

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

IN THE MATTER OF THE APPROVAL OF THE)
PETITION FOR ARBITRATION OF AN)
INTERCONNECTION AGREEMENT BETWEEN)
MIDCONTINENT COMMUNICATIONS AND)
JAMES VALLEY COOPERATIVE TELEPHONE)
COMPANY)

**ORDER RULING ON
BIFURCATED COA ISSUE**

TC21-124

On December 6, 2021, the South Dakota Public Utilities Commission (Commission) received a Petition for Arbitration of an Interconnection Agreement Between Midcontinent Communications and James Valley Cooperative Telephone Company (Petition). Midcontinent Communications (Midcontinent) filed the Petition requesting arbitration of the terms of an interconnection agreement between Midcontinent and James Valley Cooperative Telephone Company (James Valley) for the exchange of traffic between Midcontinent and James Valley in the James Valley service area in South Dakota.

On December 9, 2021, the Commission electronically transmitted notice of the filing to interested individuals and entities on the Commission's PUC Weekly Filing electronic listserv.

On December 22, 2021, James Valley filed a Motion to Dismiss Untimely Petition, asserting that Midcontinent failed to timely file its Petition for Arbitration. On December 27, 2021, the South Dakota Telecommunications Association (SDTA) filed a Limited Petition to Intervene, requesting intervention solely for the purposes of addressing whether Midcontinent is required to obtain a Certificate of Authority to provide the services contemplated under its proposed interconnection agreement as filed with its Petition.

On December 29, 2021, Staff filed Consent to Intervention and a Motion to Bifurcate Issue and Scheduling Hearing. On January 6, 2022, the Commission issued an Order Denying Motion to Dismiss; Order Bifurcating Issue. On January 13, 2022, Staff filed a letter regarding the Bifurcated Issue, notifying the Commission of the specific question to be answered, as agreed to by all parties. On January 18, 2022, Midcontinent filed a Revised Proposed Schedule. On February 17, 2022, the parties filed Briefs on Bifurcated Issue. On March 3, 2022, the parties filed Reply Briefs on Bifurcated Issue.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD 20:10:32.

At its regularly scheduled meeting on March 15, 2022, the Commission considered the bifurcated issue as to whether Midcontinent is required to obtain a Certificate of Authority from the Commission to provide the services contemplated in Midcontinent's Proposed Interconnection Agreement attached as Exhibit 1 to Midcontinent's Petition. Having read and considered all briefs and heard oral argument on the issue, the Commission voted unanimously to find that Midcontinent is required to obtain a Certificate of Authority pursuant to SDCL Chapter 49-31 in order to provide the services described in the proposed interconnection agreement.

Specifically, the proposed interconnection agreement states Midcontinent seeks to interconnect with James Valley "for the sole purpose of exchanging Local/EAS Traffic".¹ The Commission finds the services described in the proposed interconnection agreement are local exchange services. SDCL 49-31-1(13) defines local exchange service as "the access to and transmission of two-way switched telecommunications service within a local exchange area".

This definition does not exclude interconnection services and does not limit local exchange service to only those services provided to an end user or only those services provided at retail. Further, the proposed traffic will originate and terminate within the James Valley local exchange area. A certificate of authority is required for a telecommunications company to provide local exchange services pursuant to SDCL 49-31-69.

*Time Warner*², while relevant to the topic of whether a company is entitled to 47 U.S.C. §251 interconnection, does not address the bifurcated question. The FCC does not preempt state regulation regarding a certificate of authority to provide local exchange service.

It is therefore

ORDERED, that Midcontinent must obtain a Certificate of Authority from this Commission in order to provide the services described in the proposed interconnection agreement.

Dated at Pierre, South Dakota, this 18th day of March 2022.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.</p> <p>By: <u>Adam DeHueck</u></p> <p>Date: <u>3/18/22</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner

¹ Exhibit 1 to Petition, Paragraph 1.3

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").