

**Before the  
South Dakota Public Utilities Commission  
Pierre, South Dakota 57501**

In the Matter of )  
 )  
Application of Clarity Telecom, LLC ) TC16 - 009  
d/b/a Vast Broadband for an Amended Certificate )  
of Authority to Provide Local Exchange )  
Telecommunications Services in the )  
Brookings Rural Service Area )

**RESPONSE OF CLARITY TELECOM, LLC TO PETITIONS TO INTERVENE**

Applicant Clarity Telecom, LLC d/b/a Vast Broadband (“Clarity” or “Applicant”) hereby responds to certain questions raised in SDTA’s Petition to Intervene.

**Background**

On June 20, 2016, Clarity filed an application to amend its Certificate of Authority, seeking to expand the geographic scope of its operating authority to include the Brookings exchange (the “Application”).

Clarity is currently authorized to operate as a competitive local exchange carrier throughout the non-rural areas of the state and is the incumbent local exchange carrier in a number of rural communities in southeastern South Dakota. Since Clarity bought these ILEC properties in late 2014, it has begun to make substantial investments to improve service and expand its service offerings. The COA amendment that Clarity seeks here is in keeping with its business plan of improving service to existing customers, as it will enable Clarity to directly serve several existing multi-location business customers with operations outside its current service footprint.<sup>1</sup>

Following Clarity’s Application, three parties petitioned to intervene. These petitions were all

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<sup>1</sup> See Clarity Response to Staff Data Request 1.3 (attached hereto as Exhibit No. 1). Clarity notes that its responses to Staff’s Data Requests included copies of its audited financial statements, which were filed under seal. See *id.*, Clarity Response to Staff Data Request 1.9. Thus, Clarity withdraws its request for a waiver from the requirements of S.D. Admin R. 20:10:32:03(12). See Application at 5.

subsequently granted by the Commission.<sup>2</sup> As an initial matter, Clarity notes that none of the Intervenors has opposed Clarity's Application. The Swiftel and Mediacom Petitions were procedural in nature, and the SDTA Petition simply seeks additional information which it believes was missing from Clarity's Application.<sup>3</sup> This response provides the information sought by SDTA.<sup>4</sup>

### **Response**

1. SDTA says that Clarity's Petition does not "provide sufficient information regarding the specific local exchange services that Clarity will make available, where within the 'Brookings service territory' it will actually offer and provide such services, and which class or classes of customers it intends to serve within the Brookings area."<sup>5</sup>

**Response:** With respect to its CLEC operations in Brookings, Clarity will provide telecommunications services to support the interconnected voice over Internet protocol ("VoIP") service offerings provided to the public under the d/b/a, Vast Broadband Phone Service. Clarity will not be providing telecommunications services to end-users directly.<sup>6</sup> Such arrangements were expressly

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<sup>2</sup> *Application of Clarity Telecom, LLC DBA Vast Broadband for an Amended Certificate of Authority*, South Dakota Telecommunications Association, Petition to Intervene, Docket No. TC16-009 (filed July 8, 2016) ("**SDTA Petition**"); *Application of Clarity Telecom, LLC DBA Vast Broadband for an Amended Certificate of Authority*, Brookings Municipal Utilities, Petition to Intervene, Docket No. TC16-009 (filed July 8, 2016) ("**Swiftel Petition**"); *Application of Clarity Telecom, LLC DBA Vast Broadband for an Amended Certificate of Authority*, MCC Telephony of the Midwest, Inc., Petition for Intervention, Docket No. TC16-009 (filed July 27, 2016) ("**Mediacom Petition**").

<sup>3</sup> The Swiftel and Mediacom Petitions were procedural filings only. To the extent that either party has questions about Clarity's application that are not answered here, Clarity stands ready to respond.

<sup>4</sup> *Application of Clarity Telecom, LLC DBA Vast Broadband for an Amended Certificate of Authority*, Clarity Telecom, LLC d/b/a Vast Broadband, Application for Amended Certificate of Authority, Docket No. TC16-009 (filed June 20, 2016) ("Clarity Application").

<sup>5</sup> SDTA Petition at ¶3.

<sup>6</sup> Interconnected VoIP services are not classified as "telecommunications services" by the Commission or the FCC. That said, the Commission has the authority to grant a Certificate for services that utilize IP. See *In re Native American Telecom, LLC Application for a Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota*, Final Decision and Order, TC11-087 (South Dakota Public Service

sanctioned by the Federal Communications Commission in its *Time Warner Declaratory Ruling*, where the FCC explained that, “telecommunications carriers are entitled to interconnect and exchange traffic with incumbent local exchange carriers (LECs) when providing services to other service providers, including voice over Internet Protocol (VoIP) service providers pursuant to sections 251(a) and (b) ....”<sup>7</sup>

As the FCC has recognized, retail interconnected VoIP services require telecommunications service inputs in order to exchange traffic with other carriers on the public switched telephone network.<sup>8</sup>

Clarity d/b/a Vast Broadband intends to offer service to multi-location businesses with locations in the Brookings exchange, which are presently commercial customers of Clarity elsewhere in the state. Clarity will target its build-out to serve those customers. While Clarity while offer services to other prospective customers that it can economically reach through these build-outs, Clarity does not intend to serve the entire Brookings Municipal Utilities (“Swiftel”) exchange.

With respect to SDTA’s request that Clarity identify precisely where it plans to provide service, Clarity declines to provide such commercially sensitive information beyond that disclosure which may be required by law.

2. Next, SDTA states that Clarity has failed to provide any information regarding how it would meet the “service obligations imposed on local service providers in rural service areas pursuant to SDCL § 49-31-73 and ARSD §§ 20:10:32:15 thru 20:10:32:17.”<sup>9</sup>

**Response:** SDCL § 49-31-73 and ARSD §§ 20:10:32:15- 7 require carriers seeking to provide

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Commission June 12, 2014) (av’l at 2014 S.D. PUC LEXIS 95).

<sup>7</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, 22 FCC Rcd 3513, ¶ 1 (2007) (emphasis supplied).

<sup>8</sup> *See, e.g., Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶ 12 (2007).

<sup>9</sup> SDTA Petition ¶ 3.

local exchange service in the service area of a rural telephone company to meet service obligations, as set forth in 47 U.S.C. § 214(e)(1). Because Clarity will not be providing local exchange services to end users directly, these provisions are inapplicable.

In the alternative, Clarity requests a waiver from these requirements. A waiver is appropriate because, although Clarity does not plan to offer service throughout the Swiftel service territory, its competitive offerings will bring increased choice and the benefits of competition to the customers it is able to serve.

Further, Clarity does not intend to petition the Commission to amend its ETC designation to include the Brookings service area, and does not intend to seek universal service fund support to serve this territory. serve the entirety of the Brookings Municipal Utilities exchange as stated above.

Regarding SDTA's "concern ... given the FCC's recent 'Rate of Return USF Reform Order,'" <sup>10</sup> Clarity's presence in the Brookings service area should have no impact on Swiftel's Universal Service support given the fact that other competitive providers already operate there.

### **Conclusion**

Clarity reiterates that issuance of an amended Certificate of Authority to provide local exchange service in the Brookings, South Dakota service area, pursuant to S.D. Codified Laws §§ 49-31-3 and 49-31-69; and S.D. Admin. R. 20:10:32:03 and 20:10:32:15, is in the public interest. Clarity has requested interconnection with Swiftel, <sup>11</sup> and fully intends to begin provisioning service in the Brookings rural service area, in compliance with all applicable South Dakota statutes and regulations, within 90 days of

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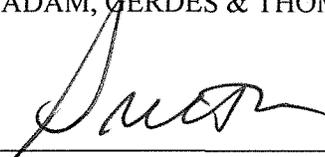
<sup>10</sup> SDTA Petition at ¶5. In its recent Rate-of-Return Reform Order, the Federal Communications Commission ("FCC") explicitly states that Universal Service support "should be used to further the goal of universal voice and broadband, and not to subsidize competition in areas where an unsubsidized competitor is providing service." See *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3132-33, ¶ 120 (2016). Accordingly, to advance the principles of 47 U.S.C. § 254(b), the FCC implements a process whereby Universal Service support is eliminated for incumbent local exchange carriers ("ILECs") in locations where a competitor is present. See *id.* at 3131-3145, paras. 116-155.

<sup>11</sup> See attached.

the issuance of an amended Certificate of Authority by the Commission.

Dated this 22 day of September, 2016.

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### CERTIFICATE OF SERVICE

22 Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 22 day of September 2016, he electronically served, a true and correct copy of the foregoing in the above captioned action to the following at his last known address, to-wit:

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A handwritten signature in black ink, appearing to read "Brett Koenecke", written over a horizontal line.

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