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April 16, 2010

Patricia Van Gerpen, Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Re: Docket TC10-014  
Response by Midstate Telecom, Inc., RC Communications, Inc.,  
SSTelecom, and SDTA to Qwest's Motion to Adopt Price  
Regulation of Switched Access Services for CLECs, to Suspend  
Deadline for Reply Testimony and Define Further Proceedings

Dear Patty:

Attached for filing please find the Response by Midstate Telecom, Inc.,  
Communications, Inc., SSTelecom, and SDTA to Qwest's Motion to Adopt Price  
Regulation of Switched Access services for CLEC's, to Suspend Deadline for Reply  
Testimony and Define Further Proceedings.

Very truly,

RITER, ROGERS, WATTIER  
& NORTHRUP, LLP

BY:   
Darla Pollman Rogers

DPR/dk  
Enclosure

Cc: Service List

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Robert D. Hofer, Of Counsel

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

IN THE MATTER OF THE )  
INVESTIGATION OF PRICING )  
REGULATION FOR SWITCHED ) DOCKET NO. TC10-014  
ACCESS SERVICES PROVIDED BY )  
COMPETITIVE LOCAL EXCHANGE )  
CARRIERS )

**RESPONSE BY MIDSTATE TELECOM, INC., RC COMMUNICATIONS,  
INC., SSTELECOM, and SDTA TO QWEST'S MOTION TO ADOPT  
PRICE REGULATION OF SWITCHED ACCESS SERVICES FOR  
CLECS, TO SUSPEND DEADLINE FOR REPLY TESTIMONY AND  
DEFINE FURTHER PROCEEDINGS**

Midstate Telecom, Inc., RC Communications, Inc., SSTELECOM, Inc., and South Dakota Telecommunications Association (collectively referred to as Parties) by and through their counsel of record, hereby respond to and join in the motion filed by Qwest on April 12, 2010, that requests that this Commission enter an Order in the above referenced docket to (1) find that pricing regulation is appropriate for switched access services provided by competitive local exchange companies (CLECs); (2) suspend the April 29, 2010, deadline to file reply testimony in this docket; and (3) define a further proceeding for the parties to address this Commission and advocate their respective positions as to what rule or rules should be adopted, based upon price regulation, for establishing switched access rates for CLECs.

1) The Commission Appropriately Limited the Scope of This Docket

As pointed out by Qwest in its Motion and by Northern Valley Communications (NVC) in its joinder of Qwest's Motion, the Commission established the parameters of TC10-014 when it opened the docket. In the Order

Opening Docket (January 27, 2010), the purpose of this proceeding is clearly articulated:

ORDERED, that a docket to investigate whether pricing regulation is appropriate for switched access services provided by competitive local exchange companies is hereby opened.

In the follow-up scheduling Order, there is nothing that expands that scope:

The issue at the hearing is to consider whether pricing regulation is appropriate for switched access services provided by competitive local exchange companies. . . . As a result of this hearing, the Commission shall determine whether pricing regulation is appropriate for switched access services provided by competitive local exchange carriers.

Verizon notes in its response to Qwest's Motion that "Qwest's Motion is predicated on a fundamental misunderstanding of the nature of this proceeding," and that "Qwest fails to offer any justification for seeking to revise, and drastically narrow the scope of the relevant issues at this stage of the process." (emphasis added). Parties would point out, however, that it is the Commission, not the parties, that define the scope of the docket. In this docket, it is difficult to imagine how the Commission could have articulated the scope and purpose of the docket more clearly, i.e., to determine whether pricing regulation is appropriate for determining switched access rates for CLECs.

It is equally clear that the purpose of the current docket has been achieved. All of the parties, including Verizon, concur that pricing regulation is appropriate for CLEC switched access rates.<sup>1</sup> Since there is no dispute to be determined at a

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<sup>1</sup> "Verizon agrees with Qwest that the opening testimony submitted by the parties reflects substantial agreement that pricing regulation is appropriate for CLEC switched access services." Verizon Response, Page 3, footnote 3.

hearing, it would be appropriate for this Commission to enter an Order that pricing regulation for CLECs is appropriate, to suspend further testimony, and to close this docket.

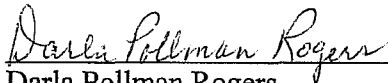
## 2. A Rulemaking Docket is Appropriate

Instead of continuing to litigate a legal question upon which the parties agree, Parties assert that resources would be better utilized by focusing on a rulemaking docket to develop and implement rules for switched access rates for CLECs, based upon pricing regulation. In fact, such a docket may already exist. Currently pending before this Commission is a Rulemaking docket that could be utilized to further identify the form or method of pricing regulation for CLECs. On December 14, 2005, the Commission filed an Order opening a rulemaking docket to consider revisions and/or additions to the Commission's switched access rules (RM05-002). The scope of that docket was redefined on May 27, 2009, by the filing of Draft Rules that were specific to CLEC switched access rates. Parties submit that this pending docket may be the appropriate forum for the Commission to develop rules for switched access rates for CLECs.

Parties would also point out that the comments and input in the first round of prefiled testimony in TC10-014 is not "wasted effort" on the part of the various intervenors. A rulemaking docket is a more appropriate forum for the Commission to review and evaluate the various proposals of the Intervenors, the Commission, and Staff.

WHEREFORE, Parties request that the Commission grant the Motion as requested herein.

Dated this 16<sup>th</sup> day of April, 2010.



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CERTIFICATE OF SERVICE

I hereby certify that an original Response By Midstate Telecom, Inc., RC Communications, Inc., SSTELECOM, Inc., and SDTA To Qwest's Motion To Adopt Price Regulation of Switched Access Services for CLECs, To Suspend Deadline for Reply Testimony and Define Further Proceedings filed in Docket No. TC10-014, was served upon the PUC electronically, directed to the attention of:

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A copy was also sent by e-mail to each of the following individuals:

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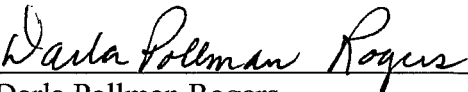
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Dated this 16<sup>th</sup> day of April, 2010.

  
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