

ATTACHMENT



South Dakota Telecommunications Association
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April 1, 2010

Ms. Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Docket TC10-014 (In the Matter of the Investigation of Pricing Regulation for
Switched Access Services Provided by Competitive Local Exchange Carriers)

Dear Patty:

Enclosed for filing in the above referenced docket you will find the electronic original of the "Direct Testimony of Dan Davis" submitted on behalf of the South Dakota Telecommunications Association.

As is evidenced by the Certificate of Service attached to the Petition, service has been made to all individuals listed on the Service List for the Docket (as found on the Commission's website).

Thank you for your assistance in filing and distributing copies of this filing.

Sincerely,



Richard D. Coit
SDTA Executive Director and General Counsel

**STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION**

In the Matter of the Investigation of Pricing Regulation for Switched Access Services Provided by Competitive Local Exchange Carriers.)))))))	PUC 10-014
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**DIRECT TESTIMONY OF DAN DAVIS
ON BEHALF OF THE SOUTH DAKOTA TELECOMMUNICATIONS
ASSOCIATION**

APRIL 1, 2010

1 **I. Background**

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3 **Q1. Please state your name, employer and business address.**

4
5 **A.** My name is Dan Davis. I am employed with Consortia Consulting (“Consortia”).
6 My business address is 233 South 13th Street, Suite 1225, Lincoln, Nebraska,
7 68508. Consortia is a telecommunications management consulting company
8 representing the interests of rural telephone companies.

9 **Q2. On whose behalf are you testifying?**

10 **A.** I am testifying on behalf of the South Dakota Telecommunications Association
11 (“SDTA”).¹ SDTA represents the interests of numerous cooperative, rural, and
12 municipal incumbent local exchange carriers operating throughout the State of
13 South Dakota.

14 **Q3. What is your current position?**

15 **A.** I am a Senior Consultant and Director of Policy Analysis at Consortia.

16 **Q4. What are your duties and areas of expertise at Consortia?**

17 **A.** My duties and areas of expertise at Consortia are in the areas of regulatory policy
18 research and development at the state and federal level, intercarrier compensation
19 including access charges and reciprocal compensation, and interconnection rules
20 and regulations. I have testified on behalf of rural ILECs in arbitration

¹ SDTA member companies are: Alliance Communications Cooperative, Beresford Municipal Telephone Company, Cheyenne River Sioux Tribal Telephone Authority, Faith Municipal Telephone Company, Fort Randall Telephone Company d.b.a. Mount Rushmore Telephone Company, , Golden West Telecommunications Cooperative, Hills Telephone Company, Interstate Telecommunications Cooperative, James Valley Telecommunications, Jefferson Telephone Company d.b.a. Long Lines, Kennebec Telephone Company, TrioTel Communications, Midstate Communications, Inc., Knology Community Telephone, RC Communications, Inc., Roberts County Telephone Cooperative Association, Santel Communications Cooperative, Inc., Splitrock Properties, Inc., Stockholm-Strandburg Telephone Company d.b.a. Interstate Telecommunications Cooperative, Valley Telecommunications Cooperative, Venture Communications Cooperative, West River Cooperative Telephone Company, West River Telecommunications Cooperative, and Western Telephone Company.

1 proceedings and at hearings regarding wireless Local Number Portability
2 (“LNP”), wireless interconnection and compensation, eligible telecommunications
3 carrier (“ETC”) designation rules, access charges and universal service rules. In
4 addition, I write and file comments with the Federal Communications
5 Commission (“FCC”) and state commissions on behalf of rural ILECs in the areas
6 of interconnection, intercarrier compensation, and universal service. I have also
7 assisted in competitive local exchange carrier (“CLEC”) implementation issues
8 and financial modeling on behalf of clients.

9 **Q5. What was your professional experience prior to your current position?**

10 A. I have worked in the telecommunications industry for 25 years, the last ten of
11 which have been at Consortia. Prior to my position with Consortia, I worked at
12 ALLTEL (formerly known as Aliant Communications prior to merging with
13 ALLTEL) as the Regulatory/Financial manager of their Nebraska CLEC
14 operations. Prior to that position, I worked for Aliant Communications in the
15 areas of Regulatory Policy and Separations and Access.

16 **Q6. What is your educational background?**

17 A. I have a Master’s degree in Finance and a Bachelor’s degree in Business, both
18 from the University of Nebraska.

19 **II. Purpose of Testimony**

20

21 **Q7. Please generally describe the purpose of your testimony.**

22 A. The purpose of my testimony is to provide a general and brief response to the
23 Commission’s consideration of whether “price regulation” as contemplated under
24 South Dakota Codified Law § 49-31-4.1 would be appropriate for reviewing and

1 establishing the switched access charges assessed by competitive local exchange
2 carriers operating in the State of South Dakota.²

3 **Q8. Does SDTA object to the Commission's investigation into the issue of**
4 **whether it should apply price regulation instead of rate-of-return regulation**
5 **for CLEC switched access service?**

6
7 **A.** SDTA does not object to this Commission's investigation into whether the
8 standards for applying price regulation as established under SDCL § 49-31-4.1
9 would be met if the Commission applied price regulation instead of rate-of-return
10 regulation for CLEC switched access services. As indicated in the SDTA Petition
11 to Intervene, however, it is important that the Commission in this review process
12 remain cognizant of the different service obligations and regulations imposed by
13 the FCC and this Commission on ILECs versus CLEC entities and the resulting
14 cost of service differences that exist between such carriers. Many of the
15 regulations imposed upon ILEC entities under both federal and state law are
16 designed to achieve various public policy objectives related to maintaining and
17 advancing universal service and the application of rate of return regulation to such
18 entities, in particular, at both the federal and state levels, has been critical to
19 incenting network investment and providing for sustainable telecommunications
20 services in the high cost rural areas. Accordingly, if the Commission decides as a
21 result of this proceeding to implement price regulation for CLECs, it should very
22 clearly indicate that its decision is limited to CLEC entities and give appropriate
23 recognition to the differences existing between CLEC and ILEC entities which

² On January 5, 2010, Chairman Johnson requested the Commission to open a docket, pursuant to SDCL 49-31-4.1, to consider whether price regulation is appropriate for switched access services provided by competitive local exchange carriers.

1 warrant the different rate or price regulation approach. Further, in regards to any
2 price regulation that may be adopted for CLECs it should be implemented in a
3 manner that is consistent with the rural safeguards and other provisions found in
4 the federal and state law that are intended to discourage selective marketing by
5 CLECs and prevent geographic rate de-averaging between rural and urban areas.

6 **Q9. How are the South Dakota rural ILECs' switched access rates regulated at**
7 **the Federal level?**

8
9 **A.** Each of the South Dakota rural ILECs is rate-of-return regulated by the FCC³
10 whereby ILECs' costs are subject to detailed accounting requirements,⁴ divided
11 into regulated and non-regulated portions,⁵ and separated jurisdictionally⁶
12 between the interstate and intrastate jurisdictions.⁷ Once the regulated, interstate
13 portion of an ILEC's costs are indentified, the FCC's access charge rules specify
14 the rate elements under which ILECs may recover those costs.⁸ The FCC has
15 found that this process has yielded presumptively just and reasonable access rates
16 for ILECs.⁹ After the ILEC access rates have been developed and approved by the

³ See 47 C.F.R. §§65.1-65.830.

⁴ See 47 C.F.R. §§32.1-32.9000.

⁵ See 47 C.F.R. §§64.901-64.904.

⁶ See 47 C.F.R. §§36.1-36.471.

⁷ See *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, Released April 27, 2001, at Paragraph 41.

⁸ See 47 C.F.R. §§69.1-69.731. An ILEC in the NECA pools can choose to have its settlement based on average schedules. Revenue distribution from the pool is based on formula developed by NECA and approved by the FCC. This acts as surrogate for cost of providing access service. See 47 C.F.R. §69.606.

⁹ See *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, Released April 27, 2001, at Paragraph 41.

1 FCC, those rates are filed in accordance with Part 61 of the FCC rules on Tariff
2 filings in order to conform to the FCC rules regarding the payment of statutory
3 charges.

4 **Q10. What other cost recovery mechanisms have been established other than**
5 **access charges at the federal level?**

6
7 A. The rural ILEC cost that are not recovered through interstate access charges are
8 recovered under Federal Universal Service Fund mechanisms established within
9 the High Cost Program¹⁰, in the form of High Cost Loop Support,¹¹ Interstate
10 Common Line Support,¹² and Local Switching Support.¹³

11 **Q11. How are CLEC access rates determined at the Federal level?**

12
13 A. CLEC access rates are based upon the findings in the FCC's Seventh Report and
14 Order in CC Docket No. 96-262.¹⁴ The FCC limits most CLEC access rates to the
15 rate level of the ILEC with which the CLEC is competing. The FCC found this
16 solution to be reasonable given the importance of having CLEC rates move
17 toward and ultimately meet those of market incumbents and the extreme difficulty

¹⁰ The High Cost Program is administered by the Universal Service Administration Company (USAC) and ensures that consumers in all regions of the nation have access to and pay rates for telecommunications services that are reasonably comparable to those services provided and rates paid in urban areas.

¹¹ High Cost Loop support provides support for the "last mile" of connection for rural companies in service areas where cost to provide this service exceeds 115% of the national average cost per line.

¹² Interstate Common Line Support is available to rate-of-return carriers to offset interstate access charges and is designed to permit each rate-of-return carrier to recover its common line revenue requirement, while ensuring that its subscriber line charges remain affordable to its customers.

¹³ Local Switching Support is available to rural incumbent carriers serving 50,000 lines or fewer as is designed to help carriers recoup some of the high fixed switching costs of providing service to fewer customers. Local Switching Support helps keeps customer rates comparable to more densely populated urban rates.

¹⁴ See *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, Released April 27, 2001.

1 of establishing a “reasonable” CLEC access rate given the historical lack of
2 ratemaking regulation with respect to CLEC entities.¹⁵ Just as this Commission
3 has experienced in trying to apply its existing switched access rules to CLEC
4 entities, the FCC concluded that it lacked an established framework for translating
5 CLEC costs into access rates.¹⁶

6 The FCC rules relating to CLEC access charges do provide a “Rural Exemption”
7 to give some recognition to the different costs experienced by rural CLECs
8 competing in truly rural, high-cost areas versus those that have operations in the
9 lower-cost areas of larger price cap regulated incumbent carriers.¹⁷ Those CLECs
10 meeting certain rural criteria under the FCC rules are permitted to tariff the
11 NECA rate instead of the ILEC rate for Interstate access.¹⁸ More specifically, the
12 CLEC is allowed to charge the NECA rates when it is competing with a non-rural
13 ILEC as long as no portion of the CLEC service area falls within any incorporated
14 place of 50,000 inhabitants or more or an urbanized area as defined by the Census
15 Bureau.

16
17

18 **Q12. Are the FCC rules on CLEC access charges binding on the Commission for**
19 **development of CLEC state access charges?**

20

21 **A.** No. Although the FCC rules are not binding on the Commission, they do
22 illustrate that there are reasons to apply different forms of access charge

¹⁵ *Id.* at Paragraph 44.

¹⁶ *Id.* at Paragraph 46.

¹⁷ *Id.* at Paragraph 3.

¹⁸ *Id.* at Paragraph 80.

1 regulation between incumbent LECs and competitive LECs. Further, the FCC’s
2 findings and conclusions in that docket do provide some level of support for
3 determining that price regulation would also be a fair and reasonable alternative to
4 rate-of-return regulation for CLEC switched access rates at the state level.

5 **Q13. Should the Commission continue to regulate ILEC switched access rates**
6 **consistent with how the FCC regulates such charges?**

7
8 **A.** Yes, allowing rural ILECs to remain under rate-of-return regulation allows rural
9 ILECs the ability to recover their costs in both the state and federal jurisdictions.

10 **Q14. Are there any other reasons why the Commission should continue to regulate**
11 **ILEC switched access rates based on rate-of-return regulation?**

12
13 **A.** Yes, there is. The FCC recently released its National Broadband Plan (“NBP”) to
14 Congress. The NBP introduces a framework for intercarrier compensation reform
15 and universal service reform. As part of the NBP, the FCC will consider
16 requirements which would move state access rates to interstate access rate levels
17 over a period of time and later phasing access rates to reciprocal compensation
18 rates. The NBP does not clearly articulate how rural ILECs are to recover the
19 revenues lost in reducing state access charges under these proposals, but it is
20 indicated in addressing these proposals that carriers should be given the
21 “opportunity for adequate cost recovery.”¹⁹ Further, it is specifically indicated in
22 the NBP that the universal service monies discontinued for competitive ETCs
23 may, in part, be reallocated as a “potential revenue replacement resulting from
24 intercarrier compensation reform.” These indications related to future FCC
25 action suggest that it will be important for state commissions to coordinate any
26 switched access regulatory reform for ILECs with what is likely to occur at the

¹⁹ See “Connecting America: The National Broadband Plan” released March 16, 2010, p. 148.

1 federal level. If reform of ILEC intrastate charge regulation is done prematurely,
2 before the precise details for federal intercarrier compensation reform are known,
3 there is certainly a possibility that less universal service replacement dollars
4 would be available to offset intrastate access revenue losses. And certainly, an
5 inability to recoup such dollars could stall continued facility investment in the
6 high cost rural markets and even affect the very sustainability of some rural ILEC
7 operations.

8 **Q15. Does this conclude your testimony?**

9

10 **A. Yes.**

11