

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

IN THE MATTER OF THE PETITION OF)	ORDER OPENING NEW
MIDCONTINENT COMMUNICATIONS FOR)	DOCKET
APPROVAL OF SWITCHED ACCESS RATES)	TC07-117

On October 31, 2007, Midcontinent Communications (Midcontinent) filed with the Public Utilities Commission (Commission) a petition (Petition) requesting (i) an exemption, pursuant to ARSD 20:10:27:11, from the requirement of ARSD 20:10:27:07 to file a company-specific cost study in support of its switched access rates, (ii) approval of switched access rates that mirror rates of similarly situated CLECs and (iii) approval of the switched access tariff sheets submitted with the petition incorporating the rates approved by the Commission.

On November 1, 2007, the Commission electronically transmitted notice of the filing and the intervention deadline of November 16, 2007, to interested individuals and entities. No petitions to intervene or comments were filed.

On July 14, 2008, the Commission received a Motion to Amend Petition from Midcontinent. In its Motion Midcontinent stated:

Midcontinent devised a cost study model designed to convert its GAAP accounting inputs to those which would effectively meet the Commission's existing cost model. Midcontinent believes this cost model is the functional equivalent of the Commission's cost model and can be adopted and approved by the Commission to permit Midcontinent to file its cost study and establish company-specific costs to determine switched access rates. Midcontinent requests that the Commission approve Midcontinent's cost study, waive relevant sections of ARSD Chapters 20:10:27, 20:10:28 and 20:10:29, and approve the switched access rates indicated by the study.

Midcontinent's Motion requested amending the Petition to include alternative relief of either: (i) exemption from developing company-specific cost-based rates pursuant to ARSD 20:10:27:11 and approval of the state-wide average small LEC rate (LECA Plus rate) pursuant to ARSD 20:10:27:12; or (ii) acceptance of its cost study and the rates indicated by it, with waivers as necessary pursuant to ARSD 20:10:27:02 to permit the use and acceptance of its model and cost study. At its regularly scheduled meeting of July 29, 2008, the Commission considered the Motion to Amend Petition. Commission Staff recommended granting approval. The Commission unanimously voted to grant the Motion to Amend Petition.

By order dated July 16, 2008, a hearing in this matter was scheduled for August 5, 2008, with marking of exhibits to begin at 8:30 a.m. and the hearing to begin at 9:00 a.m., in the Visitors Center, 650 East Capitol, Pierre, South Dakota. The hearing was held as scheduled. In conformity with a briefing schedule agreed to by Midcontinent and Staff, Midcontinent filed its Initial Post-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.

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.

On January 20, 2009, the Commission received Midcontinent's Petition for Reconsideration. On February 9, 2007, the Commission received Staff's Response to Midcontinent's Petition for Reconsideration. At its regularly scheduled meeting of February 24, 2009, the Commission voted to deny the Petition for Reconsideration (Dustin M. Johnson, dissenting).

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 regularly scheduled meeting of March 10, 2009, the Commission considered opening a new docket for the filing of Midcontinent's cost study. Commission Staff recommended opening a new docket for Midcontinent's cost study. Midcontinent stated that it had no objections to opening a new docket. However, Midcontinent asked that the new docket not be opened until two weeks after the Commission's draft of proposed CLEC switched access rule revisions are released to the public so the rules can be reviewed prior to the opening of the docket. The Commission also considered assessing Midcontinent a filing fee and suspending the operation of the tariff for 120 days beyond the proposed effective date of the rate. The Commission voted unanimously to open a new docket for Midcontinent's cost study two weeks after the public release of the CLEC switched access rules, and at that time assess Midcontinent a \$1,000 filing fee and suspend the operation of its tariff for 120 days. It is therefore

ORDERED, that the Commission shall open a new docket for Midcontinent's cost study two weeks after the public release of the Commission's draft proposed CLEC switched access rule revisions, and at that time shall assess Midcontinent a \$1,000 filing fee and suspend the operation of its tariff for 120 days.

Dated at Pierre, South Dakota, this 18th day of March, 2009.

CERTIFICATE OF SERVICE	
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.	
By:	<u>Helaine Kolbo</u>
Date:	<u>3/18/09</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman

Steve Kolbeck
STEVE KOLBECK, Commissioner

Gary Manson
GARY MANSON, Commissioner