

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

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

**COMMENTS OF THE  
MICHIGAN PUBLIC SERVICE COMMISSION**

On July 20, 2022, the Federal Communications Commission (FCC) released a Public Notice for the above-captioned proceeding seeking comment regarding Midcontinent Communications (Midco) concerning the qualifications for obtaining local interconnection under section 251(a) of the Communications Act.<sup>1</sup> The Michigan Public Service Commission (Michigan PSC) offers the following comments. Per the schedule established in the Public Notice, the comment deadline is August 19, 2022, and reply comments are due September 9, 2022.

**Introduction**

The Michigan PSC is the regulatory agency in the state of Michigan tasked with oversight of certain intrastate telecommunication services, including basic local exchange service (BLES). In order to provide BLES, telecommunication providers must obtain a license, or certificate of authority (COA), from the Michigan

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<sup>1</sup> FCC’s July 20, 2022, Public Notice: <https://docs.fcc.gov/public/attachments/DA-22-782A1.pdf>

PSC pursuant to sections 301 and 302 of the Michigan Telecommunications Act (MTA).<sup>2</sup> Applicants seeking a license to provide BLES must follow the notice and hearing process outlined in Section 203 of the MTA and demonstrate that they possess “sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service within the geographic area of the license and that the applicant intends to provide service within 1 year from the date the license is granted.”<sup>3</sup> While the MTA has been modified several times over the years, particularly affecting the Michigan PSC’s authority on the retail end, the licensing requirements have been left largely unchanged in the MTA, as well as the process that the Michigan PSC technical staff use in reviewing BLES license applications. The BLES licensing process in Michigan has generally been uneventful and rarely, if ever, contested by providers.

While some licensed providers may not specifically provide traditional BLES, as defined in the MTA, many seek interconnection into the networks of the incumbent local exchange carriers (ILECs) in order to provide their services. In their applications for licenses, many applicants identify whether they are requesting a temporary license in order to assist in negotiating an interconnection agreement.

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<sup>2</sup> MCL 484.2301; MCL 484.2302

[http://www.legislature.mi.gov/\(S\(wfpsd4xxva0zoz1n54hd5vor\)\)/documents/mcl/pdf/mcl-Act-179-of-1991.pdf](http://www.legislature.mi.gov/(S(wfpsd4xxva0zoz1n54hd5vor))/documents/mcl/pdf/mcl-Act-179-of-1991.pdf)

<sup>3</sup> *Id.*

The license requirement in the MTA allows staff to examine the qualifications of companies that provide service to customers in Michigan and provides further assurance that the Michigan PSC is providing state oversight of the providers that wish to connect into the ILEC networks. In the event of a dispute, the Michigan PSC technical staff has the ability to intervene and assist in the resolution of any issues pursuant to the MTA. While the Michigan PSC may not have complete oversight over some of the specific services within the context of BLES and the license, it can often assist more fully when issues arise between providers due to the licensing requirement.

**The Requested Relief Undermines the BLES Licensing Authority of the State of Michigan**

If the FCC grants the requested relief in the petition, the Michigan PSC has significant concerns that its own statutory and regulatory framework could be undermined. Midco seeks a declaratory ruling that would “affirm” that a telecommunications carrier authorized to provide any telecommunications service in a state may seek interconnection with any other telecommunications carrier without the need to obtain additional authority from a state regulator, including a COA to provide BLES. Although Midco is interested in providing “wholesale interconnection services” in South Dakota, it acknowledges the possible national ramifications of its petition and is explicit on a number of occasions that granting of

the petition should have a national impact.<sup>4</sup> Midco contends that it is “impermissible” for a state regulator to require a telecommunications carrier to obtain local exchange service authority before it can provide those services.<sup>5</sup> There are also concerns that Midco’s petition, if granted, will impact any state oversight or even basic registration requirements of telecommunication providers within the states.

Several important state laws in Michigan could potentially be preempted and negatively impacted by the requested relief in the petition, including much of the MTA and even legislation with established definitions and terms related to telecommunication services. For example, service providers would no longer need to comply with MCL 484.2302, which ensures that they possess sufficient technical, financial, and managerial resources to provide adequate and reliable service in the state. In addition, section 13(3) of PA 565 of 2018 could also be negated, which outlines the requirements for providers licensed under the MTA interested in moving facilities in authorized locations and public rights-of-way.<sup>6</sup> Finally, section 359(21)(f)(i – iii) of PA 53 of 2022 defines an “internet service provider” allowed to obtain broadband infrastructure grants as any of the following: a license holder under the MTA, an entity with a video franchise agreement, or an entity currently providing broadband in the state.<sup>7</sup> Without these statutory and procedural

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<sup>4</sup> Midco Br., p 19 (“Granting this petition will permit competition across all communication services in Groton . . . and across the country.”)

<sup>5</sup> *Id.* at 4.

<sup>6</sup> MCL 247.183

<sup>7</sup> 2022 Mich. Legis. Serv. P.A. 53 (S.B. 565).

safeguards, including whether applicants obtain a COA regulated by a local authority such as the Michigan PSC, bad actors could enter the market and states may not have the ability or tools to adequately address issues with these service providers to the detriment of customers.

### **Midco Ignores Federal Carve-Outs for State Regulation of Local Service**

In its crusade to bypass state regulation of intrastate telecommunication services, Midco ignores established federal law that envisions the important role states play in ensuring safe and reliable telecommunication service in localities across the country. Midco zeroes in on language in subsection 251(a) of the Communications Act that each telecommunications carrier “has the duty” to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”<sup>8</sup> Midco argues that this affirmative language prohibits any state regulator from requiring COA authority to interconnect with another carrier.<sup>9</sup> Midco further contends that the FCC’s decision in *Time Warner*<sup>10</sup> “prevent[s] state regulators from requiring a service provider to obtain local

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<sup>8</sup> 47 U.S.C. § 251(a)(1).

<sup>9</sup> Midco Br., p 11 (stating that Section 251(a) is “unqualified and contains no restrictions or limitations.”).

<sup>10</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, 3517 (2007) (“*Time Warner*”).

exchange authority to interconnect with rural carriers.”<sup>11</sup> Midco is wrong for several reasons.

Midco ignores 47 USC §152(b)(1) of the Communications Act that expressly excludes FCC authority “over charges, classifications, practices, services, facilities, or regulations for or In connection with intrastate communication service by wire or radio of any carrier.” That arguably includes state-regulated BLES service, the service at issue in this matter, even though Midco mischaracterizes it as “wholesale interconnection service.” Consistent with 47 USC §152(b)(1) of the Communications Act, Section 301 of the MTA requires all telecommunication providers to obtain a license from the state commission before providing or reselling basic local exchange service *in the state*.<sup>12</sup> Federal preemption is even codified in section 201 of the MTA but explains that the state commission has “jurisdiction and authority to administer this act and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state.”<sup>13</sup> Rather than use a chisel to identify nuances in the interplay between federal and state jurisdiction over telecommunication services, Midco takes a sledgehammer to the role of states in regulating intrastate service, something that deeply concerns the Michigan PSC.

Similarly, the *Time Warner* decision does not support Midco’s position because the FCC explicitly stated that its holding in that case was “limited” and “in no way diminishes the ongoing obligations of these wholesales as

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<sup>11</sup> Midco Br, p 16.

<sup>12</sup> MCL 484.2301

<sup>13</sup> MCL 484.2201

telecommunications carriers, including compliance with any technical requirements imposed by this Commission *or a state commission*.”<sup>14</sup> This finding supports the long-held principle that FCC jurisdiction does not extend to intrastate service affairs.<sup>15</sup> Indeed, in the proceeding below, the South Dakota Public Utilities Commission took the position that the Communications Act and *Time Warner* are at the very least silent on state COA regulatory authority and that the FCC does not preempt state law on these local service issues.<sup>16</sup> The Michigan PSC agrees.

### Conclusion

The states play a vital role in the oversight of telecommunication service and holding providers accountable as it relates to local service through their detailed examinations of BLES applications, certifications, and recertifications. If applicants can bypass the BLES process based on federal preemption, states may be restricted from performing this important work. The Michigan PSC therefore requests that the petition be denied so as not to set a precedent for circumventing state local service oversight, thereby detrimentally impacting customers utilizing these services. This petition is not in the public interest. The Michigan PSC

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<sup>14</sup> *Time Warner*, ¶ 16 (emphasis added).

<sup>15</sup> 47 USC §152(b)(1); see also *Louisiana Public Service Commission v FCC*, 476 US 355, 370 (1986) (stating that Section 152(b) of the Communications Act “fences off from FCC reach or regulation intrastate matters—indeed, including matters ‘in connection with’ intrastate service”).

<sup>16</sup> *In the Matter of the Approval of the Petition for Arbitration of an Interconnection Agreement Between Midcontinent Communications and James Valley Cooperative Telephone Company*, Order Ruling on Bifurcated COA Issue, Docket. No. TC21-124, p 2 (S.D.P.U.C. March 18, 2022).

appreciates the opportunity to provide comments on such an important matter and respectfully encourages the FCC to continue to recognize the states' important role as it relates to intrastate COA authority.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE  
COMMISSION**

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**DATED: August 19, 2022**