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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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February 9, 2009

Mr. David A. Gerdes
Attorney at Law
May, Adam, Gerdes & Thompson
P. O. Box 160
Pierre, SD 57501-0160

Re: In the Matter of the Petition of Midcontinent Communications
for Approval of its Switched Access Rates
Docket TC07-117

Dear Mr. Gerdes:

Attached you will find copy of Staff's Response to Midcontinent's Petition for Reconsideration with reference to the above captioned matter. This is intended as service upon you electronically.

Very truly yours,

Karen E. Cremer
Staff Attorney

Enc.

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

IN THE MATTER OF THE PETITION OF))	STAFF'S RESPONSE TO
MIDCONTINENT COMMUNICATIONS FOR))	MIDCONTINENT'S PETITION
APPROVAL OF SWITCHED ACCESS RATES))	FOR RECONSIDERATION
))	TC07-117

Pursuant to ARSD 20:10:01:29, 20:10:01:30.01, and 20:10:01:30.02 (set forth below), Staff files its Response to Midcontinent's Petition for Reconsideration in the above-captioned matter. Staff respectfully submits that Midcontinent's Petition for Reconsideration should be denied.

20:10:01:29. Rehearing or reconsideration. A party to a proceeding before the commission may apply for a rehearing or reconsideration as to any matter determined by the commission and specified in the application for the rehearing or reconsideration. The commission may grant reconsideration or rehearing on its own motion or pursuant to a written petition if there appears to be sufficient reason for rehearing or reconsideration.

20:10:01:30.01. Application for rehearing or reconsideration. An application for a rehearing or reconsideration shall be made only by written petition by a party to the proceeding. The application shall be filed with the commission within 30 days from the issuance of the commission decision or order. An application for rehearing or reconsideration based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error. An application for rehearing or reconsideration based upon newly discovered evidence, upon facts and circumstances arising subsequent to the hearing, or upon consequences resulting from compliance with the decision or order, shall set forth fully the matters relied upon. The application shall show service on each party to the proceeding.

20:10:01:30.02. Answer to application for rehearing or reconsideration. Within 20 days following service of an application for rehearing or reconsideration, any party may file with the commission an answer to the application. The answer shall show service on each party to the proceeding.

ARSD 20:10:01:29 requires that the applicant for reconsideration specify in its application that matter it wishes the Commission to reconsider. Midcontinent has requested that it be given its cost study result as an interim rate while Staff reviews the cost study.

In order to clarify any misunderstanding of the facts as stated in Midcontinent's Petition for Reconsideration, paragraph 1., as to when Midcontinent filed its cost study, Staff would note that on October 31, 2007, the Commission received a petition from Midcontinent requesting (i) a waiver, pursuant to ARSD 20:10:27:02, from the requirement of ARSD 20:10:27:07 to file a company-

specific cost study in support of its switched access rates, (ii) approval of switched access rates that mirror rates of similarly situated CLECs and (iii) approval of the switched access tariff sheets submitted with the Petition incorporating the rates approved by the Commission. **Contrary to Midcontinent's statement, this October 31, 2007, filing consisted of five (5) pages and did not contain a cost study.** See <http://www.puc.sd.gov/Dockets/Telecom/2007/tc07-117.aspx>

On December 5, 2007, and December 14, 2007, Staff sent Midcontinent a data request, requesting, among other information, a "working electronic copy and the results of the cost study." On February 8, 2008, Midcontinent filed its responses with Staff and not as a part of the official docket.

The cost study was filed in the docket on July 15, 2008, three (3) weeks before the hearing, as a confidential exhibit to Warren Fischer's testimony. On July 29, 2008, the Commission granted Midcontinent's Motion to Amend Petition which allowed Midcontinent to present evidence at the hearing regarding its GAAP converted cost study. The hearing in this matter was held as scheduled on August 5, 2008.

Following the hearing, the Commission issued its ruling which denied Midcontinent's Petition. One of the reasons for the denial was Midcontinent's failure to file its cost study in accordance with the Commission's rules. The Commission found in its January 14, 2009, Order that:

3. Finding that Midcontinent's filing of its cost study as an exhibit to pre-filed testimony and its Motion to Amend Petition only a short period prior to the hearing had not afforded Staff sufficient opportunity to perform a customarily thorough analysis of the study prior to the hearing, the Commission voted unanimously to require Midcontinent to file its cost study-based proposed rates as a formal rate tariff filing, attendant with the Commission's statutory filing fee and rate suspension powers, and to direct Staff to perform, as expeditiously as possible, a customarily thorough evaluation of Midcontinent's cost study.

As of today's date, Midcontinent has not filed its cost study pursuant to the Commission's Order. Without a filing that satisfies ARSD 20:10:27, 20:10:28 and 20:10:29, the Commission is not in a position to grant Midcontinent a rate increase.

Staff would recommend denial of Midcontinent's Petition for Reconsideration. Until a cost study is filed in accordance with the Commission's rules, Midcontinent's switched access rate is unknown and will remain so until such time as the cost study can be appropriately reviewed. Permitting Midcontinent's desire for its requested cost study rate only advances a short-term fix and not the public's long-term needs. Public interest dictates that the Commission deny Midcontinent's request for reconsideration.

Dated at Pierre, South Dakota, this 9th day of February, 2009.

Respectfully submitted,

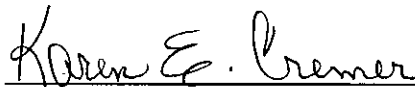


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CERTIFICATE OF SERVICE

I hereby certify that a copy of Staff's Response to Midcontinent's Petition for Reconsideration was served on the following electronically, at the e-mail address shown below on this the 9th day of February, 2009.

Mr. David A. Gerdes
dag@magt.com



Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission