

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

**IN THE MATTER OF THE JOINT APPLICATION OF)
THE ORBITCOM, INC., KNOLOGY OF THE)
PLAINS, INC. AND KNOLOGY OF THE BLACK)
HILLS, LLC FOR WAIVER OF ARSD §§)
20:10:29:10, 20:10:29:12 AND 20:10:29:16)**

**ORDER GRANTING
INTERVENTIONS AND
WAIVER/SUSPENSION REQUESTS**

TC12-065

On May 29, 2012, the Public Utilities Commission (Commission) received a joint application from OrbitCom, Inc. (OrbitCom), Knology of the Plains, Inc., and Knology of the Black Hills, LLC, (Applicants) for waiver or suspension of ARSD 20:10:29:10, 20:10:29:12 and 20:10:29:16. Applicants state that these rules govern the establishment of intrastate switched access charges and a waiver/suspension is requested from the provisions in each rule indicating that local exchange carriers should tariff equal rates for originating and terminating traffic. On June 4, 2012, Midcontinent Communications (Midcontinent) filed a Petition to Intervene and to Join in Application of Waiver. On June 7, 2012, the Commission included Midcontinent's request to intervene and join in the application in its weekly notice filing and extended the intervention deadline in this docket to June 18, 2012. On June 13, 2012, AT&T Communications of the Midwest, Inc. filed a petition to intervene. The petition states, "AT&T asks for intervention status to initially seek a determination by the commission if CLECs in South Dakota require the specific waivers being sought in this docket." The petition further states, "In the event the commission determines that a waiver of the requirements found in ARSD 20:10:29 et. seq. is required for CLECs, AT&T in the alternative would ask it be granted a waiver for the reasons stated by OrbitCom, Knology and Midcontinent in their filings." On June 18, 2012, Sprint filed a request that the Commission grant it status as an Intervenor to participate in this matter for the purpose of joining AT&T's request that the Commission determine that no waiver or suspension is needed from ARSD Sections 20:10:29:10; 20:10:29:12, and 20:10:29:16 for a CLEC that caps its rates at the RBOC rate under ARSD 20:10:27:02.01. Alternatively, if the Commission determines that a waiver or suspension is required, Sprint requested intervention for the purpose of requesting a waiver or suspension.

On May 31, June 7, and June 13, 2012, the Commission electronically transmitted notice and amended notices of the filing and an amended intervention deadline of June 18, 2012, to interested individuals and entities.

At a regularly scheduled meeting of June 19, 2012, the Commission heard the arguments of the Applicants, Midcontinent, AT&T, and Sprint. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD 20:10:01:15.05, 20:10:27:02, and ARSD Chapter 20:10:29. The Commission found that the Petitions to Intervene of Midcontinent, AT&T, and Sprint demonstrated good cause to grant intervention and voted unanimously to grant intervention to Midcontinent, AT&T, and Sprint.

The Commission further voted unanimously to waive/suspend, until the Commission otherwise orders, the specific provisions in rules ARSD 20:10:29:10, 20:10:29:12, and 20:10:29:16 that state "[t]he per minute charge is equal for both originating and terminating traffic" for OrbitCom, Knology of the Plains, Inc., Knology of the Black Hills, LLC, Midcontinent, and AT&T. Pursuant to ARSD 20:10:27:02, the Commission finds good cause to waive/suspend these provisions because of the FCC's order regarding intrastate switched access rates.¹ In that order, the FCC mandated reductions in terminating intrastate switched access rates but left issues regarding originating intrastate switched access for further proceedings. The Commission did not address Sprint's request for waiver as the matter was not noticed on the agenda for decision.

At a regularly scheduled meeting of July 3, 2012, the Commission heard the argument of Sprint

¹ See Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket NO.1 0-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11161 (rel. Nov. 18, 2011).

pertaining to its request for a waiver or suspension of the aforementioned rules. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, ARSD 20:10:27:02, and ARSD Chapter 20:10:29. The Commission voted unanimously to waive/suspend, until the Commission otherwise orders, the specific provisions in rules ARSD 20:10:29:10, 20:10:29:12, and 20:10:29:16 that state "[t]he per minute charge is equal for both originating and terminating traffic" for Sprint. It is therefore

ORDERED, that the Petitions to Intervene of Midcontinent, AT&T, and Sprint are hereby granted. It is further

ORDERED, until such time as the Commission otherwise orders, the requests of OrbitCom, Knology of the Plains, Inc, Knology of the Black Hills, LLC, Midcontinent, AT&T, and Sprint for waiver/suspension of the specific provisions in rules ARSD 20:10:29:10, 20:10:29:12, and 20:10:29:16 that state "[t]he per minute charge is equal for both originating and terminating traffic" are hereby granted.

Dated at Pierre, South Dakota, this 9th day of July, 2012.

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, electronically.	
By:	<u>Joy Chung</u>
Date:	<u>7-9-12</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Chris Nelson
CHRIS NELSON, Chairman

Kristie Fiegen
KRISTIE FIEGEN, Vice Chairman

Gary Hanson
GARY HANSON, Commissioner