

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.)	

REPLY TESTIMONY
OF
DOUGLAS DUNCAN MEREDITH
ON BEHALF OF
NORTH DAKOTA TELEPHONE COMPANY

January 9, 2006

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I. INTRODUCTION

Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND BUSINESS ADDRESS.

A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis, Inc. (JSI). JSI is a telecommunications consulting firm headquartered in Greenbelt, Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah 84010.

Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND.

A: At JSI, I am the Director of Economics and Policy. In this capacity, I assist clients with the development of policy pertaining to economics, pricing and regulatory affairs. I have been employed by JSI since 1995. Prior to my work at JSI, I was an independent research economist in the District of Columbia and a graduate student at the University of Maryland – College Park.

In my employment at JSI, I have participated in numerous proceedings for rural and non-rural telephone companies. These activities include, but are not limited to, the creation of forward-looking economic cost studies, the development of policy related to the application of the rural safeguards for qualified local exchange carriers, the determination of Eligible Telecommunications Carriers, and the sustainability and application of universal service policy for

1 telecommunications carriers. I have participated in and have assisted a number of
2 telephone companies in negotiation of interconnection agreements, including
3 situations similar to the one involved in this matter.

4
5 In addition to assisting telecommunications carrier clients, I have served as the
6 economic advisor for the Telecommunications Regulatory Board of Puerto Rico
7 since 1997. In this capacity, I provide economic and policy advice to the Board
8 Commissioners on all telecommunications issues that have either a financial or
9 economic impact. I have participated in a number of arbitration panels established
10 by the Board to arbitrate interconnection issues under Section 252 of the
11 Telecommunications Act of 1996 (the "Act").

12
13 I am participating or have participated in numerous national incumbent local
14 exchange carrier and telecommunications groups, including those headed by
15 NTCA, OPASTCO, USTA, and the Rural Policy Research Institute. My
16 participation in these groups focuses on the development of policy
17 recommendations for advancing universal service and telecommunications
18 capabilities in rural communities and other policy matters.

19
20 I have testified or filed pre-filed regulatory testimony in various states including
21 North Dakota, South Dakota, South Carolina, Vermont, New Hampshire, New
22 York, Michigan, Texas, Utah, and Wisconsin. I have also participated in
23 regulatory proceedings in many other states that did not require formal testimony,

1 including Florida, Louisiana, Mississippi, North Carolina, Puerto Rico, and
2 Virginia. In addition to participation in state regulatory proceedings, I have
3 participated in federal regulatory proceedings through filing of formal comments
4 in various proceedings and submission of economic reports in an enforcement
5 proceeding.

6
7 I have a Bachelor of Arts degree in economics from the University of Utah and a
8 Masters degree in economics from the University of Maryland – College Park.
9 While attending the University of Maryland – College Park, I was also a Ph.D.
10 candidate in Economics. This means that I completed all coursework,
11 comprehensive and field examinations for a Doctorate of Economics without
12 completing my dissertation.

13
14 **Q: ON WHOSE BEHALF ARE YOU PRESENTING THIS PRE-FILED**
15 **DIRECT TESTIMONY?**

16 A: I am testifying on behalf of North Dakota Telephone Company (“NDTC”), a rural
17 telephone company operating in North Dakota.

18
19 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A: The purpose of my testimony is to respond to the Direct Testimonies filed on
21 behalf of Midcontinent Communications (“Midcontinent”). The testimonies of
22 Messrs. Gates and Fischer as well as Ms. Lohnes are designed to support
23 Midcontinent’s request under Section 251(c) for wholesale resold service for the

1 Devils Lake, North Dakota, exchange. (Gates at 3 and Fischer at 2, “request
2 under 47 U.S.C. § 251(c) for wholesale resold service for the Devils Lake, North
3 Dakota, exchange within NDTC’s serving territory;” and Lohnes at 4,
4 “Midcontinent’s request asks that the company be granted authority under Section
5 251(c) of the federal Communications Act to receive wholesale telephone services
6 from NDTC in the Devils Lake exchange.”) My testimony also responds to
7 several statements included in those testimonies in an effort to ensure that the
8 record is clear with respect to NDTC’s conduct and position on the issues raised
9 at this point in this proceeding. Furthermore, I provide evidence supporting the
10 public policy and the mandates of the Act that NDTC believes that the North
11 Dakota Public Service Commission (“NDPSC” or the “Commission”) should
12 consider and adopt as it resolves the issues in this proceeding.

13
14 **Q: WHAT IS YOUR UNDERSTANDING OF WHAT NEEDS TO BE DONE**
15 **IN THIS PROCEEDING?**

16 A: My layman’s understanding is that this proceeding is being conducted under
17 Section 251(f)(1)(B) of the Act. Based on the words used by Congress in this
18 section of the Act, I understand that the Commission needs to determine whether
19 NDTC’s rural exemption for wholesale resale (47 U.S.C. § 251(c)(4)) for
20 NDTC’s Devils Lake exchange area should be terminated. In the event the
21 NDPSC terminates NDTC’s rural exemption for wholesale resale in the Devils
22 Lake exchange, the NDPSC then would need to establish an implementation
23 schedule consistent “in time and manner” with FCC regulations. Based on my

1 familiarity and reading of other decisions regarding Section 251(f)(1) of the Act, I
2 also understand that Midcontinent has the burden of proof in this proceeding.¹
3

4 **Q: WHAT STANDARDS MUST THE COMMISSION USE IN**
5 **DETERMINING WHETHER THE EXEMPTION SHOULD BE**
6 **REMOVED?**

7 A: Actually, the Commission's "Notice of Rescheduled Hearing" issued on
8 December 14, 2005, and its stated issues 1 through 3 in that Notice appear to
9 mirror the standards included by Congress in Section 251(f)(1)(A).
10

11 **Q: IS THERE ANYTHING ELSE THAT NEEDS TO BE DONE IN THIS**
12 **PROCEEDING?**

13 A: Yes. I have examined Midcontinent's testimonies and I believe there needs to be
14 corrections and clarifications made regarding some of the statements that
15 Midcontinent makes. I also believe that a reasonable implementation schedule
16 needs to be considered by the NDPSC but only if, first, the NDPSC determines
17 that Midcontinent has met its burden of proof on the issues and, second, the
18 Commission determines that NDTC's rural exemption for wholesale services in
19 the Devils Lake exchange should be terminated.
20

¹ See IOWA UTILITIES BOARD, et al., Petitioners v. FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, Respondents 219 F3d 744 (2000) and FCC Order re: ACS et al. Petition, 16 FCC Rcd 15672 (2001).

1 **Q: DO YOU AGREE WITH MIDCONTINENT’S SUGGESTED**
2 **IMPLEMENTATION SCHEDULE?**

3 A: No. It is clear to me that Midcontinent is advocating an implementation schedule
4 which is not consistent in time and manner with the general negotiation and
5 arbitration time frames included in the Act: all possibly based on Midcontinent’s
6 mistaken belief that the wholesale resale discount that it believes should apply to
7 NDTC’s Devils Lake exchange will be established in this proceeding. As I
8 explain later, however, that discount (even assuming its determination is
9 necessary) is first subject to negotiation and then arbitration if not agreed to by the
10 parties. Again, those negotiations and/or any arbitration would only occur if the
11 NDPSC determines to remove the exemption in place for NDTC in the Devils
12 Lake exchange for NDTC’s retail tariffed telecommunications service at a
13 wholesale discount. If this were to occur, then the NDPSC’s determination of a
14 proper implementation schedule is a very important matter, and rational public
15 policy supports the conclusion that the NDPSC should follow the time frames
16 established by Congress in the Act.

17

18 **Q: WHAT ARE THE TIME FRAMES YOU REFERENCE THAT ARE**
19 **INCLUDED IN THE ACT?**

20 A: These are contained in Section 252 of the Act. Under Section 252(b), arbitration
21 may be conducted if the parties are unable to reach an agreement within 135 days
22 to 160 days of the receipt of a valid interconnection request and one of the parties,
23 either Midcontinent or NDTC, requests the NDPSC to arbitrate. It is my

1 understanding the Commission has done this in the past under its authority
2 contained in Section 49-21-01.7(8) of the North Dakota Century Code.

3
4 For example, I was previously involved in a proceeding involving the rural North
5 Dakota companies and Western Wireless. This Commission appointed a third
6 party to serve in the arbitration, and the North Dakota Rural Telephone Company
7 Group was able to agree on an Interconnection Agreement with Western Wireless
8 and file it with the Commission for approval. (See Case No. PU-2077-02-308)

9
10 **Q: WHAT IS YOUR RECOMMENDATION TO THIS COMMISSION?**

11 A: I recommend the NDPSC deny Midcontinent's request to terminate NDTC's rural
12 exemption for wholesale services in the Devils Lake exchange for the reasons
13 stated below and later in this testimony.

14
15 Assuming, for sake of completeness, that the NDPSC should determine that the
16 NDTC wholesale resale exemption for its Devils Lake exchange be lifted, then
17 the Commission should order the parties to begin negotiating the entirety of the
18 terms and conditions for a resale interconnection agreement, including, but not
19 limited to, the applicable wholesale resale discount percentage for the Devils Lake
20 exchange. Once this agreement is finalized and/or arbitrated in a manner
21 consistent with the time periods stated in Section 252 (with the time periods
22 beginning to run as of the date of the Commission's decision), then the parties
23 would implement the agreement after it is approved by the Commission.

1 I note that NDTC is not in a position to provide video programming in Devils
2 Lake on its fiber installation until after February 1, 2007.² It is my understanding
3 Midcontinent's request to terminate NDTC's rural exemption in Devils Lake
4 would become moot under Section 251(f)(1)(C) once NDTC begins to offer
5 video.

6
7 **Q: COULD YOU EXPLAIN YOUR REFERENCE TO THE TIME FRAMES**
8 **YOU PROVIDED ABOVE ?**

9 A: Yes. If the Commission were to terminate the wholesale resale exemption for
10 NDTC's Devil Lakes exchange as to Midcontinent, it should follow the 1996
11 Telecommunications Act regarding the implementation of this Section 251(c)
12 duty. Specifically, after terminating the rural exemption as to Midcontinent in
13 Devils Lake, NDTC would not be opposed to having the Commission order the
14 parties to conduct negotiations on the proper business terms and conditions for a
15 resale agreement with a wholesale discount specific to the Devils Lake exchange.
16 Based on my familiarity with Section 252, that would allow the parties to
17 negotiate such business terms and conditions for at least 135 days before a party
18 could seek arbitration before the Commission (and, at the outside, up to 160 days
19 from the effective date of the Commission's decision in this proceeding). Section
20 252 would also allow the Commission up to nine months from the date of its
21 decision in this proceeding to render a decision on what the proper terms and
22 conditions should be for any unresolved issue that was the subject of the
23 negotiations. These procedures are followed by state commissions and the FCC

² See Reply Testimony of Mr. David Dircks at 9.

1 in resolving disputes regarding Section 251(c) duties. As I indicated above for the
2 Western Wireless matter, this is also consistent with this Commission's prior
3 practices.

4

5 **II. RESPONSE TO CERTAIN STATEMENTS**

6

7 **Q: DO YOU AGREE WITH MIDCONTINENT'S DISCUSSION THAT**
8 **NDTC'S RURAL EXEMPTION TERMINATES WHEN NDTC OFFERS**
9 **VIDEO PROGRAMMING?**

10 A: Not in its entirety. If NDTC begins to offer video programming in Devils Lake,
11 its rural exemption would not apply in the Devils Lake exchange for Midcontinent
12 (where Midcontinent acts as the incumbent cable operator providing video
13 programming in Devils Lake). Therefore, Midcontinent's conclusion does not
14 follow that because of this limitation, the termination of the exemption is not
15 likely to be unduly economically burdensome since NDTC does not provide video
16 programming. (Gates at 23; "That is another reason to conclude that termination
17 of the exemption is unlikely to be unduly economically burdensome.")

18

19 **Q: WHAT IS YOUR UNDERSTANDING OF TWO AVENUES OF RESALE**
20 **DISCUSSED BY MR. DIRCKS?**

21 A: There are two avenues for resale offered by the Act. The first is Section 251(b)(1)
22 resale which is commonly called retail resale because it does not have a wholesale
23 discount applied to the rates. The second is Section 251(c)(4) resale which is

1 called wholesale resale because this resale is offered at a wholesale discount.
2 Should it wish, Midcontinent is able to request retail resale at any time because
3 there is no rural exemption granted to NDTC for this offering. Midcontinent has
4 never requested retail resale. Consequently, Midcontinent's claim that NDTC has
5 refused to allow resale is not correct. (Gates at 5) At best, Midcontinent's
6 statement is overly broad. Any effort to infer some anti-competitive motivation
7 by Midcontinent to NDTC is misplaced.

8

9 **Q: WHAT IS YOUR RESPONSE TO MIDCONTINENT'S ALLEGATION**
10 **THAT NDTC'S OPERATIONS WILL BECOME MORE EFFICIENT?**
11 **(GATES AT 20)**

12 A: Mr. Gates has offered no evidence suggesting that NDTC will become more
13 efficient once it faces wireline telecom competition. He seems to allude to
14 unspecified improvements that NDTC will need to undertake if Midcontinent
15 resells NDTC's service. Moreover, Midcontinent fails to grasp the impact that
16 wireless service has on wireline operations as well as NDTC's experience with
17 competition for high speed internet service.

18

19 **Q: HAS MIDCONTINENT PROVIDED SUPPORT FOR ITS ALLEGATION**
20 **THAT IT PROVIDES SUPERIOR SERVICE QUALITY? (LOHNES AT 5)**

21 A: No. Midcontinent has provided no support that it will provide superior quality
22 service. Furthermore, I believe any discussion regarding operational quality
23 superiority is moot in the context of resold services because a reseller is reselling

1 the underlying carrier's service. Thus, it is unclear how Midcontinent expects to
2 improve operational service quality in the Devils Lake exchange.

3
4 **Q: WHAT IS WRONG WITH MIDCONTINENT'S ANALYSIS REGARDING**
5 **THE FCC'S DEFAULT WHOLESALE DISCOUNT RATE? (FISCHER AT**
6 **4)**

7 A: There are several errors with Midcontinent's analysis. First, the FCC standard for
8 determining a wholesale discount rate does not apply except in arbitration: the
9 parties can reach a voluntary agreement without any regard to the FCC's pricing
10 standard. (47 U.S.C. § 252(a) and 252(d)(3))

11
12 Second, the FCC's interim rate quoted by Midcontinent's witness would apply
13 only when the NDPSC cannot establish a wholesale rate using the incumbent's
14 avoided retail cost study. (47 CFR § 51.611(a)) Apparently, Midcontinent seeks
15 to have the Commission apply this interim rate without giving NDTC the
16 opportunity to produce a wholesale cost study in the event arbitration is required.
17 To date, NDTC has not produced a wholesale cost study for its Devils Lake
18 exchange because it is exempt from this provision in the Act. In the event the
19 NDPSC terminates NDTC's rural exemption for wholesale resale as to
20 Midcontinent in Devils Lake, NDTC would then need to be in the position to
21 offer a specific wholesale discount rate. If Midcontinent does not agree with this
22 proposed discount percentage during negotiations, NDTC may need to produce a
23 study, and an arbitrator may need to examine a NDTC cost study and establish a

1 wholesale discount based on that cost study. Only if the arbitrator or NDPSC
2 determined that the NDTC study is defective would the interim rate apply – and
3 the interim rate would only apply for a limited time. (See 47 CFR § 51.611(c))
4

5 Furthermore, as explained later, I disagree with the methodology used by Mr.
6 Fischer. His analysis is largely incomplete and in some instances inaccurate. I
7 recommend the NDPSC disregard his numerical assessment of Midcontinent's
8 proposed competition strategy in Devils Lake.
9

10 **Q: WHAT IS YOUR RESPONSE TO MIDCONTINENT'S PROPOSED 90-**
11 **DAY IMPLEMENTATION TIMELINE? (GATES AT 24 AND LOHNES**
12 **AT 5)**

13 A: Midcontinent's proposal is unrealistic and is not consistent with the time and
14 manner standard established by Congress for Section 251(c) requests. This will
15 only be a Section 251(c) request if the Commission decides wholesale resale is
16 required to be provided by NDTC in its Devils Lake exchange. Under the Act,
17 the parties may negotiate for 135 days and, if no resolution is reached, arbitration
18 may be requested between 135 and 160 days from the request. The NDPSC has
19 up to nine months to approve an arbitration award for disputed items. Once the
20 rural exemption determination is resolved, either the matter is dismissed or the
21 normal Section 252 clock then applies. Imposing an arbitrary 90-day
22 implementation deadline on the resolution of terms and conditions and, more

1 importantly, the development and review of an avoided cost study before the rural
2 exemption issue is decided is unrealistic and unduly burdensome.

3
4 Accordingly, I think it is clear by the time frames included within the Act that
5 interconnection arrangements under the Act are not established out of thin air.
6 Rather, the practical affect of the Act's structure is to allow the parties sufficient
7 time to negotiate all of the terms and conditions that each party feels necessary to
8 ensure that its business interests are properly addressed in both the agreement and
9 the agreement's implementation. Midcontinent appears to focus solely on the
10 discount rate (which has yet to be negotiated) and apparently wants the
11 Commission to look past the need for all of the other terms and conditions
12 necessary to establish and implement a resale agreement (whether that be a resale
13 with a wholesale discount or a simple retail resale arrangement).

14
15 **III. PUBLIC POLICY SUPPORTING THE PUBLIC INTEREST**
16 **IN THIS CASE**

17
18 **Q: DO YOU AGREE WITH MIDCONTINENT'S CONCERN ABOUT**
19 **ESTABLISHING A LEVEL PLAYING FIELD? (LOHNES AT 5)**

20 A: Yes. I believe there is a public policy concern about establishing a level playing
21 field. As expressed by Mr. Dirks, contrary to Midcontinent's allegation, the
22 playing field in the Devils Lake exchange favors Midcontinent. Customers
23 appear to enjoy "one-stop shopping" and Midcontinent actually acknowledges

1 this fact. (Gates at 15) However, the favorable treatment associated with
2 “bundled” service offerings, particularly where the video service is bundled, that
3 Midcontinent may receive is not reciprocal for NDTC. For example,
4 Midcontinent may resell NDTC’s telecommunications service, but NDTC cannot
5 at present resell Midcontinent’s cable service. Compounding this inequity is the
6 clear advantage Midcontinent has being affiliated with cable giant Comcast. In its
7 latest press release on the internet (December 12, 2005), Midcontinent describes
8 itself as follows:

9 Midcontinent Communications, a subsidiary of Midcontinent Media, Inc.
10 and Comcast, is the Upper Midwest’s leading provider of cable television,
11 local and long distance telephone service, high-speed Internet access, and
12 cable advertising services to communities in North and South Dakota,
13 Northern Nebraska, and Western Minnesota. Midcontinent’s service area
14 includes over 200 communities serving over 200,000 customers.³
15

16 The size and scope of Midcontinent is further confirmed by Ms. Lohnes. (Lohnes
17 at 3)

18
19 Accordingly, the NDPSC should consider the size of giant Midcontinent versus
20 NDTC in Devils Lake when it makes a determination in removing a rural
21 exemption designed to preserve and advance universal service. As the core of the
22 Devils Lake exchange experiences competition, the periphery may be left to carry
23 the burden of universal service; the possibility of this result has not been
24 examined by Midcontinent and should be considered in any universal service
25 analysis. The legislative presumption is that NDTC’s rural exemption helps
26 promote universal service.

³ <http://www.midcocomm.com/LatestNews/NewsDetail40.cfm?Id=0,69>

1 **Q: IS MIDCONTINENT A LARGE PLAYER IN VIDEO?**

2 A: Yes, as noted above.

3

4 **Q: DOES THAT LIKELY MAKE MIDCONTINENT A SIZEABLE**
5 **COMPETITOR IN DEVILS LAKE?**

6 A: Yes. Based on the testimony of Midcontinent and Mr. Gates in particular, it
7 appears that the objective of Midcontinent is to establish a beachhead in Devils
8 Lake with NDTC wholesale resale and then convert the Midcontinent's resale
9 customers to some form of facilities-based telecommunications service offering
10 that may or may not require the use of NDTC network. The public policy
11 objectives within North Dakota should include an examination of the ultimate
12 goal of Midcontinent's migration strategy – starting with wholesale resale but
13 ultimately ending up with facilities-based competition. Facilities-based
14 competition can be a healthy development in a community, but at the very least
15 that result can only occur if the playing field is level and fair. Duties to serve all
16 customers in a timely manner should be reciprocal. At present, Midcontinent
17 does not have any of these duties. The reality is that Midcontinent is in the best
18 position to "cherry pick" customers. The NDPSC should examine seriously the
19 potential of Midcontinent's strategy because it will be copied in other rural
20 communities in North Dakota, just as it has in the past. The consequences of
21 overturning a presumed rural protection can be harmful to universal service and
22 harmful to the public interest of North Dakota.

23

1 Q: IN THE EVENT THIS COMMISSION LIFTS NDTC'S RURAL
2 EXEMPTION FOR 251(C)(4) DUTIES IN DEVILS LAKE FOR
3 MIDCONTINENT, WHAT RECOMMENDATION DO YOU HAVE
4 REGARDING ALLOWING MIDCONTINENT TO RESELL NDTC
5 TELECOMMUNICATIONS SERVICES AT A WHOLESALE
6 DISCOUNT?

7 A: I recommend the NDPSC deny Midcontinent's petition to terminate NDTC's
8 exemption. When NDTC begins offering video programming in Devils Lake,
9 then its rural exemption in Devils Lake will no longer apply to Midcontinent as
10 the incumbent cable carrier offering service in Devils Lake. At that time, NDTC
11 and Midcontinent will be able to compete as equally as possible for one-stop
12 shoppers.

13
14 In the event, however, that the NDPSC terminates NDTC's rural exemption in
15 Devils Lake for wholesale resale as to Midcontinent, I recommend the use of the
16 standard Section 252 schedule for the negotiation and potential arbitration of an
17 interconnection agreement between the parties. This process is well tested and
18 provides equal opportunities for parties to negotiate and, if necessary, arbitrate
19 issues.

1 **Q: IS YOUR ALTERNATE RECOMMENDATION -- TO LIFT NDTC'S**
2 **RURAL EXEMPTION FOR MIDCONTINENT'S RESALE AND ALLOW**
3 **FOR NEGOTIATION REGARDING TERMS AND CONDITIONS,**
4 **INCLUDING THE WHOLESALE DISCOUNT -- CONSISTENT WITH**
5 **THE PUBLIC POLICY OF NORTH DAKOTA?**

6 **A: Yes.**

7

8 **Q: DOES THIS CONCLUDE YOUR REPLY TESTIMONY?**

9 **A: Yes.**

10

11