

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

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| IN THE MATTER OF THE PETITION OF) | ORDER GRANTING WAIVER; |
| MIDSTATE TELECOM FOR APPROVAL OF) | ORDER SUSPENDING |
| ITS COST BASED SWITCHED ACCESS) | TARIFF |
| RATES AND FOR A PHASE-IN) | |
|) | TC12-133 |

On September 10, 2012, the Public Utilities Commission (Commission) received a petition from Midstate Telecom, Inc. (Midstate) for approval of its new intrastate switched access rates. Pursuant to ARSD 20:10:27:02.02, Midstate requested the Commission approve a higher rate than allowed under ARSD 20:10:27:02.01 and filed a cost study in support of the higher rate. Midstate also requested a phase-in period "in which to implement the switched access rate established in ARSD 20:10:27:02.01 until six months from the date of this filing, or until Midstate Telecom's switched access rate developed pursuant to the cost study filed herewith is approve [sic] by the Commission, whichever occurs first. During the phase-in period, Midstate Telecom requests that it be allowed to continue to charge the switched access rate of 11.5 cents per minute."

On September 13, 2012, the Commission electronically transmitted notice of the filing to all interested parties and entities with an intervention deadline of September 28, 2012. On September 28, 2012, AT&T Communications of the Midwest, Inc. (AT&T) filed a Petition for Intervention. At its October 23, 2012, meeting, the Commission granted intervention to AT&T, assessed Midstate a \$1,000 filing fee, subject to additional amounts as requested by the Executive Director up to the statutory limit of \$100,000, and granted the Executive Director authority to enter into necessary consulting contracts.

On October 24, 2012, Commission Staff filed a Motion to Dismiss or in the Alternative, Issue an Order to Comply. The motion requested dismissal because Midstate's cost study was based on a test period ending December 31, 2010 and ARSD 20:10:27:14 requires a test period consisting of 12 months ending no earlier than 6 months before the date for a change in switched access rates, unless a waiver is granted. On November 15, 2012, Midstate filed its Response to Motion to Dismiss and Request for a Waiver of ARSD 20:10:27:14. Midstate requested a waiver of the rule in order to allow it to use the cost study filed in this docket. Midstate also filed revised tariff pages.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-1A, and 49-31 and ARSD Chapters 20:10:01, and 20:10:27 through 20:10:29, inclusive.

At its regularly scheduled meeting of November 20, 2012, the Commission considered this matter. After listening to the arguments of Midstate and Staff, the Commission deferred action. On December 3, 2012, Staff filed a letter requesting suspension of the operation of Midstate's proposed tariff pages for an initial period of one hundred twenty days pursuant to SDCL 49-31-12.4(2). It was Midstate's position that the revised tariff pages filed November 15, 2012, would go into effect December 15, 2012.

At its regularly scheduled meeting of December 4, 2012, the Commission considered these matters. The Commission voted to grant Midstate's request for a waiver of the six month requirement in ARSD 20:10:27:14 (Commissioner Hanson, dissenting.) The Commission finds that based on the unique circumstances of this case, including the issuance of the FCC's order regarding intrastate switched access rates,¹ that a waiver should be allowed. The Commission unanimously voted to suspend the operation of Midstate's proposed tariff for an initial period of one hundred twenty days from December 15, 2012.

It is therefore

ORDERED, that Midstate's request for a waiver of ARSD 20:10:27:14 is hereby granted. It is further

ORDERED, that Midstate's proposed tariff is suspended for an initial period of one hundred twenty days from December 15, 2012.

Dated at Pierre, South Dakota, this 13th day of December, 2012.

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: Tina Douglas

Date: 12-13-12

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson
GARY HANSON, Commissioner
(dissenting on granting of waiver)

¹ *In the Matter of Connect America Fund et al.*, WC Docket Nos. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. November 18, 2011).