

**BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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Petition of)	
)	
IntelPeer, Inc.)	Docket No. TC 10-015
)	
for Exemption from the Cost Support Requirements)	
for Switched Access Services and Approval of)	
its Proposed Access Services Tariff)	
)	
_____)	

IntelPeer, Inc. (“IntelPeer” or “Petitioner”), by its undersigned counsel, pursuant to ARSD 20:10:27:11 and ARSD 20:10:27:02, hereby petitions the South Dakota Public Utilities Commission (“Commission”) for exemptions or waivers from (1) developing company-specific cost-based switched access rates; (2) use of the formula in ARSD 20:10:27:12, so that IntelPeer may mirror, or cap its tariffed access rates at, the Qwest Corporation (“Qwest”) tariffed access rates for as long IntelPeer is subject to ARSD 20:10:27; (3) calculation of billing and collection costs as set forth in ARSD 20:10:27:13; and (4) the requirement, set forth in ARSD 20:10:27:07, that IntelPeer file cost data in support of its switched access service tariff no less than once every three years.

I. REQUESTS FOR EXEMPTION

A. Request for Exemption from the Requirements of Developing Intrastate Switched Access Rates Based on Company-Specific Costs

Pursuant to ARSD 20:10:27:11, a company seeking an exemption from the requirements of developing intrastate switched access rates based on company-specific costs must show that it lacks the necessary financial, technical, or managerial resources needed to determine company-specific cost-based intrastate switched access rates or that the additional costs associated with

developing company-specific cost-based intrastate switched access rates outweigh any benefit to the consumer or customer. As described below, IntelPeer is able to meet its burden for both.

1. Cost Studies are Applicable to Rate of Return Regulated Companies

Pursuant to ARSD 20:10:27:06, each carrier's carrier or association shall file a tariff that is designed to recover no more than its intrastate switched access costs as determined by the Commission and developed pursuant to chapters 20:10:28 and 20:10:29, including a commission-approved return on investment. The evaluation of costs described in the Commission's Administrative Rules involves a cumbersome and complicated process of cost separations and allocation ("fully allocated" cost studies), which historically has been relevant only to rate of return companies which use the Uniform System of Accounts ("USOA"). An integral part of the ratemaking process for these companies also has included a determination of a company-specific rate of return. IntelPeer does not utilize USOA but instead keeps its books according to Generally Accepted Accounting Principles ("GAAP").

Furthermore, an integral part of the ratemaking process for rate of return companies also has included a determination of a company-specific rate of return. As a competitive carrier, IntelPeer is not subject to a rate of return regulatory scheme. The development of cost studies consistent with Commission formulae would be complex and challenging to apply with accuracy.

2. IntelPeer Does Not Have the Managerial or Technical Resources to Conduct Cost Studies

IntelPeer's underlying network costs are primarily based on the costs of network services provided by underlying carriers. As a result, IntelPeer does not have entire departments dedicated to the task of preparing fully allocated cost studies on a year-round basis. Consequently, IntelPeer does not have the personnel or expertise to prepare the cost studies that

are contemplated under chapters 20:10:28 and 20:10:29. Furthermore, as IntelPeer is not a rate of return regulated company, it has never had any reason to evaluate its costs in the same manner as a rate of return regulated company. The results of such a cost study would be practically meaningless for a new market entrant that is not regulated on a rate of return basis and would be of dubious accuracy for a competitive service provider that is not regulated on a rate of return basis.

The Commission has recognized that preparation of a cost study is costly, labor-intensive and consumes a great deal of resources. For example, in 2008 Qwest filed an application seeking to avoid filing the cost studies required under ARSD 20:10:27:07. Qwest requested the waiver because, it asserted, “(1) producing such a study is costly and consumes a great deal of resources; and (2) Qwest does not intend to raise access rates at this time, although preliminary analysis indicates that a cost study would likely support higher rates than even those from the last study.” The Commission found that these facts constituted good cause and granted Qwest’s waiver request in an order issued on February 27, 2008.¹

Similar requests for waivers of the cost justification requirements were granted to Qwest and South Dakota Network, LLC on essentially the same grounds in 2005.² In addition, OrbitCom, Inc., a CLEC, was granted a waiver of the requirement to prepare cost studies by agreeing to set its intrastate switched access rates at the rates set by Qwest.³

¹ TC08-003, *In the Matter of the Request by Qwest Corporation for a Waiver of a Requirement to file a Switched Access Cost Study*, Order (Feb. 27, 2008).

² TC05-006, *In the Matter of the Request by Qwest Corporation for a Waiver of a Requirement to file a Switched Access Cost Study*, Order (March 17, 2005); TC05-062, *In the Matter of the Request by South Dakota Network, LLC for a Waiver of a Requirement to file a Switched Access Cost Study*, Order (June 30, 2005).

³ TC05-192, *In the Matter of the Filing by OrbitCom, Inc. f/k/a VP Telecom, Inc. for an Extension of an Exemption from Developing Company Specific Cost-Based Switched Access Rates*, Order (Dec. 14, 2005) (granting OrbitCom a waiver for so long as OrbitCom’s intrastate switched access rate is equal to or less than that of Qwest’s intrastate switched access rate or until the Commission orders otherwise).

Like OrbitCom, IntelPeer seeks to avoid preparing and filing a cost study to support its proposed switched access rates because preparation of such a study would be costly and consume a great deal of resources. Moreover, all such effort would be unnecessary because IntelPeer agrees to set its intrastate switched access rates at the same level as Qwest's rates.

3. The Costs Associated With Developing Company-Specific Cost-Based Intrastate Switched Access Rates Outweigh Potential Benefits to the Consumer or Customer

Requiring companies like IntelPeer to prepare cost studies would diminish the potential benefits of competition in the telecommunications market by making entry into the access services market prohibitively expensive. And, added costs associated with building expertise in-house to perform such costs studies or outsourcing the function could compel the company to increase its rates, thus undermining its attractiveness to prospective South Dakota subscribers.

B. Request for Waiver or Suspension of ARSD 20:10:27:12 Cost Formulae.

ARSD 20:10:27:12 specifies that the intrastate switched access rates and the calculation thereof for a telecommunications company that is granted its petition for exemption pursuant to ARSD 20:10:27:11 are based on a formula utilizing the costs and number of access lines of the telecommunications companies with less than 100,000 access lines that determine switched access costs pursuant to chapters 20:10:28 and 20:10:29. IntelPeer respectfully requests a waiver or suspension of ARSD 20:10:27:12 so that it may mirror, or cap its rates at, the Qwest tariffed access rates. As Qwest's switched access rates are lower than those charged by the companies identified in ARSD 20: 10:27: 12, good cause is shown for the Commission's grant of a waiver of this rule.

C. Request for Waiver or Suspension of the Billing and Collection Requirements of ARSD 20:10:27: 13

Should the Commission exempt IntelPeer from ARSD 20:10:27:12 as requested, IntelPeer requests a waiver from the requirement that it determine billing and collection costs based on the average of such costs for all telecommunications companies with less than 100,000 access lines. The Commission should grant this waiver for the same reasons that the Commission should grant the waivers requested above.

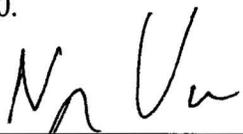
D. Request for Waiver or Suspension of ARSD 20:10:27:07

IntelPeer respectfully requests a waiver or suspension of the requirement that it file cost studies in support of its access tariff no less than once every three years. In support, IntelPeer reiterates its commitment to mirror, or cap its rates at, Qwest's South Dakota switched access rates.

WHEREFORE, for the reasons state above, IntelPeer petitions the Commission for an exemption from developing company-specific cost-based switched access rates, for exemption of the three-year filing requirement in ARSD 20:10:27:07 and for such other relief as requested herein.

Respectfully submitted this 13 day of May, 2010.

By:



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