

Hearing Brief on October 1, 2008, Staff filed its Post-Hearing Brief on October 31, 2008 and Midcontinent filed its Post-Hearing Reply Brief on November 17, 2008.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, particularly SDCL 49-31-12.2, 49-31-12.4 and 49-31-19, and ARSD Chapters 20:10:27 through 20:10:29, particularly ARSD 20:10:27:02, 20:10:27:07, 20:10:27:11 and 20:10:27:12.

At its ad hoc meeting of December 16, 2008, the Commission considered this matter. The Commission took the following actions:

1. Finding that Midcontinent had produced a cost model and study and had not met its burden of proving that it lacks the financial, technical or managerial resources needed to determine company-specific cost-based rates or that the additional costs of developing company specific cost-based rates outweigh any benefit thereof to the consumer or customer, the Commission voted unanimously to deny Midcontinent's request for an exemption from developing company specific cost-based switched access rates pursuant to ARSD 20:10:27:11.

2. Chairman Johnson moved to allow, as interim rates, the switched access rates requested by Midcontinent as supported by its cost study, subject to refund with interest in the event that the final rates approved by the Commission are lower than the interim rates, and to waive ARSD 20:10:27:04 and 20:10:27:10. The motion failed 1-2 with Commissioners Kolbeck and Hanson voting "no." As a result of the Commission's action in denying Midcontinent's proposed rates as interim rates, Midcontinent's current rates will remain in effect pending further action by Midcontinent or the Commission.

3. Finding that Midcontinent's filing of its cost study as an exhibit to pre-filed testimony and its Motion to Amend Petition only a short period prior to the hearing had not afforded Staff sufficient opportunity to perform a customarily thorough analysis of the study prior to the hearing, the Commission voted unanimously to require Midcontinent to file its cost study-based proposed rates as a formal rate tariff filing, attendant with the Commission's statutory filing fee and rate suspension powers, and to direct Staff to perform, as expeditiously as possible, a customarily thorough evaluation of Midcontinent's cost study.

4. The Commission voted unanimously to redirect Docket RM05-002 from a general switched access docket to focus more specifically on a CLEC switched access rate-setting policy and directed Staff to provide a straw man proposal for the Commission's consideration within 180 days after the date of this Order.

It is therefore

ORDERED, that Midcontinent's request for an exemption from developing company specific cost-based switched access rates is denied. It is further

ORDERED, that Midcontinent shall be required to file its cost study-based proposed rates as a formal rate tariff filing, attendant with the Commission's statutory filing fee and rate suspension powers, and that Staff is directed to perform, as expeditiously as possible, a customarily thorough evaluation of Midcontinent's cost study. It is further

ORDERED, that Docket RM05-002 shall be redirected from a general switched access rulemaking docket to a rulemaking docket focused more specifically on a CLEC switched access rate-setting policy and that Staff shall provide a straw man proposal for the Commission's consideration within 180 days of this Order.

Dated at Pierre, South Dakota, this 14th day of January, 2009.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.</p> <p>By: <u><i>Mildred Kolbo</i></u></p> <p>Date: <u><i>1/14/09</i></u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman
Dissenting in part as to the interim rate decision

Steve Kolbeck
STEVE KOLBECK, Commissioner

Gary Hanson
GARY HANSON, Commissioner