

Exhibit 3

Letter from Patrick Mastel to the Commission

October 11, 2021



Direct Dial: 605-271-0594
Email: pat.mastel@midco.com

October 11, 2021

South Dakota Public Utilities Commission
500 E. Capitol Ave
Pierre, SD 57501

Attn: Adam de Hueck

Re: Midcontinent Communications
James Valley Cooperative Telephone Company
Request for Interconnection under Section 251(a) of the
Communications Act of 1934

Dear Mr. de Hueck:

I am writing to notify the Commission that Midcontinent Communications (“Midco”) has requested interconnection from James Valley Cooperative Telephone Company (“James Valley”) under Section 251(a) of the Federal Communications Act of 1934 (the “Communications Act”), 47 U.S.C. § 251(a), as described in the attached letter from Midco’s counsel to James Valley.

As explained in the letter, because Midco’s request was made under Section 251(a), it is not subject to Section 251(f)(1) or Section 251(f)(2) of the Communications Act, 47 U.S.C. §§ 251(f)(1), (2). Consequently, the notice requirement in Article 20:10:32:20 of the South Dakota administrative rules, ARSD 20:10:32:20, and the provisions of Section 49-31-81 of the South Dakota Consolidated Laws, SDCL 49-31-81 do not apply to Midco’s request. However, this notice is being provided at the request of Commission staff for your information.

As described in the attached letter, Midco is willing to negotiate reasonable terms of interconnection with James Valley. However, absent an agreement, Midco expects to file a petition for arbitration with the Commission within the period specified in the Communications Act.



Please inform me if any questions should arise in connection with this notification.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Patrick J. Mastel", written over a horizontal line.

Patrick J. Mastel
Senior Vice President and General Counsel
Midcontinent Communications

Attachment

cc: Josh Wurgler, counsel to James Valley



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
July 16, 2021
Page 2

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.



Mr. James Groft
July 16, 2021
Page 3

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.