STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

DIRECT TESTIMONY OF TIMOTHY J GATES

On Behalf Of

MIDCONTINENT COMMUNICATIONS

December 21, 2005

TABLE OF CONTENTS

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

A. My name is Timothy J Gates. My business address is QSI Consulting, 819 Huntington Drive, Highlands Ranch, Colorado 80126.

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulated industries, econometric analysis and computer aided modeling. I currently serve as Senior Vice President and Partner.

Q. PLEASE PROVIDE A SYNOPSIS OF YOUR EDUCATIONAL BACKGROUND AND RELEVANT WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. Since I received my Masters, I have taken additional graduate-level courses in statistics and econometrics. I also have attended numerous courses and seminars specific to the telecommunications industry, including both the NARUC Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI, I was a Senior Executive Staff Member at MCI. I was employed by MCI and/or MCI/WorldCom for 15 years in various public policy positions. While at MCI I managed various functions, including tariffing, economic and financial analysis, competitive analysis, witness training and MCI's use of external consultants. Prior to joining MCI, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. I also worked at the Bonneville Power Administration (United States Department of Energy) as a Financial Analyst doing total electric use forecasts while I attended graduate school. Prior to doing my graduate work, I worked for ten years as a reforestation forester in the Pacific Northwest for multinational and government organizations. Exhibit TJG-1, attached hereto to this testimony, is a summary of my work experience and education.

Q. HAVE YOU EVER TESTIFIED BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION ("COMMISSION")?

A. Yes. I have testified in North Dakota in the following dockets: PU-2320-90-183, PU-2065-02-465, and PU-2342-01-296. I have testified more than 200 times in 44 states and filed comments with the FCC on various public policy issues ranging from costing, pricing, local entry and universal service to strategic planning, merger and network issues. As noted above, a list of proceedings in which I have filed testimony or provided comments is attached hereto as Exhibit TJG-1.

Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?

A. This testimony was prepared on behalf of the Midcontinent Communications ("Midcontinent").

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to support Midcontinent's bona fide request under 47 U.S.C. § 251(c) for wholesale resold service for the Devils Lake, North Dakota exchange within North Dakota Telephone Company's ("NDTC's") serving territory. This testimony, combined with that of my partner, Mr. Warren Fischer, will show that Midcontinent's provisioning of resold services in Devils Lake will have only a *de minimis* impact on NDTC and actually will benefit the public interest. Finally, this testimony addresses the issues identified by the Commission in its Notice of Hearing issued July 28, 2005.

III. OVERVIEW OF THE TWO COMPANIES AND THE DISPUTE

Q. PLEASE PROVIDE AN OVERVIEW OF MIDCONTINENT.

A. Midcontinent is a diversified company that provides data, voice and video in more than 200 communities in North and South Dakota, northern Nebraska and western Minnesota. The company is over 60 years old and is growing through acquisitions and organic expansion.

A summary of some of Midcontinent services is found below:

MidcoNet Broadband	Web Hosting
Local and Long Distance Telephony	800 Services

Classic, Digital and HD Cable	Digital Music
Television Advertising Services	

Q. PLEASE PROVIDE AN OVERVIEW OF NDTC.

A. According to its website, NDTC is a wholly owned subsidiary of TPC, Inc. and is a consortium formed by United Telephone Mutual Aid Corporation (Langdon, ND); Dakota Central Rural Telephone Coop. (Carrington, ND); and Polar Communications (Park River, ND). The company has grown dramatically, primarily through the purchase of exchanges from US West and Contel. NDTC provides local and long distance telephone services, Internet, business equipment (phones and phone systems), paging equipment, and wireless service with Verizon.

A sample of NDTC's services is provided below:

Dialup and Broadband Internet	Video on the Planning Board
Web Hosting	Local and Long Distance Telephony
800 Services	Digital White and Yellow Pages

Q. IS THERE ANY DISPUTE AS TO WHETHER NDTC IS A RURAL TELEPHONE COMPANY AS DEFINED IN THE FCC'S RULES (§ 51.5)?

A. No. NDTC is a rural telephone company.

Q. PLEASE BRIEFLY DESCRIBE THE DISPUTE.

A. Midcontinent would like to resell telephone services of NDTC in the Devil's Lake exchange. To that end, Midcontinent filed a bona fide request under 47 U.S.C. § 251(c) for wholesale services. NDTC does not want the competition from Midcontinent and has suggested that the "rural exemption" under 47 U.S.C. § 251(f) protects NDTC from competition. In response to NDTC's refusal to allow resale, Midcontinent asked the Commission to conduct an inquiry to determine whether to terminate NDTC's rural exemption.[1]

Q. HAS THE COMMISSION IDENTIFIED ISSUES TO BE ADDRESSED IN THIS PROCEEDING?

A. Yes. In the Notice of Hearing, the Commission identified four issues:

1. Whether the request of Midcontinent is unduly economically burdensome.

2. Whether the request of Midcontinent is technically feasible.

3. Whether the request of Midcontinent is consistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

4. The implementation schedule for compliance with the request should the exemption be terminated.[2]

Q. THESE ISSUES APPEAR TO COME FROM THE TELECOMMUNICATIONS ACT.[3] PLEASE DESCRIBE THE "RURAL EXEMPTION" AS YOU UNDERSTAND IT.

---

[1] *See* Commission's **Notice of Hearing** dated July 28, 2005, at page one.

A. First of all, I am not a lawyer, so I will leave the legal interpretations to the lawyers. I can provide the pertinent language and my economic interpretation of the intent of the exemption within the context of The Act.

The purpose of the 1996 Act was to encourage competition and to remove barriers to competition. Indeed, in the first paragraph of the FCC's *Local Competition Order* it states,

> The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress.[4]

In the FCC's Triennial Review Order[5] the goals of The Act were again repeated,

> Seven years ago, Congress enacted the Telecommunications Act of 1996 (1996 Act) for the benefit of the American consumer. This watershed legislation was partially designed to remove the decades-old system of legal monopoly in the local exchange and open that market to competition. The 1996 Act did so by establishing broad interconnection, resale and network access requirements, designed to facilitate multiple modes of entry into the market by intermodal and intramodal service providers.

Q. WHAT WERE THE MARKET OPENING MECHANISMS THAT THE FCC REQUIRED FOR ILECS?

---

[2] *<u>Id.</u>*

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. (1996 Act).

[4] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996) (*Local Competition Order).*

[5] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Report and*

A. The requirements varied. Congress recognized the importance of interconnection by requiring all telecommunications providers to interconnect, directly or indirectly, in Section 251(a)(1) of the Act. But Congress also recognized that the ILECs were and would remain the overwhelmingly largest networks and the dominant carriers in any given area for the foreseeable future (and, nearly 10 years after the passage of the Act, this remains true). This situation gives the ILECs powerful economic leverage over CLECs: an ILEC will be strongly motivated to use its control over access to its large base of subscribers either to out-and-out destroy its competitors (by not allowing interconnection at all) or hamper their growth by only permitting interconnection on expensive or inefficient terms. So, Congress — quite rationally from an economic standpoint — imposed special interconnection duties on ILECs.

Q. WHAT WERE THOSE SPECIAL INTERCONNECTION DUTIES IMPOSED ON ILECS?

A. The FCC and state commissions have recognized that the various subsections of section 251 impose escalating duties and obligations on carriers depending upon their classifications (*i.e.*, telecommunications carrier, LEC, ILEC). These classifications are based upon their market power and economic position (e.g. monopoly) and attendant public obligations (e.g., common carrier obligations). Section 251(a) of the Act requires all telecommunications carriers to

---

Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978. ("*TRO*") "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[6] Section 251(b) imposes additional duties on local exchange carriers ("LECs") and section 251(c) imposes further obligations and specific interconnection duties on ILECs, such as Qwest. Those obligations include the duty to negotiate, interconnect, provide unbundled network elements at TELRIC[7] rates, provide various types of collocation and to allow resale at an appropriately calculated discount.

Q. DOES THE "RURAL EXEMPTION" EXEMPT THE RURAL CARRIERS FROM THE 251(C)(2) REQUIREMENTS?

A. Generally yes, although there is a limitation on the exemption that I will discuss later in this testimony. The facts and law on the issues identified for this proceeding will help to show why the Commission should terminate the rural exemption for NDTC.

Q. WHAT IS THE RURAL EXEMPTION?

A. Section 251(f)(1) states,

> (1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES
>
> (A) EXEMPTION – Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

---

6 47 USC § 251(a)(1).

7 *Local Competition Order* at ¶ 672.

Q. CAN THIS COMMISSION TERMINATE THE RURAL EXEMPTION FOR NDTC?

A. Yes. While I am not an attorney, Section 251(f)(2) states that, after an inquiry, such as this proceeding, "the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof)."

IV. WHETHER THE REQUEST OF MIDCONTINENT IS UNDULY ECONOMICALLY BURDENSOME

Q. WHAT DOES IT MEAN TO BE "UNDULY ECONOMICALLY BURDENSOME"?

A. We can break down this phrase using standard definitions. "Unduly" means "exceeding or violating propriety or fitness – excessive." "Economically" is defined as "of, relating to, or based on the production, distribution, and consumption of goods and services." "Burdensome" means "oppressive" or "onerous." These are standard definitions taken from a Merriam Webster's Collegiate Dictionary. Based on my experience in the industry, however, I believe this test relates to the financial and operational impact of competition on NDTC. More specifically, if the competition harmed NDTC to the point where it was damaging its ability to operate efficiently or to continue to offer services, then the exemption would apply. Based on our analysis of the potential impact of

Midcontinent's participation in the Devils Lake area, however, the impact is certainly not unduly economically burdensome.

Q. WOULD YOU AGREE THAT INDIVIDUALS MAY INTERPRET THIS STANDARD DIFFERENTLY?

A. I would expect a healthy debate on the impact of Midcontinent's entry into NDTC's serving territory in Devils Lake, but there are limits in the statutory language. Congress wanted and expected competition, so it is not enough for a rural ILEC to show that complying with Section 251(c) will impose some costs.

Since entry has not yet occurred, both parties will need to estimate the impact. But given the Act's goal of opening markets to competition, the impact would need to be truly onerous on NDTC, which it is not. This is true because Midcontinent is proposing to resell NDTC's services. Total service resale has never been considered effective competition, and certainly not economically burdensome.

Q. PLEASE EXPLAIN THE CONTINUUM OF ENTRY STRATEGIES THAT CLECS EMPLOY AND THEIR RELATIVE COMPETITIVE SIGNIFICANCE.

A. The continuum would be from total service resale ("TSR", as proposed by Midcontinent) to CLEC-owned loop with the following strategies in increasing order of competitive significance – TSR – UNE-platform ("UNE-"P") – UNE-loop ("UNE-L") – CLEC-Owned Loop. In other words, TSR has the least impact on the incumbent and a CLEC that builds its own loops has the greatest competitive impact on the incumbent. However, both UNE strategies require more of the incumbent's resources than resale or a CLEC-owned loop.

Q. ARE YOU SUGGESTING THAT THE COMMISSION SHOULD FOCUS EXCLUSIVELY ON NON-RESALE COMPETITION IN DETERMINING WHETHER EFFECTIVE COMPETITION IS PRESENT AND WHETHER THE IMPACT OF SUCH ENTRY IS UNDULY ECONOMICALLY BURDENSOME?

A. Yes. Resellers cannot independently produce the service they offer their customers, so they purchase services from carriers such as NDTC to provide their service to customers. The continued viability of resellers is dependent upon the maintenance of a sufficient margin between the wholesale price they pay to NDTC and the retail price they charge their customers.

Q. HOW DO RESELLERS COMPETE?

A. A reseller would purchase NDTC's services at the same rates, terms and conditions that NDTC offers those services, less a discount that reflects NDTC's avoided retailing costs. Resale has always been seen as a "speed to market" strategy with only limited benefits to the reseller.

Q. BUT ISN'T RESALE ONE OF THE THREE ENTRY STRATEGIES DISCUSSED AND ANTICIPATED BY THE FCC'S *LOCAL COMPETITION ORDER*?

A. Yes. The Act and the FCC's *Local Competition Order* "…contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale."[8] Resale was expected to be one of the ways in which companies would gain access to the market quickly. Generally, it was thought that, over time, CLECs utilizing resale would develop the critical mass of customer density and capital to make it economically viable for them to build their own facilities and eventually diminish their reliance upon resale and/or the purchase of UNEs. As an example, I understand from Midcontinent employees that the company entered the markets in Aberdeen and Sioux Falls on a resale basis and then later built out its own facilities. This is the type of behavior one would expect when entering a market.

Q. **ARE YOU SUGGESTING THAT RESALE IS A SHORT-TERM ENTRY STRATEGY?**

A. Yes. Resale is generally not thought of as a long-term solution because of the reliance upon the incumbent provider and the inability to distinguish the resold service from that of the underlying carrier. In addition, the CLEC reseller has no ability to cut its cost of telecommunications services relative to the retail rates of

[8] *Local Competition Order*, at ¶ 12.

the incumbent from which it purchases services. No matter how well the CLEC manages its own business, and how efficient it becomes, it will still have the same narrow margin upon which to meet its own costs and earn a profit. For that reason, the reseller has only a very limited ability to impose any competitive threat or pressure on the underlying provider and, as such, cannot be considered effective competition. It is only with facilities-based competition that new entrants can gain their independence from the incumbent and truly differentiate their services from those of the incumbent. Thus, when considering competitive impact, the Commission should give no weight to resale-based entry.[9]

Q. WHY IS FACILITIES-BASED COMPETITION IMPORTANT TO THE DEVELOPMENT OF EFFECTIVE COMPETITION IN TELECOMMUNICATIONS?

A. Without a network of its own, a carrier is relegated to a “resale” role in the market. Successful marketing normally requires product differentiation and price competition. It is difficult, if not impossible, for a carrier to differentiate its product when it is reselling all or part of the incumbent’s product. The reseller is dependent upon the underlying carrier for quality of service, features, speed to market, and facilities. Just as important, the reseller is dependent upon the underlying carrier for its cost of service. In other words, the cost that the reseller pays NDTC becomes the most important cost for Midcontinent, and is probably

[9] As noted herein, resale is the most prevalent way to test a market. Facilities-based competition, in areas where the market is show to justify the investment, provides additional benefits by virtue of the

the only cost over which the Midcontinent has no control or influence whatsoever.

Q. ARE YOU SUGGESTING THAT MIDCONTINENT'S USE OF RESOLD NDTC SERVICES DOES NOT RESULT IN SIGNIFICANT HARM TO NDTC?

A. That's correct. As discussed above, total service resale is simply Midcontinent doing marketing for NDTC. In fact, Midcontinent will be dependent upon NDTC for the timing of service delivery, quality of service and features. As such, it is NDTC making these finished services "available," albeit on behalf of Midcontinent. Mr. Fischer's analysis shows that even with a significant share of the market in Devils Lake, the impact on NDTC is minimal.

Q. IF MIDCONTINENT BUILDS ITS OWN FACILITIES IN NDTC'S SERVING TERRITORY, WOULD SERVICES OFFERED OVER THOSE FACILITIES BE CONSIDERED EFFECTIVE COMPETITION?

A. Yes, if Midcontinent offered services that were comparable in terms of rates, terms and conditions. Simply overbuilding the NDTC network is not sufficient to result in effective competition unless that network can provide "competitive" alternative services.

---

unique features and economies that a company can develop with its own facilities.

Q. BASED ON YOUR STATEMENTS ABOVE, ARE YOU SUGGESTING THAT RESALE PROVIDES NO BENEFITS TO CONSUMERS?

A. No. To the consumer, it appears that the resold offering is an alternative to NDTC's service. To that end, if the service is priced competitively and well marketed, resellers can attract customers. Consumers also benefit from "one-stop shopping" if a service provider like Midcontinent can offer multiple or bundled services. As such, resale can provide some limited competition for NDTC. The potential for success, however, is tempered by the cost that Midcontinent must pay NDTC for the underlying service. These assumptions are discussed at length in the testimony of Mr. Fischer.

Q. CAN YOU BRIEFLY SUMMARIZE THE FINANCIAL IMPACT THAT MR. FISCHER CALCULATED?

A. Yes. Below I have reproduced Table 4 from Mr. Fischer's testimony.

Devils Lake Gross Revenue Loss Under Different Penetration Scenarios and 16.15% Resale Discount

Devils Lake Total Annual Operating Revenue (2004)	$ 5,040,579			
NDTC Total Annual Operating Revenue (2004)	$ 16,977,056			
PENETRATION RATE SCENARIOS	**2%**	**10%**	**20%**	**30%**
Lines Lost to Resale	113	567	1,134	1,701
Estimated Annual Gross Revenue Loss:				
At a 10% Resale Discount	**$ 3,620**	**$ 18,101**	**$ 36,201**	**$ 54,302**
At a 16.15 % Resale Discount	**$ 5,846**	**$ 29,232**	**$ 58,465**	**$ 87,697**
Gross Revenue Loss as % of NDTC Total Revenue:				
At a 10% Resale Discount	**0.021%**	**0.107%**	**0.213%**	**0.320%**
At a 16.15 % Resale Discount	**0.034%**	**0.172%**	**0.344%**	**0.517%**

As you can see, the gross revenue loss as a percentage of NDTC's total revenue is small even at aggressive assumptions. For instance, assuming 30 percent penetration in Devils Lake and a 16.15 percent discount, NDTC's gross revenue loss is only 0.517 percent.

Q. BASED ON YOUR ANALYSIS AND THAT OF MR. FISCHER, WOULD RESOLD SERVICES BY MIDCONTINENT IN DEVILS LAKE BE UNDULY ECONOMICALLY BURDENSOME?

A. No. Table 6 in Mr. Fischer's testimony shows that the total annual net income loss is minimal in both absolute and percentage terms compared to NDTC's overall net income under all penetration scenarios. In fact, the relative loss of net income in the last column in Table 6 (0.257% of total NDTC net income) is lower than the relative loss of gross revenue in the last column of Table 3 (0.517% of total NDTC operating revenue). Given these small impacts and the potential benefits from competition, it is clear that Midcontinent's entry will not be unduly economically burdensome.

V. WHETHER THE REQUEST OF MIDCONTINENT IS TECHNICALLY FEASIBLE

Q. IS MIDCONTINENT'S REQUEST TO RESELL NDTC'S TELEPHONE SERVICES TECHNICALLY FEASIBLE?

A. Yes. Resale is very easy to accomplish in telecommunications. This is one of the reasons why resale is generally the first entry method used when testing a market.

If resale is successful then companies generally move to unbundled network elements or build out facilities of their own.

Q. DURING THE DEPOSITION OF MR. DIRCKS, DID NDTC CONFIRM THAT THERE ARE NO TECHNICAL REASONS WHY NDTC COULD NOT PROVIDE RESOLD SERVICES TO MIDCONTINENT?

A. Yes. The following exchange occurred during the deposition of Mr. Dave Dircks of NDTC at page 35 of the transcript:

> Q. And while I'm on that, in a resale agreement, there certainly are no technical reasons why you could not offer resold services to Midco. Is that true?
>
> A. To the best of my knowledge, that is true.

Q. HAS MIDCONTINENT RESOLD SERVICES OF OTHER CARRIERS IN THE PAST?

A. Yes. Midcontinent has resold the services of Qwest and Missouri Valley. Midcontinent's experience with resale should make the same experience with NDTC relatively easy.

Q. WOULD YOU ANTICIPATE ANY TECHNICAL OR OPERATIONAL PROBLEMS WITH RESELLING NDTC SERVICE?

A. At this time, we do not anticipate any problems with reselling NDTC service in Devils Lake. This assumes of course that NDTC cooperates and works with Midcontinent in setting up the exchange of information required for resale. Again, to the extent NDTC does not have any experience with resale, Midcontinent is willing to share its experience and knowledge with resale to expedite the process.

VI. WHETHER THE REQUEST OF MIDCONTINENT IS CONSISTENT WITH SECTION 254

Q. WHAT IS SECTION 254 OF THE ACT?

A. Section 254 is the Universal Service portion of the Act. Section 254(b) lays out the universal service principles to include, (1) quality services available at just, reasonable and affordable rates, (2) access to advanced services in all regions of the Nation, (3) access to services in rural and high cost areas that are reasonably comparable to those services provided in urban areas, (4) equitable and nondiscriminatory contributions to the preservation and advancement of universal service, (5) specific and predictable support mechanisms, (6) access the advanced telecommunications services for schools, health care and libraries, and (7) additional principles as the Joint Board and the FCC determine are necessary. Section 254(b)(7) is not applicable to this investigation.

Q. WHY IS SECTION 254 A CONSIDERATION WITH RESPECT TO THE RURAL EXEMPTION?

A. One of the goals of the Act is to preserve and advance universal service. If Midcontinent's entry, even through resale, was shown to harm the ability of NDTC to provide the services as described in Section 254(b), then the

Commission would have to weigh that consideration carefully. In other words, the desire for competition does not override the federal goal for the preservation and advancement of universal service. Nevertheless, the ultimate goal would be to have both. In fact, over time, we have seen that competition is consistent with universal service objectives.

Q. BASED ON YOUR ANALYSIS AND THAT OF MR. FISCHER, WOULD MIDCONTINENT'S PRESENCE IN THE DEVILS LAKE EXCHANGE HARM UNIVERSAL SERVICE?

A. No. It is clear, based on even the most conservative estimates, that Midcontinent's resold services will have only a very minimal impact on NDTC's revenues and will certainly not harm universal service. For instance, to harm universal service, one would expect people or businesses to be dropping off the network. Nothing about Midcontinent's resale of NDTC's services would cause people or businesses to drop off the network. In fact, increased efficiencies, new services and reduced rates actually may increase penetration. As such, Midcontinent's presence will benefit consumers and the public interest.

Q. HOW WILL MIDCONTINENT'S PRESENCE BENEFIT CONSUMERS AND THE PUBLIC INTEREST?

A. The benefits of competition are well known. The most obvious benefit of competition – even from resale – is the availability of alternative offerings for consumers. The ability to choose among providers heightens the consumers' sensitivity to features, service quality and price. Moreoever, based on Midcontinent's experience, it is able to bring additional offerings, great customer service and attractive pricing even in a resale environment.

Q. IF NDTC HAS A COMPETITOR, WILL THAT AFFECT ITS OPERATIONS?

A. Yes. Some economists argue that even the threat or possibility of competition is sufficient to create incentives for the incumbent to become more efficient. While I don't necessarily agree with the contestable market theory, I do know that competition will provide incentives for NDTC to offer new and better services and to operate more efficiently. The most obvious impact occurs when the incumbent feels the need to reduce prices to maintain customers.

In a competitive environment, all providers have an incentive to differentiate their services from their competitors' services. Competitors also compete on the basis of price. All of these activities – introducing new or different services, operating more efficiently to gain a cost advantage, reducing prices to retain or gain customers, etc. – will benefit consumers.

Q. IS IT POSSIBLE THAT NDTC COULD ACTUALLY MAKE MONEY WHILE PROVIDING ITS SERVICES TO MIDCONTINENT FOR RESALE?

A. Yes. As noted in Mr. Fischer's testimony if the avoided cost discount does not accurately represent NDTC's retailing costs, then the incumbent may lose or gain in the transaction. For instance, NDTC may experience a net gain, rather than a net loss in income if the resale discount is set at a level that is lower than the avoided retail costs. As Mr. Fischer noted, because of the asymmetric nature of information necessary to determine the avoided cost (information that concerns NDTC's own operations and is available to NDTC but not Midcontinent), it is possible that the approved resale discount could be lower than the retail costs actually avoided by NDTC.

Q. IS THE CONVERSE TRUE? IN OTHER WORDS, COULD NDTC ACTUALLY LOSE MORE MONEY THAN ESTIMATED IF THE AVOIDED COST DISCOUNT IS TOO HIGH?

A. Yes. Rarely are such estimates precise so there is a chance that the avoided cost discount will be too high or too low. With NDTC's assistance, however, and oversight by this Commission, the parties should be able to develop an accurate avoided cost discount for NDTC.

Q. BASED ON YOUR ANALYSIS AND THAT OF MR. FISCHER, WHAT IS THE FINANCIAL IMPACT ON NDTC ASSOCIATED WITH RESOLD SERVICES BY MIDCONTINENT?

A. The financial impact of resale on NDTC's Devil's Lake operation will be minimal and would not harm universal service.

Q. DURING THE DEPOSITION OF MR. DIRCK'S DID HE OPINE ON WHETHER RESALE WOULD HARM UNIVERSAL SERVICE?

A. Yes.

Q. WHAT WAS HIS OPINION?

A. The question and answer at page 36 of the deposition were as follows:

> **Q.** Can, can you see any impact on Universal Service Requirements as they're applicable to Devils Lake by a resale agreement?
>
> **A.** The way the rules are today, I would have to say no, --

Based on this exchange, and on commonly held opinions in the industry, Midcontinent's offering of resold services in Devils Lake will not harm universal service.

VII. LIMITATION ON EXEMPTION

Q. YOU STATED EARLIER IN THIS TESTIMONY THAT THERE IS A LIMITATION ON THE RURAL EXEMPTION. PLEASE DESCRIBE THAT LIMITATION.

A. Section 251(f)(1)(C) is the "Limitation on Exemption". That limitation reads as follows:

> (C) LIMITATION ON EXEMPTION – The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on the date of enactment of the Telecommunications Act of 1996.

Q. IS MIDCONTINENT A CABLE OPERATOR?

A. Yes.

Q. IS NDTC PROVIDING VIDEO?

A. During the deposition of Mr. Dircks, he indicated that NDTC plans to offer video services in the future.[10]

Q. IN YOUR OPINION, BASED ON THE FACTS IN THIS CASE, DOES THE LIMITATION ON THE EXEMPTION COME INTO PLAY?

A. Not directly. However, if NDTC follows through on its plans to offer video, the exemption will terminate automatically. That means that any possible negative effects on NDTC from termination of the exemption in this proceeding would be only of limited duration. That is another reason to conclude that termination of the exemption is unlikely to be unduly economically burdensome.

---

[10] *See* Deposition of Dave Dircks at page 17.

VIII. IMPLEMENTATION SCHEDULE

Q. IF THIS COMMISSION TERMINATES NDTC'S RURAL EXEMPTION, WHAT SHOULD BE THE IMPLEMENTATION SCHEDULE FOR MIDCONTINENT?

A. NDTC may need some time to set up some guidelines and internal procedures that would allow Midcontinent to order services. This would not take months and could be done quickly. The two companies would not need to establish an interconnection agreement similar to those entered into with Qwest and other RBOCs for all 251(c) services and functionalities, so this agreement and technical details could be worked out in a relatively short period of time. The Commission should require NDTC to develop such an agreement with Midcontinent within 30 days and to provide resale within 60 days later, that is within a total of 90 days after the Commission's order in this proceeding.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. NDTC's rural exemption should be terminated. Midcontinent's request is not unduly economically burdensome to NDTC as Mr. Fischer's analysis shows. There is not dispute as to whether resale is technically feasible – it is. Finally, as shown above, Midcontinent's resale of NDTC's services is not a threat to the preservation and advancement of universal service. Indeed, the benefits of competition – even through resale – will inure to consumers in Devils Lake and will ultimately make both companies more efficient in delivering services and more responsive to consumer demands.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.