BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

Proposed Rulemaking of the Public Utilities Commission of South Dakota On Telecommunications Switched Access Rules	))))	Docket No. RM05-002

Comments of AT&T Communications of the Midwest, Inc. in the Proposed Rulemaking of the Public Utilities Commission of South Dakota on Telecommunications Switched Access Rules

AT&T Communications of the Midwest, Inc. ("AT&T"), before the Public Utilities Commission of the State of South Dakota, respectfully submits the following comments on the proposed Telecommunications Switched Access Rules, 20 SDR, Chapter 20:10:27 ("Proposed Rules").

Excessive switched access charges are a holdover of the monopoly days in the telecommunications market from nearly a quarter of a century ago. Today, they harm consumers, impede competition, unjustly discriminate against certain market segments, and slow the deployment of new technologies that will be required for providing the telecommunications services of today and tomorrow. The Federal Communications Commission ("FCC") has ordered significant reductions in interstate switched access charges for incumbent local exchange carriers ("ILECs"), and it has "capped" the access rates for CLECs at the rates of the ILECs with which they compete. More than 20 states – most recently New Jersey – have followed the FCC's lead at the state level, by requiring from one to all local exchange carriers ("LECs") to reduce their intrastate switched access rates to "parity" with their corresponding interstate rates.[1]

This Commission should do the same for South Dakota consumers:(i) direct Qwest and all South Dakota ILECs to implement intrastate switched access rates that match, both in rate level and rate structure, their corresponding interstate switched access rates, and (ii) direct all CLECs to cap their intrastate switched access rates at the corresponding intrastate switched access rates of the ILECs with which they compete. Going forward, Qwest and its proposed successor CenturyLink, as well as all South Dakota ILECs and CLECs should be required to continue these requirements. At the same time, the Commission should ensure that South Dakota ILECs can recoup access revenue reductions from (i) additional retail pricing flexibility, up to a reasonable "benchmark" price, for local service, and (ii) a state universal service fund ("USF"). CLECs, which have the ability to be selective as to which geographic areas they wish to enter and those customers whom they serve, should recover any access revenue reductions from retail pricing only and should not be permitted to draw from a state USF.

---

[1] The following states have implemented parity between intrastate and interstate rates from one to all LECs, either through legislation, commission rule or commission order: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Tennessee, Texas, West Virginia, and Wisconsin.

I. The Commission Has Long Been Faced with the Need for Access Reform in South Dakota.

Intrastate switched access rates were first approved by the Commission several years ago and were established when wireline telephone service was essentially a closed monopoly. Generally, these charges were established containing an implicit subsidy so that local rates could be held artificially low. Consumers wanting to communicate over a long-distance network had little choice but to place a wireline long-distance call and pay long-distance rates that were established at rates levels that would allow IXCs to recover the high intrastate access charges being assessed to them by ILECs.

Over 4 years have passed since the Commission first opened this rulemaking to review South Dakota access rates. AT&T is encouraged that the Commission has refreshed its efforts to review switched access rates as the existing rules are woefully out of date. The disparity between Qwest's interstate and intrastate access rates is an astounding 1300%[2]. The remainder of the ILECs' intrastate access rates are all significantly higher than their corresponding interstate access rates.

If adopted, the six-cent rate cap for CLECs operating in communities of 10,000 inhabitants or more and the eight-cent rate cap for CLECs operating in communities with less than 10,000 inhabitants contained in the Proposed Rules would maintain a very substantial implicit subsidy that is wholly inappropriate for switched access. Switched access is a monopoly service and should not be

[2] \$0.0039 versus \$0.0537

used to subsidize the operations of CLECs that have no carrier of last resort obligations.

Such high access rates enable ILECs and CLECs to artificially maintain low local retail rates, thereby resulting in other South Dakota consumers subsidizing the ILEC and CLEC operations. Cross-subsidy mechanisms are incompatible with the policy goal of promoting consumer welfare and advancing competition on the merits. The success and failure of competitors should be determined on the basis of their relative costs, efficiencies, and quality of services, not by regulatory asymmetries. Highly disparate access rates also distort investment by creating an artificial, regulatory-induced competitive disadvantage for wireline long-distance providers.

In its recent National Broadband Plan, the FCC "encourage[d] states to complete rebalancing of local rates to offset the impact of lost access revenues ... [as] [d]oing so would encourage carriers and states to 'rebalance' rates to move away from artificially low $8 to $12 residential rates that represent old implicit subsidies to levels that are more consistent with costs."[3] (Endnotes omitted).

AT&T requests that the Commission evaluate the level of intrastate originating and terminating switched access rates charged by all ILECs and CLECs and establish a course to remove implicit subsidies inherent in the current switched access rate structure that would level the competitive landscape, stimulate the economy and also be in harmony with the *FCC NBP*

---

[3] *Connecting America: The National Broadband Plan*, FCC (Mar. 16, 2010), at 142 (citation omitted) ("*FCC NBP*").

recommendation for "comprehensive reform ... to shift from primarily supporting voice communications to supporting a broadband platform that enables many applications, including voice."[4] The Commission should actively pursue access reform and encourage competition in local exchange markets, balancing the interests of consumers and telecommunications providers alike within the parameters mandated by Congress and the FCC."[5]

While the FCC opened an access reform docket almost 10 years ago,[6] it has not yet acted, and this Commission should not wait for the FCC to take such action.[7] Instead it should do what the FCC NBP recommended and "...complete rebalancing of local rates to offset the impact of lost access revenues."[8] The fact remains that no one knows when or if the FCC will issue an order that would preempt all state authority in making determinations and reform intrastate access charges.

State law and prior action by this Commission makes clear that intrastate access reform falls under the Commission's jurisdiction and is *its* responsibility. It is past time for the Commission to take meaningful action and move forward with comprehensive access reform.

II. Explanation of Switched Access Charges

Intrastate switched access services are wholesale services provided by local exchange carriers generally to wireline long-distance providers (*i.e.*, local

---

[4] *FCC NBP* at 141.
[5] *In the Matter of An Inquiry into Local Competition Universal Service, and the Non-Traffic Sensitive Access Rate*, Adm. Case No. 355, Order at 48-49 (Sept. 26, 1996).
[6] FCC Common Carrier Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime.*
[7] AT&T's proposed plan submitted herewith provides for many of the recommendations made in the *FCC NBP* and provides for any future action the FCC may take.
[8] *FCC NBP* at 148.

long-distance providers and interexchange carriers ("IXCs")), for originating and terminating intrastate long-distance calls. For example, if a customer in one local exchange makes a toll call to a customer in another local exchange, the caller's LEC typically transports that call to an IXC, thereby providing "originating" switched access services. The IXC then transports the call to the recipient's LEC, which delivers and terminates the call to the recipient, thereby providing "terminating" switched access services.

On the originating side, the IXC has no control over which ILEC or CLEC serve its customers; likewise, on the terminating side, the IXC has no control over which recipients its customers call, and no control over which ILEC or CLEC serve those recipients. Thus, the IXC must pay whatever switched access rates the ILEC or CLEC assess for those calls, since the ILEC or CLEC has a monopoly over access service. As the FCC stated, "when an end user decides to take service from a particular LEC, that LEC controls an essential component of the system that provides interexchange calls, and it becomes the bottleneck for IXCs wishing to complete calls to, or carry calls from, that end user."[9]

Given the market power that ILECs and CLECs wield over intrastate switched access services and the lack of action by the Commission on access reform, it is not surprising that the ILECs' and CLECs' intrastate switched access rates are much higher than their corresponding interstate rates for the same access service

---

[9] *In re Access Charge Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd. 9923, 9931 (2001).

III. The Problem: High Access Charges Harm Consumers And Competition.

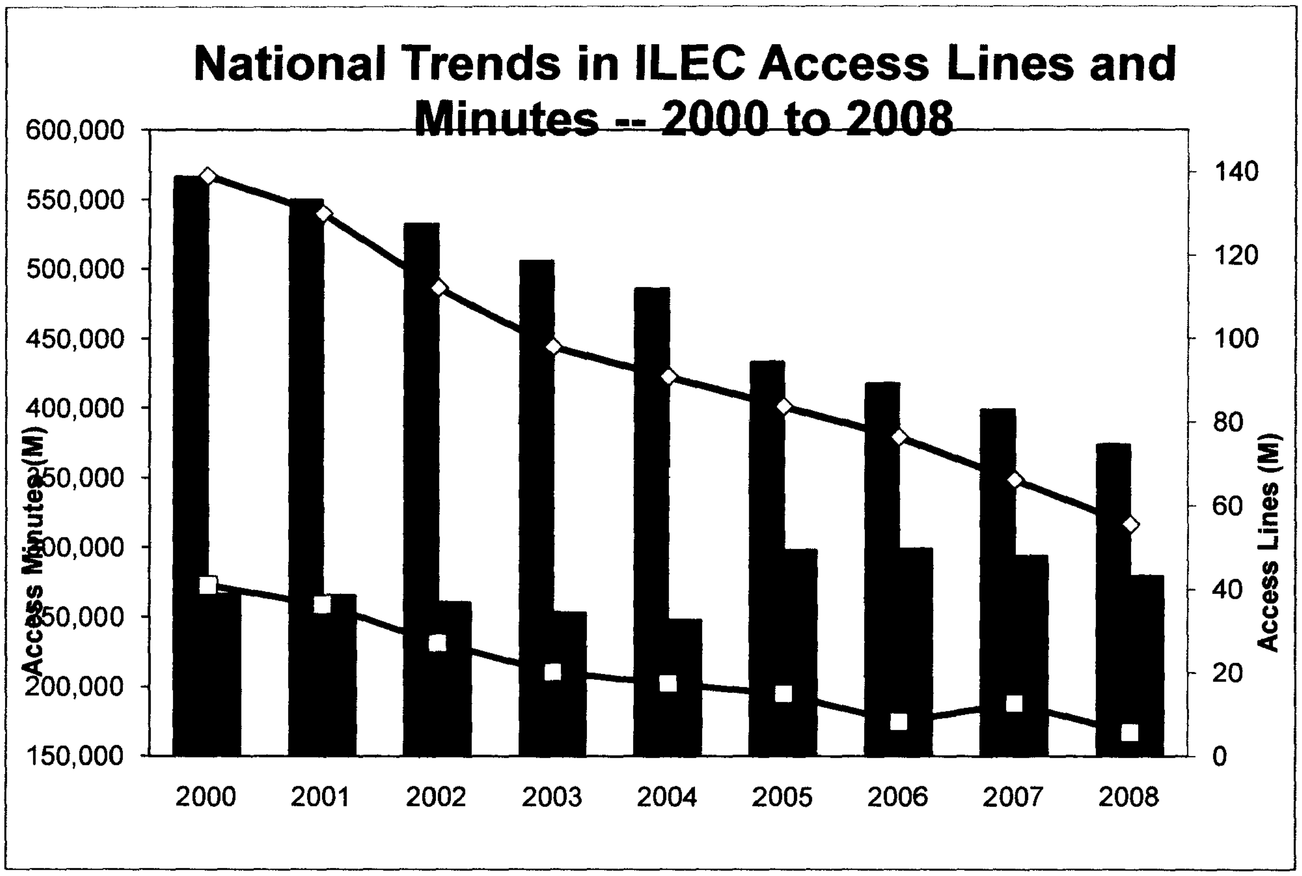
These inflated intrastate switched access rates are harmful to both consumers and competition in South Dakota for several reasons. *First*, switched access charges are a principal cost component of providing wireline long-distance service. Thus, the prices for in-state wireline long-distance calls are higher than they otherwise would be due to high access charges. And because long-distance rates are geographically averaged (so that long-distance providers spread high access costs over all South Dakota consumers who place long-distance calls) high intrastate access charges harm all South Dakota consumers. As a result, consumers who place traditional long-distance calls from their home or office phones – one of the staples of modern life – are paying much more than they should and have been forced to look for more economical means to place such calls.

Second, while that direct hit to South Dakota consumers is bad enough, high access charges damage the state's economy in other ways. Wireline long-distance providers face a wide array of competing technologies including, but not limited to, email, texting, wireless phone service,[10] Voice over Internet Protocol ("VoIP") services, cable telephony, instant messaging, and social networking websites that do not have to bear the same subsidy-laden access cost burden. Saddled with the cost of high access charges, wireline providers simply cannot

[10] Pursuant to FCC rules, wireless carriers pay access charges on calls between Major Trading Areas ("MTAs") but not on calls within an MTA. Given that virtually all of South Dakota falls within a single MTA, wireless carriers are practically exempt from South Dakota intrastate switched access charges. *See* http://wireless.fcc.gov/auctions/data/maps/mta.pdf.

compete fully and aggressively against competitors that are free from such burdens.

In recent years, AT&T's wireline long-distance business has lost millions of minutes of traffic to many of these competing technologies, not because of any real difference in quality, but in part because of the market distortion created by regulatory rules permitting those alternatives to avoid incurring access costs in the same way as wireline long-distance service, and accordingly those alternatives can offer materially more attractive retail prices. Indeed, as shown in **Chart 1** below, nationally, from 2000 through 2008, the number of intrastate access minutes of use declined more than 39% , as consumers shifted their usage away from traditional long distance calling and to forms of communication not burdened with access subsidies.



Data in Millions	2000	2001	2002	2003	2004	2005	2006	2007	2008
Interstate mou	566,900	539,800	486,600	443,900	422,300	401,000	379,200	348,646	316,869
Intrastate mou	272,585	258,885	231,527	210,504	202,130	194,622	174,410	187,713	166,945
Residential Lines	139	133	127	119	112	94	89	83	75
Business Lines	39	39	37	34	33	49	50	48	43

Chart 1

Fair competition is always a welcome development, but high intrastate access rates distort competition. If the artificial burden of high access charges were removed or at least lightened, wireline long-distance providers could compete more aggressively. In turn, other competing technologies will be forced to become more efficient, more innovative, and more attuned to consumer needs. The results will be a more competitive, consumer-focused South Dakota communications market – a clear win for consumers who will be reaping the benefits of full and fair competition.

Third, there is no material technical difference in functionality between originating and/or terminating an interstate call versus originating and/or terminating an intrastate call, yet there is a vast difference in rates between the intrastate and interstate switched access rates. Charging radically different prices for materially the same functionality leads to arbitrage, substantial expense, waste, and inefficiency, resulting in decreased value for consumers.

Fourth, carriers that pay high intrastate access charges have an incentive to evade them if the interstate-intrastate differential is too great. For example, high switched access rates could encourage "buying" carriers to route traffic in such a way that makes it difficult or impossible to determine its jurisdiction. In addition, carriers may fail to provide the necessary information required to apply the proper charges, either access for long distance traffic or reciprocal compensation for the exchange of local traffic. This practice is known as "phantom traffic."

Fifth, high switched access rates also engender uneconomic traffic stimulation. Providers that receive high access charges have an incentive to generate increased traffic volumes. The recent, highly publicized "traffic pumping" schemes, which are designed to drive massive volumes of traffic to adult chat lines and similar services (*e.g.*, free conference call offers) via rural LECs and CLECs with high switched access rates, clearly highlight the potential for abuse.[11]

Finally, the status quo cannot be sustained. As indicated in Chart 1, access minutes of use are decreasing at an increasing rate as more and more consumers shift their usage away from traditional long distance services to alternatives not saddled with the same access subsidy obligations. As traditional landline minutes are transitioned to email, social networking, wireless and IP-based alternatives, access revenues (historically used as "implicit subsidies" for artificially low local service prices) diminish. With the erosion of these subsidies and ultimate loss of access revenues for ILECs comes a threat to universal service and rural investment, which puts rural connectivity at risk. As consumers shift their calling away from the traditional wireline telephone networks, the traditional telephone companies are strained to recover largely fixed costs from a shrinking customer base. Ironically, because high access charges drive customers and usage away from the wireline networks, they are drying up the

---

[11] *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers,* Notice of Proposed Rulemaking, FCC 07-176, WC Docket No. 07-135 (Rel. Oct. 2, 2007). *See also, Northern Valley Commc'ns, LLC v. Sprint Commc'ns Co., LP,* Civ. 08-1003-KES; *Northern Valley Commc'ns, LLC v. Qwest Commc'ns Corp.,* Civ. 09-1004-CBK; *Northern Valley Commc'ns LLC v. AT&T Corp.,* Civ. 09-1003-CBK; *Sancom, Inc., v. Sprint Commc'ns Co, LP,* Civ 07-4107-KES; *Sancom, Inc. v. Qwest Commc'ns Corp.,* Civ. 07-4147-KES; *Sancom, Inc. v. AT&T Corp.,* Civ. 09-1003-KES; *Splitrock Props. Inc. v. Qwest Commc'ns Corp.,* Civ. 08-4172; *Splitrock Props. Inc. v. Sprint Commc'ns Corp.,* Civ. 09-4075.

stream of implicit subsidies that they were intended to generate for other wireline services like local exchange service in rural areas. As the FCC noted in its *FCC NBP*, "fewer terminating minutes ultimately mean a smaller revenue base for intercarrier compensation. ... Even rate-of-return carriers, who are permitted to increase per-minute rates so they have the opportunity to earn their authorized rate of return, acknowledge that the current system is 'not sustainable' and could lead to a 'death spiral' as higher rates to offset declining minutes exacerbate arbitrage and non-payment."[12]

Today's broken system means that rural providers may not be able to re-invest in their networks or invest in new technologies, which may leave rural communities without the benefits of advanced technologies. The current system also discourages other companies from investing in rural communities because of the unfair advantage enjoyed by the current providers. Thus, the perpetuation of high intrastate access rates is impeding South Dakota's technological future.

In short, reforming today's high intrastate access rates will yield profound benefits to South Dakota consumers and ensure that South Dakota remains competitive in the new economy. When access rates are reformed, consumers can enjoy a fuller array of competing services. They can expect savings and innovation from the local exchange carriers and more efficient and improved services at the best possible price, as all providers – regardless of technology – will be afforded the opportunity to compete fairly.

---

[12] *FCC NBP* at 142 (citation omitted).

IV. A Simple and Meaningful Step towards Reform – AT&T's Proposed Framework for Resolution of the Issues.

While the problems created by inflated intrastate switched access charges are severe, meaningful reform is simple. Years ago, the FCC took significant steps to eliminate implicit subsidies from interstate access rates, by reducing ILEC rates and "capping" CLEC rates at the level of the corresponding ILEC rates.[13] Many states have followed the FCC's lead, by ordering some or all ILECs to reduce their intrastate rates to "parity" with the corresponding interstate rates and/or by adopting the FCC's interstate caps on CLEC rates.

AT&T recommends that in the Proposed Rules, the Commission take the same straightforward approach that the FCC recently suggested in its *FCC NBP* by moving all South Dakota ILECs' intrastate switched access rates to interstate switched access rate levels.[14] AT&T also recommends following the FCC's precedent on CLEC interstate switched access rates and requiring all CLECs' intrastate switched access rates to be capped at the intrastate rates of the ILECs with which they compete.[15] This will reduce implicit subsidies in intrastate switched access rates and benefit consumers by creating a more level playing field among differing technologies.

CLECs, which have the ability to choose the geographic areas in which to provide service and to whom they provide service in order to maximize earnings, also have full de-regulatory freedom, and thus can determine on their own how to

---

[13] *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶ 3 (2001) ("*CLEC Access Reform Order*").
[14] *FCC NBP* at 148. The FCC also discusses ultimately eliminating per-minute charges altogether, but that is not a part of AT&T's proposal in this docket.
[15] *See CLEC Access Reform Order,* ¶ 3.

best recover, if necessary, the resulting shift in revenues that would come about by restructuring their intrastate switched access rates to reasonable levels.

With regard to the ILECs, AT&T proposes a benchmark model that creates a framework for the ILECs to recover the resulting shift in revenues they will experience.

AT&T's recommendation contains three essential elements that will facilitate accomplishing effective access reform: (1) creation of a limited (size and length of time) South Dakota USF; (2) freedom for the ILECs to determine the best manner to recover their resulting access revenue reduction; (3) and a transition mechanism that allows ILECs with very low retail rates to raise those rates modestly each year, thereby diminishing distributions from the South Dakota USF. These elements can be achieved in three steps.

First, all ILECs should immediately and fully reduce their intrastate access rates to their interstate levels and structure, and CLECs should immediately cap their intrastate access rates at the intrastate rates of the ILECs with which they compete.

Second, a local retail rate benchmark level, determined by the Commission, would establish how much of the ILEC access revenue reduction would be recovered from a new South Dakota USF versus local retail rate increases. An ILEC whose basic local exchange rate is at or above the benchmark would recover its access revenue reduction entirely from South Dakota USF distributions. An ILEC whose basic local exchange rate is below the local retail rate benchmark would recover its access revenue reduction from distributions from the South Dakota USF less an imputed amount of revenue that the ILEC would realize if it raised its retail rate to the benchmark level.

Third, the South Dakota USF requirement would be determined by using data made available to the Commission or to a neutral third party by each ILEC. Consistent with established state USF methodologies employed by a number of states, all providers with South Dakota retail revenues would be required to fund the South Dakota USF through contributions based upon their South Dakota intrastate end-user retail revenues. At each company's discretion, the provider would have the ability to recover such assessments from its customers, either through a line item surcharge or some other method. The Commission could reevaluate the level of South Dakota USF support once the plan has been in place for a few years.

V. Conclusion.

There is no dispute as to the need for comprehensive access reform in South Dakota. Such need is not confined just to CLECs as is presently outlined in the Proposed Rules, but to all LECs operating within South Dakota.

Comprehensive reform is needed now; however the extent to which retail rate levels must change and the amount switched access revenues will be reduced differs dramatically among South Dakota carriers. A solution that appears reasonable for Qwest, which may have a relatively low access revenue reduction measured on a per line basis and a relatively high retail rate, may be totally impractical for a rural ILEC which may experience a relatively high access revenue reduction when its intrastate access rates are reduced to parity with its interstate rates, and which has very low retail rates. The Commission needs a policy framework that accounts for these differences and sets out a reasonable path that requires all ILECs and CLECs to lower their intrastate switched access rates.

Time is of the essence. The Commission should move forward in this rulemaking to enact comprehensive ILEC and CLEC access reform. Rather than preserve the malfunctioning status quo of implicit subsidies which has led to artificial market conditions, the Commission should adopt a policy framework that will promote robust and irreversible competition, while at the same time preserve universal service throughout the state.

Respectfully submitted this 14th day of June, 2010.

Olinger, Lovald, McCahren & Reimers, P.C.

/s/ William M. Van Camp
William M. Van Camp
Attorney at Law
PO Box 66-117 E Capitol
Pierre SD 57501
Attorneys for AT&T Communications of the Midwest, Inc.

CERTIFICATE OF SERVICE

On this 14th day of June, 2010, a true and correct copy of the foregoing was mailed electronically to:

Ms. Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 E Capitol
Pierre SD 57501
patty.vangerpen@state.sd.us
605-773-3201-voice
866-757-6031-fax

Ms. Karen E. Cremer
Staff Attorney
SD Public Utilities Commission
500 E Capitol
Pierre SD 57501
karen.cremer@state.sd.us
605-773-3201-voice
866-757-6031-fax

Ms. Terri Labrie Baker
Staff Analyst
SD Public Utilities Commission
500 E Capitol
Pierre SD 57501
Terri.labriebaker@state.sd.us
605-773-3201-voice
866-757-6031

Richard B. Severy
Assistant General Counsel
Verizon
201 Spear Street 9th Floor
San Francisco CA 94105
richard.b.severy@verizonbusiness.com
415-228-1121-voice
415-228-1094-fax

Thomas F. Dixon
Assistant General Counsel
Verizon
707 17th Street #4000
Denver CO 80202
thomas.f.dixon@verizon.com
303-390-6206-voice
303-390-6333-fax

David A. Gerdes
May Adam Gerdes & Thompson LLP
PO Box 160
Pierre SD 57501
dag@magt.com
605-224-8803-voice
605-224-6289-fax

Brett M. Koenecke
Attorney at Law
May Adam Gerdes & Thompson LLP
PO Box 160
Pierre SD 57501
koenecke@mgt.com
605-224-8803-voice
605-224-6289-fax

James M. Cremer
Attorney at Law
Bantz Gosch & Cremer LLC
PO Box 970
Aberdeen SD 57402-0970
jcremer@bantzlaw.com
605-225-2232-voice
605-225-2497-fax

Ms. Meredith A. Moore
Attorney at Law
Cutler & Dpnahoe
100 No. Phillips Ave. 9th Floor
Sioux Falls SD 57104-6725
MEREDITHM@CUTLERLAWFIRM.COM
605-335-4950-voice
605-335-4961-fax

Thomas Welk
Attorney at Law
Boyce Greenfield Pashby & Welk LLP
101 No. Phillips Ave. Suite 600
Sioux Falls SD 57117-5015
tjwelk@bgpw.com
605-336-2424-voice
605-334-0618-fax

Christopher W. Madsen
Attorney at Law
Boyce Greenfield Pashby & Welk LLP
101 No. Phillips Ave Suite 600
Sioux Falls SD 57117-5015
cwmadsen@bgpw.com
605-336-2424-voice
605-334-0618-fax

George Baker Thomson, Jr.
Corporate Counsel
Qwest Corporation
1801 California St. Suite 1000
Denver CO 80202
george.thomson@qwest.com

Jeffrey D. Larson
Attorney at Law
Larson & Nipe
PO Box 277
Woonsocket SD 57385
jdlarson@santel.net
605-796-4245-voice
605-796-4227-fax

Richard D. Coit
Executive Director and General Counsel
SDTA
PO Box 57
Pierre SD 57501
richcoit@sdtaonline.com
605-224-7629-voice
605-224-1637-fax

Talbot Wieczorek
Attorney at Law
Gunderson Palmer Nelson & Ashmore LLP
PO Box 8045
Rapid City SD 57709
tjw@gpnalaw.com
605-342-1078-voice
605-342-0480-fax

Darla Pollman Rogers
Attorney at Law
Riter rogers Wattier & Northrup LLP
PO Box 280
Pierre SD 57501
dprogers@riterlaw.com
605-224-5825-voice
605-224-7102-fax

Margo D. Northrup
Attorney at Law
Riter Rogers Wattier & Northrup LLP
PO Box 280
Pierre SD 57501
m.northrup@riterlaw.com
605-224-5825-voice
605-224-7102-fax

/s/ filed electronically
William M. Van Camp