

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

IN THE MATTER OF THE FILING BY	)	TC09-014
SSTELECOM, INC. FOR AN EXTENSION	)	
OF AN EXEMPTION FROM DEVELOPING	)	<b>MIDCONTINENT'S REPLY TO</b>
COMPANY SPECIFIC COST-BASED	)	<b>SSTELECOM'S OBJECTION</b>
SWITCHED ACCESS RATES	)	<b>TO ITS INTERVENTION</b>

In response to SSTELECOM's objection to the Petition to Intervene of Midcontinent Communications ("Midcontinent"), Midcontinent states as follows:

1. SSTELECOM states that it agrees with Midcontinent's statement in its Petition to Intervene that the Commission "has an obligation to treat CLECs in the same manner so as to ensure fair competition." It then seeks to distinguish its situation from that principle. SSTELECOM casts its request as being ". . . for a limited extension of its current exemption . . . to maintain the status quo until such time as the proposed rules are released and adopted." The Commission's switched access rule docket was opened on December 14, 2005. There is no guarantee that that rulemaking will conclude any time soon. Even if draft rules were issued tomorrow, final drafts are not assured at any "limited" time.

2. During that period of time SSTELECOM will compete with Midcontinent in the Milbank exchange, to quote from Commission Staff's brief in Docket TC07-117 ". . . at a huge competitive advantage over the other CLECs and Qwest . . ." SSTELECOM asserts in its objection that Midcontinent must allege a ground for intervention whereby it ". . . will be found and affected either favorably or adversely with respect to an interest peculiar to [Midcontinent] . . ." ARSD 20:10:01:15.05. In its Petition to Intervene, Midcontinent alleged that it competes in the Milbank exchange with SSTELECOM, where they are both CLECs. It is submitted that placing Midcontinent at the mercy of ". . . a huge competitive advantage . . ." is an interest peculiar to Midcontinent.

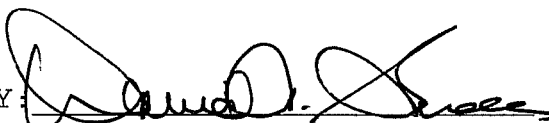
3. SSTELECOM alleges that it is simply preserving a status quo. However, the status quo that SSTELECOM seeks to preserve is an artificially high switched access rate that was arrived at simply by negotiation. The rate is little more than thin air and has nothing to do with actual costs relevant to the establishment of a switched access rate. SSTELECOM argues that it has already received authority for its exemption and switched access rate which somehow justifies a continuation of the rate past its expiration. As stated in the Settlement Stipulation, the stipulated tariff rate schedules ". . . do not in any way represent SSTELECOM's cost of providing service." The rate is simply a negotiated rate. The terms of the Stipulation call for its cessation after three years without any expectation that those rates will continue.

#### CONCLUSION

Midcontinent competes CLEC-to-CLEC with SSTELECOM. Its switched access rate is significantly higher than Midcontinent's rate. Based upon that fact alone, Midcontinent is entitled to intervene. Beyond the foregoing, however, Midcontinent believes that the Commission's responsibility, as agreed upon by SSTELECOM, lies with ensuring that all CLECs are treated in the same manner so as to ensure fair competition.

Dated this 20<sup>th</sup> day of April, 2009.

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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the ~~20<sup>th</sup>~~ day of April, 2009, he filed electronically with the Public Utilities Commission and e-mailed a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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A handwritten signature in black ink, appearing to read "David A. Gerdes", written over a horizontal line.

David A. Gerdes