

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of) CUID No:	PSID No:
Midcontinent Communications) Sioux Falls (SD0017)	002640
	) Baltic (SD0138)
	) Harrisburg (SD0321)
	) Tea (SD0322)
	) Canton (SD0053)
	) Madison (SD0040)
) Yankton (SD0046)	001276
	) Gayville (SD0316)
	) Meckling (SD0325)
	) Vermillion (SD0047)
Petition for Determination of Effective Competition) Rapid City (SD0001)	002426
	) Unincorp. Pennington Co. (SD0054)
	) (SD0262)
	) (SD0282)
	) (SD0283)
	) (SD0309)
	) Summerset (SD0323)
	) Unincorp. Meade Co. (SD0110)
	) (SD0165)
) Unincorp. Mead Co. (Sturgis) (SD0035)	005303
	) Belle Fourche (SD0009)
	) Central City (SD0038)
	) Deadwood (SD0010)
	) Lead (SD0012)
	) Spearfish (SD0013)
) Sturgis (SD0014)		
) White Wood (SD0106)		
) Boulder Canyon (SD0116)		

To: The Secretary's Office
Attn: The Media Bureau

PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION

Midcontinent Communications

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October 17, 2012

Its Attorneys

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SUMMARY

Competition among multichannel video programming distributors (“MVPDs”) in Midcontinent’s Sioux Falls and Rapid City, South Dakota communities included in this Petition (collectively, the “Communities”) more than satisfies the effective competition standard that Congress established in Section 623(*I*)(1) of the Communications Act. Midcontinent provides superior voice, video, and data services to its customers in the Sioux Falls and Rapid City areas, and customers there also may choose comparable video services offered throughout the Communities by nationwide direct broadcast satellite providers DirecTV and Dish Network, among others. As described herein, more than fifteen percent (15%) of customers in each of the Communities have chosen the competing services of Midcontinent’s rivals. This fully competitive environment provides all consumers in the Communities with abundant and growing options for multichannel video and other communications services, which ensures high standards of customer service and competitive rates.

Given these circumstances, the fact that all the Communities are subject to effective competition under Section 623(*I*)(1)(B) of the Act and corresponding Section 76.905(b) of the Commission’s rules (the “Competing Provider” test) is unsurprising. Multiple competitors unaffiliated with Midcontinent offer more than two hundred (200) channels of comparable video programming to at least fifty percent (50%) of the occupied households within each of Midcontinent’s franchise areas. In the aggregate, these competitors actually provide service to more than fifteen percent (15%) of the occupied households in each franchise area based upon 2010 Census data. The Competing Provider test therefore is satisfied in all the Communities.

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Boulder Canyon (SD0116)		

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PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION

Midcontinent Communications ("Midcontinent"), by its attorneys and pursuant to Sections 76.7 and 76.907 of the rules of the Federal Communications Commission (the "Commission"), 47 C.F.R. §§ 76.7, 76.907, hereby petitions the Media Bureau for a

determination of effective competition in the above-captioned Sioux Falls and Rapid City, South Dakota area communities (collectively, the “Communities”).¹

BACKGROUND

The Communications Act (the “Act”) and the Commission’s rules provide that cable television rates may be regulated only in the absence of effective competition.² The Commission, however, presumes that cable systems do not face such competition absent a demonstration to the contrary.³ When a cable operator rebuts this presumption with evidence that effective competition is present within a franchise area, rates and other aspects of the operator’s business in the affected area no longer are subject to regulation.⁴

Midcontinent’s franchise areas in the Communities are served by competitive multichannel video programming distributors (“MVPDs”) in addition to Midcontinent, including but not limited to Direct Broadcast Satellite (“DBS”) providers DirecTV and Dish Network. This competitive environment ensures that customers in Midcontinent’s service areas have

¹ Midcontinent is submitting application fees pursuant to 1.1104(8)(g) of the Commission’s rules for each physical system (“PSID”) included in this petition. 47 C.F.R. § 1.1104(8). The Communities associated with PSID Nos. 001276 and 002640 are part of Midcontinent’s Sioux Falls area system and the communities associated with PSID Nos. 002426 and 005303 are part of Midcontinent’s Rapid City area system.

² 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a).

³ 47 C.F.R. § 76.906.

⁴ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, *Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631 at paras. 39-49 (1993) (“Rate Order”); *First Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking*, 9 FCC Rcd 1164 at para. 26 (1994); *Third Order on Reconsideration*, 9 FCC Rcd 4316 at para. 7 (1994). See also 47 C.F.R. § 76.905(a); 47 U.S.C. § 533(a)(3) (MMDS and SMATV cross-ownership restrictions are inapplicable where effective competition is present); *Time Warner Entertainment Co. v. FCC*, 56 F.3d 151, 187-92 (D.C. Cir. 1995) (tier buy-through and uniform rate requirements are inapplicable where effective competition is present); Implementation of the Cable Television Consumer Protection and Competition Act of 1992, *Memorandum Opinion and Order*, 11 FCC Rcd 20206 (1996); Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues, *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598 at para. 102 (2001) (cable operator subject to effective competition may place broadcast signals on upper service tiers).

available a variety of multichannel video program offerings at competitive prices. It also ensures a high standard of customer service.

Midcontinent is subject to effective competition under Section 623(*D*)(1)(B) of the Act⁵ and corresponding Section 76.905(b)(2) of the Commission's rules⁶ (the "Competing Provider" test) in the Communities. As demonstrated below, at least two unaffiliated competitors offer comparable programming to fifty percent (50%) or more of occupied households, and competitors other than Midcontinent collectively serve more than fifteen percent (15%) of occupied households in each of the Communities.

DISCUSSION

I. Midcontinent Is Subject To Effective Competition In Each Of The Communities.

Under the Competing Provider test adopted in the 1992 Cable Act,⁷ cable operators are subject to effective competition whenever two or more unaffiliated MVPDs offer comparable programming to at least fifty percent (50%) of the households in a franchise area and the number of households subscribing to MVPDs other than the largest exceeds fifteen percent (15%) of such households.⁸ Midcontinent's cable systems serving the Communities are subject to effective competition because: (1) Midcontinent, Dish Network, and DirecTV offer service throughout Midcontinent's franchise areas; and (2) more than fifteen percent (15%) of the occupied households in each of the Communities subscribe to the comparable video programming services offered by Midcontinent's unaffiliated MVPD competitors.⁹

⁵ 47 U.S.C. § 543(*D*)(1)(B).

⁶ 47 C.F.R. § 76.905(b)(2).

⁷ The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁸ 47 U.S.C. § 543(*D*)(1)(B).

⁹ Census data for the Communities are attached hereto in Exhibit 1.

A. At Least Two Unaffiliated MVPD Competitors Offer Comparable Programming To More Than Fifty Percent Of The Households In Each Of The Communities.

The first prong of the Competing Provider test requires that at least two unaffiliated MVPDs offer comparable programming to at least fifty percent (50%) of the occupied households in the franchise area. This part of the test is satisfied easily here.

Midcontinent is unaffiliated with either DirecTV or Dish Network, both of which are themselves unaffiliated, and both of which offer comparable video programming to virtually one hundred percent (100%) of the households in each of the Communities.¹⁰ Midcontinent's DBS rivals present comparable programming under the Commission's rules because each provides more than twelve channels of video programming, including at least one non-broadcast channel.¹¹ The services provided by Dish Network and DirecTV each include more than 200 channels of broadcast and non-broadcast video programming.¹² Midcontinent similarly offers comparable programming to virtually one hundred percent (100%) of its service areas in all the Communities and provides more than 250 channels of broadcast and non-broadcast programming. In each of the Communities, therefore, two or more unaffiliated MVPDs offer comparable video programming to more than fifty percent (50%) of occupied households in the franchise area.

The first part of the Competing Provider test also requires that at least two unaffiliated competitors actually offer video programming services in the relevant franchise area pursuant to the Commission's rules.¹³ This requirement is satisfied here because: (1) Midcontinent offers

¹⁰ The Commission presumes that DBS providers satisfy the fifty percent (50%) offering and comparable programming thresholds. *See, e.g., Comcast Cable Communications, LLC*, 20 FCC Rcd 20438 (Med. Bur. 2005); *Amzak Cable Midwest, Inc.*, 19 FCC Rcd 6208 (Med. Bur. 2004); *Time Warner Entertainment-Advanced/Newhouse Partnership*, 12 FCC Rcd 13801 at para. 10 (Cab. Serv. Bur. 1997), citing *Rate Order*, 8 FCC Rcd at 5659-60.

¹¹ *See* 47 C.F.R. § 76.905(g).

¹² Channel line-ups for DirecTV and Dish Network are included in Exhibit 2, attached hereto.

¹³ Under Section 76.905(e) of the Commission's rules, video programming services are offered:

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service throughout the Communities; (2) Midcontinent is unaffiliated with Dish Network or DirecTV; (3) Dish Network and DirecTV are physically, legally, and technically able to deliver service in all the Communities; and (4) potential subscribers in the Communities are reasonably aware that they may purchase competitive MVPD services from Midcontinent’s competitors. Therefore, two or more unaffiliated MVPDs offer service in all the Communities pursuant to the Commission’s standards.

The Commission uniformly has held that “DBS service is presumed to be technically available due to its nationwide satellite footprint, and [is] presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.”¹⁴ The Commission also has acknowledged repeatedly that the sustained national, regional, and local advertising campaigns conducted by DirecTV and Dish Network, and their steadily increasing market share — now more than thirty-three percent (33%) of the MVPD market¹⁵ — has resulted in a nationwide awareness of DBS availability. According to the Commission’s most recently

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(1) When the multichannel video programming distributor is physically able to deliver service to potential subscribers, with the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service; and

(2) When no regulatory, technical or other impediments to households taking service exist, and potential subscribers in the franchise area are reasonably aware that they may purchase the services of the multichannel video programming distributor.

47 C.F.R. § 76.905(e).

¹⁴ *FrontierVision Operating Partners, L.P., et al.*, 16 FCC Rcd 5228 at para. 3 (Cab. Serv. Bur. 2001) (footnote omitted, citing *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997)). See also, e.g., *Cablevision of Rockland/Ramapo, Inc.*, 22 FCC Rcd 11487 (Med. Bur. 2007); *Charter Communications et al.*, 20 FCC Rcd 20448 at para. 3 (Med. Bur. 2005); *Texas Cable Partners, L.P.*, 16 FCC Rcd 4718 at para. 4 (Cab. Serv. Bur. 2001).

¹⁵ See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, *Fourteenth Annual Report*, 27 FCC Rcd 8610 at para. 4 (2012) (“*Fourteenth Annual Report*”). The Fourteenth Annual Report reflects data as of December 2010 and the thirty-three percent DBS market share reported therein represents a gain of 4.3 million DBS subscribers since 2006; see *Fourteenth Annual Report* at para. 139 and Table 5.

released Video Competition Report, as of December 2010, DirecTV and Dish Network were the second and third largest MVPDs in the nation.¹⁶

Given the dramatic growth of DBS service over the past several years and its ubiquitous availability, the Commission presumes a reasonable awareness of DBS service based on the established nationwide market share of DBS operators.¹⁷ When combined with a demonstration that more than fifteen percent (15%) of the franchise area's households subscribe to DBS service, such as the one Midcontinent is providing here, a reasonable awareness of DBS service in the Communities is undeniable.¹⁸

The Commission's presumption of DBS awareness is demonstrably accurate in this case. Potential subscribers in the Communities are broadly aware of the competing services provided by DirecTV and Dish Network due to extensive advertising distributed in local and national media serving the Communities.¹⁹ Moreover, given the penetration levels that DBS competitors have achieved in the Communities, the existence of "reasonable awareness" regarding the

¹⁶ See *Fourteenth Annual Report* at para. 31.

¹⁷ See, e.g., *Charter Communications*, 24 FCC Rcd 10130, 10133, para. 12 (Med. Bur. 2009) ("*Charter*") (no evidence of DBS awareness is required because the Commission has "no reason to disregard the well-known ubiquity of DBS service [and] the nationwide subscribership of DBS at almost twice the level needed to show competing provider effective competition [which] show real widespread awareness among American households that DBS service is available to them.") (footnote omitted). The Commission formerly presumed a reasonable awareness of DBS services within any given community based on the existence of national and regional advertising. See, e.g., *Time Warner Entertainment – Advance/Newhouse Partnership d/b/a Time Warner Cable*, 20 FCC Rcd 15709, 15710-11, para. 3 (Med. Bur. 2005); *Adelphia Communications*, 20 FCC Rcd 20487, 20488-89, paras. 4-6 (Med. Bur. 2005); see also *Amzak*, 19 FCC Rcd at 6208, para. 4 (basing awareness finding solely on the availability of national advertising within community); *CC VIII Operating, LLC*, 19 FCC Rcd 6204, 6205, para. 3 (Med. Bur. 2004) (regional and national advertising); *Texas Cable Partners, L.P.*, 19 FCC Rcd 6213, 6214 para. 3 (Med. Bur. 2004) (regional and national advertising). Under *Charter* and subsequent cases, the Commission no longer requires evidence of local advertising.

¹⁸ See *MediaCom Illinois, LLC*, 22 FCC Rcd 13503, 13504, para. 3 (Med. Bur. 2007) ("In view of this DBS growth data, and the data . . . showing that more than 15 percent of the households in each of the Communities are DBS subscribers, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test."); *MCC Iowa, LLC*, 22 FCC Rcd 13507, 13508, para. 3 (Med. Bur. 2007) (same).

¹⁹ Examples of DirecTV's and Dish Network's local and national advertising and marketing materials are attached hereto as Exhibit 3.

availability of DBS services is unquestionable. In addition, no regulatory, technical, or other impediments to households taking service exist, and competitive DBS services are readily available to residents throughout the Communities. To purchase these services, potential customers need only contact either: (1) the DBS companies directly using a toll-free telephone ordering system; (2) local dealers such as Sears, RadioShack, Best Buy, and Wal-Mart; (3) other local independent dealers; or (4) on-line retailers.²⁰

Potential subscribers throughout the Communities also may purchase the services of Midcontinent's DBS competitors with "the addition of no or only minimal additional investment by the distributor, in order for an individual subscriber to receive service."²¹ Beyond the installation services and customer premises equipment that DirecTV and Dish Network customers must purchase, no additional investment by either the distributor or the customer is necessary. Dish Network and DirecTV therefore satisfy each of the Commission's standards regarding the offering of comparable video programming.

Because two or more unaffiliated MVPDs offer comparable programming to more than fifty percent (50%) of the households in each of the Communities, the first prong of the Competing Provider test is satisfied.

B. More Than Fifteen Percent Of The Households In Each Of The Communities Subscribe To Video Services Offered By MVPDs Other Than Midcontinent.

The second and final prong of the Competing Provider test requires that more than fifteen percent (15%) of the occupied households in the relevant franchise area subscribe to services offered by competitors other than the largest MVPD.²² As the analysis and independent third-

²⁰ Examples of local and national retailers offering DirecTV and Dish Network's programming services in the Communities can be found at <http://www.directv.com/DTVAPP/global/findRetailer.jsp?assetId=500016> (last visited Oct. 9, 2012); <http://www.dish.com/support/tools-apps/locate-retailer/> (last visited Oct. 9, 2012). A non-exhaustive list of local DBS retailers in the Communities is attached hereto as Exhibit 4.

²¹ 47 C.F.R. § 76.905(e).

²² So long as the first prong of the Competing Provider test is satisfied, the subscribers of all other MVPDs in the franchise area are aggregated to determine whether the statutory fifteen
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party reports described below confirm, more than fifteen percent (15%) of occupied households in each of the Communities subscribe to MVPDs other than Midcontinent. Midcontinent is the largest MVPD in each of the Competing Provider Communities because the number of Midcontinent subscribers in each exceeds the aggregate total of customers served by its MVPD competitors.

To determine precisely the number of DBS subscribers in each of the Communities, Midcontinent first ascertained all the residential zip codes located either wholly or partially within its franchise areas.²³ Midcontinent then purchased an effective competition tracking report (“ECTR”) pursuant to an agreement with the Satellite Broadcasting and Communications Association (“SBCA”).²⁴ The ECTR reported total DBS subscribers for the relevant zip codes in all the Communities. Midcontinent obtained official 2010 Census occupied household data for each of the Communities and for each of the five-digit zip codes located either wholly or partially within the associated franchise areas.²⁵ To account for differences between the zip code boundaries reflected in the ECTR and franchise area boundaries, Midcontinent allocated the

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percent (15%) standard has been met under the second prong of the test. *See Time Warner*, 56 F.3d at 189.

²³ To ascertain the relevant zip codes, Midcontinent first examined the U.S. Postal Service (“USPS”) and related commercial websites to determine which residential zip codes USPS associates with each of the Communities. *See* <http://www.usps.com>; www.melissadata.com; www.zipmap.net; <http://maps.google.com>. Midcontinent then confirmed that all or a portion of each zip code area listed by the USPS was actually located wholly or partially within the borders of the Communities by consulting detailed maps that reflected political boundaries as well as zip code areas.

²⁴ The ECTR Midcontinent purchased from the SBCA is attached hereto as Exhibit 5. The ECTR includes five-digit zip codes encompassing in whole or in part each of the Communities.

²⁵ As the Commission has recognized consistently, current Census data satisfies the Commission’s effective competition evidentiary requirements. *See, e.g., Comcast Cable Communications, LLC*, 27 FCC Rcd 4307, at para. 6 (approving use of 2010 census data); *Time Warner Cable, Inc.*, 26 FCC Rcd 17130, at para. 6 (same); *Cablevision of Rockland/Ramapo, Inc.*, 22 FCC Rcd 11487, at para. 16 (approving use of 2000 census data); *Comcast Cable Communications, LLC*, 20 FCC Rcd 20438 at para. 11 (same); *Comcast of Dallas, LP*, 20 FCC Rcd 17968 at para. 9 (Med. Bur. 2005) (same); *Amzak*, 19 FCC Rcd at 6210, para. 6 (citing Cable Operators’ Petitions for Reconsideration and Revocation of Franchising Authorities’ Certifications to Regulate Cable Service Rates, *Order*, 9 FCC Rcd 3656 (1994)). *See* Exhibit 1.

subscribers reported in the ECTR to Midcontinent's franchise areas using the Commission's standard allocation methodology.²⁶

Pursuant to the Commission's methodology, Midcontinent calculated an allocation percentage for each of the Communities by comparing community-specific 2010 Census occupied household data with a total of the 2010 Census occupied household data for the zip code areas located either wholly or partially within the relevant community.²⁷ This comparison yielded an allocation percentage that Midcontinent applied to the total number of DBS subscribers reported in the ECTR for the zip codes covering the franchise area.²⁸ In other words, Midcontinent reduced the number of DBS subscribers reported in the ECTR by the applicable allocation percentage for each of the franchise areas.²⁹ Midcontinent then divided the allocated figure by the 2010 Census occupied household figure for each Community to determine the DBS penetration rate in the relevant franchise area. In this manner, the Commission's allocation methodology accounts for DBS subscribers that reside outside the relevant franchise area and accurately determines the respective extent of DBS penetration.

Where no community-level 2010 Census occupied household data corresponding to Midcontinent's franchise service area was available, and Midcontinent's cable system passed all

²⁶ See, e.g., *Alert Cable TV of South Carolina, Inc.*, 21 FCC Rcd 269 at para. 9 (Med. Bur. 2006); *Amzak*, 19 FCC Rcd at 6210, para. 6; *CC VIII*, 19 FCC Rcd at 6205-06, para. 4; *Texas Cable Partners, L.P.*, 19 FCC Rcd at 6215, para. 7.

²⁷ For the Meade County and Pennington County, South Dakota franchise areas, Midcontinent determined the number of occupied households by subtracting the total number of occupied households in the incorporated areas located within each county from the total number of occupied households in each county. See Exhibit 6.

²⁸ For example, 2010 Census data for Sioux Falls, South Dakota reflects 61,707 occupied households for the city and a total of 64,311 occupied households for the zip codes located wholly or partially within the franchise area. Dividing the 2010 Census occupied households for Sioux Falls by the total 2010 Census occupied households in the relevant zip codes results in an allocation percentage of 95.9509% ($61,707 \div 64,311 = 95.9509\%$). Midcontinent's calculations for each of the Communities are set forth in Exhibit 6.

²⁹ For example, the ECTR reports 12,164 DBS subscribers for the residential zip codes located wholly or partially within Sioux Falls, South Dakota. Midcontinent reduced this figure to account for the relevant allocation percentage derived above and thereby determined that DBS operators serve 11,671.47 subscribers in Midcontinent's Sioux Falls franchise area ($12,164 \times 0.959509 = 11,671.47$). See Exhibit 6.

of the housing units in the franchise area (collectively, the “Non-Census Communities”),³⁰ Midcontinent relied upon its own business records to determine the number of occupied households pursuant to the Bureau’s orders in *Americable International Arizona, Inc.* and related cases.³¹ Midcontinent then used the same Commission-approved allocation and penetration methodology described above.

Inasmuch as Midcontinent’s cable television system passes virtually one hundred percent (100%) of the homes in its franchise areas in each of the Non-Census Communities, reliance on Midcontinent’s internally maintained business records as the starting point for its calculation of occupied households is particularly appropriate. Midcontinent regularly updates these figures based on street-level surveys and data regarding the construction of new housing units.³² To account for vacant households (and thereby determine the correct number of occupied households), Midcontinent reduced its homes-passed data by applying the Census vacancy rate for the relevant area.³³ Midcontinent then applied the Commission’s approved methodology, described above, to allocate the DBS subscribers reported in the ECTR to Midcontinent’s franchise areas.

³⁰ This occurred in areas where Midcontinent serves only a portion of a community, or where it is authorized to serve a small unincorporated housing development for which no census data is available. The Non-Census Communities are Meckling and Boulder Canyon.

³¹ See *Americable International Arizona, Inc.*, 11 FCC Rcd 11588 at paras. 12 and 16 (Cab. Serv. Bur. 1996); see also, e.g., *CoxCom Inc.*, 22 FCC Rcd 4663 at para. 7 (Med. Bur. 2007); *CoxCom, Inc.*, 22 FCC Rcd 4522 at para. 13 (Med. Bur. 2007); *Cable TV Del Noroeste*, 13 FCC Rcd 12512 at paras. 8 and 11 (Cab. Serv. Bur. 1998).

³² See Declaration of Steve Grosser, attached hereto. Midcontinent uses a combination of data reported from various sources and regular system drive-outs to maintain an accurate count of the homes passed in its franchise areas. The homes-passed data Midcontinent used in this Petition were current as of September 21, 2012. See *id.*

³³ For example, Midcontinent’s cable system serving its Boulder Canyon franchise area passes all 246 households in the Community. According to the 2010 Census, the vacancy rate for Lawrence County, SD, in which Boulder Canyon is located, is 17.4%. Midcontinent therefore concluded that 82.6% of the homes it passes in Boulder Canyon were occupied ($100 - 17.4 = 82.6$), which results in a calculation of 203 current occupied households. See Exhibits 1 and 6. Midcontinent’s Occupied Household calculations for the Non-Census Communities are included in the relevant DBS penetration calculations reflected in Exhibit 6.

Applying the methodologies described above to the data Midcontinent received from SBCA revealed a competitive penetration rate in each of the Communities that exceeds the fifteen percent (15%) statutory test for effective competition. The following table reflects competitive penetration in the Communities pursuant to the Commission’s standards:

FRANCHISE AREA COMMUNITY	OCCUPIED HOUSEHOLDS	DBS CUSTOMERS (Allocated)	TOTAL COMPETITIVE MVPD PENETRATION
Sioux Falls	61,707	11,671.47	18.91%
Baltic	389	65.32	16.79%
Harrisburg	1,423	450.84	31.68%
Tea	1,254	331.85	26.46%
Canton	1,248	337.84	27.07%
Madison	2,627	759.12	28.90%
Yankton	5,909	952.48	16.12%
Gayville	163	45.09	27.66%
Meckling	35	7.21	20.59%
Vermillion	3,811	784.75	20.59%
Rapid City	28,586	4,742.36	16.59%
Unincorporated Pennington County	9,717	2,172.59	22.36%
Summerset	655	174.91	26.70%
Unincorporated Meade County ³⁴	5,331	1,033.87	19.39%
Belle Fourche	2,322	639.65	27.55%
Central City	66	21.61	32.74%
Deadwood	661	228.14	34.51%

³⁴ Midcontinent’s Meade County service area includes two separate geographic areas: one adjacent to Rapid City, South Dakota (served by Physical System No. 002426), and the other adjacent to Sturgis, South Dakota (served by Physical System No. 005303).

FRANCHISE AREA COMMUNITY	OCCUPIED HOUSEHOLDS	DBS CUSTOMERS (Allocated)	TOTAL COMPETITIVE MVPD PENETRATION
Lead	1,420	474.02	33.38%
Spearfish	4,644	844.42	18.18%
Sturgis	2,916	613.89	21.05%
White Wood	374	123.53	33.03%
Boulder Canyon	203	42.74	21.05%

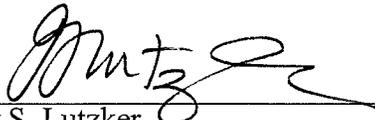
Because the number of households subscribing to video programming services offered by competing MVPDs exceeds fifteen percent (15%) of the occupied households in each of the Communities, Midcontinent is subject to effective competition pursuant to Section 623(l)(1)(B) of the Act.

CONCLUSION

For the reasons stated above, the Bureau should grant this Petition forthwith and revoke the authority of the franchising authorities in the Communities to regulate Midcontinent's basic service, equipment, and installation rates.

Respectfully submitted,

Midcontinent Communications



Gary S. Lutzker
Jason E. Rademacher

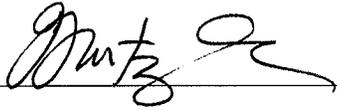
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Its Attorneys

October 17, 2012

Verification

To the best of my knowledge, information and belief formed after reasonable inquiry, this Petition for Determination of Effective Competition is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose.



Gary S. Lutzker

October 17, 2012

CERTIFICATE OF SERVICE

I, Sandra Dallas Jeter, a secretary at the law firm of Dow Lohnes PLLC, certify that on this 17th day of October 2012, I caused the foregoing Petition for Determination of Effective Competition to be served by first-class mail, except where hand delivery is indicated, on the following:

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Chief, Media Bureau
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445 12th Street, S.W.
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Washington, D.C. 20554

Ms. Claudia Tillery *
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

City of Sioux Falls
Mike Huether, Mayor
224 W. Ninth St.
Sioux Falls, SD 57104-6407

City of Harrisburg
Julie Bowen, Mayor
P. O. Box 26
Harrisburg, SD 57032-0026

City of Baltic
Michael Wendland, Mayor
P.O. Box 327
Baltic, SD 57003-0327

City of Tea
John Lawler, Mayor
P.O. Box 128
Tea, SD 57064-0128

City of Canton
Elizabeth Bowling, Mayor
210 N. Dakota St.
Canton, SD 57013-1834

City of Madison
Gene Hexom, Mayor
P.O. Box 308
Madison, SD 57042-0308

City of Yankton
Nancy Wenande, Mayor
P.O. Box 176
Yankton, SD 57078-0176

City of Gayville
Jay Jorgenson, President
P.O. Box 162
Gayville, SD 57031-0162

City of Vermillion
Jack Powell, Mayor
25 Center Street
Vermillion, SD 57069-2101

City of Rapid City
Sam Kooiker, Mayor
300 6th Street
Rapid City, SD 57701-2724

Pennington County
Lyndell Peterson, Chairman
Pennington Co. Courthouse
315 St. Joseph St.
Rapid City, SD 57701

City of Summerset
George Mandas, Mayor
P.O. Box 783
Summerset, SD 57718-0783

Meade County
Alan Aker, Commission Chair
1300 Sherman Street
Sturgis, SD 57785

City of Central City
Marc Straub, President
214 Central Main
Central City, SD 57754

City of Spearfish
Jerry Krambeck, Mayor
625 N. 5th Street
Spearfish, SD 57783-2311

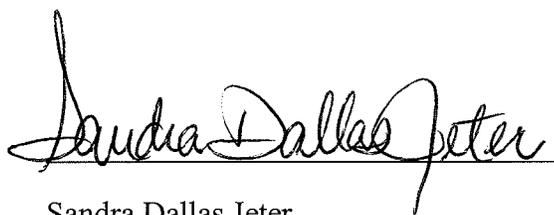
City of Whitewood
Deb Schmidt, Mayor
1025 Meade Street
Whitewood, SD 57793-3053

City of Belle Fourche
Gary Hendrickson, Mayor
511 6th Avenue
Belle Fourche, SD 57717-1407

City of Deadwood
Francis Toscana, Mayor
102 Sherman Street
Deadwood, SD 57732-1309

City of Sturgis
Mark Carstensen, Mayor
1040 Second St., Suite 103
Sturgis, SD 57785-1552

City of Lead
Tom Nelson, Mayor
801 W. Main St.
Lead, SD 57754-1533

A handwritten signature in cursive script that reads "Sandra Dallas Jeter". The signature is written in black ink and is positioned above a horizontal line.

Sandra Dallas Jeter

* *By Hand Delivery*

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of) CUID No:) PSID No:
Midcontinent Communications	Sioux Falls (SD0017)	002640
	Baltic (SD0138)	
	Harrisburg (SD0321)	
	Tea (SD0322)	
	Canton (SD0053)	
	Madison (SD0040)	
	Yankton (SD0046)	001276
	Gayville (SD0316)	
	Meckling (SD0325)	
	Vermillion (SD0047)	
	Rapid City (SD0001)	002426
	Pennington County (SD0054)	
	(SD0262)	
	(SD0282)	
(SD0283)		
(SD0309)		
Summerset (SD0323)		
Meade County (SD0110)		
(SD0165)		
Petition for Determination of Effective Competition	Belle Fourche (SD0009)	005303
	Central City (SD0038)	
	Deadwood (SD0010)	
	Lead (SD0012)	
	Spearfish (SD0013)	
	Sturgis (SD0014)	
	Sturgis (Meade Co.) (SD0035)	
	White Wood (SD0106)	
Boulder Canyon (SD0116)		

To: The Secretary's Office
Attn: The Media Bureau

DECLARATION OF STEVE GROSSER

1. My name is Steve Grosser and I am Chief Financial Officer for Midcontinent Communications ("Midcontinent"), which operates cable television systems in the above-captioned communities.
2. I have read the foregoing "Petition for Determination of Effective Competition" (the "Petition") and I am familiar with the contents thereof.

3. Midcontinent's cable system passes one hundred percent (100%) of the households in its Boulder Canyon and Meckling, South Dakota franchise areas.
4. To determine the number of total households in these communities, Midcontinent reviewed its own business records and surveys of its franchise area to determine the number of homes its cable system passes. Midcontinent employees update this information regularly based on street-level surveys and data regarding the construction of new housing units. Midcontinent compiles new housing data from a variety of sources, including: (1) permit reports obtained from local franchising authority outlining permits issued for new construction; (2) developer reports (*i.e.*, the local Dodge Report) regarding new projects; (3) utility consultant reports based on permitting and other activities on behalf of builders and developers; and (4) direct information on new construction based on observation by local system field personnel. Midcontinent also updates its database of homes passed based on direct observation and monthly system drive-outs. In the case of new construction or development, initial database information is based on specific house counts from developers and builders. Those initial counts are then verified on an ongoing basis when homes are completed and service is activated to the portions of Midcontinent's system serving those homes.
5. All the internally maintained records and information included in the foregoing Petition were current as of September 21, 2012.
6. I declare under penalty of perjury that the facts contained herein and within the foregoing Petition are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Petition is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.



Steve Grosser
Chief Financial Officer
Midcontinent Communications
3600 Minnesota Drive, Suite 700
Minneapolis, MN 55435
Tel: 952-844-2611

Dated: October 16, 2012