

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

**REBUTTAL TESTIMONY OF
WARREN R. FISCHER
On Behalf Of
MIDCONTINENT COMMUNICATIONS**

January 16, 2006

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1 **I. INTRODUCTION**

2 **Q. MR. FISCHER, PLEASE STATE YOUR FULL NAME AND BUSINESS**
3 **ADDRESS FOR THE RECORD.**

4 A. My name is Warren R. Fischer. My business address is 2500 Cherry Creek Drive
5 South, Suite 319, Denver, Colorado 80209.

6 **Q. ARE YOU THE SAME MR. FISCHER WHO FILED HIS DIRECT**
7 **TESTIMONY IN THIS CASE?**

8 A. Yes.

9 **II. PURPOSE OF TESTIMONY**

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. The purpose of my testimony is to respond to certain claims made in the reply
12 testimony of NTDC's witnesses Messrs. Douglas Meredith¹ and David Dircks².

13 **III. RESPONSE TO MR. MEREDITH'S CONCERNS**

14 **Q. ON PAGE 11 OF HIS REPLY TESTIMONY MR. MEREDITH DISCUSSES**
15 **"SEVERAL ERRORS" IN MIDCONTINENT'S ANALYSIS REGARDING**
16 **THE FCC DEFAULT WHOLESALE DISCOUNT RATE. IS MR.**
17 **MEREDITH'S CRITICISM WARRANTED?**

18 A. No. Mr. Meredith argues against positions that I did not take: I did not suggest that
19 "the Commission apply the interim rate without giving NDTC the opportunity to

¹ See Reply Testimony of Douglas Duncan Meredith submitted on January 9, 2006 ("Meredith Reply").

² See Reply Testimony of David Dircks submitted on January 9, 2006 ("Dircks Reply")

20 produce a wholesale cost study[.]”³ Nowhere in my testimony did I propose a
21 specific wholesale discount. I did mention the FCC default rate, along with Qwest
22 North Dakota’s wholesale discount rate, but simply to provide a “typical” and
23 “reasonable” range for the wholesale discount rates assumed in my financial
24 analysis.⁴ Moreover, one of the key points in my testimony is that the specific
25 discount *negotiated between parties* can be different than the actual costs that are
26 avoided.⁵ As I demonstrated in my financial analysis, if the negotiated discount is
27 lower than the actual avoided costs, NDTC may experience a *net gain* rather than a
28 net loss from Midcontinent’s resale entry.⁶

29 **Q. ARE YOU SAYING THAT YOU DID NOT USE THE FCC INTERIM
30 DISCOUNT RATE IN YOUR FINANCIAL ANALYSIS?**

31 A. That is correct. Most of my financial analysis used the level of discount currently
32 offered by Qwest North Dakota, which is 16.15%. In addition, I considered
33 hypothetical wholesale discount rates of 10% and 14%. These rates are less than the
34 lower boundary of the FCC interim discount rate range, which is 17.00%.
35 As I showed in my direct testimony,⁷ *lowering* the wholesale discount results in a
36 *lower* revenue loss to NDTC. In other words, if the actual discount rate under which
37 NDTC would provision resale services to Midcontinent is less than 16.15%, the
38 NDTC’s financial impact from Midcontinent’s resale entry into the Devils Lake

³ See Meredith Reply, p. 11 lines 15-16.

⁴ See Fischer Direct, p. 11 lines 210-214.

⁵ *Id.*, p. 19 lines 337-340.

⁶ *Id.*, p. 19 Table 7.

⁷ *Id.* p. 14 lines 251-261 and Table 4.

39 exchange would be even lower than my estimates – estimates that already show that
40 the impact will be minimal.

41 **IV. RESPONSE TO MR. DIRCKS' CONCERNS**

42 **Q. MR. DIRCKS STATES THAT THE TESTIMONIES OF MS. LOHNES, MR.**
43 **GATES AND MR. FISCHER DO NOT ACCURATELY REFLECT NDTC'S**
44 **OPERATIONS.⁸ DO ANY SPECIFIC "INACCURACIES" CLAIMED BY**
45 **MR. DIRCKS AFFECT THE CONCLUSIONS IN YOUR DIRECT**
46 **TESTIMONY?**

47 A. No. Mr. Dircks only explains that his position is related to Mr. Gates' list of
48 "services and scope of NDTC operations," and Ms. Lohnes' statements about
49 "NDTC's public communications."⁹ On the next page Mr. Dircks briefly discusses
50 NDTC's operations in relation to Mr. Gates' testimony,¹⁰ and the rest of Mr. Dircks'
51 testimony appears to be related to NDTC's entry into video market.

52 **Q. HOW DOES MR. DIRCKS' POSITION REGARDING NDTC'S**
53 **OPERATIONS¹¹ COMPARE TO THE SCOPE OF YOUR FINANCIAL**
54 **ANALYSIS?**

55 A. Mr. Dircks' position does not contradict the scope of my financial analysis. Mr.
56 Dircks states that "[t]he regulated company is the entity in question for this
57 proceeding[]"¹² and "only the financials of the regulated company should be

⁸ See Dircks Reply p. 4 lines 17-21.

⁹ *Id.*

¹⁰ *Id.*, p. 5 lines 1-13.

¹¹ *Id.*

¹² *Id.*, line 8.

58 considered in this proceeding.”¹³ Although I disagree that non-regulated activities or
59 actions by an affiliate are necessarily irrelevant to a case involving a regulated
60 company, the financial analysis presented in my direct testimony is done exclusively
61 for the *regulated entity* “NDTC,” as provided to Midcontinent by NDTC.
62 Specifically, my analysis is based on NDTC’s 2004 financial data provided in
63 response to discovery. NDTC’s financial results are reported under the format
64 prescribed by the section 47 C.F.R. Part 32 accounting rules used by incumbent local
65 exchange carriers.¹⁴

66 Under the Part 32 accounting system a non-regulated activity that does not involve
67 the joint or common use of resources in the provision of both regulated and non-
68 regulated services is accounted for under separate accounts such as Account 7990,
69 Non-regulated Net Income.¹⁵ NDTC did not provide any data for this account;
70 therefore, it was not included in my study.¹⁶ Similarly, under Part 32 accounting,
71 revenue from a non-regulated activity that does involve the joint or common use of
72 resources in the provision of both regulated and non-regulated services is reported
73 under revenue account 5280, Non-regulated Operating Revenue. Again, NDTC did
74 not provide any data for this account; therefore, it was not included in my study. To
75 summarize, my financial analysis complies not only with Mr. Dircks’ insistence that

¹³ *Id.*, lines 10-12.

¹⁴ 47 C.F.R. § 32.11.

¹⁵ 47 C.F.R. § 32.23(b).

¹⁶ In contrast to the revenue data used in my analysis, NDTC’s 2004 Annual report contains such non-operating income items as “Internet Net Income” and “Nonregulated Net Income.”

76 only finances of the regulated entity be considered, but also excludes non-regulated
77 income of the related entity.

78 **Q. WHEN DISCUSSING NDTC'S OPERATIONS, MR. DIRCKS LISTS LONG-**
79 **DISTANCE SERVICE AS ONE OF THE SERVICES NOT OFFERED BY**
80 **THE REGULATED COMPANY.¹⁷ AT THE SAME TIME YOUR**
81 **FINANCIAL ANALYSIS INCLUDED NDTC'S LONG-DISTANCE**
82 **REVENUE. PLEASE COMMENT.**

83 A. As I already explained, my financial analysis is based on NDTC's booked revenue
84 (not the booked revenue of North Dakota Long Distance – a company referenced by
85 NDTC's web site¹⁸ and owned by 10 local exchange companies including NDTC¹⁹).
86 In any case, long-distance revenue booked by NDTC is so small that its inclusion in
87 (or exclusion from) the analysis does not make a material difference. This revenue
88 accounts for less than 1% of NDTC's total operating revenue (\$13,418 over
89 \$16,977,056 in 2004) according to NDTC's 2004 Annual Report.
90 Furthermore, in my financial analysis I assumed that long-distance revenue would be
91 subject to resale. If this is not the case, NDTC's revenue loss from resale would be
92 even smaller than I estimated. However, this reduction would be immaterial for that
93 same reason – that long-distance revenue constitutes a very small portion of NDTC's
94 total revenue.

95
¹⁷ See Dircks Reply, p. 5, lines 4-7.

¹⁸ <http://www.ndtel.com/telephone.htm>.

¹⁹ <http://www.ndld.com/owners.htm>.

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

97 A. Yes, it does.

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