

MEMORANDUM

TO: Commissioners Clark, Wefald and Cramer

FROM: Bill Binek and Pat Fahn

DATE: April 20, 2006

RE: Midcontinent Communications/NDTC, Case No. PU-05-451

This case is about termination of a rural exemption. No one disputes the fact that the Commission has authority under N.D.C.C. §49-21-01.7(11) to terminate the rural exemption. Section 251(f)(1)(B) of the Act provides that a state commission shall terminate the exemption if the request for interconnection is not unduly economically burdensome, is technically feasible, and is consistent with the universal service requirement of Section 254. Section 251(f)(1)(B) then provides that upon termination of the exemption, the state commission "shall establish an implementation schedule for compliance with the request that is consistent in time and manner with [FCC] regulations." Both parties agree that the FCC has issued no regulations regarding establishment of an implementation schedule.

On April 12, 2006, North Dakota Telephone Company (NDTC) filed a Memorandum with the Commission asserting that the Commission does not have the authority to mandate terms and conditions relating to interconnection in this proceeding absent an arbitration proceeding. NDTC states that the Commission has only the authority granted to it by the North Dakota Legislature, and that those powers are set forth in N.D.C.C. §§49-21-01.7(9) and 49-21-01.7(15). NDTC contends that that Section 252 of the Act provides the specific time frames and procedures that the Commission must follow in this proceeding.

The Legislature has not limited the Commission's authority over interconnection to the provisions contained in N.D.C.C. §49-21-01.7. The Legislature has also granted the Commission authority over interconnections between telecommunications companies in N.D.C.C. §49-21-09.

N.D.C.C. §49-21-01.7 sets forth the Commission's powers in general. N.D.C.C. §49-21-01.7(9) provides that the Commission has the power to "[a]pprove or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act" and N.D.C.C. §49-21-01.7(15) provides that the Commission has the power to "[a]dopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13. . . ." Also, N.D.C.C. §49-21-01.7(8) provides authority for the Commission to mediate or arbitrate agreements for interconnection, services or network elements under Sections 251 and 252 of the Act.

Arbitration and mediation are processes for determining compensation, terms and conditions for interconnection, but are not the only ways under North Dakota law for

the Commission to make such determination. The Legislature has given the Commission explicit authority under N.D.C.C. §49-21-09 to require interconnections between telecommunications companies and provides that the Commission “may prescribe reasonable compensation, terms and conditions” for such use. N.D.C.C. §49-21-09 gives the Commission the authority to establish an implementation schedule at its discretion.