

**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 MOTION TO DISMISS OR, IN THE ALTERNATIVE, ISSUE AN ORDER TO COMPLY TC12-133
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Commission Staff (staff), by and through its counsel, submits the following 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 comply with the Commission's rule pertaining to the filing of a historical 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.

Midstate seeks approval of its switched access rate in accordance with the submitted cost study. Pursuant to ARSD 20:10:27:14, Midstate must file a cost study using a historical test year. The test period must consist of 12 months of actual experience ending no earlier than 6 months before the date of filing for a change in switched access rates. 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. Staff's Memorandum in Support of Its Motion to Dismiss or, in the alternative, Issue an Order to Comply, is filed contemporaneously herewith.

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 Commission rules or, in the alternative, Issue an Order to Comply.

Dated this 24th day of October, 2012.

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