

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

)	TC10-096
IN THE MATTER OF THE COMPLAINT)	
OF MIDCONTINENT COMMUNICATIONS,)	ANSWER AND OBJECTION TO
KNOLOGY OF THE PLAINS, INC., AND)	PETITION TO INTERVENE OF
KNOLOGY OF THE BLACK HILLS, LLC,)	SOUTH DAKOTA NETWORK,
AGAINST MCI COMMUNICATIONS)	LLC, SOUTH DAKOTA
SERVICES, INC. D/B/A VERIZON)	TELECOMMUNICATIONS
BUSINESS SERVICES FOR UNPAID)	ASSOCIATION AND LOCAL
ACCESS CHARGES)	EXCHANGE CARRIERS
)	ASSOCIATION

MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”), by and through its counsel of record, files this answer in accordance with ARSD 20:10:01:15.04 to the late-filed Petition to Intervene filed in this docket by the South Dakota Network, LLC , the South Dakota Telecommunications Association and Local Exchange Carriers Association (collectively “Petitioners”) on January 14, 2011. Verizon objects to granting this petition to intervene in this complaint case concerning a billing dispute between Midcontinent Communications (“Midcontinent”), Knology of the Plains, Inc., and Knology of the Black Hills, LLC (together, “Knology”; collectively, “Complainants”) and Verizon for the following reasons.

1. Petitioners failed to timely file their petition as required by ARSD 20:10:01:15.02. Interventions were due in this docket on November 12, 2011¹, over two months prior to Petitioners filing their petition to intervene. Petitioners offer no explanations as to why they failed to timely file their petition to intervene. Instead Petitioners rely on that portion of that rule that allows the Commission to grant their intervention if the granting will not unduly

¹ See, Weekly Filings 10/21/10 to 10/27/10 on the Commission’s website found at: <http://www.puc.sd.gov/Dockets/Telecom/2010/tc10-096.aspx>

prejudice the rights of other parties to the proceeding or if denial of the petition is shown to be detrimental to the public interest.

2. Under ARSD 20:10:01:15.03, Petitioners are first required to clearly and concisely state the facts supporting their alleged interest in the proceeding and, to the extent known, their position. Aside from stating that they are telecommunications carriers that provide tariffed switched access services, Petitioners provide no other facts to support their alleged interest in this billing dispute. Their petition does not address whether their potential participation in this complaint case would “unduly prejudice the rights of other parties” as required under ARSD 20:10:01:15.05. They provide no facts demonstrating that denial of their petition could be detrimental to the public interest also required under ARSD 20:10:01:15.05. Rather they provide conclusory statements that they “do not intend to cause any undue delay in this matter” and that they “have the potential to be ‘bound and affected favorably or adversely’ by any Commission decisions made in this proceeding.” As to this latter point, they provide no facts or legal argument demonstrating how a decision in this complaint case would bind them as non-parties. Finally, they provide no statement of their position described in ARSD 20:10:01:15.03.

3. Formal complaints invoke the Commission’s quasi-judicial role as opposed to its quasi-legislative role. This is not a rulemaking proceeding wherein binding policy may be established. Rather, this is an adversary proceeding that originated as a billing dispute where the individual rights of the parties will be determined. It addresses private interests, the interests of Complainants and Verizon, not a public interest.

4. Petitioners do not demonstrate that they are similarly situated to Complainants. Petitioners do not state that they are actually providing intrastate switched access services to

Verizon, They make no assertions that they have similar billing disputes with Verizon to that the Complainants assert here. Therefore, it is unclear exactly what role Petitioners would play. However, if their intervention is granted under ARSD 20:10:01:15.05 they are entitled to notice of the hearing, to appear at the hearing, to examine and cross-examine witnesses, to present evidence in support of their interest, to compel attendance of witnesses and production of evidence, to submit briefs, to make and argue motions and objections, and to all other rights granted to parties by statute or Chapter 20.10.01. Their assertion that they do not intend to participate in discovery does provide any basis to assume that they will not assert all the other rights of a party to this case or even change their position regarding discovery.

5. Petitioners assert that there was no procedural schedule in place and that discovery had not commenced when they filed their petition. Apparently Petitioners failed to review not only the weekly filing for the period from October 21, 2011 to October 27, 2010 when the complaint was noticed by the Commission, but also failed to review the Commission's website for this docket and Commission's order issued January 7, 2011. That order directed the parties to establish a procedural schedule with its staff and established discovery timelines. In fact, Complainants served discovery upon Verizon on December 29, 2010 and responses are due on January 28, 2011. At least one of Petitioners' attorneys attended the Commission's public meeting held on January 4, 2011, when motions and a procedural schedule were discussed and which resulted in the order issued January 7, 2011. Therefore, Petitioner's assertion regarding the status of this proceeding is incorrect.

6. Petitioners have failed to adequately demonstrate their alleged interest in this proceeding with sufficient facts and have failed to state their position under then requirements of ARSD 20:10:01:15.03. They have failed to address how their potential participation in this

complaint case would not “unduly prejudice the rights of other parties” or that denial of their petition could be detrimental to the public interest as required under ARSD 20:10:01:15.05. To the extent they become parties, Verizon will be unduly prejudiced because it will required to issue discovery to them on an expedited basis given the schedule that was proposed and discussed by the Commission, its staff, and the parties at the meeting held January 4, 2011, and otherwise prepare for the Petitioners’ full participation, including their presentation of evidence, cross-examination of their witnesses and their legal arguments. Finally, they provide no facts or legal argument showing how a decision in this case would bind them. Accordingly, for the reasons stated, they should not be entitled to have the rights conferred upon a party as stated in ARSD 20:10:01:15.05.

WHEREFORE, Verizon objects to the late-filed Petition to Intervene and requests that the petition be denied.

Dated this 27 day of January, 2011.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

BRETT KOENECKE
Attorneys for MCI Communications Services, Inc.
d/b/a Verizon Business Services
503 S. Pierre Street
PO Box 160
Pierre, SD 57501
(605) 224-8803

CERTIFICATE OF SERVICE

27 Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the day of January, 2011, he emailed and mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above captioned action to the following at their last known addresses:

MS PATRICIA VAN GERPEN
EXECUTIVE DIRECTOR
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
patty.vangerpen@state.sd.us

MS KARA SEMMLER
STAFF ATTORNEY
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
kara.semmler@state.sd.us

MS BOBBI BOURK
STAFF ANALYST
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL
PIERRE SD 57501
bobbi.bourk@state.sd.us

MS KATHYRYN FORD
ATTORNEY AT LAW
DAVENPORT EVANS HURWITZ & SMITH LLP
PO BOX 1030
SIOUX FALLS SD 57104
kford@dehs.com

CT CORPORATION SYSTEM
319 S COTEAU STREET
PIERRE SD 57501



BRETT KOENECKE