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VIA EMAIL TO PATTY.VANGERPEN@STATE.SD.US

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
Our File No. 280.30

Dear Ms. Van Gerpen:

Attached for filing in the above matter, please find the Joint Response of Alliance Communications Cooperative, Inc. and South Dakota Telecommunications Association to Midcontinent's Amended Motion to Find Rural Exemption Waived or to Terminate Rural Exemption Under 47 U.S.C. § 251(F)(1)(B).

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,

CUTLER & DONAHOE, LLP



Meredith A. Moore
For the Firm

MAM/cmc
Attachment

**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. TC 08-105

**JOINT RESPONSE OF ALLIANCE
COMMUNICATIONS COOPERATIVE,
INC. AND SOUTH DAKOTA
TELECOMMUNICATIONS
ASSOCIATION TO MIDCONTINENT'S
AMENDED MOTION TO FIND RURAL
EXEMPTION WAIVED OR TO
TERMINATE RURAL EXEMPTION
UNDER 47 U.S.C. § 251(F)(1)(B)**

COME NOW Alliance Communications Cooperative, Inc. (“Alliance”) and South Dakota Telecommunications Association (“SDTA”) and hereby submit their joint response to the Amended Motion to Find Rural Exemption Waived or to Terminate Rural Exemption Under 47 U.S.C. § 251(f)(1)(B) as submitted by Midcontinent Communications (“Midcontinent”) in the above-referenced docket.

BACKGROUND

On August 14, 2008, Midcontinent submitted an application to the South Dakota Public Utilities Commission (the “Commission”) seeking authority to provide local exchange service in two of Alliance’s study Areas, Crooks and Baltic (the “Application”). Through the service and filing of this Application, Midcontinent also requested that Alliance enter into negotiations with Midcontinent for the purpose of developing an interconnection agreement. Midcontinent’s Application and Request for Negotiations presupposed that Alliance was not entitled to assert the rural exemption contained in 47 U.S.C. § 251(f)(1). As such, on August 25, 2008, Alliance filed with this Commission a Petition for Intervention and a Petition for Exemption Pursuant to 47 U.S.C. § 251(f). On September 23, 2008, Midcontinent served discovery requests upon Alliance.

Midcontinent requested information from Alliance about its current business plans. Midcontinent thereafter served the instant motion to have the rural exemption waived on October 9, 2008. On October 15, Alliance submitted its response to Midcontinent's motion. Alliance also submitted objections to Midcontinent's discovery requests on October 16, 2008. On November 20, Midcontinent filed an Amended Motion to Find Rural Exemption Waived or to Terminate Rural Exemption under 47 U.S.C. § 251(f)(1)(B) ("Amended Motion"), which is currently before this Commission.

AUTHORITY AND ANALYSIS

Midcontinent's Amended Motion does not significantly alter the relief sought in its original motion. Midcontinent seeks from this Commission either a determination that Alliance, by its conduct, has waived the rural exemption contained in 47 U.S.C. § 251(f)(1)(A) or a ruling that the rural exemption is terminated pursuant to 47 U.S.C. § 251(f)(1)(B). Either form of relief sought results in a termination of the rural exemption as it applies to Alliance. Midcontinent renews its request for a hearing to determine whether Alliance is in fact engaging in the provision of video programming in the Crooks and Baltic exchange areas, intimating that the facts presented at such a hearing will conclusively establish that Alliance is currently offering cable in the relevant exchanges. As previously set forth in its Response to Midcontinent's Motion, Alliance is not currently providing cable and its intent to do so at some indeterminate point in the future is irrelevant to a determination of the applicability of the rural exemption contained in 47 U.S.C. § 251(f)(1)(B). In the interest of avoiding unnecessary duplication, Alliance refers this Commission to its Response dated October 15, 2008 for further discussion of the issue. See pp. 4-6. As set forth in its initial Response, Alliance submits that its current actions in no way justify a finding that the rural exemption is waived nor does the applicable law allow for a waiver under the known facts.

In the instance that this Commission agrees with Alliance's position that the rural exemption remains intact, Midcontinent defines further alternate relief. Midcontinent's request is twofold: (1) a determination that its interconnection request is a bona fide one, and (2) a determination that Midcontinent's request for interconnection is not unduly economically burdensome and is technically feasible and consistent with 47 U.S.C. § 254. See Amended Motion, p. 2. Midcontinent's request is based upon that relief afforded in 47 U.S.C. § 251(f)(1)(B).

Section 251(f)(1)(B) provides:

The Party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State Commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of this title (other than subsections (b)(7) and (c)(1)(D) therefore). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

Under this provision, this Commission has the authority to determine that the rural exemption is waived if it finds that Midcontinent's request is not unduly economically burdensome and is technically feasible and otherwise consistent with the law.

South Dakota Administrative Rule 20:10:32:38 outlines the procedure applicable to Midcontinent's request for termination pursuant to 47 U.S.C. § 251(f)(1)(B). It provides:

Upon making a request to a rural telephone company for interconnection, services, or network elements that are subject to the exemption established by 47 U.S.C. § 251(f)(1) (September 10, 1998), the person or entity making the request shall provide the commission notice of the request. Within ten days of receiving the request, the rural telephone company shall inform the requesting party and the commission if the rural telephone company is disputing whether the request is a bona fide request. If the rural telephone company disputes that the request is bona fide, the commission shall determine if the request is a bona fide request. If the rural telephone company does not dispute that the request is a bona fide request,

the commission shall initiate a proceeding to determine if the rural telephone company shall comply with the request unless the rural telephone company receiving the request waives its exemption.

As set forth in its Petition to Intervene, Alliance initially contested the validity of Midcontinent's request for interconnection. See Petition to Intervene p. 3, ¶8. Specifically, Alliance noted that the interconnection request failed to comply with the specifications of A.R.S.D. 20:10:32:37, namely, a statement of which services or network elements Midcontinent seeks from Alliance. Midcontinent corrected this deficiency in its supplemental filing with this Commission.¹ Accordingly, Alliance does not contest whether Midcontinent's request for interconnection is bona fide.

While Midcontinent's request for interconnection may be bona fide, questions remain as to the nature, extent and cost of those potential obligations imposed on Alliance as a result of Midcontinent's request for services. Under these circumstances, Alliance therefore requests that this Commission initiate a proceeding pursuant to A.R.S.D. 20:10:32:38 so as to determine if Alliance shall comply with Midcontinent's request for interconnection. Moreover, Alliance seeks appropriate safeguards from this Commission so as to avoid unnecessary discovery or other evidentiary hearings which will not only place a burden upon Alliance, but also provide Midcontinent an unfair competitive advantage.

¹ Midcontinent filed a Supplemental Notice of Application to Provide Local Exchange Service. Supplemental Request for Interconnection requesting the following services from Alliance:

1. As to interconnection points, Midcontinent will request trunk-side interconnection; central office connection and tandem interconnect.
2. Midcontinent will request no unbundled elements. Midcontinent uses NDA for operator services.
3. As to co-location, Midcontinent will ask for meet-point co-location located at SDN.
4. As to wholesale services, Midcontinent will request directory publication.
5. As to number portability, Midcontinent requests long-term number portability.
6. As to access to 911 or enhanced 911, Midcontinent currently is connected to the Minnehaha County PSAP-Metro Communications. Dialing parity will be required, including as to EAS.

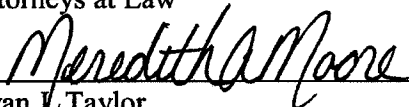
See Exhibit A, Midcontinent's Supplemental Notice of Application to Provide Local Exchange Service and Request for Interconnection to both Midcontinent's Motion to Find Rural Exemption Waived and Midcontinent's Amended Motion to Find Rural Exemption Waived or to Terminate Rural Exemption under 47 U.S.C. § 251(f)(1)(B).

CONCLUSION

The rural exemption serves the purpose of protecting companies such as Alliance from unnecessary and costly negotiations and discovery proceedings until such time as this Commission determines whether the rural exemption remains intact. Midcontinent should not be allowed to circumvent the applicable federal rules and state regulations regarding the rural exemption. For these reasons, Alliance respectfully requests that this Commission deny Midcontinent's Motion to Deem Rural Exemption waived, deny Midcontinent's request for an evidentiary hearing, and instead initiate a proceeding pursuant to A.R.S.D. 20:10:32:38 to determine whether Alliance must comply with Midcontinent's request for interconnection.

Dated this 1st day of December, 2008.


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CERTIFICATE OF SERVICE


The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 1st day of December, 2008, upon the following:

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