

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

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**TC13-027**

**In the Matter of the Consideration of )  
Eligible Telecommunications Carrier )                   **COMMENTS FROM**  
Certification Requirements           )                   **MIDCONTINENT COMMUNICATIONS****

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Midcontinent Communications (“Midcontinent”) hereby submits its comments in response to the South Dakota Public Utilities Commission’s (“Commission”) Order Opening Docket; Order Setting Comment Deadline, dated March 28, 2013, regarding whether the Commission’s rules should be modified or changed to mirror or take into account the existing and still changing Federal Communications Commission’s (“FCC”) rules concerning Eligible Telecommunication Carriers (“ETC”) annual reports. As a basis for its Order, the Commission pointed to a discussion at its March 26, 2013 meeting regarding various issues presented by South Dakota Telecommunication Association (“SDTA”) concerning the FCC’s annual reporting requirements and how the FCC requirement mirror or conflict with the Commission’s Annual ETC reporting requirements. These comments address some of the issues raised during the March 26, 2013 meeting and provide additional comments regarding Competitive ETCs (“CETC”).<sup>1</sup>

As recognized during the Commission’s hearing on March 26, 2013 and by most all parties involved in the telecommunications industry, the FCC’s rules regarding ETC annual reporting to account for high cost support remains rather fluid. There are several pending

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<sup>1</sup> Although beyond the scope of the comments here, the Commission may wish to consider in the future addressing its rules on procedure and format followed for relinquishing ETC certification. It is likely that a number of carriers will be relinquishing certification in the coming years as the support for CETCs is phased out.

proceedings seeking clarification, modification or even direct repeal of various rules adopted as a result of various FCC decisions. Decisions modifying and explaining the federal rules continue to be released.

A few weeks prior to the Commission establishing the above docket, the Chief, Wireline Competition Bureau, issued an order clarifying that competitive ETCs whose support is being phased out did not have to file a new five-year build out plans.<sup>2</sup> In that decision, it was acknowledged that without the ongoing support, the build out plan became unnecessary. The order required competitive ETCs to still continue to file annual updates on past build out plans and use of funds.<sup>3</sup>

This Commission's rules require a two-year service quality improvement plan.<sup>4</sup> Midcontinent has previously provided in its annual ETC filings a two-year plan. Midcontinent encourages the Commission to make clear that competitive ETCs will not be required to file with this Commission a two-year plan once a plan has been produced covering the support phase out period. Currently, the phase out is scheduled to progress over the next couple of years with support going to zero in July 2016.<sup>5</sup> With the phase out occurring, the Commission should recognize two alternatives to CETCs. The first would be that if a CETC continues to file a two-year plan, that the CETC can stop filing a service quality improvement plan when the two-year time period would exceed the remaining continued funding timeline. Essentially, the Commission should recognize that a plan is not necessary past December 31, 2016. The Commission should also grant an alternative to CETCs or other carriers subject to the phase out

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<sup>2</sup> *In the Matter of Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-5, CC Docket No. 01-92, 96-4, WT Docket No. 10-208, DA 13-332 ( Adopted: March 5, 2013) at ¶ 6.

<sup>3</sup> *Id.* ¶ 7.

<sup>4</sup> A.R.S.D. 20:10:32:54(1).

<sup>5</sup> see *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), ¶ 519.

that would allow the carrier, at the carrier's discretion, to provide a plan to run beyond two years through the end of support. After the filing of that plan, a carrier would no longer be obligated to file a plan but would still be subject to filing of an annual report on the use of funds under A.R.S.D. 20:10:32:54(2). Like the continuing requirements by the FCC, a CETC would maintain an obligation to report on previously filed plans and use of funds.<sup>6</sup>

It is not a productive use of companies' resources to produce a two-year plan that is not tied to nor integrated with receipt of support. In addition to the saving the expense for the company, it also preserves resources of the Commission in that staff will not have to review going forward build out plans.

During the March 26, 2013 hearing, SDTA's representative, Rich Coit, asked that the Commission consider waiving the obligation to provide a two-year service plan as members of SDTA would be preparing a five-year service plan for submission to the FCC on July 1. Since CETCs subject to phase out have no such obligations, Midcontinent has no comments on this request.

SDTA also sought a waiver or extension to file the information relating to three other obligations under the Commission's ETC annual certification filings. Specifically, these were the obligations to list the number of complaints received, certify the local usage plan is comparable to that offered by an incumbent local exchange carrier in the area, and certify that equal access to long distance carriers exists.<sup>7</sup>

Subsequent to SDTA's comments and even this Commission setting forth its order initiating this matter, the FCC has made the determination that it is not going to require certification that voice service rates are reasonable compared to national averages, which SDTA

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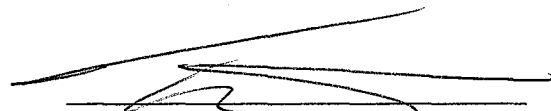
<sup>6</sup> See A.R.S.D. 20:10:32:54(2).

<sup>7</sup> See A.R.S.D. 20:10:32:54(5)(8) and (9).

pointed out as the basis for seeking the continuance on the local usage plan requirement.<sup>8</sup> While this decision illustrates the fluid nature of the FCC rules, it would appear to alleviate one of the concerns expressed by SDTA. Still, as to this requirement and the other remaining requirements, Midcontinent requests the Commission enter an order recognizing that for the remaining elements of the Commission's annual certificate that where a comparable FCC requirement exists that a filing that meets the FCC requirements will meet the South Dakota Public Utilities Commission requirements.<sup>9</sup>

Thus, Midcontinent is not requesting an extension to July 1 for the filing. Midcontinent is requesting the waiver of CETCs' obligation to provide future service improvement plans once a CETC subject to phase out has provided a plan through 2016 and recognition by the Commission that if ETCs file information in an acceptable FCC format that approximates Commission requirements, it will be deemed acceptable under the Commissions' rules.

Dated this 15<sup>th</sup> day of April, 2013.



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<sup>8</sup> See *In the matter of Connect America Fund* WC Docket 10-90, DA 13-598, ¶ 2, (April 3, 2013).

<sup>9</sup> For example, South Dakota rules require that the number of complaints received from a customer from a previous calendar year be provided to the Commission. The FCC rules require a number of complaints per 1,000 in connections. While it would appear reasonable that the filing complies with the FCC rule also complies with the South Dakota rule, it should be recognized by the Commission that if the format or presentation complies with the FCC, it will also comply with the South Dakota Commission rules.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of April, 2013, I served a copy of Midcontinent's Comments to:

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