

**BEFORE THE  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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Petition of	)	
	)	
<b>Pac-West Telecomm, Inc.</b>	)	Docket No. TC10-097
	)	
for Exemption from the Cost Support Requirements	)	
for Switched Access Services and Approval of	)	
its Proposed Access Services Tariff	)	
	)	

Pac-West Telecomm, Inc. (“Pac-West” or “Petitioner”), by its undersigned counsel, pursuant to ARSD 20:10:27:11 and ARSD 20:10:27:02, hereby petitions the South Dakota Public Utilities Commission (“Commission”) for exemptions or waivers of ARSD 20:10:27:07, 20:10:27:11, 20:10:27:12, and 20:10:27:13. Pac-West will tariff switched access services at rates below the rates of the incumbent, Qwest Communications, Inc. (“Qwest”). Moreover, for the reasons detailed below, Pac-West lacks the resources to develop company-specific cost-based rates, and the additional costs of such development outweighs any putative benefit to South Dakota consumers or customers.

**I. Request for Exemption from the Requirements of Developing Intrastate Switched Access Rates Based on Company-Specific Costs**

Pursuant to ARSD 20:10:27:11, a company seeking an exemption from the requirements of developing intrastate switched access rates based on company-specific costs must show that it lacks the necessary financial, technical, or managerial resources needed to determine company-specific cost-based intrastate switched access rates or that the additional costs associated with developing company-specific cost-based intrastate switched access rates outweigh any benefit to

the consumer or customer. As described below, Pac-West is able to meet its burden for both.

A. Cost Studies are Applicable to Rate of Return Regulated Companies

An integral part of the ratemaking process for rate of return companies has included a determination of a company-specific rate of return. As a competitive carrier, Pac-West is not subject to a rate of return regulatory scheme. The development of cost studies consistent with Commission formula would be complex and challenging to apply with accuracy.

B. Pac-West Does Not Have the Managerial or Technical Resources to Conduct Cost Studies

Pac-West's underlying network costs are primarily based on the costs of network services provided by underlying carriers. As a result, Pac-West, without expending significant additional resources, does not possess the personnel or expertise to prepare cost studies. Furthermore, as Pac-West is not a rate of return regulated company, it has never had any reason to evaluate its costs in this manner.

The Commission has recognized that preparation of a cost study is costly, labor-intensive and consumes a great deal of resources.<sup>1</sup> Similar requests for waivers of the cost justification requirements were granted to Qwest and South Dakota Network, LLC on essentially the same grounds in 2005.<sup>2</sup> In addition, OrbitCom, Inc., a CLEC, was granted a waiver of the requirement to prepare cost studies by agreeing to set its intrastate switched access rates at the rates set by Qwest.<sup>3</sup> As noted above, Pac-West makes a similar commitment to maintain intrastate rates at or

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<sup>1</sup> TC08-003, *In the Matter of the Request by Qwest Corporation for a Waiver of a Requirement to file a Switched Access Cost Study*, Order (Feb. 27, 2008).

<sup>2</sup> TC05-006, *In the Matter of the Request by Qwest Corporation for a Waiver of a Requirement to file a Switched Access Cost Study*, Order (March 17, 2005); TC05-062, *In the Matter of the Request by South Dakota Network, LLC for a Waiver of a Requirement to file a Switched Access Cost Study*, Order (June 30, 2005).

<sup>3</sup> TC05-192, *In the Matter of the Filing by OrbitCom, Inc. f/k/a VP Telecom, Inc. for an Extension of an Exemption from Developing Company Specific Cost-Based Switched Access Rates*, Order (Dec. 14, 2005) (granting OrbitCom a waiver for so long as OrbitCom's intrastate switched access rate is equal to or less than that of Qwest's intrastate switched access rate or until the Commission orders otherwise).

below the rates established by Qwest.

Like OrbitCom, Pac-West seeks to avoid preparing and filing a cost study to support its proposed switched access rates because preparation of such a study would be costly and resource intensive. Moreover, such a study would have no benefit to customers or consumers because Pac-West agrees to set its intrastate switched access rates at the same level as Qwest's rates.

**II. Request for Waiver or Suspension of ARSD 20:10:27:12 Cost Formula.**

ARSD 20:10:27:12 specifies that the intrastate switched access rates and the calculation thereof for a telecommunications company that is granted its petition for exemption pursuant to ARSD 20:10:27:11 are based on a formula utilizing the costs and number of access lines of the telecommunications companies with less than 100,000 access lines that determine switched access costs pursuant to chapters 20:10:28 and 20:10:29. Pac-West respectfully requests a waiver or suspension of ARSD 20:10:27:12 based upon Pac-West's commitment to cap its rates at the Qwest tariffed access rates. As Qwest's switched access rates are lower than those charged by the companies identified in ARSD 20:10:27:12, good cause is shown for the Commission's grant of a waiver of this rule.

**III. Request for Waiver or Suspension of the Billing and Collection Requirements of ARSD 20:10:27:13**

Should the Commission exempt Pac-West from ARSD 20:10:27:12 as requested, Pac-West requests a waiver from the requirement that it determine billing and collection costs based on the average of such costs for all telecommunications companies with less than 100,000 access lines. The Commission should grant this waiver for the same reasons that the Commission should grant the waivers requested above.

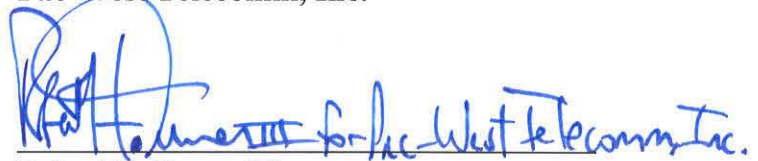
**IV. Request for Waiver or Suspension of ARSD 20:10:27:07**

Pac-West respectfully requests a waiver or suspension of the requirement that it file cost studies in support of its access tariff no less than once every three years. In support, Pac-West reiterates its commitment to cap its rates at Qwest's South Dakota switched access rates.

**WHEREFORE**, for the reasons state above, Pac-West petitions the Commission for an exemption or waiver from developing company-specific cost-based switched access rates and from the requirements of ARSD 20:10:27:07, 20:10:27:11, 20:10:27:12, and 20:10:27:13, and for such other relief as requested herein.

Respectfully submitted this 22d day of December 2010.

**Pac-West Telecomm, Inc.**



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