BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of	)	
	)	
Petition for Arbitration of an Interconnection	)	Docket No. TC21-124
Agreement Between Midcontinent	)	
Communications and James Valley	)	
Cooperative Telephone Company	)	
	)	

OPPOSITION TO MOTION TO DISMISS

Midcontinent Communications ("Midco") hereby opposes the Motion to Dismiss Untimely Petition (the "Motion") filed in the above-referenced proceeding by James Valley Cooperative Telephone Company ("James Valley") in response to Midco's Petition for Arbitration (the "Petition").

James Valley argues that the Petition was filed too late because Midco should have been counting from June 3, 2021, the date of Midco's first contact with James Valley, instead of July 16, 2021, the date of Midco's letter formally notifying James Valley that the time period for negotiation and arbitration had begun.[1] The Motion should be denied for two distinct reasons. First, James Valley, having rejected the June 3 Letter as an invalid request for interconnection, cannot now change its mind to claim that June 3 was the start of the process. Second, James Valley misreads the underlying statutory provision, which does not prevent a carrier from making multiple interconnection requests. As a result, it fails to recognize that the July 16 Letter

[1] Petition, Exhibit 2, Letter of Andi Livingston to James Groft (requesting discussions concerning an interconnection agreement "under the provisions of Section 251 (c)(2) of the Act") (the "June 3 Letter") and Letter from J.G. Harrington to James Groft, July 16, 2021 (the "July 16 Letter"). James Valley also asserts that, under South Dakota law, it is entitled to ten days following resolution of the Motion before it must file its response to the Petition. Motion at 3, n. 1. This is incorrect. The deadline for James Valley to respond to the Petition is set by federal law and is January 3, 2022. 47 U.S.C. § 252(b)(3); *see also* Petition, Exhibit 4. The Communications Act does not make any provision for delays in providing responses based on motion practice in the arbitration proceeding.

started a separate arbitration clock and that the Petition was filed squarely within the arbitration window for that request.

I. Statement of Facts

On June 3, 2021, Midco sent the June 3 Letter to James Groft, the Chief Executive Officer of James Valley, requesting discussions concerning interconnection with James Valley under Section 251(c)(2) of the Communications Act. Mr. Groft responded on June 18, 2021, with a letter that stated that any request for interconnection was "premature at best," that the June 3 Letter did not make a valid request because it was "procedurally deficient," and that "any interconnection agreement the parties negotiated would be unlawful and void."[2] It also said that any negotiations would be "not appropriate."[3]

Midco determined that Groft June 18 Letter raised concerns about whether it was appropriate to proceed under Section 251(c)(2) of the Communications Act, which is subject to the provisions of the Act that exempt rural carriers from certain interconnection obligations. Rather than contest the claims in the Groft June 18 Letter, Midco determined that it would, instead, make a new interconnection request under Section 251(a) of the Act, which is not subject to the rural exemption and applies to interconnection between all classes of carriers.

Consequently, Midco's federal regulatory counsel sent the July 16 Letter to Mr. Groft, describing the FCC precedent that permits carriers to request interconnection from rural incumbent LECs under Section 251(a).[4] To ensure that James Valley was on notice that this letter constituted a new interconnection request, it included the following passage:

> 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

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[2] Petition, Exhibit 2, Letter from James Groft to Andi Livingston, June 18, 2021 (the "Groft June 18 Letter").
[3] *Id.*
[4] July 16 Letter at 1-3.

> arbitration under Section 252. 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.[5]

Following additional correspondence between Midco and James Valley, James Valley filed a petition for declaratory ruling concerning issues raised in that correspondence on September 23, 2021.[6] This petition was dismissed by the Commission on September 29, 2021, in an email message from Patricia Van Gerpen, Executive Director of the Commission to James Valley counsel.[7] As part of the explanation for why the petition for declaratory ruling was being dismissed, the mail stated as follows:

> Moreover, ARSD 20:10:32:38, provides relief better suited to the situation than a declaratory ruling. Once Midco provides the commission notice of the request, within ten days of receiving the request, James Valley shall inform Midco and the commission if James Valley is disputing whether the request is a bona fide request. If James Valley disputes that the request is bona fide, the commission shall determine if the request is a bona fide request. If James Valley does not dispute that the request is a bona fide request, the commission shall initiate a proceeding to determine if the rural telephone company shall comply with the request unless the rural telephone company receiving the request waives its exemption.[8]

Midco provided the requested notice in a letter dated October 11, 2021.[9] That letter stated that Midco had made a request for interconnection under Section 251(a), and that the request was reflected in the July 16 Letter, which was attached to the notice.[10] James Valley did respond to the October 11 Notice.

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[5] *Id.* at 3 (footnote omitted).
[6] James Valley Telecommunications, Petition for Declaratory Ruling to Determine: Whether Midcontinent Communications Must Obtain a Certificate of Authority Before It Seeks Interconnection with James Valley Cooperative Telephone Company, filed Sept. 23, 2021 (the "September 23 Petition").
[7] *See* Email correspondence from Patricia Van Gerpen, Executive Director, Commission, to Josh Wurgler, counsel to James Valley, Sept. 29, 2021 (the "Van Gerpen Email").
[8] *Id.* (emphasis in original).
[9] Petition, Exhibit 3, Letter of Patrick Mastel, Midco, to the Commission, Oct. 11 2021 (the "October 11 Notice").
[10] *Id.*

II. The Motion Should Be Denied Because James Valley's Actions Bar It from Asserting that the Arbitration Window Should Be Based on the June 3 Letter.

The entire premise of the Motion is that the dates for the arbitration window should be calculated based on the June 3 Letter. However, James Valley's prior actions, notably the Groft June 18 Letter and its failure to respond to the October 11 Notice, demonstrate that it did not consider the June 3 letter to be a valid interconnection request. It cannot change its mind now.

First, the Groft June 18 Letter is an unequivocal rejection of the June 3 Letter on the ground that the June 3 Letter does not constitute a valid interconnection request. As noted above, the Groft June 18 Letter states that the June 3 Letter is "premature at best," that it did not make a valid request because it was "procedurally deficient," and that "any interconnection agreement the parties negotiated would be unlawful and void."[11] The only reasonable reading of that letter is that James Valley had determined that the June 3 Letter did not start the arbitration clock.

Second, James Valley's later actions are consistent with this conclusion. Most important, when given an opportunity to object to Midco's October 11 Notice, James Valley remained silent, even though the October 11 Notice stated that the July 16 Letter was the only pending request for interconnection from Midco. James Valley did nothing despite explicit direction from the Commission to "inform Midco and the commission if James Valley is disputing whether the request is a bona fide request" and to do so "within ten days of receiving the request."[12]

Even the September 23 Petition reinforces that James Valley did not consider June 3 Letter to be a valid interconnection request. In particular, the September 23 petition stated that

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[11] Groft June 18 Letter.
[12] Van Gerpen Email.

the June 3 Letter was "not a 'bona fide request'" under ARSD 20:10:32:37.[13] Thus, until after Midco filed the Petition, James Valley's official position was that the June 3 Letter was not a valid interconnection request. In fact, even in the Motion, James Valley continues to assert that the June 3 Letter was "substantively deficient."[14]

If the June 3 Letter was not a valid interconnection request, it could not have started the arbitration clock. James Valley cannot now change its position and claim that the June 3 Letter was a valid request that actually did start the clock.[15] Under basic principles of estoppel, it must bear the consequences of its earlier actions, both as a matter of appropriate Commission practice and because Midco was entitled to rely on James Valley's repeated statements and omissions over a period of four months.

First, James Valley is bound by its prior statements and actions at the Commission concerning the June 3 Letter. These include both its affirmative statement in the September 23 Petition that the June 3 Letter was not a bona fide request and its failure to object to the October 11 Notice, despite Commission direction to respond if it was "disputing whether the request" described in the October 11 Notice was "a bona fide request."[16] Although neither the September 23 Petition nor the October 11 Notice is formally part of this proceeding, they plainly are related, and the Commission is entitled to rely on them.[17] James Valley cannot change its position on the status of the June 3 Letter for its convenience.

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[13] September 23 Petition at 5. The September 23 Petition referred only to the June 3 Letter, and did not discuss the July 16 Letter. If Midco had the opportunity to respond to the declaratory ruling request, it would have noted that the July 16 Letter was the only pending interconnection request, but the Commission dismissed the declaratory ruling request before Midco could file a response.

[14] Motion at 1.

[15] Indeed, the Motion is internally inconsistent on this point, claiming both that the June 3 Letter was "substantively deficient" and that it nevertheless was a valid interconnection request that started the clock. *Compare id.* at 1 *with id.* at 3-4 (claiming that June 3 Letter was sufficient to start the arbitration clock).

[16] Van Gerpen Email.

[17] In addition, there have been no outside events that give James Valley a basis for changing its position – no rulings by the Commission or the FCC, no court decisions, and no changes in the underlying statute. There is nothing that

Second, Midco was entitled to rely on James Valley's statements and actions as well, and in light of that reliance James Valley is estopped from changing its position. South Dakota courts have recognized that under principles of estoppel one party is entitled to rely on another party's conduct (and, particularly, conduct that indicates that a potential defense will not be raised if there is a later dispute), and to alter its course of action based on the second party's behavior.[18]

Here, Midco was entitled to rely on James Valley's continuous conduct over the four month period between the Groft June 18 Letter until now. James Valley did not merely refuse to negotiate an interconnection agreement, but took the position that the June 3 Letter was "procedurally deficient," that any agreement that might result from negotiations would be "unlawful and void," and that the June 3 Letter was "premature at best."[19] It is difficult to imagine a more definitive statement of James Valley's position that the June 3 Letter was not a valid request for interconnection. As a consequence of this letter, and rather than continuing its original request, Midco changed its position by sending a new request based on Sections 251(a) and (b) rather than Section 251(c)(2).[20]

James Valley's later actions underlined its position that the June 3 Letter was not a valid request for interconnection. The September 23 Petition stated directly that the June 3 Letter was

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compels James Valley to change its position on the validity of the June 3 Letter except its desire to delay interconnection with Midco.

[18] *See, e.g., Jacobson v. Gulbransen,* 2001 SD 33, 623 N.W.2d 84 (S.D. 2001) (holding that promissory estoppel applied when one party withdrew objections to sale of property by the Forest Service based on second party's agreement to sell him part of the property because failure to enforce the agreement would prejudice the first party): *Grady v. Commers Interiors, Inc.,* 268 N.W.2d 823, 825 (S.D. 1978) (quoting Corbin on Contracts for the proposition that estoppel occurs when a party "conducted himself as to induce the [second party] to believe that the defense or counterclaim that is later asserted did not exist and to change his position materially in reasonable reliance thereon" and had a reason to foresee that the second party would change its position).

[19] Groft June 18 Letter.

[20] *Compare* June 3 Letter (request under Section 251(c)(2)) *with* July 16 Letter at 3 (request under Sections 251(a) and (b)).

not a proper interconnection request and, by not responding to the October 11 Notice, James Valley indicated that it had no objections to Midco characterizing the July 16 Letter as the underlying request for interconnection.[21] Both of these actions occurred between the July 16 Letter and the deadline that would have applied to the June 3 Letter under James Valley's theory. These actions confirmed that James Valley did not think the clock started on June 3, and Midco was entitled to rely on both the Groft June 18 Letter and the company's later actions in determining when the arbitration window was open.

Thus, the Commission should hold James Valley to its position that the June 3 Letter was not a valid request for interconnection and deny the Motion.

III. Even If the June 3 Letter Qualified as a Request for Interconnection, the Petition Was Timely Filed.

The Motion contends that the only possible start date to determine the time period for requesting arbitration is June 3 and that, no matter what the July 16 Letter said, there is no way to count from any later date. This position misreads the Communications Act, and even the one case that James Valley cites does not support its position. The July 16 Letter was an independent, distinct request that set its own time frame for arbitration, and even if the July 16 Letter were deemed to be asking for the same thing as the June 3 Letter, Midco still would have been entitled to make a second request and restart the clock.

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[21] Again, the Commission directed James Valley to respond to the October 11 Notice if it did not believe that the July 16 Letter was a bona fide request. Van Gerpen Email. If James Valley believed that the June 3 Letter was the bona fide request that started the arbitration clock, not the July 16 Letter, it was obligated to tell the Commission that the October 11 Notice was incorrect. The purpose of the Van Gerpen Email, consistent with ARSD 20:10:32:38, was to ensure that the Commission and Midco knew whether there was a dispute about any matter related to Midco's request for interconnection, and so a failure to object was, in effect, a statement that there was no dispute that the July 16 Letter was a valid interconnection request.

A. A Party May Make Multiple Requests for Interconnection Under Section 252(b)(1).

As an initial matter, James Valley fundamentally misreads the Communications Act provision governing requests for arbitration. Section 252(b)(1) of the Communications Act reads as follows:

> During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.[22]

There is nothing in this provision that limits a party to making one request for negotiation – it simply says that after an incumbent local exchange carrier receives "***a*** request for negotiation" that complies with Section 252, a party may file a petition for arbitration during the period from the 135th to 160th day after the request. The time frame attaches to each request for negotiation, and so if a party makes more than one request, the time frame for each request is determined separately. In other words, if a petition for arbitration is filed within 160 days of the specific request referred to in the petition, it is timely.

This is the plain meaning of Section 252(b)(1), and it also is the only sensible reading. First, if Congress had intended to include constraints on how often a party could request interconnection, it could have done so, but no constraints appear in any part of Section 252. The legislative history also contains no indication that Congress believed that a carrier could make only one request for interconnection or that the arbitration clock is set by only the first arbitration request.[23]

Second, there are circumstances under which multiple requests are likely to occur. For instance, if a competitive carrier requests interconnection under Section 251(c) from a rural

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[22] 47 U.S.C. § 252(a)

[23] H.R. Rep. No. 104-458, at 124 (discussing Senate version of provision that became Section 252), 125 (describing final provision) (1996).

incumbent local exchange carrier, and obtains relief from the rural exemption, it is very unlikely that the rural exemption proceeding will be done in time to meet the arbitration deadline, so a new request will be required.[24] There also are occasions when negotiations are ongoing and a carrier determines that it would prefer to continue negotiations rather than proceed to arbitration, when resetting the deadline benefits both parties to the negotiation. Moreover, there are cases in which a party requests interconnection negotiations even after an arbitration has been completed, either because a prior agreement has expired or because not all issues were resolved in the arbitration, and arbitration of those additional requests is routine.[25]

James Valley, on the other hand, imports concepts into Section 252(b)(1) that do not appear in the language. There is nothing in Section 252, let alone Section 252(b)(1), that prohibits multiple requests for interconnection. The statute does not even say "the" request for interconnection, which arguably would imply that the arbitration window could be triggered only once – it says "a" request, which creates no limit.

The one case involving the arbitration deadline cited by James Valley does not support its position at all. *W. Radio Services* was about whether there was a second request for interconnection that would permit a second arbitration, not whether the appellant had met the

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[24] The deadline for state action on a request to lift the rural exemption is 120 days from the date of the request and state commissions are empowered to set implementation schedules that could extend well beyond that time. 47 U.S.C. § 251(f)(1). Even if a state commission decided that there should be no transition period, in practical terms it is extremely unlikely that a new interconnection agreement could be negotiated within the short time between a decision lifting the rural exemption and the end of the period for filing a petition for arbitration.

[25] *See, e.g.,* Petitions of WorldCom.Inc. Cox Virginia Telcom, Inc. and AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission, *Memorandum Opinion and Order,* 17 FCC Rcd 19654 (2002) (arbitrating new interconnection agreements after initial interconnection agreements expired), *AT&T Communications of the Southwest, Inc. v. Southwestern Bell Tel. Co.,* 86 F. Supp. 2d 932, 941-3 (W.D. Mo. 1999) (order reversed and case remanded by *Southwestern Bell Tel. Co. v. Mo. Pub. Serv. Comm'n,* 236 F.3d 922 (8th Cir. 2001) (describing how AT&T sought and obtained a second arbitration on unresolved issues before an initial arbitration proceeding was completed)..

deadline.[26] The court affirmed a state commission decision that there had not been a second request because the document the appellant relied upon actually was a routine notice under one of Qwest's tariffs.[27] In fact, the decision – by evaluating whether a second request had in fact been made – assumes that such a request was permissible and could restart the clock. Moreover, the one sentence quoted by James Valley actually is in the context of a discussion about when the arbitration period ***begins***, not when it ends.[28]

Other courts have recognized that the purpose of the arbitration deadline is not to cut off the ability of a party to obtain interconnection, but instead to encourage the parties to negotiate to avoid arbitration. For instance, the Eighth Circuit, in its initial review of the FCC's rules implementing the Telecommunications Act of 1996, concluded that the provisions of Section 252 "reveal that the Act establishes a preference for incumbent LECs and requesting carriers to reach agreements independently and that the Act establishes state-run arbitrations to act as a backstop or impasse-resolving mechanism for failed negotiations."[29] This view is consistent with the FCC's conclusion in 1996 that "The possibility of arbitration itself will facilitate good faith negotiation."[30] Consequently, as a matter of policy and conservation of Commission resources, Section 252(b) should be interpreted in a way that encourages negotiation, rather than encouraging parties to file petitions for arbitration when they might not be necessary.

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[26] *W. Radio Servs. Co. v. Qwest,* 678 F.3d 973, 978 (9th Cir. 2012) (*"W Radio Services"*). The court also concluded that the particular issues raised by the appellant already had been decided in the first arbitration. *Id.*

[27] *Id.* at 978 n.5.

[28] The sentence immediately following the sentence quoted by James Valley is "In other words, a carrier may not petition the PUC for arbitration until 135 days after it has received a qualifying 'request for negotiation.'" *Id.* at 977

[29] *Iowa Utilities Bd. v. FCC,* 120 F.3d 753, 801 (8th Cir. 1997) (affirmed in part, reversed in part on other grounds, and remanded by *AT&T Corp. v. Iowa Utilities Bd.,* 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 834, 14 CR 1120, 67 U.S.L.W. 4104 (1999) (*"AT&T Corp."*)). The Supreme Court, in reviewing the Eighth Circuit decision, agreed with its analysis of the preference for negotiation. *AT&T Corp.,* 525 U.S. at 405.

[30] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499, 15575 (1996).

In this context, the James Valley assertion that it is impossible to make a second request for interconnection that restarts the arbitration clock is insupportable.

B. Even If the June 3 Letter Was Treated as an Open Request for Interconnection, the July 16 Letter Would Be a Distinct and Separate Request that Created a New Deadline.

The Motion treats the July 16 Letter as a mere continuation of the initial request in the June 3 Letter.[31] As described above, James Valley is barred from making this argument because it contradicts its prior consistent position that the June 3 Letter was not a valid interconnection request.[32] Even if it were not barred from making this argument, it is incorrect because the July 16 Letter requested a different kind of interconnection than the June 3 Letter and, further, recited that it was a distinct request.

First, the two letters asked for different kinds of interconnection that afford both Midco and James Valley distinct rights. The June 3 Letter asked for interconnection under Section 251(c) of the Communications Act, a provision that, among other things, would allow Midco to choose any reasonable point of interconnection and entitle it to pricing under the FCC's TELRIC principles.[33] The July 16 Letter, on the other hand, requested interconnection under Section 251(a) of the Communications Act.[34] As the FCC has held, under Section 251(a) terms and conditions for interconnection are constrained only by the just and reasonable standard, and the requesting carrier cannot specify types or points of interconnection, but must negotiate or arbitrate them.[35] Thus, under a Section 251(a) request, James Valley has the ability to propose

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[31] Motion at 5.
[32] *See supra* Part II.
[33] June 3 Letter; 47 U.S.C. § 251(c), 47 C.F.R. § 51.305.
[34] July 16 Letter at 3.
[35] *See generally* 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, 8260 (2011) (describing differences between Section 251(c) and Section 251(a) interconnection).

its own types or points of interconnection and to propose other terms that would not be permissible under Section 251(c).

Second, the July 16 Letter plainly recites that it constitutes a request for interconnection that starts the clock under Section 252. This reinforces the substantive differences between the two letters and further establishes that the July 16 Letter is making a distinct, independent request.

Thus, even if the June 3 Letter were to be treated as a valid interconnection request that started the clock for arbitration as to Section 251(c) interconnection, it would not have started the clock on the July 16 Letter. Rather, by asking for different types of interconnection, the two letters created distinct and separate timelines for requesting arbitration. Midco did not ask for arbitration of the request contained in the June 3 Letter. Instead, it asked for arbitration of the request for a different kind of interconnection contained in the July 16 Letter. In effect, James Valley has filed a motion to dismiss against a petition for arbitration that never was filed. Consequently, the Motion must be denied.

C. Even If the July 16 Letter Had Asked for the Same Type of Interconnection as the June 3 Letter, Midco Still Would Be Permitted to File a Petition for Arbitration as to the July 16 Letter.

Finally, even if James Valley were not barred from treating the June 3 Letter as a valid interconnection request and even if the July 16 Letter had asked for the same type of interconnection as the June 3 Letter, the Communications Act would not prevent Midco from invoking its arbitration rights as to the July 16 Letter.

Simply put, Section 252 does not place any limits on the number of open interconnection requests that a party may pursue prior to filing a petition for arbitration.[36] There is nothing to

[36] As described in *W. Radio Services,* the courts and state commissions have concluded that redundant petitions for arbitration intended to relitigate issues that have been resolved in prior arbitrations may be dismissed, but since this

suggest such a limit in the text of Section 252, in the legislative history, in the FCC's rules, in the FCC's implementing orders, or in the case law. Indeed, when a second request is made because the requesting party has concluded that doing so would increase the likelihood that negotiations would follow, treating the second request as starting a new timeline advances the goals of the statute.[37]

James Valley argues that Midco "could wait until the 159th day" to make a new request for interconnection and that such actions would render the deadlines in Section 252(b)(1) irrelevant.[38] Of course, that is not what happened here – Midco made an initial request and made a second request just six weeks later under a different provision of the Communications Act based on James Valley's claim that the initial request was invalid. In that context, there is no reasonable claim that Midco acted in bad faith or with any intent to delay the time when it would be required to file a petition for arbitration.

More significantly, James Valley is wrong to assert that a requesting party could string along a negotiation indefinitely, because Section 252(b)(1) gives ***either*** party the right to request arbitration.[39] As a consequence, a party like James Valley that wanted to ensure that the negotiation process would end could file its own petition during the period from 135 to 160 days after any pending interconnection request. That is why Congress did not need to address the

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is the first petition for arbitration between Midco and James Valley that has been filed at the Commission, that issue does not arise here. *W. Radio Services,* 678 F.3d 973, 978.

[37] *See supra* Part III(A). That is, in fact, the situation in this case. Midco made a new request in an effort to facilitate negotiation by seeking interconnection under a provision of the Communications Act that did not implicate the rural exemption, not as a way to delay the arbitration process. Indeed, the only party in this proceeding that has an interest in delay is James Valley.

[38] Motion at 5.

[39] 47 U.S.C. § 252(b)(1) (stating that "the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues").

question of whether a requesting carrier could make multiple abusive requests – the statute contains a remedy for such behavior that guarantees a resolution.[40]

Thus, even if the July 16 Letter asked for exactly the same type of interconnection as the June 3 Letter, it would have been a valid request for interconnection, and Midco was entitled to file a petition for arbitration during the period from 135 to 160 days after the July 16 Letter.

IV. Conclusion

The Motion should be denied. James Valley is estopped from claiming that the June 3 Letter started the clock for arbitration under Section 252(b)(1) and even if the June 3 Letter is treated as a valid request for interconnection, the Communications Act permits multiple requests and the July 16 Letter started its own arbitration clock.

Respectfully submitted,

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[40] In contrast, the James Valley hypothesis that Congress would have provided for multiple requests if it thought they were desirable is unsupported by the statutory language or the overall framework of Section 252. The text of the local competition provisions of the Communications Act shows that Congress knew how to limit rights when it wanted to do so, for instance through the graduated levels of obligations that apply to all carriers under Section 251(a), to only local exchange carriers under Section 251(b), and to only incumbent local exchange carriers under Section 251(c). 47 U.S.C. §§ 251(a), (b), (c). The decision not to include any specific limitation on how often a carrier could request interconnection was a deliberate decision as well.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December, 2021, a copy of the foregoing Opposition to Motion to Dismiss was filed electronically with the South Dakota Public Utilities Commission and sent by first class mail, postage prepaid, and by electronic mail, to:

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