

BEFORE THE SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT APPLICATION FOR APPROVAL OF AN AMENDMENT TO THE CERTIFICATE OF AUTHORITY OF MIDSTATE COMMUNICATIONS, INC. AND FOR WAIVER OF CERTAIN REQUIREMENTES OF A.R.S.D. 20:10:32:03	DOCKET NO. _____ JOINT APPLICATION FOR APPROVAL OF AN AMENDMENT TO CERTIFICATE OF AUTHORITY AND FOR WAIVER OF CERTAIN REQUIREMENTES OF A.R.S.D. 20:10:32:03
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COME NOW, the Applicants, Midstate Communications, Inc., a South Dakota cooperative corporation ("Parent") and Midstate Telecom, Inc., a South Dakota corporation ("Subsidiary" and in conjunction with Parent, collectively the "Applicants" or individually, an "Applicant"), by and through their undersigned counsel, and jointly request that pursuant to the provisions of SDCL § 49-31-59, § 49-31-69 and § 49-31-75, the South Dakota Public Utilities Commission (the "Commission") approve the following:

(1) the merger of Subsidiary with and into Parent (the "Merger"), in the manner set forth in this Application and the Agreement and Plan of Merger dated April 29, 2013, entered into by and among Parent and Subsidiary, which is attached hereto as Exhibit A and is incorporated herein by this reference (the "Agreement");

(2) an amendment to the Certificate of Authority held by Subsidiary, to permit Parent, as the successor by merger of Subsidiary, to operate as a competitive local exchange carrier ("CLEC") in the areas served by Subsidiary, in compliance with the terms, provisions and conditions of the application of Subsidiary and the Order of the Commission granted under Docket No. TC01-007; and

(3) a request for waiver of the requirements under A.R.S.D. 20:10:32:03: (6), (7), (8)(c), (10), (13), (14), (15), (18), (19), (20) and (22).

IN SUPPORT THEREOF, Applicants do state and declare as follows:

1. Applicant Parent is a South Dakota cooperative corporation with its principal office located at 120 E. 1st Street, Kimball, South Dakota 57355. The registered agent of Parent is Mark Benton. The Federal Identification Number of Parent is 46-0240510, and the South Dakota Sales Tax Number is 1014-3104-ST. A copy of the authorization to transact business in the State of South Dakota from the Secretary of State is attached hereto as Exhibit B and is incorporated herein by this reference. Parent presently holds a Certificate of Authority issued by the Commission (the "Parent Certificate") and operates as an incumbent local exchange carrier ("ILEC") in 10 local telephone exchanges serving approximately 4,210 access lines located within the State of South Dakota. Parent is the sole shareholder and parent corporation of Subsidiary.

2. Applicant Subsidiary is a South Dakota corporation with its principal office located at 120 E. 1st Street, Kimball, South Dakota 57355. The registered agent of Subsidiary is Mark Benton. A copy of the authorization to transact business in the State of South Dakota from the Secretary of State is attached hereto as Exhibit C and is incorporated herein by this reference. Subsidiary presently holds a Certificate of Authority issued by the Commission (the "Subsidiary Certificate") and operates approximately 1,434 total access lines located in CenturyLink's Chamberlain and Oacoma Exchanges. Subsidiary is a wholly-owned subsidiary of Parent.

3. Both of the Applicants have previously submitted the information required by A.R.S.D. 20:10:32:03 and are in good standing with the Commission. Both of the Applicants are

also in good standing with the Federal Communications Commission (“FCC”) and have requested consent from the FCC to the Merger.

4. Parent and Subsidiary have entered into the Agreement which, contingent upon the receipt of all necessary lender and regulatory approvals, including, without limitation, the South Dakota Public Utilities Commission and the Federal Communications Commission, contemplates, among other things, the following transactions:

(i) At 12:01 a.m. on January 1, 2014, Subsidiary will be merged with and into Parent pursuant to the provisions of SDCL Chapter 47-1A *et seq.*;

(ii) Upon the consummation of the Merger, all of the assets and liabilities of Subsidiary will become the assets and liabilities of Parent;

(iii) All of the patrons formerly receiving local exchange telephone service from Subsidiary that meet the requirements for membership under the bylaws of Parent¹ will automatically become members of Parent upon the consummation of the Merger;

(iv) Effective as of the close of business on December 31, 2013, Parent will allocate its 2013 operating margin and its accumulated non-operating margins to its existing members. No member of Parent will lose any capital credits or any entitlement thereto, as a result of this Merger; and

¹ Any person, firm, association, limited liability company, partnership, corporation, or body politic or subdivision thereof may become a member of Midstate Communications, Inc. (the “Company”) by complying with each of the following: (a) submitting a written agreement for membership to the Board of Directors (the “Board”) for approval; (b) agreeing to purchase from the Company, local telephone exchange service as hereinafter specified; (c) agreeing to comply with and be bound by the articles of incorporation and bylaws of the Company and any rules and regulations adopted by the Board; (d) no person or entity shall hold more than one (1) membership interest in the Company and no membership shall be transferable except as provided herein; (e) is not significantly involved in the management or administrative affairs of a direct competitor of the Company, as determined by the Board in its sole discretion; and (f) receives such local telephone exchange service from the Company within the ILEC certified service territory of the Company, as such certified service territory is defined by the applicable state regulatory authorities from time to time (“ILEC Area”), or from the Company within the CLEC Area (defined hereinafter). For purposes of this Application, the term “CLEC Area” shall mean any area which is outside of the Company’s ILEC Area, but within the area in which the Company has received authority to operate as a CLEC and within which the Company owns facilities for the provision of retail local telephone exchange service.

(v) For all periods subsequent to December 31, 2013, the former patrons of Subsidiary will be eligible to become members of Parent and receive allocations and retirements of capital credits on an equal basis as the currently existing members.

5. The Agreement has received all necessary member and shareholder approvals:

(i) On October 3, 2013, at its Annual Meeting, the members of Parent approved the Agreement and Plan of Merger by a vote of 174 to 14;

(ii) As the sole shareholder of Subsidiary, Parent has approved the Merger.

6. Parent and Subsidiary both presently operate under the registered trade name "Midstate Communications" in their respective service areas. Upon the completion of the Merger, use of Subsidiary's business name "Midstate Telecom, Inc." shall cease and all further business shall be conducted under the name of Parent or its registered trade name "Midstate Communications."

7. The contact information for Parent is as follows:

Midstate Communications, Inc.
120 E. 1st Street
P.O. Box 48
Kimball, South Dakota 57355-0048
Office: (605) 778-6221
Fax: (605) 778-8080
Website: www.midstatesd.net
E-Mail: mark@midstaff.net

Following the Merger, the contact information for any complaints or regulatory matters, including those of Subsidiary, should be directed to Parent, whose contact information shall remain the same. Further, the SD Sales Tax Number and the Federal Identification Number of Parent shall remain the same following the Merger.

8. The service area map indicating the geographic area presently served by Parent as an ILEC is presently on file with the Commission and will remain unchanged.

9. In addition to the service area presently served by Parent as an ILEC, subject to the Commission's approval, Parent will, as the successor by merger to Subsidiary, operate as a CLEC in the areas presently served by Subsidiary.

10. The audited consolidated financial statements of Parent and its subsidiaries for the fiscal years ended June 30, 2013 and 2012 are attached hereto as Exhibit D and are incorporated herein by reference.

11. Following the consummation of the Merger, Parent shall assume full responsibility for any remaining liabilities of Subsidiary, if any, including, without limitation, any unpaid regulatory assessments. Further, Parent shall be responsible for filing any other final annual reports, or comparable reports, on behalf of Subsidiary prior to the applicable deadlines.

12. Upon the consummation of the Merger, any and all of Subsidiary's interconnection agreements, if any, shall be assigned to, and assumed by, Parent.

13. In addition to telephony services, Parent and Subsidiary offer various other communications services. These additional services include, without limitation: (i) high-speed internet access service; and (ii) cable television service. Upon completion of the Merger, the customers of both companies will continue to receive those same services without any noticeable change.

14. There will be no changes in the telephone numbers, prefixes, or area codes (NXX codes) of any of the persons or entities receiving local telephone exchange service in the areas served by Subsidiary as a result of the Merger.

15. None of the EAS arrangements of Subsidiary or Parent shall change as a result of the Merger.

16. Following the Merger, the customers of Subsidiary receiving local exchange telephone service and who qualify for membership under the bylaws of Parent, will automatically become members of Parent. Parent anticipates that all of the current customers of Subsidiary who continue to receive communications service from Parent following the Merger will qualify for membership under its bylaws (as set forth in footnote 1 on page 3 hereof). The former customers of Subsidiary will change from being customers of a for-profit corporation to patrons of a cooperative entitled to vote for and become members of the board of directors of the cooperative and to receive patronage allocations and dividends following the Merger. However, if any patrons of Subsidiary do not qualify for membership, they will be able to continue as non-member patrons of Parent. All of the customers of Subsidiary will receive written notice by mail describing the transaction and its implications, including, without limitation information on Parent's current rates, terms, and conditions for all telecommunications services. Such notice will be sent out when all requisite regulatory and lender approvals to the transaction have been obtained.

17. Parent has the managerial, technical and financial resources to adequately provide local telephone exchange services in the areas served by Subsidiary. The Applicants are currently all under common management, have identical boards of directors, and are administered from the same headquarters in Kimball, South Dakota. The Merger will not change the management, operations or administrative responsibilities of Parent in any meaningful way. Parent and Subsidiary have a proven record of providing high quality communications services in rural areas and complying with all regulatory and safety requirements. Both Parent and

Subsidiary also presently provide enhanced 911 services in all of their local telephone exchanges and Parent will continue to provide it in the areas served by Subsidiary following the Merger.

18. Applicants have fully considered the repercussions associated with 47 U.S.C. § 252(i) and have made arrangements to alleviate the burdens associated with the Merger. As a result of the presently shared management between Parent and Subsidiary, great respect has always been given to the relationship between Parent, as an ILEC operator, and Subsidiary, because of the impact it might have on their relationship with unrelated CLEC operators in exchanges in which such operators are the ILEC. In its current operations, Parent maintains interconnection agreements with unrelated CLEC operators and those agreements provide substantially identical treatment to that which is given to Subsidiary. For example, the EAS services presently offered by Subsidiary mirror that of CenturyLink, which is the ILEC in the Chamberlain and Oacoma Exchanges. Following the Merger, Parent does not intend to offer any EAS services beyond those which are currently offered by Subsidiary. Parent recognizes that a change in this practice would have material implications on its present arrangements with CLEC operators in the ILEC exchanges of Parent.

19. Following the Merger, the accounting practices employed by Parent will not change materially from the way the Applicants operate currently. As the Applicants share the same staff and management, they already account for their costs separately between each company. For instance, staff members presently track their time dedicated to work associated with each Applicant. Such time is then separately accounted for by each Applicant in the companies' respective general ledgers. With respect to accounting for the work of management, Subsidiary is assessed a flat fee that is set forth in a management agreement between the companies. Following the Merger, Parent

will continue to account for separate costs of the ILEC operations and for the separate costs associated with the operation of the CLEC area presently operated by Subsidiary. On a going forward basis, management will also begin to account for its time dedicated to ILEC operations and CLEC operations, respectively, in lieu of the current flat fee arrangement. It is Parent's intention to operate the single unified legal entity with two distinguishable internal divisions, ILEC operations and CLEC operations. As with its desire to maintain separate Certificates of Authority and separate tariffs, Parent intends to maintain as much separation between its ILEC and CLEC operations as possible so as to provide a clear distinction and the utmost transparency to third party observers.

20. Neither the public interest nor the current customers of Parent or Subsidiary will be harmed, or otherwise adversely affected, by the Merger. There will be no discontinuance, reduction, or impairment of any of the services presently offered by Parent or Subsidiary following the Merger. There will be no change in rates for local telephone services offered in the areas served by Subsidiary or Parent solely as a result of the Merger. There will be no change in the method of calculating or paying any of the taxes payable to the State of South Dakota to which Subsidiary and Parent are currently subject. There will be no reduction in the labor force of Subsidiary or Parent solely as a result of the Merger. As such, the number of available service technicians will not decrease. Because of the currently shared management and administrative functions, there will be no noticeable change in the management, operations or administration of the companies.

21. Subject to the Commission's approval, upon completion of the Merger, it is the intention of Parent to have two remaining Certificates of Authority. The Parent Certificate would remain unchanged. Upon completion of the Merger, Parent would request that the Commission amend the Subsidiary Certificate to permit Parent, as the successor by merger of Subsidiary, to

operate as a CLEC in the exchanges presently served by Subsidiary. Such operation would be required to comply with the terms, provisions and conditions of the initial application of Subsidiary and the Order of the Commission granted under Docket No. TC01-007. Subject to the Commission's approval, the amendment to the Subsidiary Certificate would be effective January 1, 2014, and such amendment would be contingent upon completion of the Merger.

22. Subject to the Commission's approval, Parent and Subsidiary do not plan to consolidate their access tariffs upon completion of the Merger. Within sixty (60) days following the effective date of the Merger, Parent will submit a proposal to identify its current access tariff as the Midstate ILEC tariff. In addition, Parent will propose to amend the Subsidiary tariff to substitute in Parent as the carrier and further identify the access tariff as the Midstate CLEC tariff.

23. Subsidiary or Parent shall notify the South Dakota Department of Public Safety and the Statewide 911 Program, of the pending transaction.

24. Parent will provide the Commission with notification immediately following the closing of the Merger.

WHEREFORE, Applicants respectfully request that the Commission grant the following:

A. Approval of the "sale," as defined by SDCL § 49-31-59, of each of the areas served by Midstate Telecom, Inc. to Midstate Communications, Inc., by merger in the manner set forth in this Application and the Agreement;

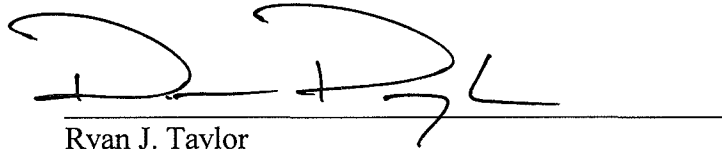
B. An amendment of the Subsidiary Certificate to permit Parent, as the successor by merger to Subsidiary, to operate as a competitive local exchange carrier in the areas served by Subsidiary on and after January 1, 2014 in accordance with the application of Subsidiary and the corresponding Order of the Commission granted in Docket No. TC01-007;

C. Waiver of the requirement to submit the information enumerated under A.R.S.D. 20:10:32:03: (6), (7), (8)(c), (10), (13), (14), (15), (18), (19), (20), and (22); and

D. Such other relief, consents, or authorizations as the Commission may deem necessary or appropriate and in the public interest to consummate the transactions described in this Application.

Dated this 29th day of October, 2013.

CUTLER & DONAHOE, LLP
Attorneys at Law

A handwritten signature in black ink, appearing to be a combination of the initials 'RJT' and 'DJ', written over a horizontal line.

Ryan J. Taylor
Daniel J. Doyle
100 N. Phillips Ave., 9th Floor
Sioux Falls, South Dakota 57104-6725
Telephone (605) 335-4950
Facsimile (605) 335-4961
Attorneys for Joint Applicants Midstate Telecom,
Inc. and Midstate Communications, Inc.