

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)

MIDCONTINENT COMMUNICATIONS' MOTION TO STRIKE

Midcontinent Communications ("Midcontinent"), by its attorneys, hereby moves to strike certain portions of the reply testimony filed in this proceeding on behalf of North Dakota Telephone Company. For the reasons shown below, the materials subject to this motion are not the proper subject for prefiled testimony.

Midcontinent objects to the following portions of the reply testimony of Douglas Duncan Meredith, a consultant retained by NDTc:

- (1) Page 7, lines 15 through 23
- (2) Page 8, line 7 through page 9, line 3.
- (3) Page 12, line 10 through page 13, line 13.

These passages purport to describe the legal requirements that apply to timing of Commission action under Sections 251(f)(1) and 252 of the federal Communications Act of 1934, as amended. Unlike other passages of the testimony, which merely recite statutory or regulatory language, these passages propose an interpretation of the specific provisions, *i.e.*, that the nine-month clock for arbitrations is triggered by termination of the rural exemption, not by a carrier's

bona fide request. These passages do not address any factual or policy issues relevant to this proceeding.

Such legal interpretation is outside the permissible scope of witness testimony in this proceeding, and consequently should be struck from Mr. Meredith's testimony. Legal analysis is not the purpose of testimony, and therefore it is inappropriate to permit witnesses, except in unusual circumstances, to testify as to the meaning of the law.¹ Further, even to the extent that there were a reason for NDTC to present testimony on the interpretation and interaction of Sections 251(f) and 252, Mr. Meredith's testimony establishes that he has no legal training or any other special qualifications that would provide a basis for him to offer legal analysis.² Thus, he is not qualified as an expert on these issues.

For these reasons, Midcontinent respectfully requests that the Commission strike the referenced portions of Mr. Meredith's testimony from the record of this proceeding.

Respectfully submitted,

PEARCE & DURICK



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¹ Neither Mr. Meredith nor NDTC has suggested that there are any special circumstances that would warrant testimony on legal interpretation issues.

² See Reply Testimony of Douglas Duncan Meredith at 2 to 3 (describing qualifications, including degrees in economics).

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF MAILING

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

Kathryn Crawford hereby certifies that on January 17, 2006, she served a copy of the following:

- 1) Midcontinent Communications' Motion to Strike;
- 2) Rebuttal Testimony of Timothy J. Gates;
- 3) Rebuttal Testimony of Mary Lohnes; and
- 4) Rebuttal Testimony of Warren R. Fischer,

by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota, addressed to the following:

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

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

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

Kathryn Crawford

Subscribed and sworn to before me this 17 day of January, 2006.

Jeanne A. Fest
Notary Public

My commission expires:

