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April 1, 2010

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VIA EMAIL TO PATTY.VANGERPEN@STATE.SD.US

Ms. Patricia Van Gerpen
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

RE: *TC10-014 - In the Matter of the Investigation of Pricing Regulation for Switched Access
Services Provided by Competitive Local Exchange Carriers*

*Joint Pre-Filed Testimony Filing of Midstate Telecom, RC Communications and
SSTELECOM, Inc.*

Dear Ms. Van Gerpen:

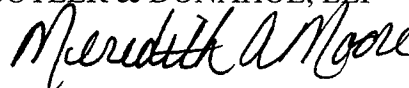
Attached for filing in the above matter, please find the Pre-Filed Testimony of Marlene Bennett. This testimony is submitted on behalf of Midstate Telecom, RC Communications and SSTELECOM, Inc.

As indicated above, this document has been sent to you via electronic mail in PDF form. If you have any questions or concerns regarding this document, please do not hesitate to contact me.

Best regards.

Sincerely,

CUTLER & DONAHOE, LLP



Meredith A. Moore

For the Firm

-and-

Riter, Rogers, Wattier & Northrup

/s/ *Darla Pollman Rogers*

Darla Pollman Rogers

MAM/cmc

Attachment

cc: Service List

**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
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Testimony of Marlene Bennett

On Behalf of Midstate Telecom, RC Communications and SStelecom

April 1, 2010

1 **Q. PLEASE STATE YOUR NAME, EMPLOYER, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Marlene Bennett. I am employed at CHR Solutions, Inc. (CHR). My
4 business address is 1515 North Sanborn Boulevard, Mitchell, South Dakota.

5 **Q. ON WHOSE BEHALF WAS THIS TESTIMONY PREPARED?**

6 A. This testimony was prepared on behalf of Midstate Telecom, RC
7 Communications and SStelecom (the "Rural CLECs"). Each of the Rural
8 CLECs on behalf of whom this testimony is submitted is a subsidiary of a Rural
9 South Dakota Incumbent Local Exchange Carrier.

10 **Q. WHAT IS YOUR CURRENT POSTION?**

11 A. I am the Carrier Consulting Manger at CHR Solutions.

12 **Q. WHAT ARE YOUR DUTIES AND AREAS OF EXPERTISE AT CHR?**

13 A. I work closely with other CHR departments to ensure regulatory compliance,
14 revenue maximization, and operational efficiency for clients. I oversee a group of
15 specialists in the areas of regulatory matters, tariff preparation, operational code
16 administration, numbering administration, interconnection, access service
17 requests, rating and routing of traffic, cost studies, and business plan
18 development. I also assist with rate development and distribution models for
19 Ethernet Transport, ATM and Frame Relay networks and administer the Local
20 Exchange Carrier Association (LECA), a group of 27 independent LECs that have
21 created a pooling association for intrastate-switched access revenues in South
22 Dakota.

25 **Q. HOW LONG HAVE YOU BEEN IN YOUR CURRENT POSITION?**

26 A. I have worked for CHR, f/k/a Martin Group, for 15 years and been in my current
27 position for the past 10 years.

28 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

29 A. I received a Bachelor of Arts Degree in Accounting, with a minor in Computer
30 Science, from Dakota Wesleyan University, Mitchell, SD.

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

32 A. According to the Order opening this docket, the South Dakota Public Utilities
33 Commission (the "Commission") is investigating whether pricing regulation is
34 appropriate for switched access services provided by CLECs. The purpose of my
35 testimony is to demonstrate to the Commission that price regulation is appropriate
36 for South Dakota CLECs.

37 **Q. IS IT APPROPRIATE FOR THIS COMMISSION TO INVESTIGATE**
38 **APPLYING PRICE REGULATION INSTEAD OF RATE OF RETURN**
39 **REGULATION TO THE SWITCHED ACCESS RATES OF CLECS?**

40 A. Yes, it is appropriate first of all from a policy perspective. For example, ILECs
41 have different service obligations than CLECs. ILECs are required to serve the
42 entirety of each of their exchanges, which obligation is also known as Carrier of
43 Last Resort obligation. Carrier of Last Resort obligation requires ILECs to serve
44 high cost, less populated areas that may not be sustainable in a competitive
45 market. CLECs, on the other hand, are allowed to choose service areas which
46 may lead to "cherry picking" in the more densely populated and profitable areas.
47 Because of these differing service obligations, investigating the application of a
48 different regulatory process for CLECs is appropriate.

49 **Q. ARE SWITCHED ACCESS RATES FOR ILECS AND CLECS**
50 **DETERMINED DIFFERENTLY AT THE FEDERAL LEVEL?**

51 A. Yes, the FCC rules require ILECs to complete a separations study, which is the
52 basis of determining the interstate portion of the ILECs cost of providing
53 interstate switched access service. Through the separations process, the ILEC
54 determines its tariff switched access rates, which are designed to recover the costs
55 the ILEC incurs to provide switched access service to the interexchange carriers
56 (“IXC”). Costs include a commission-approved return on investment. For
57 CLECs, the FCC has established benchmark access rates. For those CLECs that
58 qualify for a rural exemption, such as Rural CLECs, the FCC allows the CLEC
59 rates to be either negotiated by contract or based on a tariff rate at or below the
60 benchmark rate. CLEC tariff rates are mandated by the FCC to be based on the
61 rate of the incumbent ILEC or if a rural exemption applies the rates can be based
62 on the National Exchange Carrier Association (NECA) rates. Rates based on the
63 FCC CLEC order are considered “just and reasonable”. CLEC rates above the
64 mandated rates will cause the CLEC access services to be mandatorily detariffed.
65 Accordingly, rates above the mandated rates would need to be negotiated with the
66 IXC.

67 **Q. WHILE FCC RULES ARE NOT BINDING ON THIS COMMISSION, DO**
68 **THEY PROVIDE FURTHER JUSTIFICATION FOR THIS COMMISSION**
69 **TO ESTABLISH DIFFERENT REGULATORY TREATMENT OF ILECS**
70 **AND CLECS FOR SWITCHED ACCESS RATES?**

71 A. Yes, for two reasons. First, the South Dakota rules and regulations for ILECs are
72 based on the FCC rules. Secondly, the FCC and federal entities have spent

73 numerous resources researching and developing the regulatory requirements for
74 both ILECs and CLECs, so it would seem efficient to rely on their conclusions.

75 **Q. HOW ARE SWITCHED ACCESS RATES DETERMINED FOR ILECs**
76 **OPERATING UNDER RATE OF RETURN REGULATION IN SOUTH**
77 **DAKOTA?**

78 A. Intrastate access rates are determined based on the Commission's switched
79 access filing rules (ARSD Ch. 20:10:27). These rules require an ILEC to
80 complete a separations study, which is the basis of determining the intrastate
81 portion of the ILEC's cost of providing intrastate switched access service. In
82 summary through the separations process, the ILEC determines its tariff
83 switched access rates, which are designed to recover the costs the ILEC incurs to
84 provide switched access service to the interexchange carriers. Costs include a
85 commission-approved return on investment. For most South Dakota carriers,
86 the commission-approved rate of return is 10%. The method is tailored after the
87 FCC separations procedures for rate of return ILECs.

88 **Q. SHOULD THE COMMISSION CONTINUE TO USE RATE OF RETURN**
89 **REGULATION FOR ILECS?**

90 A. Yes, because of the different service obligations between ILECs and CLECs, and
91 also because the Commission's rules governing regulation of ILEC switched
92 access rates (i.e. rate of return regulation) are consistent with the federal
93 regulation. Rate of return regulation at both the state and federal level is
94 important to encourage ILECs, especially in rural, high-cost areas, to continue to
95 invest in network to ensure sustainable telecommunications services in the future.

96

97 **Q. IS RATE OF RETURN REGULATION APPROPRIATE FOR CLECS, IN**
98 **ALL INSTANCES?**

99 **A.** No, because the Commission's Switched Access Rules were written based on the
100 regulation of ILECs. When the 1996 Telecommunications Act was implemented,
101 the FCC made it clear that in lieu of regulating CLEC access rates, it would rely
102 on complaints filed under 208 of the Act to enforce the "just and reasonable"
103 standard of section 201(b) to constrain and discipline CLEC access rates. In
104 contrast to the situation for CLECs, the FCC rules prescribe the precise manner in
105 which ILECs may assess interstate access charges to the IXC and end users. First,
106 an ILEC must keep its books in accordance with the Uniform System of Accounts
107 set forth in Part 32 of the FCC rules. Second, Part 64 of the rules divides an
108 ILEC's cost between those associated with regulated telecommunications services
109 and non-regulated activities. Third, Part 36 separations rules determine what
110 fraction of the ILEC's regulated costs, expenses, and investments should be
111 allocated to which jurisdiction. Once the jurisdictional costs are identified, the
112 access charge rules translate these costs into specific services and rate elements.
113 CLECs are not required to follow FCC procedures (47 CFR Part 32, 36 and 64),
114 so application of those procedures would result in substantial legal and practical
115 difficulties in comparing CLEC rates to an objective cost-based standard of
116 reasonableness.

117 **Q. IS PRICE REGULATION APPROPRIATE FOR NON-COMPETITIVE**
118 **SERVICE PROVIDERS?**

119 **A.** Yes. In most cases, interexchange carriers possess greater market power than
120 rural CLECs, making it difficult if not impossible for rural CLECs to negotiate

121 reasonable access rates. Therefore, price regulation is appropriate for CLEC. If
122 cost information were available and rates could be reviewed for reasonableness,
123 rate-of-return regulation would be the preferred method; however, for reasons
124 stated above it would be unreasonable and impractical to determine “reasonable
125 and just rates” as required by the Telecommunications Act for CLECs based on
126 ILEC regulations.

127 **Q. WHAT IS THE RURAL EXEMPTION AND WHY IS IT APPROPRIATE?**

128 **A.** The FCC concluded that mandating the CLEC rate to be based on the rates of the
129 incumbent LEC may not always be in the best interest of the consumers. As noted
130 in the FCC CLEC Order, often CLECs are more likely to deploy the new facilities
131 capable of supporting advanced services in rural areas than are non-rural ILECs.
132 Non-rural ILECs are more likely to deploy facilities in their more concentrated
133 urban markets. Given this role, rural CLECs are more likely to bring the benefits
134 of new technologies to rural areas and will require higher access rates than the
135 non-rural ILEC. Since rural CLECs lack the lower cost urban operations that non-
136 rural ILECs often use to subsidize their rural operations, CLECs should be
137 permitted to charge more for access services. The FCC concluded that a rural
138 exemption should apply to rural CLECs operating in a rural service area (no
139 portion of the CLEC area falls within any incorporated place of 50,000 in
140 habitants or more). The same rationale applies in South Dakota. The rural
141 exemption is appropriate for the rural CLECs in South Dakota for the same
142 reasons: Rural ILECs bring new technologies to the rural areas they serve.
143 Therefore, thus, rural CLECs may require switched access rates that are higher
144 than the urban ILEC rate.

145

Q. DOES THIS COMPLETE YOUR TESTIMONY?

146

A. Yes it does.

147

148