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May 13, 2009

Patricia Van Gerpen, Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

Re: RC Communications, Inc.  
TC 09-

Dear Patty:

Attached for filing please find Motion For Temporary Approval of Switched Access Rates in regards to the above-referenced matter.

Very truly,

RITER, ROGERS, WATTIER  
& NORTHRUP, LLP

BY:

A handwritten signature in cursive script that reads 'Margo D Northrup'.

Margo D. Northrup

MDN/cs

Attachment

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE  
APPLICATION OF RC  
COMMUNICATIONS, INC., FOR  
APPROVAL OF EXTENSION OF  
TIME OF EXEMPTION FROM  
DEVELOPING COMPANY SPECIFIC  
COST-BASED SWITCHED ACCESS  
RATES

DOCKET NUMBER TC09-  
  
MOTION FOR TEMPORARY  
APPROVAL OF SWITCHED  
ACCESS RATES

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COMES NOW RC Communications, Inc. ("RC"), by and through its counsel of record, and hereby submits the following Motion for Temporary Approval of its Switched Access Rate. RC respectfully requests that this Commission grant it authority to utilize the rates identified in its switched access services tariff currently on file with this Commission until such time as the issues in this docket are resolved. Such an Order is requested for the following reasons:

1. On May 12, 2009, RC moved this Commission for an extension of its current exemption from developing company specific cost-based switched access rates as contained in the Order in TC06-001 dated April 25, 2006 (the "Order").<sup>1</sup>

2. The Commission's April 25, 2006 Order approved the terms of a Settlement Stipulation agreed upon by Commission Staff and RC on April 7, 2006. More specifically, that Order approved the intrastate switched access rate to be used by RC in its tariff. Pursuant to the terms of that Settlement Stipulation, RC's tariffed intrastate switched access rate is \$0.1150.

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<sup>1</sup> The Order is specifically titled: "Order Granting Petition for Waiver and Approval of Tariff; Order Granting Joint Motion for Approval of Settlement Stipulation; and Order Approving Access Rate Settlement Stipulation."

3. The terms of the relevant Settlement Stipulation and corresponding exemption expired in April of 2009.

4. Although RC's exemption has expired, an expiration of its exemption does not result in invalidation of RC's current intrastate switched access tariff. The filed rate doctrine prohibits a regulated entity from charging any rate other than that filed with the relevant regulatory authority. Firstcom, Inc. v. Qwest Corp., 555 F. 3d 669, C.A.8 (Minn.) 2009 (citing Ark. La. Gas, 453 U.S. at 577, 101 S.Ct. 2925; H.J. Inc., 954 F.2d at 488; see also Verizon, 377 F.3d at 1087 (“[A]ll of the published cases addressing the filed rate doctrine hold unequivocally that no one may bring a judicial proceeding to enforce any rate other than the rate established by the filed tariff.” (quotation omitted)); Fax Telecomms, Inc. v. AT & T, 138 F.3d 479, 482 (2d Cir. 1998) (“Carriers are prohibited from providing communications services except pursuant to a filed tariff, and may not charge, demand, collect or receive a rate other than the rate listed in the applicable tariff.”). RC is concerned that interexchange carriers or others obligated to pay RC's rates may argue that they need not do so in the absence of an Order from this Commission requiring the same. This would result in significant prejudice and harm to RC.

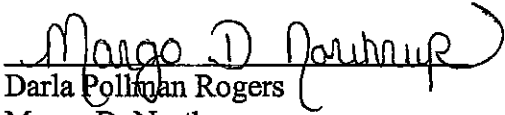
5. Additionally, RM05-002, which has been re-focused for purposes of proposing and implementing rules which specifically address rate development for competitive local exchange carriers (“CLECs”), remains open and no rules have yet been disseminated to the public for review and comment. As set forth in its Request for Extension of Time of Exemption From Developing Company Specific Cost-Based Switched Access Rates,

under these circumstances, RC is not in a position to develop a cost study until a methodology has been adopted by this Commission.

6. Accordingly, for these reasons RC respectfully requests that it be allowed to continue to use that rate contained in its current intrastate switched access tariff until such time as a resolution is reached in this docket or through other Order of this Commission.

Dated this 13 day of May, 2009.

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& NORTHRUP, LLP

  
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