

**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)

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in the above-captioned proceeding.² The Public Notice issued on June 20, 2022 sought comment on a Petition for Declaratory Ruling (“Petition”) filed by Midcontinent Communications (“Midcontinent” or “Petitioner”) requesting 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.”³ As noted further below, the record compiled in response to the Public Notice supports rejection of the Midcontinent Petition.

As NTCA noted in initial comments, the instant dispute is not, as Midcontinent attempts to frame it, about *whether* a provider such as Petitioner can obtain interconnection; rather, the

¹ 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.

² *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).

³ *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.

dispute is centered on *how* it does so pursuant to applicable federal *and* state laws/regulations.⁴ Other parties representing state commissions⁵ recognize that Midcontinent’s Petition is actually an attempt to disguise a petition for preemption as a Petition for Declaratory Ruling, seeking to evade the South Dakota Public Utilities Commission’s (“SD PUC”) authority to require a certificate of authority (“COA”) for the services that Midcontinent seeks to offer. On this point, the SD PUC correctly characterizes the Petition as an effort to “stamp out state oversight through the misapplication of prior FCC declaratory rulings.”⁶

Notably, the SD PUC’s exercise of authority that Midcontinent falsely characterizes as an insurmountable barrier to interconnection is, as commenters note, an important and reasonable method of ensuring that providers offering telecommunications services in their states do so in a manner consistent with the public interest.⁷ As JSI correctly points out, in “*Time Warner*, the Commission confirms that a state commission can impose ongoing obligations on telecommunications providers, including compliance with “technical requirements.”⁸ Thus, the decision to which Midcontinent points to as support for its preemption request in fact eschews the very preemption sought by the Petition. JSI goes on to note that the COA process at issue in

⁴ Comments of NTCA-The Rural Broadband Association, WC Docket No. 22-277 (fil. Aug. 19, 2022).

⁵ Michigan Public Service Commission, WC Docket No. 22-277 (fil. Aug. 19, 2022) (“Michigan PSC”), p. 4 (noting that “Midco’s petition, if granted, will impact any state oversight or even basic registration requirements of telecommunication providers within the states”); Comments of the National Association of Regulatory Utility Commissioners, WC Docket No. 22-277 (fil. Aug. 19, 2022) (“NARUC”), p. 8 (“Midco asks the FCC to preempt the South Dakota Public Utilities Commission’s (SD PUC) authority to require Midco to obtain a certificate of authority before providing a state-jurisdictional intrastate service.”).

⁶ Comments of the South Dakota Public Utilities Commission WC Docket No. 22-277 (fil. Aug. 19, 2022), p. 2.

⁷ See Comments of JSI, WC Docket No. 22-277 (filed Aug. 19, 2022), p. 5. See also Comments of James Valley Cooperative Telephone Co. and the South Dakota Telecommunications Ass’n, WC Docket No. 22-277 (fil. Aug. 19, 2022) (“James Valley/SDTA”), p. 5; Michigan PSC, pp. 4-5.

⁸ JSI, p. 5.

the state of South Dakota includes “regulatory authority over carriers seeking interconnection so that they can impose technical requirements on telecommunications providers”⁹ as well as other requirements related to “other state initiatives such as the administration of any state universal service programs, the successful resolution of consumer complaints, and technical requirements such as number portability that the state PUC needs to monitor.”¹⁰ Midcontinent acknowledges that the traffic at issue will be between local users, even as the service may be offered via a wholesale arrangement through Midcontinent’s affiliated VoIP provider. That provider will be operating as a customer of Midcontinent, with local residential users ultimately utilizing North American Numbering Plan Administrator allocated telephone numbers. Midcontinent attempts to rely on *Time Warner/CRC Communications* as the foundation for the preemption of state authority in this instance (while contorting to avoid such a characterization); however, Midcontinent fails to recognize that nothing in those decisions preempted a state’s authority to determine whether a service offered to local users utilizing local telephone numbers falls within the definition of a telecommunications service subject to the state’s certification authority. The COA requirement at issue is intended to advance important consumer protections that fall within the purview of the SD PUC, and nothing in the *Time Warner/CRC Communications* decisions set aside that authority.

With respect to the *Time Warner* decision that Midcontinent relies upon so heavily, James Valley and the South Dakota Telecommunications Association (“James Valley/SDTA”)

⁹ *Id.*

¹⁰ *Id.*

correctly summarize the weakness of Petitioner’s legal assertions, as well as Midcontinent’s attempt to portray the COA process as an intractable barrier to entry:

Time Warner dealt only with the rights of wholesale telecommunications service providers to interconnect with incumbent carriers. Midco conflates this holding to mean that state commissions no longer have CoA jurisdiction over wholesale telecommunications service providers. Of course, no citation for this proposition is given (nor does it exist), and at least two wholesale telecommunications service providers have applied for and received CoAs from the SDPUC in the 15 years since Time Warner was issued.¹¹

On that latter point, as to wholesale providers having successfully obtained COAs in South Dakota, NARUC, like NTCA,¹² points out that Midcontinent itself has previously obtained a COA from the SD PUC for another exchange, is thus fully aware of the process, and has shown itself capable of navigating the requirements needed to obtain such authority.¹³ This should put to rest any argument that the state COA process at issue here is somehow so unsurmountable or burdensome that the Commission must set aside the process.

NCTA, like Midcontinent, argues that the Commission should grant the Petition on the basis that doing so would enhance competition in the area Midcontinent proposes to serve.¹⁴ However, “enhancing competition” provides no basis for this Commission to preempt state authority, especially when there is no reason to believe that competition could not be enhanced if Midcontinent simply sought to take the same steps that it has before to obtain the requisite authority to compete. Rather, as James Valley/SDTA point out, even as wholesale telecommunications providers such as Midcontinent may have a right to interconnect with

¹¹ James Valley/SDTA, pp. 4-5.

¹² Comments of NTCA–The Rural Broadband Association, WC Docket No. 22-277 (fil. Aug. 19, 2022), p. 2.

¹³ NARUC, p. 8.

¹⁴ Comments of NCTA, WC Docket No. 22-277 (fil. Aug. 19, 2022), p. 3.

incumbent providers, states are charged with making the determination of whether a provider's service falls within the definition of a telecommunications service subject to the state's certification authority.¹⁵ In South Dakota, providers must demonstrate that their service would operate in the public interest based on the service's prices and terms, and would align with the entire service area of the rural telephone company.¹⁶ To reiterate, the insinuation made by both NCTA and Petitioner that the COA process somehow thwarts competition is misplaced, as the latter has already obtained COAs in other instances.

Based on the foregoing, the Commission should reject the Midcontinent Petition as seeking to circumvent requirements that Midcontinent prefers to avoid as a condition of providing service in the state of South Dakota. The COA requirements at issue are fully vested in states' authority and are not subject to review through a Petition for Declaratory Ruling crafted to address interconnection.

Respectfully submitted,



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¹⁵ James Valley/SDTA, p. 5; NTCA Comments, p. 4.

¹⁶ James Valley/SDTA, pp. 6-7; NTCA, pp. 4-5.