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COMMISSION STAFF MEMORANDUM IN SUPPORT OF SETTLEMENT STIPULATION

TO: Commissioners Sahr, Johnson and Hanson,
Commission Counsels Smith and Wiest,
Commission Advisor Rislov

FROM: Keith Senger, PUC Commission Staff

DATE: April 7, 2006

RE: TC05-060 - In the Matter of the Filing by Midstate Telecom, Inc. for an Extension of an Exemption from Developing Company Specific Cost-Based Switched Access Rates.

Staff submits this memorandum in support of the Settlement Stipulation filed April 7, 2006 by Staff and Midstate Telecom, Inc. in the above referenced docket.

BACKGROUND

On April 27, 2005, Midstate Telecom, Inc. (MTI), a certified LEC providing competitive local exchange telecommunication services in the Chamberlain exchange, filed with the South Dakota Public Utilities Commission (Commission) a petition in accordance with ARSD 20:10:27:11 requesting an extension for an exemption from developing company specific cost based switched access rates. MTI proposed an intrastate switched access rate of \$0.1325 per access minute (equal originating and terminating). This requested rate is based on the current interim costs (revenue requirements) and minutes of use of all the telecommunications companies with less than 100,000 access lines as calculated in accordance with ARSD 20:10:27:12. This rate is the sum of three component rates: (1) Carrier Common Line Access Service per Access Minute - \$0.0693; (2) Local Switching (End Office) per Access Minute - \$0.0276; and (3) Local Transport per Access Minute - \$0.0356.

Commission staff issued data requests to MTI on May 10, June 7, October 3 and November 16, 2005. MTI responded on June 3, and October 17, 2005...

On January 27, 2006, staff filed a memo stating its position regarding MTI's petition. In that memo, staff advocated the Commission grant MTI's petition for an exemption from filing a cost study, but deny MTI's request to use the average schedule intrastate switched access rate as determined by ARSD 20:10:27:12 (referred to as the LECA Plus rate). Instead, staff recommended a Commission decision to order MTI to adopt the Qwest intrastate rate of \$0.0609. Staff supported its position with an FCC order, FCC rules pertaining to the interstate jurisdiction, and numerous economic and competitive neutrality arguments.

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Staff and MTI met several times in an effort to arrive at an acceptable informal resolution of this matter. As a result, the parties have been able to resolve all issues in this proceeding and have entered into a Settlement Stipulation.

OVERVIEW OF THE SETTLEMENT

Under the terms of this Stipulation, MTI and staff have agreed that MTI will lower its intrastate switched access rate from the \$0.1325 that is currently tariffed and billed, to \$0.1150, a reduction of \$0.0175. This rate will essentially be frozen as a maximum rate until: (1) 6 months after the effective date of the new rules in the FCC - ICC docket, (2) until 6 months after the effective date of the new rules in the SDPUC's docket RM05-002, or (3) three years, which ever comes first. During this rate freeze, MTI cannot file for any intrastate access rate increases. However, should this rate during the freeze period exceed the rate as determined by ARSD 20:10:27:12, MTI will have to decrease its tariffed rate so not to exceed the rate as determined by ARSD 20:10:27:12.¹

Any adjustment to this frozen rate will be on a going-forward basis and thus not subject to refund. The old rate (\$0.1325) remains subject to refund with interest because that rate is based on the '04 LECA interim rates which the Commission has not yet finalized or approved. If the '04 LECA rates should decrease because of hearing or settlement of the '04 access dockets, then the old LECA Plus rate of \$0.1325 that MTI is currently charging will require refund with interest as ordered by the Commission in docket TC04-126 once that final rate is determined.

The \$0.1150 frozen rate is made of three elements: (1) Carrier Common Line Access Service per Access Minute - \$0.0548; (2) Local Switching (End Office) per Access Minute - \$0.0231; and (3) Local Transport per Access Minute - \$0.0371, and represents a decrease of \$0.0175 per Access Minute from what MTI is currently charging. This rate represents the 2003 LECA Plus rate as calculated based on ARSD 20:10:27:12 using the Commission-approved switched access dockets filed with the Commission by June 30, 2003.

STAFF SUPPORT FOR THE SETTLEMENT

Although this settlement represents a substantial movement from staff's original position, staff believes this movement is supported for a number of reasons. First, staff's original position gave very limited consideration to several potential negative effects. Staff's original position would have had negative financial impacts on MTI which could outweigh any burden placed on the IXCs and could also slow the deployment of advanced services in South Dakota. Second, although staff believes that ARSD 20:10:27:12 was not intended for CLECs, this settlement acknowledges that MTI's requested rate was filed in accordance with a black and white interpretation of ARSD 20:10:27:12. Third, staff's original position was based on the legal argument that this Commission has the legal authority to, on its own motion, waive or suspend ARSD 20:10:27:12 and order MTI to use an alternative rate. This issue has not been litigated before, or addressed in any manner by this Commission. This settlement acknowledges that legal and other practical considerations may likely overcome the theory advanced in staff's position, and recognizes that CLEC access reform may be better addressed in the Commission's current rulemaking docket. Fourth, staff believes that the movement by MTI from

¹ Since the rate as calculated under ARSD 20:10:27:12 is dependent upon the cost and access minutes of use of all the companies with under a 100,000 access lines, it is possible that, at the conclusion of the 2004, 2005 or future filed cost studies, the rate as calculated by ARSD 20:10:27:12 could fall below what staff and MTI has accepted as the frozen rate. Should this happen, MTI will have to adjust accordingly.

its original position, although ¼ of staff's original per minute recommendation, represents material movement toward principles proposed by staff. Staff considers this movement to be an important step toward development of rates that are fair to all, yet reflective of the crucial role played by South Dakota's small telecommunications companies.

OTHER ISSUES

In its original memo staff made a number of recommendations regarding other MTI deficiencies that staff discovered during examination of MTI's petition. Staff believes that these issues are not well suited for this docket and thus are not part of this settlement stipulation. However, staff and MTI have an informal, but specific agreement regarding the resolution of those issues. If those issues are not resolved accordingly, staff will pursue other avenues to resolution before the Commission.

COMMISSION ACTION REQUESTED

As supported above, Staff urges the Commission to 1) approve MTI's ARSD 20:10:27:11 request for an exemption from developing company-specific cost-based switched access rates, 2) grant MTI and Staff's joint motion for a waiver of ARSD 20:10:27:07 and 20:10:27:12, and 3) approve the settlement Stipulation.