

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of NORTHERN VALLEY COMMUNICATIONS, L.L.C. for Approval of Extension of an Exemption from Developing Company-Specific Cost-Based Switched Access Rates	TC 09-031 NORTHERN VALLEY COMMUNICATIONS, L.L.C.'S OBJECTION TO MIDCONTINENT'S MOTION TO INTERVENE
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Northern Valley Communications, L.L.C. ("NVC"), 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 Petition to Intervene by Midcontinent Communications ("Midco") filed on June 6, 2009.

BACKGROUND

On May 21, 2009, NVC filed an Application 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. NVC filed this request because its current exemption expired in June of 2009. Because of the anticipated release of proposed rules relating specifically to the development of access costs for competitive local exchange carriers ("CLECs"), NVC 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. For the reasons set forth below, the motion to intervene filed by Midco should be denied.

OBJECTION

A. Midco has not established that it will be adversely affected pursuant to ARSD 20:10:01:15.05.

On June 3, 2009, Midco filed a Petition to Intervene. 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, Midco argues two points: (1) "the commission has an obligation to treat CLECs in the same manner;" and (2) Midco "is a

CLEC that competes across the state with various CLECs" and, therefore, it argues that it "has a keen interest in robust and fair competition in all...exchanges across the state."

Neither of these reasons is sufficient to permit Midco to intervene.

1. Treat all CLECs the same.

Midco cites no authority for this statement. However, there is guidance in the telecommunications field that is contrary to Midco's assertion. The FCC has made a distinction between CLECs that serve an incorporated place of 50,000 population or more and those that do not. This is commonly referred to as the rural CLEC exemption.¹ For CLECs that serve customers in incorporated places of less than 50,000 population, those CLECs, on the interstate side, charge rates equal to the NECA rate, which is substantially higher than the non-rural CLEC interstate rate. Midco serves customers in Sioux Falls and Rapid City and, therefore, does not qualify as a rural CLEC. NVC serves customers in Aberdeen and therefore qualifies as a rural CLEC. For policy reasons fully examined and accepted on the interstate side, this same distinction should be recognized for intrastate switched access rate purposes.

2. Midco competes across the state.

In another docket dealing with the intrastate switched access rates of a CLEC, (TC07-117), this Commission determined there are no Commission rules in effect that provide a cost study methodology for CLECs. Accordingly, on January 14, 2009, the Commission ordered that rulemaking 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 rulemaking process is currently pending. Any arguments Midco has with regard to this Commission's treatment of CLECs and other similarly situated carriers are best addressed in

¹ Section 61.26(a) of the FCC's rules, 47 C.F.R. § 61.26(a), provides as follows:

(6) *Rural CLEC* shall mean a CLEC that does not serve (*i.e.*, terminate traffic to or originate traffic from) any end users located within either:

(i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or
(ii) An urbanized area, as defined by the Census Bureau.

Docket RM05-002. Since Midco claims it will be affected because it is a statewide provider of telecommunications services, it would be more appropriate for it to present its concerns regarding switched access rates in Docket RM05-002.

Furthermore, Midco has filed a request to amend its intrastate access tariff, which petition has been pending for some time. NVC submits that Midco's own docket is the appropriate vehicle in which Midco can litigate issues relating to the development of switched access rates and the policies relating thereto.

Therefore, it is not appropriate for Midco to litigate those same issues within NVC's docket, as it will likely only lead to increased expenditures of time and money on the part of all of the parties.

CONCLUSION

Accordingly, for those reasons set forth above, NVC requests that this Commission deny Midco's Petition to Intervene.

Dated this 19th day of June 2009.

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CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 19th day of June 2009 upon the following:

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