

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

Come now Midcontinent Communications, Knology of the Plains, Inc., and Knology of the Black Hills, LLC, (collectively "Complainants") by and through their undersigned counsel of record, and file this Request for Interim Relief. Specifically, Complainants request that the South Dakota Public Utilities Commission ("Commission") issue an order, pursuant to SDCL § 49-31-114, requiring MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon") to immediately pay to Complainants all outstanding intrastate switched access charges and to continue to make such payments to Complainants pending resolution of this complaint proceeding. In the alternative, Complainants request that the Commission issue an order authorizing Complainants to cease providing intrastate switched access services to Verizon.

1. Complainants filed this Complaint, under A.R.S.D. § 20:10:01:07.01 and SDCL Chapters 49-13 and 49-31, for Verizon's failure to pay tariffed intrastate switched access charges for switched access services provided by the Complainants.

2. Verizon asserts that all Verizon traffic originating from or terminating to Knology and Midcontinent is either IP-originated or IP-terminated traffic and as such, is not subject to switched access charges.

3. Under SDCL §§ 49-31-110, 49-31-111, and 49-31-112, it is Verizon's burden, as the originating carrier and/or transiting carrier, to provide the necessary signaling information to the terminating carriers (Midcontinent and Knology) to allow them to appropriately classify its traffic for billing purposes. On the disputed traffic in this case, Verizon failed to provide any signaling information that would have identified the traffic as being subject to anything other than intrastate switched access charges. As noted in SDCL § 49-31-111, "[i]f accurate and verifiable information allowing appropriate classification of the telecommunications traffic is not provided by the originating carrier, the terminating carrier may classify all unidentified nonlocal telecommunications traffic terminating for the originating carrier as intrastate telecommunications traffic for service billing purposes." To date, the call detail records provided by Verizon indicate that the "disputed" traffic bears all of the hallmarks of, and is indistinguishable from, all other voice traffic.

4. According to SDCL § 49-43-114, any telecommunications carrier damaged by noncompliance with the provisions of SDCL §§ 49-31-109 to 49-31-115, may file a complaint with the Commission pursuant to chapter 49-13 (as Complainants have done here) and the Commission is authorized to order interim payments to the damaged party or other appropriate relief pending the final resolution of the complaint proceeding. Complainants seek such an order in this case.

5. Verizon has been exchanging intrastate telecommunications toll traffic with Knology and Midcontinent for many years and continues to do so today. Prior to July, 2010, Verizon paid the intrastate switched access invoices of Knology and Midcontinent for the exchange of that traffic. (Verizon Answer at ¶ 27) However, beginning in July, 2010, Verizon unilaterally declared that some or all of the traffic it is exchanging with Knology and

Midcontinent is no longer subject to intrastate switched access charges. Verizon refuses to pay switched access charges for the services Knology and Midcontinent have rendered, and continue to render, with respect to that traffic. (Verizon Answer at ¶¶ 30; 33)

6. Knology and Midcontinent are entitled to payment for services rendered and ask the Commission to order Verizon to immediately pay all outstanding invoices and to continue to make interim payments while this dispute is being resolved. The status quo in South Dakota prior to July was payment of switched access charges for the traffic Verizon now disputes. Knology and Midcontinent are entitled to restoration of that status quo pending resolution of this dispute.

7. Failure of Verizon to make payments for services rendered places an unjust financial burden on both Knology and Midcontinent and is inconsistent with state law. Knology and Midcontinent continue to incur the costs associated with maintaining their networks as well as the costs associated with terminating Verizon's traffic. Verizon has not stopped sending traffic to Knology and Midcontinent – it has just stopped paying for it. When an authorized carrier terminates traffic on another carrier's network, it is obligated to pay for its use of that network.

8. Verizon's refusal to pay switched access charges to Knology and Midcontinent has resulted in significant past due amount owed, as set forth on the attached Confidential Exhibit A. These amounts will continue to grow pending resolution of this complaint.¹

¹ Knology and Midcontinent have been working with Verizon and the Staff of the Commission to develop a workable procedural schedule for this complaint proceeding. In these informal discussions, Complainants proposed a shortened discovery cycle which would have resulted in a dispositive motions deadline in early March and a potential evidentiary hearing in early April. Verizon rejected Complainants proposal, claiming it could not comply with shortened discovery deadlines. As a result, it is Complainants understanding that an evidentiary hearing will not be

9. Knology and Midcontinent should not be required to continue to provide free switched access services to Verizon while this case is being resolved. Verizon initiated the underlying dispute by refusing to pay switched access charges on traffic for which it had previously and consistently paid such charges. It is inequitable and unreasonable to require Knology and Midcontinent to continue to forego payment as a result of Verizon's self-help measures. Knology and Midcontinent are essentially being forced to subsidize the free ride of Verizon, resulting in uncompensated use of their networks. Ultimately, this will lead to increased costs for those who are properly paying.

10. The Commission is empowered and authorized by SDCL § 49-31-114 to order interim payments or other appropriate relief pending resolution of this complaint proceeding. Interim payments are appropriate to compensate for Verizon's past and continued use of Complainants' networks. Ordering timely payment for services rendered does not create a burden on Verizon. Non-payment, on the other hand, creates an unjust burden on local exchange carriers such as Knology and Midcontinent and constitutes a continuing violation of the applicable tariffs on file with the Commission.

11. Absent an order for interim payments, Complainants request that the Commission order "other appropriate relief" in the form of an authorization to Knology and Midcontinent to discontinue providing intrastate switched access services to Verizon. Verizon should not be granted free use of the networks of Knology and Midcontinent for an undetermined amount of time. If Verizon is unwilling to pay the tariffed rate for terminating traffic to the Knology and Midcontinent networks, Knology and Midcontinent should not be required to provide such terminating services.

scheduled until mid-May, 2011. With post hearing briefing schedules and time for deliberation by the Commission, a resolution of this case is not likely until late next year.


12. Complainants respectfully request that the Commission consider this Request for Interim Relief at its next available Commission Public Meeting.

CONCLUSION

WHEREFORE, Complainants respectfully request that the Commission order Verizon to pay all outstanding switched access invoices and to continue to make such payments pending resolution of this complaint proceeding. Alternatively, Complainants request authorization from the Commission to immediately cease providing intrastate switched access services to Verizon.

Respectfully Submitted this 21st
day of December, 2010

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Complainants, hereby certifies that a true and correct copy of the foregoing "Complainants' Request for Interim Relief was served via email upon the following:

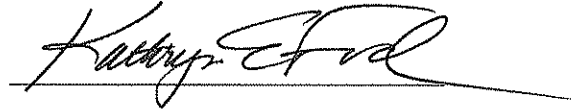
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on this 21st day of December, 2010.

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