LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

GLENN W. MARTENS (1881-1963)
KARL GOLDSMITH (1885-1956)
THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
ROBERT D. ANDERSON
BRENT A. WILBUR
TIMOTHY M. ENGEL
MICHAEL F. SHAW
ROBERT K. SAHR

OF COUNSEL
WARREN W. MAY

TELEPHONE
605 224-8803
TELECOPIER
605 224-6289
E-MAIL
dag@magt.com

November 13, 1998

HAND DELIVERED

RECEIVED
NOV 13 1998
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

RE: **MCI WORLDCOM; SOUTH DAKOTA TELECOMMUNICATIONS RULES**
Our file: 0175.5

Dear Bill:

Enclosed are original and four copies of MCI WorldCom's comments regarding the proposed telecommunications rules. Please file the enclosure.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY:

DAG:mw

Enclosures

cc/enc: Michel Murray

COMMENTS OF MCI WORLDCOM, INC.
ON PROPOSED SOUTH DAKOTA TELECOMMUNICATIONS RULES

MCI WorldCom, Inc. ("MCI WordCom") files these comments in response to the request for data, opinions, and arguments contained in the NOTICE OF PUBLIC HEARING TO ADOPT RULES ("notice") issued by the South Dakota Public Utilities Commission ("Commission") on October 7, 1998. These written comments will supplement the oral comments made by MCI WorldCom at the November 2, 1998 hearing.

20:10:01:15:06

MCI WorldCom objects to striking the language "and the right to broaden the issues is disclaimed." If a new party can appear before the Commission in the context of a on-going proceeding and broaden the issues, this will theoretically have the effect of broadening the scope of the proceeding and might require additional interventions from other previously non-interested parties. Additionally, this could prove burdensome upon existing parties which may have to deploy additional scarce resources to address the new issues and file additional comments, testimony, etc.

20:10:24:02(11)

MCI WorldCom objects to this rule which would require new companies applying to operate as interexchange carriers to provide the Commission with a copy of "all telemarketing scripts used by the applicant and its third party verifier." Not only does MCI WorldCom consider certain of its telemarketing materials as highly sensitive and proprietary, this requirement would also stifle competition in a world where timely marketing responses make the difference between retaining and

losing a customer.[1] While it would be relevant for the Commission to make specific requests of certain companies on a case-by-case basis, at the time of a new application, for example, or when the Commission has good reasons to suspect wrongdoing, MCI WorldCom would object to the Commission systematically micro-managing telemarketing. Moreover, marketing materials change so frequently that it would be unpractical for the Commission to start collecting and filing largely useless information.

Additionally, instead of requiring that carriers provide the Commission with the "qualifications of its marketing personnel," a potentially broad requirement which may not in the end yield the information that the Commission is looking for, we recommend that the Commission instead request information about a carrier's "quality assurance programs." That is, information about any measures taken by a carrier to ensure it provides quality services (for example, information about how a carrier monitors sales calls, trains personnel, etc.).

Therefore, the new rule should read:

> (11) A detailed description of how the applicant intends to market its services, its quality assurance programs ~~the qualification of its marketing sales personnel~~, its target market, whether the applicant engages in any multilevel marketing, and copies of any company brochures used to assist in the sale of its services~~, and all telemarketing scripts used by the applicant and its third party verifier~~.

20:10:24:02(14)

MCI WorldCom requests that the Commission clarify that the requirements contained in this section applies only to formal agency complaints at the conclusion of which a carrier was specifically

---

[1] Furthermore, MCI WorldCom's telemarketers do no read off of a script, even though they are carefully trained to ensure that they provide prospective customers with specific and accurate information. We would have no objection to provide the Commission with our third-party verification script, however.

found in violation of regulations governing the unauthorized switching of a customer's telecommunications service provider. To MCI WorldCom's knowledge, this is a highly unusual state requirement, and it would be unduly burdensome (and unfair) for new applicants to have to disclose all *allegations* of wrongdoing filed against it. The Commission should also limit this requirement to a reasonable period of time; MCI WorldCom suggests twelve months.

The proposed rule should be modified as follows:

> (14) The number and nature of formal agency complaints filed against the applicant with any state or federal regulatory commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered, at the conclusion of which a carrier was specifically found in violation of regulations governing such practices.

20:10:24:04.04

The language in the second paragraph would restrict the Commission to "either dismissing the complaint or entering an order directing the action specified in the order to show cause." As MCI WorldCom suggested at the November 2, 1998 hearing, the Commission might want to modify this language so as to retain the flexibility of ordering other forms of relief which could include, for example, a timetable agreeable to all parties for creative resolution of the dispute.

MCI WorldCom suggests that paragraph 2 of the new rule should read:

> After the hearing the commission shall enter its decision either dismissing the complaint or entering an order directing the action specified in the order to show cause, or shall order any other reasonable forms of relief agreeable to the commission after consultation with the parties. . . .

20:10:24:04.05. Performance bond.

MCI WorldCom suggests that this proposed rule be amended to clarify that the public interest test used in determining whether a company should post a performance bond should give

considerable weight to the company's track record of meeting (or, inversely, not meeting) its financial obligation.

Additionally, paragraph 2 of this proposed rule should be modified not to restrict acceptable bonds to only corporate surety bonds. A company asked by the Commission to post a bond should have the option of posting a cash or property bond to save the cost of the bond premium.

20:10:28:45, 20:10:28:47, 20:10:28:105, 20:10:28:108, 20:10:28:117, 20:10:28:118, 20:10:29:20, 20:10:29:34, and 20:10:28:43. Designed to delete any recovery of public payphone expenses from the rates charged for intrastate switched access.

The Commission's proposed rules appear to accomplish the goals envisioned by the Commission. MCI WorldCom would encourage the Commission to closely monitor their implementation to ensure that all South Dakota ILECs are in compliance. Initially, the Commission should require all ILECs to certify to the Commission that their records agree with these rules.

MCI WorldCom specifically disagrees with the comments filed on November 2, 1998 by the South Dakota Independent Telephone Coalition ("SDITC"). According to SDITC, section 20:10:28:118 of the proposed rules should not "reference any exclusion of expenses associated with pay telephone services." However, the Federal Communications Commission's ("FCC") payphone order clearly stated at paragraph 186: "We require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the cost of payphones."[2] The *costs of payphones* would include the payphone sets and the expenses of the payphone operation, including coin collection and commission payments.

---

[2]See CC Docket No. 96-128: First Report and Order, In the Matter of the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

20:10:29:14. Equal access - Assignment of revenue requirements.

This section of the proposed rules pertains to the recovery of costs associated with equal access conversion. While the rule as drafted assigns the recovery of these costs to the local switching element, it fails to identify which costs are recoverable.

The costs associated with conversion to equal access should be limited to those incremental costs actually incurred in order to add this limited capability to a converted end office.

MCI WorldCom recommends that this rule should be expanded to read as follows:

20:10:29:14. Equal access - Assignment of revenue requirements. Intrastate equal access revenue requirements which result when an exchange carrier converts a local exchange switch to provide feature group D service substantially equivalent to access provided for message toll service or wide area telephone service are assigned to the local switching element. The determination of recoverable costs and the recovery method shall be determined according to the following guidelines:

(1) Equal access expenses include only initial incremental pre-subscription costs and other initial expenditures related directly to the provision of equal access that would not be required to upgrade the capabilities of the office involved absent the provision of equal access. Equal access expenses are limited to such expenditures for converting central offices that serve competitive interexchange carriers or where there has been a bona fide request for conversion to equal access;

(2) The costs associated with the conversion to equal access that are assigned to the switching element shall be recovered from all toll carriers purchasing feature D access in the LEC's service territory, including the incumbent local exchange carrier itself. Only those Commission approved costs directly associated with the conversion to equal access should be recovered during a five year time period, unless otherwise approved by the Commission on a case-by-case basis;

(3) The LEC shall have the burden of demonstrating that any proposed conversion costs are reasonable; and

(4) The tariff or price list element associated with the recovery of equal access conversion costs shall include an automatic termination. This termination date shall coincide with the end of the selected or ordered recovery period.

20:10:32:03(21)

This section would, in part, require an applicant to provide to the Commission "all telemarketing scripts used by the applicant and its third-party verifier." MCI WorldCom's earlier objection to this same requirement for rule 20:10:24:02(11) continues to apply here. Such a requirement would also stifle the emergence and subsequent development of competition in the local marketplace.

MCI WorldCom suggests that this rule should read:

> (21) Information concerning the applicant's policies relating to solicitation of new customers, ~~including all telemarketing scripts used by the applicant and its third party verifier~~ and a description of the efforts that will be made to prevent unauthorized switching of local service customers by the applicant, its employees, or agents;

20:10:32:03(22)

Please see MCI WorldCom's response to proposed rule 20:10:24:02(14). The proposed rule should be modified as follows:

> (22) (14) The number and nature of formal agency complaints filed against the applicant with any state or federal regulatory commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered, at the conclusion of which a carrier was specifically found in violation of regulations governing such practices;

20:10:32:11

This proposed rule prescribes that a competitive local exchange carrier ("CLECs") "that is granted authority to offer competitive local exchange services in an area where the incumbent local exchange carrier provides a certain local calling area shall provide no less than the same local calling area to its customers" unless the carrier can show that offering a different calling area would be in the public interest. As local competition eventually emerges and develops in South Dakota, each CLEC will have to compete for every single one of their customers. The Commission does not need

to restrict CLECs to the provision of pre-determined calling areas because those CLECs which will not provide calling schemes appealing to customers will quickly be out of business. Competition should be allowed to follow its course, and the marketplace should become the ultimate judge of what services are offered. At the very least, opposing parties should have the burden of proving that a CLEC not mirroring the local area of the ILEC is not in the public interest, not the other way around.

MCI WorldCom suggests that the new rule should read:

> **20:10:32:11. Local calling scope for alternative providers.** ~~A telecommunications company that is granted to authority to offer competitive local exchange services in an area where the incumbent local exchange carrier provides a certain local calling area shall provide no less than the same local calling area to its customers.~~ An alternative provider of local exchange services may, ~~subject to commission approval,~~ offer a different local calling area ~~upon showing that~~ as long as it would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns. Upon a complaint from a third party, the commission shall investigate whether the offering by an alternative provider of a calling area different from that offered by the ILEC is in the public interest. The burden of proof shall be with the complaining third party.

20:10:32:20. Failure to meet service obligations - Grounds for revocation of certificate

MCI WorldCom agrees with the comments made by DTG on October 30, 1998 that this proposed rule should be deleted. While we understand the Commission's desire to ensure that South Dakota consumers have access to high quality telecommunications service, the Commission should refrain from adopting requirements that would impede on the emergence and development of competition in the state's local marketplace. To that end, MCI WorldCom would urge the Commission to exempt non-dominant carriers from any service quality standards imposed on dominant carriers. Non-dominant CLECs do not possess market power and can be easily and effectively disciplined by the market through the loss of customers if they fail to maintain good

service quality. As they begin to enter the South Dakota local marketplace, CLECs will face competition for every single customer, and dissatisfied customers will have the ability to quickly move on to another carrier. Inversely, it is appropriate for the Commission to impose quality standards on the dominant ILECs, as customers of a monopoly provider have no choice but to continue to buy service from that carrier.

20:10:34:01(1) - Definition of "Subscriber"

MCI WorldCom has no quarrel with the Commission's definition of "subscriber", which takes into account modern day realities where more than one person at any given location may be able to select telecommunications services. Instead, we would encourage the Commission to resist any proposal to modify this definition. Similarly, there are other areas in the proposed rules that suggest that more than one person may be authorized to make decisions concerning telecommunications service, and MCI would oppose any modifications to these sections that would restrict the ability of a subscriber to authorize others to make such decisions.

20:10:34:02(1)

The proposed rule in part reads "Reference to use of another telecommunications company's network or facilities, if stated, must be secondary in nature to the prominent identification of the telecommunications company which will be providing the service and setting the rates . . ." (emphasis added) MCI WorldCom does not oppose this proposed rule as drafted but would oppose any modification that would obligate a reseller of telecommunications services to identify the underlying company by name. The reseller and the underlying company, even though they enter into contractual arrangements, remain two different entities.

20:10:34:02(4)

Unless asked, MCI WorldCom does not offer new customers a toll free telephone number during the third-party verification process. Instead, customer service numbers are clearly indicated in the "welcome kit" we send new customers. MCI WorldCom would encourage the Commission to help keep the third-party verification process as clear and simple as possible for South Dakota consumers by deleting this requirement from its proposed rules.

20:10:34:03(6)

This section would require that the precise amount of any charge resulting from a change of carrier be indicated in the letter of agency ("LOA"). MCI WorldCom does not currently include the precise amount of such charges and would discourage the Commission from requiring us to do so. In addition to raising carriers' costs of doing business, this requirement would be practically impossible to meet. As the Commission is aware, interexchange carriers ("IXCs") often market on a nation-wide basis using a pre-printed LOA[3], while the fees for changing carrier vary widely from one region to another and from one local exchange company ("LEC") to another. Even within a same state there are many LECs which charge different switching fees, it would be unpractical to try and include specific switching fees on the LOAs used in that state. For example, MCI WorldCom includes sales literature and detachable LOAs in airline magazines, where a same airplane seat will be occupied by a great variety of people who are also customers of various local exchange companies. If MCI WorldCom was not permitted to use a pre-formatted LOA clear of precise local rates, it would have to stop including sales literature on airplanes. Even if a carrier was not using a pre-formatted, generic LOA, this requirement might lead to serious consumer confusion in

[3]Consumers benefit from the economies of scale realized by marketing nationally, as they do not have to ultimately pay for the additional costs of adapting each telemarketing piece to various areas.

instances when a LEC decreases or increases the switching fee without timely or properly informing all other carriers.

Currently, MCI WorldCom includes a $5.00 "check" in all of its "welcome kits" to new customers as total or partial compensation for the switching fee incurred by the customer.[4]

This section should read as follows:

> (6) That the subscriber understands that any change in a subscriber's interexchange or local exchange service company may involve charges to the subscriber. ~~The precise amount of each charge shall be specified in the letter of agency;~~

20:10:34:03(9)

Please see MCI WorldCom's comments on proposed rule 20:10:34:03(6) above. MCI WorldCom does not systematically include on its LOAs a toll-free number where the customer can call to verify a switch in presubscribed carrier. We would request that the Commission delete this requirement from its proposed rules, as it would limit the ability of carriers to use lower-cost pre-formatted LOAs, which ultimately result in savings for our customers.

20:10:34:05. Complaints of unauthorized switching of a telecommunications company.

This section in part reads "Upon receipt of an oral or written complaint alleging an unauthorized switch in a subscriber's telecommunications company from the subscriber, *the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company,* or from the commission or its staff on behalf of a subscriber or applicant . . ." (emphasis added) MCI WorldCom very strongly opposes the language in italics which would effectively make the local exchange company ("LEC") or a customer's previous pre-subscribed

---

[4]This is not an actual check or negotiable instrument, but rather a form or certificate that the customer must sign and mail back to MCI WorldCom or the LEC, to be used against the customer's bill.

telecommunications company — two hardly impartial parties in such circumstances — the initiator and/or the arbitrator of an alleged unauthorized switching. Any such dispute should be brought forth by the subscriber or by the Commission only.

MCI WorldCom suggests that this rule should read:

> **20:10:34:05. Complaints of unauthorized switching of a telecommunications company.** Upon receipt of an oral or written complaint alleging an unauthorized switch in a subscriber's telecommunications company from the subscriber, ~~the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company,~~ or from the commission or its staff on behalf or a subscriber or applicant . . .

20:10:34:06(1) and 20:10:34:07

MCI WorldCom opposes the language in these two sections which would amount to giving a consumer free service for a period up to six months. While we agree that customers should not be switched without their consent, MCI WorldCom would support a alternative approach whereby a customer's bills would be re-rated to the rates of the customer's carrier of choice. Any switching fees incurred by the customer would also be refunded. This is MCI WorldCom's current practice, and we believe that the Commission should adopt it as a reasonable compromise that would remove any economic incentive of slamming while protecting companies (such as MCI WorldCom) which make every efforts to avert slamming.

Furthermore, the rules should be clarified to state that they apply only to "direct dialed" charges billed by the unauthorized carrier, and not to other charges not associated with that carrier. For example, assuming that a carrier slammed customer A, that carrier should refund the switching charges and re-rate the customer's bills to the rates of the customer's carrier of choice. However, if customer B calls customer A collect and the latter accepts the call/charges, the carrier should be able to collect the "non direct dialed" charges incurred by the customer by accepting the collect call.

MCI WorldCom suggests that 20:10:34:06 and 20:10:34:06(1) should read:

20:10:34:06. Telecommunications company liability. Notwithstanding any other provision of law, a telecommunications company, its agent or employee, who intentionally initiates a change in a subscriber's telecommunications company in violation of these rules, or cannot provide documentation that the change was initiated in compliance with these rules is liable:

(1) To the subscriber for ~~all~~ any direct-dialed long distance or local exchange service charges in excess of the charges that would have normally been billed by the customer's former carrier for comparable service, ~~local exchange service charges~~, monthly service charges, and carrier switching fees, ~~and other relevant charges~~ billed by the unauthorized telecommunications company or its agent to the subscriber during the period of the unauthorized change, ~~, not to exceed six continuous months, and~~

And 20:10:34:07 should read:

20:10:34:07. Refund of charges. A telecommunications company which intentionally initiates a telecommunications carrier change without authorization from the subscriber in accordance with this chapter shall issue to the subscriber a ~~full~~ credit or refund for any ~~the entire~~ amount ~~of such customer's telephone~~ in excess of the charges attributable to direct-dialed telephone service that would have normally been billed by the consumer's carrier of choice for comparable service ~~from the telecommunications company for up to six continuous months of unauthorized service~~ and any charges from another telecommunications company to re-establish service or to change the subscriber's pre-subscribed company. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the switch was unauthorized.

20:10:34:10.Authorized products or services

MCI WorldCom requests that the Commission clarify the second sentence of this rule which could be read as a broad requirement for carriers to notify consumers prior to making any changes in rates, terms, or condition of services, unless the subscriber has previously agreed in writing that no notification is necessary. The Commission should clarify that this does not apply to changes in tariffed rates, terms, or conditions. Otherwise, such a requirement could potentially be very costly for carriers and might result in higher prices for all South Dakota customers. In competitive markets such as the interstate interexchange markets, companies attract and retain customers by their ability

to quickly respond to the competitive offerings of other providers. Additional notification procedures would only serve to decrease the amount of competition in South Dakota, and would not benefit consumers. However, should the Commission insist on imposing additional notifications, MCI WorldCom would suggest that the Commission allow each carrier to select the most efficient method of notification.

Additionally, forcing carriers to maintain different databases differentiating between those customers who wish to be notified and those who do not would obviously be very costly for all carriers. MCI WorldCom urges the Commission not to go forward with this requirement.

For these reasons, this proposed rule be modified as follows:

20:10:34:10. Authorized products or services. Any products or services listed on a subscriber's bill must be authorized by the subscriber. ~~Prior to changing any rate, term, or condition of service, a telecommunications company shall notify the subscriber of the change unless the subscriber has previously agreed, in writing, that no notification is necessary.~~

MCI WorldCom appreciates this opportunity to assist the Commission with the revision of the state's telecommunications rules, and looks forward to participate in other proceedings.

DATED: November 13, 1998

MAY, ADAM, GERDES & THOMPSON LLP

BY: _____
DAVID A. GERDES
Attorneys for MCI WorldCom
P.O. Box 160
Pierre, SD 57501-0160