

Gary Hanson, Chair  
Bob Sahr, Vice-Chair  
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## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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September 26, 2005

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Re: In the Matter of the Establishment of LECs'  
2005 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 )  
OF LECs' 2005 SWITCHED ACCESS )  
REVENUE REQUIREMENTS )  
 )  
 )**      **STAFF'S RESPONSE TO  
MCI, MIDCONTINENT AND  
AT&T'S PETITIONS TO  
INTERVENE**

Alliance Communications Cooperative, Inc.	TC05-083
City of Brookings Municipal Telephone Department	TC05-087
Midstate Communications, Inc.	TC05-090
Western Telephone Company	TC05-091
Beresford Municipal Telephone Company	TC05-092
Roberts County Telephone Cooperative Association	TC05-093
McCook Cooperative Telephone Company	TC05-094
Kennebec Telephone Company	TC05-095
Santel Communications Cooperative, Inc.	TC05-097
Tri-County Telcom, Inc.	TC05-098
Fort Randall Telephone Company and Mount Rushmore Telephone Company	TC05-099
West River Telecommunications Cooperative	TC05-109

**FACTS**

Between the dates of June 21, 2005, and July 21, 2005, twelve local exchange companies (LECs) filed their 2005 switched access separations cost studies. Shortly after these were filed Commission Staff sent data requests in ten of the dockets. To date, only TC05-099 has responded to the data request and Commission Staff has sent a second data request. The Commission's fax filings reflect intervention deadlines for these dockets ranging from July 8, 2005, to August 5, 2005.

At its regularly scheduled Commission meetings of July 28, 2005, and August 9, 2005, the Commission assessed initial filing fees against the LECs. On July 28, 2005, at its regularly scheduled meeting, the Commission, pursuant to SDCL 49-31-12.6, unanimously voted to suspend the effective date of LECA's switched access rate for no more than 120 days after the proposed effective date of August 1, 2005. Between August 17, 2005, and August 26, 2005, the LECs replaced the previously filed cost studies with cost studies that use actual 2004 minutes of use rather than forecasted minutes of use. Between September 1, 2005, and September 15, 2005, MCI/metro 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' 2005 cost study dockets. The LECs filed their joint answer to the petitions objecting to the interventions.

**ISSUE**

Should the Intervenors be allowed intervention in the 2005 cost study dockets?

**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 Intervenors have 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 Intervenors' petitions are granted. However as noted above, only one LEC has responded to the Commission Staff's data requests. The information gathered at this point is in its infancy and granting the petitions to intervene will not cause any further delays.

#### CONCLUSION

The Intervenors should be granted intervention in the 2005 cost study dockets as the timing of their interventions will not be detrimental to the public interest or likely to result in a miscarriage of justice. As noted earlier, only one of the twelve LECs have responded to Staff's data requests therefore the LECs will not suffer from prejudice caused by any delay on the part of the Intervenors. 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 all the 2005 switched access cost study dockets. Commission Staff would note that while Fort Randall (TC05-099) is not a LECA member, thus it has its own intrastate access rate, the revenue requirement and minutes of use that is determined by its filing is used in determining the LECA rate. Commission Staff would further note that West River (TC05-109) 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 26<sup>th</sup> 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 26<sup>th</sup> day of September, 2005.

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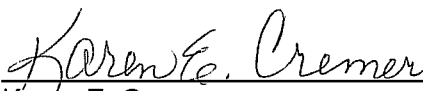
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