

**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)

REBUTTAL TESTIMONY OF MARY LOHNES

On Behalf Of
MIDCONTINENT COMMUNICATIONS

January 13, 2006

1 Q. **PLEASE STATE YOUR NAME FOR THE RECORD:**

2 A. Mary Lohnes.

3 Q. **BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

4 A. I am employed by Midcontinent Communications as Manager Regulatory Affairs.

5 Q. **DID YOU FILE DIRECT TESTIMONY?**

6 A. Yes.

7 Q. **WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?**

8 A. I am providing this testimony to respond to certain specific claims made in the
9 testimony of Douglas Meredith and David Dircks.

10 Q. **MR. MEREDITH'S TESTIMONY, ON PAGES 12 AND 13, DISCUSSES
11 YOUR CONCLUSION THAT IT WOULD BE REASONABLE TO
12 EXPECT RESALE TO BE IMPLEMENTED WITHIN 90 DAYS OF
13 COMMISSION ACTION IN THIS PROCEEDING. COULD YOU
14 RESPOND TO HIS STATEMENTS ON THIS ISSUE?**

15 A. Yes. My estimate was based on Midcontinent's experience in beginning resale
16 service in other markets following the time that Midcontinent has made a request.

17 In practical terms, once an agreement is reached there is very little work
18 that needs to be done technically, and the time necessary largely is related to
19 setting up the back office processes. Midcontinent appreciates that this is new
20 processes for NDTA but we have experience and industry standard processes in
21 place that can be shared with NDTA for a quick and smooth set-up. Mr.
22 Meredith's testimony makes the assumption that the full arbitration period would
23 be necessary before resale could begin, but that is not necessarily the case.

1 **Q. ON PAGES 2 AND 3 OF HIS TESTIMONY, MR. DIRCKS ASSERTS**
2 **THAT NDTC COULD NOT DETERMINE FROM MIDCONTINENT'S**
3 **MAY 12, 2005, LETTER WHETHER MIDCONTINENT WAS SEEKING**
4 **TO OBTAIN RETAIL RESALE OR WHOLESALE RESALE. DO YOU**
5 **HAVE A RESPONSE TO THAT CLAIM?**

6 A. Yes. Midcontinent's request should have been clear to NDTC because of the
7 attachment to the letter. As described in my direct testimony, the attachment was
8 the form of a resale agreement between Midcontinent and NDTC. That
9 agreement called for wholesale resale. A copy of the letter, with the attachment,
10 is attached to this rebuttal testimony as Exhibit 1.

11 **Q. MR. DIRCKS' DIRECT TESTIMONY ON PAGE 5 STATES THAT YOUR**
12 **DIRECT TESTIMONY INCORRECTLY CONSTRUES NDTC'S**
13 **ADVERTISING, NEWSLETTERS AND HELP WANTED ADVERTISING**
14 **CONCERNING TO INDICATE THAT NDTC PLANS TO OFFER VIDEO**
15 **SERVICES. WOULD YOU LIKE TO RESPOND TO THIS STATEMENT?**

16 A. Yes. First, Mr. Dircks has now confirmed that NDTC is, in fact, planning to enter
17 the video business in Devils Lake in early 2007, and that it began construction of
18 the fiber optic plant that will be used to support video service last year.

19 Second, Mr. Dircks provided only selected materials concerning NDTC's
20 future plans, and other materials support the statements I made in my direct
21 testimony. For instance, in a press release dated October 3, 2005, NDTC and one
22 of its vendors announced that NDTC was purchasing the vendor's "Triple Play"
23 solution for fiber facilities. "Triple play" is a term that refers to offering voice,

1 high-speed Internet and video services. Similarly, Mr. Dircks was quoted in an
2 article in the *Minot Daily News* on August 23, 2005 as saying that NDTC required
3 certain regulatory action “to bundle services and compete with cable providers.”
4 Another NDTC executive, Richard Ellison, told Telephony Online that video
5 service is “probably in our future.” These statements are consistent with a variety
6 of NDTC communications to its customers, such as a customer notice concerning
7 the construction of fiber that stated that the fiber plant would allow NDTC “to
8 deliver telephone, Internet and new products in the future all on one fiber optic
9 line.” (I have attached copies of the materials described above and other relevant
10 communications from NDTC to this testimony as Exhibit 2.) Finally, even the
11 help wanted advertisement attached to Mr. Dircks’s testimony indicates that the
12 position requires experience in “video.”

13 **Q. MR. DIRCKS ASSERTS ON PAGE 8 OF HIS TESTIMONY THAT HE**
14 **DOES “NOT EXPECT THAT NDTC WILL RECEIVE THE SAME RATES**
15 **FROM PROGRAMMERS THAN MIDCONTINENT IS ABLE TO**
16 **RECEIVE.” DO YOU WISH TO RESPOND TO THAT CLAIM?**

17 A. Yes. Although NDTC will offer video service to only a small number of
18 customers when it begins to provide service, that does not mean it cannot obtain
19 discounted programming by joining with other small cable operators. For
20 instance, many small cable operators are members of the National Cable
21 Television Cooperative, which negotiates programming contracts on behalf of all
22 of its members. The cooperative’s membership includes rural telephone
23 companies like NDTC that provide video service. Together, the members of the

1 cooperative serve many times more video customers than Midcontinent does, and
2 so the cooperative can negotiate favorable rates with programmers.

3 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

4 A. Yes.



WILLIAM P. PEARCE
 PATRICK W. DURICK
 B. TIMOTHY DURICK
 GARY R. THUNE
 DAVID E. REICH
 JEROME C. KETTLESON
 LARRY L. BOSCHEE •
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May 12, 2005

Mr. Dave Dircks, General Manager
 North Dakota Telephone Company
 P.O. Box 180
 Devils Lake, ND 58301-0180

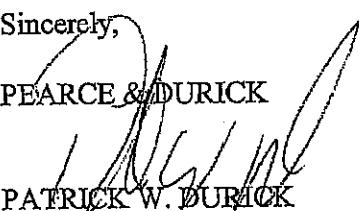
Re: Resale Agreement
 Midcontinent Communications

Dear Sir:

We represent Midcontinent Communications and the purpose of this letter is to propose a Resale Agreement between North Dakota Telephone Company and Midcontinent Communications. A copy of a proposed agreement is enclosed for your review and comment.

Please review the enclosed agreement and contact me with any suggested revisions to the agreement. I look forward to working with you to reach an agreement.

Thank you for your anticipated cooperation.

Sincerely,

 PEARCE & DURICK
 PATRICK W. DURICK

PWD/jf

Enclosure.
 cc: Mary Lohnes

RESALE AGREEMENT

Between

NORTH DAKOTA TELEPHONE COMPANY

AND

MIDCONTINENT COMMUNICATIONS

IN THE STATE OF

NORTH DAKOTA

_____ , 2005

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Section 1.0 - GENERAL TERMS

1.1 This Agreement must be filed with the North Dakota Public Service Commission (Commission). Absent Commission action within 90 days of the filing the Agreement will be deemed approved. The Agreement is between North Dakota Telephone Company (NDTC), a North Dakota cooperative and Midcontinent Communications (Midcontinent), a South Dakota General Partnership.

1.2 This Agreement sets forth the terms, conditions and pricing under which NDTC will offer and provide to Midcontinent, telecommunications services available for resale within the Devils Lake, ND exchange and for which NDTC is the incumbent local exchange carrier with the State of North Dakota for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.

Section 2.0 - TERMS AND CONDITIONS

2.1 General Provisions

2.1.1 Each Party is solely responsible for the services it provides to its end users and to other telecommunications carriers. This provision does not limit the liability of either Party for its failure to perform under this agreement.

2.1.2 The Parties shall work cooperatively to minimize third party fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement. Blocking of these services may be necessary to minimize fraud.

2.2 Term of Agreement

2.2.1 This Agreement shall become effective in accordance with the time frame set by North Dakota Statute. This Agreement shall be binding upon the Parties for a term of two (2) years unless terminated earlier pursuant to Section 2.2.3. It shall remain effective following the initial term on a month-to-month basis until the Parties enter into a successor agreement or the Agreement is terminated pursuant to Section 2.2.3.

2.2.2 Any Party may request negotiation for a successor Agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the initial term and at any time thereafter.

2.2.3 This Agreement shall terminate:

2.2.3.1 Following the expiration of the initial term upon one hundred sixty

(160) days prior notice from one Party to the other, provided that the Agreement shall continue in effect until a successor agreement becomes effective.

2.2.3.2 Pursuant to the terms of Section 2.4.2 hereof.

2.2.3.3 Except as otherwise provided in this Agreement, upon fifteen (15) days written notice from one Party, if that Party previously notified the other Party in writing that the other Party was in breach of a material provision of this Agreement, and the other Party failed to correct the breach within thirty (30) days from receipt of written notice and to notify the first Party in writing that the breach has been corrected. If a Party fails to exercise its right to terminate the agreement pursuant to this Section 2.2.3.3 within sixty (60) days of a notice of breach, it shall be required to provide a new notice of breach in accordance with this section 2.2.3.3 before it can terminate the Agreement.

2.3 Proof of Authorization (POA)

2.3.1 Each Party shall be responsible of obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

2.4 Performance

2.4.1 Amounts payable under this Agreement are due and payable within twenty (20) calendar days after bill date. If the payment due date is not a business day, the payment shall be due the next business day.

2.4.2 Except for amounts disputed pursuant to Section 2.4.5 herein, the following shall apply:

2.4.2.1 If payment is not received thirty (30) days from the bill date, NDTC may provide written notice to Midcontinent that additional applications for service will be refused, and that any pending orders for service will not be completed if payment is not received by the fifteenth (15th) day following the date of the notice. If NDTC does not refuse additional applications for service on the date specified in the notice, and Midcontinent's noncompliance continues, nothing contained herein shall preclude NDTC's right to refuse additional applications for service without further notice.

2.4.2.2 If Midcontinent fails to make any payment following the notice under Section 2.4.2.1, NDTC may, on thirty (30) days written notice to Midcontinent's designated representative, discontinue the provision of

existing services to Midcontinent at any time thereafter. Such notice will be sent by certified mail, return receipt requested. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If NDTC does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and Midcontinent's noncompliance continues, nothing contained herein shall preclude NDTC's right to discontinue the provision of the services to Midcontinent without further notice.

2.4.2.3 If payment is not received within sixty (60) days of the notice under Section 2.4.2.1, NDTC may terminate this Agreement.

2.4.3 After disconnect procedures have begun, NDTC shall not accept service orders from Midcontinent until all unpaid charges are paid in full in immediately available funds. NDTC shall have the right to require a deposit equal to two month's charges (based on the highest previous month of service from NDTC) prior to resuming service to Midcontinent after disconnect for nonpayment has occurred.

2.4.4 In the event NDTC properly terminates the provisioning of any resold services to Midcontinent for any reason, and subject to the requirements of the Commission and the FCC, Midcontinent shall be responsible for providing any and all necessary notice to its end users of the termination. NDTC shall not be responsible for providing such notice to Midcontinent's end users unless required by the Commission or the FCC.

2.4.5 Disputes: Midcontinent shall, in writing, advise NDTC of any disputes with respect to billing within forty-five (45) calendar days of the receipt of the invoice and include the specific amount (the "Disputed Amount"), details and reasons for disputing each item. If Midcontinent provides written notice of such dispute within thirty (30) days of receipt of an invoice, it shall not be required to pay the Disputed Amount and the provisions of Sections 2.4.2 shall not apply to the Disputed Amount during the pendency of this dispute. The Parties agree to expedite the investigation of any Disputed Amount in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be resolved in favor of NDTC, Midcontinent shall thereafter pay to NDTC any unpaid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute. Should the dispute be resolved in favor of Midcontinent, NDTC shall pay to Midcontinent any paid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute, and shall remove any unpaid Disputed Amount resolved in favor of Midcontinent from Midcontinent's invoices. If a Disputed Amount remains unpaid thirty (30) days after final resolution of such dispute, NDTC may disconnect service to Midcontinent upon providing ten

(10) days' written notice.

2.5 Taxes

2.5.1 Any federal, state or local taxes including but not limited to sales, use, excise, franchise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges, from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever required by law, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to qualify for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

2.6 Insurance

2.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain all insurance required by law and Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage and contractual liability with respect to the liability assumed by that Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit. Each Party will provide a certificate of insurance evidencing coverage within 90 days of execution of this Agreement and every year thereafter that this Agreement is in effect.

2.7 Force Majeure

2.7.1 Neither party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work

stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without the Party's fault or negligence. If affected by a Force Majeure Event, a Party shall give prompt notice to the other Party, and shall be excused from performance of its obligations hereunder on a Day to Day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the affected Party agrees to provide service to the other Party at a level equivalent to the level the affected Party provides itself.

2.8 Limitation of Liability

2.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to the other Party under this Agreement during the contract year in which the cause accrues or arises.

2.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

2.8.3 Nothing contained in this Section shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of a Party's respective agents, subcontractors, or employees.

2.8.4 Nothing contained in this Section shall limit either Party's indemnification obligations pursuant to Section 2.9 of this Agreement, nor shall this Section limit a Party's liability for failing to make any payment due under this Agreement.

2.9 Indemnity

2.9.1 Each Party (the Indemnifying Party) agrees to release, indemnify, defend

and hold harmless the other Party (the Indemnified Party) and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any person or entity, for invasion of privacy, bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

2.9.2 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

2.9.3 If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

2.9.4 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party.

2.10 Warranties

NDTC HEREBY STATES AND MIDCONTINENT HEREBY ACKNOWLEDGES THERE DOES NOT EXIST ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

2.11 Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other party, except that either Party may assign or transfer this agreement in connection with the acquisition of all or substantially all of the Party by another entity with sixty (60) days written notice to the other Party. Any attempted assignment or transfer that is not permitted is void ab initio.

2.12 Disclaimer of Agency

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute designation of either Party as a legal representative or agent of the other Party, nor shall either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted in writing by other Party. Except as otherwise expressly provided in this Agreement, neither Party undertakes to perform any obligation of the other Party, whether regulatory or contractual.

2.13 Severability

In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

2.14 Nondisclosure

2.14.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans and user customer specific, facility specific, or usage specific information, other than end user customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the other Party at the time of delivery, or by written within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Confidential Information"), shall remain

the property of disclosing Party.

2.14.2 Upon termination of this agreement or any time during this Agreement upon request by the disclosing Party, the other Party shall return all tangible copies of Confidential Information, whether written graphic or otherwise.

2.14.3 The receiving Party shall keep the disclosing Party's Confidential Information confidential. In no case shall retail marketing, sales personnel, or strategic planning have access to such Confidential Information. Each Party shall use the other Party's Confidential Information only in connection with this Agreement.

2.14.4 Each Party agrees that the other Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement and that a disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

2.15 Survival

Any liabilities or obligations by a Party for acts or omissions prior to the termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

2.16 Controlling Law

This Agreement is made in accordance with applicable federal law and the state law of North Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of North Dakota.

2.17 Notices

Any notices required by or concerning this Agreement shall be in writing sent by certified mail, return receipt requested to NDTC and Midcontinent at the addresses shown below:

North Dakota Telephone Company:

North Dakota Telephone Company
P.O. Box 180
Devils Lake, ND 58301-0180

With copy to:

And to Midcontinent at the address shown below:

Midcontinent Communications
Mary Lohnes, Regulatory Affairs Manager
5001 W 41st Street
Sioux Falls, SD 57106
Phone (605) 357-5459
Fax (605) 339-4419

Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section.

2.18 Responsibility of Each Party

Each Party is an independent contractor with respect to the other party, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations, and (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

2.19 No Third Party Beneficiaries

The provisions of this Agreement are for the benefit of the Parties and not for any other person. This Agreement will not provide any person not a Party to this Agreement with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

2.20 Publicity

Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Neither Party may use the other Party's logo or any other symbol or language for which the other Party has trademark or copyright protection.

2.21 Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

2.22 Compliance

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, each Party agrees to keep and maintain in full force and in effect all permits, licenses, certificates, and other authorizations needed to perform obligations hereunder.

2.23 Compliance with the Communications Assistance Law Enforcement Act of 1994.

Each Party represents and warrants that any equipment, facilities or services provided under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance.

2.24 Cooperation

The Parties agree that this Agreement involves the provision of NDTC services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, and provisioning.

2.25 Amendments

Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing the desired amendment and proposed language changes. This Agreement can only be amended in writing, executed by duly authorized representatives of the Parties.

2.26 Entire Agreement

This Agreement constitutes the entire agreement between NDTC and Midcontinent and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

2.27 Dispute Resolution

2.27.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 2.27 shall be the preferred, but not the exclusive remedy for all disputes between NDTC and Midcontinent arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 2.27 shall limit the right of either Party, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 2.27. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

2.27.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar Days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted on an informal basis. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

2.27.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar Days after the date of the Resolution Request, then either Party may request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar Days after the Resolution Request pursuant to the terms of Section 2.27.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 2.27. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute.

The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in a mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).

2.27.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its end user customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar Days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 2.27.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

2.27.3.2 There shall be no discovery except for the exchange of

documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. NDTc and Midcontinent shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either NDTc or Midcontinent may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between NDTc and Midcontinent, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

2.27.4 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

2.27.5 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the Arbitrator shall remain in effect, but the enjoined Party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review, a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

2.27.6 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 2.14 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide prior written notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

2.27.7 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the

court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

2.27.8 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

2.27.9 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

2.27.10 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

2.27.11 This Section does not apply to any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, trade name, trade dress or service mark of a Party.

Section 3.0 - RESALE

3.1 Description

3.1.1 NDTC shall offer to Midcontinent for resale at wholesale rates any Telecommunications Services tariffed with the Commission that it provides at retail to subscribers who are not telecommunications carriers, subject to the terms and conditions of this Agreement. Appendix A lists services which are available for resale under this Agreement and the applicable discounts, and is attached and incorporated herein by this reference.

3.1.2 Upon request by NDTC, Midcontinent shall make its Telecommunications Services available to NDTC for resale pursuant to the applicable provisions of the Telecommunications Act of 1996, the FCC's relevant orders and rules, and the Commission's relevant orders and rules.

3.2 General Provisions

3.2.1 Residential services and Lifeline/Link-up services are available only to the same class of end user eligible to purchase these services from NDTC. Universal emergency number service is not available for resale.

3.2.2 Non-Telecommunications Services, including but not limited to inside

wiring and maintenance, CPE, ADSL, and directory listing charges are not available for resale under this Agreement unless NDTC in its sole discretion decides to make the services available. If NDTC at its sole discretion provides non-regulated services to Midcontinent for resale, said services shall be resold to Midcontinent according to terms and conditions established by NDTC.

3.2.3 Telecommunications Services provided directly to Midcontinent for its own use and not resold to end users must be identified by Midcontinent as such, and Midcontinent will pay NDTC retail prices for such services.

3.2.4 Resold services are available only where adequate facilities currently exist that are capable of providing such services without construction of additional facilities or enhancement of existing facilities, except to the extent that NDTC would provide such additional construction or enhancement had the end user chosen not to move service to Midcontinent and that Midcontinent pays NDTC's standard charges for such construction or enhancement.

3.2.5 Midcontinent has no right to the telephone number or any other call number designation associated with services furnished by NDTC. NDTC reserves the right to change telephone numbers if necessary as a result of regulatory requirements or safety concerns.

3.2.6 Discontinuance of end user service for cause.

3.2.6.1 The service is furnished subject to the condition it will not be used for an unlawful purpose. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advises that such service is being used or will be used in violation of law. If NDTC receives other evidence giving reasonable cause to believe that such service is being used or will be so used, it will either discontinue or deny the service or refer the matter to the appropriate law enforcement agency.

3.2.6.2 NDTC reserves the right to suspend or discontinue service to an end user in the event of prohibited, unlawful or improper use of facilities or service, abuse of facilities, or any other violation or noncompliance of the rules and regulations of the NDTC Local Exchange Tariff.

If NDTC discontinues, suspends or denies service pursuant to this Section 3.2.6, NDTC will provide notice to Midcontinent of such discontinuance or denial.

3.2.7 NDTC accepts no responsibility for any unlawful act committed by Midcontinent or its end users as part of providing service to Midcontinent for purposes of resale or otherwise.

3.2.8 NDTC is authorized, but not required to cooperate with law enforcement agencies with respect to their investigation of any alleged unlawful activity of Midcontinent or its end users. Law enforcement agency subpoenas and court orders regarding the end users of Midcontinent will be directed to Midcontinent. NDTC shall be entitled to bill Midcontinent for any cost associated with complying with any requests by law enforcement agencies regarding Midcontinent or Midcontinent's end users that NDTC does not recover from law enforcement agencies. NDTC will determine whom to bill for these costs. If NDTC provides such assistance in response to a request from Midcontinent, it shall be entitled to bill Midcontinent for any cost associated with providing such assistance.

3.2.9 NDTC will accept at no charge one primary listing for each main telephone number belonging to Midcontinent's end user customer based on end user information provided to NDTC by Midcontinent. NDTC will place Midcontinent's listings in the NDTC directory and will make listings available to directory publishers and other third parties. NDTC reserves the right to charge Midcontinent for subsequent changes to directory listing information at NDTC's Tariffed rates.

3.2.10 Interexchange carried traffic (e.g. sent-paid, information services and alternate operator services messages) received by NDTC with respect to Midcontinent end-user accounts will be returned to the IXC as unbillable, and will not be passed on to Midcontinent for billing. An unbillable code returned with those messages to the carrier will indicate that the messages originated from a resold account and will not be billed by NDTC.

3.2.11 NDTC shall continue to have the right to serve and market directly to any end user within NDTC's service area, including but not limited to Midcontinent's end users. NDTC shall have the right to continue to directly market its own telecommunications products and services, and in doing so may establish independent relationships with Midcontinent's end users.

3.2.12 The circuits, facilities or equipment provided by any person or entity other than NDTC and use, operation, maintenance or installation thereof shall not:

3.2.12.1 interfere with or impair NDTC's business operations including but not limited to providing service over NDTC's facilities or those of NDTC's affiliates, or connecting and concurring carriers;

3.2.12.2 cause damage to NDTC's plant;

3.2.12.3 impair the privacy of any communications of NDTC or its

customers; or

3.2.12.4 create hazards to any NDTC employees or the general public.

3.2.13 Facilities and/or equipment utilized by NDTC to provide service to Midcontinent shall remain the property of NDTC.

3.2.14 All costs incurred by NDTC for providing services to Midcontinent that are not covered in the NDTC tariffs or in this Agreement shall be recovered from Midcontinent. NDTC shall attempt to provide advance written notice to Midcontinent if NDTC expects costs to exceed \$500. NDTC may not always be able to provide such notice in the event of unexpected expenses.

3.2.15 The rates applicable to Midcontinent for purchase of services from NDTC for resale shall be the retail rate for the telecommunications services as provided in NDTC's applicable Local Exchange Tariff less the wholesale discount listed in Appendix A.

3.2.16 Directory assistance and operator handled service are available through a third party provider. These services are not directly provided by NDTC and will not be discounted.

3.2.17 Prior to placing any orders for services under this Agreement, the Parties will jointly complete NDTC'S "New Customer Questionnaire."

3.2.18 NDTC shall provide to Midcontinent, for Midcontinent's end users, E911/911 call routing to the appropriate public safety answering point (PSAP). NDTC shall not be responsible for any failure of Midcontinent to provide accurate end user information for listings in any databases in which NDTC is required to retain and/or maintain such information. NDTC shall provide Midcontinent's end user information to the Automatic Location Identification/Database Management System (ALI/DMS).

3.3 Reseller Responsibilities

3.3.1 Midcontinent will be the customer of record for all services purchased hereunder from NDTC. NDTC will take service orders from, bill and collect payment from Midcontinent for all services purchased pursuant to this Agreement. Midcontinent alone, not Midcontinent's agents or third parties hired by Midcontinent will be NDTC's single point of contact for all services purchased pursuant to this Agreement. NDTC will accept a request from another local service provider for conversion of the end user's service from Midcontinent to the other local service provider in accordance with applicable requirements of the FCC and the Commission.

3.3.2 Midcontinent shall resell telecommunications services only to the same class of customers to which NDTC sells the services; e.g. residential service may not be resold to business customers. Except where explicitly provided in the NDTC Local Exchange Tariff or where NDTC otherwise permits such use, Midcontinent shall not permit the sharing of a service by multiple end users or the aggregation of traffic from multiple end users onto a single line service.

3.3.3 Midcontinent shall not use resold local exchange telephone service to provide access services to interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunication service providers.

3.3.4 All necessary information with respect to an end-user, including telephone number, requested service dates, and products and services desired will be provided to NDTC by Midcontinent in accordance with the practices and procedures established by NDTC.

3.3.5 Midcontinent shall not interfere with the right of any person or entity to obtain service directly from NDTC.

3.3.6 If NDTC determines that an unauthorized change in local service by a local service provider has occurred, NDTC will reestablish service with the appropriate local service provider, and will assess against the local service provider an unauthorized change charge. Appropriate nonrecurring charges, as set forth in the Local Exchange Tariff as applicable, will also be assessed to the local service provider.

3.3.7 To the extent allowable by law, Midcontinent shall be responsible for primary interexchange carrier (PIC) change charges associated with such local exchange line and trunks. Midcontinent shall pay for PIC changes at the tariffed rate.

3.3.8 Midcontinent is solely responsible for the payment of charges for all services furnished under this Agreement.

3.3.9 NDTC shall not be responsible for the manner in which the use of Telecommunications Services or the associated charges are billed to others by Midcontinent.

3.3.10 If Midcontinent does not wish to be responsible for toll, collect, third number billed, 900 calls, last call return, caller originated trace, directory assistance inquiries, operator assistance charges Midcontinent must order blocking services as outlined in the NDTC Local Exchange Tariff and pay any applicable charges.

3.3.11 Midcontinent shall be responsible for providing to its end users, and to NDTC a telephone number or numbers that Midcontinent end users can use to contact Midcontinent in the event of service or repair requests.

3.4 Establishment of Service

3.4.1 Midcontinent will provide NDTC with the necessary documentation to enable NDTC to establish a master account for Midcontinent.

3.4.2 Service orders will be submitted in the format designated by NDTC. The format shall conform to the formats adopted by the Ordering and Billing Forum or shall require only the information necessary for NDTC to process an order, including customer-identifying information, services requested and the date on which service is to commence, be changed or be discontinued.

3.4.3 When NDTC receives a properly completed service order from Midcontinent that a customer is subscribing to Midcontinent's services, standard service order intervals for the appropriate class of service will apply.

3.4.4 Except as required by applicable laws or rules, NDTC will not require end user confirmation prior to establishing service for Midcontinent's end user customers. Midcontinent must, however, be able to demonstrate lawful end user authorization upon request.

3.4.5 At Midcontinent's request, NDTC will provide to Midcontinent's customers per customer, blocking of calls (e.g., toll, 900, international calls, and third party or collect calls) by line or trunk, to the extent that NDTC provides such blocking capabilities to its customers and to the extent required by law. A nonrecurring charge will apply for any changes.

3.4.6 When ordering Telecommunications Services via a service order, Midcontinent may order from NDTC separate InterLATA and IntraLATA service providers (i.e., two PICs) on a line or trunk basis. NDTC will accept PIC change orders from Midcontinent for Midcontinent's end users. PIC change fees will not be discounted.

3.4.7 NDTC based on a credit check, may require Midcontinent to provide NDTC a security deposit to ensure payment of Midcontinent's account.

3.4.7.1 Such security deposit shall be a cash deposit or other form of security acceptable to NDTC. Any such security deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

3.4.7.2 If NDTC determines that a security deposit is required prior to the activation of service, it shall provide notice to Midcontinent within fifteen (15) days following Commission approval of this agreement.

3.4.7.3 The provision of a security deposit does not relieve Midcontinent from complying with NDTC's regulations as to prompt payment of bills on presentation and does not constitute a waiver or modification of the provisions of Section 2.4.2.

3.4.7.4 NDTC reserves the right to increase the security deposit requirements when, in its sole judgment, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the security deposit. In no event shall the deposit exceed twice the highest amount of any previous invoice. NDTC shall reduce or eliminate any deposit in accordance with its standard policies governing such deposits after satisfactory credit is established, and shall refund the excess deposit including interest accrued within forty-five (45) days after determining that the deposit should be reduced or eliminated.

3.4.7.5 In the event this Agreement is terminated by NDTC any security deposits will be applied to Midcontinent's account and NDTC may pursue any other remedies available by law. To the extent the security deposit exceeds the amounts owed by Midcontinent, NDTC will refund the excess including any interest accrued within one hundred and twenty (120) days after termination of the Agreement.

3.4.7.6 In the case of a cash deposit, interest at a rate as set forth in the appropriate NDTC tariff shall be paid to Midcontinent during the possession of the security deposit by NDTC. Interest on a security deposit shall accrue annually and, if requested, shall be annually credited to Midcontinent by the accrual date.

3.5 Maintenance of Service

3.5.1 NDTC's facilities and equipment provided by NDTC shall be maintained solely by NDTC or its agent.

3.5.2 Midcontinent or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by NDTC without the written consent of NDTC.

3.5.3 Midcontinent shall promptly notify NDTC of any situations that arise that may result in a service problem.

3.5.4 Midcontinent will be NDTC's single point of contact for all repair calls on

behalf of Midcontinent's end users with respect to Telecommunications Services.

3.5.5 Midcontinent will contact NDTC's repair center in accordance with procedures established by NDTC. Midcontinent will refer repair calls to NDTC by telephone.

3.5.6 For all repair requests, Midcontinent shall adhere to NDTC's prescreening guidelines mutually agreed upon prior to referring the trouble to NDTC.

3.5.7 For purposes of this Section, Telecommunications Services is considered restored or a trouble resolved when the quality of Telecommunications Services is equal to that provided before the outage or the trouble occurred.

3.5.8 NDTC will bill Midcontinent for handling troubles that are found not to be in NDTC's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what NDTC charges to its retail customers for the same services.

3.5.9 NDTC Maintenance of Service Charges, when applicable, will be billed by NDTC to Midcontinent, and not to Midcontinent's end-user customers.

3.5.10 NDTC technicians will be dispatched to Midcontinent customer premises pursuant to a repair request being received from Midcontinent.

3.5.11 If trouble cannot be cleared without access to Midcontinent local customer's premises and the customer is not at home, the NDTC technician will leave at the customer's premises a "no access" card requesting the customer to call "their local service provider" for rescheduling of repair.

3.5.12 NDTC will perform testing (including trouble shooting to isolate any problems) of Telecommunications Services purchased by Midcontinent in order to identify any new circuit failure performance problems.

3.5.13 NDTC reserves the right to contact Midcontinent's end users, if deemed necessary, for maintenance purposes.

3.6 Discontinuance of Service

3.6.1 End User Disconnect Procedures

3.6.1.1 At the request of Midcontinent, NDTC will disconnect a

Midcontinent end user customer.

3.6.1.2 All requests by Midcontinent for denial or disconnection of an end user for nonpayment must be provided to NDTC in writing in the manner and format prescribed by NDTC.

3.6.1.3 Midcontinent will be solely responsible for notifying the end user of the proposed disconnection of service.

3.6.1.4 Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of Midcontinent.

3.6.1.5 NDTC may report annoyance calls to Midcontinent when it is determined that annoyance calls are originated from one of Midcontinent's end user's locations. NDTC shall be indemnified, defended and held harmless by Midcontinent against any claim, loss or damage arising from providing this information to Midcontinent. It is the responsibility of Midcontinent to take the corrective action necessary with its customers who make annoying calls. Failure to do so may result in NDTC's disconnecting the end user's service. If either party disconnects a customer pursuant to this Section 3.6.1.5 (Midcontinent via instructions to NDTC to disconnect service or NDTC acting without instructions from Midcontinent), the other Party shall be indemnified, defended and held harmless by the disconnecting Party against any claim, loss or damage arising from a claim of wrongful disconnection.

3.7 Billing and Payments

3.7.1 Pursuant to this Agreement, NDTC shall bill Midcontinent those charges, which Midcontinent incurs as a result of Midcontinent purchasing Telecommunications Services from NDTC.

3.7.2 NDTC shall provide Midcontinent a monthly bill including all charges incurred by and credits and/or adjustments due to Midcontinent for the Telecommunications Services ordered, established, utilized, discontinued or performed pursuant to this Agreement. Each bill provided by NDTC to Midcontinent will include:

3.7.2.1 All non-usage sensitive charges which are billed in advance and usage sensitive charges which are billed in arrears;

3.7.2.2 Any previously unbilled non-usage and usage sensitive charges for prior periods; and

3.7.2.4 NDTC will also bill to Midcontinent all other charges, including

but not limited to 911 and E911 fees, telecommunications relay charges, subscriber line charges, local number portability charges and applicable taxes.

3.7.3 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due NDTc from the Interexchange Carrier.

3.7.4 All end user common line (EUCL) charges, subscriber line charges (SLC), Local Number Portability (LNP) or other similar charges will continue to apply for each local exchange line resold under this Agreement. All applicable federal and state rules, tariffs and regulations associated with such charges shall be applicable, as may be amended from time to time.

3.7.5 Each Party will provide the other Party at no charge a contact person for the handling of any Resale Billing questions or problems.

3.7.6 NDTc will render bills each month on established bill days

3.7.7 If Midcontinent requests an additional copy(ies) of a bill, Midcontinent will pay NDTc a reasonable fee per additional bill copy, unless such copy(ies) was requested due to errors, omissions, or corrections, or the failure of the original transmission to comply with the specifications set forth in this Agreement.

3.7.8 Payment of all charges will be the responsibility of Midcontinent. NDTc is not responsible for payments not received by Midcontinent from Midcontinent's customer. NDTc will not become involved in billing disputes that arise between Midcontinent and its customer. Payments made to NDTc, as payment on account, will be credited to an accounts receivable master account and not to an end user's account. NDTc will not accept payments from Midcontinent's customers to apply on Midcontinent's account.

3.8 Customer Billing Data

3.8.1 End user billing data will be provided according to NDTc practices and procedures. Usage data with respect to end users who have subscribed to a local measured service will be provided by NDTc to Midcontinent when the end user has been transferred to Midcontinent, and Midcontinent purchases Telecommunications Services from NDTc.

3.8.2 NDTc will bill and Midcontinent will pay the applicable charges for usage data set forth in this Agreement. Billing and payment will be in accordance with the applicable terms and conditions set forth in this Agreement.

Section 4.0 - DEFINITIONS

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms maybe defined elsewhere in this Agreement, as well as terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the Effective Date of this Agreement.

"Agreement" refers to the resale agreement signed by both parties.

"Commission" means the North Dakota Public Service Commission.

"Confidential Information" has the meaning set forth in Section 2.14 of this Agreement.

"Parties" means NDTC or Midcontinent collectively.

"Party" means either NDTC or Midcontinent as applicable.

"Tariff" as used throughout this Agreement refers to the NDTC North Dakota tariff filed with the Commission.

"Telecommunications Service(s)" means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. As used in this definition, "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

"Work Locations" means any real estate that NDTC or Midcontinent owns, leases or licenses or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Section 5.0 -SIGNATURE PAGE

By Signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Resale Agreement.

Midcontinent Communications

North Dakota Telephone Company

Signature

Signature

Name Printed/Typed

Name Printed/Typed

Title

Title

Date

Date

APPENDIX A – NORTH DAKOTA LOCAL EXCHANGE SERVICES RESALE OF SERVICES

The Parties agree the following charges apply to the Resale of Local Service:

1. Nonrecurring Charges

a. Customer Transfer Charge (CTC): The following nonrecurring charges apply when converting a NDTC account to a Reseller account or when changing an end user from one reseller to another.

Residence and Business	\$22.20
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b. Product Specific Nonrecurring Charge: As set forth in NDTC tariffs, the product specific nonrecurring charges, without discount, will apply when additional lines or trunks are added or when the end user adds features or services to existing lines or trunks.

2. NDTC shall offer to Midcontinent for resale at wholesale rates from the tariffed pricing Telecommunications Services tariffed with the Commission that NDTC provides at retail to subscribers who are not telecommunications carriers, subject to the terms and conditions of this Agreement. Except as qualified below, NDTC telecommunications services shall be available for resale at a 16.15% discount from the tariffed prices.

a. The services not available for resale include but are not limited to the following services:

- Customer Premises Equipment
- Inside Wire
- Dedicated or Switched Access Service
- Promotions of 90 days or less in length
- Non Tariffed items
- Voice Mail
- Toll services
- ADSL
- Operator Services*
- Directory Listing charges
- Nonregulated services
- Directory Assistance Services*

Services marked with an * are available for resale, but not at discounted rates.

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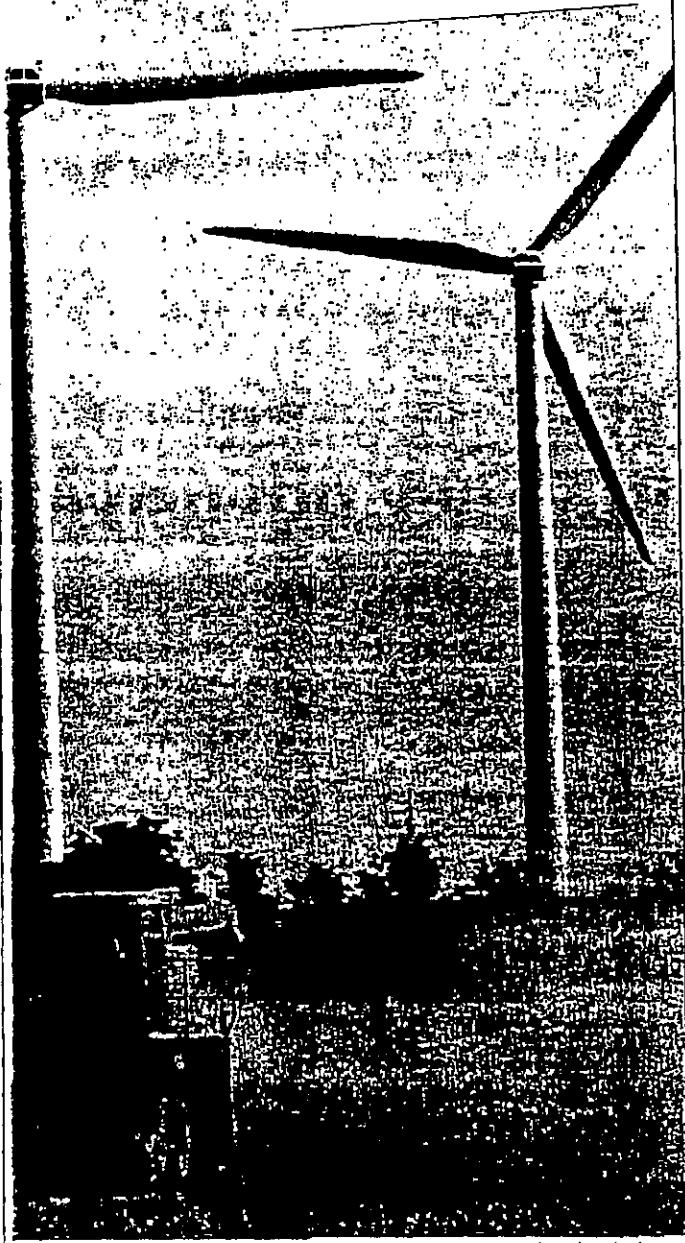
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s attorney's office that

See FEMA — Page B4

Hearty harvest

Minot Daily News
August 23, 2005



Robert Perryman

ued Monday in the Minot area. Across the state, the harvests ahead of schedule.

Received Time: Jan. 13, 11:42 AM

NORTH DAKOTA TELEPHONE CO.

Company keeps equalization plan, cans long-distance offer

AUGUST
23, 2005

By JILL SCHRAMM

Staff Writer

jschramm@ndweb.com

area from Velva to McVille, including Devils Lake, Rugby and Harvey.

The company is going forward with a separate proposal to the North Dakota Public Service Commission to equalize rates among cities served. The equalization would result in no change in company revenue, Dircks said.

Rates differ now because North Dakota Telephone Co. left existing rates in place at the time it added cities formerly served by other providers. The equalization plan also proposes a rate reduction for about 1,200 farm subscribers by reclassifying them as residential customers. They currently pay a rate that falls between residential and the higher commercial rate.

Dircks said equalizing

See PHONE — Page B4

LOCAL ARTIST VERN SKAUG

Mural nears completion

By KATINA TENGESDAL

Staff Writer

ktengesdal@ndweb.com

Minot artist Vern Skaug has been working on a mural at Joe's Smoke Shop, located on Burdick Expressway E., for about three weeks now. Weather permitting, he hopes to have it finished in another week or so.

Rain has been just one of the weather problems he has dealt with.

"When it's hot, I have to go slower because the paint dries faster," Skaug said.

Skaug is at work on the mural, weather permitting, from 9:30 a.m. to 4 or 5 in the afternoon.

Skaug has been an artist for 40 years, and has painted several murals in the last eight years. He helped with a mural in Rolla, painted a mural for Rolette's centennial celebration, and painted the mural near the Herberger's in Dakota Square Mall, among others.

"I started with Herberger's and that was commissioned. I do murals for people in towns with centennials or if they have a big, blank wall," Skaug said.

The mural he is currently working on is painted entirely with farm implement paint. "It's all tractor and combine colors," Skaug said.

The design is a "hodge-

See MURAL — Page B4

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EVILS LAKE

Phone company customers facing rate increases

BISMARCK (AP) — North Dakota Telephone Co. has dropped plans to boost residential rates by \$4.54 monthly to allow unlimited long-distance calling within its northwestern North Dakota service area, the company's manager said.

However, the Devils Lake company is going ahead with a separate proposal to charge the same monthly residential and business rates for the 26 communities it serves, Dave Dircks said. The "rebalancing" initiative would boost telephone bills for many residential customers by more than \$2 monthly.

North Dakota Telephone now has about 20,000 customers and an assortment of rates, depending on each customer's location and service type. The state Public Service Commission is reviewing the company's proposal, and held an informal hearing last week with Dircks and James Howard Jr., a consultant.

"This is not intended to bring us more revenue," Dircks said in an interview. "What we are trying to do is to treat all of our customers the same."

Telephone rate hearings are rare for the PSC. It has no jurisdiction over cellular telephone companies, rural telephone cooperatives and small independent companies.

Qwest, which serves most of North Dakota's largest cities, is limited by state law to charging \$18 monthly for basic telephone service.

"This is the last true rate-regulated phone company in North Dakota," Commissioner Kevin Cramer said. "We have the final say in exactly what their rates will look like."

North Dakota Telephone is asking to charge its residential phone customers \$13.12 monthly. In Devils Lake, that represents a 27-cent increase. For Cando customers, the phone bill would rise by 82 cents, regulatory filings say.

For 11 communities, including McVille, Starkweather, Tolna and Warwick, the increase would be \$1.12, the company's proposal says. For another dozen, including Rugby, Velva, Esmond, Fessenden and Balta, monthly phone bills would go up by \$2.23.

The proposal would also cut costs for some ratepayers. Monthly "combo" rates charged to farm customers would fall by more than \$4 monthly for most exchanges, while multiline rates extended to some small businesses would also drop.

This is not intended to bring us more revenue. What we are trying to do is to treat all of our customers the same.

— Dave Dircks, manager,
North Dakota Telephone Co.

North Dakota Telephone had also proposed charging an additional \$4.54 monthly for all of its residential customers to call anywhere within the company's territory without long-distance charges. For business customers, the increases would have been much steeper.

Customers in Rugby, Velva and other communities on the western border of North Dakota Telephone's service territory balked at the idea.

The Public Service Commission got dozens of messages from customers saying they seldom made long-distance calls within North Dakota Telephone's service area, and that the proposal would make them pay for a service they wouldn't use.

The idea "would be of no benefit for most people in the area," Duane Veach of Rugby told the commission. "It will only mean increased rates that would benefit maybe one of 100 people."

Another customer, Dan Humble of Rugby, said he and his wife "don't call Devils Lake often enough to receive any benefit from such a large increase."

North Dakota Telephone is owned by three rural cooperatives — United Telephone Mutual Aid Corp. of Langdon, Dakota Central Telecommunications Cooperative of Carrington and Polar Communications Corp. of Park River.

The company purchased Devils Lake and 14 rural phone exchanges from the Contel phone company in 1993. Three years later, it bought 11 rural exchanges from Qwest, which was then known as U S West, as part of a U S West divestment of its rural North Dakota telephone properties.

Dircks said the different rates are a lingering remnant of those acquisitions. The company intends to survey its customers about the extended area service charges to see what other options they might prefer, he said.

"I think most of the customers probably perceived it as a general overall rate increase," he said. "They didn't like it."



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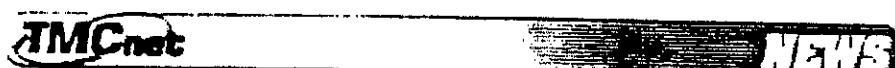
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[October 03, 2005]



Allied Telesyn Wins North Dakota Telephone Company Bid; Rural ILEC Will Deploy Allied Telesyn iMAPs, iMGs in \$2M FTTH Overbuild

SAN JOSE, Calif. --(Business Wire)-- Oct. 3, 2005 -- Allied Telesyn, a global provider of secure Ethernet/IP access solutions and an industry leader in the deployment of IP Triple Play networks over copper and fiber infrastructure, today announced that its IP Triple Play solution has been chosen by North Dakota Telephone Company (NDTC) for a multi-million dollar FTTx overbuild of its Devils Lake Exchange, which serves more than 3500 subscribers. Products to be deployed by NDTC include the iMAP integrated Multiservice Access Platform, capable of 100 megabit symmetrical service, and iMG intelligent Multiservice Gateways.

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NDTC currently uses Allied Telesyn's iMAP and iMG platforms to deliver ADSL2+ internet and telephone services. Phase One of the Devil's Lake overbuild will begin this summer and incorporate approximately 1000 lines. Phases Two and Three are expected to be completed in 2006 and will reach

another 2200+ subscribers.

IPCC

"We knew we wanted an active fiber network and Allied Telesyn had the solution that fit our needs best," says Rich Ellison, NDTC's Network Services Manager. "They had a gateway for any size of deployment: from MDUs, to business, to single homes. They even customized products specifically for our needs."

IP Conferencing and Collaboration

"We've also been very impressed with Allied's responsiveness and customer service," adds Ellison. "Anything we wanted to see, they brought out and set up for us, and then proved it would work in our design. We've been really pleased with the commitment and the quality of the products they offer."

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Says Allied Telesyn's Executive Vice President of Marketing and Product Development Philip Yim, "Allied Telesyn's solution was ideal for NDTC. They knew they needed to upgrade to fiber to stay competitive in their market. The iMAP and iMGs offer NDTC the flexibility not just to match what their competition can offer, but to easily expand that offering in the future without a costly forklift upgrade. Delivery of 100Mb symmetrical service differentiates NDTC from its competitors, and deploying active end-to-end fiber without sharing bandwidth eliminates potential fiber exhaustion. Plus, future services with very high bandwidth requirements can be deployed without complex OSP re-engineering and bandwidth restrictions, which is key for any service provider."

The RUS-accepted iMAP is the industry's most flexible solution for deploying FTTx, ADSL2+ and POTS from a single platform. A secure, carrier-grade, chassis-based access platform with built-in redundancy and QoS, it is built to easily accommodate both an expanding subscriber base and expanding IP voice, video and data application needs.

iMG series Residential Gateways come in a variety of models supporting fiber, ADSL2+, 10/100 and Gigabit Ethernet, VoIP and POTS, as well as RG and serial interfaces. These highly-secure, carrier-grade solutions incorporate options including: Stateful Inspection Firewall, LAN and FXS ports, tagged-based VLAN (IEEE 802.1Q), Layer 2 & Layer 3 QoS, IGMP Snooping & Proxying and PPPoE protocol support, and environmentally hardened chassis options. Zero-touch configuration makes deployment and firmware upgrades simple and virtually maintenance-free.

North Dakota Telephone Company is an ILEC formed in 1993 through the purchase of 15 former GTE exchanges serving 10,000 lines in north central North Dakota. In 1996 they purchased an additional 11 exchanges from US West and currently serve nearly 19,000 lines.

For more information on Allied Telesyn products and solutions, call 1-800-424-4284 or visit <http://www.alliedtelesyn.com>

About Allied Telesyn, Inc.

Allied Telesyn was founded in 1987 with the global goal of producing reliable, standards-based IP/Ethernet networking products. Focused on secure Ethernet/IP solutions geared to application solutions, Allied Telesyn offers carrier-class access-edge products including Layer 3/2 switches & Routers,

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transport systems, fiber/copper Multiservice Access Platforms, and multiservice CPE/media converters. Our customer-focused approach has made Allied Telesyn the ideal choice for IT/SP professionals looking for high-quality, feature-rich IP/Ethernet network solutions. With an extensive product portfolio that covers telephony POTS to 40G transport systems Allied offers providers the one stop networking choice for IP/Ethernet solutions.

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NDTEL gets active on FTTP

By Vince Vittore

Oct 1, 2005 12:00 AM

Like many independents, NDTEL is deploying fiber-to-the-premises. Based in Devils Lake, N.D., the company has launched a two-phase buildout using Allied Telesyn's access gear. Unlike most telcos, though, the company has opted to use an active Ethernet system versus the passive optical network architecture.

"We started construction in August, and we're doing probably 1000 premises in phase one, which is this year," said Richard Ellison, network services manager for NDTEL. "We'll do an additional 2200 in phase two next year."

NDTEL decided to use active Ethernet largely because it wanted the opportunity to offer bandwidth beyond what copper could provide, he said. Currently, NDTEL faces off with Midcontinent Cable in Devils Lake. In areas where copper is in good shape, the company is providing a 4 Mb/s service (with 500 kb/s upstream).

In the FTTP areas, though, it wants to go up to 100 Mb/s, and active Ethernet made that easier.

"The mathematics were a little more logical with the active solution," Ellison said. "This product is easy for us to manage all the way into the home. It's just so versatile, and the deliverable bandwidth isn't shared until quite a bit back in the network."

In a PON architecture, bandwidth is split multiple times before it hits the home. Most existing telco FTTP deployments are PON because carriers believe it is more cost effective. Conversely, many municipalities have opted for active solutions, believing they offer greater bandwidth in situations where penetration rates are high, said James Mustarde, vice president of marketing for Allied Telesyn.

Allied, though, has seen increased interest from telcos as they begin to do more long-range planning.

"The real driving force is that PON is not nearly as scalable as active solutions," Mustarde said. "The bandwidth requirement for building and scaling a network plays very significantly into the decisions you make."

The counter argument in favor of PONs is that as users begin signing up for high-end access services, the cost of providing enough bandwidth at aggregation points increases, cutting further into margins.

Mustarde defends against such assertions by noting that the cost of transport from aggregation points is continually dropping. Moreover, the objective in providing high-speed data isn't always to make it the most profitable service.

"A lot of the IOCs are very happy with adoption rates lower than 50%, but the long-term objective is to stop erosion of voice revenue," he said. "What they're really looking to do is see a retention in customers who are moving to other voice services."

For NDTEL, that line of thinking makes perfect sense. Initially, the company will offer voice and data services over the FTTP network, but it's definitely contemplating other parts of the bundle.

"It's not for video, but that's probably in our future," Ellison said. "It's definitely been mentioned."

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The opportunity we've been waiting for is here! This year, NDTC will begin installing a brand new state-of-the-art telecommunications network in Devils Lake and some surrounding areas. This new fiber optic network will give you more of what you want:

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To accomplish this conversion, we will need to bury a new fiber cable to your premise; which will be done at no charge to you. NDTC will be placing North Dakota One Call, the electric company, the cable provider and other utilities on notice of the upgrade and these utilities will locate their underground facilities during the construction process.

As a property owner, we ask that you identify any buried facilities that will not show up on the North Dakota One Call report. Examples of what would *not* show up on a ND One Call report include: underground sprinkler systems, electrical or propane lines that you have installed from your house to the garage, underground pet retention systems, etc. Please inform us of any buried facilities that would not show up on a ND One Call report. You can do this by listing them on the enclosed drop permit form or contacting NDTC.

NDTC will make every effort to keep your premise minimally disturbed. In most cases, the fiber will be cut into the ground and you will notice no disturbance on your property. In the cases of any disturbance NDTC will restore your property to as near original condition as possible.

By signing the enclosed drop permit form you are giving NDTC permission to enter upon your property to complete the connection to the network. When you have completed the drop permit form, please return it to NDTC in the self addressed stamped envelope. If you are not the property owner, please contact NDTC for assistance.

If you have any questions regarding this notice, please call one of our customer service representatives at 662-1100. Our office hours are Monday – Friday, 8 a.m. – 5 p.m. We look forward to receiving your signed drop permit form so we can begin offering you enhanced quality and future telecommunication services.

Sincerely,

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Job Opening - Account Executive

North Dakota Telephone Company is searching for a highly motivated individual excited about selling state-of-the-art telecommunication services and equipment. A substantial degree of knowledge and experience in all aspects of telephony with emphasis in voice, data, IP, computer based networking, video, surveillance and security cameras, etc. is desired. Individuals applying must be detail oriented and possess excellent communication skills, a professional demeanor, a strong commitment to provide excellent customer service, ability to develop and maintain knowledge of an expanding product line and ever changing details of the competitive market place. This position will involve contacting businesses located within (but not exclusive to) NDTC's 26 exchanges, which covers an area from McVille to Velva and New Rockford to Cando. Individuals will develop leads to prepare and present sales proposals to customers regarding new and/or additional telecommunication products and services and all follow-up associated with such proposals. Some overnight travel will be required. NDTC offers a comprehensive benefit package.

Requirements: Associate's degree (A.A.) or equivalent from two-year college or technical school; or two years experience in sales/marketing field; or equivalent combination of both. Proficient knowledge and use of computers is required.

Interested parties should complete and mail to NDTC Application for Employment, letter of interest and current resume no later than July 5th, 2005 to:



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The job description and the NDTC Application form can be found on the website at www.goNDTC.com or at Job Service ND. North Dakota Telephone Company is an Equal Opportunity Employer.