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COMMISSION STAFF MEMORANDUM IN SUPPORT OF SETTLEMENT STIPULATION

TO: Commissioners Sahr, Johnson and Hanson,
Commission Counsels Smith and Wiest,
Commission Advisor Rislov

FROM: Keith Senger, PUC Commission Staff

DATE: May 19, 2006

RE: TC05-197 – In the Matter of the Filing by Northern Valley Communications, LLC for an Extension of an Exemption from Developing Company Specific Cost-Based Switched Access Rates.

RECEIVED

MAY 19 2006

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Staff submits this memorandum explaining the Settlement Stipulation to be filed by Staff and Northern Valley Communications, LLC in the above referenced docket.

BACKGROUND

On December 1, 2005, Northern Valley Communications, LLC (NVC), a certified LEC providing competitive local exchange telecommunication services in the Aberdeen exchange, filed with the South Dakota Public Utilities Commission (Commission) a petition in accordance with ARSD 20:10:27:11 requesting an extension for an exemption from developing company specific cost based switched access rates. NVC proposed an intrastate switched access rate of \$0.1325 per access minute (equal originating and terminating). This requested rate is based on the current interim costs (revenue requirements) and minutes of use of all the telecommunications companies with less than 100,000 access lines as calculated in accordance with ARSD 20:10:27:12. This rate is the sum of three component rates: (1) Carrier Common Line Access Service per Access Minute - \$0.0693; (2) Local Switching (End Office) per Access Minute - \$0.0276; and (3) Local Transport per Access Minute - \$0.0356.

On February 24, 2006, staff filed a memo stating its position regarding NVC's petition. In that memo, staff advocated the Commission grant NVC's petition for an exemption from filing a cost study, but deny NVC's request to use the average schedule intrastate switched access rate as determined by ARSD 20:10:27:12 (referred to as the LECA Plus rate). Instead, staff recommended a Commission decision to order NVC to adopt the Qwest intrastate rate of \$0.0609. Staff supported its position with an FCC order, FCC rules pertaining to the interstate jurisdiction, and numerous economic and competitive neutrality arguments including that NVC was providing service in Aberdeen, South Dakota's third largest city which is hardly a LECA type service territory.

Staff and NVC met several times in an effort to arrive at an acceptable informal resolution of this matter. As a result, the parties have been able to resolve all issues in this proceeding and have entered into a Settlement Stipulation.

OVERVIEW OF THE SETTLEMENT

Under the terms of this Stipulation, NVC will continue to charge its currently tariffed and billed rate of \$0.1325 until June 30, 2006. On July 1, 2006 NVC will lower its intrastate switched access rate from the \$0.1325 to \$0.1250, a reduction of \$0.0075. On July 1, 2007 will lower its rate to \$0.1150, a further reduction of \$0.01. These rates will essentially be frozen as a maximum rate until: (1) the effective date of the new rules in the FCC - ICC docket, (2) the effective date of the new rules in the SDPUC's docket RM05-002, or (3) three years, which ever comes first. During this rate freeze, NVC cannot file for any intrastate access rate increases. However, should this rate during the freeze period exceed the rate as determined by ARSD 20:10:27:12, NVC will have to decrease its tariffed rates so not to exceed the rate as determined by ARSD 20:10:27:12.¹

Any adjustment to these frozen rates will be on a going-forward basis and thus not subject to refund. The old rate (\$0.1325) remains subject to refund with interest because that rate is based on the '04 LECA interim rates which the Commission has not yet finalized or approved. If the '04 LECA rates should decrease because of hearing or settlement of the '04 access dockets, then the old LECA Plus rate of \$0.1325 that NVC is currently charging and will charge until June 30, 2006, will require refund with interest as ordered by the Commission in docket TC04-127 once that final rate is determined.

The \$0.1250 rate is made of three elements: (1) Carrier Common Line Access Service per Access Minute - \$0.0627; (2) Local Switching (End Office) per Access Minute - \$0.0256; and (3) Local Transport per Access Minute - \$0.0367. The \$0.1150 frozen rate is made of three elements: (1) Carrier Common Line Access Service per Access Minute - \$0.0548; (2) Local Switching (End Office) per Access Minute - \$0.0231; and (3) Local Transport per Access Minute - \$0.0371. The \$0.1150 rate represents the 2003 LECA Plus rate as calculated based on ARSD 20:10:27:12 using the Commission-approved switched access dockets filed with the Commission by June 30, 2003. The \$0.1250 rate is an arbitrary step down between the \$0.1325 and \$11.50 rates.

STAFF SUPPORT FOR THE SETTLEMENT

Although this settlement represents a substantial movement from staff's original position, staff believes this movement is supported for a number of reasons. First, staff's original position gave very limited consideration to several potential negative effects. Staff's original position would have had negative financial impacts on NVC which could outweigh any burden placed on the IXCs and could also slow the deployment of advanced services in South Dakota. Second, although staff believes that ARSD 20:10:27:12 was not intended for CLECs, this settlement acknowledges that NVC's requested rate was filed in accordance with a black and white interpretation of ARSD 20:10:27:12. Third, staff's original position was based on the legal argument that this Commission has the legal authority to, on its own motion, waive or suspend ARSD 20:10:27:12 and order NVC to use an alternative rate. This issue has not been litigated

¹ Since the rate as calculated under ARSD 20:10:27:12 is dependent upon the cost and access minutes of use of all the companies with under a 100,000 access lines, it is possible that, at the conclusion of the 2004, 2005 or future filed cost studies, the rate as calculated by ARSD 20:10:27:12 could fall below what staff and NVC has accepted as the frozen rate. Should this happen, NVC will have to adjust accordingly.

before, or addressed in any manner by this Commission. This settlement acknowledges that legal and other practical considerations may likely overcome the theory advanced in staff's position, and recognizes that CLEC access reform may be better addressed in the Commission's current rulemaking docket. Fourth, staff believes that the movement by NVC from its original position, although $\frac{1}{4}$ of staff's original per minute recommendation, represents material movement toward principles proposed by staff. Staff considers this movement to be an important step toward development of rates that are fair to all, yet reflective of the crucial role played by South Dakota's small telecommunications companies.

It must also be noted that the settlement with NVC incorporates a phased in step-down rate not incorporated in the other similar CLEC dockets TC05-060 (Midstate Telecom) and TC06-001 (RC Communications). In those dockets the CLEC's rates moved from the requested \$0.1325 rate down to \$0.1150 rate without phase in, immediately upon approval. In this docket the CLEC NVC will continue to charge \$0.1325 and phase in the rate decrease to \$0.1250 and \$0.1150 on July 1, 2006 and July 1, 2007 (respectively). NVC believes this step down rate is justified.

COMMISSION ACTION REQUESTED

As supported above, Staff requests the Commission to approve NVC's ARSD 20:10:27:11 request for an exemption from developing company-specific cost-based switched access rates, and grant approve the settlement Stipulation.