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August 25, 2008

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Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, SD 57501-5070

Re: Docket No. TC08-105  
In the Matter of the Application of Midcontinent Communications to  
Provide Local Exchange Service in a Rural Service Area

Dear Ms. Van Gerpen:

Enclosed for filing in connection with Docket No. TC08-105 is a Petition to Intervene  
and for Exemption Pursuant to 47 U.S.C. §251(f) of Alliance Communications Cooperative, Inc.

If you have any questions, please feel free to contact me at your convenience at (605)  
335-4950. Thank you for your assistance in this matter.

Sincerely,

CUTLER & DONAHOE, LLP



Ryan J. Taylor  
For the Firm

RJT:dah

Attachment

cc w attachment via e-mail: Karen E. Cremer  
Terri Labrie Baker  
Nancy Vogel  
David A. Gerdes

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of  
Midcontinent Communications to Provide  
Local Exchange Service in a Rural Service  
Area

Docket No. TC08-105

**PETITION TO INTERVENE AND FOR  
EXEMPTION PURSUANT TO 47 U.S.C. §  
251(f) OF ALLIANCE  
COMMUNICATIONS COOPERATIVE,  
INC.**

COMES NOW, Alliance Communications Cooperative, Inc., by and through its undersigned counsel, and: (i) pursuant to SDCL § 1-26-17.1 and A.R.S.D. 20:10:01:15.02 and 20:10:32:04, petitions this Commission for leave to intervene in the above entitled proceeding; and (ii) pursuant to 47 U.S.C. § 251(f), SDCL § 49-31-79, and A.R.S.D. 20:10:32:38, petitions this Commission to determine that the request for interconnection filed by Midcontinent Communications in the above entitled proceeding is not a bona fide request and that Alliance Communications Cooperative, Inc. is exempt from the duty to negotiate any interconnection agreement with Midcontinent Communications.

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

I. INTERVENTION OF ALLIANCE COMMUNICATIONS COOPERATIVE, INC.

1. Alliance Communications Cooperative, Inc. (“Alliance”) is a South Dakota cooperative corporation headquartered in Garretson, South Dakota. Alliance presently operates six (6) local telephone exchanges serving approximately 8,690 access lines in the State of South Dakota. Alliance is also a “rural telephone company” as defined in 47 U.S.C. § 153(37) and SDCL § 49-31-1(22).

2. On August 14, 2008, Midcontinent Communications (“Midcontinent”) filed a Petition with this Commission to amend its certificate of authority to provide local exchange service in the rural exchange areas of Crooks and Baltic, South Dakota (the “Petition”).

3. The Petition was received by Alliance on August 15, 2008. Alliance is the incumbent local exchange carrier in both the Crooks and Baltic rural exchange areas. Pursuant to the provisions of each of SDCL § 1-26-17.1 and A.R.S.D. 20:10:01:15.02 and 20:10:32:04, Alliance is entitled to “Intervener Status” in the above entitled proceeding.

4. In its Petition, Midcontinent alleges that it satisfies the requirements of an eligible telecommunications carrier under 47 U.S.C. § 214(e)(1) as required by A.R.S.D. 20:10:32:15, and should therefore be granted authorization to provide service in the rural areas specified in its Petition. See Petition at pp. 4-5, 34-37, 1-11. However, Alliance does not currently have sufficient information to conclude that all of these requirements are satisfied.

5. Pursuant to 47 C.F.R. § 54.101(a) and (b), SDCL § 49-31-73, SDCL § 49-31-75, and A.R.S.D. 20:10:32:15 this Commission is vested with the authority to grant or deny Midcontinent’s Petition.

6. Alliance has a direct and substantial interest in these proceedings as this Commission’s decision may, directly or indirectly, affect the quality or cost of telecommunications services provided by Alliance to its customers.

7. Alliance desires to intervene in order that it may fully review the application, receive documents, comment, present testimony, cross-examine witnesses and produce evidence either seeking to clarify or oppose Midcontinent’s Petition, to the extent that such actions are required in the above entitled proceeding. Alliance seeks to make certain that Midcontinent’s Petition fully complies with all legal requirements and Commission orders.

## II. REQUEST FOR INTERCONNECTION

8. Exhibit D to the Petition contains a request for interconnection, subject to the exemption established by 47 U.S.C. §251(f)(1), with Alliance (the “Request for Interconnection”). The Request for Interconnection is not a bona fide request as required by the provisions of A.R.S.D. 20:10:32:37 for the following reasons:

(a) The Request for Interconnection does not contain the information concerning the interconnection, services or network elements requested of Alliance as specifically enumerated in A.R.S.D. 20:10:32:37 and required for any interconnection request to a rural telephone company which retains its rural exemption. Without this information, Alliance is unable to adequately respond to the Request for Interconnection in an informed manner or know whether it must file a petition for suspension or modification pursuant to 47 U.S.C. § 251(f)(2);

(b) The Request for Interconnection is premised upon factually incorrect assertions of Midcontinent; and

(c) The protections of 47 U.S.C. § 251 (f)(1)(A) remain in full force and effect for Alliance in the rural exchange areas of Crooks and Baltic.

9. In its Petition, Midcontinent states that “this application is a competitive response to the provision of video programming in the geographical area by the incumbent carrier, Alliance Communications.” See Petition at p. 1, 5-11. From this inaccurate assertion, Midcontinent then draws the flawed conclusions that the provisions of 47 U.S.C. § 251(f)(1)(C) apply and the exemption provided by 47 U.S.C. § 251 (f)(1)(A) is inapplicable. *Id.*

10. Midcontinent's assertion that there has been "provision of video programming" by Alliance in the rural exchanges of Crooks and Baltic is false. Alliance does not offer any video programming in these exchanges nor has it obtained any legal authority to do so, such as applying for a cable television franchise from either the City of Crooks or the City of Baltic. The limitation on the rural exemption set forth in 47 U.S.C. § 251(f)(1)(C) applies only in instances in which the rural telephone company provides video programming in the area in question. *See* 47 U.S.C. § 251(f)(1)(C). Alliance is a rural telephone company and does not provide video programming in the rural exchanges of Crooks and Baltic. As such, the protections of the rural exemption found in 47 U.S.C. § 251 (f)(1)(A) are applicable to Alliance in the rural exchanges of Crooks and Baltic.

11. Midcontinent also states that the Petition is a competitive filing since "Alliance has begun construction to offer cable services in" the rural exchanges of Crooks and Baltic. *See* Petition at p. 4, 25-27. Alliance is engaged in a fiber-to-the-home construction project in these exchanges. However, Alliance does not provide video programming in the area in question and has not applied for legally required cable television franchises to do so. The limitation on the rural exemption found in 47 U.S.C. § 251(f)(1)(C) only applies when the rural telephone company "provides video programming." 47 U.S.C. § 251(f)(1)(C) does not say "will provide," "may provide," or even "intends to provide." Before Alliance may be stripped of the protections given it under 47 U.S.C. § 251 (f)(1)(A), the plain language requirements of 47 U.S.C. § 251(f)(1)(C) must be met.

12. Pursuant to 47 U.S.C. §§ 251(f) and 254, SDCL § 49-31-79, and A.R.S.D. 20:10:32:38, this Commission is vested with the authority to determine the bona fide status of the

Request for Interconnection and the obligations of a rural telephone company such as Alliance to negotiate an interconnection agreement.

WHEREFORE, Alliance respectfully requests that the Commission grant as follows:

- A. Alliance's petition to intervene in the above entitled proceeding with full rights to participate as a formal party;
- B. A determination that the Request for Interconnection in the above entitled proceeding is not a bona fide request as required under A.R.S.D. 20:10:32:37 and 20:10:32:38;
- C. A determination that Alliance is exempt from the duty to negotiate any interconnection agreement with Midcontinent pursuant to 47 U.S.C. § 251(f)(1), SDCL § 49-31-79, and A.R.S.D. 20:10:32:38; and
- D. Such other relief as the Commission may deem proper.

Dated this 25<sup>th</sup> day of August, 2008.

Respectfully submitted,

CUTLER & DONAHOE, LLP

By: 

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Attorneys for Alliance Communications  
Cooperative, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via email to the following on this 25<sup>th</sup> day of August, 2008:

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Executive Director  
South Dakota Public Utilities Commission  
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