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:l 0:27 THROUGH 20:10:29	**)**	

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

Qwest Corporation and Qwest Communications Company, LLC (collectively, "Qwest") takes this opportunity to refresh comments regarding amending the rules governing switched access filings for local exchange carriers ("LECs") and believes that the rules are a step towards curbing abuses of high switched access rates charged by some competitive local exchange carriers (CLECs), rates that are often far higher than the rates charged by comparable incumbent local exchange carriers ("ILECs"). In order to fully refresh the record, Qwest attaches hereto as Exhibit 1 the Direct Testimony of William R. Easton filed in Docket TC10-014, <u>In the Matter of the Investigation of Pricing Regulation for Switched Access Services Provided by Competitive Local Exchange Carriers</u>. While the proposed rules restrain 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:

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 enters into a business relationship with a Free Calling Service Company ("FCSC"), and memorializes their business relationship in a written contract. 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. However, switched access charges do not apply to all long distance calls; the calls must meet certain requirements as defined by the LEC's switched access tariffs. The traffic pumping LEC bills long distance carriers for these charges as if they 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.

1) Tying the rate allowable for switched access services to 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 the proposed rule, 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, if not eliminate, 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 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, and will place all competitors in South Dakota on a level playing field without the ability to defraud IXCs through regulatory arbitrage schemes.

January 27, 2011

Respectfully Submitted,

/s/

George Baker Thomson, Jr.
Corporate Counsel
Qwest Corporation
1801 California St., 10th Floor
Denver, CO 80202
303-383-6645
george.thomson@qwest.com