

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

Petition of

Bandwidth.com CLEC, LLC)
for Exemption from the Cost Support) Docket _____
Requirements for Switched Access Services)
and Approval of its Proposed Access Services)
Tariff)

PETITION

Bandwidth.com CLEC, LLC (“Bandwidth.com CLEC, LLC” or "Petitioner"), 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 from 1) developing company-specific cost-based switched access rates; 2) use of the formula in ARSD 20:10:27:12, so that Bandwidth.com CLEC, LLC may mirror its tariffed interstate switched access rates; 3) calculation of billing and collection costs as set forth in ARSD 20:10:27:13; and 4) the requirement, set forth in ARSD 20:10:27:07, that Bandwidth.com CLEC, LLC file cost data in support of its switched access service tariff no less than once every three years. Bandwidth.com CLEC, LLC also petitions the Commission for approval of its access services tariff attached as Exhibit A. In addition to the reasons set forth below, the Company's request for relief is supported by the Commission's recent conclusion in Docket TC10-014 that pricing regulation is appropriate for Competitive Local Exchange Carriers' switched access services. *Order Finding Pricing Regulation Appropriate for CLECs' Switched Access Services; Order Denying In Part and Granting In Part Qwest's Motion; Order Taking Judicial Notice; and Order Closing Docket, TC 10-014, dated May 4, 2010.*

I. PETITIONER

Petitioner is a Delaware corporation formed on January 9, 2007, which was granted authority to provide facilities-based local exchange service in South Dakota pursuant to the Certificate of Authority issued March 18, 2008, in Docket TC08-001.

II. CONTACT INFORMATION

Correspondence or communications pertaining to this petition should be directed to:

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III. DESCRIPTION OF PETITION

As a facilities-based competitive local exchange carrier ("CLEC"), Petitioner also provides switched access services to interexchange carriers. Pursuant to Administrative Rule 20:10:27:11, a telecommunications company may petition the Commission to be exempted from the requirements of developing intrastate switched access rates based on company-specific costs. Pursuant to ARSD 20:10:27:02, the Commission may grant, for good cause, a waiver or suspension of any rule in chapters 20:10:27 to 20:10:29, inclusive.

In this petition, the Company demonstrates that it lacks the necessary financial, technical and managerial resources needed to determine company-specific cost-based intrastate switched access rates and that the additional costs associated with developing company-specific cost-based intrastate switched access rates outweigh any benefit to the consumer or customer. In addition, the Company requests, for good cause, waiver or suspension of 1) ARSD 20:10:27:12 so that Bandwidth.com CLEC, LLC may mirror its tariffed interstate switched access rates, 2)

ARSD 20:10:27:13, so that Bandwidth.com CLEC, LLC will not be required to calculate billing and collection costs based on telecommunications companies with less than 100,000 access lines; and 3) ARSD 20:10:27:07, so that Bandwidth.com CLEC, LLC is not required to file cost data in support of its switched access service tariff once every three years.

IV. REQUESTS FOR EXEMPTION

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

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

Pursuant to ARSD 20:10:27:06, each carrier's carrier or association shall file a tariff that is designed to recover no more than its intrastate switched access costs as determined by the Commission and developed pursuant to chapters 20:10:28 and 20:10:29, including a Commission-approved return on investment. The evaluation of costs described in the Commission's Administrative Rules involves a cumbersome and complicated process of cost separations and allocation ("fully allocated" cost studies), which historically has been relevant only to rate of return companies that use the Uniform System of Accounts ("USOA"). An integral part of the ratemaking process for these companies also has included a determination of a company-specific rate of return. Bandwidth.com CLEC, LLC does not utilize USOA but instead keeps its books according to Generally Accepted Accounting Principles ("GAAP").

2. Bandwidth.com CLEC, LLC Does Not Have the Managerial or Technical Resources to Conduct Cost Studies

Bandwidth.com CLEC, LLC is a small competitive local exchange company. Unlike rate of return regulated local exchange companies, Bandwidth.com CLEC, LLC does not have entire departments dedicated to the task of preparing fully allocated cost studies on a year-round basis. Consequently, Bandwidth.com CLEC, LLC does not have the

personnel or expertise to prepare the cost studies that are contemplated under chapters 20:10:28 and 20:10:29. Furthermore, as Bandwidth.com CLEC, LLC is not a rate of return regulated company, it has never had any reason to evaluate its costs in the same manner as a rate of return regulated company. Finally, the results of such a cost study would be practically meaningless for a new market entrant that is not regulated on a rate of return basis.

3. The Costs Associated With Developing Company-Specific Cost-Based Intrastate Switched Access Rates Outweigh Potential Benefits to the Consumer or Customer

Requiring companies like Bandwidth.com CLEC, LLC to prepare cost studies would diminish the potential benefits of competition in the telecommunications market by making entry into the market prohibitively expensive.

B. Request for Waiver or Suspension of ARSD 20:10:27:12

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. Bandwidth.com CLEC, LLC respectfully requests a waiver or suspension of ARSD 20:10:27:12 so that it may mirror its tariffed interstate switched access rates, which in turn are capped at Qwest's interstate switched access rates. As the Company's proposed 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.

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

Assuming the Commission's grant of waiver from ARSD 20:10:27:12, Bandwidth.com CLEC, LLC 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.

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

Bandwidth.com CLEC, LLC 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.

WHEREFORE, for the reasons state above, Bandwidth.com CLEC, LLC petitions the Commission for an exemption from developing company-specific cost-based switched access rates and for such other relief as requested herein.

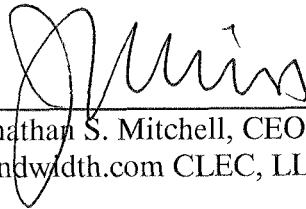
Respectfully submitted this 18th day of March, 2011.

/s/Sharon Thomas
Sharon Thomas
Consultant to Bandwidth.com CLEC, LLC

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VERIFICATION

I, Jonathan S. Mitchell, declare under penalty of perjury, that I am Chief Executive Officer for Bandwidth.com CLEC, LLC, Petitioner in this proceeding; that I am authorized to make this verification on the Petitioner's behalf; that I have read the foregoing petition; and that the facts states therein are true and correct to the best of my knowledge, information and belief.



Jonathan S. Mitchell, CEO
Bandwidth.com CLEC, LLC

Sworn to and subscribed before me this 3rd day of March, 2011.



Lisa Jill Freeman
Notary Public

My Commission expires: 03/28/2015

