

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

IN THE MATTER OF THE APPLICATION OF)
MIDCONTINENT COMMUNICATIONS)
TO PROVIDE LOCAL EXCHANGE SERVICES IN) Docket No. TC12-035
A RURAL SERVICE AREA)

SDTA Petition to Intervene

The South Dakota Telecommunications Association ("SDTA") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.

2. On April 25, 2012, Midcontinent Communications ("Midcontinent") filed an Application with this Commission seeking an amendment to its prior local exchange service certification received from this Commission. Specifically, Midcontinent seeks authorization to provide competitive local exchange services in the exchange area of Lennox, South Dakota, an exchange served by and existing within the rural "service area" or "study area" of Knology Community Telephone ("KCT").

3. KCT currently exists as an "incumbent local exchange carrier" (ILEC) and a "rural telephone company" (RLEC) under federal and state telecommunications law and is a member of the SDTA. As an ILEC and RLEC, KCT provides all of its basic local exchange services as a "carrier of last resort" throughout a defined rural "service area" or "rural study area." The KCT rural study area, in addition to the Lennox local exchange area, also

includes the following local exchange areas: Alsen; Beresford Rural; Chancellor; Davis; Flyger; Gayville; Hurley; Irene; Monroe; Parker; Volin; Wakonda; and Worthing.

4. After filing its Application in this matter, Midcontinent received an initial data request from the Commission Staff and has already filed a "Response to Staff Data Request" dated May 7, 2012. In that Response, Midcontinent indicated that it has no intention to provide its competitive telecommunications services within either other exchange areas that are part of KCT's service area or to the entirety of the Lennox exchange. While Midcontinent states specifically that it "is able to satisfy the local exchange service obligations provided [for] in ARSD 20:10:32:10, as well as those provided in 47 U.S.C. § 214e(1)", it has determined that it will seek "a waiver of the eligible telecommunications carrier service requirements pursuant to ARSD 20:10:32:18." (Response to Staff Data Request, p. 1).

5. Under both federal and state law several rural safeguards have been established to assist in the preservation and advancement of universal service within high cost rural areas. One such safeguard is found in 47 U.S.C. § 253(f) and SDCL § 49-31-73. Under those statutes, generally, states are authorized to condition competitive entry into rural telephone company service areas with the imposition of certain minimum telecommunications service obligations. The obvious intent of these statutes is to pressure competing carriers into making their service offerings available to all consumers within low density and high cost rural service areas and to prevent or minimize the adverse universal service impacts that "cream-skimming" or "cherry-picking" practices are likely to have.

6. This Commission has adopted a number of administrative rules aimed at implementing this rural safeguard. Under § 20:10:32:15 of the Commission's rules, specifically, "if a telecommunications company is seeking authority to provide local

exchange service in the service area of a rural telephone company, the company shall satisfy the service requirements imposed on eligible telecommunications carriers pursuant to 47 U.S.C. § 214e(1) and applicable federal regulations. After notice and opportunity for hearing, these service requirements shall be imposed on the alternative local service provider throughout a geographic area as determined by the [C]ommission, unless a waiver is granted pursuant to § 20:10:32:18.” In regards to this waiver, as described in § 20:10:32:18, the Commission may only grant such waiver “if, after notice and opportunity for hearing, it is determined by the commission that granting the waiver does not adversely impact universal service, that quality of service shall continue, and that it is in the public interest. And further, it is stated that “[t]he telecommunications company requesting the waiver shall have the burden to prove by a preponderance of the evidence that granting the waiver is consistent with these standards.”

7. Midcontinent’s filing and its request for a waiver of the additional service obligations imposed under the above referenced rural safeguard provisions present several issues that are of interest to all SDTA member companies. As this Commission is well aware, SDTA has consistently intervened in filings by competitive local exchange carriers involving rural telephone company service areas and has consistently emphasized to the Commission the importance of effectively enforcing the federal and state rural safeguard referenced above. While this Commission in a few prior cases has granted the waiver authorized by ARSD § 20:10:32:18, these past waivers have been based on stipulations reached between the affected carriers. Based on present information and belief, to date, this Commission has not yet presided over an adversarial hearing process and/or made any evidentiary, factual or legal findings relative to the applicable waiver standards set forth in ARSD § 20:10:32:18. Consequently, if the waiver request filed by Midcontinent in

this case is ultimately reviewed through a hearing process and is addressed on its merits by Commission Order, that Order will be precedent setting.

6. Given this possibility, all of the SDTA member companies are interested in this proceeding and stand to be affected by the Commission's decisions herein. SDTA seeks intervention in this proceeding based on the interest of KCT, an SDTA member, and also the interest of other SDTA member companies which operate as incumbent local exchange carriers and "rural telephone companies" and are likely to be "bound and affected favorably or adversely" by decisions made in this proceeding. (See ARSD § 20:10:01:15.05).

7. Based on all of the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status

Dated this 14 day of May, 2012.

Respectfully submitted:

SDTA



Richard D. Coit

Executive Director and General Counsel

CERTIFICATE OF SERVICE

I hereby certify that an original of the Petition to Intervene, dated May 11th, 2012, filed in PUC Docket TC12-035 was served upon the PUC electronically, directed to the attention of:

Ms. Patty Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

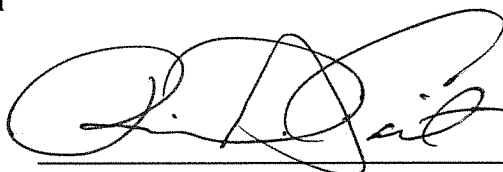
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