

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

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	<b>ORDER GRANTING</b>
<b>MIDCONTINENT COMMUNICATIONS FOR</b>	)	<b>PETITION TO AMEND</b>
<b>APPROVAL TO PROVIDE LOCAL EXCHANGE</b>	)	<b>CERTIFICATE OF</b>
<b>SERVICE IN A RURAL SERVICE AREA</b>	)	<b>AUTHORITY AND ORDER</b>
	)	<b>APPROVING</b>
	)	<b>CONFIDENTIAL</b>
	)	<b>STIPULATION FOR PARTIAL</b>
	)	<b>SETTLEMENT</b>
	)	<b>TC08-105</b>

On August 14, 2008, the Public Utilities Commission (Commission) received an Application for an Amended Certificate of Authority from Midcontinent Communications (Midcontinent) for approval to provide local exchange service in the Crooks and Baltic exchanges of Alliance Communications (Alliance), a rural telecommunications carrier. In addition to providing local exchange services for commercial and residential customers, Midcontinent also will provide intrastate interexchange services for commercial and residential customers and interstate interexchange services for commercial and residential customers. In the Crooks and Baltic exchanges Midcontinent Communications will use a hybrid fiber coax (HFC) network of its cable plant to provide primary transport for residential and commercial telephone services. Midcontinent stated that its application is a competitive response to the provision of video programming in the geographical area by the incumbent carrier, Alliance. Section 47 U.S.C. 251(f)(1)(C) is applicable to the application. Midcontinent asserted that, as such, the exemption provided by 47 U.S.C. 251(f)(1)(A) does not apply to Alliance. Midcontinent has requested interconnection pursuant to 47 U.S.C. Section 251(f)(1)(A) with Alliance, requests confidential treatment of its financial information, and requests a waiver from providing services to the entire Alliance service area.

On August 21, 2008, the Commission electronically transmitted notice of the filing and the intervention deadline of September 5, 2008, to interested individuals and entities. Alliance Communications Cooperative, Inc. (Alliance) filed to intervene on August 25, 2008. South Dakota Telecommunications Association (SDTA) filed to intervene on September 5, 2008. On September 22, 2008, the Commission received Midcontinent's Reply and Opposition to the SDTA Petition to Intervene. At its regularly scheduled meeting of September 23, 2008, the Commission granted intervention to Alliance and deferred the Petition to Intervene of SDTA. On October 6, 2008, the Commission received a letter response to Midcontinent's Reply and Opposition to the SDTA Petition to Intervene from SDTA.

At a regularly scheduled meeting of October 7, 2008, the Commission granted intervention to SDTA, subject to certain restrictions. On October 9, 2008, the Commission received Midcontinent's Supplemental Notice of Application to Provide Local Exchange Service and Request for Interconnection and Midcontinent's Motion to Find Rural Exemption Waived. On October 16, 2008, the Commission received Alliance's Response to Midcontinent's Motion to Find Rural Exemption Waived. On November 20, 2008, the Commission received Midcontinent's Amended Motion to Find Rural Exemption Waived or to Terminate Rural Exemption under 47 USC § 251(f)(1)(B). On December 2, 2008, the Commission received a Joint Response of Alliance and SDTA to Midcontinent's Amended Motion to Find Rural Exemption Waived or to Terminate Rural Exemption under 47 USC § 251(f)(1)(B). On December 8, 2008, the Commission received Midcontinent's Motion to Compel Discovery. On December 17, 2008, the Commission received a Response of Alliance to Midcontinent's Motion to Compel Discovery and an Affidavit of Don Snyders.

At its regularly scheduled meeting of December 30, 2008, the Commission voted unanimously to deny Midcontinent's Motion to Compel. On January 26, 2009, the Commission received a Stipulation for Scheduling Order from Midcontinent.

At its regularly scheduled meeting of January 27, 2009, the Commission took no action on the Amended Motion to Find Rural Exemption Waived. The Commission voted unanimously to approve the Stipulation for Scheduling Order. On February 27, 2009, the Commission received an Application for Waiver from Midcontinent. On March 11, 2009, the Commission received a Motion to Compel from Midcontinent. On March 17, 2009, the Commission received an Amended Application for Waiver from Midcontinent. On April 8, 2009, the Commission received a Confidential Stipulation for Partial Settlement from Midcontinent. On April 21, 2009, the Commission received a Second Amended Application for Waiver from Midcontinent.

At its regularly scheduled meeting of April 21, 2009 the Commission considered Midcontinent's Confidential Stipulation for Partial Settlement and its request for an amended certificate of authority. The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3 and 49-31-69 and ARSD 20:10:32:03. Commission Staff recommended approval of the Confidential Stipulation for Partial Settlement, granting the petition to amend the certificate of authority and that the Commission grant Midcontinent's request for confidential treatment of its financials. The Commission voted unanimously to approve the Confidential Stipulation for Partial Settlement.

The Commission also voted to approve Midcontinent's request for an amended certificate of authority. (Commissioner Hanson, dissenting.) The Commission determined that the geographic area will be the city limits of Baltic and Crooks, granted the request for confidential treatment of Midcontinent's financials, and found the granting of the amended certificate is subject to the terms of the Confidential Stipulation for Partial Settlement. The Commission finds that Midcontinent has met the legal requirements established for the granting of an amended certificate of authority for the city limits of Baltic and Crooks. Midcontinent has in accordance with SDCL 49-31-3 and 49-31-71, demonstrated sufficient

technical, financial and managerial capabilities to offer telecommunications services in South Dakota. Further, the Commission finds that pursuant to SDCL 49-31-69, an Amended Certificate of Authority shall be granted as it is in the public interest. As the Commission's final decision in this matter, it is therefore

ORDERED, that the Confidential Stipulation for Partial Settlement is hereby approved; and it is

FURTHER ORDERED, that the request for an Amended Certificate of Authority shall be granted to authorize Midcontinent to provide competitive local exchange service in the city limits of Crooks and Baltic, subject to the terms of the Confidential Stipulation of Partial Settlement; and it is

FURTHER ORDERED, that confidential treatment be granted to Midcontinent's financials.

Dated at Pierre, South Dakota, this 8<sup>th</sup> day of May, 2009.

<b>CERTIFICATE OF SERVICE</b>
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.
By: <u><i>Delaine Kolbo</i></u>
Date: <u>5/8/09</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*Dustin M. Johnson*  
DUSTIN M. JOHNSON, Chairman *dk*

*Steve Kolbeck*  
STEVE KOLBECK, Commissioner

*Gary Hanson*  
GARY HANSON, Commissioner,  
Dissenting in part