

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

IN THE MATTER OF THE APPLICATION BY)	ORDER GRANTING
MIDCONTINENT COMMUNICATIONS FOR)	ELIGIBLE
ELIGIBLE TELECOMMUNICATIONS CARRIER)	TELECOMMUNICATIONS
DESIGNATION WITHIN CERTAIN ADDITIONAL)	DESIGNATION; ORDER
QWEST SERVICE AREAS)	GRANTING CERTIFICATION
)	TC10-099

On November 12, 2010, the Public Utilities Commission (Commission) received an application from Midcontinent Communications (Midcontinent) seeking designation as an eligible telecommunications carrier (ETC) in the Qwest service areas of Meckling, Summerset, Vermillion, Whitewood and Yankton.

On November 18, 2010, the Commission electronically transmitted notice of the filing and the intervention deadline of December 3, 2010, to interested individual and entities. No Petitions to Intervene were filed.

At its February 1, 2011, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-31, and 47 U.S.C. § 214. The Commission voted unanimously to approve the petition.

In order to be designated an ETC, a carrier must offer the supported services throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e). The Federal Communications Commission (FCC) has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a). Midcontinent stated that it provides all of these services in the requested service areas. The Commission finds that Midcontinent is able to offer the supported services.

A carrier must offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services. . . ." 47 U.S.C. § 214(e)(1)(A). Midcontinent stated that it provides the supported services throughout the entirety of the requested service areas. Thus, the Commission finds Midcontinent meets this requirement.

The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Midcontinent stated that it will continue to "advertise the availability of its local exchange services in media of general distribution." Midcontinent further stated that "[b]ooklets showing all products and prices are available to consumers and can be found on the Midcontinent website as well." The Commission finds Midcontinent has demonstrated that it will meet the advertising requirement.

The Commission has adopted ETC rules that are similar to the rules adopted by the FCC. See ARSD 20:10:32:42 through 20:10:32:46. As the FCC stated in its order adopting its new ETC rules, the rules were designed to "create a more rigorous ETC designation process" and because of this more rigorous process, the "long-term sustainability of the universal service fund" would be

improved. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, Report and Order, ¶ 2 (rel. March 17, 2005) (“*FCC Order Regarding ETC Designations*”).

Pursuant to ARSD 20:10:32:43.01, an applicant for ETC status must commit to providing service to customers making a reasonable request for service in the service area. Midcontinent states that it currently provides consumers in the requested service area high quality, fully supported services within a reasonable time frame.

Pursuant to ARSD 20:10:32:43.02, an applicant must provide a two-year plan that explains upgrades or improvements the applicant will make in each wire center. Midcontinent provided a two-year plan setting forth the upgrades and improvements it plans on making in that two year period.

Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations. Midcontinent stated that it has the ability to remain functional in emergency situations and that it is currently in compliance with the auxiliary and battery power requirements set forth in ARSD 20:10:33:19.

Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. Midcontinent stated that it is complying with applicable service standards and consumer protection plans.

Pursuant to 20:10:32:43.05, an applicant must demonstrate that it offers a local usage plan comparable to the one offered by the incumbent carrier. Midcontinent stated that it offers local usage plans comparable to the plans offered by Qwest.

Pursuant to 20:10:32:43.06, an applicant must certify that it will be able to provide equal access to long distance carriers if no other ETC is providing equal access within the service area. Midcontinent certified that it would do so.

The Commission finds that Midcontinent has met the requirements of ARSD 20:10:32:43.01 through 20:10:32:43.06.

In order to designate an applicant as an ETC, the Commission must determine whether such designation is in the public interest. *See* ARSD 20:10:32:43.07. When making this determination, the Commission must consider the following:

Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. The commission shall consider the benefits of increased consumer choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant's service offering, commitments made regarding the quality of the telephone service provided by the applicant, and the applicant's ability to provide the supported services throughout the designated service area within a reasonable time frame. In addition, the commission shall consider whether the designation of the applicant will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. If an applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. In its creamskimming analysis, the commission shall consider

other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 (January 1, 2006) by the incumbent local exchange carrier.

In accordance with the public interest rule, the Commission will consider the benefits of increased consumer choice, any unique advantages and disadvantages of Midcontinent's service offerings, and Midcontinent's commitments regarding its telephone service quality. Midcontinent asserted that its designation as an ETC will provide consumers with increased choices and competitive products and services. Midcontinent stated that it provides quality services and has been providing telephone service in the requested service areas for a number of years. Midcontinent further stated that it makes Lifeline and Link-Up services available to the consumers that qualify. The Commission finds that the designation of Midcontinent will bring the benefits of increased consumer choice and Midcontinent has committed to providing quality telephone service.

Next, the Commission will consider the impact of multiple designations on the universal service fund. The FCC has stated that "analyzing the impact of one ETC on the overall fund may be inconclusive." *FCC Order Regarding ETC Designations* at ¶ 54. However, the analysis regarding the impact of multiple designations on the universal service fund has been affected by an FCC order which caps the amount of universal service funds for competitive ETCs. *In the Matter of High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order (rel. May 1, 2008). In this order, the FCC capped the total annual competitive ETC support for each state at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis. The FCC adopted this as an interim emergency cap and stated that it will be of limited duration. Thus, the Commission finds that, at this time, multiple designations will have no or limited impact on the overall size of the universal service fund given that the support is currently capped for competitive ETCs.

The Commission must also consider Midcontinent's ability to provide the supported services throughout the designated service area within a reasonable time frame. Midcontinent stated it is currently serving the entirety of the service areas.

The next consideration is whether the designation of Midcontinent will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. Qwest, as the incumbent local exchange carrier, did not intervene or submit comments in this docket. The Commission finds that no evidence was presented to show that the designation of Midcontinent as an ETC would have a detrimental effect on the provisioning of universal service by the incumbent local exchange carrier.

Midcontinent further certified that it will use the federal universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support was intended. Thus, the Commission also will provide the appropriate certification to USAC and the FCC.

It is therefore

ORDERED, that Midcontinent is designated as an ETC in the Meckling, Summerset, Vermillion, Whitewood and Yankton areas; and it is

FURTHER ORDERED, that Midcontinent is eligible to receive federal support as it states it will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Dated at Pierre, South Dakota, this 23rd day of February, 2011.

CERTIFICATE OF SERVICE

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: *Seanna Ryz*

Date: 2.23.11

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Steve Kolbeck
STEVE KOLBECK, Chairman

Gary Hanson
GARY HANSON, Commissioner

Ch. Nelson
CHRIS NELSON, Commissioner