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September 26, 2005

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Re: In the Matter of the Establishment of LECs'
2004 Switched Access Revenue Requirements

Dear Counsel:

Enclosed each of you will find a copy of Staff's Response to MCI, Midcontinent and AT&T's Petitions to Intervene with reference to the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Karen E. Cremer
Staff Attorney

KEC:dk
Enc.

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

IN THE MATTER OF THE ESTABLISHMENT)	STAFF'S RESPONSE TO
OF LECS' 2004 SWITCHED ACCESS)	MCI, MIDCONTINENT AND
REVENUE REQUIREMENTS)	AT&T'S PETITIONS TO
)	INTERVENE

Cheyenne River Sioux Tribe Telephone Authority	TC04-104
Alliance Communications Cooperative, Inc.	TC04-106
Splitrock Properties, Inc.	TC04-107
Valley Telecommunications Cooperative Association, Inc.	TC04-108
Venture Communications Cooperative, Inc.	TC04-111
City of Brookings Municipal Telephone Department	TC04-112
Stockholm-Strandburg Telephone Company	TC04-114
Santel Communications Cooperative, Inc.	TC04-116
James Valley Cooperative Telephone Company	TC04-117
Kennebec Telephone Company	TC04-118
Local Exchange Carriers Association	TC04-119
Golden West Telecommunications Cooperative, Inc.	TC04-120
Vivian Telephone Company	TC04-121
Sioux Valley Telephone Company	TC04-122
Bridgewater-Canistota Telephone Company	TC04-123
Union Telephone Company	TC04-124
West River Telecommunications Cooperative	TC04-125

FACTS

Between the dates of June 22, 2004, and July 1, 2004, sixteen local exchange companies (LECs) filed their 2004 switched access separations cost studies. The Local Exchange Carrier's Association (LECA) filed its revised Tariff No. 1 on June 30, 2004, requesting an August 1, 2004, effective date. The Commission's fax filings reflect intervention deadlines for these dockets ranging from July 9, 2004, to July 23, 2004. At its regularly scheduled Commission meetings of July 6, 2004, and August 17, 2004, the Commission assessed initial filing fees against the LECs. On August 5, 2004, an interim rate was approved for LECA in TC04-119.

Commission Staff sent numerous data requests to the LECs over the past year. Between August 31, 2005, and September 19, 2005, MCImetro Access Transmission Services, LLC (MCI), Midcontinent Communications (Midcontinent), and AT&T Communications of the Midwest, Inc. (AT&T) (hereinafter Intervenors) filed petitions to intervene in the LECs' 2004 cost study dockets. The LECs filed their joint answer to the petitions objecting to the interventions.

Commission Staff has concluded its analysis and filed its memo with the Commission in TC04-104 (memo filed October 20, 2004) and TC04-114 (memo filed October 22, 2004). Five LECs (TC04-108, TC04-112, TC04-116, TC04-117, and TC04-118) have responded to Commission Staff's data requests and Staff is nearing the completion of its analysis and will soon file its memo with the Commission. The eight of the nine remaining LECs have not responded to Commission Staff's initial data requests, the ninth responded to the initial data request within the last 2 weeks. TC04-119 cannot be completed until the above referenced dockets are approved.

ISSUE

Should the Intervenor be allowed intervention in the 2004 cost study dockets as well as TC04-119?

ARGUMENT AND AUTHORITY

Pursuant to ARSD 20:10:01:15.02 intervention is determined based on the following criteria:

A person who is not an original party to a proceeding before the commission and who claims an interest in a pending proceeding may petition the commission for leave to intervene. *An original and ten copies of a petition to intervene shall be filed with the commission within the time specified in the commission's order establishing time for intervention.* A petition to intervene which is not timely filed with the commission may not be granted by the commission unless the denial of the petition is shown to be detrimental to the public interest or to be likely to result in a miscarriage of justice. (Emphasis added.)

Intervention is sought as a matter of right and permission. The rule speaks in terms of timely application for intervention *within the time specified in the commission's order establishing time for intervention.* In these dockets the Commission has not issued a procedural order establishing a time for intervention. As a courtesy to the general public that has signed up for the service, the Commission electronically transmits a weekly "fax filing" which lists all the dockets that have been opened for that week. Within the information that is provided in the fax filing is an "intervention deadline" that is arbitrarily established by Commission Staff. Fifteen days from the date of the weekly filing notification date is the most common allotment of time for intervention but depending on the circumstances, that deadline has been shortened to as little as three days to accommodate the needs of a particular docket and its parties.

The Intervenor has not filed late due to a statutorily required intervention deadline as there is no statutorily defined deadline for intervention. The petitions to intervene were filed after the deadline listed in the fax filing; however, they are not in violation of a Commission order setting forth an intervention deadline.

The LECs allege that further delay will occur if the Intervenor's petitions are granted. That is true for dockets TC04-104 (memo filed October 20, 2004) and TC04-114 (memo filed October 22, 2004) and the dockets that are near completion (TC04-108, TC04-112, TC04-116, TC04-117, and TC04-118). As for the nine remaining dockets (TC04-106, TC04-107, TC04-111, TC04-120, TC04-121, TC04-122, TC04-123, TC04-124, and TC04-125) there would not be further delay as the LECs have not responded to Commission Staff's initial data request. Allowing intervention in those dockets would not prejudice the LECs. The information gathered at this point is in its infancy and granting the petitions to intervene will not cause any delays. The Intervenor should also be granted intervention in the LECA docket, TC04-119. Commission Staff believes that the dockets that are completed or nearly completed, the revenue requirement established in those dockets can be treated the same as the LECs that did not file in 2004.

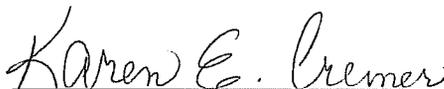
CONCLUSION

The Intervenor should be granted intervention in the 2004 cost study dockets and TC04-119 as noted above as the timing of their interventions will neither be detrimental to the public interest or likely to result in a miscarriage of justice. Nor will the LECs suffer from prejudice caused by any delay on the part of the Intervenor. Further, while a rulemaking docket may be the ultimate result in this matter, the petitions to intervene should be granted so that all interested parties can be heard should the rulemaking docket not come to fruition. In order for this matter to get properly resolved

in a timely manner, all interested parties should be granted intervention. This way a hearing date can be established and a procedural schedule that includes discovery, prefiled testimony, etc. can be issued. This will keep the process moving forward to a solution.

Commission Staff would recommend that the petitions to intervene be granted in TC04-119 as well as the nine 2004 switched access cost study dockets in which the LECs have not responded to Commission Staff's data requests as the LECs will suffer no prejudice. Commission Staff would recommend that intervention **not** be granted in the remaining seven dockets wherein its work is completed or nearly completed. Commission Staff would further note that West River Telecommunications Cooperative (TC04-125) uses its consultant's (GVNW) cost study model rather than the Commission's model so the grounds for permitting intervention in that docket should not include an examination of the *Commission's* cost model.

Dated this 26th day of September, 2005.



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CERTIFICATE OF SERVICE

I hereby certify that copies of Staff's Response to MCI, Midcontinent and AT&T's Petitions to Intervene were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 26th day of September, 2005.

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