

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

3050 K STREET, N.W.

SUITE 400

WASHINGTON, D.C. 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

KATHERINE E. BARKER MARSHALL

DIRECT LINE: (202) 342-8519

EMAIL: kbarker@kelleydrye.com

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ
BRUSSELS, BELGIUM

AFFILIATE OFFICES
MUMBAI, INDIA

July 16, 2007

VIA UPS

Pamela A. Bonrud
Executive Director
Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Re: Petition of NOS Communications, Inc. for Continued Waiver of ARSD
20:10:27:02 and 20:10:27:11

Dear Ms. Bonrud:

Enclsoed please find one original and ten (10) copies of the Petition of NOS Communications, Inc. ("NOS") for continued waiver of ARSD 20:10:27:02 and 20:10:27:11. The initial waiver request was granted in in Docket No. TC-03-022 on March 7, 2003.

Please date stamp the duplicate of this filing and return in the self-addressed, postage prepaid envelope. Thank you for your assistance in this matter and please do not hesitate to contact me at (202) 342-8519 if you have any questions or concerns.

Respectfully submitted,



Katherine E. Barker Marshall

Enclosure

cc: Jessica Renneker, NOS Communications, Inc.
Harlan Best, Public Utilities Commission

**Before the
STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION**

In the Matter of the Petition of)
)
NOS Communications, Inc.)
)
Continued Waiver of ARSD 20:10:27:07) TC07-
Requiring the Development of Company-)
Specific Cost-Based Switched Access)
Rates; Continued Waiver of ARSD)
20:10:27:12, so as to Mirror Qwest)
Corporation Tariffed Access Rates)
)

PETITION

COMES NOW NOS Communications, Inc. (“NOS” or “Petitioner”), pursuant to ARSD 20:10:27:02 and 20:10:27:11, and shows the South Dakota Public Utilities Commission the following:

I. PARTIES

The Petitioner is NOS Communications, Inc., 4380 Boulder Highway, Las Vegas, Nevada 89121. All notices, pleadings, and other communications concerning this Petition should be directed to:

Katherine Barker Marshall
Kelley Drye & Warren, LLP
3050 K Street NW, Suite 400
Washington, DC 20007
Telephone: (202) 342-8519
Facsimile: (202) 342-8451
E-Mail: Kbarker@kelleydrye.com

II. FACTS

- A. NOS received a certificate of authority to provide local exchange service in South Dakota in Commission Order TC01-043 on September 14, 2001.
- B. NOS requested and received a waiver of the requirement contained in ARSD 20:10:27:07 to file cost data in support of its switched access tariff in Docket No. TC-03-022 on March 7, 2003. Under this waiver, NOS was directed to seek a continuation of the waiver within three (3) years if it was necessary.
- C. NOS requests continued waiver of the requirement contained in ARSD 20:10:27:07 to file cost data in support of its switched access service tariff for the following reasons:
 1. NOS is a small company with limited financial, technical, and managerial resources.
 2. NOS does not have the necessary resources to determine company-specific cost-based intrastate switched access rates.
 3. The additional costs associated with developing company-specific cost-based intrastate switched access rates outweigh any benefit to the consumer or customer.
 4. NOS provides service through the unbundled network element platform (“UNE-P”) obtained from Qwest Communications, the incumbent local exchange company (“ILEC”).
 5. Because NOS obtains all of its switched access elements from the ILEC, its costs for switched access service elements are at least as much as the ILEC’s costs for those elements.

6. NOS proposes to continue mirroring the intrastate switched access rates of the ILEC contained in the Qwest South Dakota Access Service Tariff, Sections 3.9 and 6.8.
 7. The use of rates identical to the ILEC's rates for intrastate switched access will result in less confusion to carrier customers and to customers that review and evaluate the companies' rates for provision of switched access services.
- D. NOS requests continued waiver of ARSD 20:10:27:12 for the following reasons:
1. ARSD 20:10:27:12 would require NOS to base its intrastate switched access rates on the costs of all the South Dakota telecommunications companies with fewer than 100,000 access lines.
 2. Under ARSD 20:10:27:12, NOS would be required to charge a substantially higher intrastate switched access rate than the ILEC.
 3. The Petitioner's South Dakota switched access rates follow the Federal Communications Commission guidelines that generally prohibit switched access rates (albeit *interstate* rates) higher than those charged by the ILEC. *In the Matter of Access Charge Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking*, FCC 01-146 (rel. Apr. 27, 2001).

III. LEGAL AUTHORITY

Because the tariff is an intrastate switched access tariff, the Public Utilities Commission has jurisdiction over this matter; authority to temporarily waive or suspend any rule in Chapters 20:10:27 to 20:10:29, inclusive; and authority to waive company-specific cost-

based switched access rates pursuant to SDCL Chapter 49-1-11, 49-31-5, and 49-31-18, and ARSD 20:10:27:01 et seq.


IV. RELIEF REQUESTED

NOS respectfully requests continued waiver of the requirement to develop company-specific cost-based switched access rates under ARSD 20:10:27:07; and the continued waiver of the requirement under ARSD 20:10:27:12 to base its switched access rates on the costs of all of the telecommunications companies with fewer than 100,000 access lines.

Dated: July 16, 2007

Respectfully submitted,

NOS COMMUNICATIONS, INC.

By: 
Danny E. Adams
Katherine Barker Marshall
Kelley Drye & Warren, LLP
3050 K Street NW, Suite 400
Washington, DC 20007
Telephone: (202) 342-8519
Facsimile: (202) 342-8451
E-Mail: Kbarker@kelleydrye.com