

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

IN THE MATTER OF THE FILING BY) MIDSTATE TELECOM, INC. FOR APPROVAL) OF ITS ACCESS SERVICE TARIFF NO. 2))))	ORDER APPROVING TARIFF IN PART; ORDER REQUIRING REVISIONS; AND ORDER GRANTING WAIVER TC12-102
---	---

On June 22, 2012, the Public Utilities Commission (Commission) received a filing from Midstate Telecom, Inc. (Midstate) for approval of its Access Service Tariff No. 2. Midstate stated that the purpose of this filing is to implement the Federal Communication Commission's (FCC's) intercarrier compensation reforms as set forth in its *USF/ICC Transformation Order*, released November 18, 2011.¹ As part of its *USF/ICC Transformation Order*, the FCC adopted "bill-and-keep as the default methodology" and "end state" for all intercarrier compensation traffic, including intrastate traffic. The FCC further adopted a defined "transition path" for moving to this end state. The first reduction mandated by the FCC's Order requires a carrier to reduce its intrastate terminating access rate, if above the carrier's interstate access rate, by 50 percent of the differential between the carrier's intrastate rate and the carrier's interstate access rate. The reduced rates are required to be effective by July 3, 2012.² Midstate requests an effective date of July 1, 2012.

On June 28, 2012, the Commission electronically transmitted notice of the filing and the intervention deadline of July 13, 2012, to interested individuals and entities. No parties sought intervention.

On July 10, 2012, Midstate requested a waiver of ARSD 20:10:29:10, 20:10:29:12, and 20:10:29:16 and filed responses to Staff's Data Request 1. On July 13 and 16, 2012, Midstate filed revised tariff pages.

At the Commission's regularly scheduled July 17, 2012, meeting, Midstate requested the docket be deferred. On August 24, 2012, Commission Staff filed a Staff Memorandum. On August 28, 2012, Midstate filed a Response to Staff's Memorandum. At its regularly scheduled August 28, 2012, meeting, the Commission listened to the arguments of Midstate and Staff and deferred action. On September 7, 2012, Midstate filed a Supplemental Filing and an Affidavit of Mark Benton. At its regularly scheduled September 11, 2012, meeting, the Commission listened to the arguments of Midstate and Staff and requested additional briefing. On September 19,

¹ *In the Matter of Connect America Fund et al.*, WC Docket Nos. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. November 18, 2011) (*USF/ICC Transformation Order*).

² *See In the Matter of Connect America Fund et al.*, WC Docket Nos. 10-90, et al., Order, DA 12-870 (rel. June 5, 2012) (allowing effective dates for intrastate filings to be extended from July 1, 2012 to July 3, 2012).

2012, Midstate filed a Second Supplemental Filing. On September 21, 2012, Staff filed its Memorandum in Response to Second Supplemental Filing of Midstate Telecom.

At its regularly scheduled meeting of September 25, 2012, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31 and ARSD chapters 20:10:27 through 20:10:29. In its filing, Midstate continued to use 11.5 cents for its originating access rate and used 11.5 cents as the basis for the calculation of its reduced terminating access rate. Commission Staff recommended not approving the tariff pages as filed by Midstate. Staff's position was that Midstate should be required to file tariff revisions that comply with the Commission's switched access rules by using the Regional Bell Operating Company (RBOC) rate for Midstate's originating rates and using the RBOC rate as the starting point for the calculation of Midstate's transitional terminating rates.³ Although Midstate had sought higher rates than the RBOC rate by filing a cost study pursuant to ARSD 20:10:27:02.02, Commission Staff pointed out that Midstate had withdrawn its cost study prior to the filing of this docket.⁴ Midstate asserted that it correctly determined its interstate terminating access rates in accordance with the *USF/ICC Transformation Order*, including section 51.911. For originating rates, Midstate argued that as a result of its cost study, its originating rates are "sustainable" at the 11.5 cent rate.⁵ At the meeting, Midstate stated that it would be willing to make adjustments to the originating rates, as the Commission would find appropriate, back to the date of the withdrawal of the cost study.

The Commission unanimously voted to approve Midstate's transitional terminating access rates as filed in this docket. With respect to terminating access rates, the Commission first notes that the FCC's basis for the calculation of a carrier's transitional intrastate terminating rate is the carrier's intrastate terminating rate that was in effect on December 29, 2011.⁶ The Commission finds that the rate that was in effect on December 29, 2011 was the rate filed in Midstate's tariff which was the 11.5 cent rate. Thus, the Commission finds that Midstate correctly calculated its transitional intrastate terminating rate as required by the FCC.

With respect to originating access rates, the Commission unanimously voted to require Midstate to refile its tariff with the originating rate corrected to the RBOC rate, effective as of the date the cost study was withdrawn. In this docket, Midstate is requesting approval of a new tariff, Midstate's Access Service Tariff No. 2. The tariff contains an originating rate of 11.5 cents per access minute. The Commission notes that with respect to originating intrastate access rates, an FCC rule provides that for competitive local exchange carriers, such as Midstate, intrastate originating access service "shall remain subject to the same state regulation in effect December 31, 2011, as may be modified by the state thereafter."⁷ The Commission finds that

³ ARSD 20:10:27:02.01 provides that "[a] competitive local exchange carrier shall charge intrastate switched access rates that do not exceed the intrastate switched access rate of the Regional Bell Operating Company operating in the state."

⁴ See *In the Matter of the Filing by Midstate Telecom, Inc. for Approval of its Intrastate Switched Access Tariff and for a Phase-In Period*, Docket TC11-075. Midstate filed to close the cost study docket on May 25, 2012 and the request was granted by order dated June 15, 2012.

⁵ Midstate refiled its cost study on September 10, 2012. *In the Matter of the Petition of Midstate Telecom for Approval of its Cost Based Switched Access Rates and for a Phase-In*, Docket TC12-133.

⁶ See 47 C.F.R. § 51.911(b).

⁷ 47 C.F.R. § 51.911(a)(2).

Midstate's originating rate does not comply with the Commission's switched access rule that requires the rate to not exceed the intrastate access rate of the RBOC. Midstate has failed to show why it was not required to comply with ARSD 20:10:27:02.01.

The Commission also unanimously voted to grant the waiver of rules requiring equal originating and terminating rates. Therefore, until the Commission otherwise orders, the Commission waives 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." Pursuant to ARSD 20:10:27:02, the Commission finds good cause to waive these provisions.

It is therefore

ORDERED, that Midstate's Access Services Tariff No. 2 is approved with the exception of the originating rates which shall be refiled to reflect the RBOC rate. It is further

ORDERED, that until such time as the Commission otherwise orders, the request for waiver 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" is hereby granted.

Dated at Pierre, South Dakota, this 5th day of October, 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>Jay Hanson</u>
Date:	<u>October 5, 2012</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner