

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

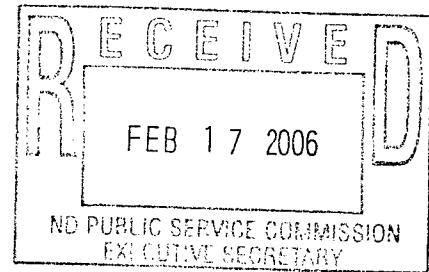
Midcontinent Communications,
a South Dakota Partnership,

Complainant,

vs.

North Dakota Telephone Company,

Respondent.



) Case No. PU-05-451

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF MIDCONTINENT COMMUNICATIONS**

Proposed Findings of Fact

1. Midcontinent and NDTC are certificated local exchange carriers in North Dakota. NDTC provides service in Devils Lake and other areas and Midcontinent is certificated to provide service in Devils Lake.
2. Midcontinent requested wholesale resale service from NDTC on May 12, 2005.
3. Midcontinent filed a bona fide request under Section 251(f)(1) of the federal Communications Act of 1934 (the "Communications Act") on July 15, 2005.
4. NDTC is the incumbent local exchange carrier in Devils Lake.
5. Midcontinent is a competitive local exchange carrier in all the areas it serves in North Dakota.
6. NDTC is replacing its current copper telephone plant in Devils Lake with fiber optic cable, at an approximate cost of \$11 million, and anticipates completing the replacement in February, 2007.

7. The replacement of NDTC's plant is not necessary to support NDTC's current services in Devils Lake, but will enable NDTC to offer video service.
8. NDTC has approximately \$16 million in annual revenues, including approximately \$1.6 million in federal universal service support and \$10 million in revenues from access charges.
9. NDTC's profits have ranged from \$3.4 million to \$4.3 million over the last five years.
10. If NDTC were required to offer wholesale resale to Midcontinent at a discount rate of 16.15 percent, and Midcontinent achieved a market share of 30 percent, NDTC's total revenues in Devils Lake would be reduced by 1.74 percent and its net profits in Devils Lake would be reduced by \$7,031 a year.
11. Resale competition would not be economically burdensome for NDTC.
12. Existing facilities-based competition from wireless providers has not been economically burdensome for NDTC.
13. There are no technical barriers to NDTC's provision of service to Midcontinent on a wholesale basis.
14. Competition from Midcontinent will not affect NDTC's access to universal service support under current law.
15. Resale competition from Midcontinent will not affect NDTC's access revenues.
16. Competition benefits consumers by lowering prices, creating incentives for innovation, encouraging better customer service and providing choice.

17. While facilities-based competition has the greatest benefits to consumers, resale competition also is beneficial.
18. There are no meaningful benefits to waiting for NDTc to begin providing video service before allowing local telephone competition to begin.
19. In light of Midcontinent's experience in other markets, it is feasible for NDTc to begin providing resale to Midcontinent within 90 days of an order from the Commission.
20. Adopting a true-up provision will insulate both parties from potential harm that could be caused by errors in setting an interim discount rate.
21. Adoption of NDTc's proposed schedule for implementation would delay the consumer benefits of competition for a year or more.
22. Waiting to start the negotiation process for facilities-based competition until NDTc enters the video market could prevent consumers from obtaining the benefits of facilities-based competition until some time in 2008.
23. Because NDTc already is entering the video market, it would not be harmed by requiring it to negotiate full interconnection arrangements with Midcontinent.

Proposed Conclusions of Law

1. Midcontinent has met the requirements for a bona fide request for the rural exemption under Section 251(f)(1) of the Communications Act to be lifted in Devils Lake.
2. The Commission must grant Midcontinent's petition to lift the rural exemption in Devils Lake if the criteria established in Section 251(f)(1) of the Communications Act are met.

3. The criteria under Section 251(f)(1) are (a) whether Midcontinent's request is unduly economically burdensome; (b) whether Midcontinent's request is technically feasible; and (c) whether Midcontinent's request is consistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D) thereof).
4. The evidence in this proceeding establishes that the criteria in Section 251(f)(1) have been met.
5. Section 251(f)(1) automatically lifts the rural exemption as to a competing video provider if the rural carrier begins providing video service.
6. The rural exemption will be lifted as to Midcontinent in Devils Lake when NDTC completes its fiber upgrade and begins providing video service.
7. Once a state commission determines that the three criteria for lifting the exemption have been met, it is empowered to set a schedule for the rural carrier's implementation of its obligations under Section 251(c) of the Communications Act, so long as the schedule is consistent with any rules adopted by the FCC.
8. The FCC has adopted no rules governing how state commissions may set implementation schedules under Section 251(f)(1).
9. The Communications Act does not require a state commission to adopt the schedule for negotiation and arbitration under Section 252 of the Act as the implementation schedule under Section 251(f)(1) of the Act.
10. Any implementation schedule adopted by the Commission must be consistent with the evidence in this proceeding.