

Exhibit 2

Correspondence Between Midco and James Valley

Letter from Andi Livingston to James Groft

June 3, 2021



June 3, 2021

James Valley Cooperative Telephone Company
ATTN James Groft, Chief Executive Officer
235 E. 1st Avenue
PO Box 260
Groton, SD 57445

RE: Midcontinent Communications
Request for Section 251 (c) Facilities based Interconnection Agreement

Dear Mr. Groft,

I am writing on behalf of Midcontinent Communications ("Midco"). The purpose of this letter is to request an interconnection agreement with James Valley Cooperative Telephone Company ("James Valley") for the purpose of facilities based interconnection, the exchange of traffic, number portability and other customary arrangements in the Groton, South Dakota, exchange. Midco is not seeking to resell James Valley's services.

This request is made under the provisions of Section 251 (c)(2) of the Act, 47 U.S.C., and is intended to trigger the time periods for negotiation and arbitration under Section 252 of the Act.

We look forward to negotiating and reaching an acceptable interconnection Agreement with James Valley for the Groton exchange.

Sincerely,

A handwritten signature in black ink that reads "Andi Livingston".

Andi Livingston
Regulatory Reporting Manager
Midcontinent Communications
3901 N Louise Avenue
Sioux Falls, SD 57107
(605) 274-3648
Andrea.Livingston@Midco.com

Letter from James Groft to Andi Livingston

June 16, 2021



June 18, 2021

Andi Livingston
Regulatory Reporting Manager
Midcontinent Communications
3901 N Louise Avenue
Sioux Falls, SD 57107

Re: Midcontinent Communications
Request for Section 251 (c) Facilities based Interconnection Agreement

Dear Ms. Livingston:

I have reviewed your June 3, 2021, letter requesting an interconnection agreement with James Valley Cooperative Telephone Company for the purposes of facilities based interconnection, exchange traffic, number portability and other arrangements in the Groton, South Dakota exchange. It is my understanding that Midco does not have a Certificate of Authority (COA) from the South Dakota Public Utilities Commission to provide service in James Valley's service area. Pursuant to ARSD 20:10:32:02, a "telecommunications company may not provide local exchange service in an area for which it does not have a valid certificate of authority without first obtaining an amended certificate of authority from the commission applicable to the area into which the company proposes to expand." Midco's request for an interconnection agreement is, therefore, premature at best because Midco does not have the legal authority to provide the services that would be contemplated by an interconnection agreement.

The request is also procedurally deficient because it did not include the information required by ARSD 20:10:32:37.

Finally, any contract the parties negotiated would be unlawful and void because Mido cannot provide the services without a COA.

Because the request does not comply with the legal requirements, requesting James Valley to engage in contract negotiations at this time and under these circumstances is not appropriate. As a result, James Valley will not respond to this request and spend its resources doing so until Midco has obtained a COA and otherwise complies with the procedural requirements.

If the South Dakota Public Utilities Commission grants Midco a COA, James Valley, at that time, will respond to an interconnection request.

Sincerely,

A handwritten signature in blue ink that reads "James Groft". The signature is fluid and cursive, with the first and last names being the most prominent.

James Groft, CEO
James Valley Telecommunications

Letter from J.G. Harrington to James Groft

July 16, 2021



J.G. Harrington
+1 202 776 2818
jgharrington@cooley.com

By FedEx

July 16, 2021

Mr. James Groft
Chief Executive Officer
James Valley Telecommunications, Inc.
234 E. 1st Ave.
PO Box 260
Groton, SD 57445

**Re: Midcontinent Communications
Interconnection for Provision of Wholesale Services**

Dear Mr. Groft:

Midcontinent Communications (“Midcontinent”) has asked me to respond to your June 18, 2021 letter to Andi Livingston (the “June 18 Letter”).¹ For the reasons described below, your claim that James Valley Telecommunications, Inc. (“James Valley”) is not obligated to enter into an interconnection agreement with Midcontinent is incorrect and in direct conflict with binding decisions of the Federal Communications Commission (the “FCC”). Moreover, because the rural exemption is not implicated by Midcontinent’s request, ARSD 20:10:32:37 does not apply. Consequently, James Valley is obligated to provide interconnection to Midcontinent.

Midcontinent is requesting interconnection for the purpose of providing wholesale interconnection services to a voice over IP provider. Under the FCC’s 2007 decision in the *Time Warner* case, “wholesale providers of telecommunications services are telecommunications carriers for the purposes of sections 251(a) and (b) of the [Communications] Act, and are entitled to the rights of telecommunications carriers under that provision.”² That decision rejected state commission claims that wholesale service did not qualify as telecommunications service, and concluded that wholesale carriers are entitled to request interconnection from rural carriers under Sections 251(a) and (b) to provide wholesale service. The *Time Warner* decision specifically applies to rural carriers and, because it addresses interconnection under Section 251(a) and (b) of

¹ A copy of this letter is being sent to James Cremer, who Midcontinent understands is counsel for your company. If the company is represented by other counsel, please inform me and I will send a copy of this letter to that individual.

² *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007) (“Time Warner”).*



Mr. James Groft
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the federal Communications Act, the rural exemption does not apply to such requests.³ The FCC affirmed this position four years later in *CRC Communications*.⁴ *CRC Communications* also held that carriers are entitled to arbitration of such requests.⁵

There is no doubt that Midcontinent is a telecommunications carrier in South Dakota, and Midcontinent holds several authorizations that allow it to provide service throughout the state.⁶ Indeed, James Valley already has an EAS agreement with Midcontinent, which governs the exchange of local telecommunications traffic between the companies.⁷ Thus, as a provider of telecommunications service in South Dakota, Midcontinent is entitled to interconnection to provide wholesale interconnection services under both the *Time Warner* and *CRC Communications* decisions.⁸

³ See 47 U.S.C. § 251(f)(1)(A) (rural exemption applies to Section 251(c) obligations only); *Time Warner*, 22 FCC Rcd at 3517-20 (determining that wholesale services qualify as telecommunications services entitled to interconnection under Sections 251(a) and (b) of the Communications Act).

⁴ *CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, Declaratory Ruling*, 26 FCC Rcd 8259 (2011) (“*CRC Communications*”).

⁵ *Id.*; see also *Missouri Valley Communications v. North Dakota Pub. Svc. Comm’n.*, Order Denying Plaintiff’s Motion for Summary Judgment, Case No. 4:12-cv-091 (D. N.D. 2013) (denying appeal of arbitration decision made pursuant to *Time Warner* and *CSC Communications* and affirming that rural local exchange carriers are subject to interconnection and arbitration under Section 251(a)).

⁶ See South Dakota Certificate of Authority TC00-085 (granting authority to conduct business as a Telecommunications Company in South Dakota); FCC Public Notice, Domestic Section 214 Authorization Granted, DA 10-1260 (rel. July 6, 2010) (granting transfer of control of domestic Section 214 authorization held by Midcontinent); FCC Public Notice, International Authorizations Granted, DA No. 01-1604 (rel. July 6, 2001) (granting international Section 214 authorization to Midcontinent)

⁷ Extended Area Service Agreement Between Midcontinent Communications and James Valley Cooperative Telephone Co. DBA James Valley Telecommunications for South Dakota, Sept. 1, 2003 (“EAS Agreement”).

⁸ For similar reasons, your claim that Midcontinent must obtain a certificate of authority before obtaining interconnection is incorrect. Under *Time Warner* and *CSC*, the only requirement to obtain interconnection for wholesale services is to be a provider of telecommunications services in the state. See, e.g., *Time Warner*, 22 FCC Rcd at 3320-22 (holding that the nature of the retail services supported by the wholesale provider is irrelevant to the wholesale provider’s rights). Midcontinent provides both intrastate and interstate telecommunications in South Dakota.

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Your claim that Midcontinent's request is procedurally defective because it does not comply with ARSD 20:10:32:37 also is incorrect.⁹ ARSD 20:10:32:37, by its terms, applies only when a carrier seeks to extinguish a rural exemption under Section 251(f)(1)(A). Since the rural exemption covers only Section 251(c) interconnection, ARSD 20:10:32:37 does not apply to Section 251(a) and (b) interconnection requests like the one made in the June 18 Letter.

Moreover, under the terms of the EAS agreement with Midcontinent, James Valley is required to complete and route transit traffic.¹⁰ Thus, James Valley already is obligated to provide local interconnection to Midcontinent for third-party traffic.

Finally, and in accordance with the *CRC Communications* decision, this letter constitutes a formal request for interconnection under Sections 251(a), 251(b) and 252 of the Communications Act, and begins the period for negotiation and arbitration under Section 252.¹¹ If Midcontinent and James Valley are unable to reach an agreement prior to the close of the period to initiate arbitration under Section 252, Midcontinent intends to seek arbitration for a final agreement on these matters.

Ms. Livingston is the contact at Midcontinent to discuss the next steps for the parties to reach an agreement. Please contact her within the next fifteen (15) days.

Please inform me if you have any questions concerning this letter.

Sincerely,



J.G. Harrington
Counsel to Midcontinent Communications

cc: James M. Cremer, Esq. (via overnight courier)

⁹ June 18 Letter.

¹⁰ EAS Agreement, Section V.D.

¹¹ See *CRC Communications*, 26 FCC Rcd at 8268-69, 8272-73.

Letter from James Groft to Andi Livingston

August 6, 2021



Dear Ms. Livingston:

I have reviewed the July 16, 2021, letter from your attorney, J.G. Harrington requesting that James Valley respond to you by July 31, 2021.

While James Valley acknowledges its obligation to negotiate in good faith with respect to a proper interconnect request, negotiations at this time are premature until the issue of Midco's obligation to obtain a Certificate of Authority in James Valley's service area as outlined in my June 18, 2021, is resolved. Mr. Harrington's claim that "there is no doubt that Midcontinent ... holds several authorizations that allow it to provide service throughout the State" and that therefore a Certificate of Authority is not required is incorrect for two reasons:

- *SD PUC Dockets TC96-163, TC98-148, TC00-085 and TC08-105*. In these dockets, Midco stipulated and agreed that its Certificate of Authority was limited to areas in South Dakota where, "US West Communications, Inc. is the incumbent local exchange carrier. In the future should Midcontinent Communications choose to provide local exchange services statewide, with respect to local telephone companies, Midcontinent Communications shall have to come before the commission in another proceeding before being able to provide local service in that local service area." The SD PUC entered Orders consistent with these Stipulations.
- *Missouri Valley Communications v. North Dakota Pub. Svc. Comm'n., Case No. 4:12-cv-091 (D. N.D. 2013)*. This case is cited in Mr. Harrington's letter as authority for Midco to proceed with its request for interconnection without a Certificate of Authority in the James Valley service area. However, the court noted, "Midcontinent is a competitive local exchange carrier (CLEC) authorized to provide service throughout North Dakota under a certificate of public convenience and necessity granted by the [North Dakota Public Service Commission]." This case confirms James Valley's position that a prerequisite for an interconnection agreement is the state commission's grant of authority to provide the service in the appropriate service area.

Therefore, before engaging in further negotiations, please advise if it is still Midco's position that it is not required to obtain a Certificate of Authority and the basis for that position.

Lastly, I note that Midco sent the attached July 26 mailing to residents of Groton claiming “[w]e are coming to your area” to provide “phone services” and advising residents “[d]on’t get locked into a long term contract.” This appears to be a deceptive trade practice under SDCL 37-24-6¹ because it omitted the material fact that before Midco can provide phone service it must obtain a Certificate of Authority and an Interconnection Agreement. Therefore, I request that Midco cease and desist from further mailers or other advertising materials until it has a Certificate of Authority and an Interconnection Agreement. Failure to do so violates Midco’s obligation to negotiate in good faith.

Sincerely,



James Groft, CEO

¹ SDCL 37-24-6 provides - It is a deceptive act or practice for any person to:

- (1) Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise, regardless of whether any person has in fact been misled, deceived, or damaged thereby.



July 26, 2021

|||||
T2 P1 000319 *****AUTO**5-DIGIT 57479
Current Resident
1001 N 2nd St
Groton SD 57445-2169

**See
what
we're
about.**

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We're Midco®, a fiber internet, TV and phone provider serving residential and business customers in the Midwest - and we're coming to your area!

Don't get locked into a long-term contract. We're excited to start offering services in the area this year. That means faster surfing, better streaming and more productivity and entertainment - with no data caps. We also offer services with no contracts required and 24/7 customer care.

Want to learn more? Visit Midco.com/Groton to register for updates when services will be available.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Pat McAdaragh', written over a faint, larger version of the same signature.

Pat McAdaragh
President & CEO

Midco.com

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MIDCO

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Watching.
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Your home or business deserves reliable fiber internet, TV and phone services. Smooth streaming? Check. Reliable connection? You've got it. No data caps? Sure thing. Long-time Midwest company that's here to stay? That's us.

Professional Installation

Schedule appointments on the hour or in 15-minute increments for residential and some business services. Self-install is even available for some residential services.

24/7 Customer Care

Need help after installation? We offer plenty of self-help options on our websites. And, our Midwest-based customer care team is here if you need us via chat, text, Facebook and Twitter, or on the phone.

Community Commitment

People matter to us. We encourage our team members to give their time, energy and resources to the causes they care about most in their communities. And twice a year, we distribute grants to deserving nonprofits, local governments and schools for local projects through the Midco Foundation. Learn more at Midco.com/Foundation.

Midco.com

MIDCO

4 Reasons to Choose Midco

- 1 Our services are delivered via fiber to your home or business - making your signal more reliable, since it isn't affected by weather.
- 2 We don't limit your streaming or connections. Our internet comes with no data caps, and 2 Gig and 5 Gig data speed options.
- 3 Whether it's your entertainment or connectivity, you don't have to talk to multiple companies to equip your whole home or business.
- 4 We don't require a contract and offer a 30-day money-back guarantee if you're not satisfied. No questions asked!

Business Bonuses

Midco works with Midwest businesses, providing fiber internet, phone, advertising services and more. Whether you're large or small, we customize our services to fit your needs. When you succeed, we succeed. Visit Midco.com/Business.

No contract required for residential service. Some business services may require a contract. Contact Midco for more details.

Letter from J.G. Harrington to James Groft

August 17, 2021

(The attachment to this letter is omitted because it is the same as Exhibit 1 to this petition.)



August 17, 2021

VIA OVERNIGHT COURIER

James Groft
Chief Executive Officer
James Valley Telecommunications, Inc.
234 E 1st Ave
PO Box 260
Groton, South Dakota 57445

**Re: Midcontinent Communications
Interconnection for Provision of Wholesale Services**

Dear Mr. Groft:

Midcontinent Communications (“Midcontinent”) has asked me to respond to your August 6, 2021 letter to Andi Livingston (the “August 6 Letter”).¹ The premise of your letter is that Midcontinent must be authorized by the South Dakota Public Service Commission (the “South Dakota PSC”) to provide local exchange service within the James Valley Telecommunications, Inc. (“James Valley”) service area before Midcontinent can obtain interconnection from James Valley. Simply put, this is wrong, and as explained in my July 16 letter, this theory is directly refuted by controlling FCC decisions that are more than a decade old.

As described in Midcontinent’s earlier correspondence, Midcontinent is seeking interconnection under Section 251(a) of the federal Communications Act for the purpose of providing wholesale interconnection services to a voice over IP provider.² Thus, Midcontinent does not seek to provide retail local telephone services in the James Valley territory.

In this context, your claim that Midcontinent must obtain a Certificate of Authority from the South Dakota PSC to serve James Valley territory as a local exchange carrier before it has a right to interconnection plainly is wrong. In fact, the FCC has addressed this question twice and reached the same result both times. In 2007, it held that “wholesale providers of telecommunications services are telecommunications carriers for the purposes of sections 251(a) and (b) of the [Communications] Act, and are entitled to the rights of telecommunications carriers under that provision.”³ It repeated that conclusion in 2011, stating that:

¹ A copy of this letter is being sent to James Cremer, who Midcontinent understands is counsel for your company. If the company is represented by other counsel, please inform me and I will send a copy of this letter to that individual.

² 47 U.S.C. § 251(a).

³ Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as



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We also reaffirm the Bureau’s conclusion in the *TWC Order* that the [Communications] Act does not differentiate between the provision of telecommunications services on a wholesale or retail basis for the purposes of sections 251(a) and (b), as well as that Order’s holding that providers of wholesale telecommunications services enjoy the same rights as any other “telecommunications carrier” under those provisions of the Act.⁴

Both of these decisions refer only to “telecommunications carriers” and do not differentiate among local exchange carriers, specialized carriers, or interexchange carriers, or between interstate and intrastate carriers.⁵ This is consistent with both Section 251(a) and with the definition of “telecommunications carrier” in the Communications Act, which makes no distinction among the types of telecommunications services provided or whether the services are interstate or intrastate in nature.⁶

It is beyond dispute that Midcontinent is a telecommunications carrier operating in South Dakota. It holds FCC authorizations to provide both domestic and international service.⁷ These authorizations cover the entire country, including all of South Dakota. It also holds authorization to provide telecommunications services in South Dakota.⁸ Thus, it is entitled to interconnection with James Valley under Section 251(a) of the Communications Act and, as described in *CRC Communications*, also is entitled to arbitration under Section 251(b) of the Communications Act if the parties cannot reach a negotiated agreement.⁹

Your letter further argues that Midcontinent is not entitled to interconnection because none of its authorizations permit it to provide local exchange services in the James Valley

Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, *Memorandum Opinion and Order*, 22 FCC Rcd 3513 (2007) (“*Time Warner*”).

⁴ *CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, Declaratory Ruling*, 26 FCC Rcd 8259, 8273 (2011) (“*CRC Communications*”).

⁵ See *Time Warner*, 22 FCC Rcd at 3513; *CRC Communications*, 26 FCC Rcd at 8273.

⁶ 47 U.S.C. §§ 3(44) (defining a telecommunications carrier as a provider of telecommunications service), 3(46) (defining a telecommunications service based on nature of service offering, not whether the service is intrastate or interstate in nature), 251(a)(1) (requiring all telecommunications carriers to interconnect with all other telecommunications carriers).

⁷ FCC Public Notice, Domestic Section 214 Authorization Granted, DA 10-1260 (rel. July 6, 2010) (granting transfer of control of domestic Section 214 authorization held by Midcontinent); FCC Public Notice, International Authorizations Granted, DA No. 01-1604 (rel. July 6, 2001) (granting international Section 214 authorization to Midcontinent)

⁸ South Dakota Certificate of Authority TC00-085 (granting authority to conduct business as a Telecommunications Company in South Dakota);

⁹ *CRC Communications*, 26 FCC Rcd at 8269 (holding that “requests made to incumbent LECs for interconnection and services pursuant to sections 251(a) and (b) are subject to state commission arbitration as set forth in section 252”).



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service area. This is plainly incorrect, for three different reasons. First, Midcontinent's FCC authorizations give it the power to provide telecommunications services anywhere in South Dakota (indeed, anywhere in the U.S.), with no exclusions for the James Valley territory or any other territory. *Time Warner* and *CSC Communications* establish that this is sufficient to give James Valley an obligation to interconnect with Midcontinent.

Second, while the letter recites Midcontinent's agreement to provide local exchange services only within the then-US West territory, that agreement (along with the South Dakota PSC orders implementing it) applies only to local exchange services, not to long distance services or the interconnection services Midcontinent proposes to provide.¹⁰ Thus, your claim that Midcontinent's South Dakota authorization is insufficient for Midcontinent to obtain interconnection because it does not cover the James Valley territory is factually incorrect.¹¹

Third, even assuming that none of Midcontinent's authorizations encompassed the James Valley territory, neither *Time Warner* nor *CSC Communications* requires any service territory overlap to create an interconnection obligation. In fact, given that Section 251(a) of the Communications Act covers all forms of interconnection, including interconnection between IXCs and LECs and interconnection between incumbent LECs that do not compete with each other, it is apparent that a carrier requesting interconnection need not provide local exchange services or overlap the service area of the other carrier.¹² For that reason, Midcontinent's status as a telecommunications carrier authorized to provide service in South Dakota would be sufficient to support its request, even if that authorization were limited to a single city.

Further, *Missouri Valley Communications v. North Dakota Pub. Svc. Comm'n.* does not support the theory that a carrier must have local exchange authorization to obtain interconnection. The question of whether local exchange authorization was required was not an issue in that matter, and was not addressed by the court or by the North Dakota Public Service Commission. The only relevant legal issue in that case was whether the rural exemption continued to apply to Section 251(a) interconnection requests and, as described in my July 16 letter, that issue was decided consistently with *Time Warner* and *CSC Communications*.

Finally, Midcontinent has asked me to remind you that your letters have not stopped the clock under the negotiation and arbitration provisions of Section 252 of the Communications Act.¹³ Midcontinent continues to be willing to negotiate an interconnection agreement or to

¹⁰ As described in *Time Warner* and *CSC Communications*, interconnection services provided on a common carrier basis are telecommunications services.

¹¹ Of course, any customer that purchases those services will be subject to any applicable South Dakota PSC requirements if it chooses to provide local exchange service as a telecommunications carrier.

¹² For instance, the interconnection between James Valley and other rural LECs in South Dakota is governed by Section 251(a) even though their territories do not overlap.

¹³ 47 U.S.C. § 252.



Mr. James Groft
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enter into mediation under Section 252(a)(2), but if James Valley refuses to negotiate, Midcontinent will enforce its arbitration rights in accordance with the timetable in Section 252(b). James Valley's failure to acknowledge its obligations or to enter into negotiations does not affect Midcontinent's rights under Section 251(a) and 252.

To facilitate the negotiation process, Midcontinent has asked me to provide you with a draft interconnection agreement, which is enclosed with this letter (and will be sent separately to you via email by Ms. Livingston.) If James Valley wishes to begin negotiations or to enter into mediation pursuant to Section 252(a)(2), please contact Ms. Livingston. If James Valley does not take either of those steps, Midcontinent will presume that James Valley intends to arbitrate this matter, and will act accordingly.

Please inform me if you have any questions concerning this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "J.G. Harrington".

J.G. Harrington

Counsel to Midcontinent Communications

Enclosure

cc(w/encl.): James M. Cremer, Esq. (via overnight courier)