

LAW OFFICES  
OLINGER, LOVALD, McCAHREN & REIMERS, P.C.  
117 EAST CAPITOL  
P.O. BOX 66

PIERRE, SOUTH DAKOTA 57501-0066

RONALD D. OLINGER  
JOHN S. LOVALD  
LEE C. "KIT" McCAHREN  
WADE A. REIMERS

TELEPHONE: 224-8851  
AREA CODE 605  
FAX: 605-224-8269

WILLIAM M. VAN CAMP

May 26, 2006

Patty Van Gerpen  
Executive Director  
SD Public Utilities Commission  
500 E Capitol  
Pierre SD 57501

RECEIVED  
MAY 30 2006  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

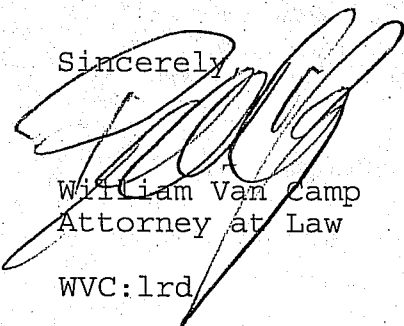
Re: RM05-002 Written Comments on Potential Revisions to the  
Commission's Switched Access Rules Codified in ARSD 20:10:27-  
20:10:29

Dear Ms. Van Gerpen:

Attached please find additional comments of AT & T Communications  
of the Midwest, Inc., regarding the aforementioned rule making  
docket.

If you, or any members of the Commission or its staff have any  
questions on this filing, please feel free to let me know.

Sincerely,



William Van Camp  
Attorney at Law

WVC:lrd

enclosures

cc: Letty S.D. Friesen

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

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

---

Pursuant to Commission Notice dated December 14, 2005, AT&T Communications of the Midwest, Inc. ("AT&T") submits its Comments and appreciates the Commission's patience with respect to the extension of time that was essential to AT&T's ability to participate.

**INTRODUCTION**

AT&T has analyzed both South Dakota law and the state of competition in the State, as well as the market distortions caused by the disparity between state and federal regulations operating in South Dakota today. As a result, AT&T concludes that a policy framework designed to *replace* the current access regime (*i.e.*, ARSD 20:10:27; ARSD 20:10:28; and ARSD 20:10:29) is warranted.<sup>1</sup> To that end, these Comments provide the Commission with some of the results of AT&T's analyses and the rationale that underpins AT&T's recommendation to fully replace the current access rules with a policy framework and rules that are consistent with the realities of the current telecommunications and information services marketplace. AT&T's replacement approach provides the Commission with a conceptual foundation to guide this rulemaking that is compatible with communications markets characterized by "intermodal" competition, *and* the preservation and advancement of universal service.

---

<sup>1</sup> AT&T recognizes that a separate Commission proceeding established the 10% ROR for the LECA carriers in 1994 from which revenue requirements are, in part, derived.

Importantly, AT&T's proposal also allows South Dakota to move forward with this rulemaking consistent with the reform process underway at the Federal Communications Commission ("FCC").

## DISCUSSION

These Comments will discuss: (1) how current intercarrier compensation regimes are broken; (2) the fundamental changes in the telecommunications industry; and (3) AT&T's proposal to move South Dakota's rules into the future.

### **I. Nationally and in South Dakota Intercarrier Compensation is Broken.**

*Intercarrier compensation*—the financial arrangements between carriers for the transport and termination of traffic—is broken. Current regulations across state and federal jurisdictions “treat different types of carriers and different types of services disparately even though there may be no significant differences in the costs among carriers or services.”<sup>2</sup> That is, “the interconnection regime that applies in a particular case depends on such factors as whether the interconnection party is a local carrier, an interexchange carrier, a wireless carrier, or an enhanced service provider; and whether the service is classified as local or long distance; state or interstate, or basic or enhanced.”<sup>3</sup> The patchwork of regulations governing the charges a carrier may impose for the transport and termination of traffic is detrimental to competition.

Similarly, intercarrier compensation in South Dakota is broken. The disparity between the rates for local and toll traffic exchanged in the State is enormous and growing despite the fundamental point that implicit subsidies are incompatible with the

---

<sup>2</sup> *In the Matter of Developing and Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92 (rel. April 27, 2001) at ¶5.

<sup>3</sup> *Id.*

competitive marketplace.<sup>4</sup> South Dakota has the distinction of ranking among those states with the highest intrastate access charges in the nation, and as such, retains one of the greatest disparities between intrastate and interstate access charges. This is especially problematic where one carrier's source of implicit subsidy (*i.e.*, the LEC's intrastate access charges) is another carrier's input (*i.e.*, an IXC's connection to customers) for the downstream market (intrastate, intraLATA toll service) in which such carriers are direct competitors. Logically, therefore, rules and regulations that only serve to *expand* implicit support in the face of competitive markets should instead be replaced.

In South Dakota the current access rules, coupled with Commission-ordered revenue requirements and the fully distributed cost methodology ("FDC"), produce a perverse effect that is contrary to the long term economic and social well-being of all of the State's consumers. This is true *regardless* of the fidelity with which ILEC cost studies are evaluated and subsequent access revisions occur. Furthermore, the trigger for increased access rates—loss of ILEC access minutes of use ("MOU"), hence revenue—cannot be "fixed" under the existing rules because the conditions causing the access MOU loss are well beyond the control of this, or any state commission. Continuing to increase per minute access charges to compensate for a shrinking volume of MOUs (as a proxy for universal service) is unsustainable, counterproductive, confers more public harm than good, and thwarts the goals of the Telecommunications Act of 1996 as well as South

---

<sup>4</sup> *In the Matter of Implementation of the Local Competitor Provisions in the Telecommunications Act of 1996*, FCC 96-325, CC Docket No. 96-98, First Report and Order (rel. Aug. 8, 1996) at ¶ 17; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket 96-45, Fourth Report and Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, FCC 99-119 (rel. May 28, 1999) at ¶17.

Dakota's statute.<sup>5</sup> Moreover, the negative effects of the current access regime in South Dakota cannot be overstated: absent meaningful reform, carriers spend more time and effort trying to gain competitive advantage through the pursuit of regulatory rents than focusing on the products and services consumers want and need.<sup>6</sup>

## **II. Fundamental Changes in the Telecommunications Industry have Accelerated the Need for Access Reform in South Dakota**

Two interrelated forces of change have fundamentally and irreversibly altered the telecommunications landscape in South Dakota and they are:

1. The regulatory framework governing intercarrier compensation for interstate toll traffic and for the newer technologies (*e.g.*, wireless, VoIP) is driven by federal policy and as such, is beyond the reach of state regulators;<sup>7</sup> and
2. The emergence of newer technologies (*e.g.*, wireless, VoIP, and cable among others) has provided the means for what has become a significant "substitution" of minutes and to a lesser extent, loss of access lines, hence revenue, from traditional wireline networks.

Taken together, these changes raise important questions about the extent to which increasing switched access rates today serves the purposes for which they were originally intended. Calling on publicly available data, the impact of each of these changes is summarized briefly below.

---

<sup>5</sup> The general purpose of the Act is to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." 47 U.S.C. § 151. Furthermore, § 254(b) of the Act sets forth the principles for the preservation and advancement of universal service in a competitive environment. Among these "services" are to be made available at "just, reasonable, and affordable rates;" contributions are to be "equitable and non-discriminatory;" support mechanisms are to be "sufficient and predictable;" and "support should be explicit." § 49-13-18 "Discrimination Prohibited" essentially collapses these principles into one phrase.

<sup>6</sup> In economic terms a "regulatory rent" is a revenue windfall conferred by regulators rather than by the normal functioning of competitive markets.

<sup>7</sup> States can and do respond to this condition – for other Qwest states, *see e.g.*, NE, NM, CO, OR.

A. Impact of Federal Regulatory Policy

Federal regulatory policy over time has provided a disparity of regulatory treatment between traditional and emergent technologies, wireless carriers and wireline carriers. On the other hand, federal policy also established a framework of access reform that moved rural carriers' interstate switched access rates closer to cost without jeopardizing universal service or broadband deployment. In contrast, South Dakota's intrastate switched access regulation remains solidly mired in the past with no apparent movement toward alleviating the disparity of treatment between providers recognized at the federal level in the intercarrier compensation docket.

Regulatory disparity in large measure is controlled at the federal level and cannot be resolved through business-as-usual state rulemakings merely "tweaking" outdated state access rules. For example, the tremendous growth in wireless minutes of use ("MOUs") is due, in part, to the more expansive geographic reach of the local calling areas for wireless consumers. These calling areas are defined at the federal level (*i.e.*, Major Trading Areas or MTAs) and afford wireless carriers lower input costs (*e.g.*, reciprocal compensation rates versus higher access rates paid by wireline carriers). In South Dakota there are three MTAs in which wireless carriers can exchange traffic with the incumbents at reciprocal compensation rates rather than at switched access rates.<sup>8</sup> This is just one example of federal regulatory policy that hinders wireline competitors as compared to other providers.

---

<sup>8</sup> MTA # 12 Minneapolis: covers 70% of South Dakota; all of Minnesota except Houston and Winona counties; all of North Dakota; 25% of Wisconsin; Ontonagon and Cobequid counties in UP Michigan; MTA # 22 Denver: covers 25% of South Dakota; 95% Colorado except four SW counties; 80% of Wyoming; 20% of Kansas; 20% of Utah; and MTA # 32 Des Moines: covers Union, Bonhomme, Yankton, Clay counties in south east South Dakota; and 90% Iowa; Dakota, Dixon, and Thurston counties in NE.

Clearly what federal regulators do impacts the intercarrier compensation framework under which all carriers operate. Nonetheless, state policy should enhance competition and work in concert with the reforms happening at the federal level if South Dakota is to lessen the disparity of treatment that hinders wireline carriers. Accordingly AT&T proposes an alternative framework in Section III below.

B. The Impact of New Technologies: Substitution and By-Pass

The divergence between state and federal policy relative to intercarrier compensation has produced profound effects on consumer behavior. To begin, in 1996 at the passage of the *Federal Telecommunications Reform Act*, the wireless sector of the telecommunications industry represented a mere 5% of the total industry revenue. By year-end 2002, wireless' proportion of total industry revenue climbed to 35% for the *entire* telecommunications industry and was projected to reach 50% in the near future.<sup>9</sup>

South Dakota tracks closely with these nationwide trends. The FCC's *Trends in Telephone Service* reports the distribution of revenue by state and by type of service. Table 1 below contains the proportion of total statewide telecommunications revenues by type of service in South Dakota for the period, 2001-2003, the period for which the most recent data are available.

---

<sup>9</sup> *In the Matter of Implementation of the Omnibus Budget and Reconciliation Act of 1993. Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Radio Services.* 8<sup>th</sup> Report, WT Docket No. 02-379, (Rel., July 4, 2003) at ¶ 102; Shvets, Viktor and Andrew Kieley. "Consumer Wireline Erosion: The strategic response to 'water torture.'" Deutsche Bank. 19 May 2005 at p. 7.

**Table 1.**        *Telecommunications Revenue by Type of Service in South Dakota*  
(2001 – 2003, \$ in 000s)

<b>Service Type*</b>	<b>2001 Total Rev.</b> <b>(a)</b>	<b>2001 %Total Rev.</b> <b>(b)</b>	<b>2002 Total Rev.</b> <b>(c)</b>	<b>2002 %Total Rev.</b> <b>(d)</b>	<b>2003 Total Rev.</b> <b>(e)</b>	<b>2003 %Total Rev.</b> <b>(f)</b>
<b>ILEC</b>	164	23%	167	24%	155	23%
<b>CLEC</b>	25	4%	26	4%	22	3%
<b>Mobile Wireless</b>	163	<b>23%</b>	184	<b>27%</b>	203	<b>30%</b>
<b>SLC</b>	20	3%	30	4%	30	4%
<b>Special Access</b>	90	13%	86	13%	82	12%
<b>Toll</b>	240	34%	194	28%	175	26%
<b>TOTAL REVENUE</b>	<b>712</b>		<b>688</b>		<b>667</b>	

Source: Industry Analysis and Technology Division Wireline Competition Bureau. *Trends in Telephone Service* May 2002, Table 15.7, p.15-9; May, 2004, Table 15.7, p. 15-9; and April, 2005, Table 15.7, p. 15-9.

\* Categories of Revenue defined by the FCC.

The data in Table 1 show that between 2001 and 2003, the total annual revenue for the mobile wireless segment in South Dakota moved up in rank each year: from 3<sup>rd</sup> in 2001 (behind ILEC and Toll as shown in columns (a) and (b)); to 2<sup>nd</sup> in 2002 (surpassing ILEC, but still behind Toll as shown in columns (c) and (d)); and to first place in state-wide total revenue in 2003 shown in columns (e) and (f). For 2003, and consistent with the national trend, wireless had captured 30% of the statewide total revenue. Over the same time period, total state-wide revenue declined by \$45M (\$712M – \$667M) and toll declined precipitously each year for a three-year total decline of \$65M (\$240M-\$175M). The decline in total revenue year-over-year is likely attributable in part to substitution that is not captured in the measured service types (e.g., VoIP, e-mail, etc.), declining costs for wireless carriers and recent failure of numerous wireline providers.



Furthermore, consumers in South Dakota (who also vote with their wallets), arguably view toll calling to be at least as socially valuable as the local wireline service provided by the incumbent carriers. Not including the CLEC or SLC categories of revenue, for each of the three years shown -- 2001, 2002, and 2003 -- the revenue associated with toll calling surpassed the ILEC revenue category (columns (a), (c), & (e)).

In addition to wireless substitution, small business and residential customers in South Dakota are increasingly able to by-pass switched access charges via Internet enabled telephony services.<sup>10</sup> The FCC also tracks and reports the growth of high speed lines nationally and in South Dakota.<sup>11</sup> Between June 2000 and December 2004, South Dakota grew from less than 3,516 high speed lines to 40,286 high speed lines. Of these, more than 38,800 or 96% are residential and small business users with the remaining 1,434 or 4% devoted to medium and large business, institutional and government users.<sup>12</sup> Notably, the cable industry has made significant inroads in South Dakota with high speed lines. Of the total number of high speed lines, more than 14,000 or 35% are provisioned over coaxial cable.

Taken together this data provides a snapshot of substitution and switched access charge by-pass occurring in South Dakota that, when combined with the different regulatory treatment between carriers, raises important questions about the sustainability

---

<sup>10</sup> The availability of Internet telephony in South Dakota is easily verified -- for example, <http://www.consumercompare.info/index3.htm> provides consumers with a summary retail plans including rates, terms and conditions, and consumer ratings.

<sup>11</sup> "High speed" is defined as "over 200 kbps in at least one direction." Industry Analysis and Technology Division Wireline Competition Bureau. *High-Speed Services for Internet Access: Status as of December 31, 2004*. July 2005, Table 8. Moreover, South Dakota tracks favorably with national averages. Nationally, 93% of the users are small business and residential users and 7% are medium and large business, government and institutional users, Table 11.

<sup>12</sup> Arguably, medium and large business, institutional and government users have been able to avoid switched access charges via special access for years.

of the implicit subsidy embedded in switched access. First and foremost, wireline toll MOUs, including intraLATA toll MOUs, have been replaced by other means of communications in large part, due to the disparity in regulatory treatment. It is no longer viable to continue to increase intrastate switched access rates in the face of that reality. Clearly, the time for the Commission to act to change this course is now.

### **III. AT&T's Recommendation for Access Reform.**

The Commission has the statutory authority necessary to reform its existing access framework to one of intercarrier compensation, universal service and carrier cost recovery that is at once more compatible with competition, closer to the prevailing federal switched access regime, and consistent with the on-going direction of reform contemplated by the FCC. Section 49-31-18 entitled "Access provided to companies doing business in the same vicinity –Discrimination Prohibited" provides, in pertinent part, that "[t]o provide facilities at reasonable rates and to enhance and preserve universal service, the commission may establish methods designed to determine and implement fair and reasonable access rates by rules promulgated pursuant to chapter 1-26." Toward that end, the Commission should conduct this rulemaking predicated on three elements intended to be implemented simultaneously as follows:

1. Reduce intrastate switched access to interstate parity for all LECs operating in South Dakota with reductions occurring over a reasonable period of time;
2. Allow for carrier recovery of lost access revenue via local rate rebalancing, and / or other explicit revenue recovery mechanisms; and
3. Design, and to the extent needed, implement a state high cost funding mechanism that is explicit, narrowly targeted, and broadly funded.

With respect to the first element of this proposal, the plain language of the statute permits the Commission to design and adopt a rate-based rather than embedded cost-based approach to setting access charges at reasonable rates. Lowering access charges over several years to interstate parity will not harm carriers and will benefit intrastate, intraLATA toll consumers that today bear the entire burden. That does not mean, however, that LECs will be denied appropriate cost recovery and universal service support. Rather, under the second and third elements of AT&T's proposal, the Commission can ensure that these needs are addressed.

Moreover, under the current access rate-setting process, incumbents are required to expend significant resources to comply with rules and regulations that require complex cost studies, traffic studies, annual filings, potential litigation, and in some cases, refunds. AT&T's proposed framework, once designed and implemented will reduce the regulatory and administrative burden on all carriers while also protecting South Dakota's consumers and competition.

Finally, although the FCC is engaged in the quest for a unified regime of intercarrier compensation at the national level, AT&T's proposal to move all LEC switched access to interstate parity over a reasonable period of time does not confound or interfere with that process. Rather, it positions South Dakota to be able to more readily synchronize state and federal policy as the federal reform process continues to unfold.

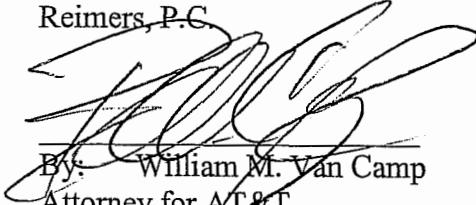
## **CONCLUSION**

For all of the reasons set forth above, AT&T recommends that the Commission completely replace the existing access rules and move toward a policy framework that

continues to promote robust and irreversible competition while at the same time,  
preserving universal service throughout the State.

Respectfully submitted this 2<sup>nd</sup> day of May, 2006.

Olinger, Lovald, McCahren &  
Reimers, P.C.



By: William M. Van Camp  
Attorney for AT&T  
117 E. Capitol  
PO Box 66  
Pierre, SD 57501  
(605) 224-8851

of counsel:

Letty S.D. Friesen