

**PUBLIC UTILITIES COMMISSION  
MINUTES OF PUBLIC HEARING**

The Public Utilities Commission convened the hearing at 1:00 p.m. on Thursday, January 20, 2011, in Room 464, Fourth Floor, State Capitol, Pierre, South Dakota.

The purpose of the meeting was to conduct a public hearing on the proposed rules of the Commission numbered 20:10:27:01, 20:10:27:02, 20:10:27:02.01, 20:10:27:02.02, 20:10:27:04, 20:10:27:07, 20:10:27:11, and 20:10:27:12, adopted under the authority of 49-1-11, 49-31-1.4, 49-31-4.1, 49-31-5, and 49-31-18.

**Hearing Officer:** Rolayne Ailts Wiest, Commission Counsel.

**Members of the Commission in Attendance:** Steve Kolbeck, Gary Hanson, and Chris Nelson.

**Others in Attendance:** Kathy Ford, Tom Simmons, Mary Lohnes, Nancy Vogel, Dan Nelson, Doug Hajek, Midcontinent Communications; Jim Cremer, Northern Valley Communications; Meredith Moore, SSTELECOM; Darla Rogers, Midstate Telecom and RC Communications; Jeff Carmon, Wayne Johnson, Qwest; Bill Van Camp, AT&T; Scott Swier, Native American Telecom; Talbot Wiczorek, Sprint; and Greg Rislov, PUC advisor.

**Written Testimony**

No written testimony was presented at the hearing. Written comments were received following the hearing from the South Dakota Telecommunications Association; Qwest Corporation and Qwest Communications, LLC; Midcontinent Communications; Northern Valley Communications LLC; MCI Communications Services, Inc. d/b/a Verizon Business Services and MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services; AT&T Communications of the Midwest, Inc.; Sprint Communications Company, L.P., Sprint Spectrum, L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners; Midstate Telecom and RC Communications, Inc., d/b/a RC Services; and SSTELECOM Inc.

**Oral Testimony**

Jim Cremer, representing Northern Valley Communications (NVC), stated that NVC supported the rules with the exception of 20:10:27:02.02. NVC would like a competitive local exchange carrier (CLEC) to be able to charge the higher Local Exchange Carriers Association (LECA) switched access rate if the CLEC provides service throughout the service area using its own facilities or the facilities of a wholly owned subsidiary.

Darla Rogers, representing Midstate Telecom and RC Communications, Inc, d/b/a RC Services, supported NVC's comments. Midstate and RC Services would like language

included that would allow a CLEC that offers service with owned or leased facilities throughout the service area to charge the higher LECA switched access rate.

Margo Northrup, representing the Local Exchange Carriers Association (LECA) and the South Dakota Telecommunications Association (SDTA), stated that LECA and SDTA supported the rules as proposed.

Meredith Moore, representing SSTELECOM, Inc, stated that SSTELECOM supports the rules as proposed. SSTELECOM believes the rules strike an appropriate balance between CLECs that serve rural areas and those that serve more populated areas.

Kathy Ford, representing Midcontinent Communications, stated that Midcontinent opposes 20:10:27:02.01. Midcontinent believes that this rule creates an artificial distinction between CLECs. Midcontinent states that costs should be taken into consideration. Midcontinent advocated that the CLEC should be able to charge a switched access rate that is no more than the incumbent local exchange carrier rate in the same competitive service area. Midcontinent supported allowing the CLEC to provide cost support if that rate is insufficient as provided in 20:10:27:02. Midcontinent also opposed including actual rates in the rules as the rates may change over time.

Wayne Johnson, representing Qwest Communications, stated that Qwest would rely on its written comments.

Talbot Wieczorek, representing Sprint, reserved the right to file comments.

**Adjournment:** 1:30 p.m.

### **Final Action – March 18, 2011**

At its March 18, 2011, meeting, the Commission considered final action on the rules. Chairman Kolbeck proposed changing rule 20:10:27:02.01 to state that a CLEC's switched access rate may not exceed the rate of the Regional Bell Operating Company (Qwest). The effect of this change is that the proposed 9 cent rate for CLECs serving smaller rural areas would be eliminated and all CLECs operating in the state would be treated the same. The Regional Bell Operating Company (Qwest) rate is the 6.042 cent rate as proposed in the rules. By referring to the Regional Bell Operating Company instead of the 6.042 cent rate, then any future changes to the Regional Bell Operating Company (Qwest) rate would be reflected in the rules. Chairman Kolbeck also noted that a CLEC would still have the opportunity to file a cost study under 20:10:27:02.02.

At the meeting, Midcontinent, AT&T, and Qwest supported the revisions as proposed by Chairman Kolbeck. SSTELECOM, Midstate, RC Services, and SDTA opposed the removal of the 9 cent rate for CLECs serving smaller rural areas.

The revisions as proposed by Chairman Kolbeck were discussed by the three Commissioners. Commissioner Nelson moved to adopt the rules as proposed except for the style and form changes as recommended by LRC and proposed rule 20:10:27:02.01. For 20:10:27:02.01, he moved to revise proposed rule 20:10:27:02.01 to provide that a CLEC's intrastate switched access rates shall not exceed the intrastate switched access rate of the Regional Bell Operating Company operating in the state. All three Commissioners voted in favor of the motion.

Therefore the differences between the rules as proposed and the rules as adopted are that the adopted rules reflect LRC's style and form change and proposed rule 20:10:27:02.01 has been revised. Proposed rule 20:10:27:02.01 now states that a CLEC's switched access rates may not exceed the switched access rate of the Regional Bell Operating Company (Qwest). The Qwest rate is currently the 6.042 cents per minute rate. The revisions eliminate the 9 cent rate for CLECs that serve smaller communities in South Dakota. If a CLEC believes that a higher rate is justified under price regulation then the CLEC may seek that higher rate under proposed rule 20:10:27:02.02.

#### **Final Action – April 19, 2011**

On March 29, 2010, at the meeting of the Legislative Rules Review Committee, the Committee determined that the Commission should take additional comments. Additional comments were received from Sprint, Verizon, Qwest, Midcontinent, AT&T, SSTELECOM, NVC, Midstate Telecom, and RC Communications. At its April 19, 2011, meeting, the Commission considered final action regarding the rules. Chairman Kolbeck asked if anyone had any further comments. No further comments were received. The Commissioners noted that they had reviewed the additional comments filed in this rulemaking. Chairman Kolbeck stated that he believed that the Commission's decision made at the March 18, 2011, meeting was the correct decision. He further noted that it was a competitive environment and that the parties had a number of years to bring their arguments before the Commission. The Commission unanimously voted to adopt the same changes that the Commission had adopted at its March 18, 2011 meeting. These changes are the style and form change recommended by LRC and changes to proposed rule 20:10:27:02.01. For 20:10:27:02.01, the rule is revised from the rule as originally proposed to provide that a CLEC's intrastate switched access rates shall not exceed the intrastate switched access rate of the Regional Bell Operating Company operating in the state.

The differences between the rules as originally proposed and the rules as adopted are that the adopted rules reflect LRC's style and form change and proposed rule 20:10:27:02.01 has been revised. Proposed rule 20:10:27:02.01 now states that a CLEC's switched access rates may not exceed the switched access rate of the Regional Bell Operating Company (Qwest). The Qwest rate is currently the 6.042 cents per minute rate. The revisions eliminate the 9 cent rate for CLECs that serve smaller communities in South Dakota. If a

CLEC believes that a higher rate is justified under price regulation then the CLEC may seek that higher rate under proposed rule 20:10:27:02.02.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rolayne Alts Wiest". The signature is written in black ink and is positioned above a horizontal line.

Rolayne Alts Wiest  
Commission Counsel  
Public Utilities Commission