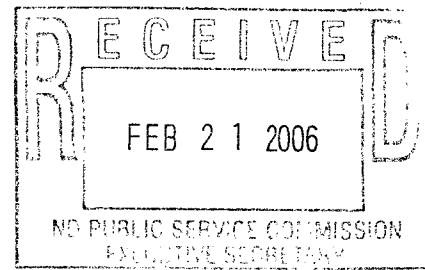


STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



Midcontinent Communications/North Dakota
Telephone Company,
Rural Exemption
Investigation

Case No. PU-05-451

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

[INSERT DATE OF ISSUANCE], 2006

Appearances

Commissioners Tony Clark, Susan E. Wefald and Kevin Cramer.

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Thomas J. Moorman, Woods & Aiken LLP, 2154 Wisconsin Ave. NW, Suite 200, Washington, D.C. 20007, appearing on behalf of North Dakota Telephone Company, Devils Lake, North Dakota.

Patrick W. Durick, Pearce & Durick, P.O. Box 400, Bismarck, ND 58502-0400, appearing on behalf of Midcontinent Communications.

J.G. Harrington, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue NW, Suite 800, Washington, D.C. 20036, appearing on behalf of Midcontinent Communications.

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, 600 East Boulevard, Bismarck, North Dakota 58505, appearing on behalf of the Public Service Commission.

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Preliminary Statement

On May 12, 2005, Midcontinent Communications ("Midcontinent") sent a letter to North Dakota Telephone Company ("NDTC") with a proposed interconnection agreement to resell NDTC's tariffed telecommunications service.

On June 10, 2005, NDTC wrote a letter to Midcontinent and requested clarification of Midcontinent's request. In that letter, NDTC asked whether the Midcontinent request was, in fact, intended to trigger the "rural exemption" under Section 251(f)(1) of the 1996 revisions to the Communications Act of 1934, as amended, (the "Act") since NDTC is a rural telephone company as that term is defined under federal law and, as such, is exempt from providing wholesale resale services.

On July 15, 2005, Midcontinent filed a complaint with the Commission asking to have lifted any exemption that NDTC had with regard to Section 251(c)(4) of the Act as it applied to Midcontinent's request for the resale at a discount of NDTC's telecommunications services within NDTC's Devil Lake, North Dakota, exchange.

On July 28, 2005, the Commission issued a Notice of Hearing on the complaint setting the matter for a public hearing on October 13, 2005. On September 20, 2005, NDTC and Midcontinent entered into a stipulation in which they agreed that the hearing could be held at a time beyond the 120 days directed by 47 U.S.C. § 251(f)(1)(B).

On December 14, 2005, the Commission issued a Notice of Rescheduled Hearing scheduling a public hearing to begin on January 23, 2006. The notice identified the issues to be considered:

1. Whether the request of Midcontinent is unduly economically burdensome.
2. Whether the request of Midcontinent is technically feasible.
3. Whether the request of Midcontinent is consistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D) thereof).
4. The implementation schedule for compliance with the request should the exemption be terminated.

On January 23, 2006, a public hearing was held as scheduled. On January 26, 2006, NDTC filed three late-filed exhibits at the request of the Commission.

Having heard and considered this matter, the Commission makes its:

Findings of Fact

1. The Complainant, Midcontinent, is a company providing consumers in the upper Midwest, including North Dakota, with cable television, telephone services, and high-speed internet access.

2. The Respondent, NDTC, is a facilities-based incumbent carrier which meets the requirements of a "rural telephone company" under 47 U.S.C. § 153(37) and therefore qualifies for the rural exemption contained at 47 U.S.C. § 251(f)(1)(A). NDTC plans to offer video service in the Devils Lake, North Dakota, exchange sometime after February 1, 2007.

3. Midcontinent's request for the removal of NDTC's rural exemption was solely with respect to the offering of resale of tariffed telecommunications services at a wholesale discount within the NDTC Devils Lake exchange.

Whether the request of Midcontinent is unduly economically burdensome.

4. Based on the current request from Midcontinent, NDTC agreed at the hearing that it will not be unduly economically burdensome for it to resell at a wholesale discount its tariffed telecommunications services to Midcontinent in NDTC's Devils Lake exchange.

Whether the request of Midcontinent is technically feasible.

5. Neither party argued that the Midcontinent request for wholesale resale within the NDTC Devils Lake exchange was not technically feasible. NDTC agreed at the hearing that the request is technically feasible.

Whether the request of Midcontinent is consistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

6. Neither party argued that the immediate request from Midcontinent would have an adverse affect on universal service. NDTC agreed at the hearing that, if required to resell its tariffed telecommunications services to Midcontinent based on both this current request and the method by which universal service fund disbursements are calculated currently, the offering of resale at a wholesale discount within NDTC's Devils Lake exchange would not be inconsistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

7. No evidence was presented by either party regarding the impact of a facilities-based competition on NDTC. Thus, this issue is not necessary to be considered by the Commission in this proceeding.

Implementation Schedule

8. The Act requires that, upon removal of the existing exemption with respect to the specific request at issue, any implementation schedule must be consistent with applicable Federal Communications Commission ("FCC") regulations. See 47 U.S.C. § 251(f)(1)(B).

9. There are no specific FCC regulations on point. However, the Act includes the time frames for negotiation and, if necessary, arbitration, and the Commission's overall time period of nine months to reach a decision on an interconnection agreement. See 47 U.S.C. § 252(b).

10. NDTC's duty to negotiate terms and conditions for offering resale services at wholesale discounts does not apply until after the rural exemption is terminated. See 47 U.S.C. § 251(f)(1)(A).

11. To date, the parties have not negotiated any terms and conditions of an interconnection agreement, including an appropriate wholesale discount rate for resale within the Devils Lake exchange.

12. It is in the public interest within the State of North Dakota to encourage both fair competition and a "level playing field" between competitors with respect to their ability to offer a consistent set of services to end users within the area that they compete with each other, and NDTC's proposed implementation schedule fulfills this objective significantly better than that proposed by Midcontinent.

13. Upon the issuance of an order in this matter terminating NDTC's rural exemption with respect to Midcontinent and its request for resale at a wholesale discount of tariffed telecommunications services offered by NDTC within its Devils Lake exchange, Midcontinent may submit a bona fide request for negotiation to NDTC requesting that it negotiate in good faith the terms of an interconnection agreement.

14. If the parties are unable to negotiate an interconnection agreement, either party may, during the period from the 135th to the 160th day (inclusive) after the date on which NDTC receives a request for negotiation under this section, petition a State commission to arbitrate any open issues. See 47 U.S.C. § 252(b)(1).

15. The Commission shall appoint an arbitrator, during the time frames established in the Act, at the request of either party to resolve each issue set

forth in the petition and the response and shall conclude the resolution of any unresolved issues not later than nine months after the date on which NDTC receives the request for negotiation of an interconnection agreement. See 47 U.S.C. § 252(b)(4)(C).

From the foregoing Findings of Fact, the Commission makes its:

Conclusions of Law

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. NDTC has agreed that the request made by Midcontinent for wholesale resale within its Devils Lake exchange is not unduly economically burdensome, is not technically infeasible, and is not inconsistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D) thereof), and therefore the implementation schedule required in § 251(f)(1)(B) is all that is required for the Commission to establish in this proceeding.

3. Since no FCC regulations are on point, the Commission relies upon Section 252 of the Act and follows the time periods established therein for purposes of establishing the beginning of an implementation schedule in this proceeding.

4. Midcontinent may submit a bona fide request, after this order is issued, for negotiation to NDTC requesting that it negotiate in good faith the terms of an interconnection agreement.

5. If the parties are unable to negotiate an interconnection agreement, either party may during the period from the 135th to the 160th day (inclusive) after the date on which NDTC receives a request for negotiation under this section, petition the Commission to arbitrate any open issues. See 47 U.S.C. § 252(b)(1).

6. The Commission shall resolve each issue set forth in the petition and the response and shall conclude the resolution of any unresolved issues not later than nine months after the date on which NDTC receives a request from Midcontinent (as Midcontinent is permitted in this order to issue) to negotiate the complete terms and conditions of an interconnection agreement, including an appropriate wholesale resale discount rate applicable to NDTC's Devils Lake exchange.

7. In order to advance the public interest in encouraging both fair competition and a level playing field between the parties regarding their service capabilities within the NDTC Devils Lake exchange, the implementation date of any interconnection agreement arrived at through agreement of the parties or

arbitration by the Commission shall be by the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange.

8. The implementation schedule adopted in this order is consistent with the Act and applicable FCC regulations. See 47 U.S.C. § 251(f)(1)(B).

9. Except as specifically provided for in this order, NDTC's Section 251(f)(1) rural exemption remains in effect.

Order

The Commission orders:

The request by Midcontinent Communications to terminate North Dakota Telephone Company's rural exemption with respect to resale at a wholesale discount within NDTC's Devils Lake exchange is granted based on and to the extent noted in the Conclusions of Law above.

The implementation schedule set forth above shall be followed by the parties.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Tony Clark
President

Kevin Cramer
Commissioner