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) RM05-002
ARSD 20:1 0:27 THROUGH 20:10:29)

<u>QWEST'S WRITTEN COMMENTS ON PROPOSED RULE CHANGES</u>

Qwest Corporation and Qwest Communications Company, LLC (collectively, "Qwest") welcome staff's recent proposal regarding amending the rules governing switched access rates for competitive local exchange carriers ("CLECs") and believe that it is a significant step towards curbing abuses of high switched access rates charged by some CLECs, rates that are often far higher than the rates charged by comparable incumbent local exchange carriers ("ILECs"). While the proposal restrains CLECs from gaining an unfair advantage in the market by using access rates to distort the local exchange market or from engaging in some arbitrage activities, Qwest is concerned that the proposal does not fully address some of the most egregious problems associated with CLEC switched access rates. Qwest therefore offers the following modifications:

1) The issue of greatest concern is found in the second paragraph of section 20:10:27:02.01. In this section, there are no protections against CLECs engaging in various forms of arbitrage - most significantly traffic pumping. Traffic pumping is a practice engaged in by several small, rural local exchange carriers (LECs) primarily (but not exclusively) in the states of Iowa, South Dakota and Minnesota. Traffic pumping, at its core, contains the following elements: A rural LEC establishes a business relationship

with a Free Calling Service Company ("FCSC"), and enters into a written contract with the FCSC. Thereafter, the FCSC sends a conference bridge, chat line computer or router to the LEC, who installs the equipment in its central office. The LEC then assigns blocks of telephone numbers to the FCSC, and the FCSC advertises "free services" on its website and encourages customers to call the telephone numbers assigned. People then place long distance calls to these telephone numbers and participate in conference calls, pornographic chat or international calls, all purportedly "free" of charge.

The LEC then bills long distance providers, like Qwest, for switched access charges for the "free" calls, even though switched access charges do not apply to all long distance calls because the calls must meet certain requirements as defined by the LEC's switched access tariffs. The traffic pumping LEC bills long distance carriers for switched access charges as if the calls meet all the requirements of their tariffs. To the extent long distance carriers pay the billed switched access fees, the LEC splits the switched access revenues with their FCSC partners; to the extent payments are withheld, the FCSCs are not paid. These kickbacks constitute the FCSC's primary, if not exclusive, revenue stream. In other words, the conferencing, pornographic chat and international calling offered by the FCSCs and their LEC partners are anything but free; instead, the FCSCs get paid through kickbacks from charges paid by long distance providers. The LECs and FCSCs seek to have the long distance carriers subsidize the FCSCs purportedly "free" services. The Iowa Utilities Board just this month issued rules to address these traffic pumping schemes in the state of Iowa. (See attachment 1).

Qwest's concern with the proposed rules is that tying the rate allowable for switched access services to the size of the community does nothing to remove the incentive to enter into partnerships with the intent to arbitrage switched access rates. Traffic pumping LECs often do not serve actual end user customers, and, under Staff's proposal, would be allowed to continue to bill switched access at very high rates. The proposed rule should be modified to either restrict switched access recovery only to services where actual end-user customers are served or limit switched access recovery to instances where revenue sharing is not occurring. Alternatively, the rule could be modified to determine that the applicable charges for the non-end user FCSC bound traffic are limited to the local switching element of the Regional Bell Operating Company's ("RBOC's") interstate switched access rate. Such modifications would further discourage existing arbitrage abuses.

2) The second issue of concern is the provision in section 20:10:27:02.02, whereby CLECs are allowed to charge a higher rate if they maintain their own facilities and are willing to provide a cost study. Qwest believes that a fundamental question exists as to whether a rate of return model is appropriate for setting the rates of CLECs, which generally set rates based on market competition for competitive services (although switched access services are not a competitive offering by the CLECs). If the provision is allowed to stand, however, two clarifications are necessary - the first being that the cost methodology should be of the same type, methodology, etc., as that performed by the ILECs who perform cost studies. Secondly, it should be made clear that this is not an option available to CLECs who do not provide service to actual end-user customers. The

first clarification is to provide guidance as to what information is necessary for a CLEC to meet its burden of proof. The second clarification is to ensure that those who would arbitrage IXCs using these rules are not able to do so.

3) Qwest's final issue of concern is that the first paragraph of section 20:10:27:02.01 specifies the actual switched access rate that CLECs cannot exceed. A more efficient approach would be to simply state that the CLECs cannot exceed the per minute rate currently charged by the RBOC. The RBOC switched access rates are an appropriate benchmark, given that they have been subject to the Commission's regulatory scrutiny and strictest economic discipline regarding recovery of revenues from its end-users, rather than from other carriers. By using a benchmark approach rather than specifying a particular rate, CLEC rate caps would change as changes are made to the RBOC rate, thus avoiding the need to open future dockets to deal with the fluctuation of CLEC rates going forward.

With these modifications, Qwest believes that the proposed rules will significantly decrease the problems associated with high CLEC switched access rates.

Dated this 14th day of June, 2010.

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CERTIFICATE OF SERVICE

I, Christopher W. Madsen, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P., and on the 14th day of June, 2010, a true and correct copy of **Qwest's Written Comments on Proposed Rule Changes** was served via electronic mail upon the following:

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