BEFORE THE

PUBLIC UTILITIES COMMISSION

STATE OF SOUTH DAKOTA

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

DOCKET NO. TC10-014

INITIAL TESTIMONY OF TERRI LABRIE BAKER

ON BEHALF OF THE COMMISSION STAFF

April 1, 2010

Q. What is your name and by whom are you employed?

A. My name is Terri LaBrie Baker and I am presently employed as a Utility Analyst with the Commission Staff of the South Dakota Public Utilities Commission (Commission). My business address is Public Utilities Commission, State Capitol Building, Pierre, South Dakota 57501.

Q. Please describe your educational background and experience.

A. I received a Bachelor of Science Degree in Accounting from Northern State University in 1994. I received my Economic Development Finance Professional certification in 2008. I have worked in the areas of finance and program administration with the State of South Dakota since 1998. I have been with the Commission since May 2008.

Q. Have you previously testified before the South Dakota Public Utilities Commission?

A. No, this is the first time I have filed testimony in any docket before the Commission.

Q. Please explain how this docket was initiated.

A. On January 5, 2010, the Commission, on its own motion, opened a docket to consider whether pricing regulation is appropriate for switched access services provided by competitive local exchange carriers (CLECs). SDCL 49-31-4.1 provides that if an investigation conducted by the Commission "indicates that pricing regulation is appropriate for any noncompetitive service because such regulation has a positive impact on universal service and is more reasonable and fair than rate of return regulation, the commission may adopt pricing regulation for any such noncompetitive service."

Q. What is the purpose of your testimony in this Docket?

A. I shall present testimony addressing intrastate switched access rates in South Dakota and whether price regulation has a positive impact on universal service and is a fair and reasonable method of setting intrastate switched access rates for CLECs.

Q. What materials did you review prior to filing your testimony?

A. Since I have been with the Commission, there has not been any switched access cost studies filed. My testimony is based on my review of the FCC's Seventh Report and Order and Further Notice of Proposed Rulemaking (See *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, Released April 27, 2001). I also reviewed Staff memos and testimony in dockets TC05-060, TC05-197, and TC07-117.

Q. What is the current structure of intrastate switched access rates of CLECs in South Dakota?

A. Per Senger testimony in TC07-117, about 80% of the CLECs in South Dakota have an intrastate switched access rate equal to or less than the Qwest switched assess rate which is $0.06042 per minute of use (MOU). A handful of other CLECs have intrastate switched access rates that are higher than the Qwest switched access rate.

Q. What is your opinion regarding intrastate switched access rates for CLECs?

A. Per my research on this topic, I do not believe that the current method of setting CLEC intrastate switched access rates is fair and reasonable mainly because of inconsistencies in the rates. There are instances where more than one CLEC serves the same exchange and each has a different intrastate switched access rate. It is Staff's belief that this puts the CLEC with the higher switched access rate at a distinct advantage over the other CLEC and essentially enables the CLEC with the higher switched access rate to subsidize both its local rate as well as its advanced service offerings. As a result, the CLEC can capture local service customers and advanced service customers from the ILEC or other CLECs by offering services at lower rates. The CLECs' end users do not pay the switched access rate. It is the interexchange carriers (IXCs) picked by the end users that pay the switched access rate.

I believe moving intrastate switched access rates for CLECs more in line with the ILEC switched access rate, similar to what the FCC did for interstate switched access rates, is a reasonable first step towards consistency with intrastate switched access rates and consistency between CLECs.

I believe CLECs should be treated differently than ILECs when determining their intrastate switched access rates. Unlike ILECs, CLECs are competitive and can choose to serve an area or not serve an area.

Q. Regarding the FCC's Seventh Report and Order that you referenced earlier regarding interstate switched access rates, is the Commission bound by the FCC Order?

A. No. However, the underlying principals and rationale should be used as a guide in developing intrastate switched access rates in South Dakota.

One of the reasons the FCC decided to move the CLEC interstate switched access rates to that of the ILEC was that they found most of the CLECs were already charging access rates at or below the ILEC rate. This is similar to South Dakota as a majority of the CLECs have agreed to mirror or be less than the Qwest switched access rate.

Also, the FCC found that the switched access market structure hinders competition and that under normal market conditions competition exists by offering a lower price than ones competitors. The FCC considers the ILEC rate to be the market rate. Therefore, bringing the CLEC rate down to that of the ILEC would mimic a competitive market and alleviate the monopoly power CLECs have over IXCs. The FCC encouraged local competition by requiring CLECs to charge switched access rates at or below that of the ILEC or market rate thereby forcing them to competitively price their local and enhanced services.

The FCC also has identified that a Safe Harbor rate for Rural CLECs is appropriate. CLECs serving qualifying rural exchanges can receive the higher NECA rate. See FCC's Seventh Report and Order and Further Notice of Proposed Rulemaking Section E. Because Qwest's intrastate switched access rate is an average of all Qwest exchanges, including Rapid City and Sioux Falls, it is unfair for a CLEC serving a small Qwest exchange to charge the lower Qwest switched access rate. I believe a rural exemption is needed to allow CLECs to use the higher LECA Plus rate when serving in small Qwest exchanges. Although the FCC does not allow a CLEC to have more than one switched access rate for interstate rates, it is Staff's belief that a CLEC may have more than one switched access rate if they serve a small and large Qwest exchange. The guidelines for this rural exemption should be lower than the FCCs and designed specifically for South Dakota. This will need to be decided in the rulemaking docket.

Q. Why is price regulation more fair and reasonable for CLECs than Rate of Return?

A. Pursuant to SDCL 49-31-4.1, if an investigation indicates that pricing regulation for a noncompetitive service is appropriate because such regulation has a positive impact on universal service and is more reasonable and fair that rate of return, the Commission may adopt pricing regulation for any noncompetitive service. Included in this determination are the five factors found in SDCL 49-31-1.4. These factors include: the price of alternative services, the overall market for the service, the affordability of the price for the service in the market it is offered, the impact of the price of the service on the commitment to preserve affordable universal service, and the fully allocated cost of providing the service.

Competition is increasing in the telecommunication industry both with new technologies, as well as more competitive local exchange companies. With the development of alternative services, such as cell phones and voice over internet protocol (VOIP), long distance providers need to be able to compete with these alternative services and charge long distance rates that are affordable to the end user without having to subsidize local exchange carrier (LEC) offerings through inequitable switched access rates.

With intrastate switched access rates charged by the incumbent local exchange carrier (ILEC) based on cost studies, moving the CLEC rates to be in line with that of the ILEC will balance the rates charged for intrastate switched access services and create an even playing field between the CLECs and the ILEC it is competing with. As an example, in the Aberdeen exchange of Qwest, there are two different intrastate switched access rates being charged by the CLECs Northern Valley Communications (NVC) and Midcontinent Communications (MIDCO). The NVC switched access rate is a settlement rate that is higher than the Qwest switched access rate which is the rate charged by MIDCO. These two CLECs are serving the same exchange, able to compete for the same local customers and yet MIDCO is restricted to the Qwest switched access rate. As a result, MIDCO, as well as Qwest, is at a competitive disadvantage.

Capping the CLEC rates at the rate the ILEC is charging in that exchange seems fair and reasonable. It is possible that CLECs serving numerous local exchanges may have more than one intrastate switched access rate – depending on the ILEC switched access rate in each exchange that the CLEC serves. This puts the CLECs, if more than one is serving the same exchange, on a level playing field as they would all have the same intrastate switched access rates in that exchange.

This puts IXCs on a level playing field as well since they do not control who their customers choose for their local service providers and therefore do not have a say in the switched access rates charged; as a result, if all CLECs must charge the same ILEC switched access rate, the IXCs have a level playing field and do not overly subsidize local and advanced services with unreasonably high intrastate switched access rates.

Because South Dakota does not have a state universal service fund, the impact to certain CLECs that would have to reduce their intrastate switched access rates to that of the ILEC may need some time to establish other means of revenue. I believe a step-down rate time-line is reasonable and necessary for these companies to analyze their business plans to restructure their local rates or to determine other means of compensating for that lost revenue.

Q Is Price Regulation in the public interest?

A. I do not believe that the public interest would be negatively affected nor do I believe that price regulation will have a negative impact on universal service. Switched access rates are paid to the LECs by long distance carriers. Universal service is premised on the idea that local residential telephone service should be affordable to anyone who wants it. In order to compete in the local service exchange, CLECs will find a way to competitively price their local service by making up for lost revenues through other means; such as charging higher cost-based rates for advanced services. It is Staff's belief that the IXC's will pass on their savings of lower switched access charges to their customers through lower long distance rates.

Staff believes that price regulation is in the public interest. High switched access rates affect the long-distance rates of all customers of wireline companies. Due to the practice of averaging long distance rates (see 47CFR 64.1801 and SDCL 49-31-4.2), requiring that intrastate switched access to be uniform throughout the exchange, will allow long distance prices to come down for all customers of that long distance company. Long distance rates between IXCs may differ; however, a certain IXC will charge the same switched access rate in all areas of the state. Therefore, in the Aberdeen example, if NVCs intrastate switched access rates were lowered and NVCs customers picked as a long distance carrier either Verizon or AT&T, all customers throughout the state that use Verizon or AT&T as their long distance carriers should see a drop in the prices Verizon and AT&T are charging. This would not only benefit NVCs customers, but customers of Verizon and AT&T throughout the state.

Q. **Does this conclude your testimony?**

A. Yes, it does.