

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

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>MIDCONTINENT COMMUNICATIONS FOR</b>	)	
<b>LIFELINE ELIGIBLE TELECOMMUNICATIONS</b>	)	<b>Docket No. TC16-044</b>
<b>CARRIER DESIGNATION WITHIN CERTAIN</b>	)	
<b>RURAL SERVICE AREAS</b>	)	

**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 or about July 6, 2016, Midcontinent Communications ("Midcontinent") filed an Application/Petition (hereinafter referenced as "Petition") with this Commission seeking designation as an eligible telecommunications carrier ("ETC") "for Lifeline services only" in various areas within South Dakota served by incumbent rural telephone companies, including: Baltic, Crooks (served by Alliance Communications Cooperative), Waubay, Webster (served by Interstate Telecommunications Cooperative), Wolsey (served by Santel Communications Cooperative), Bowdle, Roscoe, Roslyn, Selby, and Java (served by Venture Communications Cooperative), and Gayville and Lennox (served by Prairie Wave/Vast a/k/a Knology Community Telephone). Midcontinent refers to the above areas as a listing of "service areas." The areas referenced are not, however, rural "service areas" or "study areas" as those terms are defined under state and federal telecommunications statutes and rules, but instead appear to be telephone exchange areas.

3. Within its Petition, Midcontinent refers to the fact that this Commission has previously granted the company competitive ETC status in a number of "Qwest/CenturyLink" service areas throughout the State and, based on these prior

designations, claims that it continues to satisfy the ETC eligibility requirements set forth in 47 CFR § 54.201.

4. All of the SDTA member companies operate as "rural telephone companies" for purposes of the Federal Telecommunications Act of 1996 and under applicable state laws. SDTA seeks intervention in this proceeding based on the individual interests of each of its directly affected member ILECs (Alliance Communications Cooperative, Interstate Telecommunications Cooperative, Santel Communications Cooperative and Venture Communications Cooperative) and also based on the common interests of all SDTA member companies which, as similarly situated rural telephone companies, may at some point be impacted by decisions made in this proceeding.

5. SDTA has concerns with the requested Lifeline only ETC designation. First, it should be noted that this is the first Lifeline ETC petition filed with this Commission since issuance of the FCC's "Lifeline Modernization Order" which makes substantial changes to the Lifeline program extending Lifeline discounts to "Broadband Internet Access Service" ("BIAS") and also since issuance of the FCC's "Rate-of-Return Reform Order" which adopts significant reforms to the existing federal "High Cost" universal service mechanisms that support the networks and operations of rural rate-of-return carriers.<sup>1</sup> Both of these Orders establish new federal requirements related to the Lifeline program and the High Cost funding program which are relevant to and should be considered in this ETC designation proceeding. Most importantly, the new federal regulations raise a question as to whether, in this ETC designation process, the Commission should grant designation over the entirety of each exchange area listed or whether, instead, it would better serve the affected carriers and their voice and/or broadband end-user customers to consider ETC designation on a "Census Block" basis. In SDTA's view, Midcontinent's Petition is not specific enough in indicating where ETC designation is actually sought and should include information identifying the specific census blocks where Midcontinent currently provides its voice and/or broadband services. Considering census blocks in the ETC designation process is consistent with new FCC regulations that will exclude from "Connect America Fund Broadband Loop Support"

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<sup>1</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, released April 27, 2016, and *Connect America Fund et al.*, WC Docket No. 10-90 et al., FCC 16-33, released March 30, 2016.

(CAF BLS) those census blocks deemed served by an “unsubsidized competitor” and further related regulations that will require rural-rate-of-return carriers to submit “disaggregation” plans if any census blocks within their rural service areas are subject to “competitive overlap.”<sup>2</sup> It also tracks the intent of new regulations adopted under the Lifeline Modernization Order which will phase out Lifeline discounts to “voice-only service” as of December 1, 2012, except for those ETCs that provide “voice service in census blocks where they are the only Lifeline provider” [emphasis added].<sup>3</sup> For purposes of both the new regulations related to High Cost universal service support and the Lifeline program, it will be important that all future ETC designations be tied to the census blocks where a petitioning company actually provides its competitive services. If this approach is not taken, federal high cost funding to areas that are not truly subject to competition may be discontinued and existing Lifeline customers in non-competitive census blocks may be prematurely deprived of Lifeline discounts for voice-only services.

6. Further, with the expansion of the Lifeline discount program to BIAS, the FCC has adopted new rules establishing minimum service standards for broadband that must be met by any Lifeline designated ETC.<sup>4</sup> These minimum service standards relate specifically to broadband speeds and monthly data usage allowances, are applicable to both mobile and fixed broadband services, and are subject to specific phase-in timelines. None of these new ETC regulations have yet been addressed in any proceeding before this Commission and SDTA and its member companies have an interest in ensuring that such standards are appropriately considered and implemented at the state level.

7. Finally, in regards to the Petition filed by Midcontinent, because it seeks Lifeline ETC designation within certain rural telephone company service areas, the additional “public interest” requirement set forth in 47 U.S.C. § 214(e)(2) and SDCL § 49-31-78 applies and, contrary to what Midcontinent may suggest, this Commission is not obligated to grant

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<sup>2</sup> See 47 C.F.R. § 54.319, Elimination of high-cost support in areas with an unsubsidized competitor.

<sup>3</sup> See Lifeline Modernization Order, par. 61, which, in part, reads: “In summary, to ensure that future Lifeline offerings are sufficient for consumers to participate in the 21<sup>st</sup> Century economy at affordable rates, and to obtain the most value possible from the Lifeline benefit, we modify the Lifeline rules to support voice services only through a bundle that includes broadband services pursuant to the transition period detailed below. This phase-out of support will not apply to ETCs providing voice service in census blocks where they are the only Lifeline service provider. . . .” [Emphasis Added].

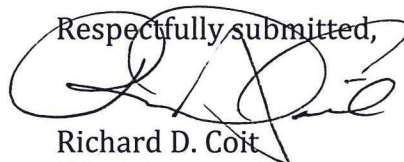
<sup>4</sup> See 47 C.F.R. § 54.408.

multiple ETC designations in such areas. Even though the FCC has taken action forbearing from the requirement that the service area of a competitive Lifeline ETC conform to the existing rural telephone company service area (eliminating the need to separately obtain a separate service area redefinition as part of the ETC designation process) this Commission's ability to fully review and consider all facts relevant to the public interest in ruling on Midcontinent's requested ETC designation has not been preempted.<sup>5</sup> As stated by the FCC, "[t]he Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest and that determination is not affected by this grant of forbearance. As a result, any concerns raised by a rural telephone company will be evaluated by the designating authority when considering designating a limited, Lifeline only ETC."<sup>6</sup> Midcontinent has not within its Petition offered any comment related to this additional public interest requirement and SDTA questions whether granting the additional ETC designation requested would be in the best interest of South Dakota consumers residing in the impacted SDTA member company rural service areas. The FCC has previously recognized that the Lifeline program does play a role in assisting with telecommunications infrastructure deployment in high cost areas.<sup>7</sup> SDTA believes that role has become more critical as rural rate-of-return carriers face greater financial pressure resulting from FCC reforms that have reduced federal high cost funding and inter-carrier compensation revenues.

9. 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 21<sup>st</sup> day of July, 2016

Respectfully submitted,



Richard D. Coit  
SDTA General Counsel

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<sup>5</sup> *In the Matter of Telecommunications Carriers Eligible for Support et. al*, WC Docket No. 09-197, Memorandum Opinion and Order, FCC 13-44 (released April 15, 2013).

<sup>6</sup> *Id.* At par. 13, p. 7.

<sup>7</sup> *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, FCC 00-208 par. 162, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking (released June 30, 2000).