

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

IN THE MATTER OF THE ESTABLISHMENT OF SWITCHED ACCESS REVENUE REQUIREMENT FOR MIDSTATE COMMUNICATIONS, INC.)))))	NOTICE OF INTENT TO CONSIDER MOTION AS ONE FOR SUMMARY JUDGMENT; ORDER FOR AND NOTICE OF HEARING; ORDER EXTENDING TIME FOR RESPONSE TC02-067
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On June 19, 2002, Midstate Communications, Inc. (Company) filed for approval by the Public Utilities Commission (Commission) its 2001 Intrastate Switched Access Cost Study.

On June 20, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of July 5, 2002, to interested individuals and entities. On July 5, 2002, the Commission received a Petition to Intervene from S&S Communications (S&S). At its regularly scheduled meeting of July 9, 2002, the Commission granted intervention to S&S.

On July 11, 2003, Company filed a Motion to Dismiss and Motion for Extension of Time to Respond to Second Discovery Request (Motions). On July 24, 2003, S&S filed a Brief in Resistance to Motion to Dismiss and Motion for Extension of Time.

The Commission scheduled the Motions for consideration at its regular meeting on August 4, 2003, and the Commission voted unanimously to serve notice on the parties that S&S's Motion to Dismiss will be considered at the Commission's next regularly scheduled meeting on August 19, 2003, at 1:30 p.m. CDT at the Ramada Inn in Aberdeen, South Dakota, alternatively as a motion for summary judgment or as a motion to dismiss. The Commission further voted unanimously to extend the time for Company's response to S&S's pending discovery requests until after decision on Company's Motion to Dismiss and the further order of the Commission.

After hearing and considering the briefs, arguments and factual representations of the parties at its August 4, 2003 meeting, the Commission finds and concludes that S&S has raised an issue as to whether a genuine issue of material fact exists as to whether S&S presently continues to have an interest in the subject matter of this proceeding that is sufficient under ARSD 20:10:01:15.05 to maintain its standing as an intervening party in the proceeding. The Commission further finds and concludes that the issue of whether a genuine issue of material fact exists should be determined before the Motion to Dismiss is decided. The Commission further finds and concludes that if a genuine issue of material fact as to S&S's present interest in the subject matter of this proceeding is presented, then the Commission should hold a preliminary factual hearing to resolve such issue of fact related to S&S's continuing standing to maintain intervenor party status.

The Commission therefore serves notice, in conformity with *Richards v. Lenz*, 539 N.W.2d 80 (S.D. 1995), that it will hold a hearing on August 19, 2003, at 1:30 p.m., at the Ramada Inn, 2727 6th Avenue S.E., Aberdeen, South Dakota, to consider Company's Motion to Dismiss as a motion for summary judgment under SDCL 1-26-18 and 15-6-56, for purposes of considering the issue of whether a genuine issue of material fact exists as to S&S's current interest in this proceeding. If a genuine issue of material fact is not presented, the Commission will determine the issue of whether S&S currently has a sufficient interest in the proceeding to maintain its status as an intervenor party as a question of law based upon the material facts as to which there is no genuine issue. On or

before August 15, 2003, S&S shall file and serve on the parties hereto any affidavit(s) or other proof it wishes to present to demonstrate that a genuine issue of material fact exists as to its present interest in the outcome of this proceeding. On or before August 18, 2003, Company shall file and serve any opposing affidavit(s) or other proofs.

The Commission further serves notice that if the Commission determines at the August 19, 2003 hearing that a genuine issue of material fact is presented as to S&S's current interest in the proceeding, that the Commission will thereupon at such time and place take evidence from S&S and other parties hereto on the issue of S&S's current interest in this proceeding.

The issue at the hearing will be whether by the outcome of the proceeding S&S will be bound and affected either favorably or adversely with respect to an interest peculiar to S&S as distinguished from an interest common to the public or to the taxpayers in general. The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights may be forfeited if not exercised at the hearing. The Commission will consider all evidence and arguments presented at the hearing. To the extent allowed by law for appeals of interlocutory decisions, the Commission's decision may be appealed by the parties to the circuit court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held at the time and place and in the manner specified above, on the issue set forth above; and it is further

ORDERED, that S&S shall file and serve any affidavit(s) or other proof as to the above issue on or before August 15, 2003, and that Company shall file and serve any opposing affidavit(s) or other proof on or before August 18, 2003; and it is further

ORDERED, that the time for Company to respond to S&S's pending discovery requests is extended until after the Motion to Dismiss is decided and the further order of the Commission.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 8th day of August, 2003.

CERTIFICATE OF SERVICE	
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>Melaine Kolbo</u>
Date:	<u>8/8/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner