BEFORE THE
PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

MIDCONTINENT COMMUNICATIONS
DOCKET NO. TC07-117

REBUTTAL TESTIMONY OF KEITH A. SENGER
ON BEHALF OF THE COMMISSION STAFF
JULY 29, 2008

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Q. Please state your name and business address for the record.

A. Keith Senger, Bureau of Finance and Management, State Capitol Building, 500 East Capitol Ave., Pierre, South Dakota 57501.

Q. Are you the same Keith Senger who filed pre-filed testimony on July 15, 2008, in regard to Commission docket TC07-117?

A. Yes.

Q. On whose behalf are you presenting this pre-filed rebuttal testimony?

A. I am presenting this rebuttal testimony on behalf of the Public Utilities Commission (PUC) Staff. The information and opinions I am presenting within this testimony is solely on behalf of the PUC Staff and not on behalf of BFM or the Executive Branch of the State of South Dakota.

Q. Briefly describe the purpose of you rebuttal testimony.

A. I am filing this pre-filed rebuttal testimony on behalf of Commission Staff in response to W. Tom Simmons and Warren R. Fischer's pre-flied testimony filed on July 15, 2008, in Commission docket TC07-117.

Q. Have you read the pre-file testimony of both?

A. Yes.

Q. Beginning first with Mr. Simmons, do you have any concerns with his testimony?

A. Yes.

Q. Please explain.

A. First, Mr. Simmons makes a number of incorrect statements and assumptions in his testimony. On page 2, lines 21 – 23, Mr. Simmons stated that Staff indicated it would resist approval of allowing Midco to match the intrastate switched access rates of the other CLECs. That is a misstatement. Staff is in fact encouraging Midco to continue to match the intrastate switched access rate of a majority (79%) of the other CLECs with approved intrastate switched access rates in South Dakota by mirroring Qwest's rates. As indicated in my prefiled testimony, 23 of the 29 CLECs with approved intrastate switched access rates in South Dakota are mirroring Qwest. Staff is opposing Midco's request to mirror the settlement rate of 4 specific CLECs in South Dakota (3 of which service very rural areas of South Dakota and do not even compete against Midco).

Q. Any other concerns or misstatements?

A. On page 4, lines 16 – 18, Mr. Simmons states that other CLECs are taking advantage of the LECA Plus rate. As stated in my prefiled testimony and as conveyed to Midco numerous times prior to any testimony being filed, if the Commission approves the Settlement Stipulation filed with the Commission in Docket TC07-128 (Sancom), no CLEC in South Dakota will be charging the LECA Plus rate.

Furthermore, on lines 20 – 22, on page 4, Mr. Simmons notes that Midco believes they have taken measures far beyond that of any other CLEC to demonstrate justification for approval of Midco's switched access rate. I can understand that Mr. Simmons may believe that, but I disagree. I submit to the Commission that I, having been involved with many of the CLEC intrastate access rates in South Dakota, can attest that many of the CLECs have hired consultants, preformed reviews and submitted extensive documentation much like what Midco has presented as Exhibit 2 of Mr. Fischer's prefiled testimony. This documentation of other CLECs, like Midco's documentation, has been filed as CONFIDENTIAL, and thus cannot be discussed in this proceeding. However, I can also attest that this documentation supports rates much higher than either the Qwest rate that they have agree to charge or other settlement rates being charged.

Q. Moving to Mr. Fischer's pre-filed testimony, do you have any concerns with it?

A. Yes

Q. Please explain.

A. First, Midco and QSI, in responses to Staff's data requests and during discussions between Staff and Midco, referred to the Commission's cost study model as the LECA model. Even after Staff explained that it is not a LECA model, Mr. Fischer continues to inappropriately refer to the Commission's model as the LECA model in his testimony.

Q. Why is this important and what difference does it make?

A. I'm concerned about Midco and QSI's understanding of the model, the model's uses and what it represents, and the incorrect picture it portrays by calling it the LECA model since Midco is referring to the rural ILEC owned CLECs.

Q Please explain.

A. First, I believe it is important to understand the Commission's model and what it represents. The LECA entity does not file a cost study and thus does not use the Commission's model. While many of LECA's members, the rural ILECs, do use the Commissions model, at least one LECA member uses a model other than the Commission's model, and several LECA members do not file a cost study at all. Second, this model in its early days was probably developed and tried more for US West (now Qwest) than it was for the rural ILEC. These facts are important and show that the Commission's model is not connected or tied specifically with LECA or with the ILEC owned CLECs.

Q. Any other concerns or misstatements?

A. Lines 64 – 71 on page 3 and 4 of Mr. Fischer's testimony indicate that the Commission "allowed it [NVC] to mirror the statewide average schedule 'LECA Plus' intrastate switched access rate" in docket TC05-197." That is incorrect. The Commission did not approve NVC's request to mirror the LECA Plus rate in docket TC05-197. Instead the Commission approved the Settlement Stipulation in that docket which immediately moved NVC below the LECA Plus rate and continued the downward movement of NVC's intrastate switched access rate over a phased-in period.

Lines 82 – 83 on page 4 of Mr. Fischer's testimony states, "After all, the rates approved for the rural ILEC-owned CLECs are based on the ILEC's costs – not the affiliated CLEC's cost." I have to believe this is either a misstatement on Mr. Fischer's part or QSI does not understand the process. The ILEC-owed CLECs' rates have nothing to do with the parent ILEC's costs. All supporting documentation that the CLECs provided was based on the CLEC's costs and not the cost of the rural ILEC parent company. Statements such as this reinforce the need for clarifying that the Commission cost study model in not a LECA model.

Q. What is Midco asking for?

A. Mr. Simmons is asking the Commission to adopt Midco's cost study so Midco can compete with other rural ILEC-owned CLEC's (lines 1 to 3, page 4 of Mr. Simmons prefiled testimony). Midco is "request[ing] equal treatment by the Commission for acceptance of our switched access tariff" (lines 20 to 21, page 4 of Mr. Simmons pre-testimony). Mr. Fischer states that "[f]airness requires that similarly–situated CLECs be allowed to charge the same switched access rates in South Dakota" (lines 81 – 82, page 4 of Mr. Fischer pre-filed testimony).

Q. Should the Commission approve Midco's cost study?

A. No.

Q. Why not?

A. First of all, the cost study model Midco is asking approval for has only been filed with the Commission since July 15, 2008. As the Commission well knows, SDCL 49-31-12.4 gives the Commission and Commission Staff up to 180 days to review and dissect the cost study before rates are implemented. If Midco truly wants its cost study approved, and should the Commission decide to permit the filing of CLEC cost studies, the Commission needs to give Staff and itself the proper time as allowed by law and administrative rules to review and perform discovery.

Second, it would be inappropriate to accept the cost study at its face value. Midco's witness noted many shortcomings in their cost study. They indicated that the 9.85 cents per MOU is a conservative estimate and should be viewed as a floor. However, that is the opinion of QSI, a consultant who was paid by Midco to maximize revenues for Midco. Furthermore, this is QSI's first experience with an intrastate cost study in South Dakota. I believe Staff can identify numerous costs included in the study by QSI that the Commission has historically disallowed. I do not believe Staff has ever reviewed even the most experienced consultant cost studies without reducing the rates.

Third, a cost study is subject to numerous allocations and inputs that can greatly affect the rates. In April of 2007, Staff did meet with Midco and QSI to review Midco's cost study. That version of the study revealed a 19.54 cent per MOU rate (line 253, page 14 of Mr. Fischer's prefiled testimony). Midco and QSI spent about an hour or two explaining the cost study. Staff indicted that this study was significantly different than what other companies and consultants were filing in South Dakota. However, with only high level overview, Staff identified a critical flaw in the allocation of C&W facilities allocated to POTs. The cost study Midco filed on July 15, 2008, adjusted the C&W allocation, adjusted the MOU (which coincidentally now violates the matching principle) and tweaked several other allocators (lines 273 – 283, page 15 of Mr. Fischer's testimony). These few changes dropped the intrastate switched access rate from 19.54 cents per MOU to 9.85 cents per MOU (line 286, page 16 of Mr. Fischer's testimony). This clearly shows how sensitive a cost study is to the input and allocations and emphasizes the need for Commission and Staff review before any approval can be sought. Furthermore, it is quite possible that the cost study as filed continues to significantly overstate Midco's costs.

Fourth, Midco and the Commission need to be informed of the possible outcome of approving a cost study for a CLEC. Staff has been working very hard in following the FCC's lead to get all CLECs' intrastate switched access rates lowered to mirror the ILEC Qwest rate in order to mimic competition in a non-functioning competitive arena. I think Staff has been very successful. If Midco continues to pursue this avenue of cost based rates, and the Commission ultimately approves a CLEC cost study with rates significantly greater than the ILEC Qwest rates, other CLECs will follow suit. As indicated earlier, I have been involved in many CLEC cost dockets. If other CLECs follow suit and file cost studies, we could see rates much higher that the 9.85 or 19.54 cents per MOU that Midco discusses. I truly believe that if that scenario plays out and CLEC rates become cost based, because of the high startup costs of new CLECs and low MOUs to spread those costs over, Midco could see its competitors with intrastate switched access rates in the 20 to 40 cent per MOU range, or higher – well above the 5.5 cent difference they are facing now. South Dakota's long distance market can not tolerate that.

Staff acknowledges that we are asking Midco to give up a little and be patient. But the Commission and Midco need to realize that other CLECs, including the ILEC owned CLECs that Midco claims they want parity with, could very easily be giving up much more than Midco is. I ask that Midco and the Commission continue to be patient and allow Staff to continue to successfully follow the FCC's lead and lower CLEC rates to that of the ILEC, as we have recently done with the settlement agreement filed in TC07-128 (Sancom).

Q. What are you recommending?

A. My recommendations from my originally pre-filed testimony have not changed.

I recommend the Commission deny approval of Midco's cost study.

I recommend the Commission grant the exemption to Midco on the same grounds it has in the past.

I recommend the Commission continue to follow the FCC's lead regarding CLEC access rates, continue to support Commission Staff's approach at attempting to create competitive based switched access rates in a noncompetitive arena, and approve an intrastate switched access rate for Midco that mirrors or is lower than the ILEC Qwest rate on the same grounds the Commission has done in the past.

Q. Do you have any alternative recommendations regarding Midco's intrastate switched access rate?

A. Staff strongly recommends the Commission use the ILEC Qwest rate. I also continue to strongly recommend the Commission, in order to eliminate CLEC abuse of monopoly power, not require or request CLECs to file cost studies, but instead follow the FCC's lead and prohibit the filing of CLEC cost studies and implement a competitive method for

CLEC rates that are not based on the CLEC's costs but instead on the ILEC rates, thus controlling the CLEC's monopoly power.

However, if the Commission is unable to impose the Qwest rate, I suggest the Commission strongly encourage Midco to adopt the Sancom Settlement rates as currently agreed to between Staff and Sancom in TC07-128 for the Mitchell and Aberdeen exchanges while continuing to use the Qwest rate in all other Qwest exchanges. If Midco truly wants equity with its competitors, such an agreement will provide such. In fact, it will put Midco at an advantage over ILEC Qwest and other CLECs in those two exchanges but it will create equity with NVC and Sancom in the Aberdeen and Mitchell exchanges and maintain equity with other CLECs in all other exchanges.

If the Commission grants a rate other than the Qwest rate, I recommend the Commission immediately open a separate rulemaking docket to address the CLEC access rate issues. I believe this rulemaking docket must be separate from the existing switched access rulemaking docket. Opening a second and separate docket will assure that the CLEC access rate issues get addressed quickly.

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

A. Yes.