



Robert C. Riter, Jr.
Darla Pollman Rogers
Jerry L. Wattier
Margo D. Northrup

Associate:
Lindsey Riter-Rapp

Of Counsel:
Robert D. Hofer

May 14, 2009

Patricia Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

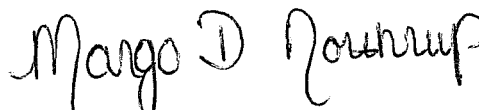
Re: Midstate Telecom, Inc.
TC 09-009

Dear Patty:

Attached for filing please find Motion For Temporary Approval of Switched Access Rates in regards to the above-referenced matter.

Very truly,

RITER, ROGERS, WATTIER
& NORTHRUP, LLP

BY: 
Margo D. Northrup

MDN/cs

Attachment

Law Office
Riter, Rogers, Wattier, & Northrup, LLP
Phone: 605-224-5825 • Fax: 605-224-7102 • www.riterlaw.com
319 South Coteau Street • P.O. Box 280 • Pierre, South Dakota 57501-0280

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE
APPLICATION OF MIDSTATE
TELECOM, INC., FOR APPROVAL OF
EXTENSION OF TIME OF EXEMPTION
FROM DEVELOPING COMPANY
SPECIFIC COST-BASED SWITCHED
ACCESS RATES

DOCKET NUMBER TC09-009

MOTION FOR TEMPORARY
APPROVAL OF SWITCHED
ACCESS RATES

COMES NOW Midstate Telecom, Inc. (“Midstate”), by and through its counsel of record, and hereby submits the following Motion for Temporary Approval of its Switched Access Rate. Midstate respectfully requests that this Commission grant it authority to utilize the rates identified in its switched access services tariff currently on file with this Commission until such time as the issues in this docket are resolved. Such an Order is requested for the following reasons:

1. On March 2, 2009, Midstate moved this Commission for an extension of its current exemption from developing company specific cost-based switched access rates as contained in the Order in TC05-60 dated April 25, 2006 (the “Order”).¹

2. The Commission’s April 25, 2006 Order approved the terms of a Settlement Stipulation agreed upon by Commission Staff and Midstate on April 7, 2006. More specifically, that Order approved the intrastate switched access rate to be used by Midstate in its tariff. Pursuant to the terms of that Settlement Stipulation, Midstate’s tariffed intrastate switched access rate is \$0.1150.

¹ The Order is specifically titled: “Order Granting Petition for Extension and Approval of Tariff; Order Granting Joint Motion for Approval of Settlement Stipulation; and Order Approving Settlement Stipulation.”

3. The terms of the relevant Settlement Stipulation and corresponding exemption expired on April 7, 2006.

4. On March 7, 2009, Midcontinent Communications (“Midcontinent”) filed a Petition to Intervene in this docket. Midstate filed an Opposition to the same on April 20, 2009. Midcontinent was granted intervention on April 21, 2009 by the Commission.

5. Although Midstate’s exemption has now expired, Midstate moved this Commission for an extension of its exemption prior to expiration of the exemption. Furthermore, an expiration of its exemption does not result in invalidation of Midstate’s current intrastate switched access tariff. The filed rate doctrine prohibits a regulated entity from charging any rate other than that filed with the relevant regulatory authority. Firstcom, Inc. v. Qwest Corp., 555 F. 3d 669, C.A.8 (Minn.) 2009 (citing Ark. La. Gas., 453 U.S. at 577, 101 S.Ct. 2925; H.J. Inc., 954 F.2d at 488; see also Verizon, 377 F.3d at 1087 (“[A]ll of the published cases addressing the filed rate doctrine hold unequivocally that no one may bring a judicial proceeding to enforce any rate other than the rate established by the filed tariff.” (quotation omitted)); Fax Telecomms, Inc. v. AT & T, 138 F.3d 479, 482 (2d Cir. 1998) (“Carriers are prohibited from providing communications services except pursuant to a filed tariff, and may not charge, demand, collect or receive a rate other than the rate listed in the applicable tariff.”). Midstate is concerned that interexchange carriers or others obligated to pay Midstate’s rates may argue that they need not do so in the absence of a new Order requiring the same. This would result in significant prejudice and harm to Midstate.

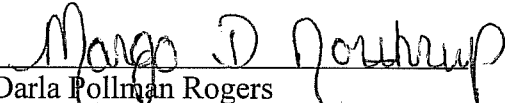
6. Additionally, RM05-002, which has been re-focused for purposes of proposing and implementing rules which specifically address rate development for competitive local

exchange carriers (“CLECs”), remains open and no rules have yet been disseminated to the public for review and comment. As set forth in its Request for Extension of Time of Exemption From Developing Company Specific Cost-Based Switched Access Rates, under these circumstances, Midstate is not in a position to develop a cost study.

7. Accordingly, for these reasons Midstate respectfully requests that it be allowed to continue to use that rate contained in its current intrastate switched access tariff until such time as a resolution is reached in this docket or through other Order of this Commission.

Dated this 14 day of May, 2009.

RITER, ROGERS, WATTIER
& NORTHRUP, LLP


Darla Pollman Rogers
Margo D. Northrup
Riter, Rogers, Wattier & Northrup, LLP
P. O. Box 280
Pierre, South Dakota 57501
Telephone: (605) 224-5825
Fax: (605) 224-7102

CERTIFICATE OF SERVICE

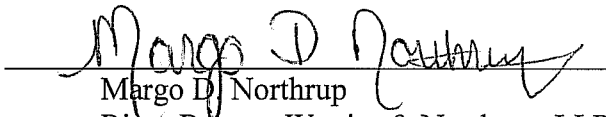
The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 14 day of May, 2009, upon the following:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Patty.vangerpen@state.sd.us
Telephone: 605-773-3201

Mr. David Gerdes
May, Adam Gerdes & Thompson,
PO Box 160
Pierre, SD 57501
dag@magt.com
Telephone: 605-224-8803

Ms. Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Karen.cremer@state.sd.us
Telephone: 605-773-3201

Ms. Terri Labrie Baker
Staff Analyst
South Dakota Public Utilities
500 East Capitol
Pierre, SD 57501
terri.labriebaker@state.sd.us
Telephone: 605-773-3201


Margo D. Northrup
Riter, Rogers, Wattier & Northrup, LLP
P. O. Box 280
Pierre, South Dakota 57501
Telephone: (605) 224-5825
Fax: (605) 224-7102