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August 6, 2010

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

Re: In the Matter of the Application of Midstate Telecom, Inc.,  
For a Waiver of ARSD 20:10:32:06.01 (Requirement for  
A Performance Bond)

Dear Ms. Van Gerpen:

Attached for electronic filing, please find Petition for Waiver in the above matter.

If you have any questions, please contact me.

Very truly yours,

RITER, ROGERS, WATTIER &  
NORTHTRUP, LLP

By:   
Darla Pollman Rogers

DPR-wb

Enclosure

Robert C. Riter, Jr.  
Margo D. Northrup

Jerry L. Wattier  
Lindsey Riter-Rapp

Darla Pollman Rogers  
Robert D. Hofer, Of Counsel

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION OF MIDSTATE TELECOM, INC., FOR A WAIVER OF ARSD 20:10:32:06.01 (REQUIREMENT FOR A PERFORMANCE BOND)

TC10-  
PETITION FOR WAIVER

COMES NOW Midstate Telecom, Inc. (Midstate), by and through its undersigned attorneys, Riter, Rogers, Wattier & Northrup, LLP, Pierre, South Dakota, and petitions the South Dakota Public Utilities Commission (Commission) for a waiver of ARSD 20:10:32:06.01, the requirement for a continuous performance bond, which was ordered by the Commission in its Order dated April 24, 2001 (See Attachment A). This Motion is based on the following:

1. Midstate filed an Application for a Certificate of Authority to provide telecommunications services in the Qwest service areas, and particularly in the City of Chamberlain, South Dakota, on January 18, 2001.
2. On April 24, 2001, the Commission granted Midstate a Certificate of Authority to provide local exchange services (See Attachment A). In the Order, the Commission approved Midstate's application for a Certificate of Authority subject to some conditions, including a continuous \$25,000 surety bond.
3. Midstate has been providing telecommunications services pursuant to this Certificate of Authority in Chamberlain, South Dakota since being granted a Certificate of Authority. Midstate has also continuously held a surety bond in the amount of \$25,000 since the date of the Order.

4. On May 20, 2010, Midstate was notified that the company from which it had purchased its surety bond would be canceling the surety bond effective February 1, 2011 (See Attachment B (Redacted)) because the company no longer is writing bonds.

5. The requirement of a performance bond is at the discretion of the Commission. ARSD 20:10:32:06.01 provides in part:

If it is in the public interest, the commission may require an applicant, as a condition precedent to granting a certificate of authority, to file with the commission a bond or other security for an amount and a duration as the commission may require. The bond or other security shall be filed with the commission and shall be for the benefit of a customer of the applicant.

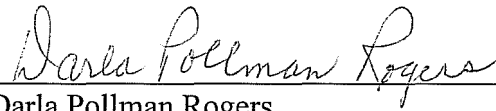
Because the filing of a bond, the amount of the bond, and the duration of the bond are “as the commission may require,” the Commission has the regulatory authority to limit the duration of the bond to the date Midstate’s bond expires, which is February 1, 2011.

6. Midstate asserts it has shown a long standing commitment to its customers and has a demonstrated history of financial stability. Midstate asserts it is no longer necessary for the public interest to require a performance surety bond.

7. Midstate is requesting that effective January 31, 2011, Midstate be granted a waiver of ARSD 20:10:32:06.01 and that it no longer be required to hold a continuous surety bond in the amount of \$25,000.

WHEREFORE, Midstate requests the Commission grant it an exemption of ARSD 20:10:32:06.01 and relieve it of the requirement to hold a continuous surety bond in the amount of \$25,000 pursuant to the Commission’s April 24, 2001 Order.

DATED this 6<sup>th</sup> day of August, 2010.

A handwritten signature in cursive script that reads "Darla Pollman Rogers". The signature is written in black ink and is positioned above a horizontal line.

Darla Pollman Rogers  
Margo D. Northrup  
Riter, Rogers, Wattier & Northrup, LLP  
P. O. Box 280  
Pierre, South Dakota 57501  
Telephone (605) 224-7889  
Fax (605) 224-7102

Attorneys for Midstate

# ATTACHMENT A

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

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>ORDER GRANTING</b>
<b>MIDSTATE TELECOM, INC. FOR A )</b>	<b>CERTIFICATE OF</b>
<b>CERTIFICATE OF AUTHORITY TO PROVIDE )</b>	<b>AUTHORITY AND ORDER</b>
<b>LOCAL EXCHANGE SERVICES IN SOUTH )</b>	<b>GRANTING PETITION FOR</b>
<b>DAKOTA )</b>	<b>WAIVER</b>
<b>)</b>	<b>TC01-007</b>

On January 18, 2001, the Public Utilities Commission (Commission) received an application for a certificate of authority from Midstate Telecom, Inc. (Midstate) and for approval of its intrastate switched access tariff no. 1 which is concurrent with the rates, terms, and conditions of the current LECA tariff no. 1, with the exception of the switched access rates, which are based upon a statewide average. Additionally, Midstate requested an exemption from the requirement to develop intrastate switched access rates based on company specific costs.

Midstate proposes to offer local exchange telecommunications services in South Dakota. A proposed tariff was filed by Midstate.

On January 25, 2001, the Commission electronically transmitted notice of the filing and the intervention deadline of February 9, 2001, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled April 17, 2001, meeting, the Commission considered Midstate's request for a certificate of authority, and its intrastate switched access tariff no. 1 and a waiver from establishing switched access rates based on company specific costs. Commission Staff recommended granting a certificate of authority, subject to a continuous \$25,000 surety bond, and subject to rural safeguards. Commission Staff further recommended a waiver of ARSD 20:10:32:03(11) and (14). Staff recommended approving the switched access tariff no. 1 and granting the exception for one year.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-18, 49-31-19, 49-31-69 and ARSD 20:10:27:11 and ARSD 20:10:32:03. The Commission finds that Midstate has met the legal requirements established for the granting of a certificate of authority. Midstate has, in accordance with SDCL 49-31-71, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. Further, the Commission finds that there is good cause to waive subparagraphs (11) and (14) of ARSD 20:10:32:03 and grant the petition for exemption from developing company specific cost-based switched access rates pursuant to ARSD 20:10:27:11 for one year and approve Midstate's intrastate switched access tariff no. 1 pursuant to ARSD 20:10:27:12.

The Commission approves Midstate's application for a certificate of authority, subject to a continuous \$25,000 surety bond, and subject to rural safeguards, and grants the petition for exemption from developing company specific cost-based switched access rates pursuant to ARSD 20:10:27:11 for one year and approves Midstate's intrastate

switched access tariff no. 1 pursuant to ARSD 20:10:27:12. The certificate of authority for Midstate shall authorize it to offer local exchange services in South Dakota, except in those areas served by a rural telephone company. In the future, should Midstate choose to provide local exchange services statewide, with respect to rural telephone companies, Midstate will have to come before the Commission in another proceeding before being able to provide local service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f). It is therefore

ORDERED, that Midstate's application for a certificate of authority to provide local exchange services is granted, subject to a continuous \$25,000 surety bond; and it is

FURTHER ORDERED, that Midstate shall file informational copies of tariff changes with the Commission as the changes occur; and it is

FURTHER ORDERED, that the Commission shall authorize Midstate to offer its local exchange services in South Dakota, except in those areas served by a rural telephone company; and it is

FURTHER ORDERED, that the Commission finds good cause to waive subparagraphs (11) and (14) of ARSD 20:10:32:03; and it is

FURTHER ORDERED, that Midstate's petition to be exempt from establishing company specific cost-based switched access rates is granted for one year and its intrastate switched access tariff no. 1 is approved.

Dated at Pierre, South Dakota, this 24<sup>th</sup> day of April, 2001.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Nelaine Kalls</u>
Date:	<u>4/24/01</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

## ATTACHMENT B





CONCORDE  
GENERAL AGENCY

5/20/10

Midstate Telecom, Inc.  
120 East 1<sup>st</sup> St  
Kimball, SD 57355

RE: NON-RENEWAL

[REDACTED]  
CARRIER: Traveler's

EXPIRATION DATE: 02/01/2011  
MAILING DATE: 05/20/2010

TIME: 12:01 A.M.

You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law, that the above mentioned policy will expire effective at and from the hour and date mentioned above and the policy will not be renewed for the reason(s) stated in the "important notices" section below.

If the reason given does not state with reasonable precision the facts on which our decision was based, you may request in writing that we provide clarifying information. We will supply such information within 15 days after receipt of your written request.

IMPORTANT NOTICES: No longer writing bonds.

AGENT: [REDACTED]

Signature of Authorized Representative

Scott M Anderson, Vice-President

RECEIVED

MAY 24 2010

MIDSTATE COMMUNICATIONS, INC.

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