

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

**IN THE MATTER OF THE)
INVESTIGATION OF PRICING)
REGULATION FOR SWITCHED)
ACCESS SERVICES PROVIDED BY)
COMPETITIVE LOCAL EXCHANGE)
CARRIERS)**

**ORDER FINDING PRICING)
REGULATION APPROPRIATE FOR)
CLECS' SWITCHED ACCESS)
SERVICES; ORDER DENYING IN)
PART AND GRANTING IN PART)
QWEST'S MOTION; ORDER)
TAKING JUDICIAL NOTICE; AND)
ORDER CLOSING DOCKET)**

TC10-014

On January 5, 2010, Chairman Johnson requested the Commission open a docket, pursuant to SDCL 49-31-4.1, to consider whether pricing regulation is appropriate for switched access services provided by competitive local exchange companies (CLECs). SDCL 49-31-4.1 provides that if an investigation conducted by the Commission "indicates that pricing regulation is appropriate for any noncompetitive service because such regulation has a positive impact on universal service and is more reasonable and fair than rate of return regulation, the commission may adopt pricing regulation for any such noncompetitive service." The Commission unanimously voted to open the docket. The deadline for intervention was February 8, 2010.

On February 5, 2010, a Petition to Intervene of MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Service and MCI Communications Services Inc. d/b/a Verizon Business Services (collectively Verizon); and Midcontinent Communications (Midcontinent) was filed. On February 5, 2010, Northern Valley Communications, LLC (Northern Valley) filed a Petition for Leave to Intervene. On February 8, 2010, a Petition to Intervene of AT&T Communications of the Midwest, Inc. (AT&T); SSTELECOM Inc. (SSTELECOM); Sancom, Inc. d/b/a Mitchell Telecom (Sancom); South Dakota Telecommunications Association (SDTA); Sprint Communications Company, LP (Sprint); RC Communications, Inc. (RC Communications); and Midstate Telecom, Inc. (Midstate Telecom) was filed. On February 8, 2010, Qwest Corporation and Qwest Communications Company, LLC (collectively Qwest) filed a Petition for Leave to Intervene. On February 23, 2010, the Commission granted intervention to Verizon, Midcontinent, AT&T, SSTELECOM, Sancom, SDTA, Sprint, RC Communications, Midstate Telecom, Northern Valley and Qwest.

Procedural schedules were issued and the hearing was set for May 19-20, 2010. On April 1, 2010, written testimony was filed by Midcontinent, AT&T, SDTA, Northern Valley, Sancom, Verizon, Qwest, Midstate, RC Communications, Midstate Telecom, and Commission Staff. On April 12, 2010, Qwest filed a Motion to Adopt Price Regulation of Switched Access services for CLECs, to Suspend Deadline for Reply Testimony and Define Further Proceedings. On April 15, 2010, Verizon filed its Response and Partial Opposition to Qwest's Motion. On April 15, 2010, Northern Valley filed its Joinder in Qwest's Motion. On April 16, 2010, Midcontinent filed its Joinder in Verizon's Response and Partial Opposition to Qwest's Motion. On April 16, 2010, Midstate Telecom, RC Communications, SSTELECOM, and SDTA filed their Response to Qwest's Motion.

At its April 20, 2010, meeting, the Commission considered this matter. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31. In its motion, Qwest requested that the Commission (1) find that pricing regulation is appropriate for switched access

services provided by CLECs; (2) suspend the deadline for reply testimony; and (3) set a procedural schedule for the parties to set forth their positions as to what should be the process for establishing the form or method of price regulation. In its motion, Qwest noted that the parties, in their initial written testimony, agreed that price regulation is appropriate for CLECs' switched access rates. When asked at the Commission meeting, none of the parties objected to the Commission finding that pricing regulation is appropriate for switched access services provided by CLECs. The Commission and the parties then discussed whether this docket should remain open or if a rulemaking was a more efficient process for going forward. At the end of the discussion, everyone was in agreement that this docket could be closed and the Commission could proceed with the rulemaking docket. At the meeting, Qwest also requested that the Commission take judicial notice in the rulemaking docket of the prefilled written testimony that was filed in this docket. The Commission unanimously voted to find that pricing regulation is appropriate for switched access services provided by CLECs. Pursuant to 49-31-4.1, the Commission finds that pricing regulation will have a positive impact on universal service and is more reasonable and fair than rate of return regulation. The Commission voted unanimously to grant in part and deny in part Qwest's motion. The part of the motion that is granted is Qwest's request to find that pricing regulation is appropriate for CLECs' switched access services. The Commission also unanimously voted to grant Qwest's request to take judicial notice of the testimony filed in this docket in the rulemaking docket. The Commission further unanimously voted to close this docket. It is therefore

ORDERED, that the Commission finds pricing regulation is appropriate for switched access services provided by CLECs; and it is

FURTHER ORDERED, that Qwest's motion is granted in part and denied in part; and it is

FURTHER ORDERED, that in its rulemaking docket, the Commission takes judicial notice of the testimony filed in this docket; and it is

FURTHER ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 4th day of May, 2010.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.</p> <p>By: <u>[Signature]</u></p> <p>Date: <u>05/04/10</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

[Signature]
DUSTIN M. JOHNSON, Chairman

[Signature]
STEVE KOLBECK, Commissioner

[Signature]
GARY HANSON, Commissioner