

# **GENERAL TERMS AND CONDITIONS**

**BETWEEN**

**BEK COMMUNICATIONS COOPERATIVE**

**AND**

**MIDCONTINENT COMMUNICATIONS**

## AGREEMENT

This Agreement (the "Agreement"), by and between BEK Communications Cooperative, a North Dakota Cooperative, ("BEK") and Midcontinent Communications, a South Dakota Partnership ("Midcontinent"), shall be effective as of the 11<sup>th</sup> day of August, 2007 (the "Effective Date").

WHEREAS, BEK is a local exchange telecommunications company authorized to provide telecommunications services in the State of North Dakota; and

WHEREAS, Midcontinent is a competitive local exchange telecommunications company ("CLEC") authorized to provide telecommunications services in the state of North Dakota; and

WHEREAS, the Parties enter into this Agreement specifically for the purposes of fulfilling their obligations pursuant to Sections 251 of the Telecommunications Act of 1996 ("the Act"); and

WHEREAS The Parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform to each Party's obligations under Sections 251 of the Act.

NOW THEREFORE, in consideration of the mutual agreements contained herein, BEK and Midcontinent agree as follows:

1. **Resale.** BEK agrees to provide to Midcontinent for resale only the services listed in Attachment 1 according to the terms, prices, and discounts indicated in this Agreement and all accompanying attachments.
2. **Term and Termination**
  - 2.1. **Initial Term.** The term of this Agreement shall be for three years beginning with the Effective Date ("Initial Term").
  - 2.2. **Renewals.** Upon the expiration of the Initial Term or any following renewal term of this Agreement, this Agreement shall automatically renew for an additional period of one year, unless either BEK or Midcontinent notifies the other pursuant to Section 21 of its intent to negotiate a new resale agreement at least 90 days prior to the expiration of the term. In the event that negotiation of a new resale agreement is not concluded before the expiration of the term, this Agreement shall continue in effect for one additional renewal term.
  - 2.3. **Termination For Non-Use.** If no services are ordered under this Agreement for a period of 90 days, either BEK or Midcontinent may terminate this Agreement by giving 30 days' notice pursuant to Section 21.
  - 2.4. **Termination For Breach.** In the event of a material breach by either BEK or Midcontinent, the other party may terminate this Agreement if the breach is not cured within 30 days after notice of the breach is given pursuant to Section 21. Material breach includes but is not limited to a party's:
    - 2.4.1. insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or
    - 2.4.2. refusal or failure in any material respect to perform any obligation under this Agreement, or the violation of any material terms or conditions of this Agreement; or

2.4.3. assignment of any right, obligation, or duty, in whole or in part, or of any interest, under this Agreement without any consent required under section 3 below.

2.5. **Liability on Termination.** Termination of this Agreement, whether in part or in whole and for any cause, shall not release either party from any liability which at the time of termination had already accrued to the other party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

### 3. **Assignments.**

This Agreement shall be binding upon the parties regardless of any subsequent change in their ownership. All benefits, obligations, and duties of each party under this Agreement shall be binding upon and inure to the benefit of any successor in interest or assign of that party. Each party covenants that, if it sells or otherwise transfers itself, any subdivision of itself, or any facilities affected by this Agreement to a third party, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this section, neither party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other party which consent shall not be withheld unreasonably; provided however that either party may assign this Agreement to a corporate affiliate or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning party.

### 4. **Representations.**

4.1. Each person signing this Agreement personally represents and warrants that he or she is authorized to bind the party on whose behalf he or she executes this agreement and has confirmed such authority with the party's legal counsel.

### 5. **Billing and Payment.**

5.1. [deleted]

5.2. In consideration of the services provided under this Agreement, BEK shall bill Midcontinent on a monthly basis all applicable charges set forth in this Agreement. In accordance with BEK's customary practices, BEK's bills shall be issued on the first day of each month and shall be due on receipt. For any bill not paid within 20 days of the bill date, BEK shall issue a notice stating that, if the bill is not paid by the 8<sup>th</sup> day of the next month, services will be disconnected. On the first day of the month following the bill date, the bill shall be considered past due and shall be so reflected on that month's bill. If any bill remains unpaid on the 8<sup>th</sup> day of the month following the bill date, all services shall be disconnected. If any bill remains unpaid sixty (60) days after its bill date, BEK may terminate this Agreement.

- 5.2.1. After disconnect procedures have begun (on the 8<sup>th</sup> day of the next month), BEK shall not accept service orders from Midcontinent until all unpaid charges are paid in full in immediately available funds.
- 5.3. **Billing Disputes Related to Unpaid Amounts:**
- 5.3.1. If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, within thirty (30) days of the bill date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment is required, the Non-Paying Party shall pay the disputed amounts with interest at the lesser of: (i) one and one-half percent (1-1/2%) per month; or (ii) the highest rate of interest that may be charged under North Dakota's applicable law. If the billed Party has paid the Disputed Amounts and the dispute is resolved such that a refund is required, the Billing Party shall refund the disputed amounts with interest at the lesser of (i) one and one-half percent (1 ½%) per month or (ii) the highest rate of interest that may be charged under North Dakota's applicable law calculated from the date that the dispute was resolved.
- 5.3.2. Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under North Dakota's applicable law.
- 5.3.3. Issues related to Disputed Amounts shall be resolved in accordance with all of the applicable procedures identified in the Dispute Resolution provisions set forth in Section 9 of this Agreement.
- 5.4. **Audits.** Either Party may conduct an audit of the other Party's books and records pertaining to the services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the accuracy of the other Party's billing, data, and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least thirty (30) days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.
6. **Laws and Regulations.**
- 6.1. **Compliance.** Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

6.2. **Force Majeure.** Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the Force Majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

7. **Confidential Information.**

7.1. Any information including but not limited to specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 7.2 of this Agreement.

7.2. If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the

Disclosing Party in attempting to obtain any protective relief that such Disclosing Party chooses to obtain.

- 7.3. In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.
- 7.4. The Parties acknowledge that, in the course of their performance under this Agreement, they will come into possession of customer proprietary network information ("CPNI"). Each Party agrees to protect the CPNI it obtains pursuant to this agreement in accordance with Section 222 of the Act, 47 U.S.C. § 222 and the FCC's rules, including, at a minimum, the protection afforded to Proprietary Information under the other provisions of this Section 7, and to use such CPNI only for the purpose of fulfilling its obligations under this Agreement or as otherwise required by law.
8. **Fraud.** Neither party shall be responsible for, nor be required to make adjustments to the other party's account due to fraud by the other party's end-users or on the other party's end-user customer accounts. The parties agree to reasonably cooperate with each other to detect, investigate, and prevent fraud and to reasonably cooperate with law enforcement investigations concerning fraudulent use of the other party's services or network. The parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one party as compared to the other.
9. **Dispute Resolution.** Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without, to the extent possible, litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
  - 9.1. **Informal Resolution of Disputes.** At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information

developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

- 9.2. **Formal Dispute Resolution.** If negotiations fail to produce an agreeable resolution within ninety (90) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.
- 9.3. **Continuous Service.** The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure (other than a dispute related to payment for service), and the Parties shall continue to perform their payment obligations including making payments in accordance with this Agreement.

## 10. **Entire Agreement.**

- 10.1. This Agreement and any applicable attachments, constitute the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied have been made or relied upon in the making of this Agreement other than those specifically set forth herein. In the event there is a conflict between any term of this Agreement, the provisions shall be construed to give the greatest possible effect to the intent of this Agreement.
- 10.2. Any amendment, or modification to this Agreement shall be effective only by written agreement signed by an authorized representative of each party.
11. **Expenses.** Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.
12. **Good Faith Performance.** In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval, or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld, or delayed.
13. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Dakota without regard to its conflict of laws principles and, when applicable, in accordance with the requirements of the Act and the FCC's implementing regulations.

14. **Headings.** The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.
15. **Independent Contractor Relationship.** Neither this Agreement, nor any actions taken by Midcontinent or BEK pursuant to this Agreement, shall be deemed to create an agency or joint venture relationship between Midcontinent and BEK, or any relationship other than that of co-carriers. Neither this Agreement, nor any actions taken by Midcontinent or BEK pursuant to this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between Midcontinent and BEK End User Customers, or others.
16. **Law Enforcement Interface.**
  - 16.1. With respect to requests for call content interception or call information interception directed at Midcontinent's End User Customer, BEK will have no direct involvement in law enforcement interface. In the event a Party receives a law enforcement surveillance request for an end-user of the other Party, the Party initially contacted shall direct the agency to the other Party. For resale customers, Midcontinent shall be the contact for Law Enforcement. Once a request has been received, Midcontinent shall request BEK to perform the actual surveillance function. If Law Enforcement directly contacts BEK concerning a Midcontinent resale customer, BEK shall direct Law Enforcement to Midcontinent simultaneously with performing any time sensitive activities. BEK may charge Midcontinent for any costs incurred for performing such functions for Midcontinent's resold customers.
  - 16.2. Notwithstanding 16.1, the Parties agree to work jointly in security matters to support law enforcement agency requirements for call content interception or call information interception.
17. **Liability.**
  - 17.1. **DISCLAIMER**

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, EACH PARTY MAKES NO REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES OR FACILITIES IT PROVIDES UNDER THIS AGREEMENT. EACH PARTY DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.
  - 17.2. **Limitation of Liability.**
    - 17.2.1. No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof

or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

17.2.2. Except as otherwise provided in Section 17, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

17.2.3. In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), regardless of whether the other Party has been advised of the possibility of such damages.

17.3. **Intellectual Property.** Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of a method, device, process, or image relating to the provision or use of any facilities by either party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

18. **Joint Work Product.** This Agreement is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

19. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

20. **No Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no party undertakes to perform any obligation of the other party, whether regulatory or contractual, or to assume any responsibility for the management of the other party's business.

21. **Notices.**

21.1. Notices given by one party to the other party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery

service; or (iii) mailed by certified mail with return receipt to the following addresses:

To: **Midcontinent**  
Mary Lohnes  
5001 W 41st Street  
Sioux Falls, SD 57106

To: **BEK**  
Derrick Bulawa  
P.O. Box 230  
Steele, ND 58482

With a copy to:  
J.G. Harrington  
Dow Lohnes, P.L.L.C  
1200 New Hampshire Avenue, NW  
Washington, DC 20036

With a copy to:  
Jerod Tuft  
106 West Broadway  
P.O. Box 139  
Steele, ND 58482

21.2. Either party may designate additional or alternate addresses using the methods in Section 21.1.

21.3. Notices will be deemed given as of the date of actual receipt.

22. **Duty to Update Contact Information.**

Each party shall provide the other with current contact and referral numbers for order inquiry, problem reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government. Within 24 hours of any change in this contact information, each party agrees to provide the other party with updated contact information.

23. **Impairment of Service.** The characteristics and methods of operation of any circuits, facilities or equipment of Midcontinent connected with the services, facilities or equipment of BEK pursuant to this Agreement shall not interfere with or impair service over any facilities of BEK, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to its plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over BEK's facilities or create hazards to the employees of BEK or to the public (each hereinafter referred to as an "Impairment of Service").

24. **Change in Law.** The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Telecommunications Act of 1996 and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment to the Telecommunications Act of 1996, any effective legislative action or any effective, final regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Telecommunications Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable that revises, modifies or reverses the Applicable Rules (individually and collectively, Amended Rules) in such a way as to invalidate any term of this Agreement, either Party may, by providing written notice to the other party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended

accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

25. **Regulatory Approval.** The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s).
26. **Taxes and Fees.**
  - 26.1. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to provide in a timely manner such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party. If either party (Contesting Party) contests the application of any tax collected by the other party (the Collecting party), the Collecting party shall reasonably cooperate in good faith with the Contesting party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting party. The Contesting party is entitled to the benefit of any refund or recovery resulting from the contests, provided that the Contesting Party is liable for and has paid the tax contested.
  - 26.2. Midcontinent shall be responsible for collecting and remitting directly to the proper agency the 911/E911 fees, FUSC, telecommunication relay service fees, applicable taxes and other payables mandated by a relevant authority. BEK shall not be responsible to pay these fees for any resold services. Midcontinent shall pay to BEK the FSLC, which BEK will remit to the regulatory agency according to BEK's usual practice.
27. **Trademarks and Trade Names.** No patent, copyright, trademark or other proprietary right is licensed, granted, or otherwise transferred by this Agreement. Each Party is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any name, copyrighted material, service mark, or trademark of the other Party.
28. **Non-Waiver.** Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

29. **Operations Manual.** Each party shall provide the other party with a copy of its Operations Manual, which shall contain the party's standard operating procedures. In the event of a conflict between this Agreement and the Operations Manual, this Agreement shall control. Each party's Operations Manual shall be complete and available no later than 90 days after submission of this Agreement to the North Dakota Public Service Commission
30. **Intercept Messaging.** Each party will make available the following intercept messaging services:
  - 30.1. **Temporary Disconnects for Non-Pay.** BEK will have control of the customer's line and will be responsible to provide the intercept message. LSR non-recurring charges are not applicable but will be applied if and when service is restored.
31. **Interpretation of This Agreement.** Words used in this Agreement and any attachments are to be understood according to the custom and usage of the telecommunications industry, including the definitions and usage in the Act and regulations promulgated pursuant to the Act, and including the following defined terms.
  - 31.1. **The Act.** The Communications Act of 1934 (47 U.S.C. §151 et. seq.), as from time to time amended (including, without limitation by the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996), and as further interpreted in the duly authorized and effective rules and regulations of the FCC or the Commission.
  - 31.2. **Commission.** The North Dakota Public Service Commission.
  - 31.3. **Customer Proprietary Network Information ("CPNI").** This term shall have the meaning ascribed to it in Section 222(h)(1) of the Act, 47 U.S.C. § 222(h)(1), and the implementing regulations of the FCC.
  - 31.4. **End User Customer.** A retail business or residential end-user subscriber to Telephone Exchange Service provided by either of the Parties.
  - 31.5. **End User Customer Location.** The physical location of the premise where an End User Customer makes use of Telephone Exchange Service.
  - 31.6. **FCC.** The Federal Communications Commission.
  - 31.7. **Local / EAS Traffic.** Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange, or other mandatory local calling area associated with the originating End User Customer's exchange as defined by BEK's Tariff. As clarification of this definition and for reciprocal transport and termination compensation, Local/EAS Traffic does not include traffic that originates from or is directed to or through an ISP.
  - 31.8. **Tariff.** For purposes of this Agreement and all attachments, "Tariff" means the services and rates in BEK's filed tariff, to the extent consistent with BEK's published retail prices, Terms and Conditions, and this Agreement. Any inconsistencies between any of these documents shall be resolved in according to the following hierarchy: (1) this Agreement, (2) BEK's published retail prices, (3) BEK's Terms and Conditions, and (4) BEK's filed tariff.

In witness whereof, the parties have executed this Agreement the day and year written below.

**BEK**

By: \_\_\_\_\_  
Name: Derrick Bulawa  
Title: General Manager  
Date: \_\_\_\_\_

**Midcontinent Communications**

By: \_\_\_\_\_  
Its Director of Revenue Assurance  
By Midcontinent Communications  
Investor, LLC,  
Managing Partner of Midcontinent  
Communications  
Date: \_\_\_\_\_

- Attachments: 1. Resale Exhibits A and B  
2. Pre-Ordering and Ordering  
3. Pricing

In witness whereof, the parties have executed this Agreement the day and year written below.

**BEK**

By:   
Name: Derrick Bulawa  
Title: General Manager  
Date: 11 August 2007

**Midcontinent Communications**

By:   
Its Director of Revenue Assurance  
By Midcontinent Communications  
Investor, LLC,  
Managing Partner of Midcontinent  
Communications  
Date: \_\_\_\_\_

- Attachments: 1. Resale Exhibits A and B  
2. Pre-Ordering and Ordering  
3. Pricing

## **RESALE**

1. Scope
  - 1.1. For the Purposes of the Agreement, Resale shall be provided under Section 251 of the Act.
  - 1.2. The telecommunications services available for purchase by Midcontinent for the purposes of resale to Midcontinent's End User Customers shall be available pursuant to BEK's Tariff less the wholesale discount and subject to the exclusions and limitations set forth in Exhibit A to this Attachment.
2. General Provisions.
  - 2.1. All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of BEK's retail telecommunications services and other services specified in this Attachment. Subject to effective and applicable FCC and Commission rules and orders, BEK shall make available to Midcontinent for resale those telecommunications services listed in Attachment 1, Exhibit A.
  - 2.2. Midcontinent may not purchase resale services from BEK for its own use in operating its business.
    - 2.2.1. Midcontinent must resell services to other End User Customers.
    - 2.2.2. Midcontinent cannot be a CLEC for the single purpose of selling to itself.
  - 2.3. Midcontinent will be the Customer of Record for all services purchased from BEK. Except as specified herein, BEK will take orders from, bill and receive payment from Midcontinent for said services.
  - 2.4. Midcontinent (not Midcontinent agents or third parties hired by Midcontinent) will be BEK's single point of contact for all services purchased pursuant to this Agreement. BEK shall have no contact with the End User Customer except to the extent provided for herein.
  - 2.5. BEK will continue to bill the End User Customer for any services that the End User Customer specifies it wishes to receive directly from BEK. BEK maintains the right to serve directly any End User Customer within the service area of Midcontinent. BEK will continue to market directly its own telecommunications products and services and in doing so may establish independent relationships with End User Customers of Midcontinent. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.
  - 2.6. When an End User Customer of Midcontinent or BEK elects to change his/her carrier to the other Party, both Parties agree to release the End User Customer's

service to the other Party concurrent with the due date of the accepted Local Service Request, which shall be established based on the standard interval for the End User Customer's requested service as set forth in BEK's Operations Manual.

- 2.7. Except where otherwise required by law, Midcontinent shall not, without BEK's prior written authorization, offer the services covered by this Attachment using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of BEK or its Affiliates, nor shall Midcontinent state or imply that there is any joint business association or similar arrangement with BEK in the provision of Telecommunications Services to Midcontinent's customers.
- 2.8. Current telephone numbers may normally be retained by the End User Customer and are assigned to the service furnished. However, neither Party nor the End User Customer has a property right to the telephone number or any other call number designation associated with services furnished by BEK, and no right to the continuance of service through any particular central office. BEK reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever BEK deems it necessary to do so in the conduct of its business and in accordance with BEK practices and procedures on a nondiscriminatory basis, provided that BEK shall give Midcontinent the same notice as provided to BEK customers.
- 2.9. If either Midcontinent or its End User Customers uses a BEK resold telecommunications service in a manner other than that for which the service was originally intended as described in BEK's Tariff, Midcontinent has the responsibility to notify BEK of such use. BEK will only provision and maintain said service consistent with the terms and conditions of the Tariff describing said service.
- 2.10. Facilities and/or equipment utilized by BEK to provide service to Midcontinent remain the property of BEK.
- 2.11. Service Ordering
  - 2.11.1. Midcontinent must order services according to the Pre-ordering and Ordering Attachment to this Agreement.
  - 2.11.2. Denial/Restoral Charge. In the event Midcontinent provides a list of customers to be denied and restored, rather than a Local Service Request, each location on the list will require a separate Purchase Order Number ("PON") and therefore will be billed as one LSR per location when the service is restored.
  - 2.11.3. Cancellation Charge. Midcontinent will incur a charge for an accepted LSR that is later canceled.

- 2.12. Midcontinent shall pay the End User Customer common line charges and any other appropriate Commission approved charges. These charges are set forth in the appropriate BEK federal and applicable state tariffs(s) and will apply to each local exchange line furnished to Midcontinent. These charges are not subject to the wholesale discount.
  - 2.13. To the extent allowable by law, Midcontinent shall be responsible for Primary Interexchange Carrier (both PIC and LPIC) change charges associated with each local exchange line furnished to Midcontinent for resale.
  - 2.14. Midcontinent is solely responsible for the payment of charges for all service furnished under this Agreement.
  - 2.15. If Midcontinent does not wish to be responsible for toll, collect, third number billed, 900 calls, last call return, caller originated trace, directory assistance inquiries, and operator assistance charges, Midcontinent must order blocking services as outlined in BEK's Tariff and pay any applicable charges.
3. BEK's Provision of Services to Midcontinent
- 3.1. Resale of BEK services shall be as follows:
    - 3.1.1. The resale of telecommunications services shall be limited to End User Customers and uses conforming to the class of service restrictions. Midcontinent shall not use resold local exchange telephone service to provide access services to Interexchange Carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunication service providers or Voice Over Internet Protocol companies.
    - 3.1.2. Service is furnished subject to the condition that it will not be used for any unlawful purpose.
    - 3.1.3. Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.
    - 3.1.4. BEK may refuse service when it has grounds to believe that service will be used in violation of the law.
    - 3.1.5. BEK reserves the right to periodically audit services purchased by Midcontinent to establish authenticity of use. Such audit shall not occur more than once in a calendar year. Midcontinent shall make any and all records and data available to BEK or BEK's auditors on a reasonable basis. BEK shall bear the cost of said audit. Any information provided by Midcontinent for purposes of such audit shall be deemed Confidential Information pursuant to the General Terms and Conditions of this Agreement.



- 5.1.3. All requests by Midcontinent for denial or disconnection of an End User Customer for nonpayment must be via an LSR.
- 5.1.4. Midcontinent will be made solely responsible for notifying the End User Customer of the proposed disconnection of the service.
- 5.1.5. BEK may report annoyance calls to Midcontinent when it is determined that annoyance calls are originated from one of Midcontinent's End User Customer's locations. BEK shall be indemnified, defended and held harmless by Midcontinent and/or the End User Customer against any claim, loss or damage arising from providing this information to Midcontinent. It is the responsibility of Midcontinent to take the corrective action necessary with its End User Customers who make annoying calls. (Failure to do so will result in BEK's disconnecting the End User Customer's service.)
- 5.2. Permanent Disconnects. Midcontinent will return the disconnected resale number immediately following the disconnect. BEK will be responsible for the message and aging of the number. Both service order and central office non-recurring charges are not applicable.
6. Maintenance of Services
  - 6.1. Services resold pursuant to this Agreement and facilities and equipment provided by BEK shall be maintained by BEK.
  - 6.2. Midcontinent or its End User Customers may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by BEK except with the written consent of BEK.
  - 6.3. Midcontinent accepts responsibility to notify BEK of situations that arise that may result in a service problem.
  - 6.4. Midcontinent agrees to follow the maintenance and repair process set out in the Ordering Attachment.
  - 6.5. For all repair requests, Midcontinent shall adhere to BEK's prescreening guidelines prior to referring the problem to BEK.
  - 6.6. Midcontinent shall be BEK's single point of contact for all repair calls on behalf of Midcontinent's End User Customers with respect to resold services.
  - 6.7. For purposes of this Section, Telecommunications Services is considered restored or a problem resolved when the quality of services is equal to that provided before the outage or problem occurred.

- 6.8. BEK reserves the right to contact Midcontinent's End User Customers, if deemed necessary, for maintenance purposes. BEK shall attempt to contact Midcontinent prior to contacting a Midcontinent customer during a scheduled maintenance event.
  - 6.9. In responding to repair calls, neither Party shall make disparaging remarks about the other party, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services. Either Party may respond with accurate information in answering customer questions.
7. Ancillary Services.
- 7.1. BEK shall provide 911/E911 for Midcontinent customers in the same manner that it is provided to BEK customers. BEK shall provide and validate Midcontinent customer information to the Public Service Answering Point (PSAP). BEK shall use its normal process to update and maintain, on the same schedule that it uses for its customers, the Midcontinent customer service information in the ALI/DMS (Automatic Location Identification/Location Information) databases used to support 911/E911 services. BEK shall not be responsible for any failure of Midcontinent to provide accurate End User Customer information for 911 or listings in any databases in which BEK is required to retain and/or maintain such information.
  - 7.2. Directory
    - 7.2.1. Subject to BEK's practices, as well as the rules and regulations applicable to the provision of White Pages directories, BEK will include in appropriate White Pages directories the primary alphabetical listings of all Midcontinent End User Customers located within the local directory scope. All Midcontinent End User Customers provisioned with service before February 15<sup>th</sup> of each year shall be included in that year's directory. The rules, regulations and BEK practices are subject to change from time to time.
    - 7.2.2. Additional Listing services, as set forth in the Pricing Attachment, may be purchased by Midcontinent for its End User Customers on a per listing basis.
    - 7.2.3. Liability relating to End User Customer Listings
      - 7.2.3.1 Midcontinent hereby releases BEK from any and all liability for damages due to errors or omissions in Midcontinent's End User Customer listing information as provided to BEK under this Attachment, and/or Midcontinent's End User Customer listing information as it appears in the White Pages directory, including,

but not limited to, special, indirect, consequential, punitive or incidental damages.

7.2.3.2 Midcontinent shall indemnify, protect, save harmless and defend BEK and BEK's officers, employees, agents, representatives and assigns from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit or judgment by a Third Party in any way related to any error or omission in End User Customer listing information as provided by Midcontinent, including any error or omission related to non-published or non-listed End User Customer listing information. Midcontinent shall so indemnify regardless of whether the demand, claim or suit by the third party is brought jointly against Midcontinent and BEK, and/or against BEK alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in Midcontinent's End User Customer listing information in the White Pages directory, BEK may, at its option, assume and undertake its own defense, or assist in the defense of Midcontinent, in which event Midcontinent shall reimburse BEK for reasonable attorney's fees and other expenses incurred by BEK in handling and defending such demand, claim and/or suit.

7.2.4. Each Midcontinent subscriber will receive one copy per primary End User Customer listing of BEK's White Pages directory in the same manner and at the same time that they are delivered to BEK's subscribers.

7.3. Operator Services (Operator Call Processing and Directory Assistance)

7.3.1. Operator services shall be provided to Midcontinent for resale in the same manner as provided to the BEK End User Customers. Charges for operator services shall be passed along to Midcontinent without discount.

7.4. Directory Assistance Service

7.4.1. BEK shall provide DA Service to Midcontinent End User Customers in the same manner as it provides such service to its own customers, without discount.

8. Usage Records

8.1. BEK shall bill Midcontinent for all the usage of operator assistance or directory services generated by Midcontinent's End User Customers.

8.2. BEK will provide Usage Data for operator services and directory assistance.

8.3. The usage information shall be provided once per month on a paper bill.

**Services available for resale and applicable discount, if any.**

This Attachment lists all services available for resale. Services listed in BEK's Tariff are not available for resale unless included in this Attachment. Pricing is subject to change upon 30 days' notice, except as may be required by a recognized regulatory authority.

<b>Type of Service</b>	<b>Res Rate</b>	<b>Bus Rate</b>	<b>Discount</b>
Local Telephone Service	\$15.95	\$22.95	Yes
Extended Area Service			
Linton	\$1.50	\$1.50	Yes
Napoleon	\$1.50	\$1.50	Yes
Wishek	\$1.50	\$1.50	Yes
Lehr	\$1.50	\$1.50	Yes
Zeeland	\$1.50	\$1.50	Yes
Wilton	\$6.00	\$6.00	Yes
Federal Subscriber Line Charge(FSLC)*	\$6.50	\$9.20	No
"Anonymous" Call Rejection	\$2.95	\$2.95	Yes
3-Way Call - Transfer	\$2.95	\$2.95	Yes
3-Way Calling	\$2.95	\$2.95	Yes
6-Way Calling	\$2.95	\$2.95	Yes
Business Toll Control	n/a	\$2.95	Yes
Call Forwarding - Automatic	\$5.95	\$5.95	Yes
Call Forwarding - Busy Line	\$2.95	\$2.95	Yes
Call Forwarding - Don't Answer	\$2.95	\$2.95	Yes
Call Forwarding - Remote	\$2.95	\$2.95	Yes
Call Forwarding - Variable	\$2.95	\$2.95	Yes
Call Waiting	\$2.95	\$2.95	Yes
Caller ID - name and number	\$6.00	\$6.00	Yes
Distinctive Ringing	\$2.95	\$2.95	Yes
Do Not Disturb	\$2.95	\$2.95	Yes
Last Call Return	\$2.95	\$2.95	Yes
Priority Ringing	\$2.95	\$2.95	Yes
Repeat Dialing	\$2.95	\$2.95	Yes
Selective Call Acceptance (6#)	\$2.95	\$2.95	Yes
Selective Call Forwarding (6#'s)	\$2.95	\$2.95	Yes
Selective Call Rejection (20#'s)	\$2.95	\$2.95	Yes
Series Completion (trunk hunting)	n/a	\$2.95	Yes
Speed Call-30	\$2.95	\$2.95	Yes
Speed Call-8	\$2.95	\$2.95	Yes
Toll Restriction (digital)	\$2.95	\$2.95	Yes
Toll Restriction w/PIN (mechanical)	\$2.95	\$2.95	Yes
Warm Line	\$2.95	\$2.95	Yes
Customer Originated Trace Per Call	\$5.00	\$5.00	Yes
Promotions > 90 days			Yes

\*NECA tariff rates - FSLC shall be paid by Midcontinent to BEK.

<b>Type of Service</b>	<b>Res Rate</b>	<b>Bus Rate</b>	<b>Discount</b>
<b>Directory Listings</b>			
Add'l Listing	\$2.95	\$2.95	No
Alternate Listing	\$2.95	\$2.95	No
Email/Website Listing	\$2.95	\$2.95	No
Extra Line - Indent	\$2.95	\$2.95	No
Foreign Listing	\$2.95	\$2.95	No
Non-Published/Unlisted	\$2.95	n/c	No
Non-Pub-Res-N/C (add'l lines only)	n/c	n/a	No

**Area of Resale**

<b>Exchange Name</b>	<b>NPA-NXX</b>
Lehr	701-378
Linton	701-254
Napoleon	701-754
Wilton	701-734
Wishek	701-452
Zeeland	701-423

## **PRE-ORDERING, ORDERING, PROVISIONING, MAINTENANCE AND REPAIR**

### 1. Pre-Ordering

- 1.1. The Parties will provide access to pre-order functions to support the requesting Party's transfer of customers. The Parties acknowledge that ordering requirements necessitate the use of current pre-order information to accurately build LSRs. The following lists represent pre-order functions that are available.
- 1.2. Release of retail Customer Proprietary Network Information (CPNI) and account information for pre-ordering will include: billing name, service address, billing address, service and feature subscription, directory listing information, long distance carrier identity, and PIC freeze indication. Parties agree that the Parties' representatives will not access the information specified in this subsection until after the End User Customer requests that his or her Local Service Provider be changed to that Party, and a Letter of Authorization (LOA) for release of CPNI complies with conditions as described in Section 3.3 of this Attachment.
- 1.3. The Parties will provide the information on the following pre-ordering functions: service address validation, telephone number selection, service and feature availability, due date information, and customer record information. BEK and Midcontinent will include the development and introduction of the new change management process. The Parties shall provide such information in accordance with the procedures set out in the BEK Operations Manual via paper copies of End User Customer record information.

### 2. ORDERING

- 2.1. Midcontinent agrees to comply with the provisions of the BEK Operations Manual, which are incorporated by reference in this Agreement, and as amended from time to time, provided however, that BEK furnishes Midcontinent with a copy of the Handbook and relevant amendments in a timely manner.
- 2.2. Ordering.
  - 2.2.1. Midcontinent shall place orders for services by submitting a Local Service Request to BEK by fax to a number provided by BEK for that purpose. BEK shall bill Midcontinent a LSR charge as specified in the Pricing Attachment for each LSR submitted. An individual LSR will be identified for billing purposes by its Purchase Order Number.
  - 2.2.2. BEK will bill the LSR charge, as applicable, for an LSR, regardless of whether that LSR is later supplemented, clarified or cancelled.

### 2.3. Provisioning.

- 2.3.1. BEK shall provision services during its regular working hours. To the extent Midcontinent requests provisioning of service to be performed outside BEK's regular working hours, or the work so requested requires BEK's technicians or project managers to work outside of regular working hours, overtime charges shall apply.
- 2.3.2. Cancellation Charges. If Midcontinent cancels an LSR any costs incurred by BEK in conjunction with the provisioning of that request will be recovered in accordance with the Pricing Attachment.
- 2.3.3. Expedited Service Date Charges. For Expedited Service Date Advancement requests by Midcontinent, expedited charges will apply for intervals less than the standard interval as outlined in the BEK Operations Manual. The charges as outlined in the Pricing Attachment, will apply as applicable.
- 2.3.4. Order Change Charges. If Midcontinent modifies an order after being sent a Firm Order Confirmation (FOC) from BEK, the Order Change Charge will be paid by Midcontinent in accordance with the Pricing Attachment.
- 2.3.5. Installation Charges. Premises visits will be charged at technical labor rates as indicated in the Pricing Attachment.

### 2.4. Maintenance and Repair

- 2.4.1. Requests for problem repair are billed in accordance with the provisions of this Agreement. BEK and Midcontinent agree to adhere to the procedures for maintenance and repair referenced in BEK's Operations Manual, as amended from time to time during this Agreement and as incorporated herein by reference.
- 2.4.2. If Midcontinent reports a problem and no problem actually exists on the BEK portion, BEK will charge Midcontinent for any dispatching and testing (both inside and outside the Central Office (CO) required by BEK in order to confirm the working status.

2.5. Rates. Unless otherwise specified herein, charges applicable to pre-ordering, ordering, provisioning and maintenance and repair, shall be as set forth in the Pricing Attachment.

## 3. Miscellaneous

### 3.1. Customer Transfer.

- 3.1.1. LSRs will be in a standard format designated by BEK.

- 3.1.2. When notification is received from Midcontinent that a current End User Customer of BEK will subscribe to Midcontinent's service, standard LSR intervals for the appropriate class of service will apply.
- 3.1.3. Midcontinent will be the single point of contact with BEK for all subsequent ordering activity resulting in additions or changes to services except that BEK will accept a request directly from the End User for conversion of the End User Customer's service from Midcontinent to BEK.
- 3.1.4. If BEK determines that an unauthorized change in local service to Midcontinent has occurred, BEK will reestablish service with the appropriate local service provider and will assess Midcontinent as the carrier initiating the unauthorized change, any charges allowed under the FCC and State rules. Appropriate nonrecurring charges, as set forth in the Tariff will also be assessed to Midcontinent. These charges can be adjusted if Midcontinent provides satisfactory proof of authorization.

### 3.2. Misdirected Calls.

- 3.2.1. The Parties will employ the following procedures for handling any misdirected calls (e.g., Business office, repair bureau, etc.):
- 3.2.2. To the extent the correct provider can be determined, each Party will refer misdirected calls to the proper provider of local exchange service. When referring such calls, both Parties agree to do so in a courteous manner at no charge.
- 3.2.3. For misdirected repair calls, the Parties will provide their respective repair bureau contact number to each other on a reciprocal basis and provide the End User Customer the correct contact number.
- 3.2.4. In responding to misdirected calls, neither Party shall make disparaging remarks about each other, nor shall they use these calls as a basis for internal referrals or to solicit End User Customers or to market services.

### 3.3. Letter of Authorization.

- 3.3.1. Midcontinent shall obtain authorization in accordance with FCC rules prior to requesting any Customer Service Record (CSR) containing CPNI on BEK's End User Customer accounts.
- 3.3.2. Midcontinent shall obtain authorization in accordance with FCC rules prior to submitting any order for services provided in cases in which the End User Customer currently receives Exchange Service from BEK or from a local service provider other than Midcontinent. Upon receipt of a request, BEK shall lift any carrier change freeze imposed on a BEK End User Customer's account upon receipt of notice orally or in writing from the End User Customer. When the End User Customer receives exchange service from Midcontinent, BEK shall lift any

carrier change freeze imposed on a Midcontinent account upon receipt in written, facsimile or electronic form, of a statement by Midcontinent that the End User Customer has authorized lifting the freeze in writing or electronically in accordance with Section 64.1190(a) of the FCC's rules.

- 3.3.3. Midcontinent shall provide evidence of customer authorization to BEK in connection with any audit pursuant to Section 5.4 of this Agreement or to the extent that a customer submits a complaint concerning BEK's processing of an order to BEK, the Commission, or the FCC.
- 3.4. Pending Orders. Orders placed in the hold or pending status by Midcontinent will be held for a maximum of thirty (30) calendar days from the date the order is placed on hold. After such time, Midcontinent shall be required to submit a new service request. Incorrect or invalid requests returned to Midcontinent for correction or clarification will be held for thirty (30) calendar days. If Midcontinent does not return a corrected request within thirty (30) calendar days, BEK will cancel the request.
- 3.5. The Parties shall return a Firm Order Confirmation (FOC) and Local Service Request (LSR) rejection/clarification in accordance with the intervals specified in BEK's Operations Manual.
- 3.6. Contact Numbers. The Parties agree to provide one another with contact numbers for the purpose of ordering, provisioning and maintenance of services. Contact numbers for maintenance/repair of services shall be answered in accordance to the BEK Operations Manual. BEK will make a reasonable effort to notify Midcontinent when a repair order has been closed.

## Pricing

The rates contained in this Pricing Attachment are the rates as referenced in the various sections of the Resale Agreement and are subject to change upon 30 days' notice, except as may be required by a recognized regulatory authority. BEK shall provide updated versions of the Tariff upon the effective date of such change.

### Resale:

- |                                      |     |
|--------------------------------------|-----|
| 1. Discount from Tariff Retail Rates | 17% |
|--------------------------------------|-----|

### Non-recurring charges:

- |  |          |
|--|----------|
| 1. Local Service Request (LSR) processing  | \$20     |
| 2. LSR cancellation                        | \$10     |
| 3. Expedited Due Date                      | \$75     |
| 4. LSR change charge                       | \$10     |
| 5. PIC change charge (in addition to LSR)* | \$5.50 * |

### Selective router / Line class code:

- |               |       |
|---------------|-------|
| Non-recurring | \$500 |
| Recurring     | \$50  |

### Technical Labor:

- |  |             |
|--|-------------|
| 1. Installation & repair technician          |             |
| Basic Time (normal scheduled hours)          | \$60/hour   |
| Overtime (outside normal scheduled hrs/days) | \$90/hour   |
| Trip charge                                  | \$20        |
| Call out                                     | Min 2 hours |
| 2. Central office technician                 |             |
| Basic Time                                   | \$60/hour   |
| Overtime                                     | \$90/hour   |
| Trip charge                                  | \$20        |
| Call out                                     | Min 2 hours |
| 3. Customer service representative           |             |
| Basic Time                                   | \$60/hour   |
| Overtime                                     | \$90/hour   |
| Call out                                     | Min 2 hours |

\*NECA tariff rates - - FUSC is to be paid by Midcontinent directly, and not to BEK.



5001 West 41st Street  
Sioux Falls, South Dakota 57106

Derrick F. Bulawa, CEO  
BEK Communications Cooperative  
PO Box 230  
Steele, ND 58482-0230

In Reference to: CIC 0338 and 0996 ACNA – MIT FG:D

Dear Mr. Bulawa:

I would like to confirm that Midcontinent is a direct contributor to the federal universal service support mechanisms and that our company is purchasing services from your company for resale as telecommunications services. In our agreement relating to these services BEK will be charging Midcontinent discounted retail rates and the Subscriber Line Charge (SLC), with Midcontinent being solely responsible for remittance of the Federal Universal Service Charge (FUSC) directly.

I certify under penalty of perjury that my company is purchasing service for resale in the form of telecommunications or interconnected Voice over Internet Protocol Service. I also certify under penalty of perjury that Midcontinent contributes directly to the federal universal support mechanisms, for resold telecommunications purchased from BEK Communications Cooperative.

[Please complete with your information]

Filer 499 ID: 802284  
 Legal Name: Midcontinent Communications  
 Address: 5001 W. 41st St  
Sioux Falls, SD 57106  
 Contact Person: NANCY VOGEL  
 Phone Number: (605) 357-5485  
 Signature: Nancy Vogel  
 Sincerely,

Over Fifty Years of Service



**OFFICE OF STATE TAX COMMISSIONER**  
**CERTIFICATE OF RESALE**  
SFN 21960 (11-2002)

I hereby certify that I hold North Dakota Sales and Use Tax permit number 161542-00. I am engaged in the business  
(State)  
of selling, leasing or renting telecommunications.

I further certify that the tangible personal property purchased from Bek Communications  
is purchased by me for resale.

**I further certify that I will report and remit any sales or use tax and any penalties which attach as a result of purchases from the above seller which are used or consumed by me.**

Midcontinent Communications  
Business Name  
Kush Putman  
Authorized Signature

5001 W. 41st St.  
Business Address  
6-8-7  
Date