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Re: In the Matter of the Establishment of Switched
Access Rates for the Local Exchange Carriers
Association
Docket TC05-096

Dear Counsel:

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

Very truly yours,

Karen E. Cremer
Staff Attorney

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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 in the LECA filing as all the other dockets must be completed before the LECA rate is determined.

SUSPENSION

On June 2, 2004, in docket TC03-108, the Commission granted LECA's request for an interim rate subject to refund with interest. On August 5, 2004, in docket TC04-119, the Commission again granted LECA's request to use an interim rate subject to refund with interest for its 2004 switched access cost study filings.

On July 1, 2005, LECA filed revised pages of its LECA Tariff No. 1 to reflect the 2005 switched access cost study filings. LECA proposed an August 1, 2005, effective date. On July 28, 2005, at its regularly scheduled meeting, the Commission, 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. On August 31, 2005, LECA filed revised pages of its Tariff No. 1 which reflected the revisions of the individual member companies' 2005 minutes of use and proposed an October 1, 2005, effective date.

On September 16, 2005, Commission Staff requested that LECA file its plan for refunding the interim rates that were approved in TC03-108, TC04-119, and TC05-096. Commission Staff requested that the refund plan information be filed by September 23, 2005. On September 23, 2005, Midcontinent filed its request to suspend the tariff of LECA pursuant to SDCL § 49-31-12.4. As of today's date, LECA has not produced a plan for refunding the monies that were collected as a part of the interim rates. Commission Staff would recommend suspending the operation of the tariff for 120 days beyond the October 1, 2005, proposed effective date due to its inability to evaluate a plan for refunding the monies already collected and those monies to be collected in TC05-096.

CONCLUSION

The Intervenors should be granted intervention in TC05-096 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 responded to Staff's initial data request 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 MCI, Midcontinent and AT&T's Petitions to Intervene and Midcontinent's Request for Suspension of Tariff be granted in TC05-096.

Dated this 26th day of September, 2005.



Karen E. Cremer
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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 and Midcontinent's Request for Suspension of Tariff 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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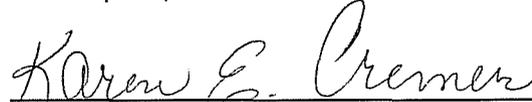
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