

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

<p>In the Matter of the</p> <p>Investigation of Pricing Regulation for Switched Access Services Provided by Competitive Local Exchange Carriers</p>	<p>TC10-014</p>
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**DIRECT TESTIMONY OF**

**KAREN W. MOORE**

**ON BEHALF OF**

**AT&T COMMUNICATIONS OF THE MIDWEST, INC.**

**AND**

**SBCLD DBA AT&T**

**LONG DISTANCE ("AT&T")**

April 1, 2010

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

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3 **A.** My name is Karen W. Moore, and my business address is 225 W. Randolph St. Chicago  
4 Illinois, 60606.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

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7 **A.** I am employed by AT&T Corp. as a Senior Product Development Manager, in National  
8 Access Management. Among other duties, I am responsible for the review of public  
9 policy and state activities as it relates to local exchange access.

10 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
11 **PROFESSIONAL EXPERIENCE.**

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13 **A.** I am a 1986 graduate of the College of Liberal Arts at Boston University, where I  
14 received B.A. in Psychology with a minor in Philosophy.

15 Since joining AT&T in 1989, I have held a variety of positions, including Sales  
16 Management, Pricing, Performance Management, and Carrier Relations.

17 **Q. HAVE YOU PREVIOUSLY APPEARED AS A WITNESS IN A REGULATORY**  
18 **PROCEEDING?**

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20 **A.** Yes. I have testified in the following states: Illinois, Indiana, Wisconsin, Ohio, and  
21 Michigan. I have also testified at the FCC. My testimony in those proceedings included  
22 written testimony and/or delivering oral testimony.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. This proceeding was initiated by the Public Utilities Commission of the State of South  
3 Dakota (“Commission”) “to investigate whether pricing regulation is appropriate for  
4 switched access services provided by competitive local exchange companies.”<sup>1</sup> In this  
5 proceeding, I am presenting testimony on behalf of AT&T Communications of the  
6 Midwest, Inc. and SBCLD dba AT&T Long Distance (“AT&T”), a telecommunications  
7 carrier authorized to provide interexchange service in South Dakota. As such, AT&T uses  
8 the switched access services provided by CLECs in South Dakota. The purpose of my  
9 testimony is to show the Commission that it should conclude CLECs in South Dakota  
10 should be price regulated. I suggest the Commission move to the next phase of this  
11 proceeding to examine how CLEC rates should be regulated and priced, just as the FCC  
12 and other State Commissions have done. That is, where market forces alone cannot  
13 discipline rates, the Commission should ensure IXCs and their toll customers are charged  
14 switched access rates consistent with a pro-competition result.

15 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

16 A. In this testimony I provide evidence that proves CLECs in South Dakota have market  
17 power over switched access services. The FCC and many states have found the same; the  
18 most recent is the New Jersey Board of Public Utilities (“New Jersey BPU”) which  
19 found, in the BPU’s words, “. . . LECs have a monopoly over access to their end users”  
20 and “. . . there is no ability for an IXC or its customers to avoid excessive access

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<sup>1</sup> Order Opening Docket; Notice of Intervention; and Notice of Procedural Schedule, TC10-014, Public Utilities Commission of the State of South Dakota, January 27, 2010, at page 1. (“Order Opening Docket”).

1 charges.”<sup>2</sup> In South Dakota, as in New Jersey, “there is no evidence that interstate access  
2 rates capped by the FCC eight years ago have caused any CLEC to exit the market.”<sup>3</sup>  
3 I show that switched access services are monopoly services, because the party who makes  
4 the decision about who the access provider will be—the CLEC’s end user customer —is  
5 not the party who pays for the access—the interexchange carrier (“IXC”). As I will  
6 discuss in this testimony, and as the FCC and numerous state commissions (most  
7 recently, the New Jersey BPU) have confirmed, the IXCs have no choice but to use the  
8 CLEC chosen by the CLEC’s customers to originate or terminate calls to the CLEC’s end  
9 users.

10 **Q. WHY SHOULD CLECS RATES BE REGULATED BY THE SOUTH DAKOTA**  
11 **PUBLIC UTILITY COMMISSION?**

12 **A.** CLEC rates should be regulated because they have market power in the wholesale  
13 switched access market. If an AT&T toll customer calls a home or business served by a  
14 CLEC, AT&T *must* deliver the call to the CLEC and use that CLEC’s terminating  
15 switched access service no matter how high the rate charged by the CLEC for that  
16 service. AT&T and other IXCs simply have no choice. They are not permitted to block  
17 the call, nor can they deliver the call to a different LEC and avoid the high access  
18 expense.<sup>4</sup> Moreover, AT&T cannot charge a higher long-distance price for that call (or  
19 for calls to customers of the CLEC), to give the end user an incentive to avoid calling the  
20 CLEC’s customers. Instead, AT&T must average its long-distance prices for all

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<sup>2</sup> See New Jersey BPU Docket TX08090830, “*New Jersey BPU Order*” dated February 1, 2010 at 27.

<sup>3</sup> *Id.* At 27

<sup>4</sup> See *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers and Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, ¶6 (June 28, 2007) (DA 07-2863). “.... no carriers, including interexchange carriers, may block, choke, reduce, or restrict traffic in any way ....” ¶6.

1 customers in a geographic region, including customers that have not selected the CLEC  
2 charging excessive access rates.<sup>5</sup>

3 The same is true for originating access: If an AT&T toll customer chooses a South  
4 Dakota CLEC for local service, AT&T has to accept that end user's long-distance calls  
5 and pay the CLEC's originating access charges. AT&T cannot block the calls, it cannot  
6 forbid its end users to choose any particular CLEC for local service, and because of  
7 geographic averaging requirements<sup>6</sup> AT&T cannot charge higher rates to end users that  
8 obtain local phone service from the CLEC which assesses excessive access charges.

9 **Q. SHOULD SOUTH DAKOTA PRICE REGULATE CLEC SWITCHED ACCESS**  
10 **CHARGES PURSUANT TO SDCL 49-31-4.1?**

11 A. Yes. CLEC, as well as ILEC switched access is a monopoly service and should be price  
12 regulated by the South Dakota Public Utilities Commission.

13 **Q. YOU MENTIONED ABOVE THAT THE FCC HAS ADDRESSED CLEC**  
14 **REGULATION. WHAT APPROACH AND REASONING DID THE FCC USE IN**  
15 **REGULATING CLEC ACCESS RATES?**

16 A. In 2001 when the FCC investigated CLECs' pricing of interstate switched access  
17 services, The FCC addressed this problem in its *CLEC Access Reform Order*, where it  
18 summarized the characteristics of the switched access market that gives CLECs market  
19 power as follows:

20 [T]he CLECs' ability to impose excessive access charges is attributable to  
21 two separate factors. First, although the end user chooses her access  
22 provider, she does not pay that provider's access charges. Rather, the  
23 access charges are paid by the caller's IXC, which has little practical  
24 means of affecting the caller's choice of access provider (and even less  
25 opportunity to affect the called party's choice of provider) and thus cannot  
26 easily avoid the expensive ones. Second, the Commission has interpreted

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<sup>5</sup> See SDCL 49-31-4.2 and 47 U.S.C. § 254(g).

<sup>6</sup> Id.

1 section 254(g) to require IXCs geographically to average their rates and  
2 thereby to spread the cost of both originating and terminating access over  
3 all their end users. Consequently, IXCs have little or no ability to create  
4 incentives for their customers to choose CLECs with low access charges.  
5 Since the IXCs are effectively unable either to pass through access charges  
6 to their end users or to create other incentives for end users to choose  
7 LECs with low access rates, *the party causing the costs – the end user that*  
8 *chooses the high [access]-priced LEC – has no incentive to minimize*  
9 *costs. Accordingly, CLECs can impose high access rates without creating*  
10 *the incentive for the end user to shop for a lower-priced access provider.*<sup>7</sup>

11 **Q HAVE OTHER STATES ADDRESSED THIS ISSUE, AND IF SO, WHAT**  
12 **ACTION HAVE THEY TAKEN?**

13 A. Yes, a growing number of states (most recently New Jersey) have implemented  
14 constraints on CLEC access rates. These states include Alaska,<sup>8</sup> Louisiana,<sup>9</sup> Maine,<sup>10</sup>  
15 Maryland,<sup>11</sup> Massachusetts,<sup>12</sup> Missouri,<sup>13</sup> New Hampshire,<sup>14</sup> New Mexico,<sup>15</sup> New  
16 York,<sup>16</sup> Ohio,<sup>17</sup> Pennsylvania,<sup>18</sup> Texas,<sup>19</sup> Virginia,<sup>20</sup> and New Jersey.<sup>21</sup>

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<sup>7</sup> *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further NPRM in CC Docket No. 96-262; FCC 01-146, (Released April 27, 2001). ("2001 CLEC Access Order"), ¶ 31, bracketed material added and italic emphasis added.

<sup>8</sup> 2004 Alaska Access Charge Manual, §§ 001(d) and (e), 003, and 102.

<sup>9</sup> Order No. U-17949-TT, *In re: Development of regulatory plan for South Central Bell, including assessment of alternative forms and methods of regulation; depreciation methods and expensing; cost of capital; capital structure; and other related matters*, Louisiana Public Services Commission, March 15, 1996 (corrected May 3, 1996), Section 301 (k)(4) of Exhibit 1.

<sup>10</sup> ME ADC 65-407 Ch. 280 §§ 2J, 8B

<sup>11</sup> Code of Maryland Regulations §§ 20.45.09.01, 20.45.09.02(b)(4), 20.45.09.02(b)(5)(a), 20.45.09.03(b).

<sup>12</sup> Final Order, *Petition of Verizon New England, Inc., MCI Metro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and Verizon Select Services, Inc. for Investigation under Chapter 159, Section 14, of the Intrastate Access Rates of Competitive Local Exchange Carriers*, D.T.C. 07-9, June 22, 2009.

<sup>13</sup> Report and Order, *In the Matter of an Investigation of the Actual Costs Incurred in Providing Exchange Access Service and the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Case No. TR-2001-65, August 21, 2003, Ordering Clause No. 4.

<sup>14</sup> New Hampshire Public Utilities Code §§ 431.07, 449.07(f)(3).

<sup>15</sup> NMAC, at 17.11.10.8.C; at 17.11.10.7.R; and at 17.11.10.2.

<sup>16</sup> Opinion and Order Establishing Access Charges for New York Telephone Company and Instituting a Targeted Accessibility Fund, *Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market; Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgment and the Federal Communications Commission's Docket 78-72 on Provision of Toll Service in New York State*, Case 94-C-0095, New York Public Service Commission (June 2, 1998), 1998 N.Y. PUC LEXIS 325 at \*41.

1 Q. WHAT ACTIONS DO YOU RECOMMEND THE COMMISSION TAKE TO  
2 ADDRESS CLEC ACCESS RATES?

3 A. The Commission should find that switch access service should be subject to price  
4 regulation. After asserting its right to regulate switched access rates in this proceeding,  
5 the South Dakota Public Utilities Commission should then take the next step in ensuring  
6 that the consumers of South Dakota, and the IXCs serving those consumers, are charged  
7 just and reasonable rates by establishing a procedural schedule for the next phase of this  
8 proceeding. As outlined above, it is clear that the FCC, and other state PUCs, have  
9 moved to regulate CLEC access rates, and South Dakota should do the same.

10 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

11 A. Yes, it does.

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<sup>17</sup> Entry on Rehearing, *In the Matter of the Establishment of Carrier-to-Carrier Rules*, before the Public Utilities Commission of Ohio, Case No. 06-1344-TP-ORD, (October 17, 2007), p. 18.

<sup>18</sup> Pennsylvania Consolidated Statutes, Title 66, §3017(c).

<sup>19</sup> TX Utilities Code§52.155.

<sup>20</sup> 20 Virginia Admin. Code 5-417-50 (E)(1). In New York, Ohio, Pennsylvania, Texas, and Virginia, the ILEC cap may be lifted if CLECs demonstrate with a cost study that higher rates are warranted. I am aware of no state in which such a demonstration has been made. In California and Iowa, CLECs have been required to reduce their rates, but not quite to the ILEC level. In California, CLECs have been ordered to reduce their intrastate access charges “to the higher of AT&T’s or Verizon’s intrastate access charges, plus 10%.” In Iowa, the Administrative Code orders CLECs that concur with the Iowa Telephone Association (ITA) Access Service Tariff No.1 to reduce their CCL charge if they offer service “in exchanges where the incumbent local exchange carrier’s intrastate access rate is lower than the ITA access rate.”

<sup>21</sup> See State of New Jersey Board of Public Utilities, *In the Matter of the Board’s Investigation and Review of Local Exchange Carrier Intrastate Exchange Access Rates*, Docket No. TX 08090830 (Telecommunication Order), Released February 1, 2010.

CERTIFICATE OF SERVICE

On this 1st day of April, 2010, a true and correct copy of the foregoing was mailed electronically to:

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