

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

**IN THE MATTER OF THE APPLICATION OF)
MIDCONTINENT COMMUNICATIONS FOR AN)
AMENDED CERTIFICATE OF AUTHORITY TO) Docket No. TC17-005
PROVIDE LOCAL EXCHANGE SERVICE IN THE)
IPSWITCH 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 February 10, 2017, Midcontinent Communications ("Midcontinent") filed an "Amended Application for Amended Certificate of Authority" with this Commission seeking an amendment to its initial local exchange service certificate of authority (COA) granted by this Commission. Specifically, Midcontinent now seeks authorization to provide competitive local exchange services in the rural area of Ipswitch, an exchange area served by and existing within the rural "service area" or "study area" of Valley Telecommunications Cooperative ("Valley").

3. Valley 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 SDTA. As an ILEC and RLEC, Valley provides all of its basic local exchange services as a "carrier of last resort" throughout its defined rural "service area" or "rural study area." The Valley rural "service area," in addition to the Ipswitch local exchange area, also includes the following exchange areas: Eureka, Glenham, Herreid, Hosmer, Leola, Long Lake, Mound City; and Pollock.

4. Along with its Amended Application for Amended Certificate of Authority, Midcontinent has filed with the Commission in this Docket an "Application for Waiver of ARSD 20:10:32:15." Within this Application for Waiver, Midcontinent specifically states that it "intends to offer and provide service only within the city limits of the City of Ipswitch, as depicted on the maps accompanying its Amended Application. To the extent that the Ipswitch city limits are less than the entire Valley study area and service of less than the entire study area of Valley requires a waiver, Midcontinent requests such a waiver."

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 service 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 long ago adopted a number of administrative rules aimed at implementing this rural safeguard. Under ARSD § 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. § 214(e)(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 Commission, 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 in the Commission rules that the "telecommunications company requesting the waiver shall

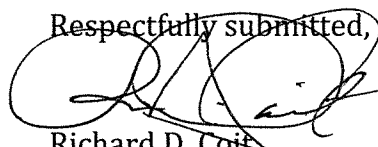
have the burden to prove by a preponderance of the evidence that granting the waiver is consistent with these standards."

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 the 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 Valley, 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 24th day of February, 2017.

Respectfully submitted,

Richard D. Coit
SDTA General Counsel