in Qwest and other ILEC service areas – intrastate toll rates paid by consumers in Qwest's territory are significantly higher than they otherwise would be. These high long distance rates thus deprive consumers throughout South Dakota of the benefits of competitive long distance

[16] *MAG Order*, at ¶ 11.
[17] For example, Verizon's intrastate direct dial long distance rates are as high as $0.30 per minute during peak periods; customers can obtain a rate of $0.16 per minute for intrastate long distance calling if they subscribe to a plan that includes an additional monthly charge.
[18] SDCL § 49-31-4.2.

pricing and service options that citizens in other states enjoy.[19] Through their payment of high, statewide long distance charges, consumers in Qwest's service area are in effect providing a "subsidy" to those ILECs that charge excessive access rates. There is no legitimate justification for this situation.[20] Finally, extraordinarily high access rates create no incentive for IXCs to invest in their network infrastructure, or to develop and promote innovative services in South Dakota.

Although the benefits of access charge reductions are well recognized, mid-tier and smaller independent carriers in South Dakota have avoided making the substantial rate reductions that are appropriate and necessary; on the contrary, they have steadily *increased* their rates to levels that are clearly excessive. Accordingly, the Commission's rules should be changed to ensure that these companies charge more reasonable rates.

B. Independent LECs Should Mirror Qwest's Intrastate Switched Access Rates.

As the FCC recognized, market-based mechanisms are the best way to produce efficient prices and promote the public interest.[21] Negotiated intercarrier compensation agreements are the best long-term solution to ensuring the efficiency of communications markets in the face of substantial technological change. Until the industry can fully transition to a regime of commercially negotiated agreements, however, the Commission should assure that access rates are set and maintained at a level that is "fair and reasonable" and that will promote competition and economic efficiency.

[19] These high retail rates also create incentives for consumers to seek out other alternatives for their long distance calling. Because some of the other alternatives do not make use of the switched wireline network or do not incur access charges, these shifting usage patterns could lead to under-utilization of, or reduced financial support for, traditional network facilities.
[20] For example, to the extent rural carriers desire to provide advanced services through new broadband capabilities, they should recover the costs of doing so from their own retail customers, and not from the customers of other LECs or through excessive access charges imposed on interconnecting carriers.
[21] *CALLS Order*, at ¶ 178.

As an important first step toward the ideal of negotiated intercarrier compensation arrangements, the Commission should set a benchmark at which local exchange carriers' access rates should be set (and from which carriers may choose to later negotiate deviations). The most appropriate benchmark for LECs is the intrastate switched access rate charged by Qwest. As the RBOC in South Dakota, its switched access rates have been subject to close regulatory scrutiny and the strictest economic discipline with respect to recovery of revenues from its own end users, rather than from other carriers.[22] Qwest's access charges better approximate "fair and reasonable" rates than the prices – which are more than twice as high – that many ILECs charge. From a competitive standpoint, it makes sense to put all local exchange carriers on equal footing by moving them to this common rate.

This can be accomplished by adopting the following straightforward rule:

> No local exchange carrier shall charge a rate for intrastate switched access services that is higher than the intrastate switched access rate of the Regional Bell Operating Company operating in South Dakota. The rate for intrastate switched access service shall mean the composite, per-minute rate for the service, including all applicable rate elements. A local exchange carrier may only impose charges for those functions that the carrier actually provides. This obligation is immediate and continuing.

Just as it was not necessary for the FCC to conduct a cost study before ordering reductions to carriers' interstate access rates in its *CALLS Order* and *CLEC Rate Cap Order*, it is not necessary to initiate a cost case before moving all LECs to Qwest's intrastate switched access rates. As the FCC observed when it declined to conduct any cost proceedings before approving a rate cap for CLECs, the public interest is better

[22] Qwest's intrastate access rates have not been increased in more than seven years. *See* Comments of Qwest Corporation, February 6, 2006.

served by immediate access rate reductions to market levels rather than trying to precisely determine costs through time-consuming, complex, expensive and archaic regulatory cost proceedings.[23] That conclusion is true here, as well, and recommends relying on Qwest's rates as a market-based price benchmark, rather than attempting to ascertain each small ILEC's costs.[24]

The Commission has recognized that preparation of a cost study is costly, labor-intensive and consumes a great deal of resources,[25] and that the results are often controversial.[26] Moreover, the key issue to be resolved is not what level of costs needs to be recovered, but *how* and from whom the carriers' costs are to be recovered. Thus, the real issue before the Commission is one of rate design, for which a cost study can provide no meaningful input. The most efficient rate design would be accomplished through establishment of a single pricing standard.

Verizon is not proposing access reform as a means of reducing carrier revenues, but to rationalize rate structures. To the extent that LECs have legitimate network costs to recover, they can and should have the flexibility to recover those costs through rates for the services they provide to their own customers, just as Qwest already must do. Verizon, therefore, agrees with the LECA and the South Dakota Telecommunications Association ("SDTA") that if intrastate switched access rates are reduced, companies that

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[23] *See CALLS Order*, at ¶¶ 178, 84.

[24] The Commission's rules permit it to establish intrastate switched access rates without determining company-specific costs. ARSD 20:10:27.11. The Commission has previously exercised this authority and granted local exchange carriers exemptions from the requirement that they submit cost data in support of their switched access tariffs. *See, e.g., In the Matter of the Request by Qwest Corporation for a Waiver of a Requirement to File a Switched Access Cost Study*, Order Granting the Waiver Request, TC05-006 (March 17, 2005) ("*Qwest*"); *In the Matter of the Filing by Orbitcom, Inc. f/k/a VP Telecom, Inc. for an Extension of an Exemption from Developing Company Specific Cost-Based Switched Access Rates*, Order Granting Extension from Developing Company Specific Cost-Based Switched Access Rates, TC05-192 (Dec. 14, 2005) ("*Orbitcom*").

[25] *See, e.g., Qwest* and *Orbitcom*, footnote 22 *supra*.

[26] *See, e.g., Order Opening Docket*, footnote 4 *supra;* and *In the Matter of the Establishment of Switched Access Rates for the Local Exchange Carriers Assn.*, TC05-096 and related proceedings.

experience revenue shortfalls should be permitted to recover lost revenues in some manner.[27] These companies have a more diverse suite of services and a broader customer base from which to recover their network costs than they did when the current access charge rules were established.[28] Most retail services offered by local exchange carriers in South Dakota are considered fully competitive, and the companies have substantial flexibility in how they price their retail services.[29] Thus, to the extent reductions in intrastate switched access rates result in decreased intrastate revenues, replacement revenues could come from rate rebalancing and other sources such as a subscriber line charge.[30]

C. Uniform, Reasonable Rate Will Curb Arbitrage Schemes

Aside from the direct benefits associated with rate reductions themselves, a more uniform rate structure as between interstate and intrastate jurisdictions will curb regulatory arbitrage opportunities. Because of the extraordinarily high access rates of independent telephone companies, South Dakota has been a target for carriers seeking to exploit high access rates and receive more favorable treatment under current rate structures. Expressing concern about such inappropriate pricing schemes, the FCC

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[27] Comments of LECA and SDTA, February 6, 2006, at 8.

[28] *See, e.g., South Dakota Public Utilities Commission Summary of Annual Reports Received* (for year ending December 31, 2006).

[29] *See, e.g.*, SDCL 49-31-5:1; *In the Matter of the Investigation into the Reclassification of Telecommunications Services*, Order Reclassifying Various Telecommunications Services, TC92-096 (1992); and *In the Matter of the Application of Qwest Corporation to Reclassify Local Exchange Services as Fully Competitive*, Order Reclassifying Qwest's Local Exchange Services as Fully Competitive, TC03-057 (2003).

[30] Residential local exchange rates in South Dakota are typically lower than the national average. Some ILECs charge $8.00 or less per month, and most have monthly rates below $15.75. *See A Report on Telecommunication Company Operations for the Year 2006*, Public Utilities Commission of South Dakota, at 10-15. Accordingly, the charges for such services seem conducive to rate rebalancing.

recently commenced an investigation of the interstate access tariffs of dozens of ILECs, including a number that operate in South Dakota.[31]

AT&T, Qwest, and Sprint filed federal court complaints in Iowa against several independent LECs for "traffic pumping" schemes designed to generate excessive access revenues for these LECs,[32] and similar claims were raised before the Iowa Utilities Board.[33] Because of "the ease with which these schemes are implemented and shifted rapidly to other locations,"[34] additional traffic pumping arrangements have been identified in a growing number of states, including Minnesota, Utah and Nevada.[35] In addition, the traffic pumping practices of carriers operating in South Dakota are currently the focus of litigation pending before a federal court here.[36]

As described in these complaints, a LEC defendant will collaborate with a non-LEC defendant that advertises free international calling, free adult content calling, free chat rooms or other such "free" services using telephone numbers obtained from the LEC. The phone numbers connect the caller to the international calling provider, chat line provider, or conference provider, and the LEC bills IXCs access charges on these

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[31] *In the Matter of Investigation of Certain 2007 Annual Access Tariffs*, Order Designating Issues for Investigation, WC Docket No. 07-184 (August 24, 2007).

[32] *AT&T Corp. v. Superior Telephone Cooperative, et al.*, No. 4:2007-cv-00043 (S.D. Iowa., filed Feb. 20, 2007) ("AT&T Complaint"); *Qwest Communications Corp. v. Superior Telephone Cooperative, et al*, No. 4:2007-cv-00078 (S.D. Iowa, filed Feb. 20, 2007) ("Qwest Complaint"); *Sprint Communications Co., L.P. v. Superior Telephone Cooperative, et al*, No. 4:2007-cv-00194 (S.D. Iowa, filed May 7, 2007) ("Sprint Complaint").

[33] *Qwest Communications Corp. v. Superior Telephone Cooperative, et al*, Complaint, Request for Declaratory Relief and Request for Emergency Injunctive Relief, Iowa Utilities Board Docket No. FCU-07-____ (filed Feb. 7, 2007).

[34] Letter to The Honorable Kevin J. Martin, Chairman, FCC, from James W. Cicconi, Senior Executive Vice President, AT&T, April 4, 2007.

[35] *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Letter to The Honorable Kevin J. Martin, Chairman, FCC, from Craig J. Brown, Associate General Counsel, Qwest, August 15; 2007; and Letter to the Hon. Kevin J. Martin, Chairman, FCC, from Gary L. Phillips, General Attorney, AT&T, July 30, 2007.

[36] *Northern Valley Communications, LLC vs. MCI Communications Services, Inc., d/b/a Verizon Business Services*, Civ. 07-1016 (U.S. Dist. Ct. South Dakota), Answer, Counterclaims and Jury Demand (filed Aug. 15, 2007); *Sancom, Inc. vs. MCI Communications Services, Inc., d/b/a Verizon Business Services*, Civ. 07-4106 (U.S. Dist. Ct. South Dakota), Answer, Counterclaims, and Jury Demand (filed August 28, 2007).

calls. The LEC then gives the non-LEC firms kickbacks of a portion of the switched access fees billed to AT&T, Qwest, Sprint, Verizon and other long distance carriers, thus allowing the non-LEC firm to offer the "free" services. As a result of these arrangements, the participating LEC experiences an exponential increase in the volume of long distance phone traffic handled. The LEC exploits its high access rates to make the scheme profitable for itself and the collaborating non-LEC, but at the expense of and to the financial detriment of the IXCs compelled to send long distance calls to the LEC's network and incur the high fees.

Because of the abuses described in these filings, AT&T reported a jump in one LEC's access charge bills from less than $2000 a month to more than $2,000,000 a month (AT&T Complaint at 3); the number of terminating access minutes that Qwest was billed by one small company spiked from 15,000 minutes a month to more than 6.4 million minutes a month (Qwest Complaint at 11-12); and the number of access minutes that one carrier billed Sprint increased by 25,690% over just one year, resulting in "millions of dollars of unlawful charges" (Sprint Complaint at 4, 13). In South Dakota, Verizon has seen its average monthly bills for switched access service from each of two carriers increase by more than 158 percent and 334 percent, respectively, in circumstances where the carriers have been engaged in traffic pumping schemes.[37]

The FCC has responded to these access stimulation practices and apparent abuses of the ILECs' interstate access tariffs by instituting an investigation of numerous carriers' annual interstate access tariffs.[38] Six of the ILECs that are parties to the FCC's ongoing investigation operate in South Dakota.

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[37] *Id.*
[38] *In the Matter of Investigation of Certain 2007 Annual Access Tariffs*, footnote 29 *supra*.

Even if the courts or the FCC put an end to the particular traffic pumping schemes that led to these complaints and litigation, new types of arbitrage abuses are sure to arise as long as access rates are set at high levels. The *only* way to eliminate the incentive and opportunity to engage in these kinds of anti-consumer practices is to reduce rates to more reasonable levels. Verizon's proposal to reduce LECs' access rates to the level of Qwest's intrastate access rate would be an important first step toward rationalizing access rates in South Dakota.

D. The LEC Price Cap Should Be Implemented Immediately

Because LEC access rates have been excessive for far too long, there is no justification for providing a transition period before carriers move to the new price cap structure. A prolonged phase-in period would perpetuate the harmful effects of unjustifiably high rates. All carriers have been on notice of this Commission's intention to consider revisions to its access charge rules since this docket was opened in late 2005. Moreover, Verizon's proposal need not result in revenue shortfalls; LECs possess sufficient flexibility to adjust their retail rates for other services to offset any revenue impacts. Accordingly, no delay or phase-in period is needed or appropriate. More delay would only deny consumers the acknowledged benefits of more reasonable access pricing.

III. The Commission Should Apply the New Price Cap Rule to all LECs to Promote Competitive Neutrality.

CLECs have the same obligation as ILECs to maintain switched access rates that are fair and reasonable.[39] However, many CLECs in South Dakota currently charge intrastate access rates that are as high as the highest ILEC access rates -- more than 11

[39] SDCL § 49-31-4.

cents per minute. These unreasonably high CLEC access rates cause the same competitive and consumer harms that excessive ILEC rates do. That is why Verizon's proposal applies to all LECs – ILECs and CLECs alike. Capping CLEC access charges at the same level as Qwest will ensure that all CLECs' rates are more reasonable.

In this regard, Verizon's proposal is similar to the rate caps imposed by the FCC and numerous states on CLEC access rates.[40] For example, under the FCC rule, a CLEC's per minute access rate cannot be higher than the interstate switched access rate

[40] *See, e.g., CLEC Rate Cap Order, supra*; *DPUC Investigation of Intrastate Carrier Access Charges*, Decision, **Connecticut** D.P.U.Docket No. 02-05-17 (2004), 2004 Conn. PUC Lexis 15, at *45 (capping CLEC rates at SBC's then-current rate); *TDS Metrocom, Inc., Petition for Arbitration*, Arbitration Decision, **Illinois** Comm. Comm'n Docket No. 01-0338, at 48-50 (Aug. 8, 2001), and *Arbitration Between AT&T Comm. of Illinois, Inc. and Ameritech*, Arbitration Decision, Illinois Comm. Comm'n Docket No. 03-0239, at 149-51 (Aug. 26, 2003) (a CLEC may not charge an ILEC more for intrastate switched access than the ILEC charges the CLEC); *Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Report and Order, **Missouri** P.S.C. Case No. TO-99-596, 2000 Mo. PSC Lexis 996, at *28-31 (June 1, 2001) (capping CLEC access rates at the competing ILEC's level); **New York** P.U.C. Case 94-C-0095, Order, at 16-17 (Sept. 27, 1995), N.Y. P.U.C. Opinion 96-13, at 26-27 (May 22, 1996), and N.Y. P.S.C. Opinion 98-10, 1998 N.Y. PUC Lexis 325, at 26-27 (June 2, 1998) (establishing a benchmark for CLEC access charges at the level of the largest carrier in the LATA); 66 Pa. Consolidated Statutes § 3017 (c) (**Pennsylvania** statute prohibits CLEC "access rates higher than those charged by the incumbent local exchange telecommunications company in the same service territory, unless such carrier can demonstrate that the higher access rates are cost justified"); **Indiana** Code § 8-1-2.6-1.5 (a carrier's switched access rates are just and reasonable if they mirror the carrier's interstate switched access rates); Code of **Maryland** Regulations § 20.45.09.03(b) (capping CLECs' switched access rates at the level of the largest LEC in Maryland); **New Hampshire** PUC § 431.07 (CLECs cannot charge higher rates for access than the ILEC does); **Texas** P.U.C. Subst. Rule § 26.223 (a CLEC may not charge a higher aggregate amount for intrastate switched access than the ILEC in the area served or the statewide average composite rates published by the Texas P.U.C. and updated every two years). Other states are actively considering adoption of similar requirements. The **Virginia** Commission has proposed new rules, including a rate cap that would prohibit CLEC rates from exceeding the higher of the CLEC's interstate access rates or the intrastate switched access rates of the competing ILEC (*Order on Application and Establishing Proceeding, Amendment of Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers*, Va. S.C.C. Case No. PUC-2007-00033 (April 30, 2007)). The **California** Commission has likewise proposed to establish a price cap on CLECs' access rates patterned after the FCC's requirements (*Order Instituting Rulemaking to Review Policies Concerning Intrastate Carrier Access Charges*, R.03-08-018, Joint Assigned Commissioner and Administrative Law Judge Ruling Setting Further Proceedings (May 4, 2007)). The Office of Regulatory Staff in **South Carolina** has recommended that the Commission there adopt a requirement prohibiting CLECs from setting intrastate access rates higher than the CLECs' interstate access rates or the ILEC's intrastate access rates. *Level 3 Communications, LLC's Tariff No. 4 – Revisions to Update the Rates for Switched Access Services*, letter from ORS to Mr. Charles Terreni, Chief Clerk/Administrator, Docket No. 2007-187-C (May 22, 2007).

of the ILEC in whose area the CLEC operates.[41] CLEC interstate access charges that do not exceed the benchmark are presumed to be just and reasonable.

Imposing the same price cap requirement on all local exchange carriers – independent LECs and CLECs alike -- will result in an intrastate access charge policy that treats all regulated carriers in the same manner, and is thus competitively neutral.

CONCLUSION

The Commission must ensure that switched access rates are fair and reasonable. Until carriers can rely fully on negotiated intercarrier compensation agreements to produce such rates, the Commission should step in to reduce the unacceptably high access rates that harm competition and consumers. Verizon's proposed price cap is the best, most efficient means for resolving a complex issue in a timely manner and providing certainty for all affected parties. Accordingly, Verizon recommends that the Commission replace its complicated access charge rules with a requirement that all local exchange carriers cap their switched access rates at the amount charged by Qwest.

Dated: September 20, 2007

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[41] *CLEC Rate Cap Order*, at ¶ 45; 47 C.F.R. § 61.26(c). Notably, certain CLECs have voluntarily set their intrastate switched access rates in South Dakota at a level equal to or less than Qwest's intrastate switched access rate. *See, e.g., Orbitcom*, footnote 22 *supra*.

CERTIFICATE OF SERVICE

I hereby certify that I sent by e-mail a redacted copy of the within pleading addressed to:

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