

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

**IN THE MATTER OF THE INVESTIGATION OF)
PRICING REGULATION FOR SWITCHED)
ACCESS SERVICES PROVIDED BY)
COMPETITIVE LOCAL EXCHANGE CARRIERS)
)**

TC10-014

**DIRECT TESTIMONY
OF
W. TOM SIMMONS
ON BEHALF OF
MIDCONTINENT COMMUNICATIONS**

APRIL 1, 2010

Q. PLEASE STATE YOUR NAME FOR THE RECORD:

1 A. W. Tom Simmons

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

3 A. I am employed by Midcontinent Communications as the Senior Vice President of Public
4 Policy.

5 Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

6 A. I am the corporate officer responsible for regulatory, government and community affairs,
7 public and media relations, and represent our telephone, cable television and broadband
8 product teams on all policy issues.

**9 Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL
10 BACKGROUND?**

11 A. I hold Bachelors and Masters degrees in Psychology and have been a
12 Midcontinent vice president since 1989. My first Midcontinent assignment was
13 with the broadcast division as a general manager of four South Dakota radio
14 stations. In 1995, I joined the telecommunications division, Midco
15 Communications, as the vice president and general manager. From 1995 to 2001, I led
16 the team that developed our local exchange operation, guided the process for our
17 certificate of authority granted by the Commission and negotiated the initial
18 interconnection agreements with other carriers

19 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

20 A. Yes. I have participated in numerous issues and meetings, formally filing
21 testimony "In the Matter of the Establishment of Switched Access rates for U S WEST
22 Communications, Inc", Docket TC 96-107, "In the Matter of the Analysis of Qwest

1 Corporation's Compliance With Section 271c of the Telecommunications Act of 1996",
2 Docket TC 01-165, "In the Matter of the Application of Qwest Corporation to Reclassify
3 Local Exchange Services as Fully Competitive", Docket TC 03-057 in Midcontinent
4 Communications' "Motion to Compel Local Number Porting or Good Faith
5 Negotiation", Docket TC03-192, and "In the Matter of the Petition of Midcontinent
6 Communications for Approval of its Intrastate Switched Access Tariff and for an
7 Exemption from Developing Company-Specific Cost-Based Switched Access Rates",
8 Docket TC07-117.

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

10 **A.** The purpose of this testimony is to provide Midcontinent's perspective and long history
11 dealing with this issue. The issue of pricing regulation¹ for switched access has been a
12 concern since our earliest days as a competitive local exchange carrier. We first brought
13 our concerns to the commission staff in May of 2005 as part of the request by LECA and
14 its members for a waiver of ARSD 20:10:27:14. Since that time we have had numerous
15 discussions and meetings with Commission staff and Commissioners with no results. We
16 still believe the state of switched access pricing regulation remains unfair and arbitrary.

17 **Q. ARE YOU AWARE OF THE COMMISSION'S ATTEMPTS TO REGULATE**
18 **SWITCHED ACCESS SERVICES?**

19 **A.** Yes. Commission staff has worked with several CLECs to arrive at a stipulated switched
20 access rate. It is our understanding that these rates came as a result of negotiations with

¹ I use the term "pricing regulation" loosely since what the Staff has done over the years is not consistent with the statutory definition of "pricing regulation" found in SDCL 49-31-1.4.

1 CLECs and not based on any model or rule other than a desire by the Commission to
2 arrive at some rate lower than the LECA rate initially requested by these same CLECs. It
3 appears they have settled for the most part at a rate of \$.1150..

4 **Q. IS THIS RATE APPROPRIATE AS A BASIS FOR CLEC SWITCHED ACCESS**
5 **RATES?**

6 A. No. This rate has no basis other than something less than that charged by rural ILEC
7 owner of these CLECs. It appears that this rate was as low a rate these CLECs would
8 stipulate as acceptable to them and the Commission confirmed the rate as acceptable to
9 them as well.

10 **Q. IS THERE ANY OTHER BASIS FOR SWITCHED ACCESS RATES IN SOUTH**
11 **DAKOTA?**

12 A. The Staff seems to think that the Qwest switched access rate is a basis for other carriers'
13 rates. Obviously the Qwest rates are appropriate only for Qwest. Qwest is the incumbent
14 LEC in most CLEC markets, and it appears the Commission has used this rate as the
15 target rate for some CLECs.

16 **Q. IF THE QWEST RATE IS THE TARGET RATE FOR SOME WHY DO OTHER**
17 **CLECS HAVE DIFFERENT RATES?**

18 A. The Commission has chosen to negotiate with some rural company owned CLECs to
19 move switched access rates from the LECA rate toward a lower rate. Once the negotiated
20 rate was established, CLECs stipulated to the rate for a specific term. It appears that the
21 primary goal of the Commission has been to move switched access rates down with little

1 concern about the disparity of rates between CLECs operating in the same markets or
2 whether those rates actually cover the costs of the CLECs. It's hard to imagine that
3 different rates for competing CLEC providers in the same exchange can be considered
4 fair and reasonable. While Midcontinent mirrors the Qwest rate, other CLECs competing
5 directly with Midcontinent enjoy a substantial advantage by charging the following
6 stipulated rates:

7 Midstate Telecom (doing business in Chamberlain with competitors Qwest and
8 Midcontinent and others), Stipulated Rate: \$.1150, Effective: 3/06

9 SStelecom (doing business in Milbank with competitors Qwest and Midcontinent
10 and others), Stipulated Rate: \$.1150 Effective: 7/07

11 RC Communications (doing business in Corona and rural Watertown with
12 competitors Qwest and Midcontinent and others), Stipulated Rate: \$.1150
13 Effective: 4/06

14 Northern Valley (doing business in Aberdeen with competitors Qwest and
15 Midcontinent and others), Stipulated Rate: \$.1150, Effective: 7/07

16 Mitchell Telecom (doing business in Mitchell with competitors Qwest and
17 Midcontinent and others), Stipulated Rate: \$.1225 Effective: 1/07

18 **Q. HOW DOES THIS IMPACT MIDCONTINENT COMMUNICATIONS?**

19 | A. Midcontinent maintains that the costs of providing switched access services for these
20 | companies are no higher than costs experienced by Midcontinent, yet they receive a

1 higher rate. Additionally, the higher switched access rates for these companies have
2 caused rates Midcontinent pays to underlying carriers to increase dramatically. Rates
3 charged by Midcontinent's primary underlying carrier jumped from \$0.082 to \$0.189 in
4 Redfield, served by NVC, and from \$0.082 to \$0.142 in Mitchell served by Mitchell Tel
5 (Sancom). Other underlying carrier rates have been quoted as high as \$0.229 for carriage
6 into NVC territory because of the high volume of calls associated with free conference
7 calling programs. As underlying carriers single out high cost markets and operators we
8 lost the averaging advantage and now feel the full impact of these high rates compared to
9 the rates we are permitted to charge.

10 **Q. WHAT IS MIDCONTINENT'S PROPOSED SOLUTION TO CORRECT THE**
11 **DIFFERENCES IN RATES?**

12 **A.** If rates are to be capped, all wireline CLECs in a given exchange should be allowed to
13 charge a rate up to the total per minute rate charged by the ILEC in the exchange. If a
14 CLEC believes it can justify a rate in excess of the ILEC rate, it should be permitted to do
15 so using an approved and appropriate cost model to be developed by the Commission.
16 Rates set in excess of the ILEC rate without some cost model justification is pure
17 speculation. The ownership of the CLEC should provide no basis as to the permitted
18 level of switched access rates.

19 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY AT THIS TIME?**

20 **A. YES.**