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 A.R.S.D. 20:10:27 THROUGH 20:10:29	**RM05-002** **APRIL 13, 2011** **COMMENTS OF** **SSTELECOM, INC.**

COMES NOW SSTELECOM, INC. ("SSTELECOM") and pursuant to the invitation of the South Dakota Public Utilities Commission contained in the Notice of Further Comment Period dated April 1, 2011, hereby respectfully submits these comments to the Final Rules regarding switched access rates for competitive local exchange carriers of the same date, which Final Rules were issued on March 21, 2011.

BACKGROUND

At the Commission's March 18, 2011 meeting, the Commission moved and ultimately approved the revision of proposed A.R.S.D. 20:10:27:02.01, which revision eliminated that portion of the rule allowing for a CLEC serving a community with a population of less than 10,000 inhabitants to charge a rate of $0.09 per minute as opposed to $0.06042. Compare with Commission's Draft Rules dated June 2, 2010. The revised and final rule required that all CLECs, regardless of the areas served, charge a rate of $0.06042 or less per minute. The Commission issued its Final Rules on March 21, 2011, and presented them to the Legislative Research Council for approval. At the Legislative Rules Review Committee meeting held on March 29, 2011, the Committee voted to revert the rules to the Commission for further comment and other action deemed necessary by the Commission.

ANALYSIS

The result of the revision to proposed A.R.S.D. 20:10:27:02.01 is significant. While great consideration was given to all parties' comments and arguments, SSTELECOM respectfully submits that the concerns expressed about the supposed creation of a distinction between CLECs and the inclusion of the $0.09 per minute rate in the rule itself are not of such a magnitude so as to result in the elimination of the higher rate.

There were numerous arguments advanced and taken into consideration when evaluating the proposed rules, but the primary argument advanced in support of the elimination of the two-tiered rating approach focused on a perceived lack of statistical or other analytical support for differentiating between CLECs such to allow certain CLECs to bill at a higher switched access rate than others. In furtherance of this argument, and in an apparent attempt to minimize the impact of the reduction in switched access rates, it was suggested that a CLEC may file a cost study if it believes a higher rate than the RBOC rate is justified. These arguments miss the mark.

1. All CLECs Are Not Created Equal.

Given the extensive history of this docket, SSTELECOM will not reiterate its past comments herein. Suffice it to say that there is ample support for differentiating between CLECs and those who disagree with the proposition have done little to distinguish that authority. See generally *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, Released April 27, 2001, ¶¶3, 80; see also Commission Docket TC 10-014, *In the Matter of the Investigation of Pricing Regulation for Switched Access Services Provided by Competitive Local Exchange Carriers*, Testimony of Dan Davis on behalf of SDTA dated April 1, 2010, p. 7, lines 6-18. Simply stating that a CLEC is a CLEC is a CLEC does not in and of itself make it true.

The arbitrary distinction of which others complain is not arbitrary in the least, but rather a realistic and justifiable distinction that finds support not only at the federal administrative level, but also in this Commission's own records. The Commission's website identifies 66 Competitive Local Exchange Carriers, which number does not include wholesale companies. See www.puc.sd.gov/commission/telecom/clec.pdf. Of those companies, the majority, as evidenced by the service area identification, serve in non-rural areas. Others provide service in the Qwest or former US West exchanges. Of the CLECs identified on the Commission website, ten identify a South Dakota presence for operations.[1] The remaining CLECs are from outside South Dakota.[2] These companies do not have any sizeable presence in South Dakota and typically provide service in multiple states around the country. Moreover, several of the other CLECs identified as having a headquarters in South Dakota provide service in communities with a population greater than 10,000, and in at least one instance, greater than 100,000. They stand in

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[1] One of the ten companies with a South Dakota presence is South Dakota Network ("SDN"). SDN does not currently provide switched access service, but filed for designation as a CLEC in the event it should ever choose to provide such service in the future.

[2] By way of example, the following CLECs identified on the Commission's website are from outside of South Dakota and, according to Commission information, have no office, significant presence or facilities in South Dakota:

Access Point, Inc. - Cary, North Carolina
ACN Communication Services, Inc. - Farmington Hills, Michigan
COMTECH 21, LLC – Wallingford, Connecticut
Crexendo Business Solutions, Inc. – Tempe, Arizona
Digital Telecommunications, Inc. – Winona, Minnesota
EnTelegent Solutions, Inc. – Charlotte, North Carolina
Granite Telecommunications, LLC – Quincy, Massachusetts
Hypercube Telecom, LLC – Lancaster, Texas
Level 3 Communications, LLC – Coudersport, Pennsylvania
Metropolitan Telecommunications – New York, New York.

stark contrast to SSTELECOM and similarly situated South Dakota CLECs who maintain the base of their operations in South Dakota and provide services in those areas where others choose not to compete because of population and other more rural demographics.[3] Under these facts and circumstances, the oft-repeated argument that the majority of CLECs bill at the Qwest rate is not worthy of the weight it is given and is ultimately a misleading statistic.

For those non-South Dakota, and non-rural, South Dakota CLECs identified on the Commission's website, the elimination of the $0.09 is a non-issue. For SSTELECOM, it is a harsh reality. SSTELECOM currently bills access at a rate of $0.115 per minute. The reduction to the RBOC rate of $0.0642 results in a reduction of almost half of its current rate. In efforts to ascertain the impact of the rate reduction on its budget SSTELECOM prepared an analysis wherein it calculated the lost revenue on an annual basis. In its analysis, SSSTELECOM assumed that its minutes of use for switched access would remain the same for the coming year. The analysis demonstrated a reduction of almost half of its intrastate switched access revenue on an annual basis, which loss amounts to tens of thousands of dollars. This is not a loss for which SSTELECOM account in its budget.[4] Small businesses operate on equally small budgets and any loss strikes a blow to that company's bottom line. While not known at this time, it is anticipated that the loss will result in a lack of funds for future investment in network improvements, both of a necessary and progressive nature. It could also potentially result in an increase in end-user customer rates. This is not necessarily the reality for the CLECs which operate in multiple communities in South Dakota and multiple states, which CLECs have the opportunity to effectively de-average their respective rates over the whole of the communities they serve.

2. The Filing of a Cost Study is Not a Viable Solution for the Projected Loss in Revenue.

Those supporting revised A.R.S.D. 20:10:27:02.01 have advanced the argument that CLECs can perform a cost study if they believe a higher rate than the RBOC rate is merited. Under the existing rules and Final rules, cost studies or cost data supporting a carrier's rate are required to be filed no less than once every three years. See 20:10:27:02.

[3] Admittedly, the majority of CLECs identified on the Commission's website, including SSTELECOM, are identified as providing service in non-rural areas. However, one need only look at a map or census analysis to identify the problem with this designation. SSTELECOM provides competitive service in Milbank, which is a town of approximately 3,350 residents according to the 2010 census results. SSTELECOM has approximately 970 access lines in the Milbank area.

[4] Interestingly, in stipulations entered into between Commission Staff and other CLECs following SSTELECOM's Stipulation, Staff and the CLEC agreed to the use of a "step down" rate, whereby the CLEC agreed to reduce the access rate charged by a certain amount per year, thereby making it easier to plan for and accommodate the loss in revenue. See TC 07-128, *In the Matter of the Filing by Sancom, Inc. d/b/a/ Mitchell Telecom for approval of its Intrastate Switched Access Tariff and for an Extension of an Exemption from Developing Company Specific Cost-Based Switched Access Rates*, Settlement Stipulation dated July 21, 2008.

The decrease in access revenue is considerable. The expense associated with the performance of a cost study is even more considerable, and that cost would increase in the event of a contested proceeding. SSTELECOM requested from its consultants a preliminary estimate of the expense of performing a cost study. Those costs were conservatively estimated at $35,000 to $40,000 for the preliminary study, with the cost likely to increase by a minimum of $5,000 to $10,000 in the event of discovery requests served by Commission Staff. In the event that other parties intervened in the docket and required the matter to proceed to a contested hearing, the estimated costs associated with the necessary defense of the proffered rate would likely double. The expense associated with the cost study, even in the absence of a contested cost study filing, would likely easily exceed the annual revenue lost as a result of the proposed rate decrease. Simply stated, the expense associated with the cost study is prohibitive under the circumstances.

It is because of the great potential for the expense of the cost study to outweigh its benefits that this Commission enacted a rule which allowed for the filing of an exemption from the requirement of developing company specific cost based switched access rates. See, e.g., A.R.S.D. 20:10:27:11. This procedure has been utilized by a majority of CLECs, including SSTELECOM, in the past. Tellingly, even Qwest, which serves thousands of access lines in South Dakota, and approximately 10,000,000 access lines across the fourteen states in which it operates, has availed itself of this exemption. In its most recent filing this year, Qwest noted in its Application for Waiver that its request was premised in part on the fact that "producing such a study is costly and consumes a great deal of resources[.]" See TC 11-002, *In the Matter of the Application of Qwest Corporation for Waiver of Switched Access Cost Study*, Qwest Corporation's Application for Waiver of Switched Access Cost Study, p. 1. Qwest also stated that "preliminary analysis based on past studies indicates that a cost study would likely justify higher rates than those from the last submitted study." Id.

While an appealing argument in theory, the completion of a cost study for a company such as SSTELECOM is not an appealing or realistic solution in practice. This is but one of the reasons why there is a legitimate basis for allowing those CLECs serving a predominantly rural population base in those communities of less than 10,000 residents to charge a higher rate.

CONCLUSION

Any loss of revenue has an impact, particularly when that loss of revenue may translate into less investment in network infrastructure and technology. The projected loss of revenue in the instant case is great. Given the oft-repeated premise of ensuring the provision of better service and greater opportunity in rural, outlying areas, the proposed rules in this instance do little to generate the revenue necessary for such investment and promotion of more technologically-advanced service. The consequences of the elimination of the higher rate contained within the prior version of the Final Rules is an immediate reality. There is no transition period. There is virtually no time for the readjustment of budgets and realities. Accordingly, SSTELECOM respectfully requests and implores the Commission to reconsider its decision to eliminate the two-tiered rate structure which was contained in the proposed rules of record prior to March 21, 2011, or in the alternative, allow for a transitional period during which period the rate would be reduced incrementally.

Dated this 13th day of April, 2011.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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