

**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 MOTION**
IN A RURAL SERVICE AREA) **TO COMPEL**

Pursuant to ARSD 20:10:01:22.01 and SDRCP 37, Midcontinent Communications ("Midcontinent") moves that the Commission compel Alliance Communications Cooperative, Inc., ("Alliance") to fully respond to its pending discovery requests of October 9, 2008, as follows:

1. As required by SDRCP 37(a)(2) the undersigned certifies that as counsel for the moving party, Midcontinent, he did in good faith confer with Alliance counsel in an effort to secure compliance by Alliance with its obligation to respond to the hereafter enumerated discovery requests.

2. Midcontinent believes that the information sought is directly relevant to its burden of proof and its obligation in this proceeding to provide the Commission with evidence and analysis to justify Midcontinent's request that it obtain entry into the Crooks and Baltic exchanges in accordance with 47 U.S.C. § 251(f)(1)(A). The statute requires that Midcontinent provide "... a bona fide request for interconnection, services or network elements" Further, under subparagraph (B) Midcontinent must prove that the request is not unduly economically burdensome, is technically feasible and is consistent with § 254 (other than subsections (b)(7) and (c)(1)(D)). SDRCP 37(a)(3) provides that for the purposes of a motion to compel, "... an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond."

3. As shown in greater detail below, Alliance simultaneously takes the position that Midcontinent has the burden of proof on certain issues and refuses to provide Midcontinent with the evidence necessary for Midcontinent to meet that burden of proof. This is particularly evident in the case of Alliance's refusal to provide financial and customer

data. Any complete analysis of the economic and universal service impacts of competition depends on this information, and Alliance's failure to provide it is a significant handicap. Moreover, given that the purpose of discovery is to permit parties to obtain evidence relevant to the issues in the proceeding -- whether or not that evidence ultimately is admitted or used -- financial and customer data plainly falls within the scope of discovery in a proceeding where the impact of competition on Alliance is an fundamental element of the statute at issue.

Alliance has given evasive or incomplete disclosures, answers or responses to Midcontinent's discovery requests numbered 13, 14, 15, 16, 20 and 30. Each will be hereafter discussed. Attached to this motion as Exhibit A is a copy of each question as posed by Midcontinent accompanied by the answer.

4. Interrogatory 13. Midcontinent asks pursuant to its supplemental interconnection request whether interconnection will be "unduly economically burdensome." This is the standard established by § 251(f)(1)(A)(ii). Midcontinent's supplemental interconnection request specified its best reasonable estimate of information concerning the interconnection, services or network elements requested. Alliance's objection is that the request is premature and that it cannot answer with precision without having received responses to its discovery from Midcontinent, notwithstanding that Alliance has or can develop the information set forth in the supplemental interconnection request. But, then Alliance goes on to recognize that if it argues that the interconnection request imposes an undue economic burden it must provide the information Midcontinent is requesting. Alliance is simply stalling. It knows what information Midcontinent needs. By refusing to provide evidence fundamental to the process, it delays Midcontinent's ability to analyze the information and in effect deprives Midcontinent of that information for its experts to analyze in time to provide meaningful follow-up discovery necessary for the scheduled second round of discovery requests. In effect, Alliance has deprived Midcontinent of one full round of discovery requests.

5. Question 14 asks whether Midcontinent's request for interconnection is technically feasible. This is another of the statutory criteria. To date no ILEC has ever suggested or maintained that an interconnection proposed by Midcontinent is

not technically feasible and yet Alliance refuses to answer the question and objects that it must first see Midcontinent's answers before it can respond. Alliance then irreconcilably admits that it must come forward with evidence if it contends the request is not technically feasible. Midcontinent is deprived of timely meaningful information and deprived of one full round of discovery requests.

6. Interrogatory 15 asks for Alliance's position on another statutory criterion, as to whether the request is consistent with principles of universal service; 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D)). Again, Alliance stalls and deprives Midcontinent of timely information. As a South Dakota ILEC Alliance controls information regarding its customer base, service quality, penetration, impacts of current competitive activities and other relevant facts that relate to universal service issues. Alliance certainly understands Universal Service and has knowledge equal to Midcontinent's concerning the subject matter of the question. By objecting, Alliance is merely evading the question and improperly depriving Midcontinent of timely information which would respond to Midcontinent's questions. Alliance questions whether Midcontinent will serve the entirety of the Baltic and Crooks exchange areas, notwithstanding that on February 27, Midcontinent filed an application for waiver dealing with service of less than the entirety of the Alliance study area.

7. Alliance also has improperly evaded response to question 16. Midcontinent is entitled to know whether Alliance contends that the request for interconnection is not in the public interest and the reasons for such a position. This is yet another statutory criterion about which Alliance should have ample knowledge in its position as an ILEC. Alliance feigns a lack of knowledge concerning the scope of services contemplated by Midcontinent, yet Midcontinent's supplemental interconnection request describes those services.

8. Alliance objects to question 20, notwithstanding that the information requested in question 20 bears a direct relationship to whether an undue economic burden will be placed upon Alliance, or whether the interconnection is or is not technically feasible. Without this information, Midcontinent cannot make a meaningful economic study and provide meaningful testimony at the hearing. Alliance has again stolen from Midcontinent the time and information necessary for Midcontinent

to prepare its case. Alliance in its answer acknowledges the importance of this information, yet refuses to provide it. Truly confidential or proprietary information can be produced under the protection of a confidentiality agreement, a process which routinely occurs in dockets presented to the Commission.

9. Question 30 likewise relates to economic burden. Without Alliance's response Midcontinent is seriously hampered in its ability to analyze and provide meaningful testimony to the Commission on this important statutory criterion. Alliance contends that it must first see Midcontinent's responses before it can respond to the question. The questions proposed are straightforward and clearly relevant to the statutory criteria governing this proceeding.

WHEREFORE Midcontinent prays that the Commission order Alliance to provide immediate and complete responses to the interrogatories enumerated above, being interrogatories numbered 13, 14, 15, 16, 20 and 30.

Dated this 11th day of March, 2008.

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CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 11th day of March, 2009, he served electronically a true and correct copy of the foregoing in the above-captioned action to the following at their last known e-mail addresses, to-wit:

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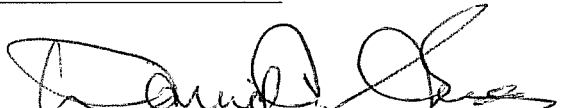
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13. Do you contend that interconnection pursuant to Exhibit A would be “unduly economically burdensome” as that phrase is used in Section 251(f)(1)(A)(ii) of the Act? If so,

for each obligation described in Section 251(c) of the federal Communications Act (47 U.S.C. § 251(c)) that you contend would be unduly economically burdensome:

- (a) List the obligation that you contend is unduly economically burdensome;
- (b) State your reasons for this conclusion; and
- (c) Describe any alternative approach to the obligation that would not be unduly economically burdensome.

OBJECTION AND RESPONSE: Alliance objects to this Interrogatory to the extent that it calls for a legal conclusion. Alliance further objects to this Interrogatory to the extent it is premature and Alliance cannot answer it with precision without having first received responses to the discovery which Alliance served upon Midco. Alliance has questions with regard to the specific nature of Midco's interconnection request. Alliance understands that if it asserts an argument that Midco's interconnection request imposes an undue economic burden on it that Alliance must substantiate its argument with appropriate testimony and documentation. To the extent that Alliance makes such an argument, it will do so and therefore reserves the right to supplement this Response.

14. Do you contend that Midcontinent's request for interconnection as described in Exhibit A is not technically feasible? If so, for each obligation described in Section 251(c) of the federal Communications Act (47 U.S.C. § 251(c)) that you contend would not be technically feasible:

- (a) List the obligation that you contend would not be technically feasible;
- (b) State your reasons for this conclusion; and
- (c) Describe any alternative approach to the obligation that would be technically feasible.

OBJECTION AND RESPONSE: Alliance objects to this Interrogatory to the extent that it calls for a legal conclusion. Alliance further objects to this Interrogatory to the extent it is premature without having first received responses to the discovery which Alliance served upon Midco with respect to the specific nature of Midco's request for interconnection to Alliance. Alliance understands that if it asserts an argument that Midco's interconnection request is not technically feasible that Alliance must substantiate its argument with appropriate testimony and documentation. To the extent that Alliance makes such an argument, it will do so and, therefore, reserves the right to supplement this Response.

15. Do you contend that Midcontinent's request for interconnection as described in Exhibit A is not consistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D))? If so, for each obligation described in Section 251(c) of the federal Communications Act (47 U.S.C. § 251(c)) and requested by Midcontinent that you contend would not be consistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D):

- (a) List the obligation requested by Midcontinent that you contend would be inconsistent with Section 254;
- (b) State your reasons for this conclusion; and
- (c) Describe any alternative approach to the obligation that would not be inconsistent with Section 254.

OBJECTION AND RESPONSE: Alliance objects to this Interrogatory to the extent that it calls for a legal conclusion. Midco bears the burden of proof in this action, and therefore, Alliance objects to this Request to the extent that it seeks to improperly shift the burden of proof to Alliance. Alliance further asserts that it cannot respond to this Interrogatory until such time as Midco serves its responses to Alliance's discovery requests. At this juncture, Alliance questions whether Midco will serve the entirety of the Baltic and Crooks exchange areas. Alliance further questions whether Midco can provide all services as required by A.R.S.D. 20:10:32:10 and 47 U.S.C. § 214(e)(1) and therefore reserves the right to provide further comment on this once it has received and reviewed Midco's discovery responses.

16. Do you contend that Midcontinent's request for interconnection is not in the public interest? If so, for each obligation described in Section 251(c) of the federal Communications Act (47 U.S.C. § 251(c)) and requested by Midcontinent that you contend would not be in the public interest:

- (a) List the obligation that you contend would not be in the public interest to meet;
- (b) State your reasons for this conclusion; and
- (c) Describe any alternative approach to the obligation that would be consistent with the public interest.

OBJECTION AND RESPONSE: Midco bears the burden of proof in this action and, therefore, Alliance objects to this Interrogatory on the basis that it seeks to improperly shift the burden of proof to Alliance. Without waiving this objection, Alliance has served discovery requests upon Midco designed to elicit information regarding the services which Midco intends to offer in the Baltic and Crooks exchanges. Depending upon the scope of the services offered by Midco and Midco's ability to offer those services throughout the entirety of the service areas for which a certificate of authority is sought, Alliance reserves the right to supplement this response.

20. For each of the following types of services, provide the number of residential customers served, the number of business customers served, the company's residential revenues in 2008 and the company's business revenues in 2008:

- (a) Local telephone service;
- (b) Intrastate long distance service;
- (c) Interstate long distance service;
- (d) International long distance service;

- (e) Access service (for this service, provide the number customers and total revenues in 2008);
- (f) Private line service;
- (g) Dial-up Internet access;
- (h) High speed Internet access;
- (i) Wireless service;
- (j) Voice mail;
- (k) Ancillary services (such as caller ID and call waiting); and
- (l) Video programming.

OBJECTION AND RESPONSE: Alliance objects to this Interrogatory on the basis that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible information. Alliance further objects to this Interrogatory to the extent that it seeks to shift the burden borne by Midco in this proceeding to Alliance. Midco bears the burden of proof and, therefore, Alliance's service offerings, customer count and revenue are not relevant. Alliance further objects to this request on the basis that it seeks confidential and proprietary information which cannot be adequately protected by a confidentiality agreement or order. Without waiving these objections, Alliance agrees that it must produce supporting documentation if it asserts that Midco's request for interconnection imposes an undue economic burden or is not technically feasible and Alliance will produce any documentation supporting such arguments.

30. Describe in detail Alliance's capital plans for 2009 and 2010, including:
- (a) The amounts to be expended each year;
 - (b) The types of equipment to be purchased;
 - (c) The transmission facilities to be deployed including locations, type (fiber, non-fiber), services to be supported (e.g., voice, data, video programming), locations and route miles;
 - (d) Expected completion dates for installation and deployment.

OBJECTION AND RESPONSE: Alliance objects to this Interrogatory on the basis that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of relevant or admissible information. Alliance further objects to this Interrogatory to the extent that it seeks to shift the burden borne by Midco in this proceeding to Alliance. Midco bears the burden of proof and, therefore, Alliance's capital plans for 2009 and 2010 are not relevant. Alliance's projected capital plans are not relevant to Midco's Application for a Certificate of Authority. Alliance further objects to this Interrogatory on the basis that it seeks information which is confidential and proprietary. Without waiving these objections, to the extent that Alliance believes that Midco's request for interconnection imposes a financial burden upon Alliance, Alliance will produce supporting documentation. Alliance, however, cannot currently provide such financial information without having Midco's responses to Alliance's first set of discovery responses. Accordingly, to the extent necessary, this Response will be supplemented.