

# Pearce Durick PLLC

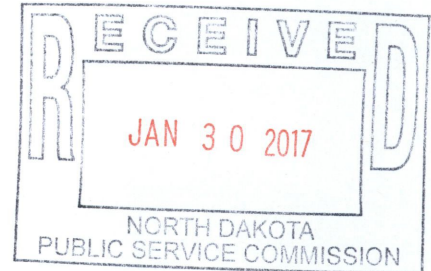
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January 30, 2017



**Hand Delivered**

Mr. Darrell Nitschke  
Executive Director  
ND Public Service Commission  
Capitol  
600 East Boulevard, 12<sup>th</sup> Floor  
Bismarck, ND 58505

RE: Midcontinent Communications Petition

Dear Mr. Nitschke:

Enclosed for filing are the original and seven copies of *Midcontinent Communication's Petition for Approval to Expand It's ETC Lifeline Designation Area*. This document is also being transmitted electronically to your office. Reference should be made to PU-16-48 in reviewing the current petition. Midcontinent seeks here to include the service area of Cooperstown to the areas it provides Lifeline service as an eligible telecommunication carrier.

If you have any questions, please do not hesitate to contact our office.

Thank you.

Sincerely,

PEARCE DURICK PLLC

  
ZACHARY E. PELHAM

ZEP/ak  
Enclosures

1 PU-17-50 Filed: 1/30/2017 Pages: 11

Application for expansion of ETC Lifeline designation area

Midcontinent Communications

Zachary Pelham, Pearce Durick, PLLC

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

PU-17-\_\_\_\_\_

In the Matter of the Application of  
Midcontinent Communications, a South  
Dakota Partnership For Approval To  
Expand Its ETC Lifeline Designation Area

**MIDCONTINENT COMMUNICATIONS' PETITION  
FOR APPROVAL TO EXPAND IT'S ETC. LIFELINE DESIGNATION AREA**

Midcontinent Communications ("Midcontinent"), for its Petition to expand the area in which it provides service as an Eligible Telecommunications carrier ("ETC") to include the service area of Cooperstown, ND, states as follows:

**I. BACKGROUND**

1. On July 28, 2005, the Commission granted Midcontinent's Petition to provide service as an ETC in the Qwest (now known as CenturyLink) service area in Case No. PU-05-272.
2. On May 15, 2016, the Commission granted Midcontinent's Petition to extend its ETC Designation as a Lifeline provider in all its service areas in Case No. PU-16-48.
3. This Petition is made pursuant to § 214 and § 254 of the federal Communications Act of 1996 and under N.D.C.C. § 49-21-01.7(12) and N.D.A.C. § 69-09-05-12.
4. Applicant's complete name is Midcontinent Communications, a South Dakota partnership. Applicant's headquarters is located at 3901 N Louise Avenue, Sioux Falls, SD 57107. Applicant is a general partnership organized under the laws of the State of South Dakota. Applicant has filed a Fictitious Name Certificate with the North Dakota Secretary of State and a copy of the Certificate is on file with the Commission. Applicant is authorized to do business in

North Dakota and is in good standing. A copy of the Applicant's Certificate of Authority to Transact Business in North Dakota is on file with the Commission.

5. If the Commission grants this Petition, Midcontinent will not be receiving High Cost Universal Support in the Cooperstown rural service area. Midcontinent will however seek reimbursement for its Lifeline support given to Cooperstown customers eligible for Lifeline service and makes its application for ETC designation accordingly.

## **II. CRITERIA FOR ETC DESIGNATION**

6. To qualify for ETC designation under 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.201, a carrier must meet the following requirements:

- (a) the Company must be a "common carrier" under federal law;
- (b) the Company must offer or be able to offer the supported services using its own facilities, or a combination of its own facilities and resale of another carrier's services;
- (c) the Company must advertise the availability and charges for the supported services using media of general distribution; and
- (d) the Company must provide the supported services throughout its designated ETC service area upon reasonable request.

7. Section 54.101(a)(1)-(a)(9) of the FCC's Rules require that an ETC provide the following services or functionalities as the supported services:

- (a) voice-grade access to the public switched telephone network;
- (b) local usage; dual-tone multi-frequency ("DTMF") signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency

services; access to operator services access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers.

8. Consistent with the public interest, convenience, and necessity, a competitive ETC may be designated in any area served by a non-rural telephone company so long as the applicant meets the requirements of 47 U.S.C. § 214(e)(1). The Commission may designate an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest. 47 C.F.R. §54.201(c).

### **III. MIDCONTINENT SATISFIES EACH OF THE REQUIREMENTS FOR DESIGNATION AS A COMPETITIVE ETC**

9. A telecommunications carrier utilizing any technology is eligible to receive federal universal service support if the company meets the requirements established under 47 U.S.C. § 214(e)(1). As demonstrated below, Midcontinent satisfies each of these requirements. Midcontinent operates as a common carrier, provides each of the nine supported services established by the FCC, and offers and advertises the availability of, and charges for, such services throughout its designated Service Area. Finally, Midcontinent's designation as a competitive ETC will serve the public interest.

#### **A. Midcontinent is a Common Carrier**

10. The first requirement for ETC designation is that the applicant is a common carrier. A common carrier is defined by the Act as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio." Midcontinent offers local exchange service including a basic phone line and various features to choose from such as caller ID, call waiting, call forwarding, and ancillary services like voice mail, to the general public. Therefore, Midcontinent meets the federal definition of common carrier for purposes of ETC designation.

**B. Midcontinent Provides Each of the Nine Required Supported Services**

11. The second requirement for ETC designation is that the applicant be capable of and committed to providing each of the nine (9) supported services upon designation.

12. Midcontinent currently provides the supported services set forth in 47 C.F.R. § 54.101(a)(1)-(9) over its existing network infrastructure in North Dakota as follows:

(a) Voice Grade Access: The FCC has determined that voice grade access to the public switched telephone network means the ability to make and receive calls with a minimum bandwidth of 300 to 3500 Hertz. Through its interconnection agreements with various ILECs, Midcontinent's customers are currently able to make and receive calls on the public switched telephone network within the FCC's specified frequency range.

(b) Local Usage: "Local usage" means an amount of minutes of use of exchange service, as prescribed by the FCC, provided free of charge to end users. The FCC has determined that a wireless carrier's inclusion of local usage in a variety of service offerings satisfies the obligation to provide local usage. Midcontinent includes local usage in all of its service offerings.

(c) Dual Tone Multi-Frequency Signaling or Its Functional Equivalent: "Dual Tone Multi-Frequency" ("DTMF") is a method of signaling that facilitates the transportation of call set-up and call detail information. Midcontinent will comply.

(d) Single-Party Service or its Functional Equivalent: The FCC has determined that a CMRS provider meets the requirement of offering single-party service when it offers a dedicated message path for the length of a user's particular transmission. Midcontinent complies with this requirement.

(e) Access to Emergency Service: "Access to emergency service" means the ability to reach a public service answering point ("PSAP") by dialing "911." The FCC also requires that a carrier provide access to enhanced 911 or "E-911," which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), when the PSAP is capable of receiving such information and the service is requested from the carrier. Midcontinent has the ability to remain functional in emergency situations. Midcontinent is currently in compliance and has approved 911 Plans on file with the Commission. Midcontinent has auxiliary and battery power backups.

(f) Access to Operator Services: "Access to operator services" means any automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call. Midcontinent meets this requirement by providing all of its customers with access to operator services provided either by Midcontinent or third parties.

(g) Access to Interexchange Service: "Access to interexchange service" means the ability to make and receive toll or interexchange calls. Midcontinent currently meets this requirement by providing all of its customers with the ability to make and receive interexchange calls through their carrier of choice. Equal access to interexchange service, i.e., the ability of a customer to access a presubscribed long distance carrier by dialing 1+number, is not required.

(h) Access to Directory Assistance: "Access to directory assistance" means the ability to provide access to a service that makes directory listings available. Midcontinent currently meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "(NPA) 555-1212."

(i) Toll Limitation Services: An ETC must offer "toll limitation" services to qualifying low-income consumers at no charge. FCC Rule 54.400(d) defines "toll limitation" as either "toll blocking" or "toll control" if a carrier is incapable of providing both, but as both "toll blocking" and "toll control" if a carrier can provide both. Toll blocking allows consumers to elect not to allow the completion of outgoing toll calls. Toll control allows consumers to specify a certain amount of toll usage that may be incurred per month or per billing cycle. As an ETC in North Dakota, Midcontinent will utilize its existing toll-blocking technology to provide the service at no additional charge to requesting Lifeline customers.

13. Midcontinent offers a basic local service plan that is comparable to the basic local usage plan that is offered in the service area for which Midcontinent seeks ETC designation. Midcontinent's basic flat rated residential line is priced at \$20.00 with Caller ID and Call Waiting available at an a la carte rate of \$3.95, with discounts available when buying the line and features together in a bundled package. Midcontinent offers a Digital Phone Package for \$32.95 which includes the local phone line, unlimited domestic long distance calling to any state and Canada, the U.S. Virgin Islands, Puerto Rico, and Guam; along with 8 calling features.

C. **Midcontinent Will Offer and Advertise the Availability of, and Charges for, the Supported Services Throughout Its Service Area**

14. The third requirement for ETC designation is that an applicant must advertise the availability of, and charges for, the supported services using media of general distribution. Midcontinent currently offers and advertises its telecommunications services to customers in North

Dakota using media of general distribution, including television and print advertising. Midcontinent advertises the availability of its service offerings and the corresponding rates for those services throughout its Service Area through media of general distribution in a manner that fully informs the general public. Advertisement of its service offerings is a part of, and integrated into, its current advertising for its existing array of services and offerings in a manner that fully complies with federal requirements and Midcontinent commits to such advertisements in the future.

15. Midcontinent's telephone service brochures and the handbooks provided to new telephone customers provide information on the availability of Lifeline assistance. Also, at least annually Midcontinent advises customers of the program through its billing statement message; however generally a billing statement message is sent on a quarterly basis.

**IV. DESIGNATING MIDCONTINENT AS AN ETC WILL SERVE THE PUBLIC INTEREST**

16. The Commission must find that the designation of a competitive ETC is consistent with the public interest, convenience, and necessity. This standard is met where the applicant satisfies the prerequisites of 47 U.S.C. § 214(e)(1) and can offer consumers a competitive alternative to the incumbent carrier. As discussed above, Midcontinent fully satisfies each of the requirements of 47 U.S.C. § 214(e)(1).

17. The Commission previously applied a public interest analysis under 47 U.S.C. § 214(e)(2) considering: (1) whether customers are likely to benefit from increased competition; (2) whether designation of an ETC would provide benefits not available from incumbent carriers; (3) the impact of multiple designations on the federal universal service fund; (4) any commitments made regarding quality services provided by competing providers; and (5) whether customers

would be harmed if the incumbent carrier exercised its option to relinquish its ETC designation.<sup>1</sup> Following this standard, the Commission should determine that it is in the public interest to designate Midcontinent as an ETC for lifeline reimbursement in all its service areas.

**A. Granting ETC Designation Will Facilitate Competition to the Benefit of Consumers**

18. Consumers should be able to choose services based on their own needs, and not just the service of the incumbent LEC. Designating Midcontinent as a competitive ETC will allow the consumers in the requested Service Areas to choose their provider based on the price, services, service quality, customer service and service availability offered by openly competing companies.

19. Funds received by Midcontinent under the universal service supports for low income customers will be used by Midcontinent to reduce the cost of basic local service provided to those customers qualified to receive support under the program.

**B. Midcontinent will comply with all State and Federal Requirements**

20. Midcontinent's service offerings includes state-of-the-art network facilities; reduced long-distance rates; competitive pricing; 24-hour customer service; enhanced features, such as voice-mail, caller-ID, call-waiting, and call-forwarding; and high-speed data functions including email and Internet access. Customers benefit by the ability to access these advanced services at competitive prices.

21. Consistent with the obligations of a competitive federal ETC, Midcontinent is committed and able to provide service to all customers within its Service Area upon reasonable request. To ensure its ability to meet reasonable requests for service, Midcontinent will comply

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<sup>1</sup> PSC Docket No. PU-05-272, In the matter of the Application of Midcontinent Communications, a South Dakota Partnership, for designation as an eligible carrier, Supplemental Information in Support of Application for Designation as an Eligible Telecommunications Carrier. Filed July 12, 2005.

with the service extension commitments previously accepted by the FCC and by this Commission. Consistent with its past practice, Midcontinent hereby certifies that it will provide service on a timely basis to all requesting customers within its designated ETC service area. In certain cases, the provisioning of this service may require a customer in a new location to first meet the requirements of Midcontinent's line extension policies. These line extension policies are, however, consistent with the requirement under both federal and state law to meet all reasonable requests for service. In those areas Midcontinent cannot provide service on its own facilities there are agreements with the ILEC to lease or resell services.

**C. Midcontinent's Commitment to Service Quality**

22. Midcontinent is committed to providing high service quality to its customers consistent with the public interest. As a certificated carrier in North Dakota, Midcontinent is in compliance with the Commission's consumer protection and service quality requirements as set forth in Chapter 69-09-05 of the ND Admin. Code and will continue to be in compliance with those requirements following its designation as an ETC.

23. Midcontinent commits to follow the same procedures approved by the Commission and the FCC to provide service to all requesting customers within the Company's Service Area upon reasonable request.

24. Accordingly, the Commission should find that designating Midcontinent as a competitive ETC will serve the public interest.

**D. Customers Will Not Be Harmed By Midcontinent's Designation**

25. Granting Midcontinent's petition to be designated as an Eligible Telecommunications Carrier will cause no risk of harm because the approval only assures that

qualifying low-income consumers served by Midcontinent will continue to receive Lifeline support.

**E. No Rural LEC Will Experience Any Significant Adverse Impact from Midcontinent's ETC Designation to Justify Denying Consumers the Benefits of Competition**

26. Because Midcontinent is not seeking high cost support, the designation of Midcontinent as an ETC in the Cooperstown Service Area will not result in any adverse impact to Griggs County Telephone Co., a rural telephone company. Any reimbursement received by Midcontinent due to its designation as an ETC will be used to defray the costs of discounted service provided by Midcontinent to qualified consumers. Midcontinent is currently providing discounted service to low income consumers in the requested Service Area and brings this Petition in order to receive reimbursement available for the provision of such service.

**F. Emergency Requirements**

27. Midcontinent has the ability to remain functional in emergency situations. Midcontinent currently provides auxiliary and battery power backup. Midcontinent has a Power Supply Response Team whose objective is to provide uninterrupted service to telephone subscribers during periods of commercial power interruptions. Midcontinent utilizes power supplies within its network which convert commercial power to 87.5-volts AC and provide the power to the network nodes, amplifiers and customer premise equipment. Each power supply unit shall have battery backup in order to continue to provide network power in the event of a commercial power failure. Portable generators shall be deployed by the PSRT to provide continuous uninterrupted power augmenting the battery power life cycle.

**G. High-Cost Certification**

28. In support of Midcontinent's request, Midcontinent hereby certifies that it will utilize support it receives on or after the date of its designation as a competitive ETC only for the

provision, maintenance, and upgrading of facilities and services for which the support is intended pursuant to 47 U.S.C. § 254(e).

29. Under the FCC's Rules, a state that desires ETCs within its jurisdiction to receive lifeline service support must file, or require the carrier to file, an annual certification with the Universal Service Administrative Company ("USAC") and the FCC stating that the lifeline plan meets the required terms and conditions and the funds will be used only for the provision, maintenance, and upgrade of facilities and services for which the support is intended. Accordingly, Midcontinent requests that the Commission so certify Midcontinent's use of lifeline support.

30. Midcontinent certifies it satisfies the requirements contained in N.D.A.C. § 69-09-05-12.

### CONCLUSION

Midcontinent respectfully requests that the Commission promptly grant this Petition and extend Midcontinent's ETC status to include the Cooperstown service area where it is authorized to provide service, for the purposes of receiving Lifeline support in North Dakota. Midcontinent would further ask the Commission to expedite the ETC approval process.

Respectfully submitted,

Dated: January 30th, 2017.

PEARCE DURICK PLLC

By 

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