

April 20, 2006

VIA HAND DELIVERY

Hon. Tony Clark
Hon. Susan E. Wefald
Hon. Kevin Cramer
North Dakota Public Service Commission
Capitol
600 East Boulevard, Ninth Floor
Bismarck, North Dakota 58505

Re: Midcontinent Communications/North Dakota Telephone Company
Rural Exemption Investigation
Case No. PU-05-451

Dear Commissioners:

We are writing on behalf of our client Midcontinent Communications ("Midcontinent") in connection with the above-referenced proceeding. This letter is in response to the April 12, 2006 memorandum submitted to the Commission by North Dakota Telephone Company ("NDTC").¹ For the reasons described below, Midcontinent submits that the NDTC memorandum does not provide any basis for adopting the full nine month negotiation and arbitration period under Section 252 of the federal Communications Act as the implementation schedule when the Commission lifts NDTC's rural exemption.

Initially, Midcontinent concurs with the analysis concerning this issue in the April 20 staff memorandum. NDTC's claim fails to account for N.D.C.C. § 49-21-09, which provides

¹ To the extent required, Midcontinent seeks the Commission's leave to file this response. Midcontinent notes that the April 12 memorandum is the second submission that NDTC has made in this proceeding after the completion of the pleading cycle, without prior notice and without specific Commission authorization. It appears to Midcontinent that the principal purpose of these submissions is to delay Commission action, as every argument in these filings could have been or had been made earlier by NDTC.

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the Commission with ample general authority to order interconnection between local telephone companies.

Even if N.D.C.C. § 49-21-09 did not provide such independent authority, however, NDTC's argument would be incorrect. NDTC premises its claim on the theory that the Commission is empowered to implement only a portion of Sections 251 and 252 of the Communications Act, and that cannot be the case. Rather, the Commission's authority to implement those provisions extends to any portion of those sections, specifically including Section 251(f)(1)(B), the provision concerning implementation schedules for termination of rural exemptions. Moreover, and as shown in Midcontinent's briefs in this proceeding, there is nothing in Section 251 or Section 252 that requires the Commission to adopt the entire Section 252 process as the implementation schedule. Thus, there is no basis in either state or federal law for NDTC's claim, and it should be rejected.

Please inform us if any questions should arise in connection with this submission.

Sincerely,

Patrick W. Durick
J.G. Harrington*

Counsel to Midcontinent Communications

cc: Donald Negaard (via email)
William Binek (via email)
Al Wahl (via email)

*Admitted pro hac vice