

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

IN THE MATTER OF THE FILING BY)
MIDSTATE TELECOM, INC. FOR AN)
EXTENSION OF AN EXEMPTION FROM)
DEVELOPING COMPANY SPECIFIC COST-)
BASED SWITCHED ACCESS RATES.)

**OBJECTION TO
MIDCONTINENT'S
PETITION TO INTERVENE
TC09-009**

COMES NOW Midstate Telecom, Inc. (Midstate), by and through its counsel of record and, pursuant to A.R.S.D. 20:10:01:15:04, hereby submits the following answer and objection to the late filed Petition to Intervene filed by Midcontinent Communications ("Midcontinent") on April 7, 2009.

BACKGROUND

On March 2, 2009, Midstate filed a Motion seeking an extension of its current exemption from the requirement of developing company specific cost-based switched access rates pursuant to A.R.S.D. 20:10:27:11. Midstate filed this request because its current exemption expired in March of 2009. Because of the anticipated release of proposed rules relating specifically to the development of access costs for competitive local exchange carriers ("CLECs"), Midstate did not believe it would be efficient, from both a time and cost standpoint, to either develop a cost study or renew its request for a long-term extension of its current exemption and rate. Further, after negotiations with Staff, Midstate entered into a Stipulation with Staff resolving this docket on April 14, 2009, subject to the approval of the Commission. This late filed intervention would curtail those efforts.

OBJECTION

A. Midcontinent has not established that it will be adversely affected with respect to its interest pursuant to ARSD 20:10:01:15.05.

On April 7, 2009, Midcontinent filed a late filed Petition to Intervene in the docket involving Midstate's Motion for Extension of Exemption. The relevant rules require that a party seeking intervention establish that it is "specifically deemed by statute to be interested in the matter involved, that [it] is specifically declared by statute to be an interested party to the proceeding, or that by the outcome of the proceeding the petitioner will be found and affected either favorably or adversely with respect to an interest peculiar to the petitioner[.]" A.R.S.D. 20:10:01:15.05. In support of its claim that it is an interested party within the meaning of this rule, Midcontinent argues the following:

Midcontinent is a CLEC which competes across the state with various other CLECs, as well as with the incumbent carriers. Midcontinent has an interest in the outcome of this proceeding because it has a keen interest in robust and fair competition in all the telecommunications exchanges throughout the state. As such, the outcome of this proceeding will have a direct impact upon the business interests of Midcontinent Communications and it therefore has a business interest peculiar to its status as a telecommunications carrier competing against other carriers in the marketplace.

See Petition to Intervene at ¶5.

Under the relevant standard, Midcontinent must do more than merely recite that it is an interested party. However, it has not done so. Midcontinent cites to no statute within which it is deemed an interested party nor does it cite to a specific statute which declares it to be an interested party. Midcontinent further fails to specify how this Commission's ruling on Midstate's request for an exemption will bind Midcontinent or affect it in either an adverse or favorable manner.

Midcontinent has alleged that it competes with Midstate in the Chamberlain exchange. See, Petition to Intervene at ¶1. This is not true. Midcontinent will not be affected adversely because it does not directly compete with Midstate.

Midstate's docket does not change or challenge any obligation that the Commission may have to CLECs or incumbent LECs. To the contrary, Midstate's request for a limited extension of its current exemption is simply a request to maintain the status quo until such time as the proposed rules are released and adopted. The current request for an extension recognizes the current climate at the Commission as it relates to the development of rules to govern CLEC access rates. The request seeks an opportunity for additional time so that Midstate may review and understand those rules so as to determine its future obligations thereunder.

B. Midcontinent's late filed Petition to Intervene would unduly prejudice the rights of Midstate.

As stated, the petition filed by Midcontinent was filed after the Commission established deadline for said petitions. A petition to intervene which is not timely filed with the Commission may only be granted if the intervention will not unduly prejudice the rights of other parties to the proceeding or if denial of the petition is shown to be detrimental to the public interest. ARSD 20:10:01:15.02. Midstate would be unduly prejudiced if Midcontinent's Petition to Intervene is granted because Midstate has entered into a negotiated Stipulation with Staff which would resolve this case subject to approval of the Commission. Midstate would be unduly prejudiced if Midcontinent is allowed to participate at this stage of the proceeding. Midstate negotiated this stipulation based upon the understanding that no party had intervened by the deadline.

C. The proper proceeding for Midcontinent to raise issues is the current rule making docket or its own docket.

In another docket dealing with the intrastate switched access rates of a CLEC, (TC07-117), this Commission determined that there are no Commission rules in effect that provide a cost study methodology for CLECs. Accordingly, on January 14, 2009, the Commission ordered that rule making docket RM05-002 be redirected from a general switched access rulemaking docket to a rulemaking docket focused on CLEC switched access rate-setting policy. The Commission additionally directed Staff to provide a straw man proposed rule for the Commission's consideration within 180 days. The rule making process is currently pending. Any arguments that Midcontinent has with regard to this Commission's treatment of CLECs and other similarly situated carriers are best addressed in Docket RM05-002.

Midstate is further aware that Midcontinent has filed a request to amend its intrastate access tariff, which petition has been pending for some time. Midstate submits that Midcontinent's own docket is the appropriate vehicle in which Midcontinent can litigate issues relating to the development of switched access rates and the policies relating thereto. It is not appropriate for Midcontinent to litigate those same issues within Midstate's docket as it will likely only lead to increased expenditures of time and money on the part of all of the parties.

CONCLUSION

Midcontinent has not satisfactorily shown that the resolution of Midstate's current docket will have a long-term impact on Midcontinent's business interests or the competitive market in South Dakota. Midstate's request for an extension is aimed specifically at addressing the fact situation which currently exists. The extension of the exemption requested is necessarily limited

in scope by the resolution of the current rulemaking docket. Accordingly, for those reasons set forth above, Midstate requests that this Commission deny Midcontinent's Petition to Intervene.

Dated this 20 day of April, 2009.

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CERTIFICATE OF SERVICE

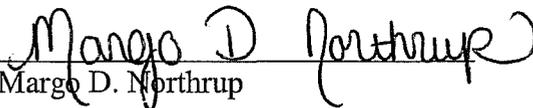
I hereby certify that a true and correct copy of the Objection to Midcontinent's Petition to Intervene was served electronically on the 20th day of April, 2009 addressed to:

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