

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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In the Matter of the Filing by Common Point  
LLC for Approval of its Access Tariff No.1.

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) TC12-185  
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**PETITION TO INTERVENE AND REQUEST TO SUSPEND  
THE TARIFF AND INVESTIGATE**

Pursuant to SDCL 49-31-12.4(1), 49-31-12.4(2), and ARSD Section 20:10:01:15.02, AT&T Corp. (“AT&T”) petitions for leave to intervene in the above-captioned proceeding concerning the tariff, filed by Common Point LLC (“Common Point”) on October 31, 2012. AT&T also petitions to suspend the tariff pending investigation. As grounds for the intervention, AT&T states as follows:

1. AT&T is an interexchange carrier authorized to do business in South Dakota.
2. As an interexchange carrier, in order to originate from and terminate to end users served by access service providers, AT&T is required to use an access provider such as Common Point to reach these end users. Consequently, it has a direct interest in the rates and terms and conditions of the access tariff filed by Common Point.
3. The tariff indicates the potential for excessive mileage-based access charges. Section 3.10 and 3.11, pages 28-29 of the Common Point tariff contain a general discussion regarding the calculation of mileage and a reference to the National Exchange Carrier Association (“NECA”) Tariff. The mileage incurred in routing calls to their intended destinations is an essential component of the access rates Common Point charges and an interexchange carrier, such as AT&T, must pay. Calls are delivered to the intended destination point (or called party) via a tandem – a physical facility that connects a long distance or toll call to the local exchange network. Common Point has not identified

where, or whether, it intends to place a tandem in the State of South Dakota. AT&T is aware that Common Point has a tandem facility located in Chicago, Illinois. Once Common Point obtains customers in South Dakota it may route calls through its tandem in Chicago before terminating the calls to their intended destination in South Dakota. This may result in excessive mileage charges assessed against AT&T, as well as other interexchange carriers operating in South Dakota. Common Point has stated in its tariff that the “maximum mileage charge of 150 miles requires trunking to the tandem and not the end office.”<sup>1</sup> AT&T contends this proposed routing scheme is unlawful, will increase its costs and warrants further investigation.<sup>2</sup>

4. Common Point also has language in the tariff that suggests that AT&T cannot establish a direct connection with a carrier subtending Common Point, thereby bypassing Common Point’s tandem. For example, the footnote on Page 43 of the tariff says, “# End Office Trunking is not available.” It is not clear if Common Point is attempting to interfere with an interexchange carrier’s ability to connect with another carrier at the end office level. If it is, such action is unreasonable and unlawful. Common Point cannot dictate the terms of interconnection with another carrier. This portion of the tariff warrants further investigation.
5. Upon information and belief, AT&T is aware that Common Point, in other jurisdictions, may provide service to customers who promote access stimulation schemes resulting in charges for traffic that is artificial, inflated and excessive. To that end, AT&T requests that this Commission investigate whether Common Point intends to provide, in South Dakota, service to customers who promote access stimulation schemes and if it is their intent to do so, investigate the appropriate rate for such traffic.
6. The tariff also contains unreasonable payment terms. The time allowed for the resolution of billing disputes is unreasonably short. For example, Section 3.6 requires that a bill must be disputed within 30 days. Requiring a dispute notification to be made

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<sup>1</sup> Common Point South Dakota P.U.C. Tariff No. 1, page 43.

<sup>2</sup> In a related proceeding, the FCC ruled several local exchange carriers in Iowa violated the NECA tariff and sections 201(b) and 203 of the Communications Act by moving their points of interconnection for no apparent reason other than increasing mileage based tandem switched transport charges assessable to interexchange carriers such as AT&T. See *in the Matter of AT&T Corp. v. Alpine Communications LLC et al.*, File No. EF-12-MD-003 (rel’d September 12, 2012).

within 30 days of the bill date is not consistent with industry practice which usually affords parties 90 days from receipt of the bill to submit a billing dispute.<sup>3</sup>

7. AT&T has a direct interest in the outcome of this proceeding. Pursuant to ARSD 20:10:1:15.05, it qualifies for intervention as its interest is distinguishable from an interest common to the public or taxpayers in general.

WHEREFORE, AT&T requests that it be granted intervention status in this proceeding and that the Commission suspend the tariff pending investigation.

Respectfully submitted this 16th day of November, 2012.

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*/s/ filed electronically*  
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#### CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 16th day of November 2012, he filed the foregoing Petition for Intervention by AT&T Corp., Docket No. TC 12-185, electronically with the Public Utilities Commission with electronic copies sent to the following persons:

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<sup>3</sup> See e.g., Qwest Corporation South Dakota Access Service Tariff, Section 2.4.1.B.2.c., page 38, effective 9-15-2000 (providing 90 days for a claim to be submitted on a billing dispute) Also, Section 3.6 states that if a dispute notification is not made within the patently unreasonable 30-day period, the bill will be considered final. The inability by tariff to contest a billing after a 30-day dispute period violates the statute of limitations for a claim that could be brought in front of the Commission or State court. See, SDCL§49-13-1-1 and SDCL§15-2-13(1).

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