
**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 20:10:29.**

DOCKET RM05-002

**REPLY COMMENTS OF
MIDSTATE TELECOM AND
RC COMMUNICATIONS, INC.,
d/b/a RC SERVICES**

Midstate Telecom and RC Communications, Inc. d/b/a RC Services (collectively referred to as "Midstate and RC"), hereby submit the following reply comments on the proposed rules in Docket RM05-002.

As indicated in their initial comments, Midstate and RC support the Commission's proposed rules, with the revisions indicated in their initial comments. Midstate and RC support the initial comments of SDTA and SStelecom and the initial and reply comments of SDTA and NVC and Sancom that oppose tying CLEC rates to the rates of competing ILECs, for the reasons articulated by those parties. Midstate and RC generally support the tiered rating system contained in the proposed rules.

Midstate and RC would like to comment further on ARSD 20:10:27:02.02. Specifically, Midstate and RC oppose the positions of Verizon, AT&T, and Midcontinent that appear to propose the elimination of 20:10:27:02.02(1).¹ As noted in their initial comments, Midstate and RC support inclusion of the concepts embodied in this subsection of the rules, i.e., ensuring service to rural or remote customers, preventing cherry picking and provisioning of service only in the more lucrative urban portions of an exchange, and recognition of added costs and

¹ See Midcontinent's Initial Comments, page 3.

investment needed to fulfill carrier of last resort obligations. Midstate and RC believe the language they proposed in their initial comments achieves that goal:

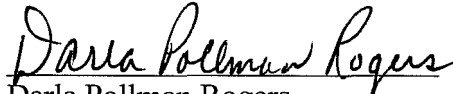
(1) If a competitive local exchange carrier offers service with its owned or leased facilities throughout all the exchanges where it operates, the competitive local exchange carrier may charge intrastate switched access rates that do not exceed the rate established by § 20:10:27:12. A competitive local exchange carrier must offer local exchange service throughout all of the exchanges where it operates using its own facilities and may not rely on the facilities owned by an affiliate or subsidiary.

In their reply comments, NVC and Sancom appear to agree with the concepts embodied in this subsection of the rule, but their proposed revision is too restrictive as to whose facilities may be utilized. NVC and Sancom attempt to address the issue of reselling in their latest draft, but NVC and Sancom are confusing the concept of “leasing” with “reselling”. This is apparent from the following language used by NVC and Sancom: “[t]he Commission may legitimately desire to prevent a CLEC from charging higher access rates merely by reselling an unaffiliated carrier’s facilities.” A carrier may resell the services of another carrier, but it cannot resell facilities. Again, the important policy embraced in this subsection of the rules is that the CLECs provide facility-based service throughout an exchange in order to be eligible for the higher switched access rate. Facilities-based services can be provided by a CLEC building its own facilities or leasing a portion of the facilities from another carrier, but the CLEC manages and operates the network it owns or leases to provide the service. Limiting facilities used by CLECs to those owned in whole or in part by a subsidiary or parent of the CLEC is not necessary to ensure that the CLEC is more than just a reseller of services. The language as proposed by Midstate and RC to 20:10:27:02.02(1) achieves the public policy of the subsection and also ensures that the services provided by the CLEC are provisioned through the CLECs facilities, whether owned or leased. Resellers who do not own or lease their own facilities are not entitled

to charge access rates under FCC rules, consistent with 47 CFR 51.605(b), because they are not providing any access services with their own network.

The Commission should adopt its proposed rules on CLEC intrastate access charges, with the revisions proposed by Midstate and RC.

Respectfully submitted this 28th day of June, 2010.



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CERTIFICATE OF SERVICE

I, Darla Pollman Rogers, certify that a true and correct copy of Comments of Midstate Telecom and RC Communications were emailed to the following on the 28th day of June, 2010:

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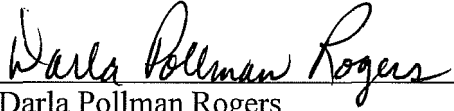
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