

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

IN THE MATTER OF THE PETITION OF ) MIDSTATE TELECOM FOR APPROVAL OF ) ITS COST BASED SWITCHED ACCESS ) RATES AND FOR A PHASE-IN )	) STAFF'S MEMORANDUM IN ) SUPPORT OF ITS MOTION ) TO DISMISS OR, IN THE ) ALTERNATIVE, ISSUE AN ) ORDER TO COMPLY
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TC12-133

**I. INTRODUCTION**

Commission Staff (staff), by and through its counsel, submits this memorandum in support of its motion to dismiss pursuant to ARSD 20:10:01:02.04 requesting the South Dakota Public Utilities Commission (Commission) to dismiss the Petition for Approval of Switched Access Rates and for a Phase-In filed by Midstate Telecom, Inc. (Midstate) in the above-captioned matter. The basis for staff's motion is that Midstate has failed to file a proper cost study pursuant to Commission rules. In the alternative, staff would request that the Commission order Midstate to file a cost study utilizing a historical test year in compliance with ARSD 20:10:27:14.

**II. BACKGROUND**

On September 10, 2012, Midstate filed a Petition for Approval of Switched Access Rates and for a Phase-In and Confidential Attachment A. On September 28, 2012, a Petition for Intervention by AT&T Communications of the Midwest, Inc. was filed.

**III. ARGUMENT**

Staff recommends the Commission dismiss Midstate's Petition for Approval of Switched Access Rates and for a Phase-In on the basis that Midstate has failed to file a cost study that reflects a historical test year as required by ARSD 20:10:27:14. The cost study filed by Midstate is outdated for purposes of establishing a switched access rate that is fair and reasonable.

It is quite clear that South Dakota statutes provide the Commission substantial and broad authority to regulate telecommunications throughout South Dakota. See SDCL 49-31-3 and *Cheyenne River Sioux Tribe Telephone Authority v. Public Utilities Commission of South Dakota*, 595 N.W.2d 604 (S.D. 1999). As a part of its authority to regulate the

business of providing telecommunication service, the Commission may promulgate rules. See SDCL 49-31-5.

ARSD Chapters 20:10:27 to 20:10:29 set forth the cost accounting and allocation rules to be used in determining a telecommunications company's switched access charges. ARSD 20:10:27:14, set forth below, requires the use of a test period consisting of 12 months of actual experience ending no earlier than 6 months before the date of filing for a change in switched access rates. Here Midstate filed its cost study on September 10, 2012. According to the rule and the date of the application, the cost study should reflect a 12-month test period ending no earlier than March 10, 2012. The cost study filed by Midstate consists of a test period ending December 31, 2010, far outside the parameters of the Commission's rule.

The purpose of the rule is simple. The test year should reflect the conditions the utility will face when the rates being established will be in effect. A 2010 test year is almost two years old, making the test year too stale to make it a reasonable basis upon which to establish rates for a future period. There have been many changes since the end of 2010 that makes the 2010 investments, costs, and revenues non-representative of conditions in 2013 and beyond.

Midstate is requesting that adjustments be made to the 2010 test year rather than using a more recent test year. ARSD 20:10:27:14 requires that adjustments become effective within 12 months of the last month of the test period. If the Commission were to allow a 2010 calendar test year as Midstate proposed, the only adjustments that could be allowed by rule would be known and measurable changes that occurred in 2011. No known and measurable changes that have occurred to date in 2012 would be allowed by rule. The investments, costs, and revenues included in the test year would not be reflective of current operations as almost another year of known and measurable changes have occurred since the end of 2011.

Finally it is not appropriate to make numerous adjustments to the 2010 test year when many adjustments would not be necessary if Midstate filed a more recent historic test year. The enormity of the task of maintaining the fundamental ratemaking principle of matching through numerous adjustments when compared to simply using a different test year is truly unduly burdensome.

**20:10:27:14. Historical test year.** The commission shall adopt a recent test year for which actual costs have been recorded and, if required, adjust the actual costs to reflect changes that are known and measurable. No adjustments are permitted unless they are based on changes in facilities, operations, or costs which are known with reasonable certainty and measurable with reasonable accuracy at the time of the filing. Such adjustments must become effective within 12 months of the last month of the test period. Expected changes in revenue must also be shown for the same period. Includable costs are limited to those which are necessary for the provision of service at the test year level. The test period shall consist of 12 months of actual experience ending no earlier than 6 months before the date of filing initial switched access rates or for a change in switched access rates. Test year costs shall be allocated to intrastate switched access service pursuant to chapters 20:10:27 to 20:10:29, inclusive.

A carrier's carrier may request and the commission may grant an extension of the six month filing period.

The use of such an old cost study will not result in rates that are fair and reasonable. Nor is it appropriate for Midstate to attempt to update the test year numbers, as the accurate matching of costs and revenues would be infeasible and would not result in fair and reasonable rates. There is likely to be an inclusion of costs without matching revenues producing excessive rates, or an inclusion of revenues without matching costs producing too low of rates.

#### IV. CONCLUSION

The Commission should dismiss the Petition for Approval of Switched Access Rates and for a Phase-In filed by Midstate Telecom, Inc. for failure to file in compliance with the Commission's rules regarding a historic test year. In the alternative, staff would request that the Commission order Midstate to file a cost study utilizing a historical test year in compliance with ARSD 20:10:27:14.

Dated this 24<sup>th</sup> day of October, 2012.

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