

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

IN THE MATTER OF THE APPLICATION) TC08-105
OF MIDCONTINENT COMMUNICATIONS)
TO PROVIDE LOCAL EXCHANGE SERVICE) **MIDCONTINENT'S**
IN A RURAL SERVICE AREA) **MOTION TO COMPEL**
) **DISCOVERY**

COMES NOW Midcontinent Communications ("Midcontinent"),
Petitioner herein, and moves the Commission to compel the
incumbent carrier, Alliance Communications, to respond to
Midcontinent's outstanding discovery requests which were served
upon Alliance on September 23, 2008, as follows:

1. Alliance responded to Midcontinent's discovery requests on
October 16, 2008, by objecting to all interrogatories on the
basis that this Commission must first determine that Alliance is
not entitled to assert the rural exemption contained in 47
U.S.C. § 251(f)(1) before Alliance should be required to respond
to the discovery requests. Attached to this motion as Exhibit A
is Alliance's response which contains a full copy of the
questions posed and Alliance's objections. Midcontinent believes
that Alliance has missed the point completely. A cursory review
of Midcontinent's discovery requests shows that each and every
request is relevant to the question of whether Alliance has in
fact waived the protections of the rural exemption by offering
video programming services. Such a waiver is provided as a
matter of law in the Telecommunications Act at
47 U.S.C. § 251(f)(1)(C), which provides:

The exemption provided by this paragraph shall not
apply with respect to a request under subsection (c)
of this section, from a cable operator providing video
programming, and seeking to provide any
telecommunications service, in the area in which the
rural telephone company provides video programming.

Moreover, Alliance's position runs contrary to the rule
established in In re GCC License Corporation, 2001 SD 32, 623

N.W.2d 474. In that case the Commission ruled that to obtain an ETC declaration GCC must actually be offering or providing services supported by federal universal support mechanisms throughout the service area before being so designated. In affirming the trial court's reversal, the Supreme Court ruled that the required showing under the Act was only that the applicant is capable of offering or providing the required services. Similarly, in this case, the required showing is not that the incumbent carrier is actually providing the service, but that it is capable of doing so or that capability and the intent to do so is imminent. The discovery requests target facts relevant to this issue.

2. Ample evidence exists to show that Alliance is well on its way to providing video programming in the Crooks and Baltic exchanges. Some of that evidence is as follows:

- a. Attached as Exhibit B is a copy of an article from the April 20, 2008, Garretson Weekly newspaper. The story recounts the proposition that fiber to the home is underway in various communities in the Alliance Communications service area. It indicates that in 2008 fiber is expected to be installed in the ground in the Crooks and Baltic exchanges. Quotations in the story indicate that customers with fiber installed to their homes have video services available to them.
- b. Attached as Exhibit C is a screen print from the Alliance website which lists, among other things, cable TV as being available to Alliance customers. It also has the notation "not available in all areas," but that may or may not involve Crooks and Baltic. The purpose of Midcontinent's discovery requests is to clarify questions such as this. Given the fact that Alliance is clearly in the process of delivering fiber to the home for all customers, the company's build-out plans are relevant to the inquiry in this docket.
- c. Attached as Exhibit D is a copy of another screen print from the Alliance website on September 25, 2008. It indicates that progress of Alliance's build-out and indicates that the following exchanges have cable: Brandon, Carthage, Garretson, Hills, MN, Howard,

Hudson, Inwood, IA, Larchwood, IA, Oldham, Ramona and Valley Springs. Given this number of exchanges which are already served, it is submitted that the progress of Alliance's build-out, as well as its equipment, is relevant now to Midcontinent's application.

- d. Attached as Exhibit E is an affidavit of Mary Lohnes outlining the time necessary for Midcontinent to implement service once an amended certificate of authority is received by the company.

WHEREFORE Midcontinent prays that the Commission order Alliance to answer the pending discovery requests within two weeks of the Commission's decision in this matter.

Dated this 8th day of December, 2008.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
DAVID A. GERDES

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Pierre, South Dakota 57501-0160
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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 8th day of December, 2008, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at his last known address, to-wit:

Alliance Communications Cooperative, Inc.
Attention: Don Snyder, General Manager
P.O. Box 349
Garretson, South Dakota 57030

and by e-mail to:

PATRICIA VAN GERPEN
EXECUTIVE DIRECTOR
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
patty.vangerpen@state.sd.us

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David A. Gerdes

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

**IN THE MATTER OF THE
APPLICATION OF MIDCONTINENT
COMMUNICATIONS TO PROVIDE
LOCAL EXCAHNGE SERVICE IN A
RURAL SERVICE AREA**

DOCKET No. TC 08-105

**ALLIANCE COMMUNICATIONS
COOPERATIVE'S ANSWERS TO
MIDCONTINENT'S
INTERROGATORIES AND REQUEST
FOR PRODUCTION TO ALLIANCE**

GENERAL OBJECTIONS

Alliance Communications Cooperative ("Alliance") generally objects to the Interrogatories and Request for Production set forth by Midcontinent Communications (the "Discovery") as follows:

1. To the extent that the Rules of Civil Procedure do not require a response to the Discovery prior to the expiration of 30 days from their service upon Alliance.
2. To the extent that the Discovery has been served prematurely and Alliance has no obligation to respond to the same until such time as it has been affirmatively determined by the South Dakota Public Utilities Commission that Alliance is not entitled to assert the rural exemption as contained in 47 U.S.C. § 251(f)(1) and A.R.S.D. 20:10:32:37 and that Midcontinent Communications has made a bona fide request for interconnection.
3. To the extent that the Discovery is not relevant to any unresolved issue or subject matter raised in this proceeding.
4. To the extent that the Discovery is not reasonably calculated to lead to the discovery of any relevant admissible evidence.
5. To the extent that the Discovery is vague and ambiguous.

6. To the extent that Midcontinent Communications seeks to impose a burden upon Alliance to secure documents or information in the possession, custody or control of persons or entities other than Midcontinent Communications for the reason that any such request is overly broad, beyond the scope of discovery, and is unduly burdensome or protected by the attorney

7. The responses contained herein are made solely for the purposes of these proceedings. Each response provided is subject to all objections as to competence, relevance, materiality, propriety, admissibility, and any and all other objections on grounds to which the same statement would be subject if delivered by way of live testimony in court. All such objections and the right to assert the same at hearing are expressly reserved by Alliance, and may be interposed at the time of hearing or in conjunction with other uses of the responses.

8. The foregoing objections are hereinafter referred to as the "General Objections."

ANSWERS TO INTERROGATORIES

1. Attached as Exhibit A is a printout of an article from the Garretson Weekly entitled "Fiber to Home Project Underway." State whether the article correctly describes that which transpired at the meeting. If you disagree, identify your disagreement and state your recollection of what occurred.

OBJECTION: Alliance objects to this Interrogatory to the extent that this Discovery has been served prematurely and Alliance has no obligation to respond to the same until such time as it has been affirmatively determined by the South Dakota Public Utilities Commission that Alliance is not entitled to assert the rural exemption as contained in 47 U.S.C.

§ 251(f)(1). Alliance further objects to this Interrogatory to the extent that it seeks confidential and proprietary information which is neither relevant nor reasonably calculated to lead to the discovery of admissible and/or relevant evidence in this proceeding.

2. Is a fiber to the home project underway in various communities in the Alliance Communications Service area? Please state those areas that are completed and the anticipated build-out of any other areas.

OBJECTION: Alliance objects to this Interrogatory to the extent that this Discovery has been served prematurely and Alliance has no obligation to respond to the same until such time as it has been affirmatively determined by the South Dakota Public Utilities Commission that Alliance is not entitled to assert the rural exemption as contained in 47 U.S.C.

§ 251(f)(1). Alliance further objects to this Interrogatory to the extent that it seeks confidential and proprietary information which is neither relevant nor reasonably calculated to lead to the discovery of admissible and/or relevant evidence in this proceeding.

3. As to the fiber optic cable which has been installed or is in the process of being installed state:

- a. The name and address of the manufacturer;
- b. The product identification of the cable, whether by model number or other identifying characteristic; and
- c. The capacity of the cable.

OBJECTION: Alliance objects to this Interrogatory to the extent that this Discovery has been served prematurely and Alliance has no obligation to respond to the same until such time as it has been affirmatively determined by the South Dakota Public Utilities Commission that Alliance is not entitled to assert the rural exemption as contained in 47 U.S.C.

§ 251(f)(1). Alliance further objects to this Interrogatory to the extent that it seeks confidential and proprietary information which is neither relevant nor reasonably calculated to lead to the discovery of admissible and/or relevant evidence in this proceeding.

4. Is that cable identified in the preceding paragraph capable of being used for the provision of video programming? If so, identify:

- a. All internal business plans maintained by Alliance for the build-out and implementation of video programming; and
- b. All representations which have been made to one or more of Alliance's customers concerning build-out and provision of video programming.

OBJECTION: Alliance objects to this Interrogatory to the extent that this Discovery has been served prematurely and Alliance has no obligation to respond to the same until such time as

it has been affirmatively determined by the South Dakota Public Utilities Commission that Alliance is not entitled to assert the rural exemption as contained in 47 U.S.C.

§ 251(f)(1). Alliance further objects to this Interrogatory to the extent that it seeks confidential and proprietary information which is neither relevant nor reasonably calculated to lead to the discovery of admissible and/or relevant evidence in this proceeding.

5. Does Alliance have on order any equipment capable of being used for the provision of video programming? If so, identify the equipment, expected delivery date and expected in-service date.

OBJECTION: Alliance objects to this Interrogatory to the extent that this Discovery has been served prematurely and Alliance has no obligation to respond to the same until such time as it has been affirmatively determined by the South Dakota Public Utilities Commission that Alliance is not entitled to assert the rural exemption as contained in 47 U.S.C.

§ 251(f)(1). Alliance further objects to this Interrogatory to the extent that it seeks confidential and proprietary information which is neither relevant nor reasonably calculated to lead to the discovery of admissible and/or relevant evidence in this proceeding.

RESPONSES TO REQUEST FOR PRODUCTION

You are requested to answer the following request for production no [sic] later than October 15, 2008, and in the manner specified by SDRCP 34.

1. Please produce copies of all documents consulted in answering the foregoing interrogatories and copies of all documents representing transactions relevant to the foregoing interrogatories.

OBJECTION: Alliance objects to this Request for Production to the extent that this Discovery has been served prematurely and Alliance has no obligation to respond to the same until such time as it has been affirmatively determined by the South Dakota Public Utilities Commission that Alliance is not entitled to assert the rural exemption as contained in 47 U.S.C.

§ 251(f)(1). Alliance further objects to this Request for Production to the extent that it seeks confidential and proprietary information which is neither relevant nor reasonably calculated to lead to the discovery of admissible and/or relevant evidence in this proceeding.

Dated this 16th day of October, 2008.

CUTLER & DONAHOE, LLP
Attorneys at Law

A handwritten signature in cursive script, reading "Meredith A. Moore", is written over a horizontal line.

Ryan J. Taylor
Meredith A. Moore
Cutler & Donahoe, LLP
100 N. Phillips Ave., Ste. 901
Sioux Falls, SD 57104
Attorneys for the Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 16th day of October, 2008, upon the following:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
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One of the Attorneys for the Petitioner

Garretson Weekly: Fiber to home project underway

April 30, 2008 6:00AM

By Alan Van Ormer
Weekly editor

The fiber to the home project is underway in various communities in the Alliance Communications service area, General Manager Don Snyders told customers at the annual meeting in the Performing Arts Center at Brandon Valley High School on Saturday. Currently, 95 percent of the customers in the Brandon, Valley Springs and Garretson exchanges have fiber installed in the ground leading up to their homes. This year, fiber is expected to be installed in the ground for Baltic, Crooks and rural Brandon exchange customers. In 2009, Alliance Communications plans on having five more service areas connected. Dean and Joan Engebretson, of Garretson, have fiber installed up to their home, but are not hooked up at this point. ♦ Once it gets hooked up it will be great, ♦ said Dean Engebretson. ♦ It would allow more channels. Our reception is good now, but this is supposed to make it better. ♦ Jon Gustafson, of Brandon, who is hooked up to the system, said it has boosted internet speed and has provided a better signal. ♦ We have a family of web surfers, ♦ he said. ♦ The bandwidth is handling it when as many as three are on at the same time. We never have any slowdown any more. ♦

Snyders said the fiber to the home project started two years ago in the Brandon exchange. He listed two reasons why Alliance Communications was replacing the old copper.

♦ Fiber to the home is the best type of technology there is, ♦ said Snyders. He said it would provide customers the services that it needs, including broadband. Also, Snyders said more people want more choices for their video services and one of those is high definition. Snyders showed a chart that stated in 1995 very few households in the country had access to high-speed internet capabilities. By 2020, 95 percent of the households are expected to have high-speed internet. Currently, there are 1,400 Alliance Communications customers using fiber to the home services. In 2007, there were an estimated 592 new internet connections. Also at the annual meeting, capital credit checks were handed out. Alliance Communications is returning \$1.69 million in capital credits to those who were customers in 1998 and 2006. The average check was \$170. Over the last three years, Alliance Communications has returned \$5 million in capital credits. Over the last 10 years, the company has returned almost \$14.5 million in capital credits.

In addition to the capital credits, four incumbents were re-elected to the Board of Directors. They included Steve Howe, who serves the Garretson exchange; Todd Dawley, who serves the Brandon exchange; Vince Hanson, who serves the Crooks and Lyons exchange; and Garry Scott, who represents the Alcester and Hudson exchange. All are for three year terms.


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You will be excited to learn that Alliance's most popular services have been bundled into one package, and you now can purchase this package at a discounted price.

The best way to save on your bills is to combine your services together in one bundled package. You'll get discount pricing and the convenience of having one bill and one number to call for service or questions. You'll save money, time, checks and stamps.

Plus, your calls to Alliance Communications won't be answered by an automated answering service. Local and friendly customer service representatives will handle your inquiries.

When you sign up for an Alliance Communications bundle, you will receive the following services at a lower price:

- High-Speed Internet
- Local Phone Service
- E-mail Virus and Spam Filtering
- 120 Minutes of Long Distance
- Cable TV (not available in all areas)
- Voice Mail
- Maintenance Plan

Sign up for a bundle today by dialing 615 from any phone with Alliance service.

* Some services aren't available in all areas.

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How get connected to high-speed Internet for FREE (reg. \$20)

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

IN THE MATTER OF THE APPLICATION) TC08-105
OF MIDCONTINENT COMMUNICATIONS)
TO PROVIDE LOCAL EXCHANGE SERVICE) **AFFIDAVIT OF**
IN A RURAL SERVICE AREA) **MARY LOHNES**

State of South Dakota)
)ss
County of Minnehaha)

Mary Lohnes, being first duly sworn, deposes and says that she is the Regulatory Affairs Manager for Midcontinent Communications and that she makes this affidavit in support of Midcontinent's Motion to Compel Discovery herein.

1. The Commission has pending before it a Motion to Compel Discovery designed to address the issue of whether Alliance is capable of providing video service in the Crooks and Baltic exchanges or that the capability and intent to do so is imminent. This affidavit is intended to address the proposition that, from Midcontinent's standpoint, once its Petition for Amended Certificate of Authority to do business in those exchanges is granted, there remains significant lead time before it can actually provide services.

2. Those matters that must be accomplished include an interconnection agreement. In Midcontinent's experience an interconnection agreement takes at least 90 days to negotiate and receive Commission approval. Only after the interconnection agreement is agreed upon can the following steps, most of which can occur simultaneously, must be accomplished:

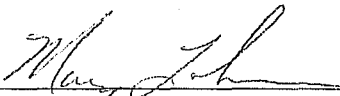
- a. Co-location, 120 days;
- b. Standby power, 120 days;
- c. LIS trunking, 30 days;
- d. CLLI (Common Language Location Identifier) code established, 10 days;
- e. NPA-NXX set up, 66 days;

EXHIBIT E

- f. MSAG (Master Street Address Guide), 90 days;
- g. Point codes, 30 days;
- h. 911 trunks, 30 days;
- i. Truck media gateway, 120 days;
- j. NIM (Network Information Management), 15 days;
- k. SAM (System Activation Manager), 30 days;
- l. ICOMS (billing), 30 days; and
- m. EAS, 120 days.

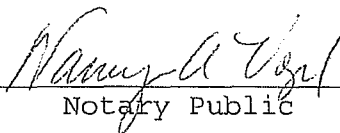
3. In addition to the foregoing which must be accomplished after the technical steps listed above are accomplished, back office LNP processes and guidelines must be established with Alliance. These can only occur after the technical steps mentioned have occurred. This ordinarily takes 30 days.

Dated this 8th day of December, 2008.



 Mary Lohnes

Subscribed and sworn to before me this 8 day of December, 2008.



 Notary Public

(SEAL)

Notary Print Name:
 My Commission Expires: ~~My Commission Expires~~
 January 24, 2010

