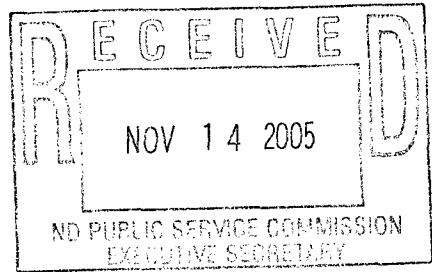


STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

**MEMORANDUM IN SUPPORT OF REQUEST
FOR DISCLOSURE OF INFORMATION**

PRELIMINARY STATEMENT

This is an action pursuant to 47 U.S.C. §251(f)(1)(A) to determine whether Midcontinent's request for wholesale resold services from North Dakota Telephone Company ("NDTC") for Devils Lake, N.D. under 47 U.S.C. §251(c) is unduly economically burdensome, is technically feasible, and is consistent with section 254 of Title 47 U.S.C. (other than subsections (b)(7) and (c)(1)(D) of Section 254 of that Title). Midcontinent made a bona fide request to NDTC for wholesale resold services for Devils Lake, ND and NDTC refused Midcontinent's request and claimed the rural exemption status provided in 47 U.S.C. §251(f)(1)(A). The Commission entered its Order setting a hearing on October 13th, 2005 to determine whether the rural exemption was justified. 47 U.S.C. §251(f)(1)(B) sets a time limit of 120 days from the date the Commission receives notice of a request for the Commission to make a determination concerning the rural exemption. By stipulation of the parties, the hearing date was continued.

FACTS

On October 5, 2005 Midcontinent served a Rule 30(b)(6) Notice to take the deposition of NDTC, requesting that NDTC produce,

1. Individual(s) knowledgeable on the financial condition of NDTC, including the

balance sheet and results of operations of NDTC for the last five years and financial projections for the next three years.

and

4. Copies of any studies done by NDTC or by consultants retained by NDTC on the potential impact of competition in the market for telephone services in the Devils Lake market.

NDTC objected to producing items 4. above on the basis that the requested material was confidential trade secret information, that the requested information was irrelevant to any issues in the instant proceeding and further, was not calculated to lead to the discovery of relevant information and finally, that the requested information was developed in anticipation of litigation and was therefore privileged.

Pursuant to the notice, the deposition of NDTC was taken on October 11, 2005 in Devils Lake, ND. Mr. Dave Dircks was produced as the witness to respond to the notice on behalf of NDTC. In response to the request for financial information for NDTC, Mr. Dircks produced audited statements for TPC, Inc., a holding company that owned all of the stock in NDTC. NDTC has operations in cities other than Devils Lake and the audited statements for TPC contained results of the operations of all of the cities. Results for Devils Lake were not broken out in the financial statements produced, although Mr. Dircks stated that he assumed that such information could be provided. (Depo. Dave Dircks 30:1 and 2 and 38:4 through 16).

With respect to reports of consultants, Mr. Negaard stated that NDTC had a consultant's study based on competition from a facilities based competitor. Mr. Negaard advised that NDTC would not produce such study.

DATE OF HEARING

It is clear from the 120 day time limit on proceedings for the determination of the rural exemption placed on state commissions by 47 U.S.C. §251(f)(1)(B), that Congress intended prompt action on such proceedings. While the parties have stipulated to an extension of the 120 day time limitation, the intent was not to make the instant proceeding a drawn out process. Especially since the issues are simple and no extended period of time is necessary to address those issues. The only issue remaining in this proceeding is whether competition from a resale agreement with Midcontinent would be economically burdensome to NDTC. At his deposition, Mr. Dircks admitted that it was technically feasible to enter into a resale agreement and that Universal Service requirements did not present a problem.

Q. [Mr. Durick] And while I'm on that, in a resale agreement, there certainly are no reasons why you could not offer resold services to Midcontinent. Is that true?

A. [Mr. Dircks] To the best of my knowledge, that is true.

(Depo. Dircks 35:8-13.)

Q. [Mr. Durick] Can, can you see any impact on Universal Service Requirements as they're applicable to Devils Lake by a resale agreement

A. [Mr. Dircks] The way the rules are today, I would have to say no, --

Q. Okay.

A. -- but I'm not sure of what's going to happen in the future with, with the FCC regulations, which concerns

Q. But at least for now, Devils Lake -- the Devils Lake market has access to all those items that are listed as Universal Service Requirements under the Act, do

they not?

A. Yes.

(Depo. Dircks 36:2-17.)

NDTC is presently competing with Midcontinent in Devils Lake in the area of high speed access to the internet. Midcontinent offers high speed access through cable and NDTC offers high speed access through DSL lines. (Depo. Dircks 30:21-23.) NDTC is constructing a fiber to the home network in Devils Lake at a cost of \$11.5 million and intends to offer video services in competition with Midcontinent. (Depo. Dircks 24:18-21 and 17:19-22.)

In the context of the competitive market in Devils Lake, It is interesting to note that in the First Report and Order of the Federal Communications Commission on Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, adopted on August 1, 1996, the Commission observed at paragraph 1262 that,

We believe that Congress intended exemption, suspension, or modification of section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemptions, suspension, or modification.

Almost ten years have passed since this observation by the FCC and it is obvious that NDTC's business plan is to compete with Midcontinent in video and high speed internet access, but to use the rural exemption to shield itself from competition by Midcontinent in telephone service.

When questioned about the financial condition of NDTC, Mr. Dircks admitted that the company was in a strong financial position.

Q. [Mr. Durick] Okay. I, I think we talked little bit at the break, and I told you, as I look over these financial statements, it looks to me like it's a pretty healthy company. Do you have some reason to, to think otherwise?

A. [Mr. Dircks) No.

(Depo. Dircks 49:17-22.)

Midcontinent would suggest that while the rural exemption was meant to be used as a shield to protect rural carriers from unwarranted competition, the exemption in this case is being used to protect NDTC from competition in the area of telephone services while NDTC works to gain a competitive advantage in other areas of telecommunications services.

Midcontinent has suggested the week of December 29th, 2005 for a hearing and as will be discussed later, a schedule can be worked out that provides ample time for the parties to address the remaining issue of whether competition in the telephone services area would place an undue economic burden on NDTC.

DISCOVERY ISSUES

As pointed out above, the only issue remaining in this proceeding is whether the economic impact of an agreement for resale of telephone services in the Devils Lake market between NDTC and Midcontinent would place an undue economic burden on NDTC. NDTC has access to the financial and operational information that is necessary for the Commission to make this determination. NDTC has furnished financial information to Midcontinent for its entire system and as discussed above, it has the ability to segregate this information for the Devils Lake market. Since a consultant has done a study on the potential effects of facilities based competition in the Devils Lake market, one would

assume that the information has already been compiled. Also, NDTC has not claimed that it would be difficult or time consuming to provide this information. Since this proceeding is addressed to the Devils Lake market and since NDTC is the only source for this information, it stands to reason that the information should be made available to Midcontinent and to the Commission.

The North Dakota Rules of Civil Procedure are applicable to the instant proceeding. §28-32-33(1.), N.D.C.C. Rule 1, North Dakota Rules of Civil Procedure provides in relevant part as follows:

They [the Rules] shall be construed and administered to secure the just, speedy and inexpensive determination of every action.

Rule 1, North Dakota Rules of Civil Procedure. Under Rule 26, North Dakota Rules of Civil Procedure, all relevant information is discoverable. There can be no doubt that financial and operational information is relevant to the question of whether competition would place an undue financial burden on NDTC. NDTC has not claimed otherwise. Instead, NDTC makes the unsupported and unsupportable argument that disclosure of such information is premature. See page 2 of RESPONSE TO REQUEST FOR AN ORDER SETTING DATES FOR DISCLOSURE OF INFORMATION AND HEARING. Midcontinent has requested segregated financial information. Midcontinent's notice to take the corporate deposition of NDTC was addressed to the instant action, which is addressed to the Devils Lake market. It is disingenuous to suggest that NDTC was surprised that Midcontinent was requesting financial and operational information for the Devils Lake market when this proceeding is addressed to NDTC's claimed rural exemption for that market.

Under Rule 34, North Dakota Rules of Civil Procedure, the Commission has the power to shorten the time for production of relevant information and under Rule 37, North Dakota Rules of Civil Procedure, the Court has the power to order production of relevant information.

Midcontinent requests that the Hearing Officer make inquiry as to whether the segregated financial and operation information requested by Midcontinent for the Devils Lake market is presently available and if it is available, that the information be produced as soon as possible. In the event the information is not presently available, that a reasonable time should be allowed for NDTC to compile and provide the information to Midcontinent. As stated above, NDTC is the only source for the information and the information is the essence of this action. In the interest of the just, speedy and inexpensive determination of this action, NDTC should be required to produce the requested financial and operational information within a reasonable time frame.

With respect to the consultant's study on the effects of facilities based competition, NDTC has claimed that the information is proprietary and confidential. Midcontinent has suggested that a protective order be entered providing that the information in the study be used for purposes of this proceeding and no other use. (See Depo. of Dircks, page 11.) Rule 26(c), North Dakota Rules of Civil Procedure concerning protective orders and Chapter 62-02-09, North Dakota Administrative Code concerning trade secrets, provide the means to protect confidential information.

The consultant's report is certainly relevant to the instant action. The study is addressed to competition and the financial implications of competition is the issue in this action. It makes no difference whether the competition results from a resale agreement

or from a facilities based competition. The issue is whether competition places an undue financial burden on NDTC. Midcontinent requests that NDTC be ordered to produce the subject consultant's study under an appropriate protective order.

NDTC's arguments that the study was developed in anticipation of litigation or is not relevant to the instant action is not supportable. Apparently, the study was done prior to the filing of the instant action and NDTC plans on using the study in the instant action. NDTC has not objected to the study on the grounds that it is the basis for an expert opinion that will not be used in the instant action.

In response to the inquiry concerning the Hearing Officer's authority to enter discovery orders, §28-32-33(3.), N.D.C.C. provides such authority. This section in relevant part provides,

In any adjudicative proceeding, upon the request or motion of any party to the proceeding . . . a hearing officer may issue . . . discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or an other motion relating to . . . discovery, or protective orders must be made to the hearing officer."

CONCLUSION

For the above and foregoing reasons, Midcontinent requests that NDTC be required to produce financial and operation information for the Devils Lake market. Additionally, NDTC be required to produce, under an appropriate protective order, the consultant's study effect of competition to NDTC in the Devils Lake market by a facilities based competitor. Finally, that a hearing be scheduled on this matter at the earliest practicable time.

Dated this /4 day of November, 2005.

PEARCE & DURICK


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Attorneys for Midcontinent Communications, Inc.

1 STATE OF NORTH DAKOTA
 2 PUBLIC SERVICE COMMISSION
 3 Midcontinent Communications,) Case No. PU-05-451
 4 a South Dakota Partnership,)
 5 Complainant,)
 6 vs.)
 7 North Dakota Telephone Company,)
 8 Respondent.)
 9 -----
 10 DEPOSITION OF DAVE DIRCKS
 11 October 11, 2005
 12 Appearances:
 13 For the Complainant:
 14 PEARCE & DURICK
 15 P. O. Box 400
 16 Bismarck, North Dakota 58502-0400
 17 By: PATRICK W. DURICK, ESQ.
 18 For the Respondent:
 19 PRINGLE & HERIGSTAD, P. C.
 20 P. O. Box 1000
 21 Minot, North Dakota 58702-1000
 22 By: DONALD A. NEGAARD, ESQ.
 23
 24 Taken By: Joy Filipski, Court Reporter
 25

1 . . . The following is the Deposition
 2 of DAVE DIRCKS, taken at the request of the
 3 Complainant in the above-entitled cause,
 4 pending in the State of North Dakota, before
 5 the Public Service Commission, pursuant to
 6 Notice and the Federal Rules of Civil
 7 Procedure, before Joy Filipski, Court Reporter,
 8 a Notary Public within and for the State of
 9 North Dakota, at the RAMSEY COUNTY COURTHOUSE,
 10 Third-Floor Juryroom, Devils Lake, North
 11 Dakota, on Tuesday, October 11, 2005, at 9:00
 12 o'clock a.m., at which time counsel appeared as
 13 hereinbefore set forth . . .
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 25

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1 D A V E D I R C K S,
 2 of Devils Lake, North Dakota, called as a
 3 witness by the Complainant, being first duly
 4 sworn by Joy Filipski, Court Reporter, a Notary
 5 Public within and for the State of North
 6 Dakota, was examined and deposed on his oath as
 7 follows:
 8
 9 MR. DURICK: Let the record reflect
 10 that this is the time and the place set for the
 11 deposition of the North Dakota Telephone
 12 Company.
 13 There's been a Rule 30(b)(6)
 14 Notice sent out, identifying some particular
 15 areas that I want to inquire about this
 16 morning.
 17 And I understand that the witness
 18 is Mr. Dircks?
 19 THE DEPONENT: Uh-huh.
 20 MR. DURICK: Okay.
 21 THE DEPONENT: Yes.
 22 MR. DURICK: This is the only
 23 witness we're going to have, Don?
 24 MR. NEGAARD: Yes, sir.
 25

1 Q. Okay.
 2 Reports to the marketing manager, I
 3 see.
 4 A. Right.
 5 Q. And the job title's account
 6 executive?
 7 A. Yes.
 8 Q. Okay.
 9 MR. DURICK: Why don't we mark,
 10 mark these items.
 11 (Whereupon, there was discussion
 12 off the record.)
 13 (Whereupon, Deposition Exhibit Nos.
 14 1 and 2, Dircks, were marked for
 15 identification.)
 16 Q. (By Mr. Durick) Okay, I've marked
 17 as Exhibit 1, then, the excerpts from the, from
 18 the audited financial statement of TPC, Inc.,
 19 the three years, 2000-2001, 2002-2003 and
 20 2003-2004.
 21 That's marked as Exhibit 1.
 22 And that includes the balance
 23 sheets and the operating statements for those
 24 years. Is that correct?
 25 A. Yes.

10 1 proper and my objections have been noted in
 2 writing.
 3 MR. DURICK: Okay.
 4 And on behalf of Midcontinent
 5 Communications, it is highly relevant. We have
 6 suggested that we take the step of entering
 7 into a Protective Order so that the information
 8 can be used in just this proceeding and no
 9 other proceeding.
 10 What it seems to us is that this
 11 goes to the heart of what the issue is here,
 12 and that's the claim by North Dakota Telephone
 13 Company of a rule exemption.
 14 And the primary area of inquiry in
 15 that, is the financial -- whether it's --
 16 whether it would be an undue financial burden
 17 on North Dakota Telephone Company to have
 18 competition.
 19 So we'll leave that for a future
 20 time, I just wanted to make a record of it.
 21 Q. (By Mr. Durick) The fifth item is
 22 a copy of any studies done by North Dakota
 23 Telephone Company or consultants on the subject
 24 of NDTC providing video programming in
 25 competition with Midcontinent.

1 Q. And the second thing we've marked
 2 as Exhibit No. 2, is the job description that
 3 was -- that I mentioned for an account
 4 executive.
 5 I asked for some other items and I
 6 have received an objection.
 7 But I asked for studies done by
 8 North Dakota Telephone Company or consultants
 9 retained by NDTC on the potential impact of
 10 competition in the market for telephone
 11 services in the Devils Lake market.
 12 Item number four.
 13 Is there such a study, and it's not
 14 just being produced, or are there no such
 15 studies?
 16 MR. NEGAARD: For the, for the
 17 record, there is a study on facilities based
 18 competition, not on wholesale resale. And we
 19 believe it's highly proprietary, confidential.
 20 Especially in this context where we have a
 21 competitor asking to provide telecommunication
 22 services in the same community.
 23 And it's just highly, highly
 24 proprietary and confidential and we don't
 25 intend to produce that, we don't think it's

10 12 1 Again, I'd ask the same question,
 2 is, is there no such study or, or is there a
 3 study that you're not producing?
 4 MR. NEGAARD: And again, --
 5 THE DEPONENT: Whoops.
 6 MR. NEGAARD: -- there, there is
 7 such a study.
 8 Again, for the reasons I previously
 9 noted, that the study measures the impact, not
 10 only in Devils Lake, but in at least one other
 11 community, and it's, it's highly proprietary,
 12 confidential, and to give that to a competitor
 13 places North Dakota Tel in an undue advantage.
 14 What we're prepared to provide,
 15 financial information, that any expert could
 16 calculate and measure the impact on North
 17 Dakota Tel and/or on North Dakota Tel from
 18 Midcontinent's entering the market as a
 19 wholesale resale competitor.
 20 But we don't think we're under any
 21 duty to do the work for such an expert.
 22 And so we're prepared to provide
 23 that information and we're providing financial
 24 information today, but we're not going to
 25 provide the expert with, with his own

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1 access to the -- to your network?
 2 A. To our network, yeah.
 3 Q. Okay. Where would Internet
 4 services come in in this operating statement?
 5 A. I'm going to have to look at that.
 6 Well, I believe they would have to
 7 come out of the local network access, then,
 8 because --
 9 MR. NEGAARD: That's interest, I'm
 10 sorry.
 11 Q. (By Mr. Durick) You believe that
 12 it would come out of the first part, local
 13 network access?
 14 A. I believe so, yes.
 15 Q. Okay. Now we're showing here gross
 16 revenue figures. I'm still looking. And
 17 that's for your entire system. Is that
 18 correct?
 19 A. Yes.
 20 Q. Do you have that broken down so you
 21 can tell me what Devils Lake does with respect
 22 to these various categories?
 23 A. No, I don't.
 24 Q. Do you have that broken down
 25 somewhere in your company?

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1 have in Devils Lake, but right now I don't
 2 know.
 3 Q. And DSL lines, what, what is the
 4 revenue per DSL line? Is it about 40 bucks, is
 5 it? Or is it --
 6 A. I think, I think our -- 34.95, I
 7 believe is what --
 8 Q. Okay.
 9 A. -- we charge.
 10 Q. And what is a phone?
 11 A. (No verbal response.)
 12 Q. Your basic service. I saw it
 13 somewhere, is it \$14, or something?
 14 A. 14.12 or -- I believe.
 15 But they vary by, by towns.
 16 Q. Uh-huh.
 17 But I guess the point I'm making --
 18 or -- is that -- not the point, but the, the
 19 fact is that the DSL lines generate more
 20 revenue than a phone line does?
 21 A. (No verbal response.)
 22 Q. Just the local service.
 23 A. I'm not positive about that.
 24 Q. But the only thing I'm talking
 25 about now, it's \$14 for a phone and -- for --

30

1 A. We don't nor -- we don't normally
 2 break it down, but I'm assuming that we could.
 3 Q. Do you -- can you give me any sense
 4 of what percentage Devils Lake would be out of
 5 the total revenues?
 6 A. Well, we have approximately 18,500
 7 lines in our company.
 8 And somewhere around, I believe 53
 9 to 5500 of those are Devils Lake, so whatever
 10 percentage that is, is the --
 11 Q. That would be a rough estimate?
 12 A. Rough. I'm sure there's other
 13 factors involved in there, but could be a rough
 14 estimate, yes.
 15 Q. So that's a little over a third, is
 16 it?
 17 A. (No verbal response.)
 18 Q. Do you have any idea what
 19 percentage of your revenues per line would be
 20 Internet versus basic telephone services?
 21 A. No, I don't. We, we have
 22 approximately, I think it's 2500 DSL lines, or
 23 high-speed Internet, is what that is.
 24 But we offer that in all of our
 25 towns, so I -- I could find out how many we

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1 A. Yeah.
 2 Q. -- basic local service --
 3 A. Yeah.
 4 Q. -- and 35 for, for a DSL line.
 5 The, the line -- the local service,
 6 obviously there's going to be access fees and
 7 other things --
 8 A. Uh-huh.
 9 Q. -- that can be attributed to that
 10 line, I take it.
 11 Do you, do you have any idea, is,
 12 is there a -- well, let me --
 13 Do you have any figure of an
 14 average revenue generated per line?
 15 A. We may have somewhere that we've
 16 done internally, but I, I am not sure what,
 17 what it would be.
 18 Q. Okay. Have you made any
 19 determination of what the effect would be of
 20 offering resold services to Midcontinent
 21 Communications?
 22 A. No.
 23 Q. You have not?
 24 A. No.
 25 Q. Okay. Well, just kind of back in

1 the envelope type calculations, do you have any
 2 idea how many telephone subscribers would take
 3 Midcontinent's telephone service if it was
 4 offered and take lines away from you?

5 A. I, I have no idea, other than
 6 making an assumption, and I, I don't know what
 7 that would be, but -- I, I don't know how many
 8 they would take.

9 Q. Okay. Have your consultants given
 10 you any estimates of what you could expect by
 11 way of a resold agreement with Midcontinent?

12 A. No.

13 Q. So, as we sit here today, you can't
 14 provide me with any quantifiable data that
 15 would suggest what the result would be of
 16 Midcontinent coming into competition with you
 17 in the resold area in the Devils Lake market?

18 A. Well, I think Don had mentioned, we
 19 have looked at it, if, if we lost those lines
 20 on a facility based -- you know, if you -- if
 21 someone actually came in and took those lines
 22 away from us.

23 Q. Okay. You have a study on that?

24 MR. NEGAARD: I, I think we said we
 25 do.

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1 agreement?

2 A. I think what we're saying is it's
 3 based on facility based loss, not, not resale.

4 Q. Okay. And facilities based is
 5 somewhat different than the resale agreement.
 6 Is that correct?

7 A. Yes.

8 Q. And while I'm on that, in a resale
 9 agreement, there certainly are no technical
 10 reasons why you could not offer resold services
 11 to Midcontinent. Is that true?

12 A. To the best of my knowledge, that
 13 is true.

14 Q. All right.

15 And you're familiar with the
 16 section, I think it's 254 of the
 17 Telecommunications Act having to do with
 18 Universal Service Requirements. Is that
 19 correct?

20 A. I wouldn't say I'm an expert, I,
 21 I --

22 Q. I'm not sure anybody --

23 A. I don't know anybody that is, but
 24 I'm somewhat familiar with them, yes.

25 Q. Familiar with them?

35

1 A. Yeah.

2 MR. DURICK: No, I understand, I'm
 3 just --

4 A. Yeah.

5 Q. (By Mr. Durick) Does that study
 6 include assumptions as to the level of lines
 7 that would be taken away?

8 A. I --

9 MR. NEGAARD: Okay, for the record,
 10 it, it does. I think that's as far as we would
 11 go. I mean, --

12 MR. DURICK: It'd make it a lot
 13 easier if you'd bring that out, so I could --

14 MR. NEGAARD: And, for the record,
 15 I, I think the consultants we're working with
 16 probably have a better feel of what kind of
 17 penetration rates market customer loss there
 18 are in, in these types of situations. And, and
 19 we'll be providing you information when our
 20 testimony's due.

21 Q. (By Mr. Durick) But, but I guess
 22 my question now is: have, have you been made
 23 aware of any of that, so that you have any
 24 idea, as the manager, what you'd be faced with
 25 if, in fact, Midcontinent did get a resale

34

1 A. Yeah.

2 Q. Can, can you see any impact on
 3 Universal Service Requirements as they're
 4 applicable to Devils Lake by a resale
 5 agreement?

6 A. The way the rules are today, I
 7 would have to say no, --

8 Q. Okay.

9 A. -- but I'm not sure of what's going
 10 to happen in the future with, with the FCC
 11 regulations, which concerns me.

12 Q. But at least for now, Devils Lake
 13 -- the Devils Lake market has access to all
 14 those items that are listed as Universal
 15 Service Requirements under the Act, do they
 16 not?

17 A. Yes.

18 Q. Okay. And that wouldn't change if
 19 you offered resold services to Midcontinent, I
 20 take it?

21 A. Today it wouldn't, no, but as I
 22 mentioned before, it's the future that I'm
 23 concerned about.

24 Q. And what about the future concerns
 25 you?

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1 A. If the rules were changed, --
 2 Q. Okay.
 3 A. -- where that would affect the
 4 company financially.

5 MR. NEGAARD: And, and for the
 6 record, to make sure you're not misled, either.

7 Mr. Dircks and I talked about this
 8 quite a bit yesterday, and he's not aware of
 9 any impacts, but we are still working with the
 10 consultants.

11 As you know, Section 254's about
 12 four pages long, there's several hundred pages
 13 of federal regulations that neither Mr. Dircks
 14 or I are intimately familiar with.

15 And we do want to work with our
 16 consultants on what are the impacts under 254.
 17 And we're still looking at that.

18 As of today, we're not aware at
 19 this point there are any, but we still want to
 20 keep looking at that and, and, and looking at
 21 the policies that are, are being promoted under
 22 254 and what impact a resale agreement could
 23 have on those.

24 Q. (By Mr. Durick) Okay. Now --

25 A. I'm not sure which one that came

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1 included in that?

2 A. That's all your time for your
 3 technicians and training and that type of
 4 thing.

5 Q. Plant nonspecific operations?

6 A. I believe that would be your -- you
 7 know, I'm not, I'm not sure about that, I --
 8 I'd have to find out.

9 Q. Depreciation, obviously.

10 Customer operations?

11 A. (No verbal response.)

12 Q. That, that your customer service
 13 type things?

14 A. Yes. Customer service reps and --

15 Q. And then --

16 A. -- repair clerks.

17 Q. -- corporate operations, what's the
 18 distinction there?

19 A. Corporate operations would be like
 20 your board of directors and corporate-level
 21 people that are in our operation.

22 Q. So corporate operations, the almost
 23 2 million, you're saying that's basically your
 24 overhead for the corporate part.

25 Does, does any -- none of that

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1 out of.

2 Q. Okay. Let's see what that is.

3 That's here -- yeah.

4 But your account -- as I understand
 5 it, you're telling me that your accounting
 6 system is such that you could segregate
 7 operating revenues from Devils Lake as opposed
 8 to other parts of your telecommunications
 9 plant?

10 A. I believe we could, if, if we had
 11 to.

12 Q. Okay. And, and how is that with
 13 respect to operating expenses? Is there any
 14 way to segregate those?

15 A. I, I think that we probably could,
 16 yes.

17 Q. Generally, what is the most
 18 profitable part of your, of your business?

19 A. I would have to say our -- probably
 20 our local service revenues is a major part of
 21 it. And then our -- as you can see from the
 22 financial report there, our network access is
 23 quite large, as far as net income.

24 Q. And on the operating side -- well,
 25 let's look. Plant specific operations, what's

40

1 includes --

2 Well, let me start over.

3 Does any of that include payments
 4 to any of the three shareholders?

5 A. I don't believe so.

6 Q. The only thing they get is the
 7 dividends?

8 A. (No verbal response.)

9 Q. All right.

10 A. Uh-huh.

11 Yes.

12 Q. Is any of your debt payable to any
 13 of the three shareholders? Do you have any
 14 debt to the three shareholders?

15 A. No.

16 Q. Did you at one time?

17 A. No.

18 Q. So they've never been a source of
 19 capital for you?

20 A. Only the down payment to buy the,
 21 the original property from GTE.

22 Q. Okay. There's no leaseback of any
 23 of your plant, you own it, you lease it from
 24 any of the three or --

25 A. There may be some services we

1 that would take and --
 2 A. Uh-huh.
 3 Somewhat.
 4 Q. And you don't lose the total
 5 revenue from the line, you just discount, --
 6 A. Yes.
 7 Q. -- so --
 8 Okay. Have you given any thought
 9 to what a discount rate would be when --
 10 A. No.
 11 Q. Have you asked any of your
 12 consultants to specifically de -- address the
 13 resale aspect of competition versus the
 14 facilities that you talked about earlier?
 15 A. The facilities based information is
 16 the only thing that we have from them.
 17 Q. Okay. I, I think we talked a
 18 little bit at the break, and I told you, as I
 19 look over these financial statements, it looks
 20 to me like it's a pretty healthy company. Do
 21 you have some reason to, to think otherwise?
 22 A. No.
 23 Q. How long have you been with the
 24 company?
 25 A. Since it started.

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1 Credit Services.
 2 MR. DURICK: Okay.
 3 MR. NEGAARD: And it was the St.
 4 Paul Bank of Cooperatives and they were
 5 combined with some other similar types of bank
 6 in the western United States and formed a
 7 bigger entity called CoBank.
 8 Q. (By Mr. Durick) Okay. Because as,
 9 as I note on the long-term debt, back in 2000,
 10 it started at 18 million, and in 2004, it's 8
 11 million; so you've knocked almost \$10 million
 12 off your long-term debt in three -- four years.
 13 Is that right?
 14 A. The original loan for the GTE
 15 property was \$20 million and it was a ten-year
 16 loan, which was paid off in 1993.
 17 The remaining balance is from the
 18 U.S. WEST acquisition in 1996.
 19 Q. Okay. That's the one that was
 20 financed through CoBank?
 21 A. Yes.
 22 Q. And it's gone, say, say, from 18
 23 million in 2000, down to, it looks like 8
 24 million in 2004. Does that sound right?
 25 A. That sounds right.

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1 Q. And that was in 1993, --
 2 A. 1993.
 3 Q. -- was it.
 4 And that -- and I do note that,
 5 that the retained earnings have certainly
 6 increased over that period of time.
 7 Is there pressure now to, to pay
 8 more dividends to the shareholders or --
 9 A. (No verbal response.)
 10 Q. Are you able to finance a good part
 11 of your growth through your retained earnings?
 12 A. We finance everything through
 13 retained earnings.
 14 Q. I see you've got, 2004, it looks
 15 like \$8 million of, of long-term debt. And
 16 that's with the CoBank that you were talking
 17 about?
 18 A. Yes.
 19 Q. Is that a -- what, what kind of an
 20 institution is that? I'm not familiar with it.
 21 A. It's -- maybe Don knows better.
 22 It's a cooperative, mainly ag -- mainly do ag
 23 loans.
 24 Q. Okay.
 25 MR. NEGAARD: Used to be Farm

1 Q. Okay.
 2 MR. DURICK: All right, I don't
 3 have anything further for you today.
 4 I, I would, again, give you a
 5 chance to produce that study so that I can look
 6 at that and ask some relevant questions, but
 7 apparently we're not going to get that done
 8 today.

9 MR. NEGAARD: Well, -- and, and we
 10 can discuss that some more.
 11 MR. DURICK: Okay.
 12 MR. NEGAARD: I do have one or
 13 two --
 14 MR. DURICK: Yeah, whatever.
 15 MR. NEGAARD: -- questions, so --

17 EXAMINATION
 18 BY MR. NEGAARD:

19 Q. Mr. Dircks, earlier, Mr. Durick
 20 spoke of this concept of bundling services.
 21 And in the telecommunication business, does --
 22 the term, bundle service, can that also include
 23 something that doesn't include video?
 24 A. I think I answered that as being
 25 company specific, because some companies bundle

FCC 96-325

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act)	
of 1996)	
)	
Interconnection between Local Exchange)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio)	
Service Providers)	
)	

FIRST REPORT AND ORDER

Adopted: August 1, 1996

Released: August 8, 1996

By the Commission: Chairman Hundt and Commissioners Quello, Ness, and Chong issuing separate statements.

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1262. Congress generally intended the requirements in section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies.³¹⁰³ We believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension, or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension, or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.

1263. Given the pro-competitive focus of the 1996 Act, we find that rural LECs must prove to the state commission that they should continue to be exempt pursuant to section 251(f)(1) from requirements of section 251(c), once a bona-fide request has been made, and that smaller companies must prove to the state commission, pursuant to section 251(f)(2), that a suspension or modification of requirements of sections 251(b) or (c) should be granted. We conclude that it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements. Moreover, the party seeking exemption, suspension, or modification is in control of the relevant information necessary for the state to make a determination regarding the request. A rural company that falls within section 251(f)(1) is not required to make any showing until it receives a bona fide request for interconnection, services, or network elements. We decline at this time to establish guidelines regarding what constitutes a bona fide request. We also decline in this Report and Order to adopt national rules or guidelines regarding other aspects of section 251(f). For example, we will not rule in this proceeding on the universal service duties of requesting carriers that seek to compete with rural LECs. We may offer guidance on these matters at a later date, if we believe it is necessary and appropriate.

1264. We find that Congress intended section 251(f)(2) only to apply to companies that, at the holding company level, have fewer than two percent of subscriber lines nationwide. This is consistent with the fact that the standard is based on the percent of subscriber lines that a carrier has "*in the aggregate nationwide*".³¹⁰⁴ Moreover, any other interpretation would permit almost any company, including Bell Atlantic, Ameritech, and GTE affiliates, to take advantage of the suspension and modification provisions in section 251(f)(2). Such a conclusion would render the two percent limitation virtually meaningless.

³¹⁰³ 47 U.S.C. § 251(f).

³¹⁰⁴ 47 U.S.C. 251(f)(2) (emphasis added).

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/ North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Belinda Dickson hereby certifies that on November **14**, 2005, she served a copy of the foregoing MEMORANDUM IN SUPPORT OF REQUEST FOR DISCLOSURE OF INFORMATION by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota, addressed to the following:

Mr. Donald Negaard
Pringle & Herigstad
P. O. Box 1000
Minot, ND 58702-100
via facsimile 701-857-1361

William W. Binek
Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505
via facsimile 328-2410

Mr. Al Wahl
Administrative Law Judge
1707 North Ninth Street
Bismarck, ND 58501-1882
via facsimile 328-3254

Belinda Dickson

Subscribed and sworn to before me this 14 day of November, 2005.

Jeanne Feist
Notary Public

My commission expires:

