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September 21, 2007

Patty Van Gerpen  
Executive Director  
SD Public Utilities Commission  
500 E Capitol  
Pierre SD 57501

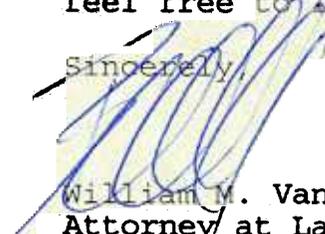
Re: Docket #RM05-002

Dear Patty:

Attached please find a Supplemental filing in this Rule Making Docket by AT&T. AT&T has previously filed comments and would offer the attached for consideration by the Commission in its rule making process.

If you have any questions on any of the materials enclosed, please feel free to let me know.

Sincerely,



William M. Van Camp  
Attorney at Law

WVC:lrd

enclosures

cc: Dan Foley  
Karen Cremer  
Service List



implemented gradually, on a step-down basis, over a three-year time period. Once fully implemented in 2011, the rates for intrastate access charged by ILECs in South Dakota will be no higher than the corresponding rates charged by the same carriers for originating and terminating interstate calls. The gradual implementation of the cap will give ILECs ample time to transition to lower access rates; moreover, the state may adopt an explicit subsidy mechanism to offset any forgone revenue associated with this access reform proposal.

## **DISCUSSION**

### **I. Intrastate switched access rates in South Dakota are too high.**

The undeniable fact is that intrastate access fees charged by rural ILECs in South Dakota are among the highest in the nation. Under the current three-year agreement with the Local Exchange Carriers Association (“LECA”), long distance carriers like AT&T are billed **\$0.125** per minute for originating access and **\$0.125** per minute for terminating access by rural ILECs. This means that the out-of-pocket expense – just for origination and termination – for a long-distance carrier handling an intrastate call in South Dakota would be **25 cents** per minute if the call originates in one LECA member’s local service area and terminates in another LECA member’s local service area. This wholesale expense is several times higher than the retail revenue that the long distance carrier would earn for that call: the competitive nationwide rates for retail long distance calls are often 5 cents or less per minute and, in many cases, long-distance is provided on a flat rate per month. Under the current access charge structure, a long-distance carrier would pay the ILECs \$15 for a single hour-long call, even though the associated retail revenue might be much less, or even zero.

Intrastate access fees in South Dakota are also much, much higher than the corresponding *interstate* fees, even though carriers use the same facilities to originate and terminate calls. If a retail customer in Brookings calls someone in Florida, the origination fee at the Brookings end would be approximately **2.5 cents**; but if that same Brookings customer calls someone in Kadoka, the origination fee would be **12.5 cents** -- **five times higher** even though the same local facilities are used to originate the two calls.

The disproportional nature of the exorbitant intrastate switched access rates charged in South Dakota is confirmed by comparison to analogous rates elsewhere. The total switched access fees for a call that originates in rural Vermont (such as Grand Isle, where local service is provided a Verizon LEC affiliate), and terminates in outstate California (*e.g.* Mendocino, where local service is provided by an AT&T LEC affiliate), equates to only **\$0.0133** per minute. But in South Dakota, the access fees for a call from Brookings to Kadoka would be **25 cents** per minute – over **18** times as much.

Intrastate access rates in rural South Dakota are also substantially higher than the intrastate rates charged by similarly situated rural carriers across the United States. For example, the members of the Oregon Exchange Carrier Association (“OECA”) charge **4 cents** for origination or termination per average minute of use – less than a third of the rate in South Dakota. And the Washington Exchange Carrier Association (“WECA”), which serves a role similar to LECA, has a state-wide switched access rate of **5 cents** per minute for origination and termination, less than half the rate here. Thus, a long-distance carrier would pay 8 cents a minute to originate and terminate a call in Oregon, but 25 cents per minute for originating and terminating a similar call in South Dakota.

**II. Disproportionately high intrastate access fees are harmful to consumers, discourage infrastructure development by competing carriers, and unsustainable in the long term.**

The vastly out-of-proportion rates for intrastate access in South Dakota are contrary to the long term economic and social well-being of all of the State's consumers, and to the health of the telecommunications network. They discourage long-distance carriers from investing in network infrastructure or promoting long distance services in South Dakota. Such carriers use national standardized rate plans (such as all-distance plans at one simple rate per minute or unlimited calling plans) to promote their intrastate and interstate long distance services. But under the current access charge structure, the out-of-pocket expense of providing long-distance service is much higher than the associated revenue. Because each long-distance call could result in significant *losses*, there is little incentive for long distance companies to compete for customers or to invest in additional infrastructure in South Dakota. The alternative is to create a special, much higher price for intrastate long-distance calls in South Dakota, a result with obvious harm to consumers.

By the same token, the current regulatory scheme does not give rural ILECs any incentive to reduce their own costs. High access fees are derived from cost inputs that comprise the ILEC's revenue requirement. From the ILEC's perspective, inefficient or excessive costs are of no concern, because the costs are simply passed on to long-distance carriers. Conversely, reducing costs would only mean a reduction in access fees.

In the short run, some ILECs might reap short-term financial windfalls because of the unusually high intrastate rates. They may, in some cases, even reinvest some of the

money back into their own networks. But in the long term, dependence on such unreasonable fees is harmful for the marketplace as a whole. Competitors will leave the state and the few interexchange carriers that are left will have little incentive to invest or to market their services to South Dakota consumers.

Further, as discussed in the comments filed by AT&T in this proceeding last year, the number of intrastate minutes associated with traditional landline carriers will continue to decrease as customers switch to other alternatives such as VoIP and wireless technologies. This shift will only increase the already-exorbitant rates for switched intrastate access because the ILECs' costs will be spread over fewer and fewer minutes.

### **III. AT&T's Recommendation for Access Reform in South Dakota**

Facing similarly high access rates, other rural states have implemented reforms to reduce access charges to more reasonable and sustainable levels. In each state, the Commission uses interstate access rates as the benchmark above which rates are presumed to be excessive. To take a few examples:

- In New Mexico, pursuant to N.M. Admin Code § 17.11.10.8, the statewide average switched access rate for originating and terminating intraLATA toll calls will be reduced by January 1, 2008 to the level of interstate access rates (in effect as of January 1, 2006) for a state-wide average of only \$0.0183 per minute to originate or terminate an in-state long distance call.<sup>2</sup>
- The Nebraska Public Service Commission also adopted parity with the interstate rate structure as its goal. *Investigation into Intrastate Access Charge Reform*, Application No. C-1628, 1999 WL 135116, \*4 (Neb. P.S.C., Jan. 13 1999). Beginning in 1999, the Nebraska commission implemented a multi-year reform, and the average rural ILEC rates in the state are now approximately \$0.02 per minute.
- Likewise, Kansas requires that access fees charged by rural telephone companies be reduced every two years until they reach parity with interstate fees. K.S.A. §66-2005(c) ("Each rural telephone company shall adjust its intrastate switched

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<sup>2</sup> The referenced per minute rate is based on using the NECA ATS rate as a proxy for rural ILEC interstate switched access.

access rates on March 1 of each odd-numbered year to match its interstate switched access rates”).<sup>3</sup>

AT&T proposes the same simple solution for South Dakota. Instead of tinkering with the specific rules, which would be cumbersome and unlikely to yield a significant change to the current situation, AT&T proposes that interstate access fees serve as a cap on intrastate access fees. This plan will be easy to administer and will bring the intrastate rates charged by the LECs in South Dakota more in line with the rates charged by comparable carriers in other parts of the country. Specifically, AT&T recommends the following rule amendment be adopted by Commission:<sup>4</sup>

ARSD 20:10:27:02. Determination of intrastate switched access charges -- General.

***The following general rules apply to all determinations of intrastate switched access charges:***

(1) Chapters 20:10:27 to 20:10:29, inclusive, establish rules for the determination of switched access charges for intrastate switched access services provided by each carrier's carrier operating in this state. Charges for switched access services shall be computed, assessed, and collected as provided in chapters 20:10:27 to 20:10:29, inclusive, except as provided in §§ 20:10:27:11 to 20:10:27:13, inclusive. For good cause, the commission may, on its own motion

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<sup>3</sup> In the same vein, other states have adopted a parity requirement for carriers electing price or alternative regulation. *See* I.C.A. § 476.97 (Under Iowa law, carriers submitting a plan for price regulation must include a proposal “for reducing the local exchange carrier’s average intrastate access service rates to the local exchange carrier’s average interstate access service rates”; the time frame allowed for the reduction depends on the number of access lines); W.S.A. § 196.196 (Under Wisconsin law, the intrastate access rates for utilities electing price regulation may not exceed their interstate rates for similar services; the time frame for accomplishing parity depends on the number of access lines in use); Ga Code Ann. § 46-5-166 (Under Georgia law, the switched access rates of LECs electing alternative regulation shall be no higher than for interstate access; the time frame for implementing the parity requirement depends on the number of access lines); NV ADC § 704.6848 (Under Nevada law, as a condition of entering a plan of alternative regulation, the provider must “adjust its rates for intrastate switched access . . . to the extent that such elements correspond to the rates for interstate access, so that those rates will be in parity with its rates for interstate switched access at the time of the entry into the plan”). *See also* NV ADV § 704.68048 (Under Nevada law, in order for a small provider of last resort to qualify for universal service funds, “[i]ts rates for interstate and intrastate switched access must be in parity, or the small provider must agree to carry out a plan approved by the Commission designed to achieve parity for those rates within the time specified by the Commission”).

<sup>4</sup> Proposed new language appears in ***bold italics***.

or by application from a carrier's carrier, temporarily waive or suspend any commission rule in chapters 20:10:27 to 20:10:29, inclusive.

***(2) By July 1, 2011, and thereafter, the intrastate switched access charges for a carrier shall not exceed its corresponding interstate switched access charges. This limitation on switched access charges shall apply to all carriers charging switched access for intrastate calls that originate and terminate in South Dakota. Further, the limitation shall be phased in as follows:***

- a. By July 1, 2009, the intrastate switched access charges for a carrier shall not exceed its corresponding interstate access charges by more than 67%.***
- b. By July 1, 2010, the intrastate switched access charges for a carrier shall not exceed its corresponding interstate access charges by more than 33%.***
- c. By July 1, 2011, the intrastate switched access charges for a carrier shall not exceed their corresponding interstate access charges.<sup>5</sup>***

Plainly, this solution is fair to the ILECs. The transition will be spread over several years, and at the end the ILECS can still charge for intrastate access at the same rates that they charge for interstate access. At the same time, parity will benefit toll consumers and provide better incentives for toll carriers to invest in infrastructure and to promote low-priced services.

To the extent there is any possible concern about the ILECs' reductions in access revenues, AT&T would not be opposed to the Commission's use of other revenue sources to make the proposed access reform revenue neutral. In this regard, the Commission could establish an explicit subsidy, such as a state universal service fund, for ILECs to make up any revenue decline. As noted in its prior comments, AT&T believes that such a subsidy should be explicit (rather than buried in interstate access fees), narrowly

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<sup>5</sup> While this rulemaking proceeding specifically addresses the intrastate switched access charged by rural incumbent local exchanges carriers, consideration should be given to applying a similar rule for Qwest and the competitive local exchange carriers.

targeted, and broadly funded (rather than imposed only on consumers who use long-distance carriers).

### CONCLUSION

For the reasons set forth above and discussed in their comments filed previously in this proceeding, AT&T recommends that the Commission move toward a policy framework that promotes robust and irreversible competition by adopting the proposed rule described herein.

Respectfully submitted this 21st day of September, 2007.

OLINGER, LOVALD, MCCAHCEN & REIMERS, PC

*/s/ filed electronically*

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*Attorneys for AT&T Communications of the Midwest, Inc.*

### CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 21st day of September 2007, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the Proposed Revisions to Commission's Switched Access Rules filing in the above-captioned action to the following at their last known addresses, to-wit:

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