



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA

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October 27, 2005



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Re: Midcontinent Communications v.
North Dakota Telephone Company
North Dakota Public Service Commission
Case No. PU-05-451
OAH File No. 20050316

Dear Counsel:

I have Midcontinent's request for an order setting dates for disclosure of information and hearing dated October 24, 2005. I offer the following advice with the thought that I can expedite the processing of Midcontinent's request with an informal response. Setting the hearing is, of course, a matter for the commissioners, and I expect that the Commission will process that request. An order for the disclosure of information is, I think, a matter for me as the hearing officer designated for the hearing, and Midcontinent's further specific request for a prehearing conference is also a matter for me unless the Commission would specially act to conduct a conference pursuant to N.D.C.C. § 69-02-03-01.

Perhaps I am missing something, but notwithstanding the Alaska Supreme Court's decision in *ACS of Alaska* referenced by Midcontinent, I note that neither 69-02-03-01 nor 69-02-04-07 appears to provide authority for me to order the disclosure of information under the Commission's rules, and otherwise such authority does not come to mind upon any provision of N.D. Admin. Code ar. 98-02 or N.D.C.C. ch. 28-32. I am unwilling to issue the order for disclosure of information requested by Midcontinent without a memorandum of law and argument addressing the question whether I may make such an order on behalf of the Commission for this hearing. (If counsel will offer any brief or memorandum, I ask, please, for a copy of the entire report of the decision for any case relied upon other than a decision of the North Dakota Supreme Court and a copy of the Westlaw KeyCite Citing References for the case.)

In the context of Midcontinent's request, I take its request for a prehearing conference as a request for a conference pursuant to N.D. Admin. Code § 69-02-03-01. Generally, I assume good cause for a prehearing conference and will schedule a prehearing conference upon the request of

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any party. Certainly, a prehearing conference would be helpful in this instance to address Mid-continent's requests (other than setting a date for the hearing) and, in the words of 69-02-03-01, "expedite the orderly conduct and disposition of the hearing."

I will have our administrative assistant call each of you to schedule a prehearing conference as soon as counsel can be heard. I am assuming that the conference can be conducted by telephone conference, but upon any party's request I will conduct the conference in person at the offices of the Commission.

Sincerely,



Al. Wahl
Administrative Law Judge

AW/eap