

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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

**Reply Comments of Northern Valley Communications, L.L.C.
and Sancom, Inc. on Proposed Rule Changes**

Northern Valley Communications, L.L.C. ("NVC") and Sancom, Inc. ("Sancom") hereby submit the following reply comments on the proposed telecommunications switched access rules, ARSD Chapter 20:10:27.

I. THE COMMISSIONS PROPOSED RATES SHOULD BE ADOPTED.

As indicated in their initial comments, NVC and Sancom, with limited exception, support the Commission's proposed rules governing CLEC access charges. After reviewing the comments filed by the other CLECs and IXCs in this docket, the position of NVC and Sancom remains largely unchanged. NVC and Sancom's reply comments will touch on many of the arguments made by other carriers for changes to the proposed rules.

A. THE COMMISSION NEED NOT TIE CLEC RATES TO RBOC/ILEC RATES.

Several commenters have argued for the Commission to tie CLEC rates to the rates of competing ILECs, in a manner similar to that provided by the rules adopted by the Federal Communications Commission ("FCC").¹ However, the Commission need not follow the path adopted by the FCC and may appropriately consider a wide range of competing policy issues in

¹ See, e.g., Comments of AT&T Communications of the Midwest, Inc. ("AT&T Comments"), Docket RM05-002, June 14, 2010, at pp. 1-2; Verizon's Comments on Draft Rules Regarding Switched Access Rates ("Verizon Comments"), Docket RM05-002, June 15, 2010, at p. 3; Qwest's Written Comments on Proposed Rule Changes ("Qwest Comments"), Docket RM05-002, June 14, 2010, at p. 4; Midcontinent Initial Comments ("Midcontinent Comments"), Docket RM05-002, June 14, 2010, at p. 1.

establishing the appropriate access rates for CLECs to charge on intrastate traffic.² Nor is the Commission obligated to preemptively adopt the FCC's non-binding *recommendations* found in the National Broadband Plan.³

As former FCC Commissioner Furchgott-Roth articulates in his attached testimony, tying CLEC rates to the rates of other carriers, namely the competing ILEC, may have adverse effects. Specifically, a larger carrier may be materially incited to, at least temporarily, reduce its access rates in order to drive competing carriers, who may place greater value on the revenue received from access charges, out of business.⁴ Moreover, it is appropriate for the Commission to devise policy that encourages competition in rural and underserved areas.⁵ Indeed, the promotion of competition in rural and underserved areas is embodied in current federal law and policy, which provides a special exemption enabling Rural CLEC's to charge higher access rates than the non-rural ILEC.⁶ This seems to be consistent with the policy objective embodied in the Commission's proposed rules.

Fixing rates at the competing ILEC or RBOC rate also ignores an important reality. As AT&T alluded in its brief, some access charges "are a holdover of the monopoly days in the telecommunications market from nearly a quarter of a century ago."⁷ It is true that ILECs and

² See Testimony of Harold W. Furchgott-Roth on Behalf of Northern Valley Communications ("Furchgott-Roth Testimony") at 9, attached hereto as Exhibit A (noting that there are non-economic factors that may appropriately influence rates for CLEC access charges).

³ See Furchgott-Roth Testimony at 17.

⁴ See Furchgott-Roth Testimony at 9.

⁵ See Furchgott-Roth Testimony at 8 – 11.

⁶ See Furchgott-Roth Testimony at 10 - 11.

⁷ AT&T Comments at 1.

RBOCs were able to build out their physical plant during the "the monopoly dates in the telecommunications market," however, competitive carriers did not gain the benefit of leveraging monopolistic powers. Rather, competitive carriers must build out their networks by charging their respective customers – end users and IXC's – their fair share for the use of the network. Tying CLEC rates to ILEC rates ignores this important reality.

NVC and Sancom believe that the Commission's proposed rules, including the rates proposed by the Commission, appropriately balance competing policy and economic factors. As such, NVC and Sancom urge the Commission to adopt the rules as proposed, subject only to the revisions noted below.

II. THE COMMISSION SHOULD AVOID CREATING ANOTHER REGULATORY BURDEN FOR CARRIERS AND REJECT AT&T'S PROPOSAL TO CREATE A STATE UNIVERSAL SERVICE FUND.

AT&T has proposed that the Commission take action in this rulemaking proceeding to create a new "South Dakota USF," that would be open only to ILECs, in order to offset access revenue reductions that AT&T has proposed.⁸ In essence, AT&T proposes a double hit to CLECs: first, a dramatic flash cut reduction in their intrastate access rates, and two, a shifting of resources through the creation of a USF system that requires CLECs to pay in, but prohibits them from being a recipient of payments.

To the extent that the Commission is interested in considering a South Dakota USF, it should do so in the context of a separate rulemaking proceeding where all interested parties

⁸ AT&T Comments at 14 - 15. AT&T's proposal for a South Dakota USF fund seems to flow from its faulty conclusion that lower intrastate access charges are necessary to curb the tidal wave of consumers migrating from wireline telephone services to wireless and VoIP products.⁸ AT&T contends that, if the Commission would only lower access rates, competition in the long distance marketplace would encourage consumers to stick with their wireline services. However, AT&T's argument ignores the fact that higher fixed monthly invoices for local service would likely cause more, not less, consumers to switch to competing products, thereby accelerating the decline in wireline minutes for all carriers. *See* Furchtgott-Roth Testimony at 14 - 15.

would have a full opportunity to be heard, rather than in the context of this proceeding focused on CLEC access rates. Further, the Commission should reject AT&T's proposal that only ILECs would be able to receive funds from any such fund, which would serve only to insulate the incumbent carrier's position of power in the South Dakota telecommunications market place and present a dramatic deterrent for new competitive carriers interested in offering service in South Dakota. Competitive carriers, which did not have the benefit of monopolistic power, must make significant investments in establishing their service offerings and, even though they do not have carrier of last resort obligations, it is simply not the case that their access is less valuable than the access provided by ILECs. Accordingly, to enable ILECs to make up lost profits, while excluding CLECs from that same opportunity, is bad public policy.

NVC and Sancom encourage the Commission to reject AT&T's proposal to develop a South Dakota USF in the course of its evaluation of CLEC access rates. In any event, the Commission should only adopt a USF system that promotes, rather than deters, competition by making any such fund equally available to CLECs and ILECs.

III. THE REQUIREMENT FOR A CLEC TO USE ONLY "ITS OWN FACILITIES" IN ORDER TO QUALIFY FOR THE EXCEPTION PROPOSED IS ARSD 20:10:27:02.2(1) IS VAGUE AND UNDEFINED.

Many commenters are in agreement that the Commission's proposed rule, ARSD 20:10:27:02.2(1) should not limit the application of the rate exception to CLECs that "operates using its own facilities and may not rely on the facilitated owned by an affiliate or subsidiary."⁹

As Midstate and RC Services stated, the language proposed by the Commission is

⁹ See Initial Comments of Midstate Telecom and RC Communications, Inc., d/b/a RC Services ("Midstate/RC Comments"), Docket RM05-002, June 15, 2010, at 3; Midcontinent Comments at 2.

"unclear, unduly restrictive, and unnecessary."¹⁰ The Commission's goal of ensuring that a CLEC that charges the ILEC rate is capable of and willing to provide service throughout the exchange, rather than only to the most lucrative users, is laudable. That goal is primarily fulfilled by the first sentence of the proposed rule. Indeed, because sentence one of the proposed rule provides that "a competitive local exchange carrier offer[ing] service with its owned *or leased* facilities through all the exchanges where it operates" is eligible for the rate exception, the second sentence creates an internal conflict by then preventing the carrier from relying on the facilities owned by an affiliate or subsidiary, arguably even if the CLEC leases those facilities.

On the other hand, because the Commission may legitimately desire to prevent a CLEC from charging higher access rates merely by reselling an unaffiliated carrier's facilities (*i.e.*, Qwest's facilities), the rule should be clarified to enable a CLEC that operates through an entire exchange using its owned facilities, or the facilities of an entity that is its 100% owner or subsidiary, or the combination thereof, to qualify for the exception.¹¹ This goal would be accomplished through the adoption of this modified rule in ARSD 20:10:27:02.02:

(1) If a competitive local exchange carrier offers service with its own 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 (i) its own facilities; or (ii) facilities owned by its parent, if the parent is the 100% owner of the competitive local exchange carrier; or (iii) facilities owned by its subsidiary, if the competitive local exchange carrier is the 100% owner of the subsidiary; or (iv) facilities that are owned by a combination of (i), (ii) or (iii); or

Accordingly, the Commission should adopt the proposed language in NVC and Sancom's initial comments or otherwise make clear that a CLEC may use the facilities of a subsidiary or

¹⁰ Midstate/RC Comments at 3.

¹¹ See Furchgott-Roth Testimony at 16.

affiliate to make service available throughout the exchange.

IV. THE COMMISSION SHOULD HELP PUT AN END TO AN INDUSTRY CONTROVERSY BY ESTABLISHING A RATE FOR CALLS DESTINED TO CONFERENCE CALLING COMPANIES AND MAKE CLEAR THAT THE IXCS MUST PAY FOR THOSE SERVICES.

Finally, Qwest has called on the Commission to proscribe rules against what it pejoratively terms "traffic pumping."¹² NVC and Sancom are not opposed to the Commission addressing the application of access charges to intrastate telephone calls that terminate to conference calling and welcome Qwest's apparent recognition that the services that they receive from the LECs that terminate these calls are, indeed, access services.¹³ The Commission has an opportunity to help bring an end this industry controversy by establishing a safe harbor rate for services that generate high volumes of traffic and by making clear that IXCs are not at liberty to engage in self-help by refusing to pay for that traffic.

As the Commission knows, Midco, Qwest and other IXCs attempted to have the South Dakota legislature pass a bill aimed at preventing LECs from providing local exchange service to free calling service providers, as NVC does, and Sancom did. That bill, HB 1097, was rejected because of the negative impact it would have on competition and entrepreneurship in the state, and because many nonprofit, entrepreneurs, and even government agencies rely on free conferencing services to conduct their legitimate business. Accordingly, the bill failed to pass the House and was rejected on February 10, 2010.

Having failed at its legislative efforts, Qwest now attempts to get the Commission to ignore the legislature and implement regulations to achieve the same result. The Commission

¹² Qwest Comments at 1 – 3.

¹³ See Qwest Comments at 3 ("Traffic pumping LECs . . . under Staff's proposal, would be allowed to continue to bill switched access at very high rates.").

should decline Qwest's invitation to stymie competition in the conference calling market by eliminating these competitive and entrepreneurial companies and defend South Dakota's reputation as the leading state for entrepreneurship.¹⁴ Moreover, it does not necessarily follow that the level or availability of access charges would eliminate the provisioning of free or low cost conference services – to the extent that such was even considered to be a laudable policy goal.¹⁵

Nevertheless, it is the case that Qwest and other IXCs have forced competitive carriers into protracted and expensive legal battles as a pretext for their desire to lower access rates on these types of calls and the Commission is likely to be the next front in that legal battle in the case brought by South Dakota Network against Sprint, where Sprint has also brought claims against NVC, Sancom, and Splitrock regarding the application of access charges to conference calling services.¹⁶ The Commission could resolve this dispute, however, by simply clarifying that IXCs receive "intrastate access services" and are liable for intrastate access charges when their customers originate calls that are terminated to conference call providers.

NVC and Sancom believe that it would be appropriate for the Commission to establish a benchmark rate, at or below which, a carrier would be expressly permitted to tariff and collect for calls destined to conference calling and similar service providers. NVC and Sancom would

¹⁴ See *Small Business Survival Index 2009 Ranks States Policy Climates for Entrepreneurship*, December 1, 2009, available at: <http://www.sbecouncil.org/uploads/SBSI2009%20Release%20US%5B1%5Dpdf%20version.pdf> (last accessed June 24, 2010) (finding South Dakota to have the best policy environment for entrepreneurs in the nation).

¹⁵ Furchgott-Roth Testimony at 12 (noting that services are available in areas with high, low, and no access charges).

¹⁶ See *In the Matter of South Dakota Network Against Sprint Communications Co., LP*, TC09-098.

suggest incorporating the following into proposed ARSD 20:10:27.02:

(3) If a competitive local exchange carrier provides service to an end user that offers to the public services that generate high volumes of telecommunications traffic, including, but not limited to, chat line services, conference calling services, help desk assistance, or call center support, and that end user installs equipment in the competitive local exchange carrier's central office, the competitive local exchange carrier shall charge intrastate switched access rates for calls terminating to that end user that do not exceed that rate of 1.4 cents per minute. This provision shall not be interpreted to otherwise affect the intrastate switched access rates that a competitive carrier assesses for calls to other end users.

Though NVC and Sancom understand that certain IXC's, namely Qwest and Sprint, may continue to engage in litigation and force NVC and Sancom to do so, seemingly without regard to the amounts at issue,¹⁷ most other IXC's have shown a more rational approach to this issue. To the extent that rates are lower, most IXC's are willing to acknowledge that calls to conference calling services do generate substantial revenue for the IXC's and that LEC's are providing a significant service by allowing the IXC's' customers' calls to be terminated. With this in mind, NVC and Sancom believe that the rate of 1.4 cents per minute may provide a disincentive for IXC's to engage in the self-help activities that have spawned litigation. It is NVC and Sancom's hope that this proposal, when adopted by the Commission, will allow CLEC's to once again focus their attention on running a business that provides jobs in and fuels the economy of South Dakota.

¹⁷ For example, between January 1, 2007 and January 1, 2010, Sprint has accrued an outstanding balance of \$15,816.72 in intrastate access charges relating to NVC's termination of conference calling traffic. Meanwhile, Sprint is withholding over \$631,911 in intrastate access charges relating to traffic terminating to NVC's other residential and business customers. This fact and the pending federal court litigation, however, have not stopped Sprint from opening its latest line of attack.

V. CONCLUSION

The Commission should adopt its proposed rules on CLEC intrastate access charges, subject to the revisions suggested herein. To the extent the Commission desires to do so, it should consider the formation of a South Dakota USF in the context of a separate rulemaking proceeding that ensures that all interested parties are afforded the opportunity to provide comments and, in any event, should make any such fund open to CLECs and ILECs alike. Finally, the Commission should adopt a 1.4 cent per minute rate for conference calling services.

Dated this 28th day of June 2010.

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Docket No. RM05-002

**Testimony of
Harold Furchtgott-Roth**

on behalf of

Northern Valley Communications, L.L.C.

and

Sancom, Inc.

June 28, 2010

Exhibit A

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**TESTIMONY OF
HAROLD W. FURCHTGOTT-ROTH
ON BEHALF OF NORTHERN VALLEY COMMUNICATIONS, L.L.C.**

I.

INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Harold W. Furchtgott-Roth. My business address is 1200 New Hampshire Avenue, N.W., Suite 800, Washington, DC 20036. My resume is attached as Schedule 1.

Q. HOW ARE YOU PRINCIPALLY EMPLOYED?

A. I am founder and president of Furchtgott-Roth Economic Enterprises, an economic consulting firm.

Q. DO YOU HAVE OTHER PROFESSIONAL RESPONSIBILITIES?

A. I chair the board of Oneida Broadband Communications. I serve on various other advisory boards.

Q. ARE YOU FAMILIAR WITH FEDERAL TELECOMMUNICATIONS STATUTES, REGULATION, AND POLICY?

A. Yes. I was chief economist of the House Commerce Committee from 1995 – 1997, and I was one of the principal staff members working on the Telecommunications Act of 1996. From 1997-2001, I was a commissioner of the Federal Communications Commission. I authored a book on telecommunications regulation under the 1996 Act entitled *A Tough Act to Follow*.

Q. HAVE YOU TESTIFIED BEFORE STATE REGULATORY AGENCIES ON TELECOMMUNICATIONS ISSUES?

A. Yes. I have testified in writing or in person on telecommunications issues before the state regulatory bodies in Alaska, Connecticut, Missouri, and Puerto Rico.

Q. HAVE YOU WORKED JOINTLY WITH STATE COMMISSIONERS?

A. Yes. As an FCC commissioner, I served on the Joint Board on Universal Service with several state commissioners. I met in Washington and around the country with state regulatory commissioners. Since leaving the FCC, I continue to see and work with state regulators at various conferences.

Q. PLEASE DESCRIBE YOUR BACKGROUND AND WORK-RELATED EXPERIENCE.

A. I grew up in Tennessee and South Carolina, and I attended classes at the University of South Carolina. I received my undergraduate degree in economics from the Massachusetts Institute of Technology, and I earned a Ph.D. in economics from Stanford University. Subsequently, I was a research analyst at the Center for Naval Analyses, a think tank for the Department of Navy where I primarily worked on projects for the Marine Corps. I then went to an economic consulting firm, Economists Incorporated, where I served as a senior economist. I then entered government as mentioned above as chief economist for the House Commerce Committee in 1995. I was a commissioner of the FCC from 1997-2001. I left the FCC in 2001 to join the American Enterprise Institute as a Visiting Fellow. In 2003, I founded Furchtgott-Roth Economic Enterprises, an economic consulting firm.

Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?

A. No.

Q. ON WHOSE BEHALF ARE YOU SUBMITTING REBUTTAL TESTIMONY?

A. I am submitting rebuttal testimony as an expert witness on behalf of Northern Valley Communications, L.L.C. and Sancom, Inc.

Q. HAVE YOU REVIEWED THE PROPOSED RULE CHANGES IN THIS PROCEEDING?

A. Yes, I have reviewed the proposed rule changes.

Q. HAVE YOU REVIEWED COMMENTS SUBMITTED IN THIS PROCEEDING SUBSEQUENT TO THE RELEASE OF THE DRAFT RULES?

A. Yes.

Q. WHICH COMMENTS HAVE YOU REVIEWED?

A. I have reviewed comments submitted by the following entities: AT&T, the Local Exchange Carriers Association (LECA) and the South Dakota Telecommunications Association, Midstate Telecom and RC Communications, Northern Valley Communications and Sancom; Qwest, Midcontinent Communications and Verizon.

II.

SUMMARY

Q. WHAT IS THE NATURE OF THE ISSUES THAT YOU ADDRESS IN YOUR TESTIMONY?

A. I am commenting on some of the issues related to economics and telecommunications regulation raised in the filing submitted in the proceeding by various parties on June 14 and June 15, 2010.

Q. ON WHICH SPECIFIC ISSUES ARE YOU COMMENTING?

A. I am commenting on the following issues raised in the filed comments in this proceeding:

- Issues of economics with respect to the linking of the regulated rates of one firm to the rates charged by a different firm;
- Issues of telecommunications regulation with respect to different regulatory treatment of telecommunications services and carriers in rural areas;
- Issues of economics with respect to the dependency of certain services such as teleconferencing services to the level of regulated intrastate access charges;
- Issues of economics with respect to the volume of long-distance calls on the level of regulated intrastate access charges; and
- Issues of telecommunications regulation with respect to the National Broadband Plan.

Q. DO YOU HOLD THE OPINIONS THAT YOU EXPRESS IN THIS TESTIMONY TO A REASONABLE DEGREE OF CERTAINTY?

A. Yes.

III.

ISSUES OF ECONOMICS WITH RESPECT TO THE LINKING OF REGULATED RATES FOR ONE FIRM TO THE RATES CHARGED BY A DIFFERENT FIRM

Q. DO ANY COMMENTS SUBMITTED IN THIS PROCEEDING SUGGEST THAT THE REGULATED INTRASTATE ACCESS RATES SET BY THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION FOR ONE FIRM SHOULD BE TIED TO THE RATES CHARGED BY OTHER FIRMS?

A. Yes.

Q. WHERE SPECIFICALLY HAVE YOU SEEN THIS RECOMMENDATION?

A. Both AT&T and Verizon recommend that the FCC rules for CLEC interstate access charges should be applied by South Dakota to CLEC intrastate rates, specifically that CLEC rates be capped at the same rate as the local ILEC access rate.¹ Qwest and Midcontinent make a similar proposal without reference to the FCC rule.²

¹ See, e.g., Comments of AT&T Communications of the Midwest, Inc. ("AT&T Comments"), Public Utilities Commission of South Dakota, Docket RM05-002, June 14, 2010, at pp. 1-2. See also Verizon Comments on Draft Rules Regarding Switched Access Rates ("Verizon Comments"), Public Utilities Commission of South Dakota, Docket RM05-002, June 15, 2010, at p. 3.

² Qwest Written Comments on Proposed Rule Changes ("Qwest Comments"), Public Utilities Commission of South Dakota, Docket RM05-002, June 14, 2010, at p.4. Midcontinent Initial Comments ("Midcontinent Comments"), Public Utilities Commission of South Dakota, Docket RM05-002, June 15, 2010, at p.1.

Q. IS IT UNIVERSALLY ACCEPTED THAT REGULATED RATES FOR ONE FIRM SHOULD BE BASED ON THE RATES OFFERED BY A DIFFERENT AND COMPETING FIRM?

A. No.

Q. CAN YOU EXPLAIN WHY NOT?

A. Yes. For most services in our economy, even regulated services, rates are rarely regulated. When rates are regulated, regulators have different purposes for the rate regulation, and comparing rates with those of other firms is but one form of rate regulation.

In some instances, particularly for a uniform or homogenously similar service such as electricity that is the primary product of a firm, rates may be "benchmarked" or compared with the rates of similarly situated firms in more competitive markets. In the case of intrastate access charges in South Dakota offered by CLECs, these conditions do not hold. Intrastate access is not the primary product of any telecommunications carrier in South Dakota, and perhaps in the United States. Instead, telecommunications carriers offer a wide range of services, each of which has associated revenues and costs, among which intrastate access services are but one. Moreover, intrastate access services may be more important both to customers and to carriers located in small towns more geographically isolated from the state line, such as Blunt, Canning, or Mitchell, than to customers and carriers located in larger cities on the border of the state, such as Sioux Falls. Under the circumstances for intrastate access offered by CLECs in South Dakota, it does not follow that regulation of rates for one firm should be based on the rates charged by a different and competing firm.

Q. BUT WOULD NOT SETTING PRICES TO THOSE OFFERED BY ANOTHER COMPETING FIRM BE ECONOMICALLY EFFICIENT?

A. No. If the firms were truly competing, competition, not regulation, would set the prices. Moreover, where one firm is price regulated based on the rate charged by a competing firm, economic gaming can result. Suppose the price of coffee for Starbucks is regulated and set at or below the price of coffee at McDonald's. Starbucks primarily sells coffee and is dependent on coffee sales. On the other hand, McDonald's sells a wide range of products among which is coffee. If McDonald's were in a position to set the price of coffee at Starbucks, McDonald's would be in a position to allow Starbucks to remain in business or to force it out of business. Giving that amount of discretion to one firm to set prices for a different firm makes neither economic nor governmental sense. In this case, which is not too different from that of intrastate access charges for CLECs, setting rates for one firm based on the rates charged by another competing firm is not economically efficient.

Q. ARE THERE NON-ECONOMIC FACTORS THAT MAY INFLUENCE HOW RATES FOR CLEC ACCESS CHARGES SHOULD BE SET IN SOUTH DAKOTA?

A. Yes. The South Dakota Public Utilities Commission has many factors to consider including special consideration for rural telecommunications.

IV.

**ISSUES OF TELECOMMUNICATIONS REGULATION WITH RESPECT TO
DIFFERENT REGULATORY TREATMENT FOR TELECOMMUNICATIONS
SERVICES AND CARRIERS IN RURAL AREAS**

Q. DO ANY COMMENTS SUBMITTED IN THIS PROCEEDING SUGGEST THAT THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION SHOULD NOT WRITE SEPARATE RULES WITH RESPECT TO ACCESS SERVICES OFFERED IN RURAL SOUTH DAKOTA BY RURAL COMPANIES?

A. Yes. The Verizon comments suggest that special rules for CLECs operating in rural areas are unnecessary.³

Q. WHY SHOULD THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION GIVE SPECIAL CONSIDERATION TO RURAL TELECOMMUNICATIONS?

A. The special consideration for rural telecommunications and for telephone companies operating in rural America is part of federal law and federal policy as articulated in the Telecommunications Act of 1996, particularly Section 254.

Q. DOES THE FEDERAL COMMUNICATIONS COMMISSION GIVE SPECIAL CONSIDERATION TO RURAL TELECOMMUNICATIONS?

A. Yes, it does particularly in the implementation of Section 254.

Q. DOES THE FCC GIVE SPECIAL CONSIDERATION FOR RURAL TELECOMMUNICATIONS CARRIERS OUTSIDE OF IMPLEMENTATION OF SECTION 254?

A. Yes. In fact, the FCC gives special consideration to telephone companies operating in rural areas in its rules with respect to access charges including access charges offered by CLECs.⁴ With respect to a rural CLEC competing with a non-rural ILEC, the FCC rules

³ Verizon comments at 4.

⁴ 47 CFR 61.26.

provide a special exemption enabling the CLEC to charge higher access rates than the non-rural ILEC.

V.

ISSUES OF ECONOMICS WITH RESPECT TO DEPENDENCY OF CERTAIN SERVICES SUCH AS CONFERENCE CALLING SERVICES ON THE LEVEL OF REGULATED INTRASTATE ACCESS RATES

Q. DO ANY COMMENTS SUBMITTED IN THIS PROCEEDING SUGGEST A DEPENDENCY OF CERTAIN SERVICES SUCH AS CONFERENCE CALLING SERVICES ON THE LEVEL OF REGULATED INTRASTATE ACCESS RATES?

A. Yes. AT&T and Qwest comment on alleged ills associated with "traffic-pumping" and other services.⁵ AT&T and Qwest suggest that these services would be diminished if access charges were set at a lower rate.

Q. IS THE PROVISION OF THESE SERVICES DEPENDENT ON THE LEVEL OF ACCESS RATES?

A. No. Teleconferencing and other services noted by AT&T and Qwest are available from a variety of sources: some online, some wireless, some wireline. Services are available with high access charges, with low access charges, and with no access charges. The level of access charge does not appear to determine whether a service is offered or not.

Q. WHAT IS THE BASIS FOR THE OBJECTION IF NOT THE LEVEL OF ACCESS CHARGES?

A. Rather than the level of the access charges, the objections may reflect initial difficulties in reconciling changes in access charges with popular flat-rate telecommunications service plans. In a competitive market, prices reflect cost structure, not vice versa. Thus if wholesale costs increase, retail prices should follow. If access wholesale prices vary, retail prices should reflect that variability. In this way, competitive markets preserve price signals: higher costs are reflected by higher prices which discourage consumption

⁵ See AT&T Comments at 11; Qwest Comments at 1-2.

and encourage competitive entry; lower costs and lower prices encourage consumption and discourage entry. In the United States, switched access charges vary, both for interstate and intrastate services. Retail long-distance rates can reflect that variability in competitive rate structures in many different ways. These rate structures include but are not limited to the following: per-minute charges that reflect the cost of a call; simple flat-rate plans that provide enough revenue for carriers to cover the costs of providing service; and modified flat-rate plans that allow carriers to pass some or all terminating-access charges to customers. With any of these or many other competitive rate structures, the difficulties raised by AT&T and Qwest would largely disappear independent of the level of access charges.

VI.

ISSUES OF ECONOMICS WITH RESPECT TO VOLUME OF LONG-DISTANCE CALLS ON THE LEVEL OF REGULATED INTRASTATE ACCESS RATES

Q. DO ANY COMMENTS SUBMITTED IN THIS PROCEEDING SUGGEST A DEPENDENCY OF LONG-DISTANCE CALLS ON THE LEVEL OF REGULATED INTRASTATE ACCESS RATES?

A. Yes. AT&T suggests that the decline in wireline long-distance volume is associated with high access charges.⁶ AT&T goes on to suggest that CLEC access rates in South Dakota should be set to a lower regulated rate so that consumers could make more switched wireline long-distance calls.

Q. WOULD SETTING ACCESS CHARGES AT A LOWER REGULATED RATE LEAD TO MORE SWITCHED WIRELINE LONG-DISTANCE CALLS?

A. No, for at least two reasons. First, most of the decline in access minutes accurately observed by AT&T is not because access charges have been going up over time. Quite the opposite, access charges have been declining over time, but access minutes have been declining as well. Long-distance minutes have been migrating away from switched wireline services and towards wireless and online services. Consumers have migrated to wireless and online services not because the government regulates access charges for these services at low rates, but despite the fact that the government does not regulate access charges for the services at all. To be consistent with this fact pattern, one might reasonably argue that the South Dakota Public Services Commission should deregulate access charge services altogether so that switched wireline rates might ultimately decline and compete with those of online and wireless services.

⁶ See AT&T Comments.

Second, telecommunications carriers, particularly small rural companies, do not view access charge revenue as unimportant income. These carriers depend on access charge revenue. If access charges decline or disappear, these carriers will seek to make up the lost revenue, and those efforts quite likely would include increased fixed charges on customers, such as higher monthly charges. But higher fixed costs would likely drive some customers away from wireline services altogether and with them any prospect of additional switched wireline access minutes. The net result is that lowering access charges by regulation would likely result in higher fixed costs for customers and lower wireline subscription rates.

VII

ISSUES OF ECONOMICS WITH RESPECT TO OWNERSHIP OF FACILITIES

Q. DO ANY COMMENTS SUBMITTED IN THIS PROCEEDING SUGGEST HOW THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION SHOULD TREAT THE OWNERSHIP OF FACILITIES WITH RESPECT TO RATE REGULATION?

A. Yes. Comments submitted by Northern Valley Communications and Sancom suggest revisions in the proposed rules with respect to rate regulation for CLECs based on the ownership of facilities. Northern Valley Communications and Sancom recommend that facilities owned by a parent or subsidiary should be treated the same as facilities owned by one corporate entity.

Q. FROM AN ECONOMIC PERSPECTIVE, DOES THE CORPORATE STRUCTURE OF OWNERSHIP OF FACILITIES AFFECT CORPORATE BEHAVIOR?

A. No. From an economic perspective, assets, including telecommunications facilities, with common corporate ownership should be consistently employed for the benefit of the common corporate ownership. There is no economic basis to give different regulatory treatment to the facilities of one affiliate differently from the facilities of other affiliates with common ownership.

VIII.
**ISSUES OF TELECOMMUNICATIONS REGULATION WITH RESPECT TO THE
NATIONAL BROADBAND PLAN**

Q. DO ANY COMMENTS SUBMITTED IN THIS PROCEEDING SUGGEST HOW THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION SHOULD TREAT THE NATIONAL BROADBAND PLAN?

A. Yes. Some comments suggest that the South Dakota PUC should adopt rules consistent with the National Broadband Plan, which calls for rate rebalancing within states⁷ and the elimination of all access charges within 10 years.⁸

Q. HOW SHOULD THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION TREAT THE NATIONAL BROADBAND PLAN?

A. The FCC, of course, does not regulate intrastate telecommunications much less intrastate telecommunications rates. The details of the National Broadband Plan, including the detailed recommendations about eliminating access charges, were not formally decided by the FCC. Merely a summary of the Plan was forwarded to Congress. I am confident that state commissions, such as the South Dakota PUC, will give the FCC National Broadband Plan recommendations their due consideration bearing in mind the lack of legal foundation for such recommendations.

⁷ AT&T Comments at 3, Verizon Comments at 9.

⁸ Verizon Comments at 9. For a different view of the National Broadband Plan recommendations, see the comments of SDTA and LECA in this proceeding.

IX.

CONCLUSION

Q. WHAT IS YOUR CONCLUSION?

A. I have reviewed both the draft revised rules proposed by the South Dakota Public Utilities Commission as well as various comments submitted in this docket. I have addressed several issues in this report, and I am not convinced that any of these specific issues should cause the South Dakota Public Utilities Commission to redraft its rules, except to allow the CLEC to use the facilities of its parent or subsidiary.