

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Public Notice that seeks comment on a petition for declaratory ruling filed on July 12, 2022, by Midcontinent Communications (“Midcontinent”).¹

INCOMPAS is the preeminent national industry association for providers of Internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace. We represent fixed broadband companies, including small local fiber and fixed wireless providers, that provide residential broadband Internet access service (“BIAS”), as well as other mass-market services, such as video programming distribution and voice services in urban, suburban, and rural areas. We also represent companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes, including regional fiber providers; transit and backbone providers that carry broadband and Internet traffic; online video distributors (“OVDs”), which offer video

¹ *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).

programming over BIAS to consumers, in addition to other online content, such as social media, streaming, cloud services, and voice services.

INCOMPAS' members are at the forefront of helping consumers and businesses get better, faster internet service, online content, and voice services at competitive prices that they can afford. The current proceeding is of interest to INCOMPAS and its members because it directly implicates the ability of competitors to bring alternative, competitive choice to consumers and businesses and the role of Section 251(a), in particular, that ensures competitive telecommunications carriers can interconnect, directly or indirectly, with other telecommunications carriers as a matter of right.² This fundamental interconnection right is important to our members who interconnect directly or indirectly to deliver competitive retail voice service in a community, and it is also critical for our members who purchase wholesale interconnection from other providers, like Midcontinent, who can connect them to an entire state or geographic territory so that they can exchange voice traffic.

As Midcontinent explained in its Petition, it seeks to provide interconnection to other voice providers who need voice interconnection in South Dakota to deliver/receive calls in the state.³ This interconnection capability is important for competitive voice providers for a number of reasons. First, they can deliver and pick up voice traffic to/from one carrier in the state who already has interconnection agreements with the other carriers without having to seek

² 47 U.S.C. § 251(a) (“Each telecommunications carrier has the duty (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.”).

³ *Petition of Midcontinent Communications for Declaratory Ruling Concerning Qualifications for Obtaining Local Interconnection Under Section 251(a) of the Communications Act*, WC Docket No. 22-277 (filed July 12, 2022), at 2.

interconnection throughout the state themselves. In other words, a competitive provider would not have to enter into its own interconnection agreement with every other provider in the state, saving them time and money. Second, they can interconnect with one provider who then can also transform IP calls into TDM and vice versa, as needed. As the Commission is fully aware, there are still a number of incumbent carriers who are not offering IP interconnection, and companies that can perform the critical function of providing IP interconnection and offering the IP to TDM functionality is a valuable interconnection solution for all-IP providers. As such, the availability of a provider like Midcontinent to offer wholesale interconnection to other voice competitors allows for a functional interconnection marketplace that enables competitive providers to deliver and receive voice traffic to/from South Dakota efficiently and effectively.

To further elucidate why interconnection is important for competitive choice for voice service, one need only review the FCC's most recent description of the voice telephone services marketplace section of the Commission's *2020 Communications Marketplace Report* wherein it states:

For decades, the public switched telephone network (PSTN) was the only means of real-time, two-way voice communications. However, due to technological advancements, such as mobile voice telephony and IP-based voice services, there now exists a multitude of other voice service options for consumers. We focus on voice services interconnected with the PSTN in our reporting, in light of the continued ubiquitous availability and use of the PSTN and interconnected services, but acknowledge that there are many other types of offerings, including apps running solely on data networks that provide similar functionality entirely outside the PSTN and nearly indistinguishable to providers and the Commission from other network data traffic.⁴

The Report highlights the following voice services that are interconnected with the PSTN: fixed and mobile voice services. It explains that fixed voice services include traditional switched

⁴ *2020 Communications Marketplace Report*, GN Docket No. 20-60, FCC 20-188, at ¶ 143 (rel. Dec. 31, 2020).

access connections and interconnected Voice over IP (“VoIP”): “VoIP is voice carried simply as data over an Internet Protocol network and can be a voice service that is bundled with the underlying broadband connection or offered independent of the necessary data service as an over-the-top, or OTT.”⁵ It further observes that fixed VoIP providers distinguish OTT VoIP, where the consumer uses an independent data service over a broadband connection, from all other types of interconnected VoIP.⁶ The Report finds that as of December 2019 there are 38 million end-user switched access lines, 70 million interconnected VoIP subscriptions, and 356 million mobile voice subscriptions. Of the interconnected VoIP subscriptions, it states that 12.9 million are OTT VoIP subscriptions, and 56.2 million are non-OTT VoIP subscriptions.⁷ It also noted that approximately 59.2% of all households were mobile-only in late 2019, with adults in lower age-groups more likely to live in mobile-only households.

The development of these multitude of voice options by thousands of providers are a direct result of the competitive-enabling provisions that were adopted in the Telecommunications Act of 1996—with Section 251(a) being one of the most critical statutory provisions to ensure that every telecommunications carrier has an obligation to interconnect with each other both directly and indirectly. The multitude of competitive options and technological advancements, including providers who focus their business on different segments of the marketplace—whether it is delivering a wholesale and/or retail voice service to residences and/or businesses, serving multi-location enterprise customers with voice options, providing mobile wireless carriers wholesale interconnection, or deploying broadband infrastructure to a community and also

⁵ *Id.* at ¶ 144.

⁶ *Id.*

⁷ *Id.* at ¶ 149.

offering voice with a broadband internet access service—are vast. Indeed, the variety and options ALL rely on a functioning interconnection marketplace that rests on the foundation of Section 251(a).

FCC grant of the Midcontinent Petition will enable more wholesale and retail competition. There will be a new IP voice interconnection option in South Dakota, which will enable INCOMPAS voice service provider members to efficiently and effectively interconnect with other providers in South Dakota through Midcontinent’s wholesale, statewide interconnection offering. INCOMPAS’ membership reflects the diversity of voice options and business models as described above. These providers rely on the availability of interconnection, including wholesale interconnection, to exchange traffic with other carriers, and a new wholesale interconnection offering in South Dakota that they can interconnect with will enhance the availability of competitive offerings in the state and also assist with IP interconnection that our members are seeking.

The issue as to whether Midcontinent must obtain state PUC authorization to exercise its Section 251(a) interconnection rights in South Dakota is an important issue for INCOMPAS members who also have faced their own difficulties obtaining interconnection (both direct and indirect), which has had serious implications for obtaining number portability and call completion capability with some RLECs.⁸ In those situations, INCOMPAS members have had to spend significant time and resources to exercise their rights under the Communications Act. Accordingly, they understand fully the implications of RLECs refusing interconnection, forcing competitors to go through the arbitration process, and then raising other issues at the state

⁸ See, e.g., *In the Matter of a General Investigation into Interconnection, Porting, Evolving Technology, and the Impacts on Consumer Choices in Kansas*, Kansas Corporation Commission, Docket No. 20-GIMT-387-GIT.

commission solely to hamper, slow, or deny competitors from succeeding. It is frustrating, expensive to litigate, and fraught with uncertainty. More importantly, however, it is delaying the benefits of competition to consumers and businesses in the affected area. This is what the FCC's interconnection precedent recognizes: "without the ability to exchange telecommunications traffic with the local incumbent carrier, no competitive provider would be able to compete effectively. Thus, when incumbent carriers resist interconnection with competitive telecommunications carriers, it impedes the development of facilities-based voice services in those areas."⁹ Further, the Commission recognized that "the ability to provide competitive voice services also drives network investment decisions. The ability to provide such services can play a significant role in enabling a service provider to justify additional investments in broadband network facilities and services."¹⁰ Accordingly, INCOMPAS urges the Commission to address the Petition immediately to provide Midcontinent the certainty it needs to move forward with its wholesale interconnection plans as not only does it impact Midcontinent, but it also impacts every provider who seeks to use the wholesale interconnection that Midcontinent will offer. INCOMPAS also believes that a speedy resolution is warranted given the already one-year delay, and INCOMPAS supports Midcontinent's request for a decision on delegated authority.

The South Dakota PUC asserts that Midcontinent will be offering a local exchange service that requires state authorization, while Midcontinent claims that it only is offering wholesale interconnection as permitted by Section 251(a), which does not require state

⁹ *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-92, Declaratory Ruling, 26 FCC Rcd 8259, at ¶ 12 (rel. May 26, 2011).

¹⁰ *Id.* at ¶ 13.

authorization. If voice providers are now required to obtain state authorization to obtain interconnection with a carrier (whether wholesale or retail) and exercise their interconnection rights of exchanging traffic with another carrier, such a finding likely would have far-reaching impact as other state commissions are likely to follow suit and require providers that obtain interconnection to exchange traffic in a state to obtain state commission authorization to do so. INCOMPAS also is concerned that those who purchase wholesale interconnection could be swept up in such new requirements from state commissions, potentially creating new entry barriers for competitors and those providers who may be using their interconnection services on a wholesale basis.

For the foregoing reasons, the Wireline Competition Bureau should grant Midcontinent's Petition.

Respectfully submitted,

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