

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 12-035

PETITION TO INTERVENE

COMES NOW, Knology Community Telephone, by and through its undersigned counsel, and 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.

IN SUPPORT THEREOF, Petitioner states and declares as follows:

1. Knology Community Telephone (“Knology”) is an incumbent local exchange carrier providing local exchange service in certain study areas in South Dakota. Knology is also a “rural telephone company” as defined in 47 U.S.C. § 153(44) and SDCL § 49-31-1(22). Knology is the incumbent local exchange carrier in the Lennox rural exchange area.

2. On April 25, 2012, Midcontinent Communications (“Midcontinent”) filed a Petition with this Commission seeking to amend its certificate of authority to provide local exchange service in the rural exchange area of Lennox, South Dakota (the “Petition”).

3. Administrative Rule 20:10:32:03 requires the company seeking a certificate of authority to provide certain information including, but not limited to, a description of services to be offered, the manner by which those services will be offered and the specific geographic service area in which those services will be offered. Midcontinent’s Application does not currently provide all of the information set forth in A.R.S.D. 20:10:32:03 and Midcontinent seeks a waiver of the requirement to provide the same. Midcontinent asserts that such waiver is appropriate because it currently holds a Certificate of Authority in a number of service areas

across South Dakota. See Midcontinent Application for Amended Certificate of Authority, ¶3. However, pursuant to A.R.S.D. 20:10:32:05, Midcontinent bears the burden of proving that it can and will provide local exchange service in a manner consistent with the applicable law and this Commission's rules. On its face, Midcontinent's Application does not meet this standard at this time.

4. Pursuant to A.R.S.D. 20:10:32:18, Midcontinent also requests a waiver of the eligible telecommunications carrier service requirements set forth in A.R.S.D. 20:10:32:10 (establishing service obligations for all providers of local exchange service) and A.R.S.D. 20:10:32:15 (providing additional service obligations for those carriers seeking a certificate of authority to provide service in the area of a rural telephone company) and 47 U.S.C. § 214(e)(1). In response to a data request from Commission Staff, which response is dated May 7, 2012, Midcontinent stated that it "is able to satisfy the local exchange service obligations provided in A.R.S.D. 20:10:32:10, as well as those provided in 47 U.S.C. § 214(e)(1)." See Response to Staff Data Request, ¶3. Midcontinent further stated that "to the extent that service of less than the entire study area of Knology requires a waiver, Midcontinent requests such a waiver." Knology is without sufficient information so as to determine whether Midcontinent intends to provide service throughout the entirety of the Lennox study area or whether such a waiver is appropriate. To the extent it does not intend to do so, Midcontinent must establish that granting the requested waiver "does not adversely impact universal service, that quality of service shall continue, and that it is in the public interest." A.R.S.D. 20:10:32:18. Issues related to cherry picking or cream skimming may be implicated by Midcontinent's request for waiver, which issues may in turn impact universal service. Again, Midcontinent bears the burden of proving

that it is entitled to an amended certificate of authority. Accordingly, further information from Midcontinent will be necessary in order to properly evaluate its request for waiver.

5. Of potential particular importance in this docket are those issues related to the protections afforded by the Telecommunications Act of 1996 to telephone companies providing local exchange service in rural areas. Midcontinent also states in its Application that it currently has an interconnection agreement with Knology and that same agreement will apply in the Lennox service territory. It is unknown at this time whether the interconnection agreement to which Midcontinent makes reference was intended to apply or does in fact apply to Knology's Lennox service territory. The referenced interconnection agreement was negotiated and approved by this Commission in 2004. According to its terms, the interconnection agreement provides that it is intended to cover certain service areas, but no specific definition of those service areas is given. To the extent the referenced interconnection agreement does not encompass the Lennox study area, and to the extent that a bona fide request for interconnection must be made, Knology may be entitled to the protections afforded it by 47 U.S.C. § 251 (f) and Midcontinent's Application cannot presuppose that Knology has waived the protections afforded it by the rural exemption contained in 47 U.S.C. § 251(f)(1).¹

¹ Section 251(f)(1)(A) of The Telecommunications Act of 1934, as amended, provides in relevant part:

(1) Exemption for certain rural telephone companies

(A) Exemption

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such 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) thereof).

6. 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.

7. 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, Knology is entitled to "Intervener Status" in the above entitled proceeding. Knology 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 Knology to its customers. Such considerations take on paramount importance in light of the Federal Communications Commission's issuance on November 29, 2011 of its Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America Fund, et al., Order on Reconsideration*, WC Docket 10-90, FCC 11-161.

8. Knology does not currently have sufficient information to conclude that all of the legal requirements for an amended certificate of authority are satisfied or that a waiver of the legal requirements associated with securing such an amended certificate is appropriate under the facts and circumstances of this matter and is therefore in the public interest.

9. Knology desires to intervene in order that it may fully review and analyze the Application and any supporting pleadings, and receive documents, comment, present testimony, cross-examine witnesses and produce evidence either seeking to clarify or oppose Midcontinent's Application, to the extent that such actions are required in the above entitled proceeding. Knology

47 U.S.C. § 251(f)(1)(A). Under the terms of this Section, a carrier which is a rural telephone carrier has no duty to negotiate an interconnection with the requesting party until the appropriate administrative body determines that it is not entitled to the protections of the rural exemption. See *Coserv Ltd. Liabl. Corp. v. Southwestern Bell Tel. Co.*, 350 F.3d 482, 487 (5th Cir. 2003) (noting that "[a]n ILEC is clearly free to refuse to negotiate any issues other than those it has a duty to negotiate under the Act when a CLEC requests negotiation pursuant to §§ 251 and 252.").

seeks to make certain that Midcontinent's Petition fully complies with all legal requirements, available legal and rural protections and Commission orders.

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

- A. Knology's Petition to Intervene in the above entitled proceeding with full rights to participate as a formal party, and
- B. Such other relief as the Commission may deem proper.

Dated this 11th day of May, 2012.

Respectfully submitted,

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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 11th day of May, 2012:

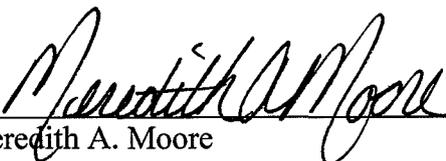
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