

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

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	)	TC10-014
	)	
IN THE MATTER OF THE	)	<b>VERIZON'S RESPONSE AND PARTIAL</b>
INVESTIGATION OF PRICING	)	<b>OPPOSITION TO QWEST'S MOTION TO</b>
REGULATION FOR SWITCHED	)	<b>ADOPT PRICE REGULATION OF</b>
ACCESS SERVICES PROVIDED	)	<b>SWITCHED ACCESS SERVICES FOR</b>
BY COMPETITIVE LOCAL	)	<b>CLECS, TO SUSPEND DEADLINE FOR</b>
EXCHANGE CARRIERS	)	<b>REPLY TESTIMONY, AND DEFINE</b>
	)	<b>FURTHER PROCEEDINGS</b>

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Verizon<sup>1</sup> respectfully submits its response and opposition in part to Qwest's "Motion to Adopt Price Regulation of Switched Access Service for CLECs, to Suspend Deadline for Reply Testimony, and Define Further Proceedings" ("Qwest's Motion"), filed on April 12, 2010. For the reasons stated below, Verizon opposes Qwest's motion insofar as it seeks to delay, and alter the scope and issues of, the current proceeding.<sup>2</sup>

Qwest's Motion is predicated on a fundamental misunderstanding of the nature of this proceeding. More than two months after the Commission opened this docket and two weeks after the parties filed opening testimony, Qwest expresses for the first time its "understanding" that the sole "threshold" issue to be decided is "***whether*** the Commission should price regulate switched

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<sup>1</sup>MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Service, and MCI Communications Services Inc. d/b/a Verizon Business Services (collectively "Verizon").

<sup>2</sup>Verizon agrees with Qwest's request that the Commission should find that pricing regulation is appropriate for switched access services provided by CLECs. Qwest Motion at 1. However, this is not the time to cut off inquiry into the related question of which method of price regulation should be adopted.

access services provided by CLECs.” Qwest Motion at 1 (emphasis in original). Qwest also states its “understanding” that if that question is answered in the affirmative, “further proceedings will be necessary to address **how** the Commission should price regulate switched access services provided by CLECs.” *Id.* (emphasis in original).

Qwest’s “understanding” is inconsistent with the Commission’s Order Opening Docket (“Order”), dated January 27, 2010. Qwest’s narrow view of the scope of the proceeding is also inconsistent with the understanding of the parties – including Qwest – that submitted opening testimony on April 1, 2010, and specifically addressed the question of “how” the Commission should implement price regulation for CLECs.

In its Order, the Commission stated its intent “to open a docket, pursuant to SDCL 49-31-4.1, to consider whether pricing regulation is appropriate for switched access services provided by competitive local exchange companies.” As explained by the Commission, “SDCL 49-31-4.1 provides that if an investigation conducted by the Commission indicates that pricing regulation is appropriate for any noncompetitive service ... and is more reasonable and fair than rate of regulation, **the commission may adopt pricing regulation** for any such noncompetitive service.” (Emphasis added).

Qwest’s Motion ignores the fact that SDCL 49-31-4.1 authorizes the Commission to “hold public hearings” to “investigat[e] **methods of pricing regulation** consistent with § 49-31-1.4 and chapter 1-26.” Section 49-31-1.4,

in turn, defines “price regulation” and specifies how the Commission is to determine whether a price is fair and reasonable. Thus, when it opened this docket and explained the statutory basis for the proceeding, the Commission provided ample notice that the hearing (conducted pursuant to SDCL 49-31-4.10) would investigate *methods* of pricing regulation, that is, “*how*” the Commission should price-regulate CLECs’ switched access services. While the Commission must also determine whether pricing regulation is appropriate based on the criteria in SDCL 49-31-1.4, the Commission’s Order did not refer to that section. Rather, it focused only on its intent to conduct an investigation “pursuant to SDCL 49-31-4.1.”

Qwest fails to offer any justification for seeking to revise, and drastically narrow, the scope of the relevant issues at this stage of the process. Because the proceeding was initiated pursuant to SDCL 49-31-4.1, Qwest is incorrect in belatedly asserting that the sole issue to be decided is *whether* price regulation should be adopted.<sup>3</sup> The language of § 49-31-4.1 expressly contemplates that there may be multiple, alternative “methods” by which the Commission can implement price regulation. Accordingly, it is appropriate and consistent with the original scope of the proceeding for the parties to explore what those various methods might be.

Indeed, most parties that filed testimony clearly understood that the particular method of price regulation to be adopted was an appropriate issue to

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<sup>3</sup>Verizon agrees with Qwest that the opening testimony submitted by the parties reflects substantial agreement that pricing regulation is appropriate for CLEC switched access services.

be addressed in the hearing. Regardless of what Qwest's current understanding might be, its own witness, Mr. William Easton, clearly understood this to be the case and made a specific recommendation for how the Commission should regulate CLECs' switched access rates.<sup>4</sup> Witnesses for the Commission Staff and other parties did likewise.<sup>5</sup> Thus, there is no factual or other basis for stopping the proceeding in its tracks, nor is there any benefit to be gained by "further defin[ing]" the scope of the proceeding at this stage of the process, as Qwest now urges.

Qwest admits that the parties' opening testimony reflect differences of opinion on "the scope of the regulation," "policy considerations" and "the form of possible changes in regulation." Motion at 2. This acknowledgment that the parties have already provided testimony on the type of pricing regulation that the Commission should adopt undermines Qwest's contention that the Commission should start the process anew and direct parties to submit testimony "regarding how price regulation for switched access services provided

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<sup>4</sup>Direct Testimony of William R. Easton at 15, 17-18 (proposing that the switched access rates for all CLECs in South Dakota be brought to the same composite rate as Qwest's intrastate switched access rates).

<sup>5</sup>See Initial Testimony of Terri Labrie Baker on behalf of the Commission Staff, at 3-5 (recommending that CLEC rates be capped at the rate of the ILEC, and that a rural exemption be established); Direct Testimony of Timothy J. Gates on behalf of Midcontinent Communications, at 27 (recommending that a CLEC be allowed to price its switched access service up to the level of the switched access rates of the ILEC in the same exchange); Direct Testimony of Don Price on behalf of Verizon, at 18-21 (recommending the adoption of a uniform statewide benchmark, set at Qwest's intrastate switched access rates, which a CLEC's switched access rates may not exceed); Testimony of Marlene Bennett on behalf of Midstate Telecom, RC Communications and SStelecom, at 6 (stating that a rural exemption should apply to rural CLECs operating in a rural service area, based on the same rationale used by the FCC); Direct Testimony of Larry Thompson on behalf of Northern Valley Communications, L.L.C. and Sancom, at 5 (commenting that the FCC's benchmark rule for CLEC access rates "is similar to the 'price regulation' envisioned by SDCL 49-31-1.4.")

by CLECs should be implemented.” The parties have already begun that discussion. They also have another opportunity to express their opinions and address their differences on this subject when they submit reply testimony, which is due on April 29. The fact that the parties may have different positions should not be surprising; indeed, the hearing scheduled to begin on May 19 is intended to provide a forum for exploring the parties’ different perspectives and to enable the Commission to reach an informed decision on the issue.

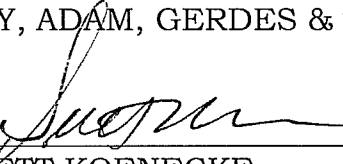
Because many of the parties have already addressed the issue of the method of price regulation that should be implemented, and have a further opportunity to comment on the matter in reply testimony due on April 29, Verizon disagrees with Qwest that the current schedule should be aborted and that the parties’ and the Commission’s resources would be “better spent” by creating a new – and delayed – process for addressing these same issues. On the contrary, starting anew would waste and duplicate the efforts these parties have already undertaken.

Testimony submitted to date indicates that excessive switched access rates harm competition, harm consumers, distort the markets for local and long distance services, and discriminate against certain carriers. Carriers affected by these high rates are entitled to see the Commission’s proceeding completed in a timely and orderly manner, and the Commission has a responsibility to correct rates that are not fair and reasonable. Any further delay is unwarranted and prejudicial to these companies and their customers.

For these reasons, Verizon urges the Commission to deny Qwest's Motion insofar as it proposes to suspend the April 29, 2010 deadline to file reply testimony, establish a new schedule for the filing of testimony, and postpone the hearing.

Respectfully submitted this 15<sup>th</sup> day of April, 2010.

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#### CERTIFICATE OF SERVICE

Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 15<sup>th</sup> day of April, 2010, he filed electronically and e-mailed a true

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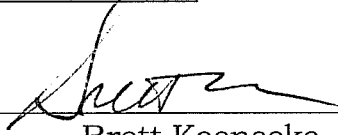
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