BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the

Investigation of Pricing Regulation for
Switched Access Services Provided by
Competitive Local Exchange Carriers

TC10-014

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
Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.
A. My name is Karen W. Moore, and my business address is 225 W. Randolph St. Chicago Illinois, 60606.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?
A. I am employed by AT&T Corp. as a Senior Product Development Manager, in National Access Management. Among other duties, I am responsible for the review of public policy and state activities as it relates to local exchange access.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.
A. I am a 1986 graduate of the College of Liberal Arts at Boston University, where I received B.A. in Psychology with a minor in Philosophy.

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

Q. HAVE YOU PREVIOUSLY APPEARED AS A WITNESS IN A REGULATORY PROCEEDING?
A. Yes. I have testified in the following states: Illinois, Indiana, Wisconsin, Ohio, and Michigan. I have also testified at the FCC. My testimony in those proceedings included written testimony and/or delivering oral testimony.
WHAT IS THE PURPOSE OF YOUR TESTIMONY?

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

PLEASE SUMMARIZE YOUR TESTIMONY.

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

\(^1\) 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").
In South Dakota, as in New Jersey, “there is no evidence that interstate access rates capped by the FCC eight years ago have caused any CLEC to exit the market.”

I show that switched access services are monopoly services, because the party who makes the decision about who the access provider will be—the CLEC’s end user customer—is not the party who pays for the access—the interexchange carrier (“IXC”). As I will discuss in this testimony, and as the FCC and numerous state commissions (most recently, the New Jersey BPU) have confirmed, the IXCs have no choice but to use the CLEC chosen by the CLEC’s customers to originate or terminate calls to the CLEC’s end users.

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

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

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2 See New Jersey BPU Docket TX08090830, “New Jersey BPU Order” dated February 1, 2010 at 27.
3 Id. At 27
4 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.
customers in a geographic region, including customers that have not selected the CLEC charging excessive access rates.\(^5\)

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

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

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

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

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

\[\text{The CLECs’ ability to impose excessive access charges is attributable to two separate factors. First, although the end user chooses her access provider, she does not pay that provider’s access charges. Rather, the access charges are paid by the caller’s IXC, which has little practical means of affecting the caller’s choice of access provider (and even less opportunity to affect the called party’s choice of provider) and thus cannot easily avoid the expensive ones. Second, the Commission has interpreted}\]

\(^5\) See SDCL 49-31-4.2 and 47 U.S.C. § 254(g).

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

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

A. Yes, a growing number of states (most recently New Jersey) have implemented constraints on CLEC access rates. These states include Alaska, Louisiana, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, Texas, Virginia, and New Jersey.

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7 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.

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

9 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.

10 ME ADC 65-407 Ch. 280 §§ 21, 8B

11 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).


15 NMAC, at 17.11.10.8.C; at 17.11.10.7.R; and at 17.11.10.2.

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

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

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

17 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.
18 Pennsylvania Consolidated Statutes, Title 66, §3017(c).
19 TX Utilities Code§52.155.
20 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.”
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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