

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

IN THE MATTER OF THE COMPLAINT)	TC10-096
OF MIDCONTINENT COMMUNICATIONS,)	
KNOLOGY OF THE PLAINS, INC.,)	
AND KNOLOGY OF THE BLACK HILLS,)	REPLY TO
LLC, AGAINST MCI COMMUNICATIONS)	COMPLAINANTS' BRIEF
SERVICES INC. D/B/A VERIZON)	
BUSINESS SERVICES FOR UNPAID)	
ACCESS CHARGES)	

MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”), by and through its counsel of record, files this reply to Complainants’ Brief in Support of Opposition to Verizon’s Request for Stay or Alternative Request for Hearing on Threshold Factual Issues (“Brief”) filed by Midcontinent Communications (“Midcontinent”), Knology of the Plains, Inc., and Knology of the Black Hills, LLC (together, “Knology”) on December 8, 2010.

1. Although Midcontinent and Knology’s Brief purported to support their opposition to Verizon’s request that the Commission either stay the case or, alternatively, convene a hearing on the threshold factual issues underlying the case, Midcontinent and Knology devoted barely two pages (at 13-15) of their 18-page Brief to Verizon’s requests. The rest of the Brief argued against the affirmative defenses that Verizon raised in its Answer to the Complaint, as if Verizon had already filed a motion to dismiss the Complaint for lack of jurisdiction. All of that discussion is procedurally improper, and the Commission should disregard it. As Verizon explained in its Answer—and as the Complainants’ Brief makes clear—there is a factual dispute about the extent to which the disputed traffic was originated and/or terminated in Internet protocol (“IP”) format. Until the parties have the opportunity to address this factual issue through discovery, briefing

the legal issue of the Commission's jurisdiction over such IP traffic is premature. If Verizon later files a motion to dismiss for lack of jurisdiction, the parties will have the opportunity to air their opposing legal theories at that time.

2. Verizon has a good faith belief, based on public knowledge of Complainants' operations and business plans, that they are originating and terminating calls in IP format. Indeed, Complainants have not denied that, and they are noticeably silent about how they originate and terminate their own customers' traffic. Instead, they argue that Verizon must immediately prove that the disputed traffic is IP-originated or -terminated, as it asserted in its defenses to the Complaint. Verizon, of course, is not obligated to do that.

3. Contrary to Complainants' claim (Brief at 1-2), the fact that Verizon bears the burden of proving its affirmative defenses under ARSD § 20:10:01:15:01 does not mean that Verizon must provide that proof when it raises those defenses. As Complainants themselves recognize, "[m]any of the assertions made in Verizon's Answer and affirmative defenses are factual in nature and their accuracy and relevance will be illuminated in the course of this complaint proceeding." (Complaint at 15.) That course will include an opportunity for thorough discovery into the nature of the parties' traffic (whether or not the Commission decides to conduct a threshold factual hearing under SDCL 15-6-12(d) that Verizon has recommended as the most efficient approach).

4. As Verizon has emphasized since this dispute began, including in the Answer to the Complaint, our goal has always been to negotiate a commercial VoIP compensation agreement with Midcontinent and Knology. We remain interested in negotiating, and if the Complainants were also willing to negotiate, the parties could sort out at least some of the facts relating to their dispute informally, as Verizon is doing with

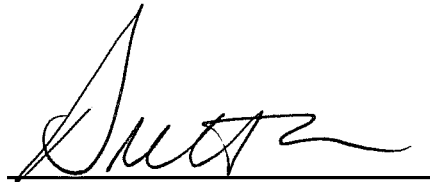
other carriers. Instead, Complainants have shown no interest in negotiating and moved directly to litigation, so discovery of facts and evidence underlying the parties' claims and defenses must be conducted through the formal process Complainants have initiated. Verizon, however, remains willing to negotiate a commercial agreement with Midcontinent and Knology and urges them to reconsider their refusal.

WHEREFORE, Verizon renews its request for the Commission stay this proceeding to encourage the parties to enter into negotiations, or in the alternative, set this matter for a hearing under SDCL § 15-6-12(d) to resolve the threshold disputed issues of material fact relating to the Commission's jurisdiction over the Complaint. .

Dated December 13, 2010

MAY, ADAM, GERDES & THOMPSON LLP

BY:

A handwritten signature in black ink, appearing to read "Brett Koenecke", written over a horizontal line.

BRETT KOENECKE

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CERTIFICATE OF SERVICE

Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 13 day of December, 2010, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above captioned action to the following at their last known addresses:

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