

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

Proposed Rulemaking of the Public)	
Utilities Commission of South Dakota)	
On Telecommunications Switched)	Docket No.RM05-002
Access Rules)	

**COMMENTS OF AT&T COMMUNICATIONS OF THE MIDWEST, INC.
IN THE RULEMAKING OF THE PUBLIC UTILITIES COMMISSION
OF SOUTH DAKOTA ON TELECOMMUNICATIONS SWITCHED ACCESS RULES**

AT&T Communications of the Midwest, Inc. ("AT&T"), respectfully submits these Comments before the Public Utilities Commission of the State of South Dakota ("Commission") on the proposed Telecommunications Switched Access Rules, 20 ARSD, Chapter 20:10:27 ("Rules"). These Comments are made pursuant to the Notice of Further Comment published by the Commission after the decision of the Legislative Rules Review Committee to revert back to the comment period to allow additional comments on the rules adopted by the Commission on March 18, 2011.

For the record and for the purpose of these additional Comments by AT&T, the Comments of AT&T filed with the Commission in this Docket on January 31, 2011, and Comments filed previous to that, as well as in Docket No. TC10-014, are hereby restated and incorporated herein.

The rules adopted by the Commission at its March 18, 2011 public hearing take an important first step in leveling the playing field that telecommunication companies play on in South Dakota. The proposed rules are a first step towards balancing the long-term interests of all which should be supporting meaningful deployment of technological innovations and ridding the market of unsustainable, implicit subsidies which lead to skewed economic behavior. AT&T has stated in its aforementioned

comments that the Commission should move, as the FCC has, towards policy reforms by establishing intrastate switched access rates in parity with interstate switched access rates. As contained in the proposed rules, the capping of Competitive Local Exchange Carrier ("CLEC") intrastate switched access at the Regional Bell Operating Company ("RBOC") rate for South Dakota, is an important first step in that direction.

It is the South Dakota consumer that is ultimately paying the cost for high switched access rates. Those rates, which are some of the highest in the nation, have invited CLECs to adopt entire business plans based solely on regulatory arbitrage. These regulatory arbitrage schemes include traffic pumping, phantom traffic, mileage pumping, and excessive 8YY Database Query Charges. As the FCC recognized in 2001, in its *CLEC Access Charge Order*, the CLECs have bottleneck monopolies over IXCs.¹ This means that IXCs are forced to accept the "services" provided by CLECs; however the rates being charged by CLECs are premised on assumptions that are improper when applied to arbitrage traffic. Certain CLECs while seeking to compete with ILECs for traditional customers while charging a higher switched access rate (unknown to the consumer), have also been partnering with free conference calling partners and sharing access revenues with these partners, as opposed to making investments and bringing new technology to the marketplace and to consumers. Certain other CLECs are coming to South Dakota only for the arbitrage opportunities.

The step taken by the Commission at its March 18, 2011 meeting is recognition of the disparate pricing regimes that exist in the market today which has lead to inefficiency, and arbitrage, as well as additional and unnecessary expense on providers

¹ *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC rcd. 9923, ¶¶30-34 (2001) ("*CLEC Access charge Order*")

and consumers. Interexchange carriers, including AT&T, have traditionally been required to pick up these additional costs that ultimately are paid by consumers who purchase traditional long distance. These proposed rules seek to equalize the pricing regimes and begin to address the arbitrage that is occurring today in South Dakota by CLECs.

The Commission was wise in its determination to go with a single intrastate rate for CLECs based on the RBOC rate as the previously proposed two-tier rate conflicted with the Commissioner's statutory obligations under SDCL §49-31-1.4. There exists a rational basis for the rules as proposed versus an arbitrary and artificial classification of a rural versus an urban CLEC based on an arbitrary number of residents in a community.

In conclusion, AT&T supports the proposed rules as adopted on March 18, 2011, as an important step forward while urging the Commission to take the steps that more than twenty states have done by requiring one and all local exchange carriers to reduce intrastate switched access rates to parity with their corresponding interstate rates. This is in line with the FCC's recent National Broadband Plan which recommends a framework for long-term intercarrier compensation reform doing the same thing.

Dated this 13th day of April, 2011.

OLINGER, LOVALD, MCCAHERN & REIMERS, P. C.

/s/ filed electronically
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CERTIFICATE OF SERVICE

On the 13th day of April, 2011, the undersigned, attorney for AT&T Communications of the Midwest, Inc., hereby certifies that a true and correct copy of the foregoing Comments of AT&T Communications of the Midwest, Inc., in the Rulemaking of the Public Utilities Commission of SD on Telecommunications Switched Access Rates was filed electronically and served upon the following via email:

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