

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

IN THE MATTER OF REVISIONS	)	RM05-002
AND/OR ADDITIONS TO THE	)	
COMMISSION'S SWITCHED ACCESS	)	<b>MOTION TO STRIKE</b>
RULES CODIFIED IN ARSD	)	<b>TESTIMONY</b>
20:10:27 THROUGH 20:10:29	)	

This docket was opened by the Commission's order of December 14, 2005, to consider revisions or additions, or both, to the Commission's switched access rules. In Docket TC10-014 the Commission entered its order finding pricing regulation appropriate for switched access services provided by CLECs and further ordered that the Commission took judicial notice of the testimony filed in that docket. On June 1, 2010, Commission Counsel prepared and disseminated proposed rule changes relating to CLEC switched access rates, inviting interested persons to reply and offer suggested changes. Upon receipt of those filings, on June 16, 2010, Commission Counsel invited further comment in the form of reply to those initial comments.

Neither Commission Counsel's comments in the letters of June 1, 2010, and June 16, 2010, nor the Commission's closure of the price regulation docket, TC10-014, made reference to or invited prefiled testimony. Comment at the Commission's April 20, 2010, meeting centered generally on the further process to be followed in the rules docket, to include the ability of participants to pose questions at the eventual rules hearing on proposed rules. The context of that discussion clearly centered upon oral questions being posed at the rules hearing. No conclusion was reached calling for prefiled testimony. Furthermore, no order of the Commission has called for prefiled testimony in this rulemaking proceeding.

As a part of their comments in response to Commission Counsel's letter of June 16, 2010, Northern Valley and Sancom have filed testimony of Harold Furchtgott-Roth.

Based upon the foregoing record and the lack of any call by the Commission for prefiled testimony, Midcontinent moves the Commission to strike the testimony of Harold Furchtgott-Roth dated June 28, 2010, which appears as Exhibit A of the filing of Northern Valley Communications and Sancom, Inc., in this docket on June 28, 2010. To allow the Furchtgott-Roth testimony to stand without opportunity for reply by the parties, or without

meaningful cross examination, would deprive the remaining parties of procedural due process. Additionally, the Commission would be deprived of a balanced record upon which to decide the issues presented by the comments in the docket.

Dated this 7<sup>th</sup> day of July, 2010.

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#### CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 7<sup>th</sup> day of July, 2010, he filed electronically and e-mailed a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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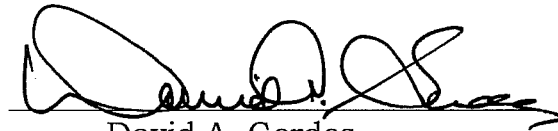
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A handwritten signature in black ink, appearing to read "David A. Gerdes", written over a horizontal line.

David A. Gerdes