

**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	)	Docket No. RM05-002
RULES CODIFIED IN ARSD 20:10:27	)	
THROUGH ARSD 20:10:29	)	
	)	

---

**VERIZON'S COMMENTS ON SWITCHED ACCESS RULES  
ADOPTED BY THE COMMISSION**

Verizon<sup>1</sup> hereby submits its comments in response to the Commission's Notice<sup>2</sup> seeking further comment on the "final" switched access charge rules that the Commission adopted at its public meeting on March 18, 2011. The essential element of the new rules is a requirement that a competitive local exchange carrier ("CLEC") may not charge a rate for intrastate switched access service that exceeds the intrastate switched access rates of the Regional Bell Operating Company operating in South Dakota, which is Qwest. *See* Section 20:10:27:02.01. Verizon supports the Commission's adoption of this rule. The requirement is supported by substantial evidence and argument in the record of this and prior proceedings.<sup>3</sup> The price cap rule is also a reasonable and prudent means of implementing the Commission's earlier decision – with which all parties agreed – that pricing regulation is appropriate for switched access services offered by CLECs.<sup>4</sup>

---

<sup>1</sup> The Verizon companies participating in this filing are MCI Communications Services, Inc. d/b/a Verizon Business Services and MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("Verizon").

<sup>2</sup> Notice of Further Comment Period, mailed April 1, 2011.

<sup>3</sup> *See, e.g.,* Verizon's Comments on Proposed Rules Regarding Switched Access Rates (Jan. 31, 2011). Verizon incorporates those comments herein as if fully set forth.

<sup>4</sup> *See In the Matter of the Investigation of Pricing Regulation for Switched Access Services Provided by Competitive Local Exchange Carriers*, Order Finding Pricing Regulation Appropriate for CLECs' Switched Access Services; Order Denying in Part and Granting in Part Qwest's Motion; Order Taking Judicial Notice; and Order Closing Docket, Docket TC10-014 (May 4, 2010), at 2 (noting Qwest's statement that the parties agreed in their written testimony that price regulation is appropriate for CLECs'.

Verizon will not reiterate the lengthy history of this multi-year proceeding, the purpose of which has been to consider modifications to the Commission's longstanding switched access rules.<sup>5</sup> For present purposes, it is sufficient to recall that the issue of capping CLEC access rates has been a central focus of the discussion since at least September 2007. At that time, AT&T and Verizon submitted similar, detailed proposals, with Verizon recommending that the Commission

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 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").<sup>6</sup>

In the intervening years, other parties have presented variations on this proposal as well as alternative recommendations, but it is beyond dispute that all parties have had ample opportunity to comment on the substance and merits of this type of price cap rule.<sup>7</sup>

On June 1, 2010, the Commission Staff distributed draft switched access rules. These were followed up by the Commission's issuance of a modified set of proposed switched access rules on November 24, 2010. The two sets of proposed rules would have capped CLEC access rates at two different price levels depending on where a carrier provides service. In their comments, Verizon and several other parties criticized the

---

switched access rates and that, at the Commission's public meeting, "none of the parties objected to the Commission finding that pricing regulation is appropriate for switched access services provided by CLECs.").

<sup>5</sup> See, e.g., Midcontinent's Comments (Jan. 28, 2011) at 1-8.

<sup>6</sup> Verizon's Proposed Revisions to the Commission's Switched Access Rules, filed Sept. 20, 2007.

<sup>7</sup> In fact a number of carriers opposed AT&T's and Verizon's recommendations for capping CLEC rates, and two CLECs expressly objected to proposals that CLEC rates be tied to the level of competing ILEC rates in a manner similar to that provided by the FCC's rules, and offered testimony in support of their opposition. See, e.g., Reply Comments of Northern Valley Communications, L.L.C. and Sancom, Inc. on Proposed Rule Changes (June 28, 2010) at 1-3 and Exhibit A; Reply Comments of Midstate Telecom and RC Communications, Inc., d/b/a RC Services (June 28, 2010) at 1; and Reply Comments of the South Dakota Telecommunications Assn. and the Local Exchange Carriers Assn. (June 28, 2010) at 3-4.

proposed rules because they were inadequate to curb excessive rates and the competitive problems they create, and because the proposed pricing standards were arbitrary, ill-defined, vague and administratively inefficient. After taking into consideration the parties' written comments, oral testimony presented at the hearing and additional commentary during its public meeting on March 18, 2011, the Commission modified its initial proposals and adopted instead a rule that was well-grounded in the record, and consistent with the price cap rules adopted by the FCC and numerous other states.

The rules adopted by the Commission embrace the equitable concept that all CLECs should be treated similarly regardless of where they provide service. This is consistent with Midcontinent's comment that "[t]here is no basis in state law to create categories of CLECs or to treat one set of CLECs differently from another set of CLECs."<sup>8</sup> AT&T and Qwest also pointed out that allowing some CLECs to charge higher rates would create enormous arbitrage opportunities, which is already a serious problem in South Dakota.<sup>9</sup> To overcome these problems, Qwest recommended that the Commission prohibit CLECs from charging more than the per minute intrastate access rate charged by the RBOC in South Dakota.<sup>10</sup> This is an appropriate benchmark, Qwest explained, because the RBOC's switched access rates "have been subject to the Commission's regulatory scrutiny and strictest economic discipline regarding recovery of revenues from its end-users, rather than from other carriers."<sup>11</sup> AT&T urged the Commission to go further and cap CLECs' intrastate access rates (as well as the rates of

---

<sup>8</sup> Midcontinent's Comments (Jan. 28, 2011) at 10.

<sup>9</sup> Qwest's Refreshed Written Comments on Proposed Rule Changes (Jan. 27, 2011) at 1-3; Comments of AT&T (Jan. 31, 2011) at 2.

<sup>10</sup> Qwest's Refreshed Written Comments on Proposed Rule Changes (Jan. 27, 2011) at 4 and Exhibit 1 (Direct Testimony of William R. Easton filed in Docket TC10-014, on April 1, 2010) at 15, 17-18.

<sup>11</sup> *Id.* at 4.

all local exchange carriers) at the level of the ILECs' interstate rates.<sup>12</sup> Accordingly, there is substantial justification and ample precedent for capping all CLECs' rates at a uniform level, and the Commission acted well within its discretion when it adopted the pricing standard proposed (repeatedly) by Qwest and Verizon.

Relying on Qwest's intrastate rate as a benchmark is a fair and reasonable method for capping CLECs' access rates. As Sprint pointed out, "[t]here is no reason to assume that CLECs have higher cost structures than the ILECs with whom they compete."<sup>13</sup> This is also consistent with the FCC's finding a decade ago "that it is highly unusual for a competitor to enter a market at a price dramatically above the price charged by the incumbent, absent a differentiated service offering."<sup>14</sup> As newer market entrants, CLECs have the opportunity to construct and expand their networks using modern, efficient, and generally less expensive equipment. Because they can decline to serve a particular area, a particular type of customer, or to provide a particular type of service, they can limit their network costs by focusing on, and investing in, only the networks they choose to build. In other words, they are generally free to make decisions based solely on their assessment of business and economic factors, and the requirements of the customers they choose to serve. Moreover, they are not saddled with legacy regulations and constraints imposed on other carriers. Thus, there is no rational basis (and certainly no evidence in the record) for concluding that the costs of a new market entrant will be higher than those of the incumbent.

---

<sup>12</sup> Comments of AT&T (Jan. 31, 2011) at 2. Interstate access rates are typically lower than intrastate rates, and are generally thought to exceed the carriers' costs of providing switched access.

<sup>13</sup> Sprint's Comments on Proposed Rules (Jan. 31, 2011) at 1-2.

<sup>14</sup> *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd 9923 (2001) at ¶ 37.

If anything, using Qwest's intrastate rate as the benchmark for CLEC access rates is overly-generous. This is because Qwest's intrastate rate in South Dakota is substantially higher (in some cases three to four times higher) than its intrastate access rate in other jurisdictions and is one of the highest (if not the highest) RBOC intrastate access rate in the country.<sup>15</sup> Moreover, CLECs are already complying with a federal rate cap under which they currently charge much lower rates for interstate switched access. Accordingly, they will not be disadvantaged or precluded from recovering their costs if they are prevented from charging a higher amount for intrastate switched access than Qwest.

The Commission's new rules contain a "safety valve" that would enable a CLEC that "believes a higher rate ... is justified" to file a cost study to support a higher rate. Section 20:10:27:02.02. This provision is not warranted or necessary, but it was apparently included in the rules to address the concerns expressed by some parties. Verizon has participated in several proceedings in which CLECs have attempted to justify switched access rates higher than those authorized by regulation or statute, but in its experience, no CLEC has yet to meet its burden of proof and convince a state commission that higher rates are warranted. Given the very high intrastate rate permitted under the Commission's newly-adopted rule (Qwest's current rate), the likelihood that any CLEC could succeed in such an endeavor in South Dakota is exceptionally remote.

Finally, although it has no bearing on the substance of the new rules, Verizon will address what it understands to have been a concern raised during the Legislative Rules Review Committee's recent consideration of the new rules. That question relates to the

---

<sup>15</sup> This is true even in rural states. For example, Qwest and all other local exchange carriers may not charge more than \$0.03 per minute for intrastate switched access service in Wyoming. *See* Wyoming Statute 37-15-203(j).

role of Form 14 – Small Business Impact Statement Form.” State law provides that when an agency submits a proposed rule that will have a direct impact on small business, it is to prepare an impact statement.<sup>16</sup> There is no requirement in the statute for an agency to update or modify a small business impact statement based on the comments received or action taken by the agency during the process of promulgating rules. In addition, an agency is only required to use readily available information and existing resources to prepare the impact statement. SDCL 1-26-2.1. The steps taken by the Commission in this instance are fully compliant with state law and the practice of other state agencies.

Moreover, it is questionable whether, based on the purpose of the small business impact statement process, it even applies in this context. Existing law grants the Public Utilities Commission the authority “to determine and approve individual rates to be charged by any telecommunications company for a noncompetitive service,” which includes switched access. SDCL § 49-31-4. Existing law also authorizes the Commission to investigate and adopt appropriate methods of price regulation, to determine and implement fair and reasonable access rates, and to prevent telecommunications companies from unlawfully discriminating against other companies. SDCL §§ 49-31-4.1 and 49-31-18. Pursuant to its authority, the Commission long ago established rules that provide for payments between telecommunications companies when they exchange traffic that originates or terminates over their respective facilities. In December 14, 2005, the Commission commenced this rulemaking proceeding to consider revisions and/or addition to its existing switched access rules.

---

<sup>16</sup> On April 8, 2011, the Chairman of the Commission signed such a form that addresses all of the pertinent items.

Under this regulatory system, the Commission is empowered to establish rules that govern the relationships and transactions between telecommunications service providers. When, in 2004, the legislature first required the filing of small business impact statements, the intent was to identify the direct impact on small businesses of action by the agency itself, and not the effects of a rule change on the relationship and financial arrangements between different businesses in the state. Switched access services are provided in a market in which payments are made between companies based on provisions in carriers' tariffs that they file with, and are subject to regulation by, the Commission. The Commission's current rule making addresses the method by which carriers are to set switched access rates that they charge other telecommunications companies at levels that are fair, reasonable and nondiscriminatory, as SDCL §§ 49-31-4 and 49-31-18 require. Thus, the nature and effect of these rules is different than those contemplated within SDCL 1-26-2.1.

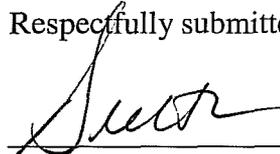
In any event, that issue is moot, given that the Commission has fully explained the new requirements, as well as the options that CLECs have for setting switched access rates that are fair, reasonable and nondiscriminatory. The new rules do not impose any new reporting requirements and are more administratively efficient than the current rules, and thus do not create any new regulatory burden on telecommunications companies operating in South Dakota. Finally, it bears emphasizing that all purchasers of switched access service, including small interexchange carriers and CLECs, will benefit from the more rational pricing structure that the new rules are designed to achieve.

For all these reasons, Verizon urges the Commission to again adopt the requirement in 20:10:27:02.01 that a CLEC may not charge intrastate switched access rates that are higher than Qwest's intrastate switched access rate.

Dated: April 13, 2011

Respectfully submitted,

By:



Brett Koenecke  
May Adam Gerdes & Thompson LLP  
P.O. Box 160; 503 South Pierre Street  
Pierre, SD 57501-0160  
Telephone: (605) 224-8803  
Facsimile: (605) 224-6289  
[Koenecke@magt.com](mailto:Koenecke@magt.com)

and

Richard B. Severy  
Assistant General Counsel  
Verizon  
2775 Mitchell Drive, Bldg. 8-2  
Walnut Creek, CA 94598  
Telephone: (925) 951-2788  
Facsimile: (925) 951-2788  
[Richard.B.Severy@verizonbusiness.com](mailto:Richard.B.Severy@verizonbusiness.com)

Attorneys for Verizon

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 13, 2011, I sent a true and exact copy of the within VERIZON'S COMMENTS ON PROPOSED RULES REGARDING SWITCHED ACCESS RATES by e-mail to all parties identified on the Commission's Service List for this docket.

MS PATRICIA VAN GERPEN  
EXECUTIVE DIRECTOR  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
500 EAST CAPITOL  
PIERRE SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)

MS KAREN E CREMER  
STAFF ATTORNEY  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
500 EAST CAPITOL  
PIERRE SD 57501  
[karen.cremer@state.sd.us](mailto:karen.cremer@state.sd.us)

MS BOBBI BOURK  
STAFF ANALYST  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
500 EAST CAPITOL  
PIERRE SD 57501  
[bobbi.bourk@state.sd.us](mailto:bobbi.bourk@state.sd.us)

MR RICHARD B SEVERY  
ASSISTANT GENERAL COUNSEL  
VERIZON  
201 SPEAR STREET 9TH FLOOR  
SAN FRANCISCO CA 94105  
[richard.b.severy@verizonbusiness.com](mailto:richard.b.severy@verizonbusiness.com)

MILT H. DOUMIT  
DIRECTOR, STATE GOVERNMENT RELATIONS  
VERIZON  
410 11TH AVE. SE, SUITE 103  
OLYMPIA, WA 98501  
[milt.h.doumit@verizon.com](mailto:milt.h.doumit@verizon.com)

RUDOLPH M. REYES  
ASSISTANT GENERAL COUNSEL - WEST REGION  
LEGAL DEPARTMENT  
711 VAN NESS AVE, SUITE 300

SAN FRANCISCO, CA 94102

[rudymreyes@verizon.com](mailto:rudymreyes@verizon.com)

ANN JOHNSON  
VERIZON  
600 HIDDEN RIDGE  
IRVING, TX 75038  
[ann.johnson@verizon.com](mailto:ann.johnson@verizon.com)

MR JAMES M CREMER  
ATTORNEY AT LAW  
BANTZ GOSCH & CREMER LLC  
PO BOX 970  
ABERDEEN SD 57402-0970  
[jcremer@bantzlaw.com](mailto:jcremer@bantzlaw.com)

MR WILLIAM M VAN CAMP  
ATTORNEY AT LAW  
OLINGER LOVALD MCCAHERN & REIMERS PC  
PO BOX 66  
PIERRE SD 57501-0066  
[bvancamp@olingerlaw.net](mailto:bvancamp@olingerlaw.net)

MS MEREDITH A MOORE  
ATTORNEY AT LAW  
CUTLER & DONAHOE LLP  
100 NORTH PHILLIPS AVENUE 9TH FLOOR  
SIOUX FALLS SD 57104-6725  
[MEREDITHM@CUTLERLAWFIRM.COM](mailto:MEREDITHM@CUTLERLAWFIRM.COM)

MR THOMAS J WELK  
ATTORNEY AT LAW  
BOYCE GREENFIELD PASHBY & WELK LLP  
101 N PHILLIPS AVE SUITE 600  
SIOUX FALLS SD 57117-5015  
[tjwelk@bgpw.com](mailto:tjwelk@bgpw.com)

MR CHRISTOPHER W MADSEN  
ATTORNEY AT LAW  
BOYCE GREENFIELD PASHBY & WELK LLP  
101 N PHILLIPS AVE SUITE 600  
SIOUX FALLS SD 57117-5015  
[cwmadsen@bgpw.com](mailto:cwmadsen@bgpw.com)

JASON D. TOPP  
CORPORATE COUNSEL  
QWEST CORPORATION  
200 S 5TH STREET, 2200  
MINNEAPOLIS, MN 55402  
[Jason.Topp@Qwest.com](mailto:Jason.Topp@Qwest.com)

WAYNE M. JOHNSON  
STATE REGULATORY AFFAIRS DIRECTOR  
QWEST CORPORATION  
925 HIGH STREET, 9S9  
DES MOINES, IA 50309  
[Wayne.Johnson3@qwest.com](mailto:Wayne.Johnson3@qwest.com)

MR GEORGE BAKER THOMSON JR (RESIGNED)  
CORPORATE COUNSEL  
QWEST CORPORATION  
1801 CALIFORNIA ST SUITE 1000  
DENVER CO 80202  
[george.thomson@qwest.com](mailto:george.thomson@qwest.com)

MR JEFFREY D LARSON  
ATTORNEY AT LAW  
LARSON & NIPE  
PO BOX 277  
WOONSOCKET SD 57385  
[jdlarson@santel.net](mailto:jdlarson@santel.net)

MR RICHARD D COIT  
EXECUTIVE DIRECTOR AND GENERAL COUNSEL  
SDTA  
PO BOX 57  
PIERRE SD 57501  
[richcoit@sdtasonline.com](mailto:richcoit@sdtasonline.com)

MR TALBOT WIECZOREK  
ATTORNEY AT LAW  
GUNDERSON PALMER NELSON & ASHMORE LLP  
PO BOX 8045  
RAPID CITY SD 57709  
[tjw@gpnaalaw.com](mailto:tjw@gpnaalaw.com)  
[kwebb@gpnaalaw.com](mailto:kwebb@gpnaalaw.com)

MS DARLA POLLMAN ROGERS  
ATTORNEY AT LAW  
RITER ROGERS WATTIER & NORTHRUP LLP  
PO BOX 280  
PIERRE SD 57501-0280  
[dprogers@riterlaw.com](mailto:dprogers@riterlaw.com)

MS MARGO D NORTHRUP  
ATTORNEY AT LAW  
RITER ROGERS WATTIER & NORTHRUP LLP  
PO BOX 280  
PIERRE SD 57501-0280  
[m.northrup@riterlaw.com](mailto:m.northrup@riterlaw.com)

MS KATHYRN FORD  
ATTORNEY AT LAW  
DAVENPORT EVANS HURWITZ & SMITH LLP  
PO BOX 1030  
SIOUX FALLS SD 57104  
[kford@dehs.com](mailto:kford@dehs.com)

  
\_\_\_\_\_  
BRETT KOENECKE