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June 15, 2010

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**JUN 15 2010**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Ms. Patricia Van Gerpen  
SD Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501

Re: In the Matter of Revisions and/or Additions to the  
Commission's Switched Access Rules Codified in ARSD  
20:10:27 through 20:10:29  
RM05-002

Dear Ms. Van Gerpen:

Enclosed herewith please find Initial Comments of Midstate Telecom and RC Communications, Inc., d/b/ RC Services. I hand file the same inasmuch as our telephone services and internet services are currently down.

If you have any questions, please contact me.

Very truly yours,

RITER, ROGERS, WATTIER &  
NORTHRUP, LLP

By:   
Darla Pollman Rogers

DPR-wb

Enclosure

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**JUN 15 2010**

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

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**IN THE MATTER OF REVISIONS  
AND/OR ADDITIONS TO THE  
COMMISSION'S SWITCHED  
ACCESS RULES CODIFIED IN ARSD  
20:10:27 THROUGH 20:10:29.**

**DOCKET RM05-002  
  
INITIAL COMMENTS OF  
MIDSTATE TELECOM AND  
RC COMMUNICATIONS, INC.,  
d/b/a RC SERVICES**

Midstate Telecom is a competitive local exchange carrier (CLEC) offering telecommunications services in Chamberlain, South Dakota. RC Communications, Inc., d/b/a RC Services, is a CLEC offering telecommunications services primarily in Corona, South Dakota. These rural CLECs (hereinafter collectively referred to as "Midstate and RC") respectfully submit the following joint comments as initial comments responding to the draft administrative rule proposals relating to the switched access rates of competitive local exchange carriers provided with the Commission's letter of June 1, 2010.

**GENERAL COMMENTS**

With regard to the rule revisions proposed in ARSD Chapter 20:10:27, Midstate and RC generally support the adoption of the rules by the Commission, with some requested revisions noted below. Midstate and RC support the position of SDTA and LECA that any proposed revisions to switched access rules should only implement changes to the regulation of intrastate switched access rates charged by CLECs operating in South Dakota. Midstate and RC support the concept of allowing rural incumbent local exchange carriers (ILECs) to remain subject to rate-of-return regulation for their switched access services, which the proposed rules do. This is

critical not only because of carrier of last resort obligations of ILECs, but also to incent ILECs to continue to invest in the rural network infrastructure.

Midstate and RC would also note that in implementing price regulation for CLEC access rates, it is important that any rule changes be consistent with the rural safeguards and other provisions found in the federal and state law that are intended to discourage selective marketing by competitors, prevent geographic rate de-averaging between urban and rural areas, and otherwise preserve and advance universal service. Midstate and RC are rural CLECs, so the safeguards and protections in current law are important to them. Midstate and RC believe that the CLEC access rule changes, as proposed, sufficiently take into account these additional regulatory requirements.

**ARSD 20:10:27:02**

Midstate and RC believe the proposed changes to 20:10:27:02 may unintentionally create a regulatory loophole for CLEC switched access charges. Chapter 20:10:27 is entitled “Telecommunications Switched Access Filing Rules”. The current rules establish the methodology for development of all local exchange carrier switched access rates. The proposed rules add subsections 20:10:27:02.01 and 20:10:27:02.02 to establish the new rate provisions for CLECs. Section 20:10:27:02, however, refers generally to all of Sections 20:10:27 to 20:10:29 as establishing rules for determination of switched access charges for intrastate switched access services. This would include the additional rules added to 20:10:27 for CLEC access rates. Therefore, Midstate and RC believe the word “incumbent” should be deleted from 20:10:27:02 or the Commission will need to better define what rules within 20:10:27 to 20:10:29 apply to ILECs versus CLECs. For example, the rate making and separation rules would not apply to CLECs that are being price regulated by the Commission. Tariff filing rules, however, should

apply to CLECs. The alternative would be to place all CLEC switched access rules in a stand alone chapter outside of 20:10:27 to 20:10:29, which would appear to be more cumbersome.

Midstate and RC suggest that 20:10:27:02 be revised as follows:

**20:10:27:02. Determination of intrastate switched access charges for incumbent-local exchange carriers -- General.** Chapters 20:10:27 to 20:10:29, inclusive, establish rules for the determination of switched access charges for intrastate switched access services provided by each carrier's incumbent-local exchange carrier operating in this state. Charges for switched access services shall be computed, assessed, and collected as provided in chapters 20:10:27 to 20:10:29, inclusive, except as provided in §§ 20:10:27:11 to 20:10:27:13, inclusive. For good cause, the commission may, on its own motion or by application from a carrier's carrier, temporarily waive or suspend any commission rule in chapters 20:10:27 to 20:10:29, inclusive.

ARSD 20:10:27:02.02

Midstate and RC believe that the exception from the rates in 20:10:27:02.01, as set forth in 20:10:27:02.02(1), is so narrowly drafted as to preclude any CLEC from qualifying for the exception. The intent of the proposed rule appears to be to allow a CLEC that serves in a community of less than 10,000 inhabitants to use the LECA plus rate if (1) the CLEC offers service throughout all of the exchanges where it serves; and (2) said service is offered with the CLEC's own facilities. The second sentence of subsection (1) appears to put further restrictions on "own facilities" by restricting the CLEC from "relying on the facilities owed by an affiliate or subsidiary". Midstate and RC would suggest that this language is unclear, unduly restrictive, and unnecessary.

The first part of the exception, i.e., that provisioning of service throughout the exchange(s) in which the CLEC serves, is certainly in the public interest of the customers living in the CLEC exchange area. By making this a requirement of the exception to the rates in 20:10:27:02.01, the rule insures service to rural or remote customers with modern facilities, thus preventing cherry-picking or providing service only in the more lucrative urban portions of an

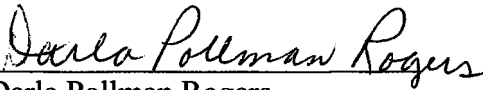
exchange. If, however, a CLEC is willing to take on the obligation of exchange-wide coverage, the manner of providing such service and over what facilities should be left to the discretion of the CLEC. The exception does not convert the process to a rate-of-return regulatory environment, so whether the CLEC builds its own facilities or leases facilities from either an affiliated entity or otherwise is immaterial. The important policy issue is that the CLEC provide facility based services to the entire exchange. Therefore, the exception should come into play if service is provided throughout the exchange, regardless of how the CLEC provisions the service. Midstate and RC would propose the following revisions to 20:10:27:02.02(1):

(1) If a competitive local exchange carrier offers service with its owned or leased facilities throughout all the exchanges where it operates, the competitive local exchange carrier may charge intrastate switched access rates that do not exceed the rate established by § 20:10:27:12. A competitive local exchange carrier must offer local exchange service throughout all of the exchanges where it operates using its own facilities and may not rely on the facilities owned by an affiliate or subsidiary;

### **CONCLUSION**

Based on the foregoing, Midstate and RC would urge the Commission to adopt the rules with the changes proposed by Midstate and RC. Midstate and RC would further urge the Commission to expand the current schedule to allow interested parties to file reply comments. The initial comments of other parties will likely include proposed revisions to the Commission's draft rules, just as Midstate and RC's initial comments do. All interested parties should be given the opportunity within this docket to respond with further comments.

Respectfully submitted this fifteenth day of June, 2010.



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#### CERTIFICATE OF SERVICE

I, Darla Pollman Rogers, certify that a true and correct copy of Comments of Midstate Telecom and RC Communications were emailed to the following on the 15<sup>th</sup> day of June, 2010:

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