

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Midcontinent Communications, )  
a South Dakota Partnership, )  
                                  )  
                                  Complainant, )      Case No. PU-05-451  
                                  )  
                                  )  
vs. )  
                                  )  
North Dakota Telephone Company, )  
                                  )  
                                  Respondent. )

**PETITION FOR RECONSIDERATION  
OF NORTH DAKOTA TELEPHONE COMPANY**

COMES NOW North Dakota Telephone Company Group (“NDTC”), Respondent herein, and moves the North Dakota Public Service Commission (“Commission”) for reconsideration pursuant to section 28-32-40 of the North Dakota Century Code.

On April 26, 2006, the Commission issued its Findings of Fact, Conclusions of Law, and Order in this proceeding (the “April 26<sup>th</sup> Action”). The April 26<sup>th</sup> Action purports to address a request made by Midcontinent Communications (“Midcontinent”) to remove NDTC’s exemption under Section 251(f)(1) of the Communications Act of 1934, as amended (the “Act”) to provide, pursuant to Section 251(c)(4) of the Act, tariffed telecommunications services at a wholesale discount rate within the NDTC Devils Lake exchange to Midcontinent.

NDTC hereby requests the Commission to reconsider its Findings of Fact, Conclusions of Law, and Order included in the April 26<sup>th</sup> Action and to issue an amended Findings of Fact, Conclusions of Law, and Order to address the following issues:

1. The Findings of Fact included within the April 26<sup>th</sup> Action incorrectly states, at paragraph 10, that “NDTC’s post-hearing brief states that it no longer challenges that its rural exemption should be terminated.” NDTC requests that this finding of fact be amended to accurately state:

“NDTC now agrees that it will no longer challenge whether the Midcontinent request is unduly burdensome, technically feasible, or whether the “wholesale resale” request made by Midcontinent with respect to NDTC’s Devils Lake exchange would adversely impact universal service.” (See NDTC Post-Hearing Brief, February 17, 2006, at page 6.)

The finding of fact of the Commission at paragraph 10 has no basis in the record and is specifically and in fact contrary to the statement by NDTC.

2. NDTC also requests the Commission to amend paragraph 23 of the Findings of Fact included within the April 26<sup>th</sup> Action. Paragraph 23 states erroneously that only one party testified about experience with resale obligations and negotiations. This statement is simply not supported by the record. (See Meredith Testimony, Ex. R6 at pp. 2, 7, 8, 12, and 13.)

3. NDTC further requests that the April 26<sup>th</sup> Action be amended to address, consistent with the time frames included in Section 252(b) of the Act, how the parties should implement the requirement to negotiate an interconnection agreement for the provision by NDTC of wholesale resale within the NDTC Devils Lake exchange to Midcontinent. The Order, however, fails to mention how the terms of an interconnection agreement will be negotiated. NDTC requests the Commission to amend its April 26<sup>th</sup> Action, specifically paragraphs 2 and 3 of the Ordering clauses contained in the April 26th Action, to:

- (a) Adopt an implementation schedule including normal arbitration time periods included in Section 252 of the Federal Act (47 U.S.C. § 252) and,
- (b) At a minimum, order that all terms and conditions of an interconnection agreement be negotiated by the parties. (See Meredith Testimony in Ex. R6, at pp. 2, 7, 8, 12, and 13, noting that the discount rate is only one of many terms and conditions that must be negotiated for implementation of wholesale/resale.)

4. NDTC requests that the Commission amend its April 26<sup>th</sup> Action to the extent that it addresses matters that are beyond the record developed in this proceeding and beyond those matters for which prior notice was given. The Commission's April 26<sup>th</sup> Action violates the Constitutional rights of NDTC under the Fifth and Fourteenth Amendments to the United States Constitution, Article I; Section 9 of the North Dakota Constitution; and Section 28-32-21 of the North Dakota Century Code. The Order is overly broad and beyond the scope of the Notice of Hearing that was issued on December 14, 2005, (the "Notice") and is not based on the record developed in this proceeding arising from such Notice.

- (a) NDTC requests that the Commission amend its April 26<sup>th</sup> Action to limit the scope of it solely to Midcontinent and solely to the relief requested and sought by Midcontinent; *i.e.*, lifting the Act's existing and ongoing rural exemption of NDTC solely with respect to the provision by NDTC of wholesale/resale of tariffed telecommunications within the NDTC Devils Lake exchange to Midcontinent; and

(b) NDTC requests that the Commission amend paragraph 2 of its ordering clauses within the April 26<sup>th</sup> Action to eliminate the requirement that a discount rate be agreed upon within 30 days under an “interconnection agreement.” At no time did the Commission provide notice that the terms and conditions of the agreement for wholesale/resale services would be decided by the Commission. No other condition or terms of an interconnection agreement are discussed in the April 26<sup>th</sup> Action, and the Commission has neither noticed nor addressed how those terms and conditions will be arrived at between Midcontinent and NDTC.

5. NDTC requests the Commission to amend its Findings of Fact, Conclusions of Law, and Order contained in the April 26<sup>th</sup> Action to remove the erroneous interpretations of law contained in paragraphs 12, 13, 14, 15, 16, and 22 of the Findings of Fact, paragraph 5 of the Conclusions of Law, and its Order. These paragraphs are all based on an erroneous interpretation of federal and state law.

6. NDTC further incorporates herein its Prehearing Brief of January 20, 2006, Post-Hearing Brief of February 12, 2006, Post-Hearing Reply Brief of February 28, 2006, and the Memoranda submitted to the Commission on March 13, 2006, and April 12, 2006, as well as the record of the Commission in this proceeding (including, without limitation, pleadings of the parties, the record (including, but not limited to, objections to evidence), and arguments to the Commission in this matter as supportive of its request for reconsideration to have the Findings of Fact, Conclusions of Law, and Order of the Commission contained in the April 26<sup>th</sup> Action, and subsequently amend the April 26<sup>th</sup> Action to reflect properly the correct law and facts in this matter.

Respectfully submitted this 10th day of May, 2006.

PRINGLE & HERIGSTAD, P.C.

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## **CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing Petition for Reconsideration of North Dakota Telephone Company together with the Brief in Support of Petition for Reconsideration was served electronically and by regular mail on the 10th day of May, 2006, on the following:

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