



South Dakota Telecommunications Association

Advocating for South Dakota's Rural Broadband Providers

November 9, 2018

Ms. Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Docket No. TC18-058, IN THE MATTER OF THE APPLICATION OF MIDCONTINENT COMMUNICATIONS

Dear Ms. Van Gerpen:

Enclosed for filing in the above referenced docket you will find the electronic original of the "SDTA Petition to Intervene."

As is evidenced by the Certificate of Service attached to the Petition, service has been made to representatives of Midcontinent Communications, as they are listed on the Commission's published service list for the Docket.

Thank you for your assistance in filing and distributing copies of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Coit", written over a circular scribble.

Richard D. Coit
SDTA Executive Director and General Counsel

CC: Service List

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

IN THE MATTER OF THE APPLICATION OF)	
MIDCONTINENT COMMUNICATIONS FOR AN)	
AMENDED CERTIFICATE OF AUTHORITY TO)	
PROVIDE LOCAL EXCHANGE SERVICE IN DEFINED)	Docket No. TC18-058
CENSUS BLOCKS WITHIN RURAL AREAS IN)	
MOODY, DAVISON, MINNEHAHA, HANSON, BEADLE,)	
KINGSBURY AND CODINGTON COUNTIES AND A)	
WAIVER OF ARSD 20:10:32:15)	

SDTA Petition to Intervene

The South Dakota Telecommunications Association ("SDTA") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL § 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support thereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperatives, independent and municipal telephone companies operating throughout the State of South Dakota.

2. On October 22, 2018, Midcontinent Communications ("Midco") filed with this Commission a "Petition for Waiver of ARSD 20:10:32:15 and Granting of Expanded Certificate of Authority with ETC Status in Defined Census Blocks" (hereinafter referenced as the "Petition"). Midco made this filing as a carrier recently chosen to receive "Connect America Fund ("CAF") Phase II" dollars pursuant to FCC "Auction 903" concluded on August 21, 2018.¹ As indicated by the filed Petition, Midco is presently of the view that it must obtain a certificate of authority to provide local exchange services and competitive eligible telecommunications carrier ("ETC") status throughout the entire area of all census blocks in which it was the successful/winning bidder. This includes, as set forth in Midco's filing, certain census blocks which it believes overlap into the rural study areas/service areas of Venture Communications Cooperative ("Venture"), Santel Communications Cooperative ("Santel"), and Interstate Telecommunications Cooperative, Inc ("ITC"). Thus, Midco with its

¹ *Connect America Fund Phase II Auction (Auction 903) Closes, Winning Bidders Announced*, FCC Form 683 due October 15, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice DA 18-887, released August 28, 2018.

filing seeks an amended Certificate of Authority and ETC designation from this Commission covering the rural service areas of these rural telephone companies, to the extent that such service areas are located in the following specific census blocks: for Venture, blocsk # 271554601001253 and 460059567001263; for Santel, blocks # 460359626002013, 460359626002002, 460359626002006, 460359626002131 and 460619641003365; for ITC, blocks # 271739702003122, 460299546001170, and 460779581001000 (*see* Midco Petition Exhibit 5).

3. Venture, Santel and ITC are all "incumbent local exchange carriers" and "rural telephone companies" under federal and state telecommunications law and each is a member of SDTA. All three of the companies provide local exchange services and broadband Internet access services as designated ETCs and are also recognized as "carriers of last resort" throughout their defined rural study areas or service areas. As such, each of the companies receives universal service support under the federal "High Cost Program." This support is specifically distributed to each of the companies based on voice and/or broadband services provided to end user locations within any portion of their service areas.

4. Under both federal and state law several rural safeguards have been established to assist in the preservation and advancement of universal service within high cost rural service areas. One such safeguard is found in 47 U.S.C. § 253(f) and SDCL § 49-31-73. Under these statutes, states are authorized to condition competitive entry into rural telephone company service areas by imposing certain minimum telecommunications service obligations. The obvious intent of these statutes is (1) to ensure that competing carriers make their service offerings available to all consumers, including higher cost consumers within rural service areas; and (2) to prevent or minimize the adverse impacts that "cream-skimming" or "cherry-picking" practices are likely to have on efforts to preserve affordable universal service.

5. This Commission long ago adopted administrative rules to implement this rural safeguard. ARSD § 20:10:32:15 of the Commission's rules specifically provides, "if a telecommunications company is seeking authority to provide local exchange service in the service area of a rural telephone company, the company shall satisfy the service requirements imposed on eligible telecommunications carriers pursuant to 47 U.S.C. §

214(e)(1) and applicable federal regulations. After notice and opportunity for hearing, these service requirements are to be imposed on the alternative local service provider throughout a geographic area as determined by the Commission, unless a waiver is granted pursuant to § 20:10:32:18." As prescribed under § 20:10:32:18, the Commission may only grant such a waiver if, "after notice and opportunity for hearing, it is determined by the commission that granting the waiver does not adversely impact universal service, that quality of service shall continue, and that it is in the public interest." It is also stated in the rule that 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." As part of its Petition, based on its belief that the census blocks listed above do extend into rural telephone company service areas, Midco requests a waiver of the rural safeguard service requirements pursuant to ARSD §§ 20:10:32:15 and 20:10:32:18.

6. Based on its own review of the census block areas referenced above and the current PUC and FCC approved rural study area/service area boundaries for Venture, Santel and ITC, SDTA questions whether Midco is correct in its conclusion that the identified census blocks extend into or overlap into any rural telephone company service areas. Moreover, even if some overlap is found to exist, there is no specific requirement in the applicable FCC rules indicating that Midco, as a winner in the CAF Phase II funding auction, must receive ETC designation for the entire area within all census blocks where funding was awarded.²

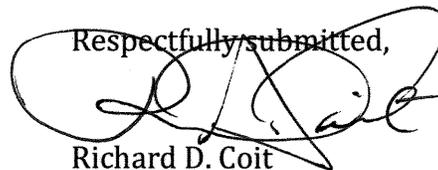
7. SDTA member companies are interested in this proceeding and stand to be affected by the Commission's decisions herein. SDTA seeks intervention in this proceeding based on the interest of Venture, Santel and ITC, all of which are SDTA members, and also the interest

² The provisions of 47 C.F.R. §§ 54.315 only generally indicate that an applicant in the competitive bidding process for CAF Phase II support need only certify and demonstrate that it "is an eligible telecommunications carrier in any area for which it seeks support." And, as the FCC has made clear, the funding awarded through the CAF Phase II reverse auction (Auction 903) is specifically targeted to "fund price cap areas where price cap carriers declined the offer of model-based support and areas that were otherwise removed or excluded from the offer of model-based support." See Public Notice, DA 18-929, Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks Within Bid Areas, released Sept. 10, 2018, par. 6. Also, in finalizing the list of census blocks that would be subject to the auction, the FCC made efforts to exclude from the auction "those census blocks that are split between a price cap carrier and a rate-of-return carrier." See Public Notice, DA16-908, Wireline Competition Bureau Releases Preliminary List and Map of Eligible Census Blocks for the Connect America Phase II Auction, released August 10, 2016, and Public Notice, DA 18-111, Revised List and Map of Eligible Census Blocks for the Connect America Fund Phase II Auction, released Feb. 6, 2018.

of all other SDTA member companies which operate as incumbent local exchange carriers and "rural telephone companies" and stand to be "bound and affected favorably or adversely" by decisions made in this proceeding (*see* ARSD § 20:10:01:15.05).

8. Based on all the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status.

Dated this 9th day of November, 2018.

Respectfully submitted,

Richard D. Coit
SDTA General Counsel

CERTIFICATE OF SERVICE

I hereby certify that an original of the Petition for Intervention, dated November 9, filed in PUC Docket TC18-058, was served upon the PUC electronically, directed to the attention of:

Ms. Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
patty.vangerpen@state.sd.us

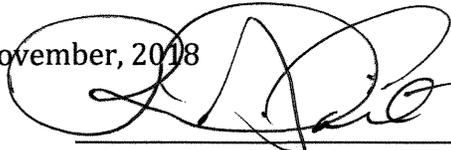
A copy was also sent by e-mail and/or US Postal Service First Class mail to each of the following individuals:

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Kristen.edwards@state.sd.us

Mr. Eric Paulson
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
eric.paulson@state.sd.us

Mr. Pat Mastel
General Counsel
Midcontinent Communications
3901 N. Louise Ave.
Sioux Falls, SD 57107
Pat.Mastel@Midco.com

Dated this 9th day of November, 2018



Richard D. Coit, General Counsel
South Dakota Telecommunications Association
PO Box 57
320 East Capitol Avenue
Pierre, SD 57501-0057