

Docket Number: TC15-063
Subject Matter: Third Data Request
Request to: Midcontinent Communications
Request from: South Dakota Public Utilities Commission Staff
Date of Request: November 4, 2015
Responses Due: November 18, 2015

- 3-1. Pursuant to ARSD 20:10:32:03(9), provide a service map or narrative description indicating with particularity the geographic area proposed to be served by Midcontinent Communications.

RESPONSE: Please see attached maps.

- 3-2. Pursuant to ARSD 20:10:32:18, "The telecommunications company requesting the waiver shall have the burden to prove by a preponderance of the evidence that granting the waiver is consistent with these standards," explain how granting a waiver of the eligible telecommunications carrier service requirements impact universal service in the entire study area of the rural service areas that include Bowdle, Roslyn, Selby, Java, and Roscoe.

RESPONSE:

Midcontinent currently provides competitive local exchange services in the rural areas of Alliance Communications, approved in TC09-099 (cities of Baltic and Crooks), Vast / PrairieWave Community Telephone / Knology Community Telephone, approved in TC07-057 and TC12-035 (cities of Gayville and Lennox), Interstate Telecommunications Cooperative in TC03-068 and TC04-081 (cities of Waubay and Webster), and Santel Communications in TC05-161 (city of Wolsey). Midcontinent believes that none of these RLECS' universal services have been harmed by competition.

Midcontinent has received authority in the above rural exchanges in South Dakota as well as several others in North Dakota and Minnesota without being required to build-out and serve the entire exchange. Midcontinent is not aware that the Commission has by rule established minimum service areas and therefore request a waiver under ARSD 20:10:32:18.

To be required to build out facilities to serve the entire exchanges in this filing is prohibited as a matter of law. Section 253 of the Federal Communications Act prohibits state regulators from adopting any requirement that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."¹ The FCC specifically has ruled that Section 253 bars state regulators from requiring competitive providers to build out any facilities.²

¹ 47 U.S.C. § 253(a)

² Public Utility Commission of Texas, *Memorandum Opinion and Order*, 13 FCC Rcd 3460 (1997). In that order, the FCC stated that: "The... build-out requirements are of central importance to competitive entry because these requirements impact the threshold question of whether a potential competitor will enter the local exchange market at all. We preempt enforcement of these requirements because they restrict the means of facilities through which a party is permitted to provide service in violation of section 253, and, independently, because they impose a financial burden that has the effect of prohibiting certain entities from providing telecommunications service in violation of section 253." *Id.* At 3466.

This filing is in response to Venture Communications offering of competitive video services where Midcontinent has cable franchises going back to the late 1980's. Venture Communications is provisioning video programming in its geographical area, including Bowdle, Roslyn, Selby, Java, and Roscoe. Under § 47 U.S.C. 251(f)(1)(C) the exemption provided in 47 U.S.C § 251(f)(1)(A) does not apply to Venture when it (Venture) enters the video market. Venture does not disagree that it has waived its right to the rural exemption by its offering of video services and that Midcontinent has made a bona fide request for interconnection.

Midcontinent and Venture are in the process of negotiation of an Interconnection Agreement and upon completion it will be filed with the Commission for its approval.

- 3-3. In response to Staff's Second Data Request, 1-1 Midcontinent Communications stated "Midcontinent is not able to determine if there is any impact to Venture Communications because we have no knowledge of their financials or network, including line counts. However, any universal service impact to a rural carrier is more likely due to ICC Reform than what it is from a competitor, such as Midcontinent, in their exchange. Under the ICC Reform Order, RLECs will continue to receive support through 2017..."
- a. Referring to 47 U.S.C. §254 (f), where "...a State may adopt regulations *not inconsistent* with the Commission's rules to preserve and advance universal service," and "A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards *that do not rely on or burden Federal universal service support mechanisms.*"

RESPONSE: Midcontinent does not understand this statement. As explained above, Venture has waived the rural exemption. Midcontinent is not aware of any effect its providing competitive telephone service to these communities will have any effect, let alone an adverse effect, on universal service. Finally, Midcontinent is not aware of any current or proposed state rules or regulations that would have any adverse effect on its application in this docket.

- b. If the South Dakota Public Utilities Commission granted a waiver of ARSD 20:10:32:15 allowing a competitor, such as Midcontinent, to serve select city limits of the Venture study areas, explain the effect on the remaining rural territory's reliance on Federal Universal funds?

RESPONSE: From previous approved dockets and carriers, Midcontinent's understanding is that nothing would change.

- 3-4. Refer to statement (3), Midcontinent's Application for Waiver of ARSD 20:10:32:15: "Midcontinent is able to satisfy the local exchange service obligations provided in ARSD 20:10:32:10, as well as those provided in 47 U.S.C. §214 (e)(1)." Provide information as to how Midcontinent would be able to serve the entire service area of Venture, indicating the extent to and time-frame by which Midcontinent would provide service through the use of its own facilities, the purchase of unbundled network elements, or resale. Also provide a description of

all facilities that the applicant would utilize to furnish the proposed local exchange services, including any facilities of underlying carriers.

RESPONSE: Midcontinent will provide service to the Venture exchanges as outlined in the maps attached to its filing. Midcontinent has been providing local exchange services in South Dakota on its own facilities since 2000, and in 2006 began provisioning services using Internet Protocol. Midcontinent will utilize its own facilities in providing local exchange service using its existing fiber network that currently provides high-speed Internet and video services in the Venture exchanges. Midcontinent will not purchase unbundled network elements or resale services from Venture. The details of interconnection are being worked out as the companies negotiate an interconnection agreement.

3-5. The Certificate of Service submitted on October 13 does not use the correct service list for this docket. Please provide all parties on the service list the Letter regarding Supplemental Notice of Application and the Supplemental Notice of Application to Provide Local Exchange Service and Request for Interconnection.

RESPONSE: Service List corrected, mailed, and filed November 11, 2015.