

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Midcontinent Communications, )  
a South Dakota Partnership, )  
                                  )  
                                  Complainant, )      Case No. PU-05-451  
                                  )  
                                  )  
                                  vs. )      **BRIEF IN RESPONSE TO**  
                                  )      **MOTION TO STRIKE**  
North Dakota Telephone Company, )  
                                  )  
                                  )  
                                  Respondent. )

North Dakota Telephone Company (“NDTC”), by counsel, hereby provides this response to the Motion to Strike (the “Motion”) filed by Midcontinent Communications (“Midcontinent”) received on January 19, 2006 (the “Motion”). In the Motion, Midcontinent is attempting to strike portions of the pre-filed reply testimony on behalf of NDTC by Douglas Duncan Meredith in this proceeding filed on January 9, 2006 (the “Meredith Testimony”).

It is unfortunate that the North Dakota Public Service Commission (the “Commission”) and NDTC needs to expend their respective resources in responding to the Motion. NDTC respectfully submits that the Motion actually highlights the deficiencies contained in the Midcontinent testimonies with respect to the issue of what a rational implementation schedule would be for any interconnection agreement (“ICA”) that may be required in the event that the NDTC existing exemption from the provision of resale at a wholesale discount is removed. For the reasons provided herein, the Motion lacks any foundation and amounts to nothing more than an 11<sup>th</sup> hour effort to thwart NDTC’s testimony that will assist the Commission in resolving this case. Accordingly, the Commission should deny the Motion in total.

The Motion is based on a single underlying premise – Mr. Meredith is interpreting the law that is applicable to the Commission’s decision in this proceeding. Such premise is without merit.

Midcontinent fails to note that Mr. Meredith has significant practical experience in both assisting companies with addressing interconnection requests and in assisting a regulatory utility board in resolving arbitrations. See Meredith Testimony at 2, lines 1-11. As such, Mr. Meredith has working experience with the framework and requirements of the 1996 revisions to the Communications Act of 1934, as amended, (the “Act”) and useful and practical insight as to how the plain-English directives from Congress contained within the Act have been implemented. As a result, his testimony regarding a practical reconciliation of the issues raised by the Commission in this proceeding and the timing guidelines contained in the Act are appropriate.

Testimony from an individual seasoned in resolving and negotiating interconnection issues (such as Mr. Meredith) is entirely appropriate and Mr. Meredith is providing only that – testimony as to a rational implementation schedule using the guideposts provided by Congress that anyone capable of reading the Act can determine. Mr. Meredith’s insights are based on the invaluable experience he has gained in assisting companies and decision makers with ensuring that the Act’s directives are achieved. Midcontinent should not be permitted to suggest otherwise; its Motion should be denied outright.

Independent of this basis, however, is the fact that Mr. Meredith is responding to the testimony provided by Midcontinent. Midcontinent witness provided opinions as to the Act (see, e.g., Gates Testimony at 7 (line 159) to 9 (line 192) and at 22 (line 485) to

23 (line 513)) as well as an implementation schedule for an ICA should that be required arising from the outcome of this proceeding. See *id.* at 22, lines 516-527. Midcontinent, therefore, “opened the door” to the very testimony that Mr. Meredith provides. The fact that Mr. Meredith’s testimony, based on considerable practical experience, demonstrates that Midcontinent’s views are without merit is the direct result of Midcontinent’s own testimony. That Midcontinent apparently disagrees with NDTC’s views on implementation is no basis for efforts to shut the door to the testimony of Mr. Meredith, particularly where Midcontinent opened the door to it and the Commission has specifically noted that implementation is an issue in this proceeding. See *Notice of Rescheduled Hearing*, Case No. PU-05-451, dated December 14, 2005.

NDTC, through Mr. Meredith, did not view the Commission’s issue so narrowly as apparently Midcontinent now contends, and provided insightful testimony on a rational implementation schedule should an ICA between the parties be required to be entered arising from decisions in this proceeding. Mr. Meredith has the experience to provide his testimony and Midcontinent can argue as to its weight but not the appropriateness of it.

Further, it appears Midcontinent has interjected a new issue into this proceeding. The issue is whether any witness has the requisite authority and experience under Rules 701 and 702 of the North Dakota Rules of Evidence to give an opinion on the timing schedules that the Commission may be required to establish vis-à-vis those contained in the Act. As such, it appears this issue needs to be addressed at the outset of the testimony of Midcontinent witnesses.

## **CONCLUSION**

For the reasons stated, Midcontinent's Motion is entirely without merit and should be denied outright.

Dated this 20th day of January, 2006.

PRINGLE & HERIGSTAD, P.C.

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Don Negaard, ND Bar ID #03598  
2525 Elk Drive  
P.O. Box 1000  
Minot, ND 58702-1000  
Telephone: (701) 852-0381  
Fax: (701) 857-1361  
[donn@srt.com](mailto:donn@srt.com)

WOODS & AITKEN, LLP

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Thomas J. Moorman  
2154 Wisconsin Avenue, NW, Suite 200  
Washington, D.C. 20007  
Telephone: (202) 944-9500  
Fax: (202) 944-9501  
[tmoorman@woodsaitken.com](mailto:tmoorman@woodsaitken.com)

Attorneys for Respondent

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing Brief in Response to Motion to Strike was served electronically and by regular mail on the 20th day of January, 2006, on the following:

Patrick W. Durick  
PEARCE & DURICK  
314 East Thayer Avenue  
P.O. Box 400  
Bismarck, ND 58502-0400

William W. Binek  
Chief Counsel  
Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

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Don Negaard, ND Bar ID #03598