

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

**IN THE MATTER OF THE INVESTIGATION OF ) DOCKET NO. TC10-014  
PRICING REGULATION FOR SWITCHED )  
ACCESS SERVICES PROVIDED BY )  
COMPETITIVE LOCAL EXCHANGE CARRIERS )**

**DIRECT TESTIMONY OF**

**WILLIAM R. EASTON**

**ON BEHALF OF**

**QWEST CORPORATION**

**APRIL 1, 2010**

## TABLE OF CONTENTS

<b>I.</b>	<b>IDENTIFICATION OF WITNESS .....</b>	<b>1</b>
<b>II.</b>	<b>PURPOSE OF DIRECT TESTIMONY.....</b>	<b>2</b>
<b>III.</b>	<b>SWITCHED ACCESS SERVICE .....</b>	<b>3</b>
<b>IV.</b>	<b>CURRENT REGULATION OF CLEC SWITCHED ACCESS SERVICE.....</b>	<b>5</b>
<b>V.</b>	<b>DETERMINING WHETHER SWITCHED ACCESS SERVICE SHOULD BE SUBJECT TO PRICE REGULATION .....</b>	<b>6</b>
<b>VI.</b>	<b>NEED FOR REVISED RULES ON CLEC ACCESS RATES .....</b>	<b>9</b>
<b>VII.</b>	<b>QWEST PROPOSAL FOR CLEC ACCESS RATES.....</b>	<b>15</b>
<b>VIII.</b>	<b>SUMMARY/CONCLUSION .....</b>	<b>17</b>

1                                   **I.       IDENTIFICATION OF WITNESS**

2   **Q.     PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION WITH**  
3       **QWEST CORPORATION.**

4   A.     My name is William R. Easton. My business address is 1600 7th Avenue, Seattle  
5       Washington. I am employed as Director – Wholesale Advocacy. I am testifying on  
6       behalf of Qwest Corporation (“Qwest”) and its affiliates.

7   **Q.     PLEASE    DESCRIBE    YOUR    EDUCATIONAL    BACKGROUND    AND**  
8       **PROFESSIONAL EXPERIENCE.**

9   A.     I graduated from Stanford University in 1975, earning a Bachelor of Arts degree. In  
10       1980 I received a Masters of Business Administration from the University of  
11       Washington. In addition, I am a Certified Management Accountant and member of the  
12       Institute of Management Accountants.

13  
14       I began working for Pacific Northwest Bell in 1980, and have held a series of jobs in  
15       financial management with U S WEST, and now with Qwest, including staff positions in  
16       the Treasury and Network organizations. From 1996 through 1998, I was Director –  
17       Capital Recovery. In this role I negotiated depreciation rates with the FCC and state  
18       commission staffs and testified in various regulatory proceedings. From 1998 until 2001  
19       I was a Director of Wholesale Finance, responsible for the management of Wholesale  
20       revenue streams from a financial perspective. In this capacity I worked closely with the  
21       Product Management organization on their product offerings and projections of revenue.  
22       In October of 2001 I moved from Wholesale Finance to the Wholesale Advocacy group,

1 where I am currently responsible for advocacy related to Wholesale products and  
2 services.

3 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THIS**  
4 **COMMISSION?**

5 A. Yes. I previously testified in docket number TC96-184.  
6

7 **II. PURPOSE OF DIRECT TESTIMONY**  
8

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

10 A. The purpose of my testimony is to discuss general policy matters regarding the pricing  
11 regulation of switched access services for Competitive Local Exchange Carriers  
12 (“CLECs”) in South Dakota. Before discussing Qwest’s proposed policy for CLEC  
13 switched access rates, my testimony will describe what switched access is, why CLEC  
14 switched access should be subject to price regulation, and why there is a need to establish  
15 revised policy for CLEC switched access rates in South Dakota.

16 **Q. PLEASE EXPLAIN ON WHOSE BEHALF ARE YOU TESTIFYING TODAY.**

17 A. I am testifying on behalf of both Qwest Communications (“QC”), which is the former US  
18 West and Regional Bell Operating Company that provides local phone service in 14 states  
19 including South Dakota, and Qwest Communications Company, LLC (“QCC”), an  
20 Interexchange Carrier (“IXC”). The Qwest companies bring a unique perspective to this  
21 case as one charges for switched access (in the case of QC) and one pays for switched  
22 access (in the case of QCC) in South Dakota.  
23

1 **III. SWITCHED ACCESS SERVICE**

2  
3 **Q. WHAT IS SWITCHED ACCESS SERVICE?**

4 A. "Switched access" is defined by SDCL 49-31-1(27) as "any exchange access service  
5 purchased for the origination and termination of interexchange telecommunications  
6 services which include central office switching and signaling, local loop facility, or local  
7 transport." Switched access is a service provided by Local Exchange Carriers ("LECs")  
8 which allows IXCs to reach the LECs' end user customers.<sup>1</sup> When a customer dials a 1+  
9 long distance call, the LEC is responsible for routing the call from the customer to the IXC  
10 point of presence ("POP"). The IXC pays originating switched access fees to the LEC for  
11 performance of this function. To complete the call, the IXC then hands the call off to a  
12 LEC who delivers it to the end user being called. IXCs pay terminating switched access  
13 fees to the LEC who terminates the call.

14 **Q. HOW ARE SWITCHED ACCESS CALLS GENERALLY ROUTED?**

15 A. Depending on the volume of calls going to an end office, the calls are either routed  
16 indirectly, through a tandem switch, or directly over dedicated facilities. If the volumes  
17 to/or from an end office are not high enough to justify the use of dedicated facilities, traffic  
18 goes through a tandem switch, which allows the IXCs to reach multiple end offices. These  
19 calls are charged tandem switching and transport rate elements, in addition to the end office  
20 elements, and carrier common line ("CCL") charges, if allowed in the particular state.

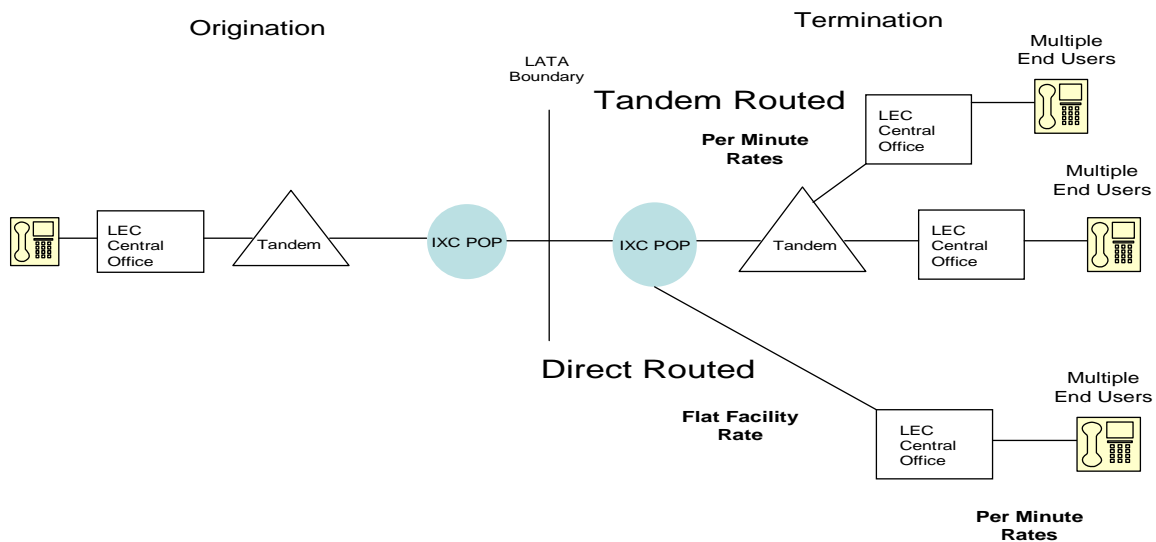
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<sup>1</sup> When IXCs have large volumes of traffic to or from a single customer, they may also purchase a direct facility, called *special* access, or build their own facility to the customer location. However, for most long distance carriers, the volumes of long distance traffic do not warrant the expense of building additional network facilities to the home or business location of the customer. For this reason IXCs typically utilize the LEC network to reach the end user.

1 **Q. WHAT IF AN IXC HAS A LARGE VOLUME OF TRAFFIC TO/FROM A**  
2 **PARTICULAR END OFFICE?**

3 A. An IXC with enough traffic volume to/from a particular end office location can order  
4 dedicated facilities (also known as direct trunking or DTT) to the local switch at that  
5 location to help lower its overall access expense. In this event, the IXC avoids paying  
6 tandem switching and transport to the LEC, since no tandem functions are provided. The  
7 following diagram illustrates the basic differences between tandem-routed and direct-  
8 routed calls.

### InterLATA Tandem Routed Call and Direct Routed Call



9  
10 **Q. DO IXCS HAVE ANY CHOICE AS TO WHAT LEC ORIGINATES OR**  
11 **TERMINATES A LONG DISTANCE CALL FOR END USER CUSTOMERS?**

12 A. No. Switched access service has long been identified as a(n) originating/terminating  
13 monopoly. That is, whatever LEC has the relationship with the end user, that LEC is the

1           only conduit for originating/terminating a long distance call to/from the end user's  
2           telephone number.

3           **Q. WHY ARE SWITCHED ACCESS RATES IMPORTANT?**

4           A. Switched access is a necessary input for the delivery of virtually all long distance calls. As  
5           a result, switched access charges directly drive the cost of providing long distance services.  
6           While not recent, a 1992 FCC order stated that switched access comprises 40% of an IXC's  
7           cost of providing long distance service.<sup>2</sup>

8

9           **IV. CURRENT REGULATION OF CLEC SWITCHED ACCESS SERVICE**

10

11          **Q. HOW ARE SWITCHED ACCESS RATES REGULATED BY THE SOUTH**  
12          **DAKOTA PUC?**

13          A. Under South Dakota statutes, namely SDCL 49-31-1.1, 49-31-1.2, and 49-31-1.3, switched  
14          access is defined as a "noncompetitive service" and is therefore subject to rate of return  
15          regulation, except for QC's rates which are price regulated.

16          **Q. ARE YOU AWARE OF ANY CARRIER WHOSE SWITCHED ACCESS**  
17          **CHARGES ARE SUBJECT TO PRICE REGULATION INSTEAD OF RATE OF**  
18          **RETURN REGULATION?**

19          A. Yes. In 1994, in docket TC94-121, QC's predecessor in interest, U.S. West  
20          Communications, Inc., sought approval of price regulation for its switched access rates,  
21          which was approved by the Commission pursuant to a stipulation. U.S. West's switched

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<sup>2</sup> *In the Matter of Transport Rate Structure and Pricing; Petition for Waiver of the Transport Rules filed by GTE Service Corporation*, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7042 ¶ 68 (1992).

1 access rate was established in a subsequent docket, TC96-107. Attached to my testimony  
2 as Exhibit WRE-1 is a true and correct copy of the Commission's Findings of Fact,  
3 Conclusions of Law, Order and Notice of Entry of Order dated November 24, 1997. The  
4 Commission's findings in TC96-107 analyzing the factors set forth in SDCL 49-31-1.4 are  
5 instructive. It is my understanding that switched access charges of all other carriers in  
6 South Dakota are subject to rate of return regulation.

7 **Q. HOW MANY CLECs ARE AUTHORIZED TO DO BUSINESS IN SOUTH**  
8 **DAKOTA?**

9 A. According to the Commission's website there are 77 CLECs authorized to do business in  
10 South Dakota.

11 **Q. HOW MANY OF THESE CLECs DO BUSINESS IN QWEST'S TERRITORIES?**

12 A. Based on the CLEC information on the Commission's website, 22 CLECs have indicated  
13 that their service areas include Qwest territory. Nearly all of the remaining CLECs  
14 indicated that their service areas are nonrural areas.

15  
16 **V. DETERMINING WHETHER SWITCHED ACCESS SERVICE SHOULD BE**  
17 **SUBJECT TO PRICE REGULATION**

18  
19 **Q. THE COMMISSION OPENED THIS DOCKET TO DETERMINE WHETHER**  
20 **CLEC SWITCHED ACCESS SERVICE SHOULD BE SUBJECT TO PRICE**  
21 **REGULATION. WHAT MUST THE COMMISSION CONSIDER TO MAKE THIS**  
22 **DETERMINATION?**



1 A. According to SDCL 49-31-4.1, the Commission must investigate methods of price  
2 regulation that are consistent with the five factors set forth in SDCL 49-31-1.4. If the  
3 investigation indicates that pricing regulation is appropriate for switched access because  
4 such regulation has a positive impact on universal service and is more reasonable and fair  
5 than rate of return regulation, the Commission may then adopt price regulation for switched  
6 access services.

7 **Q. WHAT ARE THE FIVE FACTORS THE COMMISSION MUST REVIEW UNDER**  
8 **SDCL 49-31-1.4?**

9 A. The five factors are as follows:

- 10 (1) the price of alternative services;
- 11 (2) the overall market for the service;
- 12 (3) the affordability of the price for the service in the market it is offered;
- 13 (4) the impact of the price of the service on the commitment to preserve  
14 affordable universal service; and,
- 15 (5) the fully allocated cost of providing the service.

16 **Q. LOOKING AT THE FIRST FACTOR, WHAT ARE THE PRICES OF**  
17 **ALTERNATIVES TO SWITCHED ACCESS SERVICE?**

18 A. As I indicated preciously, the only way for an IXC to reach an end user customer without  
19 using the switch belonging to the LEC chosen by the end user customer is to provision a  
20 special access circuit to the end user. The rates for special access circuits vary according  
21 to tariffs, depending on the jurisdiction and the company from whom the circuit would be  
22 ordered.

1 **Q. IN CONSIDERING THE SECOND FACTOR, WHAT IS THE OVERALL**  
2 **MARKET FOR SWITCHED ACCESS SERVICE?**

3 A. Section III of this testimony describes the overall market for switched access services.

4 **Q. THE THIRD FACTOR CONCERNS AFFORDABILITY. WHAT IS THE**  
5 **AFFORDABILITY OF THE PRICE FOR SWITCHED ACCESS SERVICE IN THE**  
6 **MARKET IN WHICH IT IS OFFERED?**

7 A. As described in Section III, IXCs, not end user customers, are the purchasers of switched  
8 access services. However, as a necessary input for the delivery of virtually all long  
9 distance calls, switched access charges directly drive the cost of providing long distance  
10 services and ultimately impact the rates that customers pay to make long distance calls.

11 **Q. THE FOURTH FACTOR CONCERNS THE IMPACT OF THE PRICE OF**  
12 **SWITCHED ACCESS SERVICE ON THE COMMITMENT TO PRESERVE**  
13 **AFFORDABLE UNIVERSAL SERVICE. WHAT IS THE IMPACT OF PRICE**  
14 **REGULATION OF SWITCHED ACCESS FOR CLECs ON UNIVERSAL**  
15 **SERVICE?**

16 A. At this time, Qwest does not believe price regulation of switched access services for  
17 CLECs will affect universal service.

18 **Q. IS THE FIFTH FACTOR CONCERNING THE FULLY ALLOCATED COST OF**  
19 **PROVIDING SWITCHED ACCESS SERVICE RELEVANT IN THIS CASE?**

20 A. No. To the best of Qwest's knowledge no CLECs current switched access rates are based  
21 on the individual CLEC's cost of providing the service.

22 **Q. ARE THERE OTHER REALITIES IN THE MARKETPLACE THAT THE**  
23 **COMMISSION SHOULD CONSIDER IN THIS CASE?**

1 A. Yes. Qwest respectfully submits the Commission should consider the switched access rates  
2 and practices occurring in South Dakota today. As will be discussed in the next section of  
3 this testimony, there is a significant disparity between access rates charged by QC and  
4 those charged by South Dakota CLECs. This leads to a distortion in local exchange rates  
5 and also to arbitrage schemes which capitalize on exorbitantly high switched access rates.  
6

7 **VI. NEED FOR REVISED RULES ON CLEC ACCESS RATES**

8

9 **Q. YOU STATED EARLIER THAT THERE IS SIGNIFICANT DISPARITY IN**  
10 **SWITCHED ACCESS RATES IN SOUTH DAKOTA. WHAT ARE THE RANGES**  
11 **OF RATES?**

12 A. The current form of regulation has resulted in a wide variability in CLEC switched access  
13 rates in the state, with rates as low as \$.043 to rates as high as \$ .1225.

14 **Q. WHAT ARE QC'S COMPARABLE INTRASTATE SWITCHED ACCESS RATES**  
15 **IN SOUTH DAKOTA?**

16 A. Qwest's composite access rate is approximately \$ .06. The rate is approximate because I  
17 have had to make an assumption about tandem transport mileage. For purposes of this  
18 calculation I have assumed 10 miles of transport. The table below details how the  
19 composite rate was calculated:

<b>Switched Access Element</b>	<b>Per Minute of Use</b>
Carrier Common Line	\$0.038420
Interconnection Charge	\$0.004681

Local Switching	\$0.008610
Tandem Switching	\$0.007700
Tandem Transmission*	\$0.000453
Total Composite	\$0.059864

\* Assumes 10 miles of transport

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The Qwest switched access rate is less than half of the \$ .1225 charged by some CLECs in South Dakota.

**Q. IS THERE ANY JUSTIFICATION FOR CLECS HAVING ACCESS RATES TWICE AS HIGH AS THOSE CHARGED BY QC?**

A. No. The access service that CLECs provide is identical, in all material respects, to the access service that Qwest provides and Qwest does not believe that there are significant cost of service differences between South Dakota CLECs and Qwest Corporation's South Dakota access services.

**Q. DO HIGH CLEC ACCESS RATES CAUSE MARKET DISTORTIONS?**

A. Yes. In addition to the distortion that high access charges cause for long distance rates, high CLEC access rates can lead to a distortion in local exchange rates. CLECs who charge very high switched access rates can use these revenues to subsidize the cost of the local loop and can undercut the local rate of the LEC with whom they compete, or generate additional margin on their services. While some CLECs simply match the local rates of the company they compete against, Qwest has found in other states that some CLECs undercut the local rates by a range of between 18 cents and 4 dollars per month, per local line.

1 High access rates can also lead to arbitrage schemes. As the term is used here, "arbitrage"  
2 in the communications industry means routing traffic in such a manner to take advantage  
3 of discrepancies in rates. The wide disparity in rates that exists today in South Dakota  
4 between the Qwest rate and some high CLEC rates provides the perfect opportunity for  
5 arbitrage and leads to abuses such as "Traffic Pumping," wherein IXC traffic is  
6 deliberately routed to rural carriers with high access charges by third parties. These third  
7 parties are known as Free Calling Service Companies (FCSCs), and they partner via  
8 confidential contracts with rural CLECs to take advantage of their high switched access  
9 rates. The access charge revenues paid by the IXCs can then be profitably shared (kicked  
10 back) by the rural carrier and its partner FCSC under the terms of the confidential contract.  
11 An example of Traffic Pumping is a recent case in Iowa where high rural company access  
12 rates led to a scheme to "pump" large volumes of traffic to rural phone numbers to  
13 generate high access billings at Qwest's and other IXCs' expense. The Iowa Utilities  
14 Board generally condemned this practice.<sup>3</sup> These massive increases in the volumes of  
15 traffic to CLECs are associated with calling services, such as free conference calling, free  
16 international calling or adult chat lines, which use FCSC conference bridges and gateway  
17 equipment.

18 **Q. HASN'T THE FCC TAKEN STEPS TO ENSURE THAT TRAFFIC PUMPING**  
19 **SCHEMES DO NOT OCCUR?**

20 A. Yes, but thus far only for ILECs. Through its rules regarding ILEC participation in the  
21 NECA pool, the FCC has limited the ability of ILECs to engage in such schemes, but no

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<sup>3</sup> Qwest Communications Corporation v. Superior Telephone Cooperative, et al., Iowa Utilities Board Docket No. FCU-07-2, *Final Order*, issued September 21, 2009.

1 action has yet been taken to limit the ability of CLECs to engage in traffic pumping. As a  
2 result, the problem of traffic pumping has now simply shifted from ILECs to CLECs.  
3 CLEC traffic pumping remains a significant problem, one that has not been curtailed by  
4 the FCC's strides in addressing traffic pumping for ILECs.

5 **Q. DO YOU HAVE REASON TO BELIEVE THAT CLECS ARE ENGAGING IN**  
6 **TRAFFIC PUMPING SCHEMES IN SOUTH DAKOTA TODAY?**

7 A. Yes. Based on analysis of its terminating minutes of use, including terminating minutes to  
8 adult content services, QCC believes that several CLECs in South Dakota are engaged in  
9 Traffic Pumping. In fact, there is on-going litigation between Qwest and three carriers in  
10 South Dakota related to traffic pumping issues. The three largest volume traffic pumping  
11 carriers in South Dakota are Sancom, Northern Valley and Splitrock. Not surprisingly,  
12 these three carriers' access charges are among the highest in South Dakota. Sancom and  
13 Northern Valley are CLECs. By addressing exorbitantly high CLEC access rates in South  
14 Dakota, the Commission can begin to remove the arbitrage opportunities which allow these  
15 kinds of schemes to exist.

16 **Q. HOW DOES TRAFFIC PUMPING NEGATIVELY IMPACT THE PUBLIC**  
17 **INTEREST IN SOUTH DAKOTA?**

18 A. In a number of ways. First, consumers are being misled into believing these services are  
19 "free," when in fact they are completely subsidized by switched access payments from  
20 Qwest and other long distance companies. Second, traffic pumpers do not provide any  
21 mechanism by which parents can block their minor childrens' access to adult chat lines and  
22 pornographic content. These chat lines are accessed through a 605-area code number, not  
23 through a 900 number that would allow parental controls. Third, CLEC switched access

1 tariffs generally require that calls be terminated to an end user in order to be charged  
2 terminating switched access rates. FCSCs have none of the indicia of end users – they  
3 purchase no local exchange products from their CLEC partners, they are headquartered out  
4 of state, they pay no South Dakota taxes, they have no physical presence in the CLEC  
5 exchanges, and they employ no one in South Dakota. Finally, the CLECs and their FCSC  
6 partners did not make their traffic pumping products or services publicly available to  
7 bonafide business end users; instead, these arrangements were recorded in secret contracts.

8 **Q. ARE THERE ANY FCC RULES REGARDING CLEC ACCESS RATES?**

9 A. Yes. The FCC currently mandates that CLECs which choose to tariff their rates must  
10 benchmark their interstate access rates to the LEC with whom they compete. In its 2001  
11 CLEC Access Reform Order the FCC stated that, “Our goal in this process is ultimately to  
12 eliminate regulatory arbitrage opportunities that previously have existed with respect to  
13 tariffed CLEC access rates.” The FCC explained that “certain CLECs have used the tariff  
14 system to set access rates that were subject neither to negotiation nor to regulation designed  
15 to ensure reasonableness. These CLECs have then relied on their tariff to demand payment  
16 from IXCs for access services that the long distance carriers likely would have declined to  
17 purchase at the tariffed rate.”<sup>4</sup> The FCC has recently condemned traffic pumping in a  
18 complaint filed by Qwest against an Iowa ILEC, and has denied reconsideration of its  
19 findings.<sup>5</sup> Unfortunately, as I will explain later, the FCC rules on CLEC access rates fail to  
20 address arbitrage schemes such as traffic pumping.

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<sup>4</sup> *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*, 16 FCC Rcd 9923 (2001)(CLEC Access Reform Order). ¶2-3.

<sup>5</sup> *Qwest Comm'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, EB-07-MD-001, Second Order on Reconsideration, 24 FCC Rcd 14801 (2009).

1 **Q. HOW HAVE OTHER STATES ADDRESSED CLEC SWITCHED ACCESS**  
2 **RATES?**

3 A. Following the lead of the FCC, many states have similarly adopted mirroring rules.  
4 Although I have admittedly not surveyed each state's regulation of CLEC access rates, I am  
5 aware that California,<sup>6</sup> New York,<sup>7</sup> Maryland,<sup>8</sup> Connecticut,<sup>9</sup> Pennsylvania,<sup>10</sup> Virginia,<sup>11</sup>  
6 and Missouri<sup>12</sup> each impose a mirroring restriction on CLEC intrastate switched access  
7 charges akin in some degree to the FCC's rule for interstate switched access.

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*Qwest Comm'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, EB-07-MD-001, Third Order on Reconsideration, 2010 WL 972315 (2010).

<sup>6</sup> *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunication Utilities, Order Instituting Rulemaking for the Purposes of revision General Order 96-A Regarding Informal Filings at the Commission, D.07-09-019, at 23, 2007 Cal. PUC LEXIS 427 (Sept.6, 2007)* (imposing a CLEC cap of \$.025 per minute effective April 1, 2008, and a CLEC cap of the highest ILEC rate plus 10%, effective January 1, 2009).

<sup>7</sup> *Case 94-C-0095, Opinion 98-10 (1998), 1998 N.Y. PUC LEXIS 325, at \*40-41* ("Under our existing policy, competitive local exchange carriers are authorized to levy access charges subject to the constraint that their rates not exceed those of the largest carrier in the LATA without a showing that higher rates are cost-based and in the public interest. [footnote omitted] Accordingly, absent further action, the access charges of competitive local exchange carriers in New York Telephone's LATAs, and new entrants, must be reduced along with New York Telephone's. This link should be maintained. In what is an increasingly vertically integrated environment, with companies competing to provide both local and long distance service, access charges should be symmetrical.").

<sup>8</sup> *Code of Maryland Regulations § 20.45.09.03(b)* (requiring all facilities-based LECs to modify their intrastate switched access rates to ensure that they do not exceed the rates of the largest LEC in Maryland).

<sup>9</sup> *DPUC Investigation of Intrastate Carrier Access Charges, Docket No. 02-05-17, Decision (2004), 2004 Conn. PUC LEXIS 15, at \*45* (requiring all LECs, including ILECs and CLECs, to implement a common price cap on intrastate access charges unless they can demonstrate through cost studies that higher rates are justified).

<sup>10</sup> *66 Pa.C.S. § 3017(c) (2006)* ("No telecommunications carrier providing competitive local exchange telecommunications service may charge access rates higher than those charged by the incumbent local exchange telecommunications company in the same service territory unless such carrier can demonstrate that the higher access rates are cost justified.").

<sup>11</sup> *20 VAC 5-417-50* (CLEC's intrastate switched access rate may not exceed the higher of its interstate rate or the aggregate ILEC intrastate rate in the area service is being provided).

<sup>12</sup> *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri, Case No. TO-99-596, Report and Order (June 1, 2000), 2000 Mo. PSC LEXIS 996, at \*28-31* (capping CLEC exchange access rates at the "level of the access rates of the directly competing ILEC."). In the *Report and Order*, the Missouri PSC specifically rejected as unreasonable the CLEC argument that CLECs be permitted to charge a certain percentage above the resident ILEC's rate. *Id. at \* 31*.



1                                   **VII. QWEST PROPOSAL FOR CLEC ACCESS RATES**

2  
3   **Q. IN THE EVENT THE COMMISSION DECIDES THAT SWITCHED ACCESS**  
4   **SHOULD BE SUBJECT TO PRICE REGULATION, WHAT IS QWEST'S**  
5   **PROPOSAL FOR CLEC INTRASTATE ACCESS RATES IN SOUTH DAKOTA?**

6   A. Qwest believes that setting a statewide intrastate switched access rate for all LECs is an  
7   appropriate way to begin the process of stopping the existing arbitrage schemes and create  
8   a level playing field for all carriers competing in South Dakota. Qwest also believes that  
9   benchmarking is an efficient and appropriate approach to determining a reasonable  
10   statewide rate and suggests that its access rates are the most appropriate benchmark rate.  
11   As the largest LEC in the state, Qwest's access rates have been subject to the  
12   Commission's regulatory scrutiny and strictest economic discipline regarding recovery of  
13   revenues from its end users, rather than from other carriers. For these reasons Qwest  
14   proposes that the switched access rates for all CLECs in South Dakota be brought to the  
15   same composite rate as Qwest's intrastate switched access rates. Lowering access rates in  
16   this competitively neutral manner will both reduce existing arbitrage opportunities and  
17   encourage competition.

18   **Q. IS THERE A PRECEDENT FOR THE USE OF BENCHMARK RATES?**

19   A. Yes. As I noted earlier, the FCC's CLEC Access Reform Order requires that CLECs which  
20   choose to tariff their access rates must benchmark to the rates of the LEC with whom they  
21   compete. In discussing the benchmark approach, the FCC stated:

22                   First, a benchmark provides a bright line rule that permits a simple determination  
23                   of whether a CLEC's access rates are just and reasonable. Such a bright line  
24                   approach is particularly desirable given the current legal and practical difficulties

1 involved with comparing CLEC rates to any objective standard of  
2 “reasonableness.” Historically, ILEC access charges have been the product of an  
3 extensive regulatory process by which an incumbent’s costs are subject to detailed  
4 accounting requirements, divided into regulated and non-regulated portions, and  
5 separated between the interstate and intrastate jurisdictions. Once the regulated,  
6 interstate portion of an ILEC’s costs is identified, our access charge rules specify  
7 in detail the rate structure under which an incumbent may recover those costs.  
8 This process has yielded presumptively just and reasonable access rates for  
9 ILECs.<sup>13</sup>

10  
11 **Q. IS IT QWEST’S PROPOSAL TO IMMEDIATELY MOVE TO THE QWEST**  
12 **BENCHMARK RATE?**

13 A. No. Given that this would be a significant reduction for many of the CLECs, the  
14 Commission should consider a transition period of one to three years.

15 **Q. WHY ISN’T QWEST SIMPLY PROPOSING THE SAME RULES FOR CLEC**  
16 **INTRASTATE SWITCHED ACCESS AS THE FCC REQUIRES FOR**  
17 **INTERSTATE SWITCHED ACCESS?**

18 A. Qwest does not believe that the FCC approach adequately addresses arbitrage issues, such  
19 as traffic pumping, that I discussed earlier. Qwest has found over the last several years that  
20 benchmarking CLEC switched access rates to the LEC with whom they compete does not  
21 reduce the number of disputes or arbitrage problems, because the FCC treats different types  
22 of LECs differently based on the idea that switched access should subsidize the local rate in  
23 higher cost areas. The result is CLEC access rates that vary greatly and are in many cases  
24 exorbitant, inviting fraud and arbitrage. Qwest’s position is that intrastate rates should be  
25 uniform for all CLECs across all of South Dakota.

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<sup>13</sup> *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, 16 FCC Rcd 9923 (2001)(CLEC Access Reform Order).* ¶41.

1 **Q. IN ADDITION TO ADOPTING QWEST'S RATE PROPOSAL, ARE THERE**  
2 **OTHER ACTIONS THAT THIS COMMISSION SHOULD TAKE TO PREVENT**  
3 **TRAFFIC PUMPING SCHEMES?**

4 A. Yes. As I discussed previously, traffic pumping schemes involve rural CLECs partnering  
5 with FCSCs to take advantage of their high switched access rates, with the parties sharing  
6 the profits based on confidential contracts. Qwest believes that the Commission should  
7 adopt rules which prohibit such switched access revenue sharing arrangements. This  
8 prohibition along with the adoption of Qwest's rate proposal should go a long way to  
9 eliminating traffic pumping schemes.

10 **VIII. SUMMARY/CONCLUSION**

11 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

12 A. Qwest believes the evidence demonstrates that switched access should be subject to price  
13 regulation. In light of the factors of SDCL 49-31-1.4, Qwest respectfully submits that price  
14 regulation is more reasonable and fair than rate of return regulation. Today there is a wide  
15 variability in the intrastate switched access rates that CLECs charge in South Dakota, with  
16 several CLECs charging rates more than twice as high as Qwest's. The disparity in, and  
17 magnitude of rates has led to opportunities for fraud and arbitrage such as the traffic  
18 pumping schemes that a number of South Dakota carriers have been involved in. In the  
19 event the Commission finds switched access should be subject to price regulation, Qwest  
20 believes that setting a statewide rate for all CLECs is an appropriate way to begin to stop  
21 arbitrage schemes and create a level playing field for all companies competing in South

1       Dakota. As the largest LEC in the state, Qwest believes that its access rates are the most  
2       appropriate benchmark rate. Lowering access rates in this competitively neutral manner  
3       will both reduce existing arbitrage opportunities and encourage competition by putting all  
4       market participants on a level playing field. Barring revenue sharing between traffic  
5       pumping CLECs and their FCSC partners will effectively halt the abuses of traffic  
6       pumping.

7       **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8       A. Yes it does. Thank you.