STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

REQUEST FOR AN ORDER SETTING DATES FOR DISCLOSURE OF INFORMATION AND HEARING

Midcontinent Communications ("Midcontinent") respectfully requests that the Commission set dates for disclosure of information relevant to this proceeding by North Dakota Telephone Company and for a hearing on the merits of this matter. The hearing in this matter was originally scheduled for October 13, 2005. The parties, by stipulation, agreed to a rescheduling of that hearing date and waived the 120 day time limitation for a determination on the merits as imposed by 47 U.S.C. § 251(f)(1)(B). A new hearing date is necessary and Midcontinent suggests a date during the week of December 29, 2005, if that time period fits with the Commission's schedule.

This matter concerns the rural exemption granted to NDTC by 47 U.S.C. § 251(f)(1)(A). Midcontinent made a bona fide request for a resale agreement from NDTC and NDTC claimed the rural exemption under 47 U.S.C. § 251(f)(1)(B). This proceeding is to determine whether the exemption should be terminated because the "[T]he request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title [47 U.S.C.] . . . " 47 U.S.C. § 251(f)(1)(B).

In this proceeding, Midcontinent has the burden of proving that its request is not economically burdensome, technically feasible and is consistent with the Universal Service Requirements. The information necessary to prove these elements is mostly within the

control of NDTC. In ACS of ALASKA, INC. et al vs. REGULATORY COMMISSION OF ALASKA, et al, 81 P.3d 292 (Alaska Sup. Ct.), in a proceeding to consider the rural exemption, the Supreme Court of Alaska recognized this fact and by way of remedy suggested,

> The RCA [Regulatory Commission of Alaska] may order discovery and require ACS's active participation in assisting GCI to analyze and organize the information, including ordering ACS to produce summaries of information and provide analyses to accompany documents if produced. (Footnote Omitted).

ACS of Alaska, supra, at page 299.

In seeking to gather information to prove the above mentioned elements, Midcontinent took the deposition of Mr. Dave Dircks, the manager of North Dakota Telephone Company ("NDTC"), on October 11, 2005. During the deposition, Midcontinent requested information on NDTC's operation's in Devils Lake, North Dakota. NDTC has operations other than those in Devils Lake, North Dakota and although Mr. Dircks had system wide financial information, he did not have that information broken down and isolated for Devils Lake operations. Midcontinent needs the information isolated for Devils Lake. Mr. Dircks indicated that such information could be provided.

Q. [Mr. Durick] Okay. Now we're showing here gross revenue figures. And that's for your entire system. Is that correct?

A. [Mr. Dircks] Yes.

Q. Do you have that broken down so you can tell me what Devils Lake does with respect to these various categories

A. No, I don't.

Q. Do you have that broken down somewhere in your company?

A. We don't nor -- we don't normally break it down, but I'm assuming that we could. Depo. Dircks, p. 29, Ln. 15 through p. 30, Ln 2. (Attached hereto as Exhibit A)

Midcontinent requests that the Commission order NDTC to provide information specific to Devils Lake for:

1. Operating Revenues

   Local Network Access

   Network access services

   Long distance network services

   Billing and collection revenue

   Miscellaneous revenue

2. System

   Number of telephone lines in Devils Lake

   Number of telephone lines in system

   Number of DSL lines in Devils Lake

   Number of DSL lines in system

During Mr. Dircks' deposition, it was also discovered that NDTC has a study by James Howard Jr., a consultant, on the impact of competition by a facilities based competitor. Such information would be very relevant to the proceeding and Midcontinent requests that the Commission order that NDTC provide Midcontinent with a copy of the study.

The parties earlier stipulated to a schedule for disclosure of testimony to be presented at the hearing on this matter. As pointed out above, Midcontinent does not have the information from NDTC necessary to determine the testimony it will present at a

hearing on this matter. Midcontinent suggests that another pre-hearing conference be scheduled to set reasonable dates for disclosure of information by NDTC and disclosure of proposed testimony and rebuttal by the parties.

Wherefore, Midcontinent requests that the Commission:

1. Set a date for hearing this matter,

2. Order NDTC to provide information as set out above, and

3. Set a date for a pre-hearing conference to establish dates for NDTC to produce the requested information and for disclosure of direct and rebuttal testimony.

Dated this 24th day of October, 2005.

RESPECTFULLY SUBMITTED,

PEARCE & DURICK

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,) Case No. PU-05-451
Complainant,
vs.
North Dakota Telephone Company,
Respondent.

DEPOSITION OF DAVE DIRCKS

October 11, 2005

Appearances:

For the Complainant:

PEARCE & DURICK
P. O. Box 400
Bismarck, North Dakota 58502-0400
By: PATRICK W. DURICK, ESQ.

For the Respondent:

PRINGLE & HERIGSTAD, P. C.
P. O. Box 1000
Minot, North Dakota 58702-1000
By: DONALD A. NEGAARD, ESQ.

Taken By: Joy Filipski, Court Reporter

. . . The following is the Deposition of DAVE DIRCKS, taken at the request of the Complainant in the above-entitled cause, pending in the State of North Dakota, before the Public Service Commission, pursuant to Notice and the Federal Rules of Civil Procedure, before Joy Filipski, Court Reporter, a Notary Public within and for the State of North Dakota, at the RAMSEY COUNTY COURTHOUSE, Third-Floor Juryroom, Devils Lake, North Dakota, on Tuesday, October 11, 2005, at 9:00 o'clock a.m., at which time counsel appeared as hereinbefore set forth . . .

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DAVE DIRCKS,
of Devils Lake, North Dakota, called as a witness by the Complainant, being first duly sworn by Joy Filipski, Court Reporter, a Notar Public within and for the State of North Dakota, was examined and deposed on his oath a follows:

MR. DURICK: Let the record reflect that this is the time and the place set for the deposition of the North Dakota Telephone Company.

There's been a Rule 30(b)(6) Notice sent out, identifying some particular areas that I want to inquire about this morning.

And I understand that the witness is Mr. Dircks?

THE DEPONENT: Uh-huh.

MR. DURICK: Okay.

THE DEPONENT: Yes.

MR. DURICK: This is the only witness we're going to have, Don?

MR. NEGAARD: Yes, sir.

access to the -- to your network?
A. To our network, yeah.
Q. Okay. Where would Internet services come in in this operating statement?
A. I'm going to have to look at that.
Well, I believe they would have to come out of the local network access, then, because --
MR. NEGAARD: That's interest, I'm sorry.
Q. (By Mr. Durick) You believe that it would come out of the first part, local network access?
A. I believe so, yes.
Q. Okay. Now we're showing here gross revenue figures. I'm still looking. And that's for your entire system. Is that correct?
A. Yes.
Q. Do you have that broken down so you can tell me what Devils Lake does with respect to these various categories?
A. No, I don't.
Q. Do you have that broken down somewhere in your company?

A. We don't nor -- we don't normally break it down, but I'm assuming that we could.
Q. Do you -- can you give me any sense of what percentage Devils Lake would be out of the total revenues?
A. Well, we have approximately 18,500 lines in our company.
And somewhere around, I believe 53 to 5500 of those are Devils Lake, so whatever percentage that is, is the --
Q. That would be a rough estimate?
A. Rough. I'm sure there's other factors involved in there, but could be a rough estimate, yes.
Q. So that's a little over a third, is it?
A. (No verbal response.)
Q. Do you have any idea what percentage of your revenues per line would be Internet versus basic telephone services?
A. No, I don't. We, we have approximately, I think it's 2500 DSL lines, or high-speed Internet, is what that is.
But we offer that in all of our towns, so I -- I could find out how many we have in Devils Lake, but right now I don't know.
Q. And DSL lines, what, what is the revenue per DSL line? Is it about 40 bucks, it? Or is it --
A. I think, I think our -- 34.95, I believe is what --
Q. Okay.
A. -- we charge.
Q. And what is a phone?
A. (No verbal response.)
Q. Your basic service. I saw it somewhere, is it $14, or something?
A. 14.12 or -- I believe.
But they vary by, by towns.
Q. Uh-huh.
But I guess the point I'm making -- or -- is that -- not the point, but the, th fact is that the DSL lines generate more revenue than a phone line does?
A. (No verbal response.)
Q. Just the local service.
A. I'm not positive about that.
Q. But the only thing I'm talking about now, it's $14 for a phone and -- for
A. Yeah.
Q. -- basic local service --
A. Yeah.
Q. -- and 35 for, for a DSL line.
The, the line -- the local service obviously there's going to be access fees a other things --
A. Uh-huh.
Q. -- that can be attributed to that line, I take it.
Do you, do you have any idea, is, is there a -- well, let me --
Do you have any figure of an average revenue generated per line?
A. We may have somewhere that we've done internally, but I, I am not sure what, what it would be.
Q. Okay. Have you made any determination of what the effect would be offering resold services to Midcontinent Communications?
A. No.
Q. You have not?
A. No.
Q. Okay. Well, just kind of back in

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document, REQUEST FOR AN ORDER SETTING DATES FOR DISCLOSURE OF INFORMATION AND HEARING, was on the *24* day of October, 2005, was mailed to

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