Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
John L. Brown
Margo D. Northrup

Of Counsel:
Robert D. Hofer

November 30, 2007

Ms. Patricia Van Gerpen
SD Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

Re: In the Matter of Revisions and/or Additions to the Commission's Switched Access Rules Codified in ARSD 20:10:27 through 20:10:29

Dear Patty:

Herewith electronically filed is Reply Comments of LECA and SDTA, along with Certificate of Service.

If you have any questions, please contact me.

Sincerely yours,

RITER, ROGERS, WATTIER, BROWN & NORTHRUP

By:
Margo D. Northrup

MDN-wb
Enclosure
Cc: Rich Coit

Law Office
Riter, Rogers, Wattier, Brown & Northrup, LLP
Phone: 605-224-5825 • Fax: 605-224-7102 • www.riterlaw.com
319 South Coteau Street • P.O. Box 280 • Pierre, South Dakota 57501-0280

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF REVISIONS AND/OR ADDITIONS TO THE COMMISSION'S SWITCHED ACCESS RULES CODIFIED IN ARSD 20:10:27 THROUGH 20:10:29.	DOCKET RM05-002 REPLY COMMENTS OF LECA AND SDTA

The Local Exchange Carriers Association (LECA), on behalf of its member local exchange carriers (LECs), and the South Dakota Telecommunications Association (SDTA) on behalf of its member LECs (some of which are not members of LECA), respectfully submit the following reply comments to the initial comments filed in this proceeding by AT&T Communications of the Midwest, Inc. (AT&T) and by Verizon Communications, Inc. (Verizon). The AT&T and Verizon comments are dated September 21, 2007, and September 20, 2007, respectively.

As was emphasized in our Initial Comments filed herein, LECA and SDTA would urge this Commission to proceed carefully in addressing reform to its access rules and to avoid any action that would not be consistent with encouraging continued upgrade of the telecommunications network in South Dakota. The difficulties faced by rural telecommunications carriers in deploying a reliable and efficient voice network as well as high-speed broadband services throughout the high-cost areas of South Dakota are already substantial, and ongoing deployment efforts should not be made more difficult through the adoption of access rule changes that would force cuts in broadband investment, end user broadband price hikes or significant end user rate increases for voice services. It is especially important this Commission carefully analyze any proposals to further reduce intrastate access rates in South

Dakota because alternative cost recovery sources in South Dakota are limited for rural carriers. In contrast to the situation in South Dakota, at the federal level, a portion of the loop related costs are recovered through the federal Subscriber Line Charge (SLC) and through the federal Universal Service Fund (USF). Also a number of state jurisdictions across the country have either a state SLC mechanism and/or a state USF as a recovery source for loop related costs. Although in South Dakota there have been attempts through the state legislative process to establish these types of mechanisms that would allow for a reduction of state access rates, to this point, they have not been successful. As this Commission is well aware, there is neither a state SLC nor any state USF in South Dakota. That being the case, the options for addressing cost recovery concerns in South Dakota in a manner that is consistent with achieving universal service goals are more limited. In short, in this State currently, if changes are made to the intrastate switched access rules and these changes result in a greater portion of loop investment costs or other costs being removed from the intrastate switched access rates, the re-allocated costs will have to be recovered directly from end user customers in some fashion. Most likely, the result to end user customers is substantially higher "local connection" charges in the form of either higher local service rates and/or higher broadband service rates.

I. Intrastate switched access rates in South Dakota are reflective of the higher costs incurred in providing telecommunications services in rural parts of the State.

AT&T and Verizon argue the current switched access rates charged by rural LECs in South Dakota must be reduced and offer two different proposals for lowering and capping the current rural LEC rate. AT&T proposes each rural LEC mirror its interstate switched access rates and Verizon proposes every rural LEC charge a total switched access rate equal to the total Qwest rate. In arguing for the adoption of these proposals, AT&T and Verizon simply offer comparisons of the current intrastate LECA rate to the intrastate switched access rates being

charged by Qwest in South Dakota, the intrastate access rates being charged in certain other states, and also the rates being charged for interstate switched access services. What is clearly missing from the AT&T and Verizon comments is any discussion of the actual costs incurred by rural LECs in providing the local and backbone network facilities necessary to provide access services and other telecommunications services in the high-cost rural areas of South Dakota. AT&T and Verizon propose what they describe as "simple" and "straightforward" revisions to the current switched access rules, asking this Commission to merely reduce and cap the intrastate switched access rates of rural carriers. In urging the Commission to adopt their cap proposals, both AT&T and Verizon show little, if any, concern for the inherent higher costs associated with providing telecommunications services in rural areas. There is a complete disregard of the cost differences that exist relative to service provisioning in non-rural vs. rural areas and, further, nothing references the very real universal service concerns that would be presented if immediate substantial reductions were ordered in the rural LEC intrastate access rates.

Contrary to what AT&T and Verizon suggest throughout their comments, there are no easy answers to the process of reducing intrastate access rates and moving to a reformed rate structure that is less reliant on switched access revenue. This is, perhaps, why even at the federal level, where USF mechanisms are already in place, we still await action by the FCC to reform inter-carrier compensation.

In South Dakota, as this Commission is well aware, there have been a number of legislative attempts to establish an explicit USF mechanism. These attempts, however, have not been successful and as a result issues surrounding the allocation of costs to switched access services and what rates should be charged for such services remain particularly difficult to address. AT&T, in its filing, gives recognition to the "possible" need for an explicit funding mechanism

to make up the "revenue decline" that would result from its proposed intrastate switched access rate cap. (AT&T filing p. 7). At the same time, however, as the means of addressing this need, AT&T simply states that the "Commission could establish an explicit subsidy, such as a state USF, for ILECs to make up any revenue decline." This proposal offers no real solution to the revenue replacement problem. As is readily apparent from past efforts to obtain state legislation authorizing a state USF, the Commission does not appear to have the requisite authority under current state statutes to issue an order establishing an explicit USF mechanism. Establishing such a mechanism would require the Commission to adopt a specific contribution mechanism and also to establish methodologies and procedures that would allow for distributions to carriers from the fund. Without more specific state legislation expressly granting the Commission authority to act in these areas, it would seem doubtful, at best, that the Commission on its own could establish an explicit funding mechanism to offset intrastate access rate reductions.

Verizon gives some recognition to the need for offsetting or replacement revenues, if intrastate access is reduced, but suffers from a delusion that rural LECs have the ability to recover all "legitimate network costs" from their end user customers. Verizon states on page 8 of its filing that "[t]o the extent that LECs have legitimate network costs to recover, they can and should have the flexibility to recover those costs through rates for the services provided to their customers, just as Qwest already must do." This comment demonstrates further a lack of regard for the true costs of providing universal service in the rural areas of South Dakota. Obviously, there are significant differences between the costs incurred in providing service in the Qwest exchange areas versus the costs incurred in providing service in the exchanges served by the SDTA and LECA member companies. There was a reason Qwest (then US West) divested itself of 64 rural exchanges more than ten years ago. Qwest is serving approximately 172,500 local

access lines in South Dakota. These lines are served over an area covering about 17.5% of the State's total geographic area (13,442 square miles). Based on these figures, Qwest serves approximately 12.83 lines per square mile in South Dakota. In contrast, the SDTA member LECs currently serve approximately 144,000 local access lines in the State covering more than 80% of the State's geography. This means that the average line density faced by rural LECs in South Dakota is 2.31 customers per square mile. (*See* SDPUC "Report on Telecommunications Company Operations for the Year 2006" p. 16).

These subscriber density numbers, standing alone, illustrate very clearly the different cost and market picture that is faced by rural LECs in South Dakota in contrast to Qwest. And, contrary to what Verizon suggests, it simply is not feasible for rural LECs in South Dakota to recover all "legitimate network costs" that would no longer be recoverable through access charges (following adoption of its proposed rate cap) through increases in retail consumer rates. The rural LECs incur substantially higher costs, on a per line basis, than Qwest does in meeting carrier of last resort responsibilities and, as a result, do not have the same cost recovery options as Qwest or other large carriers. The revenue losses that would result through the implementation of either of the proposed intrastate rate caps would be very significant and the rural LECs cannot simply rebalance rates, shift revenue recovery from access to basic local service rates or to other telecommunications services, and at the same time be expected to preserve and advance universal service. The end user rate increases that would be necessary to allow for a replacement of the lost access revenues would be excessive and absent some other means to recover these dollars, continued investment by rural LECs in local network upgrades is at risk.

AT&T and Verizon both argue that the current intrastate access rates are harmful to the consumer welfare. Verizon, specifically, suggests that consumers in this state are being deprived "of the benefits of competitive long distance pricing and service options that citizens in other states enjoy." (Verizon filing p. 6). In response, it should first be noted that rural South Dakota consumers routinely can choose from more than 170 interexchange carriers with a variety of basic, optional calling and casual dialing plans. Included among these 170 carriers are a number of larger carriers, including AT&T, MCI/Verizon and Sprint. Each of these three major providers offer a number of long distance plans to South Dakota consumers. Some, but not all, of the plans have higher rates for in-state service in South Dakota. However, under the current methodology only users of the long distance service pay these rates. If access rates were reduced to the interstate rate level as AT&T proposes, or the Qwest intrastate rate level, as Verizon proposes, rural South Dakota consumers would face possible increases in their local service charges estimated at approximately $11.00 per access line per month[1]. This fact is a direct result of the absence of a state USF mechanism that could be used to offset access revenue losses. Verizon and AT&T in arguing consumer benefit relative to their rate cap proposals are obviously focused on only a subset of consumers in the State, those in Qwest areas or those that utilize their long distance services. While it is possible, but far from certain, rates paid by certain long distance users could be reduced if the rural carrier intrastate access rates are reduced, the access revenue reductions resulting from either AT&T's or Verizon's proposed rate would be too substantial for rural ILECs to absorb and would have to be made up through increases in other

[1] This amount was calculated by applying current average interstate and Qwest access rates to an estimated annual LECA pool MOU number. The estimated MOU were determined by annualizing the MOU reported by LECA member companies for the months of January through October of 2007. Specifically, for LECA member companies the total revenue loss would be approximately $18 million if the interstate rates served as a cap (for an average loss of $11.60 per access line), and the total loss would be approximately $16 million if the Qwest intrastate rate served as a cap (for an average loss of $10.40 per access line).

end user rates. It is not possible to predict precisely what telecommunications services rates charged by each LEC would be increased to, but whether the increase is on local service, custom calling features, Caller ID, wire maintenance, and/or Internet service is not material. The result is the local service bill would go up significantly for many, if not all, rural consumers in South Dakota.

II. The proposed rate caps give no recognition to higher rural area costs and are contrary to statute.

AT&T and Verizon, in their filings, are proposing arbitrary caps that fail to give any meaningful recognition to the actual costs that the rural carriers incur in providing the regulated access services at issue. It is an inescapable fact that the costs of providing telecommunications services is significantly higher for the smaller carriers that are operating in the higher cost rural areas, and these higher costs cannot simply be ignored in the process of reforming the current switched access rules.

This disregard for the actual costs of providing access services runs counter to the current regulatory scheme that is applied to such services pursuant to state statute. Under current South Dakota law, telecommunications services are classified, for regulatory purposes, as being either non-competitive, emerging competitive, or fully competitive. SDCL §§ 49-31-1.1, 49-31-1.2 and 49-31-1.4. Switched access services by statute fall into the category of "noncompetitive" services, as "services not otherwise listed in §§ 49-31-1.2 and 49-31-1.3." That being the case, switched access services are currently viewed as monopoly services subject to full regulation by the Commission. More specifically, being "noncompetitive" services, the services are subject to tariffing pursuant to the provisions of SDCL § 49-31-12.4, and within the tariffing process the Commission is directed to establish a "fair and reasonable rate or price" for the tariffed services. In addition, certain standards governing the Commission's regulation of "access" are set forth in

SDCL § 49-31-18. In that section, it is indicated telecommunications companies providing access services are entitled to "reasonable compensation", and the methods established by the Commission in regulating access rates are supposed to result in "fair and reasonable" rates. That statute also indicates this Commission in establishing access rates must take into account universal service considerations, providing for rates that "enhance and preserve universal service." Given the fact that switched access services are currently classified as non-competitive services and given the current applicable ratemaking standards, LECA and SDTA would question whether the Commission could appropriately at this time mandate the charging of switched access rates that have no reasonable relation to the actual cost of providing the services. Although currently the LECA member companies are charging an average rate or rates lower than what was indicated by the latest filed cost studies, the current capped rate is the result of an agreed upon "Settlement Stipulation" ("Settlement Stipulation" filed with the Commission on November 8, 2006). Absent an agreement by each rural LEC to charge rates below costs, LECA and SDTA believe the Commission remains subject to the obligation to establish access rates reflective of actual costs and that are "fair and reasonable." The rate caps being proposed by AT&T and Verizon are completely detached from rural carrier cost considerations and, as such, clearly appear contrary to the "fair and reasonable" dictates in the state law.[2] Moreover, if the

[2] Very clearly the rate caps proposed by AT&T and Verizon are completely arbitrary. As already explained there is no reasonable basis to equate the costs that are incurred in rural areas with the costs incurred in Qwest areas in providing access services. Verizon argues that the Qwest rate is the most appropriate benchmark because "As the RBOC in South Dakota, (Qwest's) switched access rates have been subject to close regulatory scrutiny and the strictest economic discipline." Verizon's argument fails because Qwest's switched access rates have been removed from regulatory analysis pursuant to Qwest's request for a waiver of the requirement to file a cost study once every three years. As noted above, the basis for Qwest's request for waiver is purely an arbitrary and subjective decision of Qwest's ("a study is costly and consumes a great deal of resources" and "Qwest does not intend to raise access rates at this time," even though a study would support higher rates), which falls short of the "fair and reasonable" standard articulated in SDCL 49-31-12.4. (*See* TC05-006, waiver granted by Commission). There is also no reasonable basis to conclude that the intrastate access rates charged by either the rural LECs or Qwest should equal the interstate access rates. The interstate access rates of rural LECs do not include any local loop costs and also include reduced switching costs. Further, since 1996 the interstate subscriber plant factor (SPF) has been frozen at 25% and this has resulted in 75% of total loop costs being allocated to the state and local jurisdiction for recovery.

Commission did not in conjunction with mandating any substantial access rate reductions also take action to minimize adverse universal service impacts it would be acting in a manner inconsistent with the universal service language found in SDCL § 49-31-18. At a minimum, prior to this Commission taking any action to adopt a forced cap on intrastate access rates and effectively eliminate the current ratemaking process applicable to access services, it would be necessary for this Commission to first reclassify the services as being something other than non-competitive. And, in regards to any proposals to reclassify switched access services, LECA and SDTA do not believe the standards for reclassification set forth in SDCL § 49-31-3.2 would support any change in the current classification.

III. Switched access rate reform requires consideration of universal service impacts.

As noted in our Initial Comments filed herein, under the provisions found in Section 254 of the Federal Act both the federal and state jurisdictions are charged with the responsibility to preserve and advance universal service. Subsection 254(b)(5) states specifically that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." *Emphasis added.* The state responsibility with respect to universal service is more specifically defined in Subsection 254 (f) of the Act, which reads as follows:

> STATE AUTHORITY- A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and

It is also worth noting that the current Qwest interstate access rates are subject to price cap regulation at the federal level and the FCC has taken action to reduce them to approximately 0.6 cents per MOU. If the Commission adopts the current interstate access rates as a cap for rural LEC intrastate access rates, would it also adopt Qwest's interstate access rate as the cap for Qwest's intrastate access rate?

> sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.

The above federal provisions make it clear that intrastate telecommunications services and carriers providing such services are required to share in carrying the universal service burden. Every telecommunications carrier providing intrastate telecommunications services within a state is required to contribute on an "equitable and non-discriminatory" basis toward the preservation and advancement of universal service in that state. Furthermore, to the extent that any state seeks to establish within its jurisdiction an expanded definition of universal service (beyond what is defined as universal service by the FCC), the state is obligated to establish an additional state mechanism or mechanisms to support the expanded definition.

In considering any possible switched access rule changes, the Commission must be mindful of this State's universal service obligations. The current access rate structure has helped to keep basic local service rates affordable in South Dakota, in even the highest cost areas. It also has been successful in encouraging continued substantial investment in the telecommunications network operated by South Dakota's rural telecommunications carriers. To the extent that the current access rules have assisted in keeping local service rates universally affordable and enabled continued investment in state of the art telecommunications facilities they have, in fact, worked to "preserve and advance" universal service and have, accordingly, served to meet the State's universal service obligations imposed under the federal law.

As already noted herein, presently in South Dakota there are no alternative cost recovery mechanisms in South Dakota such as a state SLC or a state USF. The current absence of these mechanisms <u>cannot</u> be ignored in the process of reviewing possible switched access rule changes.

In the federal jurisdiction, as part of its most recent interstate access reforms applicable to rate-of-return regulated carriers (which includes the member companies of LECA and SDTA), the FCC acted in a manner consistent with the federal universal service statutes by offsetting interstate access rate reductions with additional explicit universal service support. *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, 66 Fed. Reg. 59719, FCC 01-304, released November 8, 2001 (hereinafter referenced as *MAG Order)*."[3] In issuing the *MAG Order*, the FCC was mindful of its universal service obligations and took action to avoid a shift of its universal service responsibilities to the state jurisdictions and to otherwise protect against negative universal service impacts. More specifically, the FCC, although it reduced interstate switched access rates, also increased interstate SLCs and established an additional universal service support element or mechanism (Interstate Common Line Support). *MAG Order*, par. 15. Through these steps the interstate access rate reductions implemented were offset with sufficient support from other revenue sources.

It is the position of LECA and SDTA that in the process of implementing any intrastate switched access reform, this Commission is obligated to take a similar approach as the FCC by giving full recognition to any universal service concerns that are presented. Switched access rule changes cannot be made without simultaneously addressing the impact that any such changes will have on universal service. To make access rule changes without at the same time ensuring

[3] It should be noted that SDTA presently has pending with the FCC a Petition for Reconsideration challenging that part of the FCC's *MAG Order* which led to the eventual complete elimination of interstate carrier common line charges. The Petition, more specifically, disputes on legal grounds the FCC's categorization of all interstate carrier common line charges as being an "implicit subsidy."

that state universal service responsibilities continue to be met would be contrary to the federal universal service statutes and also contrary to the best interest of South Dakota consumers.[4]

It is also essential that this Commission attach importance to the universal service impacts caused by any proposed switched access rule changes given the expressed intent of the State legislature that South Dakota has a telecommunications infrastructure that meets "advanced communications needs." SDCL 49-31-60. The State legislature, through the enactment of SDCL 49-31-60, has stated its commitment to the development of advanced communications services, including broadband services, throughout South Dakota.[5] LECA and SDTA urge the Commission in this proceeding to act in a manner consistent with these state statutory provisions by ensuring that any actions taken to reform the current intrastate access rules do not run counter to furthering broadband investment in the State.[6]

As was emphasized in our Initial Comments, this Commission is not legally obligated to change the current access rules. The current switched access rates are appropriately based on a "fully distributed, embedded cost" method which fairly recognizes the cost of all facilities actually utilized in the provisioning of intrastate access services. The U.S. Court of Appeals

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[4] Such action would also be contrary to language contained in SDCL 49-31-18 which specifically references the establishment of access rates by rules adopted pursuant to SDCL 1-26. That section provides in pertinent part that the Commission "[t]o provide access facilities at reasonable rates and to enhance and preserve universal service, . . . may establish methods designed to determine and implement fair and reasonable access rates by rules promulgated pursuant to chapter 1-26." *Emphasis added.*

[5] SDCL 49-31-60 is consistent with the FCC's position reflected in the Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256 (RTF Order) that prudent network upgrade investments including upgrades for both universal services and broadband can be paid for with universal service funds. Pars. 200 and 201.

[6] The intent of the State legislature to not only preserve, but also advance universal service in South Dakota is also evidenced by SDCL 49-31-83. That statute provides: "The commission may not prohibit telecommunications companies from voluntarily forming an association to assist in the administration and filing of schedules or tariffs and to engage in the pooling of access costs and revenues in a manner which is consistent with preserving and advancing universal service throughout this state or consistent with the Public Communications Network Infrastructure policies set forth in §§ 49-31-60 and 49-31-61." These state pronouncements supporting the advancement of universal service are entirely consistent with the stated goals found in Sections 254 of the Federal Communications Act to provide "access to advanced telecommunications and information services" in "all regions of the Nation." *See* 47 U.S.C. § 254(b) (2).

decision in Qwest Communications International, Inc. v. FCC, Case No. 03-9617, released February 23, 2005 (Qwest II) makes it clear that even if it were determined that the current intrastate access rates include certain implicit support for universal service, it is within the lawful discretion of this Commission to set its own timetable for the reform of intrastate access charges. LECA and SDTA, with respect to this timetable, believe that it should be driven ultimately by decisions made at the state level concerning the establishment of explicit universal service support mechanisms. Actions should not be taken to substantially reform intrastate access rates without first having alternative universal service support mechanisms in place at the state level. It is neither unlawful nor improper for intrastate access rates to play some role in assisting with the preservation and advancement of universal service in South Dakota. Until explicit support mechanisms are established in South Dakota that are sufficient to meet the state's universal service obligations, the current access rate structure which allows for a recovery of intrastate access costs and which has helped to meet universal service goals in South Dakota should be maintained.

Verizon and AT&T, as mentioned, compare the intrastate access rates being charged in South Dakota with the rates being charged for interstate switched access and also the rates being charged in certain other states. These comparisons are invalid for various reasons. AT&T, for example, compares the interstate access rates for a call from Vermont to California with the intrastate access rates for a call within South Dakota. AT&T has ignored the fact that the referenced interstate rates are lower because the FCC has, unlike in South Dakota, offset previously ordered access rate reductions with various forms of high cost support directed at the recovery of both local loop and local switching costs. In addition, the Federal SLC has also been implemented and increased through the years to recoup lost loop recovery brought on by past

interstate access rate reductions. The comparison made is also significantly flawed in that the AT&T LEC affiliate charging the referenced rate of $0.0133 for termination in Mendocino, California is a "price cap carrier," subject to an entirely different method of interstate access regulation. Also, the rural areas of the states referenced in the AT&T comparison have subscriber densities of 6.41 subscribers per square mile (CA RUS borrowers) and 55.28 subscribers per square mile (VT RUS borrowers). These subscriber densities range from approximately three to twenty-five times higher than the average number of subscribers per square mile served by South Dakota's rural LECs. Finally, although it is not directly pertinent to the establishment of interstate access rates, both California and Vermont have implemented state USF mechanisms.

AT&T also compares the Oregon and Washington intrastate access rates to those in South Dakota. Again the comparison is invalid. Both of these states have also implemented state USF mechanisms. Also, as a whole the carriers operating in both Oregon and Washington do not face the same level of costs, on a per line basis, in providing local telecommunications services. A fair indicator of this is the fact, in Oregon and Washington only 9%, or less, of the total ILEC access lines in the state receive high cost support. In comparison, in South Dakota 41% of all ILEC access lines are eligible to receive high cost support.

The rates in a number of other states are referenced for comparison purposes on pages 5 and 6 of the AT&T filing. Of these states, New Mexico, Nebraska, Kansas, Wisconsin, Georgia and Nevada, all have state USF available to enable rate rebalancing.

AT&T has proposed that over a three year period the current intrastate access rates should be lowered and capped at rural carrier interstate access rates (approximately 5.1 cents per MOU). Verizon proposes an alternative immediate cap at the current total per minute access rate

that is charged by Qwest for intrastate access (approximately 5.9 cents per MOU). If either of these actions were taken, it is estimated that just the LECA member companies in South Dakota would be looking at a total revenue shortfall approximating $16-$18 million annually. Recovering the $16-18 million shortfall from end user subscribers would require a rate increase, on a per line basis, of approximately $11.00 per month.

AT&T and Verizon in their comments do not sufficiently consider the significant revenue shifts that would have to occur to offset the rate reductions they have proposed. If rate rebalancing is to occur in a manner that does not threaten the continued affordability and quality of telecommunications services in rural South Dakota, it is evident that additional USF of some sort is a prerequisite. Either a state USF or additional federal USF, through inter-carrier compensation reform, would have to be made concurrently available to offset the access revenue reductions.[7]

IV. Carrier access revenue is essential to broadband infrastructure deployment.

AT&T and Verizon contend that the current intrastate access rates have worked to discourage network investment in South Dakota. LECA and SDTA would strongly disagree with these claims. AT&T and Verizon have to this point shown little, if any, interest themselves in building facilities into the rural areas of South Dakota and engaging in wireline facilities-based competition in such areas. Further, contrary to what AT&T and Verizon seem to believe, the primary challenge in states like South Dakota has not been in attracting carriers to compete in the provisioning of backbone, longer haul, transport services. Instead, as this Commission knows, the most difficult network deployment challenge faced in high cost rural states like South

[7] It should also be pointed out that the LECA member companies pursuant to the Settlement Stipulation filed with the Commission on November 8, 2006, are already charging intrastate access rates that are not reflective of the actual costs as indicated in the filed individual company cost studies.

Dakota is in ensuring ubiquitous broadband build-out within the local telecommunications networks.

As pointed out in the LECA and SDTA Initial Comments, pp. 3-9, the FCC wants policies and procedures implemented to encourage deployment of wireline broadband services. As indicated in paragraph 89 of its *DSL Order*, the FCC's primary goal "is to facilitate broadband deployment in the manner that best promotes wireline broadband investment and innovation, and maximizes the incentives of all providers to deploy broadband."[8] This Commission through its current process of regulating switched access services and through its insistence that switched access rates should be reflective of actual ILEC costs has created an environment that has been favorable to broadband deployment in the highest cost areas of South Dakota. LECA and SDTA urge the Commission in this proceeding to continue to give proper consideration to the actual costs that are incurred by rural carriers and to also, like the FCC, give priority to achieving broadband deployment goals. It should avoid actions in this proceeding that would force either cuts in broadband investment or broadband price hikes.

AT&T comments, specifically, that there is a disincentive for long distance carriers to invest in their networks throughout South Dakota. In response, it should be pointed out that through the current South Dakota Network, LLC d/b/a SDN Communication's (SDN) centralized equal access (CEA) and backbone transport network, long distance carriers are currently able to reach and provide 1+ access to their toll services to more than 130,000 customers of the 30 rural South Dakota ILECs. Prior to construction of the SDN CEA network, rural South Dakota customers had only one choice for 1+ intrastate and interstate, long distance service (Qwest and AT&T respectively), and this was because other large carriers were unwilling to build their

[8] FCC "Report and Order and Notice of Proposed Rulemaking" issued on September 23, 2005, in CC Docket No. 02-33 (FCC 05-150), In the Matter of the Appropriate Framework for Broadband Access to the Internet over Wireline Facilities.

transport networks into the sparsely populated areas of this State. Prior to the existence of the SDN network, no interexchange carrier had even requested equal access from a rural South Dakota LEC. Since the CEA network has been in place, both South Dakota consumers and the IXCs have received substantial economic benefits. As a result of the current network, South Dakota consumers continue to have many competitive choices for long distance calling plans. Long distance carriers have also experienced benefits because they have only had to connect with the SDN CEA tandem switch in Sioux Falls, where many already have network facilities. Once connected to the SDN CEA tandem, their access expense is a variable expense directly tied to incremental revenue. Their overhead costs (marketing and administration especially) can be spread over new customers without the high fixed costs that would be required to build or lease network to access the customers behind the SDN CEA tandem.

V. State access reform should be coordinated with FCC actions to reform Federal "Inter-carrier Compensation" and the Federal USF Mechanism.

Although it is difficult to predict when the FCC may take action in its pending Inter-carrier compensation reform proceedings, LECA and SDTA continue to believe that this Commission should avoid any dramatic changes to its current methods of regulating intrastate access rates until things are more certain as to how the FCC will proceed with its reforms. This is especially important given pending proposals before the FCC that would provide for the establishment of a Federal "Restructure Mechanism." With a Federal Restructure Mechanism specifically designed to help offset revenue losses associated with intrastate access rate reductions, intrastate access rate reform could be accomplished by this Commission without having to face serious negative universal service consequences.

In addition, not only is "Inter-carrier Compensation" reform pending at the federal level, the Joint Board on Universal Service (Joint Board) made a series of recommendations to the

FCC on November 20, 2007, about how to reform of the Federal USF mechanism including a recommendation to expand the definition of universal service to include broadband services. If an additional Federal USF mechanism or additional USF funding is adopted to assist more directly with the ubiquitous deployment of broadband, this Commission could also be in a better position to reform its current intrastate access regulation.

VI. <u>The "access stimulation" concerns presented by Verizon are being addressed by the FCC.</u>

With regard to arguments presented by Verizon that a more uniform rate structure is needed to curb regulatory arbitrage opportunities, and in particular to prevent access stimulation or "traffic pumping" schemes, there are several reasons why these arguments are off the mark and do not support the intrastate rate cap proposals being advocated. LECA and SDTA point out that a large percentage of minutes associated with conferencing services that stimulate access minutes of use on wireline network facilities, are interstate traffic subject to interstate access rates, rather than intrastate traffic. As Verizon has indicated, the FCC is already investigating certain access stimulation practices that result in "endogenous" traffic demand and has proposed a number of different possible actions to prevent overearnings by any ILECs through such practices.[9] In fact, the FCC has taken steps to change the tariff filing requirements that apply to those rural carriers that choose to leave the NECA traffic sensitive pool and to file their own interstate access tariffs pursuant to either §§ 61.38 or 61.39 of the FCC rules. Specifically, the FCC is now insisting that rural carriers choosing to file their own interstate access tariffs must agree to file a revised tariff if the traffic demand increases beyond certain percentage thresholds. *Access Stimulation NPRM* par. 21.

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[9] FCC 07-176, "Notice of Proposed Rulemaking" released October 2, 2007, *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers* (hereinafter referenced as *Access Stimulation NPRM*).

It is improper for Verizon to suggest that "traffic pumping" involves numerous carriers in South Dakota or that it is an extensive problem in this State. Verizon on page 11 of its filing indicates that "[s]ix of the ILECs" are parties to the "FCC's ongoing investigation." LECA and SDTA suspect that Verizon has made this statement based on the number of rural carriers in South Dakota that have filed this year to leave the NECA pool and file individual interstate tariffs. Each of these carriers, however, has its own reasons for leaving the NECA pool and tariff and it is improper to imply that all of the carriers are doing so because they plan to engage in access stimulation activities that will substantially increase their traffic demand. This is simply not the case.

Finally, it is important for the Commission to understand that given the current industry-wide trend of declining access minutes and based on the established LECA pooling process, none of the LECA member companies are positioned to utilize access stimulation arrangements as a means of generating excessive intrastate access revenues. As this Commission is well aware, the total LECA pooled minutes of use have for a number of years been declining, not increasing. As a consequence, most of the LECA member companies have been in an under-earning situation over this period. Furthermore, the current LECA pooling process requires a member company that collects more than its intrastate access revenue requirement to pay the money collected to LECA for redistribution to those pool members that would otherwise receive the lowest percentage of their individual intrastate revenue requirement. Currently, the total revenue collected by LECA members continues to be significantly below the last approved total LECA revenue requirement. The LECA process is consistent with the Commission's administrative rules which require "[e]ach carrier's carrier or association" to "file a tariff that is designed to recover no more than its intrastate switched access costs as determined by the

commission . . .." *See* ARSD § 20:10:27:06. Given the pooling process and this referenced rule prohibition, there is simply no basis to conclude that the presence of "traffic pumping" schemes requires this Commission to amend the current intrastate access rules.

VII. Conclusion

As this Commission analyzes possible reform to its current switched access rules, LECA and SDTA urge the Commission to avoid any action that is inconsistent with encouragement of continued upgrade of the telecommunications infrastructure in South Dakota. South Dakota is unique because of the substantial difficulties telecommunications carriers face in deploying broadband services throughout the high cost areas of the state, and because currently, alternative cost recovery sources in South Dakota are limited for rural carriers. Unlike many states and the federal level, South Dakota has neither a SLC nor a state USF. If changes are made to the intrastate switched access rules that result in a greater portion of loop investment costs or other costs being recovered directly from end user customers, this would have a detrimental impact on consumers of telecommunications services in South Dakota. Accordingly, LECA and SDTA urge the Commission to recognize the unique characteristics of South Dakota and to proceed carefully in studying reform to the current access rules.

DATED this 30th day of November, 2007.

RITER, ROGERS, WATTIER, BROWN & NORTHRUP, LLP

By: Darla Pollman Rogers

And Margo D. Northrup
Margo D. Northrup

319 S. Coteau – P. O. Box 280
Pierre, SD 57501-0280
Attorneys for LECA and SDTA

CERTIFICATE OF SERVICE

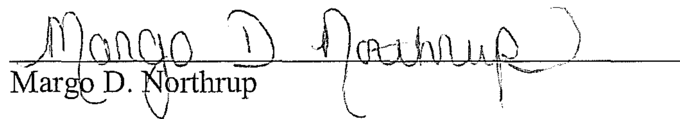
I, Margo D. Northrup, certify that a true and correct copy of Reply Comments of LECA and SDTA were mailed to the following by first class mail on the 30th day of November, 2007:

William N. Van Camp
Attorney at Law
P. O. Box 66
Pierre, SD 57501-0066

Jason D. Topp
Qwest Corporation
200 South 5th Street Room 2200
Minneapolis, MN 55402

Brett M. Koenecke
Attorney at Law
P. O. Box 160
Pierre, SD 57501-0160

David M. Gerdes
Attorney at Law
P. O. Box 160
Pierre, SD 57501-0160



Margo D. Northrup