

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

IN THE MATTER OF THE PETITION)	TC07-117
OF MIDCONTINENT COMMUNICATIONS)	
FOR APPROVAL OF SWITCHED)	MIDCONTINENT' S
ACCESS RATES)	PETITION FOR
)	RECONSIDERATION

Pursuant to ARSD 20:10:01:29 and 20:10:01:30.01, Midcontinent Communications applies for reconsideration by the Commission and if necessary rehearing of the case, as follows:

1. Midcontinent in good faith expended considerable, time effort and money to produce a cost study which, in the final analysis, translated Midcontinent's GAAP Accounting into a workable proxy for the Commission's switched access rules. The prefiled testimony of Warren R. Fischer stands uncontradicted by staff. Staff did not seriously question the translations which occurred in the Midcontinent study, but complained about not having had enough time to review all allocations of costs which were made under the study. Midcontinent submits that it has been the victim of a cruel Catch 22. It is uncontradicted that QSI and Midcontinent representatives first presented the cost study methodology to Staff informally at a meeting on April 17, 2007. Midcontinent filed its petition, with the cost study, on October 31, 2007. Staff asked clarifying questions by data requests dated December 5, 2007, which were completely answered on February 8, 2008.

2. Mr. Senger testified that Staff only had a few months to review the study. The facts do not support his testimony. The hearing in this matter commenced on August 5, 2008, three days short of six months from the delivery of Midcontinent's response to all questions posed by staff..

3. Midcontinent is willing to recognize that Staff, for whatever reason, was not able to fully review the cost study. This was likely due to the press of other business. However, the calendar does not lie.

4. Midcontinent believes that fundamental fairness dictates that the uncontradicted testimony of Midcontinent's witnesses should be given some consideration by the Commission. It is not as if Midcontinent is trying to pull the wool over anyone's eyes. Midcontinent in good faith is endeavoring to meet the spirit of the cost study aspects of the Commission's rules, notwithstanding that they were adopted before the passage of the 1996 Telecommunications Act.¹

5. Midcontinent is willing to provide staff a further opportunity to review its cost study, and will make every effort to cooperate with Staff. However, fundamental fairness suggests that Midcontinent should at least be given the result of its study, subject to refund at interest, as provided in the Commission's statute. Who is harmed if Midcontinent must refund any portion of the rates collected during staff's review? The record reflects that three CLECs are presently at at least \$0.1150 at the present time. These are all negotiated rates not proven by any cost study. Midcontinent believes that fundamental fairness should at least give it the benefit of its cost study during the period of time that its cost study is being further reviewed by staff.

6. Each telecommunications company is different, and has a different cost structure. There was no evidence in the record from any source which would indicate that the modest increase from Midcontinent's current switched access rates to the rates indicated by the cost study would be translated into cherry picking or any other market-based unfair advantage. The rules provide for a cost based switched access rate. Midcontinent is requesting fair treatment, not an unfair advantage.

7. To be clear, Midcontinent simply asks that it be given its cost study result as an interim rate while Commission Staff takes additional time to check out the cost study. It is submitted that, in reality, this simply comports with fundamental fairness.


WHEREFORE, Midcontinent prays that the Commission reconsider its decision, leaving all aspects of the decision in place but for the fact that Midcontinent be allowed to recover

¹The fact remains, that the Commission has used those rules for CLECs since the passage of the Telecommunications Act, and a review of Commission dockets substantiates this assertion.

its costs through switched access rates that were indicated by its cost study as filed with the Commission.

Dated this 20TH day of January, 2009.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
DAVID A. GERDES
Attorneys for Midcontinent
503 South Pierre Street
P.O. Box 160
Pierre, South Dakota 57501-0160
Telephone: (605)224-8803
Telefax: (605)224-6289
E-mail: dag@magt.com

CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 20TH day of January, 2009, he served electronically a true and correct copy of the foregoing in the above-captioned action to the following at their last known e-mail addresses, to-wit:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
Patty.vangerpen@state.sd.us

Karen Cremer
Staff Attorney
South Dakota Public Utilities Commission
karen.cremer@state.sd.us

Jon Thurber
Staff Analyst
South Dakota Public Utilities Commission
jon.thurber@state.sd.us

Keith Senger
Staff Analyst
South Dakota Public Utilities Commission
keith.senger@state.sd.us



David A. Gerdes