

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Petition of Midcontinent Communications for ) WC Docket No. 22-277  
Declaratory Ruling Under Section 251(a) of the )  
Communications Act )

**COMMENTS  
OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these comments in response to the Public Notice issued by the Federal Communications Commission’s (the “Commission”) Wireline Competition Bureau in the above-captioned proceedings.<sup>2</sup> The Public Notice seeks comment on a Petition for Declaratory Ruling (“Petition”) filed by Midcontinent Communications (“Midcontinent” or “Petitioner”) seeking a determination that any telecommunications carrier can “obtain interconnection for the purpose of providing wholesale local interconnection services” pursuant to Section 251(a) of the Communications Act, as amended, (the “Act”) “without obtaining additional authority, and specifically without obtaining a certificate of authority to provide local exchange service, from a state regulator.”<sup>3</sup> The Commission should reject the Midcontinent Petition; the Commission precedent to which Midcontinent points does not support its assertion that the South Dakota Public Utilities Commission (“SD PUC”) is prohibited from exercising its authority to require petitioner to

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<sup>1</sup> NTCA represents approximately 850 small rural network operators. All of NTCA’s members are voice and broadband service providers, and many of its members provide wireless, video, and other competitive services to their communities.

<sup>2</sup> Wireline Competition Bureau seeks comment on a petition for declaratory ruling filed by Midcontinent Communications, WC Docket No. 22-277, Public Notice, DA 22-782 (rel. Jul. 20, 2022).

<sup>3</sup> Petition for Declaratory Ruling Concerning Qualifications for Obtaining Local Interconnection Under Section 251(a) of the Communications Act, WC Docket No. 22-277 (fil. Jul. 12, 2022) (“Petition”), p. 1.

obtain a certificate of authority (a “COA”) for the service it seeks to offer in the study area of James Valley Telecommunications Cooperative (“James Valley”).

As an initial matter, it should be noted that Midcontinent attempts to position the requirement that it obtain a COA as an insurmountable barrier of some sort to the interconnection rights that it seeks in South Dakota.<sup>4</sup> However, Midcontinent has previously obtained a COA in the state, unrelated to the dispute at issue here, in several different instances.<sup>5</sup> Despite not seeking such authority in the instant case prior to requesting arbitration at the SD PUC and filing the Petition, Midcontinent fails to explain why there is a need to short-cut that process now and seek interconnection without such authority. In short, the instant dispute is not, as Midcontinent tries to frame it, about *whether* a provider such as Petitioner can obtain interconnection, but rather *how* it does so in conformance with applicable federal *and* state laws.

With that as the backdrop, Midcontinent’s underlying argument, which relies on the Commission’s *Time Warner*<sup>6</sup> and *CRC Communications*<sup>7</sup> decisions, should be rejected. More specifically, Midcontinent states that these precedents create a “broad and robust right to

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<sup>4</sup> *Id.*, p. 4 (stating that “a declaratory ruling is necessary to restore the pro-competition and light-touch regime that the Commission created in those decisions”).

<sup>5</sup> *In the Matter of Petition for Arbitration of an Interconnection Agreement Between Midcontinent Communications and James Valley Cooperative Telephone Company*, TC 21-124, James Valley Cooperative Telephone Company and South Dakota Telephone Association Joint Brief on the Bifurcated Issue (fil. Feb 17, 2022) (“James Valley/SDTA”), p. 5.

<sup>6</sup> *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, WC Docket No. 06-55, 22 FCC Rcd 3513 (2007) (“*Time Warner*”).

<sup>7</sup> *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, Declaratory Ruling*, WC Docket No. 10-143, 26 FCC Rcd 8259 (2011) (“*CRC Communications*”).

interconnection for all telecommunications carriers under Section 251(a)”<sup>8</sup> and that the SD PUC requirement for a provider to obtain a COA “effectively reinstates the state regulators’ veto over wholesale interconnection services that the Commission eliminated”<sup>9</sup> via those decisions. Yet, Midcontinent misconstrues the holdings in *Time Warner* and *CRC Communications*. In *Time Warner*, the Commission ruled that “providers of wholesale communications services enjoy the same rights as any other ‘telecommunications carrier’ under these provisions of the Act.”<sup>10</sup> However, what the *Time Warner* decision did not say – and Midcontinent fails to point to any language stating that it does – is that state commissions were by stripped of their jurisdiction over certification of service providers where the state deems that to be a prerequisite of providing the service for which interconnection is sought. Indeed, to the contrary, the Commission in *Time Warner* stated that “we only find that a carrier is entitled to interconnect with another carrier pursuant to section 251(a) and (b) in order to provide wholesale telecommunications service.”<sup>11</sup> Nothing in this holding indicates that states are barred from determining that the telecommunications service in question is one that requires intrastate certification in order to be offered and then considered for interconnection.

As James Valley and the South Dakota Telecommunications Association (“SDTA”) correctly noted in the underlying SD PUC proceeding, Midcontinent “may be able to avail itself of §251’s requirements as a wholesale provider, but only if it can prove that it is a

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<sup>8</sup> Petition, p. 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Time Warner*, ¶ 9.

<sup>11</sup> *Id.*, ¶ 15.

‘telecommunication company’ under state law.”<sup>12</sup> As James Valley/SDTA went on to note, “[t]he record indicates that Midco wholesale will be providing services only to a Midcontinent VOIP entity.”<sup>13</sup> In fact, Midcontinent seemingly acknowledges that the traffic at issue will be between local users.<sup>14</sup> While this may be via a wholesale arrangement through its affiliated VoIP provider, that provider will be operating as a customer of Midcontinent and with local, residential users utilizing North American Numbering Plan Administrator allocated telephone numbers. As noted above, despite relying on *Time Warner and CRC Communications* as the foundation for the relief it seeks, Midcontinent fails to demonstrate in any way that these decisions preempted the authority of a state to determine whether a service offered to local users utilizing local telephone numbers falls within the definition of a telecommunications service subject to its certification authority. Nothing in these decisions preempts that authority.

Ultimately, Midcontinent’s Petition is a request for preemption cloaked as a request for a declaratory ruling. In South Dakota, the SD PUC’s authority to determine where and when certificates are required to deliver telecommunications service is established by state law. Under that process, the SD PUC considers, among other things, whether a provider will comply with ARSD section 20:10:32:16, which states that “[a]ny service required to be provided by the alternative provider of local exchange services...shall be provided at prices and on terms which reflect a good faith offering of the services throughout the rural telephone company’s service

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<sup>12</sup> James Valley/SDTA, p. 9.

<sup>13</sup> *Id.*

<sup>14</sup> Petition, p. 5 (“ Midcontinent is offering these interconnection services on a common carrier basis via standard terms and conditions that are available to any entity that wishes to purchase them. Midcontinent also will make these services available on a contract basis if a customer has specific needs not covered by the standard terms and conditions. The interconnection services are available to any voice services provider that wishes to purchase them, including voice over IP (“VoIP”) providers, competitive local exchange carriers, providers of transit services, and wireless providers.”).

area.”<sup>15</sup> This provision also states that such provider will “advertise the availability of local exchange services and prices to potential customers throughout the relevant area.”<sup>16</sup> Finally, this provision obligates the alternative provider to “provide the required services in a manner that ensures continued reliable access to quality local exchange services.”<sup>17</sup> These provisions, as part of the COA process in the state of South Dakota, are intended to protect consumers, and neither the Petition itself nor the interconnection precedent cited by Midcontinent justifies, on legal or policy grounds, jettisoning or overriding the authority of states to carry out their own certification obligations under state law. The Petition should therefore be denied.

Respectfully submitted,



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<sup>15</sup> S.D. Admin. R 20:10:32:16.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*