DIVIDER

STATE OF NORTH DAKOTA

□INFORMATION TECHNOLOGY DEPARTMENT

SFN 2053 (4-2002)

PU-05-451
Midcontinent Communications/ND Telephone Co.
Rural Exemption
Investigation 05
Filed 7/15/2005 **Closed 10/12/2006**

Public Service Commission
Receipt of Payment

Receipt# 6901

Received: 5/25/2007 Check# 805645 for $991.99

Subject: Utility Valuation

Docket # PU-05-451

Midcontinent Communications
410 So. Phillips Ave.
Sioux Falls SD 57104-6824

177 PU-05-451 Pages: 1

Receipt# 6,901 $991.99 Utility Valuation

by Midcontinent Communications

05/25/2007

Public Service Commission
Receipt of Payment

Receipt# 6844

Received: 5/16/2007 Check# 105093 for $991.99

Subject: Utility Valuation

Docket # PU-05-451

North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

176 **PU-05-451** Pages: 1

Receipt# 6,844 $991.99 Utility Valuation

by North Dakota Telephone Company

05/16/2007

MOTION

May 2, 2007

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

I move the Commission bill Midcontinent Communications and North Dakota Telephone Company for costs incurred to date in Case No. PU-05-451, Midcontinent Communications/North Dakota Telephone Company, Rural Exemption, Investigation.

175 **PU-05-451** Pages: 3

Valuation Fund Billing Statement, Letter and Motion
by Public Service Commission
05/02/2007 CC: Comm Legal Illona, Pat, Annette . .

Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.nd.gov/psc
e-mail: ndpsc@nd.gov
TTY 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

May 2, 2007

Patrick W Durick
Pearce & Durick
PO Box 400
Bismarck ND 58502-0400

Dave Dircks Manager
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

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

Enclosed is a copy of the statement approved at the May 2, 2007 Public Service Commission meeting for the expenses incurred to date in Case No. PU-05-451.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved.

Please make your check payable to the *Public Service Commission.*

Sincerely,

Gloria Geiger
Admin Staff Officer
701-328-2401

Enc.

c: Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Don Negaard
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

Thomas J Moorman
Woods & Aitken LLP
2154 Wisconsin Ave NW Ste 200
Washington DC 20007

Billing Statement

May 2, 2007

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

Bill To:

Midcontinent Communications.....$991.99
North Dakota Telephone Company.....991.99

Expenses Incurred to Date:

Office of Administrative Hearings (June 2006)	$ 476.49
Office of Administrative Hearings (July 2006)	1,047.77
Office of Administrative Hearings (August 2006)	66.68
Office of Administrative Hearings (October 2006)	57.16
Advertising Costs	335.88
Total	**$1,983.98**

Send Payment and a Copy of this Statement To:

Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

Federal Tax ID 45-0309764

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.state.nd.us/oah

April 19, 2007

William W. Binek
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Re: Midcontinent Communications
North Dakota Telephone Company
Rural Exemption Investigation
Case No. PU-05-451
OAH File No. 20060215

Dear Mr. Binek:

Enclosed please find a tape recording of the prehearing conference in this matter held June 27, 2006. The tape was overlooked when the file was returned to you. We apologize for any inconvenience.

Sincerely,

Elizabeth Patterson

Elizabeth Patterson
Administrative Assistant

Encl.

174 PU-05-451 Pages: 1

Cover letter and tape from prehearing conference June 27, 2006 (out of sequence)
by Office of Administrative Hearings
04/20/2007 CC: Comm Legal Illona, Pat, Annette . .

HARD COPY OF Tape from prehearing conference on June 27, 2006

DOCKET SEQUENCE NO. 174

EXHIBIT

CASE NO. PU-05-451

ON FILE IN

STATE ARCHIVES

CONTROL NUMBER: 80051

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.nd.gov/oah

October 18, 2006

Mr. William W. Binek
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

RECEIVED
OCT 19 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Re: Midcontinent Communications
North Dakota Telephone Company
Rural Exemption Investigation
Case No. PU-05-451
OAH File No. 20060297

Dear Mr. Binek:

I have the Order of the North Dakota Public Service Commission issued October 12, 2006, for the captioned matter, and note the cancellation of the hearing for the matter which was scheduled to be held January 8, 2007. As the administrative law judge designated to serve as the hearing officer for that hearing, I have closed the file of the Office of Administrative Hearings for that hearing and return to you those documents which may be part of the Commission's file for the matter.

The Office of Administrative Hearings is pleased to have assisted the parties for the hearing.

Sincerely,

Al. Wahl
Administrative Law Judge

AW/eap

Encl.

cc: Mr. Patrick W. Durick
Pearce & Durick
Mr. J.G. Harrington
Dow Lohnes, PLLC
Mr. Donald A. Negaard
Pringle & Herigstad, P.C.
Mr. Thomas J. Moorman
Woods & Aitken, LLP

173 PU-05-451 Pages: 1

ALJ file closed

by Office of Administrative Hearings by Al Wahl, ALJ
10/19/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **16th day of October, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order Approving Final Discount Rate

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7005 3110 0003 6265 6458

Dave Dircks Manager
North Dakota Telephone Company
P O Box 180
Devils Lake ND 58301-0180
Cert. No. 7005 3110 0003 6265 6465

Thomas J Moorman
Kraskin Moorman & Cosson LLC
2154 Wisconsin Ave NW
Washington D C 20007
Cert. No. 7005 3110 0003 6265 6472

J G Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington D C 20036
Cert. No. 7005 3110 0003 6265 6489

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 3110 0003 6265 6496

Scott M Knudsvig
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 3110 0003 6265 6502

Sharon Helbling further deposes and says that on the **16th day of October, 2006,** she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular

mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **16th day of October, 2006**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **16th day of October, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of:

Order Approving Final Discount Rate

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **16th day of October, 2006**.

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

Sandra L. Scott
Notary Public

SEAL

wbrudvik@ohnstadlaw.com
William Brudvik

mariep@telcogroupinc.com
Marie Pierre-Paul

cheryl.robins@thomson.com
Cheryl Robins

dennis.kelley@reconex.com
Dennis Kelley
1-800-Reconex Inc
2500 Industrial Ave
Hubbard OR 97032

ffarm@wtc-mail.net
Ann Faught
Absaraka Co-op Tele Co.
2894 146 Avenue SE
Absaraka ND 58002

abby.knowlton@acceris.com
Abby Knowlton
Acceris Management & Acquisition LLC
9530 Padgett St Ste 101
San Diego CA 92126

tseat@acninc.com
TIMOTHY SEAT
ACN COMMUNICATION SERVICES, INC.
32991 HAMILTON CT
FARMINGTON HILL MI 48334-3301

jlchapman@acomminc.com
Jerry Chapman
Acomm Inc
510 1st Ave N Ste 203
Minneapolis MN 55403-0343

judy.messenger@paetec.com
Judy Messenger
American Long Lines Inc
1 PaeTec Plaza
600 Willowbrook Office Pk
Fairport NY 14450

Diana.Stevens@VerizonWireless.com
Diana Stevens
Badlands Cellular of North Dakota LP

jcremer@bantzlaw.com
James Cremer
Bantz Gosh & Cremer LLC
305 6th Ave SE
Aberdeen SD 57402-0970

rharper@bepc.com
Ron Harper
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

mzimmerman@bepc.com
Mike Zimmerman
Basin Electric Power Cooperative Inc
1717 E Interstate Ave
Bismarck ND 58503-0564

derrick@bektel.com
Derrick Bulawa
BEK Communications Cooperative
P. O. Box 230
Steele ND 58482-0230

Diana.Stevens@VerizonWireless.com
Diana Stevens
Bismarck MSA Limited Partnership

mayotte@briggs.com
Mark J Ayotte
Briqqs and Morqan P A
2200 IDS Center
80 South 8th Street
Minneapolis MN 55402

daniel.meldazis@broadwing.com
DANIEL MELDAZIS
BROADWING COMMUNICATIONS
200 NORTH LASALLE SUITE 1000
CHICAGO IL 60601

aeconomou@mettel.net
Andoni Economou
Business Productivity Solutions Inc
44 Wall St 6th FL
New York NY 10005

jean.houck@btitelecom.net
Jean Houck
Business Telecom Inc
7037 Old Madison Pike Ste 400
Huntsville AL 35806

astevens@czn.com
Scott Bohler
Citizens Telecomm Co of Minnesota
3 Hiqh Ridqe Park
Stamford CT 06905

charlie@cicom.net
CHARLES BRENNEMAN
COAST INTERNATIONAL, INC.
14303 W 95TH STREET
LENEXA KS 66215-5210

michael_nelson@cable.comcast.com
Michael Nelson
Comcast Business Communications Inc
183 Inverness Dr W
Enqlewood CO 80112

pamela.hintz@ctcnet.com

Computer Telephone Corp
220 Bear Hill Rd
Waltham MA 02451-1101

mannawiz@pacbell.net
Larry Manna
Compuwiz
1012 Industrial Blvd
South Lake Tahoe CA 96150

bryan@consolidatedtelcom.com
Bryan W Personne
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

paul@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

ken@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

ninaburslem@imagitel.com
NINA BURSLEM
D.D.D. CALLING, INC.
2400 AUGUSTA DRIVE SUITE 263
HOUSTON TX 77057-4922

keithl@daktel.com
Keith Larson
Dakota Central Tele Coop
PO Box 299
Carrinqton ND 58421-0299

---

njrasher@msn.com
Mary Jane Rasher
DCI Group

tschilling@drtel.com
Troy Schilling
Dickey Rural Services Inc
P O Box 69
Ellendale ND 58436

tschilling@drtel.com
Troy Schilling
Dickey Rural Telephone Cooperative
PO Box 69
Ellendale ND 58436-0069

lhankins@covad.com
Lynn Hankins
DIECA Communications Inc
3420 Central Expy
Santa Clara CA 95051-0703

olair.housley@orange-ft.com
Blair Housley
France Telecom Corporate Solutions LLC
13775 McLearen Rd Mailstop 1100
Oak Hill VA 20171

astevens@czn.com
Frontier Communications of America Inc
4 Triad Ctr Ste 200
Salt Lake City UT 84180

glenn.richards@shawpittman.com
Glenn Richards
Glenn Richards
ShawPittman
2300 N St NW

petra.malik@globalcrossing.com
Petra Malik
Global Crossing North American Networks
1080 Pittsford Victor Rd
Pittsford NY 14534

petra.malik@globalcrossing.com
Petra Malik
Global Crossing Telecommunications Inc
1080 Pittsford Victor Rd
Pittsford NY 14534

cooperstown@mlgc.com
Ray Brown
Griggs County Telephone Co
P O Box 506
Cooperstown ND 58425-0506

rlaqua@rrv.net
Ronald Laqua
Halstad Telephone Company
PO Box 55
Halstad MN 56548-0055

cstein@dominionbusinessgroup.com
Chris Stein
Horizon Telecom Inc
3993 Howard Hughes Pkwy Ste 250
Las Vegas NV 89109

rlaqua@rrv.net
HTC Services Inc
P O Box 55
Halstad MN 56548

bjohnson@ideaone.com
Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

carl.billek@corp.idt.net
Carl Wolf Billek
IDT America Corp
520 Broad St 4th Fl
Newark NJ 07102-3111

jamie@ignus.com
Jamie Kubik
Ignus Inc
855 45th St SW Ste 11
Fargo ND 58103-1036

---

service@inmatecallingsolutions.com
Inmate Calling Solutions LLC
5883 Rue Ferrari
San Jose CA 95138

gene.curtis@integratelecom.com
Gene Curtis
Integra Telecom of North Dakota Inc
745 45th St SW Ste C
Fargo ND 59103

narsha.pokorny@ildmail.com
MARSHA POKORNY
INTELLICALL OPERATOR SERVICES, INC.
1270 STONE STREET
OVIEDO FL 32765

kander@ictc.com
Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

dave_read@inter-tel.com
Dave Read
Inter-Tel NetSolutions Inc
885 Trademark Dr
Reno NV 89511

jamesval@jamesvalley.com

James Valley Coop Telephone Co
P O Box 260
Groton SD 57445

akiyama@kddia.com
TOSHIRO AKIYAMA
KDDI AMERICA, INC.
825 3RD AVE 3RD FLOOR
NEW YORK NY 10022

sales@kmavradio.com

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

francie@talk.com
Francie McComb
LDMI Telecommunications Inc
6805 Route 202
New Hoee PA 18938

jlowe@ldcb.com
JAN LOWE
LONG DISTANCE CONSOLIDATED BILLING CO.
7111 DIXIE HWY SUITE 211
CLARKSTON MI 48346

loretel@loretel.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

dhoyle@matarixbt.com
Dana Hoyle
Matrix Telecom Inc
2207 Commerce St
Dallas TX 75201

foss@btinet.net
Marilyn Foss
MCI
P O Box 2216
Bismarck ND 58502-2216

mary_lohnes@mmi.net
MARY LOHNES
MIDCONTINENT COMMUNICATIONS
5001 W 41ST STREET
SIOUX FALLS SD 57106

gerrya@midrivers.com
Gerry Anderson
Mid-Rivers Telephone Coop Inc
PO Box 280
Circle MT 59215-0280

carols@midstatetel.com
Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

carols@midstatetel.com
Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

mark@access-intl.com
MARK SORIA
MIRACLE COMMUNICATIONS INC.
725 LAKEFIEL ROAD STE G
WESTLAKE VILLAGE CA 91361

rdelfiacco@nemont.net
Roger Del Fiacco
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

karen.collins@mdu.com; tamie.aberle@mdu.com
Karen Collins
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

sbunn@mlgc.com
Shelie Bunn
Moore & Liberty Telephone Co

Enderlin ND 58027

dhill@ndarec.com
Dennis Hill
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

pschaner@ndarec.com
Patti Schaner
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

rdelfiacco@nemont.net
Roger Del Fiacco
Nemont Telephone Cooperative, Inc.
P. O. Box 600
Scobey MT 56263

jsilveira@netlojix.com
JANET MEDEIROS-SILVEIRA
NETLOJIX TELECOM, INC.
104 W ANAPAMU ST SUITE C
SANTA BARBARA CA 93101

prieck@newaccess.cc
Pam Rieck
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

oslaughter@newaccess.cc
BRANDI FRANZEN
NEW ACCESS COMMUNICATIONS LLC
801 NICOLLET MALL SUITE 350
MINNEAPOLIS MN 55402

rer@norlight.com
Robert E Rogers
NorLight Inc
275 N Corporate Dr
Brookfield WI 53045

laurie.willman@nbne.info
Laurie Willman
North By NortheastCom LLC

Diana.Stevens@VerizonWireless.com
Diana Stevens
North Central RSA 2 of ND LP

Diana.Stevens@VerizonWireless.com
Diana Stevens
North Dakota 5 - Kidder LP

kathyy@ndtel.com
Kathy Young
North Dakota Long Distance
P O Box 180
Devils Lake ND 58301-0180

stevedl@srttel.com
Steven Lysne
North Dakota Network Co
P O Box 2027
Minot ND 58702-2027

Diana.Stevens@VerizonWireless.com
Diana Stevens
North Dakota RSA No. 3 LP

pat@ndta.net
Patricia Gisinger
North Dakota Telephone Assoc
PO Box 2614
Bismarck ND 58502-2614

kathyy@ndtel.com
Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

dwights@nccray.com
Dwight Schmitt
Northwest Communications Coop
PO Box 38
Ray ND 58849-0038

Diana.Stevens@VerizonWireless.com
Diana Stevens
Northwest Dakota Cellular of ND LP

njureidini@noslv.com
Naz Jureidini
NOS Communications
4380 Boulder Hwy
Las Vegas NV 89121

mary.buley@onvoy.com
Mary Buley
Onvoy Inc
300 South Highway 169, Ste 700
Minneapolis MN 55426

jill.froman@excellsvcs.com
Jill Froman
Operator Service Company LLC
5302 Avenue Q
Lubbock TX 79412

ddunning@polarcomm.com
David Dunning
Polar Commun Mut Aid Corp
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telcom Inc
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telecommunications Inc
PO Box T
Park River ND 58270

klawrence@primustel.com
Kathleen Kerr-Lawrence
Primus Telecommunications Inc
7901 Jones Branch Dr #900
McLean VA 22102-3338

donn@srt.com
Don Negaard
Pringle and Herigstad P C
PO Box 1000
Minot ND 58702-1000

tresch1@attbi.com
THOMAS RESCH
PROTEL ADVANTAGE, INC.
1308 MEDORA ROAD
MENDOTA HEIGHTS MN 55118

jbrown@vcomsolutions.com
Jenna Brown
QuantumShift Communications Inc
12657 Alcosta Blvd Ste 418
San Ramon CA 945830

sschwan@qwest.com
Suzy Schwandt
Qwest Corporation

kblicke@qwest.com
Kent Blickensderfer
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

smacint@qwest.com
Scott Macintosh
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

richard.buckley@qwest.com
Richard J Buckley
Qwest Corporation
1801 California St Rm 4710
Denver CO 80202

jason.topp@qwest.com
Jason Topp
Qwest Services Corporation
200 S 5th St Rm 2200
Minneapolis MN 55402

areyes@telfile.com
Ayanery Reyes
QX Telecom LLC
230 5th Ave Ste 800
New York NY 10001

pam@tnics.com
Pamela Harrington
RC Communications Inc
PO Box 197
New Effington SD 57255-0197

jeffolson@rrt.net
Jeff Olson
Red River Rural Tele Assoc
PO Box 136
Abercrombie ND 58001-0136

royce@restel.net
Royce Aslakson
Reservation Telephone Cooperative

Parshall ND 58770

marciab@RTC.coop
Marcia Burckhard
Reservation Telephone Cooperative

Parshall ND 58770

shaneh@restel.net
Shane Hart
Reservation Telephone Cooperative

Parshall ND 58770

pam@tnics.com
Pamela Harrington
Roberts County Telephone Coop Assoc

New Effington SD 57255

aimeed@nemontel.net

Sagebrush Cellular Inc

kb9534@sbcld.com
Karen Brinkman
SBC Long Distance LLC
5850 W Las Positas Blvd
Pleasanton CA 94558

arthur.paquette@att.com
ARTHUR PAQUETTE
SNET AMERICA, INC.
310 ORANGE STREET 3RD FLOOR
NEW HAVEN CT 06510

diane.c.browning@mail.sprint.com
Diane C Browning
SPRINT COMMUNICATIONS COMPANY L.P.
6450 SPRINT PARKWAY KSOPHN0212-2A511
OVERLAND PARK KS 66251-6100

jasonrg@srttel.com
Jason Gemar
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

julieel@srttel.com
Julie Lizotte
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

stevedl@srttel.com
Steve Lysne
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

christm@srttel.com
Chris Morsefield
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

janehp@srttel.com
Jane Petersen
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

johnar@srttel.com
John Reiser
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

kimrw@srttel.com
Kim Weydahl
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

mdickerson@state.nd.us
Marcy Dickerson
State Tax Department
State Capitol
Bismarck ND 58505

francie@talk.com
Francie McComb
Talk America Inc
2704 Alternate U S 19 N
Palm Harbor FL 34683

Tele-beep@butlerpropertiesinc.com
AL BOSCH
TELE-BEEP PAGING CO.
PO BOX 7072
BISMARCK ND 58507-7072

lwh@thlglaw.com
Loubna W Haddad
The Helein Law Group LLP
8180 Greensboro Dr Ste 700
McLean VA 22102

gary.barlow@flyingj.com
D Brett Sanford
Ton Services Inc
4185 Harrison Blvd Ste 301
Ogden UT 84403

compliance@epowerc.com
Lourdes Vinas
TransWorld Network Corp
7702 Woodland Ctr Blvd Ste 50
Tampa FL 33614-2411

cdr-agency-relations@mci.com
Dan Hernandez
TTI National Inc
P O Box 3187
Cedar Rapids IA 52406-3187

lahall@usgs.gov
Lenora Hall
U S Geological Survey

kjvannin@usgs.gov
K Vannin
U S Geological Survey

kimm.partridge@ucn.net
KIMM PARTRIDGE
UCN, INC.
14870 SOUTH PONY EXPRESS ROAD
BLUFFDALE UT 84065

kcarlson@utma.com
Kenneth Carlson
United Telephone Mut Aid Corp
P O Box 729
Langdon ND 58249-0729

nspead@universalservice.org
Michael Spead
USAC
2120 L St NW Ste 600
Washington DC 20037

kander@ictc.com
Keith Anderson
Valley Communications Inc
P O Box 8
Nome ND 58062

vilaire@comcast.net
Stan Efferding
VCI Company
P O Box 98907
Lakewood WA 98498-0907

rhoudek@venturecomm.net
Randy Houdek
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

david.armey@verizonwireless.com;
john.laquatra1@verizonwireless.com
David Armey
Verizon
750 State Hwy 121, Ste 100
Louisville TX 75067

anthony.gillman@verizon.com
Anthony Gillman
Verizon Select Services Inc
P O Box 110
Mailcode: FLTC0007
Tampa FL 33601-0110

westriver@sdplains.com

West River Coop Telephone Co
801 Coleman Ave PO Box 39
Bison SD 57620-0039

bonniek@westriv.com
Bonnie Krause
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

nickg@westriv.com
Mick Grosz
West River Telecommunications Cooperati
PO Box 467
Hazen ND 58545-0467

greg.rogers@level3.com
Greg Rogers
WilTel Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021

windfall_resources@sbcglobal.net
Robert K Lock
Windfall Resources International LLC
7144 BN Harlem Ave Ste 323
Chicago IL 60631

paulihland@wtc-mail.net
Paul Ihland
Wolverton Telephone Company
P O Box 270
Park River ND 58270-0270

rex.knowles@xo.com
Rex Knowles
XO Communications Services Inc
111 E Bdwy Ste 1000
Salt Lake City UT 84111

1 Plus Savings Inc
36072 Jefferson Ave
Harrison Township MI 48045

Jennifer Sikes
1-800 Reconex
2500 Industrial Ave
Hubbard OR 97032

Patrick Summers
360NETWORKS (USA) INC.
867 COAL CREEK CIRCLE SUITE 160
LOUISVILLE CO 80027

3U Telecom Inc
1802 N Carson St Ste 212-2683
Carson City NV 89701

800 Response Information Services LLC
200 Church St
Burlington VT 05402

Access Point Inc
1100 Crescent Green Ste 10 9
Cary NC 27511

Accessline Communications Corporation
11201 SE 8th St Ste 200
Bellevue WA 98004

ACCXX Communications LLC
4035 Tampa Rd Ste 6000
Oldsmar FL 34677

Acomm Inc
5701 Shingle Crk Pkwy Ste 550
Brooklyn Center MN 55430-2467

Affinity Network Incorporated
4380 Boulder Hwy
Las Vegas NV 89121

Airespring Inc
6060 Sepulveda Blvd Ste 220
Van Nuys CA 91411-2512

Airnex Communications Inc
3000 Executive Pkwy Ste 230
San Ramon CA 94583

Alliance Group Services Inc
1221 Post Rd E
Westport CT 06880-5430

All-Star Acquisition Corporation
7361 Calhoun Pl Ste 650
Derwood MD 20855-2775

Alltel Communications Inc
1 Allied Dr
Little Rock AR 72202

Alternate Communications Technology Inc
1398 N Shadeland Ave Ste 2233
Indianapolis IN 46219

Americatel Corporation
4045 NW 97th Ave

Kelly Franks
Amerivision Communications Inc
201 NW 63rd St Ste 200
Oklahoma City OK 73116

Arch Communications Enterprises LLC
6910 Richmond Hwy #80
Alexandria VA 22306-1801

Arch Paging Inc
1800 W Park Dr
Westborough MA 01581

Arch Wireless Inc
6910 Richmond Hwy #80
Alexandria VA 22306-1801

ASC Telecom Inc
6391 Sprint Pkwy
Overland Park KS 66251-6100

Associated Network Partners Inc
3130 Pleasant Run
Springfield IL 61707-6347

Association Administrators Inc
180 E Main St
Smithtown NY 11787

Kimberly Nielsen
AT&T Wireless
P O Box 3611
Bothell WA 98073-9761

ATX Telecommunications Services Ltd
50 Monument Rd
Bala Cynwyd PA 19004

BAK Communications LLC
8421 Wilshire Blvd Ste 206
Beverly Hills CA 90211-3204

BCN Telecom Inc
550 Route 202-206 2nd Fl
Bedminster NJ 07921

Bell Atlantic Communications Inc
1320 N Courthouse Rd 9th Fl
Arlington VA 22201

JOHN BROTEN
BELL ATLANTIC COMMUNICATIONS, INC.
1320 NORTH COURT HOUSE ROAD
ARLINGTON VA 22201

Robin H Taylor
BellSouth Long Distance Inc
400 Perimeter Ctr Terr Ste 350
Atlanta GA 30346

Better World Telecom Inc
11921 Freedom Dr Ste 550
Reston VA 20194

Angel Sotomayer
Bismarck MSA Limited Partnership
180 Washington Valley Rd
Bedminster NJ 07921-2120

Blackstone Communications Company
11600 NW 34th St
Miami FL 33178

Broadwing Communications LLC
1122 Capital of Texas Highway S
Austin TX 78746

Budget Phone, Inc.
6901 W 70th St
Shreveport IL 71129

BullsEye Telecom, Inc.
25900 Greenfield Rd Ste 330

Craig Konrad
Business Discount Plan Inc
1 World Trade Ctr Ste 800
Long Beach CA 90831

Business Network Long Distance Inc
1400 16th St Ste 400
Denver CO 80202

Buzz Telecom Corporation
8380 Louisiana St
Merrillville IN 46410

Scott Geston
Cable One of Fargo
P O Box 10757
Fargo ND 58106-0757

Century Telecommunications Inc
P O Box 4065
Monroe LA 71211-5065

Cincinnati Bell Any Distance Inc
201 E 4th St
Cincinnati OH 46202

Clear World Communications Corporation
3601 S Harbor Blvd
Santa Ana CA 92704

Cognigen Networks Inc
6405 218th St SW Ste 305
Mountlake Terrace WA 98043-2180

Coleman Enterprises Inc
6053 Hudson Rd #110
Woodbury MN 55125

Beth Choroser
Comcast Business Communications Inc
1500 Market St
Philadelphia PA 19102

CommPartners LLC
3291 N Buffalo Dr Ste 8
Las Vegas NV 89129

Courtney Maroon
Communications Billing Inc
P O Box 40149
Bay Village OH 44140-0149

C Hurley Cox
Communications Network Billing Inc
6701 Democracy Blvd Ste 300
Bethesda MD 20817

CommuniGroup of K C Inc
6950 W 56th St
Mission KS 66202

Computer Integrated Communications Inc
8502 Bells Mill Rd
Potomac MD 20854-4071

Computer Network Technology Corp
6000 Nathan Ln N
Minneapolis MN 55442

Comtech 21 LLC
1 Barnes Park S
Wallingford CT 06492

Consolidated Billing Provider LLC
7 Shingle Oak Dr
Voorhees NJ 08043

Scott Kitchen
Consolidated Comm Operator Services Inc
350 S Loop 336 W
Conroe TX 77304

Consolidated Comm Telecom Services Inc
121 S 17th St

Consolidated Communications Corp
P O Box 1408
Dickinson ND 58602-1408

Consolidated Communications Networks In
507 S Main
Dickinson ND 58601

Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

Contact Communications
937 W Main St
Riverton WY 82501

Converqia Inc
237 Hymus Blvd
Point-Claire Quebec CA H9R 5C7

Corporate Callinq Services Inc
3960 Howard Hughes Pk
5th Fl #5001F
Las Vegas NV 89109-5972

Corporate Communications Inc
2150 32nd Ave S
Grand Forks ND 58201

Anthony Barrett
Covista Inc
4803 Hwy 58 N
Chatanooga TN 37416

Custom Teleconnect Inc
3111 S Valley View Ste E-120
Las Vegas NV 89102

Cybertel Communications Corp
9444 Waples ST Ste 290
San Diego CA 92121-2985

William Jackson
Dakota Justice
38 8th Ave W
Dickinson ND 58601

Daktel Communications LLC
P O Box 299
Carrington ND 58421-0299

Dave Dircks
DCN LLC
P O Box 180
Devils Lake ND 58301-0180

DelTel Inc
27071 Aliso Creek Rd Ste 150
Aliso Viejo CA 92656-5323

Dialaround Enterprises Inc
30-50 Whitestone Expwy 1st Fl Ste 102
Flushing NY 11354

Dial-Thru Inc
17383 Sunset Blvd Ste 350
Pacific Palisades CA 90272-4195

Diqital Telecommunications Inc
111 Riverfront Ste 305
Winona MN 55987

DSLnet Communications LLC
545 Long Wharf Dr
New Haven CT 06511

Eaqle Telecom Inc
614 S 8th St Ste 335
Philadelphia PA 19147

Easton Telecom Services Inc
3046 Brecksville Rd #A

Easton Telecom Services LLC
Summit II Unit A
3406 Brecksville Rd
Richfield OH 44286

Encompass Communications LLC
119 W Tyler Ste 260
Longview TX 75601

Enhanced Communications Group LLC
312 E Delaware Ave
Bartlesville OK 74003-3630

Enhanced Communications Network Inc
1031 S Glendora Ave
West Covina CA 91790

Entrix Telecom Inc
520 Broad St
Newark NJ 07102

Epixtar Communications Corp
11900 Biscayne Blvd Ste 262
Miami FL 33181

erbia Network Inc
7901 Ariel Way
McLean VA 22102

Ernest Communications Inc
5275 Triangle Pkwy Ste 150
Norcross GA 30092

Exergy Group LLC
1550 W 84th St Ste 50
Hialeah FL 33014

Chere Heintzmann
Extend America Inc
1101 E Front Ave
Bismarck ND 58504-5654

Farstad Oil Inc
P O Box 1842
Minot ND 58701

Lawrence Freedman
Fleischman & Walsh
1919 Pennsylvania Ave NW Ste 600
Washington DC 20006-3420

FreedonStarr Communications Inc
7985 Santa Monica Blvd #7
West Hollywood CA 90046

Funding Our Future LLC
1900 Wellesley Ave
St Paul MN 55105

Gates Communications Inc
1100 Olive Way #951
Seattle WA 98101

Gerlach Enterprises Inc
3002 Fiechtner Dr S Ste 1
Fargo ND 58103-2387

Global Communications Consulting Corp
2 Greenwood Sq Ste 110
3331 St Rd
Bensalem PA 19020-2052

Global Tel*Link Corporation
2609 Cameron St
Mobile AL 36607-3104

Globalcom Inc
333 West Wacker Ste 1500
Chicago IL 60606

GLOBCOM INCORPORATED
2100 Sanders Rd Ste 150

Go Solo Technologies Inc
5053 Ocean Blvd #54
Sarasota FL 34242

Gold Line Telemanagement Inc
180 W Beaver Creek Rd
Richmond Hill Ontari CA L4B 1B4

Granite Telecommunications LLC
100 Newport Ave Ext
Quincy MA 02171

Group Long Distance Inc
1 Cavalier Ct
Ringoes NJ 08551-0534

GTC Telecom
3151 Airway Ave Ste p_3
Costa Mesa CA 92626

Houlton Enterprises Inc
2201 W Bdwy Ste 1
Council Bluffs IA 51501

IBFA Acquisition Company LLC
1850 Howard St Unit C
Elk Grove Village IL 60007

Julia Waysdorf
ICG Telecom Group Inc
161 Inverness Dr W
Englewood CO 80112

Infone LLC
11200 Murray Scholls Place
Beaverton OR 97007-9702

Intercontinental Communicatiosn Group I
420 Lexington Ave Ste 518
New York NY 10170

Ken Hanks
International Telcom Ltd
417 2nd Ave W
Seattle WA 98119

International Telemanagement Group Inc
206 E Market St
Lima OH 45801

David A. Huberman
Intrado Communications Inc
1601 Dry Creek Dr
Longmont CO 80503-6493

Ionex Communications North Inc
2300 Main St Fl 6
Kansas City MO 64108-2415

IPVoice Communications Inc
14860 Montfort Dr Ste 210
Dallas TX 75254

Nanette Edwards
ITC DeltaCom Communications Inc
7037 Old Madison Pike NW #400
Huntsville AL 35806-2107

KMC Data LLC
1545 Route 206
Bedminster NJ 07921

Myer Shark
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

Thomas K Crowe
Law Offices of Thomas K Crowe PC
1250 24th St NW Ste 300
Washington DC 20037

LCI Telemanagement Corp
4650 Lakehurst Ct

LCR Telecommunications LLC
100 West Big Beaver Rd Ste 200
Troy MI 48084

LDC Telecommunications Inc
10012 N Dale Mabry Hwy
Tampa FL 33618

Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021

Lightyear Network Solutions LLC
201 E Main St Ste 1000
Lexington KY 40507

Local Telcom Holdings LLC
485 Madison Ave 15th Fl
New York NY 10022-5803

Long Distance Billing Services Inc
436 Lynchburg Ave
Brookneal VA 24528

Main Street Telephone Company
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Maxcess Inc
P O Box 951419
Lake Mary FL 32795-1419

McGraw Communications Inc
228 E 45th St 12th Fl
New York NY 10017

MCI Worldcom Network Services Inc
22001 Loudoun Cty Pkwy
Ashburn VA 20147-6105

MCImetro Access Transmission Services
22001 Loudoun County Pkwy
Ashburn VA 20147-6105

McKenzie Consolidated Telecom LLC
P O Box 1408
Dickinson ND 58602-1408

McLeodUSA
1 Martha's Way
Hiawatha IA 52233-2402

Mercury Long Distance INc
2288 Gunbarrel Rd Stte 111-269
Chattanooga TN 37421

Metropolitan Telecomm of ND Inc
44 Wall St 6th Fl
New York NY 10005

MGEN Services Corp
2510 N Red Hill Ave
Santa Ana CA 92705

Micro-Comm Inc
2612 Cameron
Mobile AL 36670-0461

Mid-Rivers Long Distance Inc
106 2nd Ave S
Circle MT 59215

Minnesota Independent Equal Access Corp
300 S Hwy 169 Ste 700
Minneapolis MN 55426

Miracle Communications Inc
725 Lakefield Rd Ste G

Mike Strand
MITS
PO Box 5237
Helena MT 59604-5237

National Access Long Distance Inc
2055 Gateway Place Ste 400
San Jose CA 95110

National Directory Assistance LLC
12700 Shelbyville Rd Danville Bldg
Louisville KY 40243

Jim Arbury
National Multi Housing Council
1850 M St NW Ste 540
Washington DC 20036

National Professional Teleservices LLC
14001 63rd Way N
Clearwater FL 33760

National Telecom Inc
2235 E Flamingo Rd Ste 405
Las Vegas NV 89119

Dave Crothers
NDATC
Box 1144
Mandan ND 58554-1144

NECC Telecom Inc
605 N Shore Dr Unit 101-103
Jeffersonville IN 47130

Nemont Communications Inc
P O Box 600
Scobey MT 59263

Net One International Inc
4037 Metric Dr
Winter Park FL 32792-6808

Netlojix Telecom Inc
104 W Anapamu St Ste C
Santa Barbara CA 93101

Network Billing Systems LLC
155 Willowbrook Blvd
Wayne NJ 07470

Network Communications International Co
606 E Magrill St
Longview TX 75601

Network Enhanced Technologies Inc
700 S Flower St Ste 420
Los Angeles CA 90017-4106

Network Operator Services Inc
119 West Tyler Ste 260
Longview TX 75601

Network PTS Inc
14472 Wicks Blvd
San Leandro CA 94577

Network Service Billing Inc
7251 W Lake Mead Blvd Ste 300
Las Vegas NV 89128

Network US Inc
1842 Centre Point Dr Ste 128
Naperville IL 60563-4851

NetworkIP LLC
119 West Tyler St Ste 168
Longview TX 75601

New Century Telecom Inc
8180 Greensboro Dr #700

New Edge Network Inc
3000 Columbia House Blvd Ste 106
Vancouver WA 98661

Bob Edgerly
Nextel West Corp
2001 Edmund Halley Dr
Reston VA 20191

NobelTel LLC
5759 Fleet St
Carlsbad CA 92008

Norlight Inc
13935 Bishops Dr
Brookfield WI 53005-6605

Cheryl Jung
Norstan Network Services Inc
5101 Shady Oak Rd
Minnetonka MN 55343

Angel Sotomayor
North Dakota 5-Kidder Ltd Ptnshp
180 Washington Valley Rd
Bedminster NJ 07921-2120

Carmine Russo
North Dakota Big Sky Telecom
374 Ansin Blvd
Hallandale FL 33009

Dave Dircks
North Dakota Long Distance Inc
P O Box 180
Devils Lake ND 58301-0180

North Dakota Long Distance LLC
104 Eastwood Dr
Grafton ND 58237

Nosva Limited Partnership
4380 Boulder Hwy
Las Vegas NV 89121-3002

NPCR Inc
4500 Carillon Pt
Kirkland WA 98033

OCMC Inc
801 Congressional Blvd
Carmel IN 46032

OLS Inc
1030 Cambridge Sq Ste E
Alpharetta GA 30201

One Call Communications Inc
801 Congressional Blvd
Carmel IN 46032

Opcom Inc
512 N 29th St
Billings MT 59101-1128

Brad Van Leur
OrbitCom Inc
1701 N Louise Ave
Sioux Falls SD 57107

OU Connection Inc
13 E 4th Ave
Ada MN 56510

Ozark Telecom Inc
1115 Mill St
Camden SC 29020

Pacific Centrex Services Inc
6855 Tujunga Ave
North Hollywood CA 91605

PAETEC Communications Inc
1 PaeTec Plaza
600 Willowbrook Office Pk

Phone1 Inc
100 N Biscayne Blvd 25th FL
Miami FL 33132

PNG Telecommunications Inc
100 Commercial Dr
Fairfield OH 45014

POPP Telcom Inc
620 Mendelssohn Ave N
Golden Valley MN 55427

Powercom Corporation
1807 N Center St
Beaver Dam WI 53916-1031

Preimiercom Inc
500 E Higgins Rd Ste 200
Elk Grove Village IL 60007

Premiere Network Services Inc
1510 N Hampton Rd Ste 120
DeSoto TX 75115

Professional Comm Management Serv Inc
RR 3 Box 69G
Bruceton Mills WV 26525-9611

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90026

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90025

Quasar Communications Corporation
15610 Boulder Oaks Dr
Houston TX 77084

Quick Tel Inc
3822 Ironwood Pl
Landover MD 20785

Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Kristin L Smith
Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Qwest Interprise America Inc
1801 California St Ste 5100
Denver CO 80202

Qwest LD Corp
1801 California St Ste 5100
Denver CO 80202

QX Telecom LLC
230 5th Ave
New York NY 10001

R2C Communications Inc
9532 Mission Rd #25
Overland Park KS 66206

Radiant Telecom Inc
1020 NW 163 Dr
Miami FL 33169

RCC Network Inc
3905 Dakota St SW
Alexandria MN 56308-2000

Dean Polkow
RCC Network Inc
PO Box 2000

RCC Paging Inc
P O Box 2000
Alexandria MN 56308

Reduced Rate Long Distance LLC
1800 Pembrooke Dr Ste 300
Orlando FL 32810

Reliance Telephone Systems Inc
118 Gateway Dr
East Grand Forks ND 56721

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary FL 32746

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary` FL 32746

Ridley Telephone Company LLC
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

Smartnet Inc
649 4th Ave SW
Dickinson ND 58601

Smartstop Inc
333 SW Taylor St
Portland OR 97204-2446

Snip Link LLC
100-A Twinbridge Dr
Pennsauken NJ 08110

Souris River Telecommunications Company
P O Box 2027
Minot ND 58702-2027

Andrew Jones
Sprint Communications Company
6391 Print Pkwy
Overland Park KS 66251-6100

Sprint Spectrum LP
6160 Sprint Pkwy 4th Fl
KSOPHIO414
Overland Park KS 66251

Startec Global Licensinq Company
1151 Seven Locks Rd
Potomac MD 20854-2968

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

TCPB Marketinq Company Ltd
P O Box 40149
Bay Village OH 44140-0149

William Staycoff
Telcom Billinq Services Inc
9243 E River Rd NW
Coon Rapids MN 55433-5722

Donald Roudebush
Telecare Incorporated
444 Lafayette Rd
Noblesville IN 46060

TeleCents Communications Inc
8615 Richardson Rd Ste 200
Walled Lake MI 48390

Telecom Manaqement Inc
563 Warren Ave

Teleconnect Lonq Dist Sevices & Systems
500 2nd Ave SE
Cedar Rapids IA 52401

Telefyne Incorporated
4286 Woodbine Rd Ste B
Pace FL 32571

Telenational Communications Inc
7310 Woolworth Ave
Omaha NE 68124

Telera Communications Inc
910 E Hamilton Ave Ste 200
Campbell CA 95008

Telliss LLC
10142 Brooks School Rd Ste 198
Fishers IN 46038

Telrite Corporation
14500 Lochridge Blvd Ste D
Covington GA 30014-4941

TelVue Corporation
16000 Horizon Way
Mt Laurel NJ 08054

The Farm Bureau Connection
600 Maryland Ave SW Ste 800
Washington DC 20024-2520

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

CURTIS HOPFINGER
T-NETIX TELECOMMUNICATIONS SERVICES, IN
14651 DALLAS PARKWAY SUITE 600
DALLAS TX 75254

Total Call International Inc
707 Wilshire Blvd 9th Fl
Los Angeles CA 90017-3501

Touch I Communications Inc
100 Brookwood Rd
Atmore AL 36504-5751

Touchtone Communications Inc
16 S Jefferson Rd
Whippany NJ 07981

Trans National Comm Internat'l Inc
2 Charlesgate West
Boston MA 02215

Transcom Communications Inc
1925 W John Carpenter Frwy Ste 500
Irving TX 75063

Tri-M Communications Inc
125 E DeLaGuerra Ste 203
Santa Barbara CA 93101

Trinsic Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

U S South Communications Inc
250 Williams St Ste M-100
Atlanta GA 30303-1032

Uni-Tel Communications Group Inc
47 E Chicago Ave Ste 328
Naperville IL 60540

US LEC Communications Inc
6801 Morrison Blvd Morrocroft III

USA Digital Communications Inc
1603 SE 19th St Ste 120
Edmond OK 73013-6621

Val-Ed Joint Venture LLP/702
702 Main Ave
Moorhead MN 56560

Rick Cantu
Value-Added Communications Inc
3801 E Plano Pkwy Ste 100
Plano TX 75074-1808

Virqin Mobile USA LLC
10 Independence Blvd
Warren NJ 07059-6747

WDT World Discount Tele Co
13644 Neuton Rd
Dallas TX 75244

WebNet Communications Inc
20904 Winola Ter
Ashburn VA 20147-6482

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

Wholesale Carrier Services Inc
7200 W Camino Real Ste 303
Boca Raton FL 33433

Carolyn Fodor
Winstar Communications
520 Broad St
Newark NJ 07102

Wireless Alliance LLC
P O Box 2000
Alexandria MN 56308-2000

Workinq Assets Fundinq Services
101 Market St #700
San Francisco CA 94105-1533

WTC Competitive Services Inc
P O Box 270
Park River ND 58270-0270

X2Comm Inc
270 S Main St
Flemington NJ 08822

XO Communications Services Inc
11111 Sunset Hills Rd
Reston VA 20190

Yak Communications (America) Inc
300 Consilium Pl Ste 500
Toronto Ontario CA M1H 3G2

Jill Papenhausen
Zone Telecom Inc
3 Executive Campus Ste 520
Cherry Hill NJ 08002

APPROVED
DATE: 10-12-06

MOTION

October 12, 2006

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission adopt the Order Approving Final Discount Rate in Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation, Case No. PU-05-451.

WWB

171 PU-05-451 Pages: 1

Motion

by Public Service Commission
10/12/2006 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

ORDER APPROVING FINAL DISCOUNT RATE

October 12, 2006

On July 15, 2005, Midcontinent Communications (Midcontinent) filed a Notice of Bona Fide Request for Services under 47 U.S.C. § 251(f)(1)(A) requesting that the Commission conduct an inquiry for the purpose of determining whether Midcontinent's request for wholesale resold services from North Dakota Telephone Company (NDTC) under 47 U.S.C. § 251(c) is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of the Act.

On April 26, 2006, the Commission issued its Findings of Fact, Conclusions of Law and Order and on June 7, 2006, the Commission issued its Order on Reconsideration and its Amended findings of Fact, Conclusions of Law and Order in this case. The Commission ordered that NDTC begin providing to Midcontinent retail services at wholesale prices for resale in the Devils Lake exchange under an interconnection agreement no later than July 26, 2006.

On July 26, 2006, the Commission issued its Findings of Fact, Conclusions of Law, and Order on Further Hearing on Interim Discount Rate setting an interim discount rate for wholesale resale services at 17 percent and ordering that a hearing to establish a final discount for wholesale resale services be held on January 8, 2007.

On August 29, 2006, the parties filed a Stipulation with the Commission in Case No. PU-06-345 which provides, among other things, that the final discount rate for wholesale resale under the resale agreement in this proceeding dated August 21, 2006 shall be seventeen percent (17%) for the initial term of the agreement. A copy of the Stipulation of the parties marked as Attachment 1 is attached to this order and is incorporated herein in its entirety.

The Commission finds the Stipulation of the parties is acceptable and hereby makes the following:

ORDER

The Commission orders:

1. The Stipulation is approved.

2. The final discount rate for wholesale resale under the resale agreement dated August 21, 2006, is seventeen percent (17%) for the initial term of the agreement.

3. The hearing scheduled for January 8, 2007, is cancelled.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	Tony Clark	Kevin Cramer
Commissioner	**President**	**Commissioner**

Attachment 1

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,

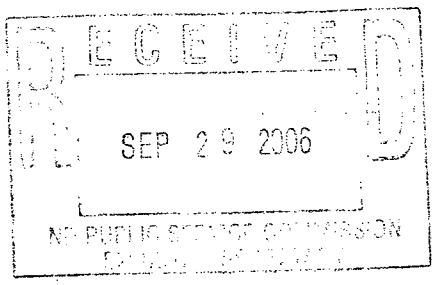
Complainant,

vs.

North Dakota Telephone Company,

Respondent.

Case No. PU-06-345



STIPULATION

169 PU-05-451 Pages: 3

Stipulation

by Midcontinent Communicatio/North Dakota T
08/29/2006 CC: Comm Legal Illona, Pat, Annette ALJ .

WHEREAS, by "NOTICE OF BONA FIDE REQUEST FOR SERVICES" (herein "the NOTICE") dated August 2, 2006 Midcontinent Communications (herein "Midcontinent") requested the North Dakota Public Service Commission (herein the "Commission") to conduct an inquiry on a request to provide certain telecommunications services in North Dakota Telephone Company (herein "NDTC") Devils Lake, ND exchange (herein the "Exchange") under an interconnection agreement for certain services under Section 251(c) of the Communications Act of 1934, as amended (the "Act"), and

WHEREAS, it appears to both Midcontinent and NDTC (collectively called the "the Parties") that the Commission has authority to arbitrate or mediate, as may be appropriate, an interconnection agreement between the Parties, and

WHERAS, the Parties have each concluded that the public interest in avoiding future litigation and resource commitments of the Commission and the Parties would be advanced through the compromise and settlement of conflicting positions that the Parties have with respect to the subject matter of the Notice and the issuance by the Commission of an Order as set forth below, without the necessity of conducting a hearing,

NOW, THERFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. A. That the Parties agree that, (a) based on the specific scope of the request made by Midcontinent limiting such request to the Exchange and (b) the fact that NDTC currently anticipates providing video programming services in competition with Midcontinent in February, 2007 for the Exchange or shortly thereafter, the Commission may enter an ORDER upon receipt of this signed stipulation, specifically finding that the request of Midcontinent, as applied solely to NDTC and solely to the Exchange:

1. is not unduly, economically burdensome,
2. is technically feasible, and
3. is consistent with the goals of 47 USC Section 254, other than subsections (b)(7) and (c)(1)(D) thereof;

B. The Parties further agree that, in the submission of this Stipulation, they will jointly encourage the Commission to adopt this Stipulation without change as to its scope and effect;

C. Should the Commission deem it necessary to hold further proceedings in any form including without limitation a hearing (the "Commission Action"), the Parties will respond to the Commission Action with submissions that are wholly consistent with this Stipulation and the Parties shall not, in any way, suggest alteration of the Stipulation either directly or indirectly by any and all submissions required of either of them by the Commission Action; and

D. The Parties each further agree that, since each of the terms contained herein are inexorably intertwined with the others and reflect a compromise of all relevant considerations of the Parties with respect to the matters raised by the Notice,

should a decision issued by the Commission on this Stipulation change in any way the terms of this Stipulation the Stipulation shall become null and avoid unless both Parties agree to abide by such Commission. change

2. For purposes of establishing the time frames established in Section 252 of the Act for negotiation, arbitration and resolution of the request for interconnection made by Midcontinent to NDTC (the "Request"), the Parties agree that the Request from Midcontinent was received by NDTC on June 1, 2006, and that the effective date for implementation of any negotiated agreement will be March 1, 2007.

3. That either Party shall have the ability to seek the assistance of the Commission through mediation by a letter to Commission no sooner than 10 days following a letter to the other Party indicating that there is an impasse on an issue or issues.

4. The Parties further agree that, as an integral component of the compromise and settlement of positions reflected in this Stipulation (including the avoidance of the expense associated with currently scheduled Commission proceedings), the discount rate for wholesale resale under the resale agreement dated August 21, 2006 (the "Agreement") shall be seventeen percent (17%) for the initial term of the Agreement. Nothing in this Section 4 shall prohibit either Party from seeking to renegotiate this rate or requesting that the Commission determine the correct resale discount at any time after the initial term of the Agreement.

5. Within 3 business days of the execution of this Stipulation, the Parties, through their respective counsel, shall jointly file this Stipulation with the Commission and seek the Commission's prompt approval of it.

6. This Stipulation may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

PEARCE & DURICK

By: Patrick W. Durick
Attorneys for Midcontinent Communications
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

Dated: 8/22/06

PRINGLE & HERIGSTAD, P.C.

By: Don Negaard
Attorneys for North Dakota Telephone Company
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000

Dated: August 21, 2006

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,

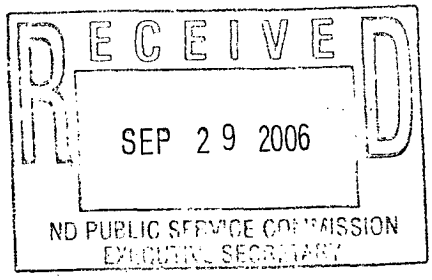
Complainant,

vs.

North Dakota Telephone Company,

Respondent.

Case No. PU-06-345



STIPULATION

169 PU-05-451 Pages: 3
Stipulation
by Midcontinent Communicatio/North Dakota T
08/29/2006 CC: Comm Legal Illona, Pat, Annette ALJ .

WHEREAS, by "NOTICE OF BONA FIDE REQUEST FOR SERVICES" (herein "the NOTICE") dated August 2, 2006 Midcontinent Communications (herein "Midcontinent") requested the North Dakota Public Service Commission (herein the "Commission") to conduct an inquiry on a request to provide certain telecommunications services in North Dakota Telephone Company (herein "NDTC") Devils Lake, ND exchange (herein the "Exchange") under an interconnection agreement for certain services under Section 251(c) of the Communications Act of 1934, as amended (the "Act"), and

WHEREAS, it appears to both Midcontinent and NDTC (collectively called the "the Parties") that the Commission has authority to arbitrate or mediate, as may be appropriate, an interconnection agreement between the Parties, and

WHERAS, the Parties have each concluded that the public interest in avoiding future litigation and resource commitments of the Commission and the Parties would be advanced through the compromise and settlement of conflicting positions that the Parties have with respect to the subject matter of the Notice and the issuance by the Commission of an Order as set forth below, without the necessity of conducting a hearing,

NOW, THERFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. A. That the Parties agree that, (a) based on the specific scope of the request made by Midcontinent limiting such request to the Exchange and (b) the fact that NDTC currently anticipates providing video programming services in competition with Midcontinent in February, 2007 for the Exchange or shortly thereafter, the Commission may enter an ORDER upon receipt of this signed stipulation, specifically finding that the request of Midcontinent, as applied solely to NDTC and solely to the Exchange:

    1. is not unduly, economically burdensome,
    2. is technically feasible, and
    3. is consistent with the goals of 47 USC Section 254, other than subsections (b)(7) and (c)(1)(D) thereof;

B. The Parties further agree that, in the submission of this Stipulation, they will jointly encourage the Commission to adopt this Stipulation without change as to its scope and effect;

C. Should the Commission deem it necessary to hold further proceedings in any form including without limitation a hearing (the "Commission Action"), the Parties will respond to the Commission Action with submissions that are wholly consistent with this Stipulation and the Parties shall not, in any way, suggest alteration of the Stipulation either directly or indirectly by any and all submissions required of either of them by the Commission Action; and

D. The Parties each further agree that, since each of the terms contained herein are inexorably intertwined with the others and reflect a compromise of all relevant considerations of the Parties with respect to the matters raised by the Notice,

should a decision issued by the Commission on this Stipulation change in any way the terms of this Stipulation the Stipulation shall become null and avoid unless both Parties agree to abide by such Commission. change

2. For purposes of establishing the time frames established in Section 252 of the Act for negotiation, arbitration and resolution of the request for interconnection made by Midcontinent to NDTC (the "Request"), the Parties agree that the Request from Midcontinent was received by NDTC on June 1, 2006, and that the effective date for implementation of any negotiated agreement will be March 1, 2007.

3. That either Party shall have the ability to seek the assistance of the Commission through mediation by a letter to Commission no sooner than 10 days following a letter to the other Party indicating that there is an impasse on an issue or issues.

4. The Parties further agree that, as an integral component of the compromise and settlement of positions reflected in this Stipulation (including the avoidance of the expense associated with currently scheduled Commission proceedings), the discount rate for wholesale resale under the resale agreement dated August 21, 2006 (the "Agreement") shall be seventeen percent (17%) for the initial term of the Agreement. Nothing in this Section 4 shall prohibit either Party from seeking to renegotiate this rate or requesting that the Commission determine the correct resale discount at any time after the initial term of the Agreement.

5. Within 3 business days of the execution of this Stipulation, the Parties, through their respective counsel, shall jointly file this Stipulation with the Commission and seek the Commission's prompt approval of it.

6. This Stipulation may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

PEARCE & DURICK

By: Patrick W. Durick
Attorneys for Midcontinent Communications
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

Dated: 8/22/06

PRINGLE & HERIGSTAD, P.C.

By: Don Negaard
Attorneys for North Dakota Telephone Company
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000

Dated: August 21, 2006

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
AUG 31 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

August 31, 2006

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding is an agreement with an effective date of July 26, 2006, between North Dakota Telephone Company and Midcontinent Communications of North Dakota entitled General Terms and Conditions of Resale, including Attachments 1-3 (wholesale/resale to be effective on July 26, 2006, as ordered by the Commission on April 26, 2006). An electronic version of this agreement is also being forwarded to your office.

Don Negaard

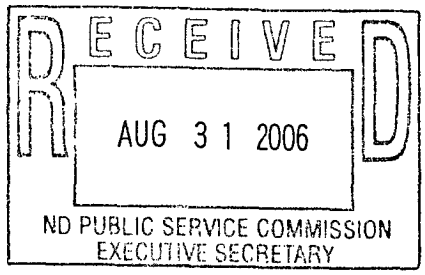
jt

Enclosures

cc/enc: Pat Durick

168 PU-05-451 Pages: 1

Letter re filing the of General Terms & Conditions of Resale Agreement by North Dakota Telephone Company by Don Negaard 08/31/2006 CC: Comm Legal Illona, Pat, Annette ALJ .



GENERAL TERMS AND CONDITIONS OF RESALE

BETWEEN

North Dakota Telephone Company

AND

Midcontinent Communications of North Dakota

167 PU-05-451 Pages: 51

General Terms & Conditions of Resale Agreement
by North Dakota Telephone Company by Don Negaard,
08/31/2006 CC: Comm Legal Iliona, Pat, Annette ALJ .

Table of Contents

Agreement....1
Witneseth....1
1. Purpose....1
2. Term of the Agreement....1
3. Termination of the Agreement....2
4. Contact Exchange....2
5. Amendments....2
6. Assignment....2
7. Authority....3
8. Responsibility of Payment....3
9. Billing and Payment....3
10. Compliance with Laws and Regulations....5
11. Confidential Information....5
12. Fraud....6
13. Dispute Resolution....6
14. Entire Agreement....7
15. Expenses....8
16. Force Majeure....8
17. Good Faith Performance....8
18. Governing Law....8
19. Heading....8
20. Independent Contractor Relationship....8
21. Law Enforcement Interface....9
22. Liability....9
23. Joint Work Product....10
24. Multiple Counterparts....10
25. No Third Party Beneficiaries....10
26. Notices....10
27. Impairment of Service....11
28. Change in Law....11
29. Regulatory Approval....12
30. Taxes and Fees....12
31. Trademarks and Trade Names....12
32. Non-Waiver....13
33. Bankruptcy....13
34. Operations Handbook....13
35. Intercept Messaging....13
Glossary....15

ATTACHMENTS:

Resale Attachment	Attachment 1
Pre-Ordering and Ordering Attachment	Attachment 2
Pricing Attachment	Attachment 3

AGREEMENT

THIS AGREEMENT ("Agreement") is effective as of the 26th day of July, 2006 (the "Effective Date"), by and between Midcontinent Communications, a South Dakota Partnership ("Midcontinent") with offices at 5001 W 41st St, Sioux Falls, SD 57106 and North Dakota Telephone Company ("NDTC") with offices at 211 22nd St NW, PO Box 180, Devils Lake, ND 58301. This Agreement may refer to either NDTC or Midcontinent or both as a "Party" or "Parties."

WITNESETH

WHEREAS, NDTC is a local exchange telecommunications company authorized to provide telecommunications services in the state of North Dakota; and

WHEREAS, Midcontinent is a competitive local exchange telecommunications company ("CLEC") authorized to provide telecommunications services in the state of North Dakota; and

WHEREAS, the Parties wish to resale specifically for the purposes of fulfilling their obligations pursuant to Sections 251 of the Telecommunications Act of 1996 ("the Act").

NOW THEREFORE, in consideration of the mutual agreements contained herein, NDTC and Midcontinent agree as follows:

1. Purpose

The Parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform to each Party's obligations under Sections 251 of the Act.

2. Term of the Agreement

2.1 The initial term of this Agreement shall be two years ("Initial Term"), beginning on the above Effective Date and shall apply to the State of North Dakota. If, as of the expiration of this Agreement, a subsequent agreement has not been executed by the Parties, this Agreement shall automatically renew for successive six-month periods, unless, not less than one hundred twenty (120) days prior to the end of the Initial Term or any renewal term, either Party notifies the other Party of its intent to renegotiate a new agreement. In the event of such renegotiation, this Agreement shall remain in effect until such time that a subsequent agreement becomes effective. If the Parties cease to order services under this Agreement, then either Party may terminate this Agreement upon thirty (30) days written notice.

3. Termination of the Agreement

3.1 Termination Upon Default

Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; provided however, that the non-defaulting Party has notified the defaulting Party in writing of the alleged default and the defaulting Party has not cured the alleged default within thirty (30) calendar days of receipt of written notice thereof. Default is defined to include:

3.1.1 A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or

3.1.2 A Party's refusal or failure in any material respect to properly perform its obligations under this Agreement, or the violation of any of the material terms or conditions of this Agreement.

3.1.3 A Party's assignment of any right, obligation, or duty, in whole or in part, or of any interest, under this Agreement without any consent required under Section 6 below.

3.2 Liability Upon Termination

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

4. Contact Exchange

The Parties agree to exchange and to update contact and referral numbers for order inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government.

5. Amendments

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

6. Assignment

This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably

determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party. Any attempted assignment or transfer that is not permitted is void *ab initio*. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

7. Authority

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement. Each Party represents he or she has had the opportunity to consult with legal counsel of his or her choosing.

8. Responsibility for Payment

NDTC will render to Midcontinent monthly bill(s) for interconnection and facilities provided hereunder at the rates set forth in the NDTC's applicable tariffs. Midcontinent shall pay bills in accordance with terms of this Agreement. In the event that Midcontinent defaults on its payment obligation to NDTC, NDTC's service to Midcontinent will be terminated and any security deposits held will be applied to the outstanding balance owed by Midcontinent to NDTC.

9. Billing and Payment

9.1 In consideration of the services and facilities provided under this Agreement, the Parties shall bill the other Party on a monthly basis all applicable charges set forth in this Agreement or in NDTC's applicable tariff. The Party billed ("Billed Party") shall pay to the invoicing Party ("Billing Party") all undisputed amounts within twenty (20) days from the bill date. If the payment due date is a Saturday, Sunday or a designated bank holiday, payment shall be made the prior business day.

9.2 Billing Disputes Related to Unpaid Amounts:

9.2.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party

billed (the "Non-Paying Party") shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment is required, the Non-Paying Party shall pay the disputed amounts with interest at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under North Dakota's applicable law. In addition, the Billing Party may cease terminating traffic for the Non-Paying Party after undisputed amounts not paid become more than 90 days past due, provided the Billing Party gives an additional 30 days' written notice and opportunity to cure the default.

9.2.2 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under North Dakota's applicable law.

9.2.3 Issues related to Disputed Amounts shall be resolved in accordance with all of the applicable procedures identified in the Dispute Resolution provisions set forth in Section 13 of this Agreement.

9.3 Except for amounts disputed pursuant to Section 9.2 herein, the following shall apply:

9.3.1 If payment is not received within thirty (30) days from the bill date, NDTC may provide written notice to Midcontinent that additional applications for service will be refused, and that any pending orders for service will not be completed if payment is not received by the fifteenth (15^{th}) day following the date of the notice. If NDTC does not refuse additional application for service on the date specified in the notice, and Midcontinent's noncompliance continues, nothing contained herein shall preclude NDTC's right to refuse additional application for service without further notice.

9.3.2 If Midcontinent should fail to make any payment following the notice under Section 9.3.1, NDTC may on thirty (30) days written notice to Midcontinent discontinue the provision of existing services to Midcontinent at any time thereafter. Notice shall be as provided in Section 26 below. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If NDTC does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and Midcontinent noncompliance continues, nothing contained herein shall preclude NDTC's right to

discontinue the provision of the services to Midcontinent without further notice.

9.3.3 If payment is not received within sixty (60) days of notice under Section 9.3.2, NDTC may terminate this Agreement.

9.3.4 After disconnect procedures have begun, NDTC shall not accept service orders from Midcontinent until all unpaid charges are paid in full in immediately available funds.

9.4 Audits:

Either Party may conduct an audit of the other Party's books and records pertaining to the services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data, and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least thirty (30) days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

10. Compliance with Laws and Regulations

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

11. Confidential Information

11.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons

who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with §11.2 of this Agreement.

11.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief that such Disclosing Party chooses to obtain.

11.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

12. Fraud

Neither Party shall bear responsibility for, nor be required to make adjustments to the other Party's account in cases of fraud by the other Party's end-users or on the other Party's end-user customer accounts. The Parties agree to reasonably cooperate with each other to detect, investigate, and prevent fraud and to reasonably cooperate with law enforcement investigations concerning fraudulent use of the other Party's services or network. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.

13. Dispute Resolution

Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without, to the extent possible, litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the

Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

13.1 Informal Resolution of Disputes. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

13.2 Formal Dispute Resolution. If negotiations fail to produce an agreeable resolution within ninety (90) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.

13.3 Continuous Service. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure (other than a dispute related to payment for service), and the Parties shall continue to perform their payment obligations including making payments in accordance with this Agreement.

14. Entire Agreement

This Agreement and applicable attachments, constitute the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied have been made or relied upon in the making of this Agreement other than those specifically set forth herein. In the event there is a conflict between any term of this Agreement, the provisions shall be construed to give the greatest possible effect to the intent of this Agreement.

15. Expenses

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

16. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the Force Majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

17. Good Faith Performance

In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval, or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld, or delayed.

18. Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Dakota without regard to its conflict of laws principles and, when applicable, in accordance with the requirements of the Act and the FCC's implementing regulations.

19. Headings

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.

20. Independent Contractor Relationship

Neither this Agreement, nor any actions taken by Midcontinent or NDTC in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between Midcontinent and NDTC, or any relationship other than that of co-carriers. Neither this Agreement, nor any actions taken by Midcontinent or NDTC in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between Midcontinent and NDTC End Users Customers or others.

21. Law Enforcement Interface

21.1 With respect to requests for call content interception or call information interception directed at Midcontinent's End User Customer, NDTC will have no direct involvement in law enforcement interface. In the event a Party receives a law enforcement surveillance request for an end-user of the other Party, the Party initially contacted shall direct the agency to the other Party.

21.2 Notwithstanding 21.1, the Parties agree to work jointly in security matters to support law enforcement agency requirements for call content interception or call information interception.

22. Liability

22.1 DISCLAIMER

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, EACH PARTY MAKES NO REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES OR FACILITIES IT PROVIDES UNDER THIS AGREEMENT. EACH PARTY DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE

22.2 Limitation of Liability

22.2.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

22.2.2 Except as otherwise provided in Section 22, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

22.2.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue

or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

22.3 Intellectual Property

Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

23. Joint Work Product

This Agreement is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

24. Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

25. No Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

26. Notices

Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; or (iii) mailed, certified mail, return receipt to the following addresses of the Parties:

To: **Midcontinent**	To: **NDTC**
Mary Lohnes 5001 W 41st Street Sioux Falls, SD 57106	Dave Dircks P.O. Box 180 Devils Lake, ND 58301
With a copy to:	With a copy to: Don Negaard Pringle & Herigstad 2525 Elk Drive PO Box 1000 Minot, North Dakota 58702-1000

Or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent *via* express mail or personal delivery; or (iii) three (3) days after mailing in the case of certified U.S. mail.

27. Impairment of Service

The characteristics and methods of operation of any circuits, facilities or equipment of Midcontinent connected with the services, facilities or equipment of NDTC pursuant to this Agreement shall not interfere with or impair service over any facilities of NDTC, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to its plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over NDTC's facilities or create hazards to the employees of NDTC or to the public (each hereinafter referred to as an "Impairment of Service").

28. Change in Law

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Telecommunications Act of 1996 and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment to the Telecommunications Act of 1996, any effective legislative action or any effective, final regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Telecommunications Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, Amended Rules), either Party may, to the extent permitted or required, by providing written notice to the other

party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

29. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under §252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s).

30. Taxes and Fees

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to provide in a timely manner such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party. If either party (Contesting Party) contests the application of any tax collected by the other party (the Collecting party), the Collection party shall reasonably cooperate in good faith with the Contesting party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting party. The Contesting party is entitled to the benefit of any refund or recovery resulting from the contests, provided that the Contesting Party is liable for and has paid the tax contested.

Midcontinent is responsible for collecting and remitting directly to the proper agency the 911/E911 fees and telecommunication relay service fees and applicable taxes. NDTC will not pay these fees for the resold services.

31. Trademarks and Trade Names

No patent, copyright, trademark or other proprietary right is licensed, granted, or otherwise transferred by this Agreement. Each Party is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications

services, of any name, copyrighted material, service mark, or trademark of the other Party.

32. Non-Waiver

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

33. Bankruptcy

If any voluntary or involuntary petition or similar pleading under any Section or Sections of any bankruptcy act shall be filed by or against a Party, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Party insolvent or unable to pay the Party's debts, or the Party makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Party or for the major part of the Party's property, the other Party may, if that Party so elects but not otherwise, and with or without notice of such election or other action by that Party, forthwith terminate this Agreement.

34. Operations Handbook

Each Parties Operations Manual will contain it's standard operating procedures. It will not supersede this Agreement and if contrary to the terms of the contract, the contract shall control.

35. Intercept Messaging

Each party will make available the following intercept messaging services:

i. Temporary Disconnects for Non-Pay. NDTC will have control of the customer's line and will be responsible to provide the intercept message. Both service order and central office non-recurring charges are not applicable but a restoral of service charge will be applied if and when service is restored.

ii. Transfer of Service Announcements. For services other than NDTC resold and ported number services, when an end user customer transfers service from one Party to the other Party, and does not retain its original telephone number, the Party formerly providing service to the end user will provide, upon request and if such service is provided to its own customers, a referral announcement on the original telephone number. This announcement will provide the new number of the end user customer and will remain in effect for the same time period this service is provided to Party's own end users. For NDTC resold, NDTC shall provide an intercept referral on behalf of Midcontinent

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

NDTC	Midcontinent
By: DCD	By: Nancy A. Vogel
Name: Dave Dircks	Name: Nancy Vogel
Title: General Manager	Title: Director of Revenue Assurance
Date: 8/24/06	Date: 8-21-06

GLOSSARY

1. General Rule

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this agreement are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

2. Definitions

2.1 ACCESS SERVICE REQUEST (ASR).

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of interconnection.

2.2 ACT.

The Communications Act of 1934 (47 U.S.C. §151 et. seq.), as from time to time amended (including, without limitation by the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996), and as further interpreted in the duly authorized and effective rules and regulations of the FCC or the Commission.

2.3 AFFILIATE.

Shall have the meaning set forth in the Act.

2.4 APPLICABLE LAW.

All effective laws, government regulations and orders, applicable to each Party's performance of its obligations under this agreement.

2.5 AUTOMATIC NUMBER IDENTIFICATION (ANI).

The signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.

2.6 CALLING PARTY NUMBER (CPN).

A Signaling System 7 (SS7) parameter that identifies the calling party's telephone number.

2.7 CENTRAL OFFICE.

A local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.8 CENTRAL OFFICE SWITCH.

A switch used to provide Telecommunications Services including but not limited to an End Office Switch or a Tandem Switch. A Central Office Switch may also be employed as combination End Office/Tandem Office Switch.

2.9 COMMISSION.

Means the North Dakota Public Service Commission.

2.10 COMMON CHANNEL SIGNALING (CCS).

A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.

2.11 COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC).

Any corporation or other person legally able to provide Local Exchange Service in competition with NDTC.

2.12 CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI).

Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. § 222.

2.13 DIGITAL SIGNAL LEVEL 1 (DS1).

The 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

2.14 DIGITAL SIGNAL LEVEL 3 (DS3).

The 44.736 Mbps third-level signal in the time-division multiplex hierarchy.

2.15 END OFFICE SWITCH OR END OFFICE.

End Office Switch is a switch in which the End User Customer station loops are terminated for connection to trunks. The End User Customer receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an End Office Switch.

2.16 END USER CUSTOMER.

A retail business or residential end-user subscriber to Telephone Exchange Service provided by either of the Parties.

2.17 END USER CUSTOMER LOCATION

The physical location of the premise where an End User Customer makes use of Telephone Exchange Service.

2.18 EXCHANGE AREA.

Means the geographic area that has been identified by NDTC for its provision of Telephone Exchange Service.

2.19 FCC.

The Federal Communications Commission.

2.20 INCUMBENT LOCAL EXCHANGE CARRIER (ILEC).

Shall have the meaning stated in the Act. For purposes of this Agreement, NDTC is an ILEC .

2.21 INTEREXCHANGE CARRIER (IXC).

A Telecommunications Carrier that provides, directly or indirectly, InterLATA or IntraLATA telephone toll services.

2.22 INTERLATA TRAFFIC.

Telecommunications traffic that originates in one LATA and terminates in another LATA.

2.23 INTERCEPT MESSAGE

An Intercept Message is an announcement on the abandoned telephone number which provides the Customer's new number or other appropriate information.

2.24 INTRALATA TRAFFIC

Telecommunications traffic that originates and terminates in the same LATA.

2.25 INTERNET PROTOCOL CONNECTION

The IPC is the connection between the ISP and the customer where end user information is originated or terminated utilizing internet protocol.

2.26 ISDN USER PART (ISUP).

A part of the SS7 protocol that defines call setup messages and call takedown messages.

2.27 LOCAL ACCESS AND TRANSPORT AREA (LATA).

Shall have the meaning set forth in the Act.

2.28 LOCAL NUMBER PORTABILITY (LNP)

LNP is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

2.29 LINE INFORMATION DATABASE (LIDB).

One or all, as the context may require, of the Line Information databases used by NDTC and owned by other entities which provide, among other things, calling card validation functionality for telephone line number cards issued by NDTC and other entities. A LIDB also contains validation data for collect and third number-billed calls; i.e., Billed Number Screening.

2.30 LOCAL EXCHANGE CARRIER (LEC).

The term "local exchange carrier" means any company that is authorized by the state public utility commission to provide local exchange and exchange access services. Such term does not include a company engaged in the provision of a commercial mobile service.

2.31 LOCAL EXCHANGE ROUTING GUIDE (LERG).

The Telcordia Technologies reference customarily used to identify NPA/NXX routing and homing information, as well as network element and equipment designation.

2.32 LOCAL/EAS TRAFFIC.

Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange, or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in NDTC's tariff. As clarification of this definition and for reciprocal transport and termination compensation, Local/EAS Traffic does not include traffic that originates from or is directed to or through an ISP.

2.33 NORTH AMERICAN NUMBERING PLAN (NANP).

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as area code), followed by a 3-digit NXX code and 4 digit line number.

2.34 NUMBERING PLAN AREA (NPA).

Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized Telecommunications Service that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.

2.35 NXX, NXX CODE, CENTRAL OFFICE CODE OR CO CODE.

The three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number). Each NXX Code contains 10,000 station numbers.

2.36 POINT OF INTERCONNECTION (POI).

The physical location(s) within NDTC's network, at which the Parties' networks meet for the purpose of exchanging Local/EAS Traffic.

2.37 RATE CENTER AREA.

A Rate Center Area is a geographic location, which has been designated by NDTC as being associated with a particular NPA-NXX code, which has been assigned to NDTC for its provision of Telephone Exchange Service. Rate Center Area is normally the same as the boundary of the NDTC Exchange Area as defined by the Commission.

2.38 RATE CENTER

A Rate Center is the finite geographic point identified by a specific V&H coordinate which is used by NDTC to measure, for billing purposes, distance sensitive transmission services associated with the specific rate center; provided that a Rate Center cannot exceed the boundaries of the NDTC Exchange Area as defined by the Commission.

2.39 SIGNALING SYSTEM 7 (SS7).

The common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). NDTC and Midcontinent currently utilize this out-of-band signaling protocol.

2.40 SWITCHED ACCESS SERVICE.

The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 8XX access, and 900 access.

2.41 TANDEM SWITCH.

A switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among end office switches and between and among end office switches and carriers' aggregation points, points of termination, or point of presence, and to provide Switched Exchange Access Services.

2.42 TANDEM TRANSIT TRAFFIC OR TRANSIT TRAFFIC

Telephone Exchange Service traffic that originates on Midcontinent's network, and is transported through an NDTC Tandem to the Central Office of a Midcontinent, Interexchange Carrier, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant NDTC Tandem to which Midcontinent delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide ("LERG"). Switched Exchange Access Service traffic is not Tandem Transit Traffic.

2.43 TARIFF.

Any applicable Federal or State tariff of a Party, as amended from time to time.

For purposes of this agreement, the term tariff shall also be deemed to include any policies or terms and conditions of service that has been adopted by NDTC and filed with a regulatory or governmental agency.

2.44 TELCORDIA TECHNOLOGIES.

Formerly known as Bell Communications Research, a wholly owned subsidiary of Science Applications International Corporation (SAIC). The organization conducts research and development projects for its owners, including development of new Telecommunications Services. Telcordia Technologies also provides generic requirements for the telecommunications industry for products, services and technologies.

2.45 TELECOMMUNICATIONS CARRIER.

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services. A telecommunications carrier shall be treated as a common carrier under the Telecommunications Act only to the extent that it is engaged in providing telecommunications services.

2.46 TELECOMMUNICATIONS SERVICE.

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

2.47 TELEPHONE EXCHANGE SERVICE.

The term "telephone exchange service" means shall have the meaning set forth in 47 U.S.C. Section 3 (47) of the Act.

2.48 VOIP or IP-ENABLED TRAFFIC.

VoIP means any IP-enabled, real-time, multidirectional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes:

(i) Voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and

(ii) Voice traffic originated on the PSTN, and which terminates on IPC.

Attachment 1

Resale

Table of Contents

1. Scope 3

2. General Provisions 3

3. NDTC's Provision of Services to Midcontinent 5

4. Establishment of Service 7

5. Discontinuance of Service 7

6. Maintenance of Services 8

7. Ancillary Services 9

8. Line Information Database (LIDB) 12

9. Usage Records 12

Exclusions & Limitations on Services Available for Resale ..... Exhibit A

Area of Resale ..... Exhibit B

Line Information Database (LIDB) Resale Storage Agreement ..... Exhibit C

RESALE

1. Scope

1.1 For the Purposes of the Agreement, Resale shall be provided under Section 251

1.2 The telecommunications services available for purchase by Midcontinent for the purposes of resale to Midcontinent's End User Customers shall be available at NDTC's tariffed rates less the wholesale discount and subject to the exclusions and limitations set forth in Exhibit A to this Agreement.

2. General Provisions

2.1 All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of NDTC's retail telecommunications services and other services specified in this Attachment. Subject to effective and applicable FCC and Commission rules and orders, NDTC shall make available to Midcontinent for resale those telecommunications services NDTC makes available, pursuant to its Local Exchange Services Tariff (LEST) to End User Customer customers who are not telecommunications carriers as listed in Exhibit A. When the provisions of the LEST conflict with the provisions of this Agreement, the provisions of this Agreement shall take precedence.

2.2 Midcontinent may purchase resale services from NDTC for its own use in operating its business.

2.2.1 Midcontinent must resell services to other End User Customers.

2.2.2 Midcontinent cannot be a CLEC for the single purpose of selling to itself.

2.3 Midcontinent will be the Customer of Record for all services purchased from NDTC. Except as specified herein, NDTC will take orders from, bill and receive payment from Midcontinent for said services.

2.4 Midcontinent (not Midcontinent agents or third parties hired by Midcontinent) will be NDTC's single point of contact for all services purchased pursuant to this Agreement. NDTC shall have no contact with the End User Customer except to the extent provided for herein. Each Party shall provide to the other a North Dakota toll-free contact number for purposes of repair and maintenance.

2.5 NDTC will continue to bill the End User Customer for any services that the End User Customer specifies it wishes to receive directly from NDTC. NDTC maintains the right to serve directly any End User Customer within the service area of Midcontinent. NDTC will continue to market directly its own telecommunications products and services and in doing so may establish

independent relationships with End User Customers of Midcontinent. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.

2.6 When an End User Customer of Midcontinent or NDTC elects to change his/her carrier to the other Party, both Parties agree to release the End User Customer's service to the other Party concurrent with the due date of the service order, which shall be established based on the standard interval for the End User Customer's requested service as set forth in the NDTC Operations Handbook.

2.7 Except where otherwise required by law, Midcontinent shall not, without NDTC's prior written authorization, offer the services covered by this Appendix using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of NDTC's or its Affiliates, nor shall Midcontinent state or imply that there is any joint business association or similar arrangement with NDTC in the provision of Telecommunications Services to Midcontinent's customers.

2.8 Current telephone numbers may normally be retained by the End User Customer and are assigned to the service furnished. However, neither Party nor the End User Customer has a property right to the telephone number or any other call number designation associated with services furnished by NDTC, and no right to the continuance of service through any particular central office. NDTC reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever NDTC deems it necessary to do so in the conduct of its business and in accordance with NDTC practices and procedures on a nondiscriminatory basis.

2.9 If Midcontinent or its End User Customers utilize a NDTC resold telecommunications service in a manner other than that for which the service was originally intended as described in NDTC's retail tariffs, Midcontinent has the responsibility to notify NDTC. NDTC will only provision and maintain said service consistent with the terms and conditions of the tariff describing said service.

2.10 Facilities and/or equipment utilized by NDTC to provide service to Midcontinent remain the property of NDTC.

2.11 Service Ordering

2.11.1 Midcontinent must order services according to the Pre-ordering and Ordering Attachment to this Agreement.

2.11.2 Denial/Restoral Charge. In the event Midcontinent provides a list of customers to be denied and restored, rather than a Local Service Request

(LSR), each location on the list will require a separate PON and therefore will be billed as one LSR per location.

2.11.3 Cancellation Charge. Midcontinent will incur a charge for an accepted LSR that is later canceled.

2.12 Midcontinent shall pay, the End User Customer common line charges and any other appropriate Commission approved charges. These charges are set forth in the appropriate NDTC federal and applicable state tariffs(s) and will apply to each local exchange line furnished to Midcontinent. This charge is not subject to the wholesale discount.

2.13 To the extent allowable by law, Midcontinent shall be responsible for Primary Interexchange Carrier (both PIC and LPIC) change charges associated with each local exchange line furnished to Midcontinent for resale.

2.14 Midcontinent is solely responsible for the payment of charges for all service furnished under this Agreement.

2.15 If Midcontinent does not wish to be responsible for toll, collect, third number billed, 900 calls, last call return, caller originated trace, directory assistance inquiries, and operator assistance charges, Midcontinent must order blocking services as outlined in NDTC's local exchange tariff and pay any applicable charges.

3. NDTC's Provision of Services to Midcontinent

3.1 Resale of NDTC services shall be as follows:

3.1.1 The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions. Midcontinent shall not use resold local exchange telephone service to provide access services to Interexchange Carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunication service providers or voice over internet protocol companies.

3.1.2 Service is furnished subject to the condition that it will not be used for any unlawful purpose.

3.1.3 Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.

3.1.4 NDTC can refuse service when it has grounds to believe that service will be used in violation of the law.

3.1.5 NDTC will cooperate with law enforcement agencies with subpoenas and court orders relating to Midcontinent's End User Customers, pursuant to Section 21 of the General Terms and Conditions.

3.1.6 NDTC is authorized, but not required to cooperate with law enforcement agencies with respect to their investigation of any alleged unlawful activity of Midcontinent or its End User Customers. Law enforcement agency subpoenas and court orders regarding the End User Customers of Midcontinent will be directed to Midcontinent. NDTC shall be entitled to bill Midcontinent for any cost associated with complying with any requests by law enforcement agencies regarding Midcontinent or Midcontinent's End User Customers.

3.1.7 NDTC reserves the right to periodically audit services purchased by Midcontinent to establish authenticity of use. Such audit shall not occur more than once in a calendar year. Midcontinent shall make any and all records and data available to NDTC or NDTC's auditors on a reasonable basis. NDTC shall bear the cost of said audit. Any information provided by Midcontinent for purposes of such audit shall be deemed Confidential Information pursuant to the General Terms and Conditions of this Agreement.

3.2 Subject to Exhibit A hereto, resold services can only be used in the same manner as specified in NDTC's Tariffs. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual End User Customer of NDTC in the appropriate section of NDTC's Tariffs. Specific tariff features (e.g. a usage allowance per month) shall not be aggregated across multiple resold services or End User Customers.

3.3 Midcontinent may resell services only within the specific service area as defined in Exhibit B. Midcontinent must have a certificate of operation approved by the Commission to operate in such areas.

3.4 Promotions of ninety (90) days or less are not available to CLEC for resale. Promotions of ninety-one (91) days or more are available to CLEC for resale.

3.5 If Midcontinent cancels an order for resold services, any costs incurred by NDTC in conjunction with provisioning of such order will be recovered in accordance with NDTC's LEST.

3.6 Service Jointly Provisioned within Third Party Company Areas

3.6.1 NDTC will in some instances provision resold services in accordance with the LEST jointly with a third party telecommunications company.

3.6.2 When Midcontinent assumes responsibility for such service, all terms and conditions defined in the Tariff will apply for services provided within the NDTC service area only.

3.6.3 Midcontinent must establish a billing arrangement with the third party prior to assuming an End User Customer account where such circumstances apply.

4. Establishment of Service

4.1 After receiving certification as a local exchange carrier from the applicable regulatory agency, Midcontinent will provide NDTC the necessary documentation to enable NDTC to establish accounts for resold services (master account) according to the NDTC Operations Handbook.

4.2 Requests for customer service records and local service requests shall be accepted in accordance with the Ordering Attachment.

4.3 NDTC will accept a request directly from the End User Customer for conversion of the End User Customer's service from Midcontinent to NDTC or will accept a request from another CLEC/CMRS for conversion of the End User Customer's service from Midcontinent to such other CLEC/CMRS. Upon completion of the conversion NDTC will notify Midcontinent that such conversion has been completed.

5. Discontinuance of Service

5.1 The procedures for discontinuing service to an End User Customer are as follows:

5.1.1 NDTC will deny service to Midcontinent's End User Customer on behalf of, and at the request of, Midcontinent. Upon restoration of the End User Customer's service, denial/restoral charges will apply and will be the responsibility of Midcontinent.

5.1.2 At the request of Midcontinent, NDTC will disconnect a Midcontinent End User Customer.

5.1.3 All requests by Midcontinent for denial or disconnection of an End User Customer for nonpayment must be in writing.

5.1.4 Midcontinent will be made solely responsible for notifying the End User Customer of the proposed disconnection of the service.

5.1.5 NDTC may report annoyance calls to Midcontinent when it is determined that annoyance calls are originated from one of its End User Customer's

locations. NDTC shall be indemnified, defended and held harmless by Midcontinent and/or the End User Customer against any claim, loss or damage arising from providing this information to Midcontinent. It is the responsibility of Midcontinent to take the corrective action necessary with its End User Customers who make annoying calls. (Failure to do so will result in NDTC's disconnecting the End User Customer's service.)

5.2 Permanent Disconnects. Midcontenent will return the disconnected resale number immediately following the disconnect. NDTC will be responsible for the message and aging of the number. Both service order and central office non-recurring charges are not applicable.

6. Maintenance of Services

6.1 Services resold pursuant to this Agreement and NDTC's LEST and facilities and equipment provided by NDTC shall be maintained by NDTC.

6.2 Midcontinent or its End User Customers may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by NDTC except with the written consent of NDTC.

6.3 Midcontinent accepts responsibility to notify NDTC of situations that arise that may result in a service problem.

6.4 Maintenance and repair process is addressed in the Ordering Attachment.

6.5 For all repair requests, Midcontinent shall adhere to NDTC's prescreening guidelines prior to referring the trouble to NDTC.

6.6 Midcontinent shall be NDTC's single point of contact for all repair calls on behalf of Midcontinent' End User Customers with respect to resold services.

6.6 For purposed of this Section, Telecommunications Services is considered restored or a trouble resolved when the quality of services is equal to that provided before the outage or trouble occurred.

6.7 NDTC reserves the right to contact Midcontinent's End User Customers, if deemed necessary, for maintenance purposes.

6.8 In responding to repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services. Either Party may respond with accurate information in answering customer questions.

7. Ancillary Services

7.1 NDTC shall provide 911/E911 for Midcontinent customers in the same manner that it is provided to NDTC customers. NDTC shall provide and validate Midcontinent customer information to the Public Service Answering Point (PSAP). NDTC shall use its service order process to update and maintain, on the same schedule that it uses for its customers, the Midcontinent customer service information in the ALI/DMS (Automatic Location Identification/Location Information) databases used to support 911/E911 services. NDTC shall not be responsible for any failure of Midcontinent to provide accurate End User Customer information for 911 or listings in any databases in which NDTC is required to retain and/or maintain such information.

7.2 Directory

7.2.1 Subject to NDTC's practices, as well as the rules and regulations applicable to the provision of White Pages directories, NDTC will include in appropriate White Pages directories the primary alphabetical listings of all Midcontinent End User Customers located within the local directory scope. The rules, regulations and NDTC practices are subject to change from time to time.

7.2.2 Additional Listing services, as set forth in Appendix Pricing, may be purchased by Midcontinent for its End User Customers on a per listing basis.

7.2.3 Liability relating to End User Customer Listings

7.2.3.1 Midcontinent hereby releases NDTC from any and all liability for damages due to errors or omissions in Midcontinent's End User Customer listing information as provided to NDTC under this Attachment, and/or Midcontinent's End User Customer listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages.

7.2.3.2 Midcontinent shall indemnify, protect, save harmless and defend NDTC and NDTC's officers, employees, agents, representatives and assigns from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit or judgment by a Third Party in any way related to any error or omission in Midcontinent's End User Customer listing information, including any error or omission related to non-published or non-listed End

User Customer listing information. Midcontinent shall so indemnify regardless of whether the demand, claim or suit by the third party is brought jointly against Midcontinent and NDTC, and/or against NDTC alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in Midcontinent's End User Customer listing information in the White Pages directory, NDTC may, at its option, assume and undertake its own defense, or assist in the defense of Midcontinent, in which event Midcontinent shall reimburse NDTC for reasonable attorney's fees and other expenses incurred by NDTC in handling and defending such demand, claim and/or suit.

7.2.4 Each Midcontinent subscriber will receive one copy per primary End User Customer listing of NDTC's White Pages directory in the same manner and at the same time that they are delivered to NDTC's subscribers.

7.3 Operator Services (Operator Call Processing and Directory Assistance)

7.3.1 NDTC Contracts with a Third Party for Operator Call Processing, (OCP) which provides operator handling for call completion (for example, collect, third number billing, and manual calling-card calls).

7.3.2 Upon request from Midcontinent for OCP, NDTC shall route calls to the Third Party Operator Services Provider for Call Processing. NDTC shall charge Midcontinent the same rates as other NDTC local service customers are charged for the following OCP services:

7.3.2.1 Process calls that are billed to Midcontinent End User Customer's calling card.

7.3.2.2 Process person-to-person calls.

7.3.2.3 Process collect calls.

7.3.2.4 Provide the capability for callers to bill a third party and shall also process such calls.

7.3.2.5 Process station-to-station calls.

7.3.2.6 Process operator-assisted DA calls.

7.3.2.7 Adhere to equal access requirements, providing Midcontinent local End User Customers the same IXC access that NDTC provides its own operator service.

7.3.2.8 Exercise at least the same level of fraud control in providing Operator Service to Midcontinent that NDTC provides for its own operator service.

7.3.2.9 Perform Billed Number Screening when handling Collect, Person-to-Person, and Billed-To-Third-Party calls.

7.4 Directory Assistance Service

7.4.1 DA Service provides local and non-local End User Customer telephone number listings with the option to complete the non-local call at the caller's direction separate and distinct from local switching.

7.4.2 DA Service shall provide up to two listing requests per call, if available and if requested by Midcontinent's End User Customer at rates charged to other NDTC customers. NDTC shall provide caller-optional directory assistance call completion service at rates set by third party service provider.

7.4.3 Directory Assistance Service Updates

7.4.3.1 NDTC shall update End User Customer listings changes on the same schedule as NDTC updates its own customer listings. These changes include:

7.4.3.1.1 New End User Customer connections
7.4.3.1.2 End user disconnections
7.4.3.1.3 End user address changes

7.4.3.2 These updates shall also be provided for non-listed and non-published numbers for use in emergencies.

7.5 Selective Call Routing using Line Class Codes (SCR-LCC)

NDTC is capable of providing SCR-LCC to Midcontinent so that Midcontinent can directly provide operator services to the resold customers. If Midcontinent decides to purchase this service, terms and conditions and pricing shall be negotiated between the Parties.

7.5.1 The interface requirements shall conform to the interface specifications for the platform used to provide Operator Services as long as the interface conforms to industry standards.

8. Line Information Database

8.1 NDTC will store in its Line Information Database (LIDB) records relating to service only in the NDTC region. The LIDB Storage Agreement is included in this Attachment as Exhibit C.

8.2 NDTC will provide LIDB Storage upon written request to Midcontinent's Account Manager stating a requested activation date.

9. Usage Records

9.1 NDTC shall bill Midcontinent for all the usage of operator assistance or directory services generated by their End User Customers.

9.2 NDTC will provide Usage Data for completed calls only for service offerings that NDTC records for itself (e.g., Local Measured Services) and recordings performed on behalf of NDTC for operator services and directory assistance.

9.3 The usage information shall be provided once per month on a paper bill.

Exhibit A

EXCLUSIONS & LIMITATIONS ON SERVICES AVAILABLE FOR RESALE

	Type of Service	North Dakota	
		Resale	Discount
1	Grandfathered Services (Note 1)	Yes	Yes
2	Promotions - > 90 Days (Note 2)	Yes	Yes
3	Promotions - ≤ 90 Days (Note 2)	No	No
4	N11 Services	No	No
5	Federal Subscriber Line Charges	Yes	No
6	Nonrecurring Charges	Yes	No
7	Public Telephone Access Svc (PTAS)	Yes	Yes
8	Voice Mail	No	No
9	Private Line including FX (Note 3)	No	No
10	Employee Discount	No	No
11	Centrex	No	No
12	Line of Information	No	No
13	Joint Use Service	No	No
14	Special Billing Number	No	No
15	Lifeline (Note 4)	No	No
16	Deregulated services – Inside wire, ISP, Toll, etc.	No	No
17	Volume Discounts	No	No

Applicable Notes:

1. Grandfathered services can be resold only to existing subscribers of the grandfathered service.
2. Where available for resale, promotions will be made available only to End User Customers who would have qualified for the promotion had it been provided by NDTC directly.
3. Midcontinent can order services from the access tariff
4. Midcontinent would apply directly for Lifeline support

AREA OF RESALE

Exchange Name

Devils Lake, North Dakota

LINE INFORMATION DATA BASE (LIDB)

RESALE STORAGE AGREEMENT

I. Definitions (from Exhibit)

A. Billing number - a number used by NDTC for the purpose of identifying an account liable for charges. This number may be a line or a special billing number.

B. Line number - a ten-digit number assigned by NDTC that identifies a telephone line associated with a resold local exchange service.

C. Special billing number - a ten-digit number that identifies a billing account established by NDTC in connection with a resold local exchange service.

D. Calling Card number - a billing number plus PIN number assigned by NDTC.

E. PIN number - a four-digit security code assigned by NDTC that is added to a billing number to compose a fourteen-digit calling card number.

F. Toll billing exception indicator - associated with a billing number to indicate that it is considered invalid for billing of collect calls or third number calls or both, by Midcontinent.

G. Billed Number Screening - refers to the query service used to determine whether a toll billing exception indicator is present for a particular billing number.

H. Calling Card Validation - refers to the query service used to determine whether a particular calling card number exists as stated or otherwise provided by a caller.

I. Billing number information - information about billing number or Calling Card number as assigned by NDTC and toll billing exception indicator provided to NDTC by Midcontinent.

J. Get-Data - refers to the query service used to determine, at a minimum, the Account Owner and/or Regional Accounting Office for a line number. This query service may be modified to provide additional information in the future.

K. Originating Line Number Screening (OLNS) - refers to the query service used to determine the billing, screening and call handling indicators, station type and Account Owner provided to NDTC by Midcontinent for originating line numbers.

L. Account Owner - name of the local exchange telecommunications company that is providing dialtone on a subscriber line.

II. General

A. This Agreement sets forth the terms and conditions pursuant to which NDTC agrees to store in its LIDB certain information at the request of Midcontinent and pursuant to which NDTC, its LIDB customers and Midcontinent shall have access to such information. In addition, this Agreement sets forth the terms and conditions for Midcontinent's provision of billing number information to NDTC for inclusion in NDTC's LIDB. Midcontinent understands that NDTC provides access to information in its LIDB to various telecommunications service providers pursuant to applicable tariffs and agrees that information stored at the request of Midcontinent, pursuant to this Agreement, shall be available to those telecommunications service providers. The terms and conditions contained herein shall hereby be made a part of this Agreement upon notice to Midcontinent's account team and/or Local Contract Manager activate this LIDB Storage Agreement. The General Terms and Conditions of the Agreement shall govern this LIDB Storage Agreement.

B. The Midcontinent LIDB information shall be used for the following purposes:

1. Billed Number Screening. NDTC is authorized to use the billing number information to determine whether Midcontinent has identified the billing number as one that should not be billed for collect or third number calls.

2. Calling Card Validation. NDTC is authorized to validate a 14-digit Calling Card number where the first 10 digits are a line number or special billing number assigned by NDTC, and where the last four digits (PIN) are a security code assigned by NDTC.

3. OLNS. NDTC is authorized to provide originating line screening information for billing services restrictions, station type, call handling indicators, presubscribed interLATA and local carrier and account owner on the lines of Midcontinent from which a call originates.

4. GetData. NDTC is authorized to provide, at a minimum, the account owner and/or Regional Accounting Office information on the lines of Midcontinent indicating the local service provider and where billing records are to be sent for settlement purposes. This query service may be modified to provide additional information in the future.

III. Responsibilities of the Parties

A. NDTC will administer all data stored in the LIDB, including the data provided by Midcontinent pursuant to this Agreement, in the same manner as NDTC's data for NDTC's End User Customer customers. NDTC shall not be responsible to Midcontinent for any lost revenue which may result from NDTC's administration

of the LIDB pursuant to its established practices and procedures as they exist and as they may be changed by NDTC in its sole discretion from time to time.

B. Billing and Collection Customers

NDTC currently has in effect numerous billing and collection agreements with various interexchange carriers (IXCs) and billing clearing houses and as such these billing and collection customers (B&C Customers) query NDTC's LIDB to determine whether to accept various billing options from End User Customers. Until such time as NDTC implements in its LIDB and its supporting systems the means to differentiate Midcontinent's data from NDTC's data, the following shall apply:

1. NDTC will identify Midcontinent End User Customer originated long distance charges and will return those charges to the IXC as not covered by the existing B&C agreement. Midcontinent is responsible for entering into the appropriate agreement with IXCs for handling of long distance charges by their End User Customers.

2. NDTC shall have no obligation to become involved in any disputes between Midcontinent and B&C Customers. NDTC will not issue adjustments for charges billed on behalf of any B&C Customer to Midcontinent. It shall be the responsibility of Midcontinent and the B&C Customers to negotiate and arrange for any appropriate adjustments.

IV. Fees for Service and Taxes

A. Midcontinent will not be charged a fee for storage services provided by NDTC to Midcontinent, as described in this LIDB Resale Storage Agreement.

B. Sales, use and all other taxes (excluding taxes on NDTC's income) determined by NDTC or any taxing authority to be due to any federal, state or local taxing jurisdiction with respect to the provision of the service set forth herein will be paid by Midcontinent in accordance with the tax provisions set forth in the General Terms and Conditions of this Agreement.

Pre-Ordering, Ordering, Provisioning, Maintenance and Repair

TABLE OF CONTENTS

1. PRE-ORDERING 3
2 ORDERING 3
3 MISCELLANEOUS 4

PRE-ORDERING, ORDERING, PROVISIONING, MAINTENANCE AND REPAIR

1. PRE-ORDERING

1.1. The Parties will provide access to pre-order functions to support the requesting Party's transfer of customers. The Parties acknowledge that ordering requirements necessitate the use of current pre-order information to accurately build service orders. The following lists represent pre-order functions that are available.

1.2. Release of retail Customer Proprietary Network Information (CPNI) and account information for pre-ordering will include: billing name, service address, billing address, service and feature subscription, directory listing information, long distance carrier identity, and PIC freeze indication. Parties agree that the Parties' representatives will not access the information specified in this subsection until after the End User Customer requests that his or her Local Service Provider be changed to that Party, and a Letter of Authorization (LOA) for release of CPNI complies with conditions as described in Section 3.3 of this Attachment.

1.3. The Parties will provide the information on the following pre-ordering functions: service address validation, telephone number selection, service and feature availability, due date information, and customer record information. NDTC and Midcontinent will include the development and introduction of the new change management process. The Parties shall provide such information in accordance with the procedures set out in the NDTC Operations Handbook via paper copies of End User Customer record information.

1.4. The Parties agree not to view, copy, or otherwise obtain access to the End User Customer record information of any customer without that End User Customer's permission. Midcontinent will obtain access to End User Customer record information only in strict compliance with applicable laws, rules, or regulations of the state in which the service is provided or FCC. NDTC reserves the right to audit Midcontinent's access to End User Customer record information. If an NDTC audit of Midcontinent's access to End User Customer record information reveals that Midcontinent is accessing End User Customer record information without having obtained the proper LOA, NDTC, upon reasonable notice to Midcontinent, may take corrective action. All such information obtained through an audit shall be deemed Information covered by the Proprietary and Confidential Information Section 11 in the General Terms and Conditions of this Agreement.

2. ORDERING

2.1. Midcontinent agrees to comply with the provisions of the NDTC Operations Handbook, which are incorporated by reference in this Agreement, and as amended from time to time, provided however, that NDTC furnishes Midcontinent with a copy of the Handbook and relevant amendments in a timely manner.

2.2. Ordering.

2.2.1. Midcontinent shall place orders for services by submitting a local service request ("LSR") to NDTC. NDTC shall bill Midcontinent a service order charge as

specified in this Attachment for each LSR submitted. An individual LSR will be identified for billing purposes by its Purchase Order Number ("PON").

2.2.2. NDTC will bill the service order charge, as applicable, for an LSR, regardless of whether that LSR is later supplemented, clarified or cancelled.

2.3. Provisioning.

2.3.1. NDTC shall provision services during its regular working hours. To the extent Midcontinent requests provisioning of service to be performed outside NDTC's regular working hours, or the work so requested requires NDTC's technicians or project managers to work outside of regular working hours, overtime charges shall apply.

2.3.2. Cancellation Charges. If Midcontinent cancels an LSR any costs incurred by NDTC in conjunction with the provisioning of that request will be recovered in accordance with the Pricing Attachment.

2.3.3. Expedited Service Date Charges . For Expedited Service Date Advancement requests by Midcontinent, expedited charges will apply for intervals less than the standard interval as outlined in the NDTC Operations Handbook. The charges as outlined in the Pricing Attachment, will apply as applicable.

2.3.4. Order Change Charges. If Midcontinent modifies an order after being sent a Firm Order Confirmation (FOC) from NDTC, the Order Change Charge will be paid by Midcontinent in accordance with the Pricing Attachment.

2.4. Maintenance and Repair

2.4.1. Requests for trouble repair are billed in accordance with the provisions of this Agreement. NDTC and Midcontinent agree to adhere to the procedures for maintenance and repair referenced in NDTC's Operations Handbook, as amended from time to time during this Agreement and as incorporated herein by reference.

2.4.2. If Midcontinent reports a trouble and no trouble actually exists on the NDTC portion, NDTC will charge Midcontinent for any dispatching and testing (both inside and outside the Central Office (CO)) required by NDTC in order to confirm the working status.

2.5. Rates

Unless otherwise specified herein, charges applicable to pre-ordering, ordering, provisioning and maintenance and repair, shall be as set forth in the Pricing Attachment.

3. MISCELLANEOUS

3.1 Customer Transfer.

3.1.1 Service orders will be in a standard format designated by NDTC.

3.1.2 When notification is received from Midcontinent that a current End User Customer of NDTC will subscribe to Midcontinent's service, standard service order intervals for the appropriate class of service will apply.

3.1.3 Midcontinent will be the single point of contact with NDTC for all subsequent ordering activity resulting in additions or changes to services except that NDTC will accept a request directly from the End User for conversion of the End User Customer's service from Midcontinent to NDTC.

3.1.4 If NDTC determines that an unauthorized change in local service to Midcontinent has occurred, NDTC will reestablish service with the appropriate local service provider and will assess Midcontinent as the carrier initiating the unauthorized change, any charges allowed under the FCC and State rules. Appropriate nonrecurring charges, as set forth in the applicable tariff will also be assessed to Midcontinent. These charges can be adjusted if Midcontinent provides satisfactory proof of authorization.

3.2 Misdirected Calls.

3.2.1 The Parties will employ the following procedures for handling any misdirected calls (e.g., Business office, repair bureau, etc.):

3.2.2 To the extent the correct provider can be determined; each Party will refer misdirected calls to the proper provider of local exchange service. When referring such calls, both Parties agree to do so in a courteous manner at no charge.

3.2.3 For misdirected repair calls, the Parties will provide their respective repair bureau contact number to each other on a reciprocal basis and provide the End User Customer the correct contact number.

3.2.4 In responding to misdirected calls, neither Party shall make disparaging remarks about each other, nor shall they use these calls as a basis for internal referrals or to solicit End User Customers or to market services.

3.3 Letter of Authorization.

3.3.1 NDTC will not release the Customer Service Record (CSR) containing CPNI to Midcontinent on NDTC's End User Customer accounts unless Midcontinent first provides to NDTC a written Letter of Authorization (LOA). Such LOA may be a blanket LOA or other form agreed upon between NDTC and Midcontinent authorizing the release of such information to Midcontinent.

3.3.2 An LOA will be required before NDTC will process an order for services provided in cases in which the End User Customer currently receives Exchange Service from NDTC or from a local service provider other than Midcontinent. Such LOA may be a blanket LOA or such other form as agreed upon between NDTC and Midcontinent.

3.3.3 Midcontinent and NDTC shall each execute a blanket letter of authorization with respect to End User Customer requests so that prior proof of End User Customer authorization will not be necessary with every request (except in the case of a local service freeze). The Parties shall each be entitled to adopt their own internal

processes for verification of customer authorization for requests, provided, however, that such processes shall comply with applicable state and federal law and industry and regulatory guidelines.

3.4 Pending Orders. Orders placed in the hold or pending status by Midcontinent will be held for a maximum of thirty (30) calendar days from the date the order is placed on hold. After such time, Midcontinent shall be required to submit a new service request. Incorrect or invalid requests returned to Midcontinent for correction or clarification will be held for thirty (30) calendar days. If Midcontinent does not return a corrected request within thirty (30) calendar days, NDTC will cancel the request.

3.5 Neither NDTC nor Midcontinent shall prevent or delay an End User Customer from migrating to another carrier because of unpaid bills, denied service, or contract terms.

3.6 The Parties shall return a Firm Order Confirmation (FOC) and Local Service Request (LSR) rejection/clarification in accordance with the intervals specified in NDTC's Operations Handbook.

3.7 Contact Numbers. The Parties agree to provide one another with contact numbers for the purpose of ordering, provisioning and maintenance of services. Contact numbers for maintenance/repair of services shall be answered in accordance to the NDTC Operations Handbook. NDTC will make a reasonable effort to notify Midcontinent when a trouble ticket has been closed. After making a reasonable effort to contact Midcontinent to request additional information or to request authorization for additional work deemed necessary, if NDTC is unsuccessful in obtaining information or authorization, NDTC will place trouble tickets in delayed maintenance status.

Pricing Attachment

Pricing Attachment

General. The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement and are subject to change. NDTC shall provide updated versions of the Tariff prior to the effective date of such change.

A. Resale:

1.	Discount from Tariff Retail Rates	Interim Rate[1] 17.0%*
2.	Denial charge	$ 15.00
3.	Restoral charge within 5 business days	
	Facility Administration Charge	$ 20.00
	Subsequent Charge	$ 12.00
4.	Restoral charge after 5 business days	
	Facility Administration Charge	$ 20.00
	Primary Charge	$ 18.00
5.	Selective Router/Line Class Code	
	Non-Recurring	$240.00
	Recurring	$ 40.00
6.	Service Order Charge (LSR)	
	Facility Administration Charge	$ 20.00/request*
	Primary Charge	$ 18.00/request*
	Subsequent Charge	$ 12.00/request*
7.	Service Order Cancellation Charge	$ 12.00/request*
8.	Expedited Due Date in addition to SOC	$ 32.00/request*
9.	Order Change Charge	$ 12.00/request*

* All Tariff rate elements (both recurring and non-recurring) are applied as stated in the applicable tariff. Rate elements listed in this Attachment are not all inclusive. The services available for resale and subject to the resale discount are listed in the Resale Attachment.

B. General Charges:

1. Technical Labor

---

[1] The Interim Discount Rate for resold services is 17%, subject to a "true-up", as ordered by the North Dakota Public Service Commission (the Commission) on July 26, 2006 which may be changed upon further order from the Commission or by written agreement of the parties. True-up of rate will be accomplished within 60 days of agreement on the final rate or as ordered by the Commission. After a Final Discount Rate is agreed upon or ordered by the Commission, the Interim Discount rate will be replaced with a Final Discount Rate.

Install & Repair Technician:	
Basic Time (normally scheduled hours)	$58.00/hr
Overtime (outside normally schld hrs on schld work day)	$87.00/hr
Trip Charge	$20.00
Call out	Min 2 hours
Central Office Technician:	
Basic Time (normally scheduled hours)	$ 75.00/hr
Overtime (outside normally schld hrs on schld work day)	$112.50/hr
Call out	Min 2 hours
Customer Service Representative	
Basic Time (Normal Scheduled)	$ 58.00/hr
Overtime (outside normally schld hrs on schld work day	$ 87.00/hr
Call out	Min 2 hours

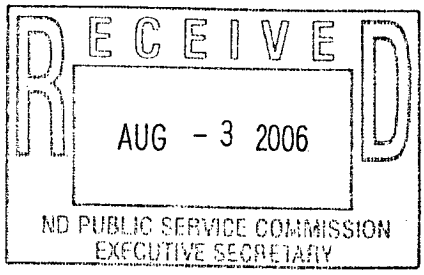
OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.nd.gov/oah

August 2, 2006



Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Dear Mr. Binek:

Thank you for your August 1, 2006, request of the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of Midcontinent Communications/North Dakota Telephone Company. I hereby designate Al Wahl to be assigned as an administrative law judge to conduct the hearing in regard to this matter. Because the administrative law judge will not be making recommended findings of fact and conclusions of law, or issuing a recommended order, the person or persons who will be making the final administrative decision in regard to this matter (*i.e.*, agency head, deputy, board, commission) must be in attendance at the hearing.

Please send all additional relevant documents (correspondence, and other pleadings and documents) to the designated administrative law judge in care of the Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882. I understand the hearing is scheduled for January 8, 2007, beginning at 9:00 a.m., in the Commission Hearing Room, 12th Floor, State Capitol. Because the administrative law judge is requested to conduct the hearing only, the agency must give proper notice of the hearing.

Your request has been assigned OAH File No. 20060297. Please include this number on all future documents and correspondence filed for this matter with the Office of Administrative Hearings.

Sincerely,

Allen C. Hoberg
Director

ACH/lmw

cc: Mr. Patrick Durick
Mr. J.G. Harrington
Mr. Don Negaard
Mr. Thomas J. Moorman

166 PU-05-451 Pages: 1

Al Wahl assigned as ALJ to conduct hearing

by Office of Administrative Hearings by Allen Hoberg
08/03/2006 CC: Comm Legal Illona, Pat, Annette . .

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

August 1, 2006

Mr. Allen C. Hoberg
Office of Administrative Hearings
1707 North 9th Street, Lower Level
Bismarck, ND 58501

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

Dear Mr. Hoberg:

Enclosed is a request for an administrative law judge in the above case. On July 26, 2006, the Commission issued its Findings of Fact, Conclusions of Law and Order on Further Hearing on Interim Discount Rate. The Commission ordered that a further hearing be held to establish a final discount rate for wholesale resale services. The Commission has scheduled the hearing for January 8, 2007, beginning at 9 a.m. in the Commission Hearing Room, 12th Floor, State Capitol. The administrative law judge will serve as a procedural law judge, a court reporter may be present and the hearing will be tape recorded. A copy of the Commission's Order is enclosed.

Please provide the Commission with a copy of any filings issued by your office in this matter.

If you have any questions, please contact me. Thank you.

Sincerely,

William W. Binek
Hearing Administrator

Enclosure

c: Patrick Durick
Don Negaard
JG Harrington
Thomas J. Moorman

165 PU-05-451 Pages: 1

Letter to Office of Administrative Hearings

by Public Service Commission
08/01/2006 CC: Comm Legal Illona, Pat, Annette . .

REQUEST FOR ADMINISTRATIVE LAW JUDGE--APPEAL, APPLICATION, OR PETITION

NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS

SFN 17819 (Rev. 03-2001)

Name of Agency, Board, or Commission
Public Service Commission

The above named agency, board, or commission requests designation of an administrative law judge from the Office of Administrative Hearings for the hearing in Case No. PU-05-451, Midcontinent Communications/North Dakota Telephone Company, Rural Exemption Investigation. Hearing is set for January 8, 2007 at 9 a.m. in the Commission Hearing Room, 12th Floor, Bismarck, ND.

(e.g., application of [name], appeal of [name], petition of [name]). Authority for the administrative action is found in Title 49 (North Dakota Century Code and/or North Dakota Administrative Code).

Please attach related documents and correspondence.

The administrative action is more fully described as follows:
On 7/26/06 the Commission issued its Findings of Fact, Conclusions of Law and Order on Further Hearing on Interim Discount Rate. The Commission ordered that a further hearing be held to establish a final discount rate for wholesale resale services.

It requests designation of an administrative law judge (please check one):

- ☐ **To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.**
- ☑ **To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).**
- ☐ **To conduct the hearing, issue findings of fact, conclusions of law, and a final order.**

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Please list parties, including the agency if it is a Party, and Representation [attorney (or other)] if known, or Agency Contact: (Attach separate list if necessary.)

AGENCY Public Service Commission	Address 600 E Blvd. Ave., Dept. 408, Bismarck, ND	Telephone Number 328-2400
Representation William W. Binek, Chief Counsel	Address Same as above	Telephone Number 328-4088
PARTY See attached	Address	Telephone Number
Representation	Address	Telephone Number
PARTY	Address	Telephone Number
Representation	Address	Telephone Number

Additional Comments
Hearing will be tape recorded and a court reporter may be present.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person William W. Binek, Hearing Officer	Date 8-1-06
Signature of Requesting Person X	Telephone Number 328-4088

08/01/2006 CC: Comm Legal Ilona, Pat, Annette . .

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

List of Parties

Company	Counsel
Midcontinent Communications Attn: Mary Lohnes 410 S Phillips Avenue Sioux Falls, SD 57104-6824	Patrick Durick Pearce & Durick P. O. Box 400 Bismarck, ND 58502 (701) 223-2890 J G. Harrington Dow, Lohnes & Albertson, PLLC 1200 New Hampshire Ave. NW, Ste. 800 Washington, DC 20036
North Dakota Telephone Company Attn: David Dircks P. O. Box 180 Devils Lake, ND 58301-0180	Don Negaard Scott M. Knudsvig Pringle & Herigstad, P. C. P. O. Box 1000 Minot, ND 58702-1000 (701) 852-0381 Thomas J. Moorman Woods & Aitken LLP 2154 Wisconsin Ave. NW, Suite 200 Washington, DC 20007 (202) 944-9501

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sandra L. Scott deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **27th day of July, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

> **Findings of Fact, Conclusions of Law and Order on Further Hearing on Interim Discount Rate**

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7002 2410 0003 4912 1200

Dave Dircks Manager
North Dakota Telephone Company
P O Box 180
Devils Lake ND 58301-0180
Cert. No. 7002 2410 0003 4912 1217

Thomas J Moorman
Kraskin Moorman& Cosson LLC
2120 L St NW Ste 520
Washington D C 20037
Cert. No. 7002 2410 0003 4912 1224

J G Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington D C 20036
Cert. No. 7005 1820 0002 3243 4250

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 1820 0002 3243 4267

Scott M Knudsvig
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 1820 0002 3243 4274

Sandra Scott further deposes and says that on the **27th day of July, 2006,** she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sandra L Scott

Subscribed and sworn to before me
this **27th day of July, 2006**.

Shelly A Bauske
Notary Public

SEAL

SHELLY A BAUSKE
Notary Public
State of North Dakota
My Commission Expires July 22, 2010

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sandra Scott deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **27th day of July, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of:

> **Findings of Fact, Conclusions of Law and Order on Further Hearing on Interim Discount Rate**

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sandra L Scott

Subscribed and sworn to before me
this **27th day of July, 2006**.

Shelly A Bauske
Notary Public

SEAL

SHELLY A BAUSKE
Notary Public
State of North Dakota
My Commission Expires July 22, 2010

wbrudvik@ohnstadlaw.com
William Brudvik

mariep@telcogroupinc.com
Marie Pierre-Paul

cheryl.robins@thomson.com
Cheryl Robins

ffarm@wtc-mail.net
Ann Faught
Absaraka Co-op Tele Co

Absaraka ND 58002

abby.knowlton@acceris.com
Abby Knowlton
Acceris Management & Acquisition LLC
9530 Padgett St Ste 101
San Diego CA 92126

tseat@acninc.com
TIMOTHY SEAT
ACN COMMUNICATION SERVICES, INC.
32991 HAMILTON CT
FARMINGTON HILL MI 48334-3301

jlchapman@acomminc.com
Jerry Chapman
Acomm Inc
510 1st Ave N Ste 203
Minneapolis MN 55403-0343

jcremer@bantzlaw.com
James Cremer
Bantz Gosh & Cremer LLC
305 6th Ave SE
Aberdeen SD 57402-0970

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

dbulawa@bektel.com
Derrick Bulawa
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

daniel.meldazis@broadwing.com
DANIEL MELDAZIS
BROADWING COMMUNICATIONS
200 NORTH LASALLE SUITE 1000
CHICAGO IL 60601

aeconomou@mettel.net
Andoni Economou
Business Productivity Solutions Inc
44 Wall St 6th FL
New York NY 10005

charlie@cicom.net
CHARLES BRENNEMAN
COAST INTERNATIONAL, INC.
14303 W 95TH STREET
LENEXA KS 66215-5210

mannawiz@pacbell.net
Larry Manna
Compuwiz
1012 Industrial Blvd
South Lake Tahoe CA 96150

bryan@consolidatedtelcom.com
Bryan W Personne
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

ken@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

paul@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

keithl@daktel.com
Keith Larson
Dakota Central Tele Coop
PO Box 299
Carrington ND 58421-0299

tschilling@drtel.com
Troy Schilling
Dickey Rural Telephone Cooperative
PO Box 69
Ellendale ND 58436-0069

rlaqua@rrv.net
Ronald Laqua
Halstad Telephone Company
PO Box 55
Halstad MN 56548-0055

carl.billek@corp.idt.net
Carl Wolf Billek
IDT America Corp
520 Broad St 4th Fl
Newark NJ 07102-3111

sales@kmavradio.com

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

loretel@loretel.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

foss@btinet.net
Marilyn Foss
MCI
P O Box 2216
Bismarck ND 58502-2216

ninaburslem@imagitel.com
NINA BURSLEM
D.D.D. CALLING, INC.
2400 AUGUSTA DRIVE SUITE 263
HOUSTON TX 77057-4922

mjrasher@msn.com
Mary Jane Rasher
DCI Group

glenn.richards@shawpittman.com
Glenn Richards
Glenn Richards
ShawPittman
2300 N St NW

bjohnson@ideaone.com
Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

kander@ictc.com
Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

jlowe@ldcb.com
JAN LOWE
LONG DISTANCE CONSOLIDATED BILLING CO.
7111 DIXIE HWY SUITE 211
CLARKSTON MI 48346

dhoyle@matarixbt.com
Dana Hoyle
Matrix Telecom Inc
2207 Commerce St
Dallas TX 75201

gerrya@midrivers.com
Gerry Anderson
Mid-Rivers Telephone Coop Inc
PO Box 280
Circle MT 59215-0280

carols@midstatetel.com
Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

2kathyg@nemontel.net
Kathy Greenwood
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

sbunn@mlgc.com
Shelie Bunn
Moore & Liberty Telephone Co

Enderlin ND 58027

dhill@ndarec.com
Dennis Hill
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

pschaner@ndarec.com
Patti Schaner
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

2kathyg@nemontel.net
Kathy Greenwood
Nemont Telephone Cooperative Inc
P O Box 600
Scobey MT 59263-0600

jsilveira@netlojix.com
JANET MEDEIROS-SILVEIRA
NETLOJIX TELECOM, INC.
104 W ANAPAMU ST SUITE C
SANTA BARBARA CA 93101

rer@norlight.com
Robert E Rogers
NorLight Inc
275 N Corporate Dr
Brookfield WI 53045

laurie.willman@nbne.info
Laurie Willman
North By NortheastCom LLC

pat@ndta.net
Patricia Gisinger
North Dakota Telephone Assoc
PO Box 2614
Bismarck ND 58502-2614

dwights@nccray.com
Dwight Schmitt
Northwest Communications Coop
PO Box 38
Ray ND 58849-0038

ddunning@polarcomm.com
David Dunning
Polar Commun Mut Aid Corp
PO Box 270
Park River ND 58270-0270

donn@srt.com
Don Negaard
Pringle and Herigstad P C
PO Box 1000
Minot ND 58702-1000

tresch1@attbi.com
THOMAS RESCH
PROTEL ADVANTAGE, INC.
1308 MEDORA ROAD
MENDOTA HEIGHTS MN 55118

sschwan@qwest.com
Suzy Schwandt
Qwest Corporation

kblicke@qwest.com
Kent Blickensderfer
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

smacint@qwest.com
Scott Macintosh
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

richard.buckley@qwest.com
Richard J Buckley
Qwest Corporation
1801 California St Rm 4710
Denver CO 80202

jason.topp@qwest.com
Jason Topp
Qwest Services Corporation
200 S 5th St Rm 2200
Minneapolis MN 55402

areyes@telfile.com
Ayanery Reyes
QX Telecom LLC
230 5th Ave Ste 800
New York NY 10001

jeffolson@rrt.net
Jeff Olson
Red River Rural Tele Assoc
PO Box 136
Abercrombie ND 58001-0136

royce@restel.net
Royce Aslakson
Reservation Telephone Cooperative

Parshall ND 58770

marciab@RTC.coop
Marcia Burckhard
Reservation Telephone Cooperative

Parshall ND 58770

shaneh@restel.net
Shane Hart
Reservation Telephone Cooperative

Parshall ND 58770

pam@tnics.com
Pamela Harrington
Roberts County Telephone Coop Assoc

New Effington SD 57255

ap1498@att.com
ARTHUR PAQUETTE
SNET AMERICA, INC.
310 ORANGE STREET 3RD FLOOR
NEW HAVEN CT 06510

diane.c.browning@mail.sprint.com
Diane C Browning
SPRINT COMMUNICATIONS COMPANY L.P.
6450 SPRINT PARKWAY KSOPHN0212-2A511
OVERLAND PARK KS 66251-6100

jasonrg@srttel.com
Jason Gemar
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

julieel@srttel.com
Julie Lizotte
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

stevedl@srttel.com
Steve Lysne
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

christm@srttel.com
Chris Morsefield
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

janehp@srttel.com
Jane Petersen
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

johnar@srttel.com
John Reiser
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

kimrw@srttel.com
Kim Weydahl
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

mdickerson@state.nd.us
Marcy Dickerson
State Tax Department
State Capitol
Bismarck ND 58505

Tele-beep@butlerpropertiesinc.com
AL BOSCH
TELE-BEEP PAGING CO.
PO BOX 7072
BISMARCK ND 58507-7072

lwh@thlglaw.com
Loubna W Haddad
The Helein Law Group LLP
8180 Greensboro Dr Ste 700
McLean VA 22102

lahall@usgs.gov
Lenora Hall
U S Geological Survey

kjvannin@usgs.gov
K Vannin
U S Geological Survey

kcarlson@utma.com
Kenneth Carlson
United Telephone Mut Aid Corp
P O Box 729
Langdon ND 58249-0729

vilaire@comcast.net
Stan Efferding
VCI Company
PO Box 98907
Lakewood WA 98498-0907

bonniek@westriv.com
Bonnie Krause
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

mickg@westriv.com
Mick Grosz
West River Telecommunications Cooperati
PO Box 467
Hazen ND 58545-0467

paulihland@wtc-mail.net
Paul Ihland
Wolverton Telephone Company
P O Box 270
Park River ND 58270-0270

MOTION

APPROVED
DATE: 7-26-06

July 26, 2006

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission adopt the Findings of Fact, Conclusions of Law and Order on Further Hearing on the Interim Discount Rate in Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation, Case No. PU-05-451.

PJF

162 PU-05-451 Pages: 1
Motion
by Public Service Commission
07/26/2006 CC: Comm Legal Illona, Pat, Annette . .

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 ON FURTHER HEARING ON INTERIM DISCOUNT RATE

July 26, 2006

Appearances

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

Don Negaard, Pringle & Herigstad, P .C ., P .O. Box 1000, Minot, North Dakota 58702, 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 and J. G. Harrington, DowLohnes 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.

Al Wahl, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

Preliminary Statement

On July 15, 2005, Midcontinent Communications (Midcontinent) filed a Notice of Bona Fide Request for Services under 47 U.S.C. § 251(f)(1)(A) requesting that the Commission conduct an inquiry for the purpose of determining whether Midcontinent's request for wholesale resold services from North Dakota Telephone Company (NDTC) under 47 U.S.C. § 251(c) is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of the Act. Under 47 U.S.C. § 251(f) the Commission must conduct an inquiry within 120 days after the Commission received notice of the bona fide request.

On April 26, 2006, the Commission issued its Findings of Fact, Conclusions of Law and Order in this case. The Commission ordered that NDTC begin providing to Midcontinent retail services at wholesale prices for resale in the Devils Lake exchange under an interconnection agreement no later than July 26, 2006.

On April 26, 2006, the Commission issued a Notice of Further Hearing to be held on July 10, 2006, to review two issues, as follows:

1. The interim wholesale discount rate to be applied effective with the effective date of the wholesale resale agreement and effective until the effective date of a final rate established for the service.

2. The need and design of a true-up provision should the final wholesale discount rate be different from the interim wholesale discount rate.

On May 10, 2006, NDTC filed a Petition for Reconsideration. On May 24, 2006, the Commission received Midcontinent Communications Inc.'s Opposition to the Petition for Reconsideration. On June 1, 2006, NDTC filed an e-mail clarification regarding its position regarding termination of the exemption solely to Midcontinent. On June 2, 2006, Midcontinent filed a Motion for Leave to File Supplemental Memorandum in Opposition for Petition for Reconsideration together with the Supplemental Memorandum. On June 6, 2006, NDTC filed its Reply to Midcontinent's Motion for Leave to File Supplemental Memorandum.

On June 7, 2006, the Commission issued its Order on Reconsideration and its Amended findings of Fact, Conclusions of Law and Order.

The Commission, having established the above record, the pleadings of the parties, and heard the evidence presented on July 10, 2006, and having reviewed the positions of the parties, and having reviewed the briefs and other materials filed by the parties, hereby adopts the following:

Findings of Fact

Discount Rate

1. Under North Dakota Century Code § 49-21-01.7(11) the Commission has authority to terminate a rural company's exemption under 252(f) of the Telecommunications Act of 1996 (Act). Under North Dakota Century Code §§49-21-01 and 49-21-09 the Commission has authority to establish interim and final discount rates.

2. 47 CFR § 51.611 provides that if a state commission cannot, based on information available to it, establish a wholesale rate using the methodology prescribed in § 51.609, then the state commission may elect to establish an interim wholesale rate of at least 17 percent, and no more than 25 percent. In discussion, the Federal Communications Commission (FCC) stated that a state commission that has not set

wholesale prices based on avoided cost studies that meet the FCC's criteria "*shall* use a default wholesale discount rate between 17 and 25 percent"[1] (emphasis added).

3. NDTC's witness Douglas Meredith filed a cost study to justify a 9.36 percent discount rate for wholesale/resale of NDTC's tariffed telecommunications service in Devils Lake, North Dakota. Meredith stated that the cost study was based on an MCI model, with some modification, as discussed by the FCC in its *Local Competition Order*. NDTC believes it used a method similar to that used by the FCC in determining the 17 to 25 percent default discount range.

4. Meredith stated that the NDTC cost study provides a summary of the direct, indirect, and cost onsets related to the retail services subject to being sold at a wholesale discount. The cost data was derived from NDTC's December 2005 ledger that identifies the accounts, as specified in the FCC Uniform System of Accounts, and the account balances. Other information relied upon by Meredith included various time NDTC studies to identify the tasks performed for specific accounts and items that are identified as Part 64 exclusions from the ledger. Part 64 defines the accounting for the separation between regulated and unregulated activities. The NDTC data used by Meredith in the costs was total company data. Costs were not identified separately for the Devils Lake exchange. Meredith testified that separated Devils Lake costs are not necessary to develop an interim discount rate, but, to the extent that a specific allocation for Devils Lake needs to be made, it would be done on a full-blown case study for a final discount rate. Meredith testified that the cost study he prepared for determination of the interim rate is not as complete as a full-blown cost study to determine a final discount rate, and the full-blown cost study should include more detailed account information.

5. To calculate a discount, NDTC divides the avoided costs by the total operating expenses for all retail telecommunications services, including services not subject to resale and excluding non-regulated services.

6. Midcontinent's witness Timothy J. Gates testified to several reasons why the Commission should not rely on NDTC's cost study to determine a discount rate. Gates stated that the standard practice to calculate wholesale discount rates is dividing avoided costs by retail revenues from services subject to wholesale resale. He testified that under Section 252(d)(3) a state commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier. Gates interpretation of Section 252(d)(3) is that the discount is equal to the total avoided retail costs divided by the total revenue subject to resale. Both parties agree that the numerator in the discount rate formula is avoided costs, but the parties do not agree on the denominator. NDTC believes the denominator should be total expenses while Midcontinent believes

[1] *First Report and Order*, 11 FCC Rcd 15499 (1996), FCC 96-325; *Local Competition Order,* paragraph 932.

the denominator should be revenues subject to resale. Gates also testified concerning unauthenticated cost data, inclusion of inappropriate or unreasonable costs, and mathematical errors.

7. Gates provided a calculation for the discount after making adjustments to NDTC's cost study. The result was a discount of 25.39 percent.

8. Each party gave considerable testimony criticizing the other's methodology. We find that neither the avoided cost study presented by NDTC nor the adjusted results advocated by Midcontinent are satisfactory to establish a wholesale rate. Therefore, under 47 CFR § 51.611 and paragraphs 910 and 932 of the *Local Competition Order*, we find that if the Commission elects to set a default rate, the Commission must set a default wholesale discount within the FCC range of 17 to 25 percent.

9. Within the FCC default range of 17 to 25 percent, we find that an interim discount rate of 17 percent is reasonable. The rate will apply only on an interim basis until a final discount rate is negotiated by the parties or determined by the Commission. The midpoint between the parties' recommended discount rates is 17.38. Setting a default rate at the high end of the FCC's default range may incorrectly promote resale competition at a time when the FCC focus is to encourage facility based competition. The Qwest discount rate litigated for North Dakota[2] was even below the low end of the FCC band of reasonableness, possibly indicating lower avoidable costs in North Dakota compared to other RBOCs in the nation.

10. If the parties cannot reach agreement on a final discount rate, we encourage the parties to come to consensus on the methodology for a cost study that meets FCC requirements to determine avoided retail costs and enable the Commission to establish the wholesale rate. We encourage the parties to come to consensus on whether the cost study should be based on total company versus Devils Lake exchange specific data. The cost study presented at a future hearing for determination of the final discount rate should include all underlying data.

True Up Mechanism

11. The Commission requested the parties to provide information on the need for a true-up provision should the final wholesale discount rate be different from the interim wholesale discount rate. The parties appear to agree that the correct true-up mechanism is reflected in Meredith's testimony, page 4, and as reflected in Exhibit No. P-17. This exhibit is attached to these Findings of Fact and is incorporated by reference.

12. The Commission finds this is an appropriate true-up mechanism, once a final discount rate is determined. The Commission further finds that it is appropriate to

[2] Case Nos. PU-2342-01-296 and PU-04-581.

require that the true-up funds accrue interest monthly at a rate equal to the three-month treasury bill rate as published monthly by the federal reserve board.

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

Conclusions of Law

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

2. The Commission has the authority to establish an interim discount rate.

3. An avoided cost study that satisfies the criteria set forth by the FCC does not exist.

4. An interim default rate of 17 percent is appropriate in this proceeding.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

The Commission orders:

1. The retail services provide to Midcontinent Communications by North Dakota Telephone Company for resale shall be discounted 17 percent until a final discount rate is established.

2. The formula agreed to by the parties for a true-up mechanism shall be applied at the time a final discount rate is established. The true-up funds must accrue interest monthly at a rate equal to the three-month treasury bill rate as published monthly by the federal reserve board and shall accrue until the final true-up payment is made.

3. A hearing to establish a final discount rate for wholesale resale services shall be held on **January 8, 2007 at 9 a.m. in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota** absent an agreement of the parties filed with the Commission.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	Tony Clark	Kevin Cramer
Commissioner	President	Commissioner

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JUL 17 2006
ND PUBLIC SERVICE COMMISSION

July 17, 2006

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding are an original and seven copies of a Post-Hearing Brief of North Dakota Telephone Company on Interim Discount Rates for Wholesale/Resale in Devils Lake, North Dakota.

Also enclosed is a proposed Findings of Fact, Conclusions of Law, and Order on Further Hearing on Interim Discount Rate.

These documents were also transmitted via electronic means to your office on this date.

Don Negaard

jt

Enclosures

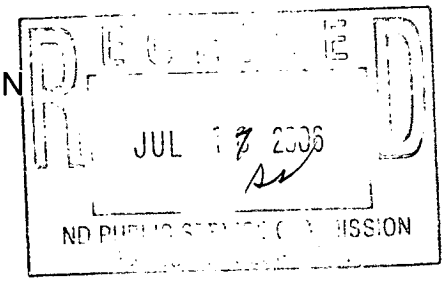
cc/enc: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission

160 PU-05-451 Pages: 1

Letter re Post-Hearing Brief and Proposed Findings of Fact
by North Dakota Telephone Company by Don Negaard,
07/17/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



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

POST-HEARING BRIEF OF NORTH DAKOTA TELEPHONE COMPANY ON INTERIM DISCOUNT RATES FOR WHOLESALE/RESALE IN DEVILS LAKE, NORTH DAKOTA

INTRODUCTION

A hearing was held before the North Dakota Public Service Commission ("the Commission") on July 10, 2006, for the purpose of determining an interim discount rate for wholesale/resale services in the Devils Lake, North Dakota, exchange pursuant to 47 U.S.C. § 252 (d)(3), to be effective July 26, 2006.

This Brief is submitted to the Commission by North Dakota Telephone Company ("NDTC") in support of its proposed interim rate.

FACTS

Each party offered one witness at the July 10, 2006, hearing. Douglas Meredith testified for NDTC and Timothy Gates testified for Midcontinent Communications ("Midco").

159 PU-05-451 Pages: 8

Post-Hearing Brief on Interim Discount Rates

by North Dakota Telephone Company by Don Negaard,
07/17/2006 CC: Comm Legal Illona, Pat, Annette . .

Witness Douglas Meredith submitted pre-filed testimony and also submitted the only study performed in accordance with FCC criteria. Witness Gates did not pre-file any study but submitted proposed revisions to the Meredith study at the hearing. Meredith's study determined that a discount rate of 9.36 percent is an appropriate interim discount rate for wholesale/resale of NDTC's services in Devils Lake.

Meredith's study used the FCC-recommended rebuttable presumptions of 90 percent and provided reasons why his study deviated from 90 percent in the following areas: Local Order Processing, PIC Charge Charges, White Page Directory, Local Bill Inquiry and Message Processing and CABS. (See Meredith Testimony, Exhibit 21, Schedule 4).

While Witness Gates testified to the actual services which he believes might be subject to resale (see Gates pre-filed testimony, lines 48-5 and 222-233), the parties have agreed upon the scope of resale (Exhibit 15; specifically, see Attachment #1 Resale, page 13) for Devils Lake, North Dakota. As such, this discussion by Gates is irrelevant.

Witness Gates also stated that DSL is subject to wholesale/resale (lines 412-415), but, again, DSL is not subject to the terms of the agreement between NDTC and Midco because it is not included in the terms and conditions agreed to by the parties (Exhibit 15, page 13 of Resale Attachment).

Gates' pre-filed testimony argues that the avoided costs, and therefore the discount, of smaller companies are a larger percentage than appropriate rates for larger companies (lines 143-150). Gates could not explain why Qwest has a

16.15 percent discount rate on file in North Dakota when the FCC found the default ranges for larger Regional Bell Operating Companies ("RBOCs") to approach 25 percent.

One statement of the Gates testimony that NDTC can agree on, and Witness Meredith did so state, was that:

> "In the end, the Commission has to apply a common-sense fact to determine which will be avoided and which ones will not."

(Lines 212-213).

Common sense would cause one to examine Midco's actions compared to its words. Actions speak louder than words. NDTC introduced the pricing schedule from an interconnection agreement, between Dakota Central Telecom I and Midco, that is on file with the Commission. In the case of Dakota Central Telecom I, Midco determined that a reasonable discount rate, considering these avoided costs, was 10 percent. (See Exhibit R-18.)

In addition, the record in this matter shows Gates substituted retail revenues for expenses as a denominator in an FCC-approved formula. The FCC has never used such a formula (Meredith Rebuttal Testimony) and it introduces apples (revenues) into a formula the FCC intended to resolve cost avoidance (oranges). (See Local Competition Order, 96-305, at paragraphs 890-894, and Meredith on Rebuttal).

Gates testified that he felt a discount rate higher than those demonstrated or testified to for any company in the FCC Local Competition Order was reasonable for NDTC. (See paragraph 930 of Local Competition Order, supra).

The parties are in agreement on a formula for true-up mechanism. (See Meredith Pre-filed Testimony and Exhibit P-17.)

LAW AND ARGUMENT

The Telecommunications Act of 1996 provides for the pricing of wholesale resale of telecommunications services, as follows:

> For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

47 U.S.C. § 252(d)(3).

The statute does not specify or differentiate between interim discount rates and long-term discount rates. The FCC did adopt 47 C.F.R. 51.611, which states, as follows:

> (a) If a state commission cannot, based on the information available to it, establish a wholesale rate using the methodology prescribed in Sec. 51.609, then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.
>
> (b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25 percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.
>
> (c) A state commission that establishes interim wholesale rates shall, within a reasonable period of time thereafter, establish wholesale rates on the basis of an avoided retail cost study that complies with Sec. 51.609.

From the reading of the FCC's regulation, it is clear that a state commission "may" adopt FCC default rates. Obviously, the FCC felt, at the time it adopted its final regulations, that state commissions should have some options.

It is also clear that Witness Meredith is the only witness to provide an interim study consistent with 47 C.F.R. 51.609 and the FCC's interim rate methodology used in the Local Competition Order. Meredith computed and calculated the avoided costs under 47 C.F.R. 51.609 and then provided evidence on the presumptions that were rebutted by NDTC, consistent with 51.609(c).

There are policy reasons why Meredith's method should be used for interim rates. As Meredith indicated, it is logical to use the FCC methodology for an interim study (based on the MCI model) because the model uses publicly available information so that it is also available to competitors. Midco had copies of NDTC's annual reports (Exhibit P-18) to use for cross examination and Gates' testimony utilized these public reports Additionally, it is appropriate to use the Meredith study since it is the only FCC-compliant study now available to the Commission. Should the Commission determine that in future cases it will forego interim rate studies or request an interim study using different methodology or methodology necessary for a long-term study, that decision need not exclude the Meredith study today.

While Gates was critical of Meredith's methodology, Gates' biggest criticism was Meredith's use of expenses as a denominator even though that is what was used by the FCC (and the MCI model) in the Local Competition Order. Gates' stated reason for this is the language in § 252(d)(3); yet that statute talks

about reducing retail prices to wholesale and discounts for cost saved. It does not speak to the denominator; only the FCC has discussed that issue. Gates' strained interpretation of the statute is hardly a mandate for using revenue as a denominator in a cost savings formula or rejection of Meredith's calculations. When questioned as to any FCC position on this issue, Gates evaded the question and again referenced § 252(d)(3). That statute was written by Congress, not the FCC, and does not mandate a denominator.

CONCLUSION

To echo Mr. Gates, this Commission must use common sense in this matter. In doing so, it must reject Mr. Gates' attempts to corrupt an FCC-approved formula used as a model to develop a cost savings study for developing an interim wholesale resale discount for Devils Lake, North Dakota.

Witness Meredith testified the appropriate discount is less than 10 percent. While Midco might raise arguments about the accuracy of certain cost savings that could raise Meredith's results to 10 percent, Midco offered no explanation of why it agreed to 10 percent with Dakota Central Telecom I. It merely suggested the 16.15 percent Qwest rate in North Dakota is a more appropriate floor. The fact that Qwest's discount is less than the other RBOCs, as calculated in the FCC's Local Competition Order, supports the conclusions of Meredith's study and actually establishes 16.15 as a ceiling. Smaller companies have less marketing costs to avoid and therefore a smaller discount because there are less costs saved. Common sense can only lead one to lean toward Midco's agreed upon rate with Dakota Central Telecom I.

Dated this 17th day of July, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

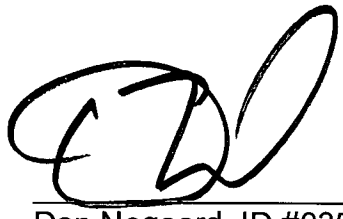
CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Post-Hearing Brief of North Dakota Telephone Company on Interim Discount Rates for Wholesale/resale in Devils Lake, North Dakota, was served electronically and by regular mail on the 17th day of July, 2006, on the following:

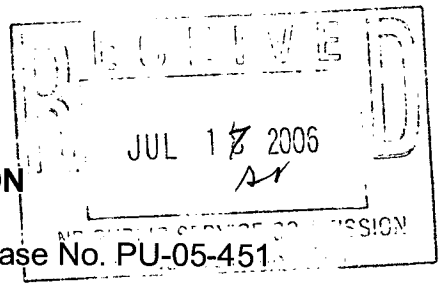
Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
PWD@pearce-durick.com

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480
wbinek@state.nd.us

J.G. Harrington
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.,
Suite 800
Washington, D.C. 20036
jharrington@dowlohnes.com



Don Negaard, ID #03598



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 ON FURTHER HEARING ON INTERIM DISCOUNT RATE

JULY _____, 2006

Appearances

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

Don Negaard, Pringle & Herigstad, P.C., P.O. Box 1000, Minot, North Dakota 58702, 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, and 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.

Al Wahl, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

Preliminary Statement

On May 12, 2005, Midcontinent Communications ("Midcontinent") sent a letter to North Dakota Telephone Company ("NDTC") proposing to enter into a resale agreement for telecommunications services in the Devils Lake, North Dakota, exchange. Attached to the letter was the proposed Resale Agreement for resale at wholesale rates any telecommunications services tariffed with the Commission that it provides at retail to subscribers who are not telecommunications carriers.

Proposed Findings of Fact, Conclusions of Law and Order
by North Dakota Telephone Company by Don Negaard,
07/17/2006 CC: Comm Legal Illona, Pat, Annette . .

By letter dated June 10, 2005, NDTC asked whether the request by Midcontinent was for 251(b) resale of NDTC telecommunications services or for 251(c) resale of NDTC telecommunications services at discounted rates. NDTC also advised Midcontinent of its rural exemption from 251(c) requirements of the Telecommunications Act (Act).

On July 15, 2005, Midcontinent filed a Notice of Bona Fide Request for Services under 47 U.S.C. § 251(f)(1)(A) requesting that the Commission conduct an inquiry for the purpose of determining whether Midcontinent's request for wholesale resold services from NDTC under 47 U.S.C. § 251(c) is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of the Act. Under 47 U.S.C. § 251(f), the Commission must conduct an inquiry within 120 days after the Commission received notice of the bona fide request.

On July 28, 2005, the Commission issued a Notice of Hearing scheduling a hearing for October 13, 2005, and identifying the following issues:

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 September 20, 2005, the parties filed a stipulation that a hearing and determination by the Commission concerning the rural exemption may be held at a time beyond the 120 days directed by 251(f)(1)(B). The hearing was rescheduled to January 23, 2006. The hearing was held as scheduled.

On April 26, 2006, the Commission issued its Findings of Fact, Conclusions of Law and Order in this case. On May 10, 2006, NDTC filed a Petition for Reconsideration. On May 24, 2006, the Commission received Midcontinent Communications, Inc.'s Opposition to the Petition for Reconsideration. On June 1, 2006, NDTC filed an e-mail clarification regarding its position regarding termination of the exemption solely to Midcontinent. On June 2, 2006, Midcontinent filed a Motion for Leave to File Supplemental Memorandum in Opposition for Petition for Reconsideration together with the Supplemental Memorandum. On June 6, 2006, NDTC filed its Reply to Midcontinent's Motion for Leave to File Supplemental Memorandum.

On June 7, 2006, the Commission issued its Order on Reconsideration and its Amended Findings of Fact, Conclusions of Law and Order for Judgment.

A Notice of Further Hearing was noticed by the Commission on April 26, 2006, for a hearing to be held on July 10, 2006, to review two issues, as follows:

1. The interim wholesale discount rate to be applied effective with the effective date of the wholesale resale agreement and effective until the effective date of a final rate established for the service.

2. The need and design of a true-up provision should the final wholesale discount rate be different from the interim wholesale discount rate.

On June 26, 2006, the Commission, through the Office of Administrative Hearings, issued a Prehearing Order for the further hearing to be held on July 10, 2006.

The Commission, having established the above record, the pleadings of the parties, and heard the evidence presented on July 10, 2006, and having reviewed the positions of the parties, and having reviewed the briefs and other materials filed by the parties, hereby adopts the following:

Findings of Fact

True Up Mechanism

1. The Commission requested the parties to provide information on the need for a true-up provision should the final wholesale discount rate be different from the interim wholesale discount rate. The parties appear to agree that the correct true-up mechanism is reflected in Meredith's testimony, page 4, and as reflected in Exhibit P-17. This exhibit is attached to these Findings of Fact and is incorporated by reference.

The Commission agrees this is an appropriate true-up mechanism, once a final discount rate is determined.

Interim Discount Rate

2. The hearing on July 10, 2006, was also held to determine the following:

> The interim wholesale discount rate to be applied effective with the effective date of the wholesale resale agreement and effective until the effective date of a final rate established for the service.

3. Each party called one witness to testify on this issue. NDTC called on Douglas Meredith to testify and Midcontinent called on Timothy Gates to testify. Each of these witnesses filed pre-filed testimony on July 5, 2006, and they each adopted their respective testimony at the hearing held on July 10, 2006.

4. NDTC presented an avoided cost study that was based on an MCI model discussed and adopted, with some modification, by the FCC in its Local Competition Order of 1996 (FCC 96-305, see paragraphs 890-894 of the FCC Order). The FCC used this modified MCI model and the results from two other state proceedings to develop its interim rate range.

5. The avoided cost study of NDTC determined that the appropriate discount rate for wholesale/resale of NDTC's tariffed telecommunications service in Devils Lake, North Dakota, is 9.36 percent. The Commission agrees this is an appropriate discount rate.

6. Midcontinent had available to it the annual reports of NDTC filed with the Commission for the year ending December 31, 2005. While Midcontinent used these reports to suggest changes to the NDTC study, it inexplicably did not file this with the Commission prior to the hearing.

7. There are no FCC rules addressing the development of an interim rate study. States are granted discretion to use the FCC interim rate range if an avoided cost study does not comply with the minimal FCC guidelines established in 47 CFR § 51.609. These guidelines only address the composition of the numerator, or the avoided costs. The Commission's requirement to perform an interim cost study is separate and distinct from the requirement to perform a final cost study.

8. Other states have used a methodology for final cost studies different than that used by NDTC. Most states do not conduct interim cost studies and proceed directly to a hearing on long-term rates. Only when the long-term rate study is found deficient does the state Commission use interim rates. The interim rate method proposed by NDTC is appropriate for interim discount rates in Devils Lake, North Dakota.

9. The NDTC cost study complies with the FCC's regulation addressing the avoided costs. It also follows the modeling methodology the FCC used to in part develop interim rates. The FCC has no discussion of retail revenues in the denominator. The FCC does not adopt any method as presumptively correct. It does however, use the modified MCI model as guidance in developing its interim rate range.

10. In establishing an interim rate range, the FCC concluded that the RBOCs would likely be in the higher end of the range (25 percent) and that smaller LECs would likely be near the lower end of the range (17 percent).

11. The facts in North Dakota demonstrate that Qwest and companies created from former Qwest exchanges have a final wholesale discount of 16.15 percent. The only rural LEC in North Dakota that was not formed from a Qwest exchange and has filed rates with the Commission has a discount rate of 10 percent. The

16.15 percent rate filed by Qwest was stipulated to by the parties as was the 10 percent rate.

12. The inferences and conclusions to be gathered from evidence before the Commission is that the common sense default range for interim rates in North Dakota (following the FCC's reasoning that Qwest should be on the higher end of the range) is 10 to 16 percent. NDTC is much more like Dakota Central than Qwest and, consequently, the expected NDTC rate should be near 10 percent.

13. Midcontinent proposed a default rate higher than 25 percent yet Midcontinent agreed to a 10 percent discount rate for wholesale resale in the Carrington, North Dakota, exchange for resale of Dakota Central Telecom I services. Midcontinent offered no explanation of why it agreed to a much lower discount in that exchange.

14. Midcontinent stated that larger companies have a smaller discount rate yet it offered evidence that the Qwest rate in North Dakota is 16.15 percent. This rate is lower than other larger Regional Bell Operating Companies (RBOCs), as documented by the FCC in its Local Competition Order of 1996.

15. The study used by NDTC is the only study before the Commission that follows the FCC-modified MCI model used in the Local Competition Order of 1996 to develop interim rates.

16. While Midcontinent suggested some other services are subject to discount, it has agreed upon services that are subject to resale in the Devils Lake, North Dakota, exchange. (Exhibit R-15, Attachment 1, page 13.)

17. No other information on file with this Commission indicates that an appropriate discount rate or an interim discount rate should be as high as that proposed by Midcontinent.

18. Midcontinent is planning to introduce facilities-based services in Devils Lake within two years.

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

Conclusions of Law

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

2. The Commission has authority to establish an interim discount rate to be effective on July 26, 2006, under the agreement filed with the Commission by the parties on July 10, 2006. (Exhibit R-15.)

3. The appropriate discount for resale of NDTC's services, to be applied to the agreement filed by the parties, is 9.36 percent. This rate shall stay in effect until such time as the Commission is able to conduct a hearing and determine the appropriate discount rate for wholesale resale of NDTC's services pursuant to § 252(d)(3).

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

The Commission orders:

1. NDTC shall begin providing wholesale resale of NDTC's services, as set forth in the interconnection agreement and attachments filed by the parties with the Commission (Exhibit R-15) on July 26, 2006.

2. The rate at which the services will be offered to Midcontinent by NDTC under the agreement for resale shall be discounted 9.36 percent for the tariffed prices and as set forth in the agreement until a final discount rate is established.

3. The formula agreed to by the parties for a true-up mechanism once a final discount rate is developed shall be used once a final discount rate is established.

4. A hearing on establishment of a final discount rate shall be held on January _____, 2007, absent an agreement of the parties filed with the Commission.

PUBLIC SERVICE COMMISSION

Susan E. Wefald **Commissioner**	**Tony Clark** **President**	**Kevin Cramer** **Commissioner**

OFFICE OF ADMINISTRATIVE HEARINGS

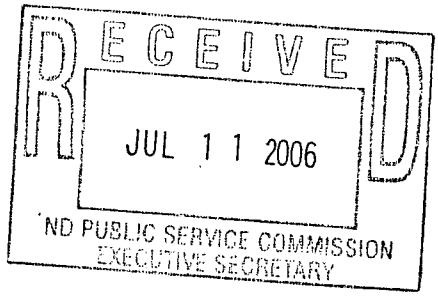
STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.nd.gov/oah

July 11, 2006

Mr. William W. Binek
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480



Re: Midcontinent Communications
North Dakota Telephone Company
Rural Exemption Investigation
Case No. PU-05-451
OAH File No. 20060215

Dear Mr. Binek:

The further hearing of the captioned matter was held July 10, 2006, and, except for the filing of briefs and recommended findings of fact, *etc.*, was completed. I have therefore closed the file of the Office of Administrative Hearings for the further hearing, and am returning the part of the file which, unless duplicated, may be maintained by the Public Service Commission as part of the record of the hearing. (You will recall that the audio cassette tapes for the audio recording of the hearing and the exhibits for the Commission's file were delivered to you following the hearing.)

The Office of Administrative Hearings is pleased to have assisted the parties for the hearing.

Sincerely,

Al. Wahl
Administrative Law Judge

AW/eap

Encl.

cc: Mr. Donald A. Negaard
Pringle & Herigstad, P.C.
Mr. Patrick W. Durick
Pearce & Durick
Mr. J. G. Harrington
Dow Lohnes, PLLC

157 PU-05-451 Pages: 1

Letter closing ALJ's file

by Office of Administrative Hearings
07/11/2006 CC: Comm Legal Illona, Pat, Annette . .

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
JEROME C. KETTLESON
LARRY L. BOSCHEE ♦♦
LAWRENCE BENDER, PC ♦
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

RECEIVED
JUL 17 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

July 17, 2006

VIA HAND DELIVERY

Illona Jeffcoat-Sacco
Executive Director
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:

Enclosed for filing herewith is an original and seven copies of BRIEF OF MIDCONTINENT COMMUNICATIONS ON INTERIM RESALE DISCOUNT. Also filed herewith are Proposed Findings of Fact and Conclusions of Law. We are also electronically filing these documents with the Commission.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Patrick W. Durick
J.G. Harrington*

Counsel to Midcontinent Communications

PWD/jf
Enclosures.
c: Donald Negaard (via email)
William Binek (via email)
Al Wahl (via email)
Scott Knudsvig (via email)
Tom Moorman (via email)

*Admitted pro hac vice

156 PU-05-451 Pages: 2

Letter re Brief and Proposed Findings and Affidavit of Service
by Midcontinent Communications by Patrick W Durick, A
07/17/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	**Case No. PU-05-451**
Complainant,	)	**AFFIDAVIT OF SERVICE BY MAIL**
vs.	)	
North Dakota Telephone Company,	)	
Respondent.	)	

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Jeanne Feist, hereby certifies that on July 17, 2006, she served a copy of the foregoing:

BRIEF OF MIDCONTINENT COMMUNICATIONS ON INTERIM RESALE DISCOUNT,

by e-mail in PDF format as follows:

William W. Binek
Public Service Commission
wbinek@state.nd.us

Scott Knudsvig
Counsel for NDTC
sknudsvig@srt.com

Tom Moorman
Counsel for NDTC
tmoorman@woodsaitken.com

Donald Negaard
Counsel for NDTC
donn@srt.com

Hon. Al Wahl
awahl@state.nd.us

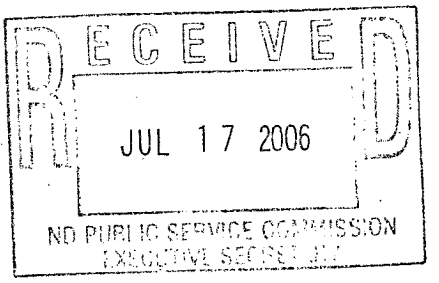
Jeanne A. Feist
Jeanne Feist

Subscribed and sworn to before me July 17, 2006.

Suzanne M Cahill
Notary Public
Burleigh County, North Dakota

SUZANNE M CAHILL
Notary Public
State of North Dakota
My Commission Expires Jan 29, 2011

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

BRIEF OF MIDCONTINENT COMMUNICATIONS ON INTERIM RESALE DISCOUNT

Patrick W. Durick
Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

J.G. Harrington*
Dow Lohnes PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

*Admitted pro hac vice

July 17, 2006

155 PU-05-451 Pages: 25

Brief of Midcontinent Communications on Interim Resale Discount
by Midcontinent Communications by Patrick W Durick, A
07/17/2006 CC: Comm Legal Illona, Pat, Annette . .

TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
II.	THE COMMISSION SHOULD NOT BASE AN INTERIM RATE ON NDTC'S FLAWED COST STUDY.	3
	A. The NDTC Cost Study Is Fundamentally Flawed Because It Does Not Conform to the Requirements of the Statute	3
	B. NDTC's Theory that There Are Separate Standards for "Interim" and "Final" Cost Studies Simply Is Wrong.	7
	C. The Commission Cannot Rely on the Data in the NDTC Cost Study.	10
III.	THE COMMISSION SHOULD EITHER ADOPT MIDCONTINENT'S CALCULATIONS OR SET A RATE BASED ON THE FCC'S INTERIM SAFE HARBOR.	16
	A. Midcontinent's Calculations Provide an Appropriate Basis for Setting an Interim Discount Rate.	16
	B. The Commission Could Reasonably Conclude that It Should Adopt an Interim Rate Based on the FCC's Safe Harbor.	19
IV.	THERE IS NO DISPUTE CONCERNING THE APPROPRIATE MECHANISM FOR A TRUE UP TO THE FINAL DISCOUNT RATE.	22
V.	CONCLUSION	22

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

BRIEF OF MIDCONTINENT COMMUNICATIONS ON INTERIM RESALE DISCOUNT

Midcontinent Communications, by its attorneys, hereby submits its brief concerning the interim resale discount to be adopted in the above-captioned proceeding. As shown below, the Commission should adopt an interim resale discount rate in the North Dakota Telephone Company ("NDTC") Devils Lake exchange of 25.39 percent or, in the alternative, adopt a rate that falls within the FCC's 17 to 25 percent safe harbor for interim rates. In doing so, the Commission should reject NDTC's plainly inadequate discount showing.

I. Introduction

This proceeding is significant for many reasons, but most importantly it will, as Commissioner Wefald indicated, set the basis for the parties' further negotiations and the baseline for the Commission's adoption, if necessary, of final resale rates. As a consequence, the Commission should insist that any discount rate showing comply with the basic requirements of the FCC's rules and with basic logic.

Unfortunately, NDTC has provided the Commission with no evidence that can be used to set a rational interim resale rate. NDTC has proffered what it belatedly described as a cost study that complies with the FCC's rules for "interim" cost studies, using an analysis that it conceded was not consistent with the requirements for a "final" cost study. However, there are no FCC rules that permit – let alone create separate requirements for – "interim" cost studies. Instead, the rules permit state commissions to set interim rates if they are presented with cost data that is inadequate to set a final discount.

Even if there were special rules for interim cost studies, NDTC's cost study is riddled with errors and other problems that would make it impossible for the Commission to rely on NDTC's conclusions. NDTC's study is based on a methodology that uses total expenses, rather than retail revenues in the denominator of the discount fraction. This approach is inconsistent with the standard practices of regulators across the country and results in excess profits for NDTC. In addition, the specific data plugged into the model is, at best, suspect. NDTC failed to provide explanations for many of its choices, and its witness was unable to identify where important potential avoided costs would be found in the study or what was contained in certain accounts. These significant issues make it impossible for the Commission to set a rational discount rate based on NDTC's claims.

In this context, the Commission has two alternatives. The first is to adopt a 25.39 percent interim discount rate based on Midcontinent's direct testimony. That testimony showed the steps necessary to correct the most significant errors in NDTC's analysis. While the Midcontinent analysis does not correct every mistake made by NDTC, it is considerably more accurate than the NDTC study, and therefore provides an appropriate interim discount percentage.

The second option is to adopt a discount within the FCC's safe harbor range of 17 to 25 percent or, at a minimum, the 16.15 percent discount rate used by Qwest and Missouri Valley. Use of the FCC range is appropriate when the Commission lacks the evidence necessary to support a specific finding. Given the flaws and errors in NDTC's showing, if the Commission does not conclude that it can rely on Midcontinent's analysis, a rate within the safe harbor would be a rational and supportable choice.

II. The Commission Should Not Base an Interim Rate on NDTC's Flawed Cost Study.

In its prefiled testimony, NDTC presented a cost study that claimed to support a wholesale discount rate of 9.36 percent. This study suffers from myriad flaws, ranging from a fundamental misconstruction of the requirements for calculating the resale discount to an inability to explain what expenses actually fall within specific accounts. In light of these facts, the only conclusion the Commission should reach is that NDTC's cost study is inadequate to support any conclusion regarding the interim resale discount.

A. The NDTC Cost Study Is Fundamentally Flawed Because It Does Not Conform to the Requirements of the Statute.

NDTC's cost study assumes that the way to calculate the resale discount is to divide avoided costs by the company's total expenses. While, as discussed below, there are several problems with the way NDTC calculates avoided costs and total expenses, the more significant error is the basic calculation of the discount fraction itself. NDTC's approach is contrary to the requirements of the Communications Act and to the practices of essentially every state that determines resale discounts. Moreover, it is illogical, and would lead to a situation in which NDTC would profit more from selling services at

wholesale than it does from selling the same services at retail. Thus, the basic calculation to obtain the discount in NDTC's cost study should be rejected.

The first reason to reject NDTC's approach is that it is inconsistent with the statute. Section 252(d)(3) of the federal Communications Act requires that

> a State commission shall determine wholesale rates on the basis of *retail rates charged to subscribers for the telecommunications service requested,* excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.[1]

In other words, the starting point for the calculation of the resale discount is not expenses, but "retail rates . . . for the telecommunications service requested," that is, to determine a relationship between the services subject to resale and the costs avoided by the local exchange carrier by reason of the resale of those services. Avoided costs, then, are subtracted from those retail revenues, not from the telephone company's overall expenses, to determine the proper numerator in the discount fraction.

This is not a novel conclusion. In fact, it is exactly what the FCC said in the *Local Competition Order:*

> The statutory pricing standard for wholesale rates requires state commissions to (1) identify what marketing, billing, collection, and other costs will be avoided by incumbent LECs when they provide services at wholesale; and (2) calculate the portion of the retail prices for these services that is attributable to the avoided costs.[2]

If, as the statute requires and the FCC concluded, wholesale rates are to be determined by subtracting avoided costs from retail rates for resold services, you cannot accomplish that goal by calculating the discount on the basis of total expenses. The only way to do it is to use retail revenues subject to resale in the denominator of the discount fraction .

---

[1] 47 U.S.C. § 252(d)(3) (emphasis supplied).

[2] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499, 15955 (1996).

This is the conclusion that other states have reached in determining resale discounts. As Mr. Gates testified, other states use a carrier's revenues subject to resale, not expenses, in the denominator of the fraction used to determine the resale discount, and other carriers routinely base their calculations on retail revenues as well.[3] In fact, even NDTC's witness conceded that there is a "trend" towards the states using retail revenues instead of expenses during his rebuttal testimony and that "it is becoming the industry standard."[4] Thus, using expenses as the denominator in the resale discount fraction would be inconsistent with the standard practices of other states.

Using total expenses in the denominator is wrong for several obvious reasons. Midcontinent will be reselling NDTC's local retail services, and CLECs are not allowed to resell access and other wholesale services. Consequently, the denominator of the discount fraction should be limited to revenues subject to resale, that is, local retail revenues. NDTC's attempt to increase the size of the denominator – thereby reducing the size of the discount dramatically – is simply wrong and should be rejected.

Moreover, using retail revenues rather than total expenses as the denominator of the discount fraction also makes the most sense in mathematical terms. Using retail revenues is the only way to ensure that the incumbent phone company's profits remain the same before and after wholesale resale begins. If, instead, the discount is calculated by dividing avoided costs by total expenses, the incumbent's profit actually increases

[3] Tr. at ___. [All transcript citations to be provided when a transcript is available.]
[4] Mr. Meredith initially argued that this "trend" applied only to "final" resale cost studies, but later acknowledged that there have been few, if any, "interim" resale cost studies. Moreover, for reasons described in more detail below, the Commission should accord little or no weight to Mr. Meredith's views on issues relating to regulatory actions at the FCC and other states. *See infra* n. 20.

when a competitor begins to offer resale.[5] The reason for this is simple – if avoided costs are spread across all expenses, some of the avoided costs will be attributed to services that are not subject to resale, such as access, rather than to the services for which the costs actually are avoided. That means the discount is lower than it should be, and the incumbent's profit margin on resold services actually is higher than its profit margin on services it sells at retail.

As Mr. Gates explained during his direct testimony, the correct way to avoid this mismatch between avoided costs and expenses is to apply the avoided costs to retail revenues.[6] When the discount fraction in the study is calculated in that way, there should be little or no difference between the carrier's profits with or without resale, which is what the statute anticipates, and the carrier will not "recover" the costs that it does not incur (the avoided costs) in the wholesale rates.

In this context, it is worth noting that even NDTC's cost study, which supposedly is based on total expenses, recognizes that some portions of its expenses must be excluded from the calculation of the discount fraction. That is why NDTC performed what Mr. Meredith described as "Part 64" exclusions.[7] The reason that these expenses were excluded, according to Mr. Meredith, is that they were not subject to regulation.[8] This is inconsistent, however, with NDTC's position that all operating expenses must be considered. In reality, the right place to draw the line is not between regulated and nonregulated services, but between services subject to wholesale resale and those that are

---

[5] This effect is illustrated in Exhibit 1 to this brief. As Exhibit 1 explains, if NDTC's model were used and all of NDTC's retail services were sold at wholesale rates, NDTC's profit would increase by $667,128, or by about one third over its profits as reported in its 2005 annual report.

[6] Tr. at __ (Gates Direct).

[7] Tr. at __ (Meredith Direct cross-examination). Part 64 of the FCC's rules assigns costs to regulated and nonregulated activities.

[8] Tr. at ___ (Meredith Direct cross-examination).

not. If NDTC had drawn the line properly, its study would have looked much different and, as shown below, the resale discount it calculated would have been much higher.

B. NDTC's Theory that There Are Separate Standards for "Interim" and "Final" Cost Studies Simply Is Wrong.

In the middle of the hearing, NDTC's witness offered the claim that there were different standards for interim discount calculations and final discount calculations.[9] This claim was proffered as an explanation of NDTC's decision to use total expenses rather than retail revenues in its discount calculation.[10] The problem with this theory is that is entirely unsupported by the FCC's rules, the *Local Competition Order* or the results of state proceedings.[11] Indeed, it appears that this theory was invented by NDTC's expert.

First, there is no FCC rule that mandates the use of different standards for calculating interim and final wholesale discounts. As Mr. Meredith acknowledged during cross-examination, all the FCC's rules say about interim rates is that a state commission may use the 17 to 25 percent safe harbor if it cannot determine a final rate.[12] If anything, the FCC rules demonstrate that there is only one kind of cost study for wholesale discounts, not that there are separate interim and final methodologies and studies.

Further, the FCC did not adopt separate standards for interim and final cost studies in the *Local Competition Order* as it implemented the Act's requirements. In fact, the FCC specifically disclaimed any intent to adopt a particular model, concluding that "we do not adopt as presumptively correct any avoided cost model."[13] Instead, the FCC identified key criteria to guide the resale discount calculation and codified those

---

[9] Tr.. at __ (Meredith Rebuttal).
[10] Tr. at __ (Meredith Rebuttal)
[11] Mr. Meredith acknowledged that this is the only proceeding he has been involved in that required calculation of an interim resale discount. Tr. at ___ (Meredith Rebuttal cross-examination).
[12] 47 C.F.R. § 51.711, Tr. at __ (Meredith Rebuttal cross-examination).
[13] *Local Competition Order,* 11 FCC Rcd at ____.

principles in its rules. Thus it is no surprise that Mr. Meredith, when asked, could not identify any place in the *Local Competition Order* where the FCC adopted any cost model, interim or otherwise.[14]

NDTC compounded its error by claming that the FCC had approved the MCI cost study as the model to be used in determining wholesale discounts and that the MCI study required use of total operating expenses for all services. As noted above, the FCC specifically disclaimed the adoption of any model, let alone the MCI model. Equally significant, the FCC's safe harbor range is not the range calculated by the MCI study – it is lower at both the bottom and top.[15] This, as the *Local Competition Order* establishes, is because the FCC relied on multiple analyses and models, including studies conducted in Illinois and Georgia, to reach its conclusions.[16] Further, there is no evidence that the MCI study used total expenses in the denominator of the discount fraction. The *Local Competition Order* does not specifically state which operating costs are used, and Mr. Meredith admitted that he had not reviewed the study himself.[17] In other words, NDTC's study is not based on the MCI study, but on Mr. Meredith's assumptions about the MCI study.

---

[14] Tr. at __ (Meredith Rebuttal cross-examination). Midcontinent also notes that NDTC's claim that there are separate standards for interim and final cost studies was made for the first time during rebuttal testimony. There is nothing at all in Mr. Meredith's prefiled direct testimony to suggest that there is any special methodology for interim discount rate calculations, or that the study he presented was based on different principles than those that would apply to a final discount study. Meredith Direct at 2. This suggests that the claim that there are different standards was invented by Mr. Meredith during the hearing.

[15] The MCI model as filed with the FCC resulted in a range of 25.6 to 33.2 percent. *Local Competition Order,* 11 FCC Rcd at 15959. As Mr. Meredith acknowledged after reading the order during his testimony, the range of rates under the MCI model with certain modifications made by the FCC was 18.8 to 25.98 percent. Tr. at ___ (Meredith Rebuttal cross-examination).

[16] *Local Competition Order,* 11 FCC Rcd at 15962-4. Mr. Meredith acknowledged on cross-examination that this was the case. Tr. at ___ (Meredith Rebuttal cross-examination).

[17] *Local Competition Order,* 11 FCC Rcd at 15944-5; Tr. at ___ (Meredith Rebuttal cross-examination). In fact, it is impossible to tell from the FCC order whether the MCI study excluded non-regulated costs, as Mr. Meredith did. As a consequence, it is apparent that Mr. Meredith simply made a series of assumptions about the MCI study based on his interpretation of the FCC order,

It is difficult to overstate the significance of NDTC's efforts to mislead the Commission about the relevant FCC requirements and how those requirements relate to the study presented at the hearing. One example, however, may provide sufficient focus on how misleading NDTC's testimony was. NDTC's Exhibit 20 is headed "Algebraic Reduction of FCC Discount Rate Formula," and the second page of the exhibit is headed "Numeric Example of FCC Formula without Cost Onsets."[18] The natural reading of these headings – perhaps the only reading – is that these pages summarize the operation of formulas adopted by the FCC in the *Local Competition Order.* This impression is reinforced by the citations to the order at the bottom of both pages of the exhibit. Further, when cross-examined about whether the FCC had adopted the MCI model in the *Local Competition Order,* Mr. Meredith claimed at first that the citation to paragraph 930 of the order was an error, and that the place where the FCC adopted the model was somewhere else in the order.[19] Nothing could have been further from the truth: There was no paragraph in the order that adopted the MCI model. In fact, the FCC not only did not adopt that model, but held that it would not adopt *any* model. Simply put, the characterization of the formula on NDTC's Exhibit 20 as the "FCC Discount Formula" was entirely incorrect, and NDTC should have known this from the start.[20]

The second page of the exhibit, headed "Numeric Example of FCC Formula without Cost Onsets," is equally misleading. As noted above, there is no specific FCC model. Further, as Mr. Gates described during his direct testimony, there is nothing in

---

[18] Exhibit R20 at 1, 2.

[19] Tr. at ___ (Meredith Rebuttal cross-examination)

[20] Mr. Meredith's plainly erroneous claims concerning the FCC's adoption of the MCI model and the existence of separate interim and final cost study rules cast serious doubt on his credibility and on all of his testimony. These are central issues in this proceeding, and Mr. Meredith made obviously incorrect affirmative claims as to both of them. Consequently, Midcontinent submits that the Commission should accord little or no weight to Mr. Meredith's testimony.

the FCC rules that allows for "cost onsets" in the calculation of the wholesale discount. As Mr. Gates noted, the only reference to expenses associated with wholesale operations was at paragraph 928 of the *Local Competition Order,* and the FCC accounted for those costs in determining the default safe harbor rates.[21]

Thus, there is no legal justification at all for adopting NDTC's cost model in this proceeding. Rather, the only approach that is justified is to divide avoided costs by retail revenues to determine the retail discount fraction. As described below, that is the approach the Commission should adopt.

C. The Commission Cannot Rely on the Data in the NDTC Cost Study.

NDTC's failure to construct its cost study properly makes it impossible to rely on Mr. Meredith's conclusions. Even if the study were constructed properly, however, the evidence shows that the Commission could not adopt NDTC's conclusions because the underlying data is improperly supported and otherwise flawed. These flaws are large and small, ranging from NDTC's failure to provide a witness who could authenticate the data used in the study to incorrect decisions about specific avoided and unavoided costs. Collectively, they render the cost study unreliable and unsuitable for use in this proceeding.[22] These problems are particularly disturbing in light of Mr. Meredith's claim that he had been working on the cost study since March, even before the Commission's initial order in this proceeding.[23]

---

[21] Tr. at __ (Gates Direct).

[22] Midcontinent does not dispute NDTC's decision to use whole-company data, rather than Devils Lake-specific data, in the cost study. It is Midcontinent's view that, unless NDTC keeps separate books for the Devils Lake exchange, which does not appear to be the case, attempting to allocate costs on an exchange-by-exchange basis is overly burdensome and would raise questions about the accuracy of the allocation.

[23] Tr. at ___ (Meredith Direct cross-examination).

The first problem with NDTC's underlying account data is that it is not authenticated in any way. Mr. Meredith testified that the information was provided to him by NDTC, and that the majority came from NDTC's December, 2005 ledger, prepared by NDTC.[24] He had no independent knowledge of the accuracy of the data provided to him, and did not know whether the information was the same information used to prepare the company's annual report.[25] Moreover, Mr. Meredith did not testify that he took any steps to verify the accuracy of the information provided to him, including the question of whether specific expenses were placed in the correct accounts.[26] Indeed, as described below, he could not explain the discrepancies between the amounts he used from the ledger and the amounts in NDTC's annual report. In all of these areas, Mr. Meredith depended on NDTC.

Mr. Meredith, as a consultant, should not be expected to have knowledge of the issues noted above, although he could have and should have tested the veracity of the data. To establish a proper foundation for the acceptance of the cost study, however, NDTC should have provided a witness who does have that knowledge. This additional witness would have provided a link in the chain of proof that Mr. Meredith was unable to provide: He knows only that he looked at certain records; he does not know that they were accurate and prepared in accordance with the FCC's accounting rules. Without that information, neither Mr. Meredith nor the Commission can conclude that the cost study is

[24] Tr. at ___ (Meredith Direct cross-examination).
[25] Tr. at ___ (Meredith Direct cross-examination).
[26] This is significant because certain expenses are presumptively avoidable and others are not. Thus, if an avoidable expense is placed in the wrong account, it would not be treated properly in an avoided cost study.

accurate or even that any part of the study is accurate.[27] Without being able to reach such a conclusion, the Commission cannot rely on the cost study to set any discount rate.

This issue becomes more significant because of Mr. Meredith's inability to explain differences between the numbers reported in the cost study, which he said he was given by NDTC, and the numbers in NDTC's annual report. For instance, Mr. Meredith could not explain why there was a difference of $32,467 between his "Total Customer Service" category and the "Customer Operations" line on the annual report.[28] These differences suggest that there are errors of some sort in Mr. Meredith's calculations, but it is impossible to divine the sources of those errors without a witness who understands the underlying company accounting.

Another consequence of Mr. Meredith's lack of knowledge of NDTC's financial matters is that he performed no independent analysis of whether most affected costs could be avoided, and instead merely copied most of the data into his spreadsheet.[29] He acknowledged, in fact, that he made no effort to identify costs (avoided or otherwise) associated with specific services affected by wholesale resale, and instead simply used the accounts as provided to him by NDTC.

---

[27] During redirect examination, Mr. Meredith indicated that it is his understanding that NDTC's books are audited. Tr. at __ (Meredith Redirect). While that certainly is the case, it does not address the issue of the authentication of the data used by Mr. Meredith because he did not testify that he had compared the data he used with the company's audit or even with the company's annual report. In fact, it appeared that Mr. Meredith was unfamiliar with the annual report. Tr. at ___ (Meredith Direct cross-examination).

[28] Mr. Meredith noted that he had removed approximately $95,000 from the "Total Customer Services" accounts, but that change would merely increase the difference between the two accounts. Tr. at ___ (Meredith Direct cross-examination). It also is noteworthy that Mr. Meredith would make such a significant adjustment without any documentation.

[29] Even where it appears that Mr. Meredith engaged in some independent analysis, it is not clear how and why he reached his conclusions. For instance, he testified that he had assumed that NDTC's customer service staff would be reduced from twelve to three, and that this would be the minimum staff necessary. Tr. at __ (Meredith Direct cross-examination). He did not explain, however, how he knew that there were twelve employees, how he knew how much employee time would be required or even how he knew what their salaries are.

The lack of independent analysis was confirmed by Mr. Meredith's inability to identify where certain types of costs would be found in the cost study or to explain what types of costs fell within many of the categories and USOA accounts included in the study. When asked during cross examination, for instance, Mr. Meredith could not say which accounts would contain the costs related to NDTC's web site and to its customer mailings, both of which would be treated as avoided costs.[30] He also could not say what types of costs fell within the product management, sales and product advertising categories, even though these particular categories all would be important elements in determining avoided costs.[31] Similarly, Mr. Meredith was unable to identify what portion of the depreciation account was allocated to the company's fiber upgrade or to DSL service, which he said was not subject to resale.[32] Given the limits of Mr. Meredith's knowledge, it was impossible to cross examine him on these issues and it also is impossible to confirm that NDTC properly allocated costs in these and nearly any other category. That makes it impossible to rely on the study itself.

The same problem affects the adjustments Mr. Meredith made to subtract costs related to unregulated services. While he testified that he had removed unregulated costs via the "Part 64 Adjustment" in his schedules, he also acknowledged that he did not know whether costs for unregulated services like voice mail and inside wire maintenance had been excluded from the study.[33] If these services were not excluded from the study, then the resale discount, even using NDTC's incorrect methodology, would be too low.

---

[30] Tr. at ___ (Meredith Direct cross-examination).
[31] Tr. at __ (Meredith Direct cross-examination). This is particularly significant because NDTC allocated $0 to sales and product advertising. Meredith Direct, Schedule 2. This allocation is somewhat surprising considering that NDTC recently hired an account executive responsible for sales of various services, as acknowledged during the January hearing. Jan. 23 Tr. at 167 (Dircks).
[32] Tr. at __ (Meredith Direct cross-examination).
[33] Tr. at __ (Meredith Direct cross-examination).

Moreover, even where Mr. Meredith did engage in his own analysis, much of it was faulty or unsupported. He assumed not just that NDTC would fire certain customer service employees, but that it would grant them eight weeks of severance pay.[34] He did not consider the possibility that NDTC would simply reassign the employees, which would avoid severance entirely (and would be likely in light of NDTC's plans to expand into video service) and he did not check with NDTC to see what its severance policies might be.[35] He also assumed that Midcontinent would make more than twice as many customer service inquiries, on a per line basis, as NDTC's current customers generate, without any apparent justification.[36] Similarly, he assumed that NDTC will incur costs to audit Midcontinent every year, even though NDTC is not required to audit Midcontinent at all.[37]

While NDTC may incur some of what Mr. Meredith referred to as "cost onsets," – a cost category not even addressed by the *Local Competition Order* – NDTC's amortization period for those costs is unrealistic. Mr. Meredith assumed that resale would stop after two years, but in reality the Commission's order lifted the rural exemption for an unlimited period of time.[38] Consequently, it is wrong to use such a short amortization period. Even adding one year to the amortization schedule, without

---

[34] Meredith Direct, Schedule 7.

[35] Tr. at __ (Meredith Direct cross-examination). As Mr. Gates indicated, it also is inappropriate to consider severance costs in an avoided cost calculation because they are a consequence of competition, and competitors should not have to pay for competitive losses of the incumbent. Tr. at ___ (Gates Direct).

[36] Mr. Meredith testified that NDTC receives about 30,000 inquiries per year for its 18,000 lines, which is something less than two inquiries per line, but that he assumed that Midcontinent would generate four inquiries per line per year. Tr. at __ (Meredith Direct cross-examination). Of course, it is likely that Midcontinent would generate fewer, not more, inquiries on a per-line basis, because many of the inquiries received by NDTC from its retail customers would be handled by Midcontinent.

[37] Tr. at __ (Meredith Direct cross-examination). It is unclear that these costs should be included as "onsets" under any circumstances, as they are not costs of offering resale, but costs of enforcing NDTC's rights.

[38] Tr. at __ (Meredith Direct cross-examination).

any adjustment to eliminate severance pay or for "recurring onsets" that are too high, reduces the total onsets by nearly $20,000, or about 17 percent.

Mr. Meredith's treatment of order processing costs also was incorrect. He assumed that these costs would not be avoided at the same level assumed by the FCC because NDTC would incur manual processing costs.[39] However, the parties' proposed interconnection agreement specifically calls for Midcontinent to pay order processing fees, so any costs incurred by NDTC to process Midcontinent orders will be recovered outside the resale rate.[40] That means that these costs essentially can be avoided at a 100 percent level, not the 76 percent level proposed by NDTC. The same is true of PIC change charges, which Midcontinent will pay in full.

Finally, one of the more significant errors in Mr. Meredith's analysis was the exclusion of DSL service. He testified that he had excluded DSL from his avoided cost calculations because the resale agreement excludes it from the services to be purchased by Midcontinent.[41] This conclusion is wrong for two different reasons. The first is that DSL is not excluded from the resale agreement. The agreement contains a specific list of excluded services, and DSL is not one of them.[42] In other words, the premise that DSL would not be subject to resale is incorrect. Second, even if the agreement did exclude DSL from wholesale resale, it would be incorrect to exclude avoided costs relating to DSL because DSL is a service subject to resale under the FCC's rules.[43] Since the

---

[39] Meredith Direct, Schedule 4.
[40] . Exhibit R15 ("Proposed Interconnection Agreement"), Attachment 2, § 2.2.1.
[41] Tr. at __ (Meredith Direct cross-examination).
[42] Proposed Interconnection Agreement , Attachment 1.
[43] While the FCC placed some limits on resale of wholesale DSL offerings, it has maintained the obligation to offer DSL on a wholesale basis when it is offered as a retail telecommunications service. Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Second Report and Order,* 14 FCC Rcd 19237 (1999). As Mr. Meredith testified, NDTC has opted under the FCC's *Wireline Broadband Order* to treat DSL as a telecommunications service. Tr. at __ (Meredith Direct cross-examination).

calculation of the discount is premised on the notion that it covers avoided costs from all services subject to resale, excluding DSL unavoidably sets the discount too low.[44] In either case, the omission of DSL from Mr. Meredith's calculations is significant.

In sum, there are so many problems with the cost study and the data used to prepare it that it is plainly unsuitable to be used to calculate even an interim wholesale discount. Even if NDTC could address one or several of these concerns, the remaining problems still would be significant and render the study fatally flawed. Thus, the Commission cannot use the NDTC cost study as the basis to set the resale discount.

III. The Commission Should Either Adopt Midcontinent's Calculations or Set a Rate Based on the FCC's Interim Safe Harbor.

Given the myriad flaws in NDTC's analysis, the Commission has two realistic options in this proceeding. The first is adopt Midcontinent's calculations, which properly base the discount rate on a rational relationship between avoided costs and retail revenues subject to resale. The second is to select an interim discount rate within the safe harbor range of 17 to 25 percent in the FCC's rules.

A. Midcontinent's Calculations Provide an Appropriate Basis for Setting an Interim Discount Rate.

The Commission's first option is to use Midcontinent's calculations to set the interim discount rate. There are several advantages to this approach: Midcontinent's calculations are based on the requirements of the statute and the practices of other states; Midcontinent has corrected some of the specific errors in NDTC's calculations; and the

[44] It might be appropriate to exclude avoided costs associated with DSL if NDTC also had based its proposed discount rate on the revenues for services subject to resale (assuming that DSL had been excluded from resale by agreement of the parties, which is not the case). In that circumstance, excluding DSL from both the numerator and denominator of the fraction used to calculate the discount potentially would result in a more accurate calculation of the discount for other services. However, excluding DSL from the numerator (that is, avoided costs) and including it in the denominator necessarily results in a resale discount that is too low.

Midcontinent calculation is reasonable in light of other data available to the Commission. While adoption of the Midcontinent calculation would leave some of the flaws of the NDTC study in place, the result still would be much closer to the likely correct result than any other option. Thus, it would be reasonable to adopt Midcontinent's proposed 25.39 percent discount.[45]

The first reason that the Commission should adopt Midcontinent's approach is that it makes an appropriate comparison between avoided costs and retail revenues subject to resale, consistent with the statute. As described above, the wording of Section 252(d)(3), the FCC's explication of that provision and the standard practices of other state commissions all are consistent with the Midcontinent approach.[46] The reason that other state commissions and carriers have concluded that they should divide avoided costs by retail revenues subject to resale is that this approach makes sense: The only costs that can be avoided by the incumbent LEC are those that relate to the services subject to resale, and so putting retail revenues subject to resale in the denominator of the discount fraction matches the avoided costs with the right services. Putting all costs (or all revenues) in the denominator, as NDTC's study does, would create a mismatch

[45] NDTC may argue in its brief that it was not afforded an adequate opportunity to review Midcontinent's proposal. This claim would be incorrect for three distinct reasons. First, NDTC was on notice that Midcontinent would be permitted to provide additional live direct testimony for the specific purpose of responding to NDTC's cost study, and NDTC was given the right to present live rebuttal testimony in response to any additional direct testimony. This is documented in the revised prehearing order. Amended Prehearing Order, Case No. PU-05-541, dated June 27, 2006. Second, NDTC had an opportunity to cross-examine Mr. Gates on the proposal, which NDTC's counsel chose not to exercise, even after Midcontinent's counsel offered the opportunity for a recess to review the discount calculation. Tr. at ___. Third, it was evident from the rebuttal testimony that NDTC was aware of the central difference between the NDTC and Midcontinent approaches before the hearing (based on Mr. Gates's prefiled direct testimony) because Mr. Meredith's testimony on the issue of using expenses or revenues in the denominator of the discount calculation was made in response to the prefiled testimony of Mr. Gates, not the live direct testimony, and because he had a prepared exhibit showing the supposed "FCC formula" for calculating discount rates. Tr. at __ (Meredith Rebuttal).

[46] *See supra* Part II(A).

between the two parts of the discount fraction .[47] As Mr. Meredith admitted, the trend in state proceedings is to use revenues subject to resale in the denominator.[48]

In addition, the adjustments to the specific figures in the NDTC cost study that were provided by Midcontinent also were appropriate. As described above, NDTC failed to account for the service order charges that Midcontinent will pay and made unreasonable assumptions about severance pay.[49] As described by Mr. Gates, NDTC also improperly allocated costs associated with local order processing and PIC change charges and made a math error in the calculation of local order processing.[50]

NDTC did not provide any meaningful reasons to reject Midcontinent's approach. Somewhat ironically, NDTC claimed during the hearing that Midcontinent should not have used NDTC's avoided cost calculation as the basis for the numerator of the equation because NDTC had included some avoided expenses related to interexchange service in the avoided cost calculation.[51] There is no evidence for this claim in the schedules to NDTC's testimony, which do not describe any costs associated with NDTC's provision of interexchange service as included in avoided costs.[52] Moreover, this claim is inconsistent with the affirmative statement in Mr. Meredith's prefiled direct testimony that his calculations were performed "in accordance with" FCC requirements.[53] If his calculations followed the FCC's guidelines, then presumably he did not include any costs

---

[47] Tr. at __ (Meredith Direct cross-examination) (acknowledging that the denominator of the NDTC equation included costs associated with services not subject to resale).
[48] Tr. at ___ (Meredith Rebuttal cross-examination).
[49] *See supra* Part II(C).
[50] Tr. at ___ (Gates Direct), Exhibit P19at 2, lines 12 & 13. Mr. Meredith argued on rebuttal that the discrepancy in the local order processing category was because he had subtracted $95,000 category, but he never explained why he had done so, and there is no explanation in any of the schedules attached to his prefiled testimony. Tr. at ___ (Meredith Rebuttal).
[51] Ti. at ___ (Meredith Rebuttal).
[52] *See* Meredith Direct, Schedules 2 to 4.
[53] *Id.* at 2.

of services that were not subject to wholesale resale in his calculation of avoidable costs.[54] In any event, NDTC should not be permitted to impeach its own calculations.

When Midcontinent's adjustments are made and the correct methodology is applied, the calculations show that the correct discount rate is 25.39 percent.[55] The reasonableness of this rate can be confirmed in several ways. For instance, as Mr. Gates testified, a similar calculation that is based on the expenses associated with the services subject to resale (rather than revenues), yields a discount rate of 28.6 percent.[56] In addition, the rate is very close to the high end of the interim range approved by the FCC in the *Local Competition Order.* Since, as Mr. Gates testified, you would expect higher discounts from smaller carriers because of the greater efficiencies of larger carriers, it is unsurprising that the NDTC discount would be at or near the top of the FCC range.[57] Consequently, the Commission can be confident that an interim discount calculated using Midcontinent's method will be reasonable.

B. The Commission Could Reasonably Conclude that It Should Adopt an Interim Rate Based on the FCC's Safe Harbor.

Although the evidence is sufficient for the Commission to adopt Midcontinent's proposal for an interim discount, the Commission also has the alternative of adopting a rate within the FCC's safe harbor. As described at the hearing, the FCC's rules specify when the interim rates may be used and the specific range of rates that would be acceptable:

> (a) If a state commission cannot, based on the evidence available to it, establish a wholesale rate using the methodology prescribed in § 51.609,

[54] Of course, if he did, then there is an additional reason to conclude that NDTC's cost study is inadequate.
[55] Exhibit P19 at 1.
[56] Tr. at __ (Gates Direct).
[57] Gates Direct at 7.

> then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.
>
> (b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25 percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.[58]

The Commission could reasonably conclude that the criteria for using the safe harbor range in Section 51.611 have been met. In particular, NDTC's failure to provide a coherent, properly supported cost study is a sufficient basis for adopting a rate from the safe harbor range. This is true both because NDTC adopted an incorrect methodology and because of the other flaws described above.

Further, there is other evidence that supports use of the safe harbor range. For instance, Midcontinent's proposal is just above the safe harbor range, and is based on an appropriate methodology for calculating discounts. If, contrary to the evidence, the Commission wished to give some weight to NDTC's calculations, the average of the NDTC and Midcontinent rates is 17.38 percent, which is within the safe harbor range.[59]

While NDTC might argue that the FCC's safe harbor range is too high, there is significant evidence that it is reasonable. In particular, Missouri Valley's agreement to use the Qwest discount rate shows that a discount of 16.15 percent is reasonable for a rural telephone company in North Dakota.[60]

Use of the safe harbor also is consistent with the arbitrator's decision in the 1997 Qwest arbitration. That proceeding adopted a 16.15 percent rate, which later was ratified

---

[58] 47 C.F.R. § 51.611(a), (b).

[59] Alternatively, combining Midcontinent's analysis of a rate based on the expenses associated with resold services with NDTC's proposal, the average would be 18.98 percent, also within the safe harbor range.

[60] Contrary to NDTC's speculation, Missouri Valley was not compelled to adopt the Qwest rate. As the Commission's own files reflect, the Midcontinent-Missouri Valley agreement was entirely voluntary. If Missouri Valley had felt the rate was too high, it would have insisted on a lower rate or not entered into the agreement. It also should be noted that the agreement was negotiated after Missouri Valley separated from Qwest, so this agreement did not represent an adoption of the existing Qwest agreement.

by the Commission. Significantly, the rate issue was litigated vigorously and decided based on specific evidence as to the appropriate discount to be adopted.[61] While the parties later entered into a stipulated agreement, the discount rate was consistent with the litigated result. Thus, if the Commission cannot conclude that it should adopt the Midcontinent proposal, it can adopt a rate from the FCC's safe harbor range and be confident that the rate is reasonable.

NDTC may argue that, to the extent there is any doubt about the interim rate, it should be set at the lowest reasonable number to avoid potential injury to NDTC. There is no merit to that argument. First, the true up (which, as shown below, is not in dispute) ensures that NDTC would recover any revenue that it should have received if the discount were later determined to be too high. Second, as shown in Mr. Fischer's testimony in the earlier phase of this proceeding, NDTC will not be materially harmed by resale even under the most optimistic assumptions about Midcontinent's ability to gain market share.[62] Third, given the myriad methodological and other errors in NDTC's cost study, all of which had the consequence of lowering the proposed discount rate, it is unlikely that the correct discount rate is nearly as low as NDTC has proposed. Fourth, the argument for a low rate ignores the Congressional intent to promote the development of competition, which must be weighed heavily against any small harm that NDTC could demonstrate.[63] Thus, the Commission should not hesitate to adopt a discount rate that is supported by the evidence.

---

[61] AT&T of the Midwest, Inc., Interconnection Arbitration Application, Case No. PU-453-96-497, Arbitrator's Decision (Mar. 19, 1997).

[62] Mr. Fischer's testimony established that, with a discount rate of 16.15 percent and 30 percent penetration by Midcontinent, NDTC's total profits would drop by $7,031, which is less than four tenths of one percent of its 2005 profits. Exhibit P5, Prefiled Direct Testimony of Warren R. Fischer, at 18. Even at a 25 percent discount rate, NDTC's profits would decline only by about $11,000.

[63]

IV. There Is No Dispute Concerning the Appropriate Mechanism for a True Up to the Final Discount Rate.

The other issue in this proceeding is how to implement a true up from the interim discount rate the Commission will adopt now to the final discount rate, whether that rate is negotiated between the parties or determined by the Commission. There is no dispute between the parties as to how that calculation should be made.

In his direct testimony, Mr. Meredith proposed a formula for calculating the true up.[64] This formula essentially calculates the amount that should have been paid under the final discount and compares it to the amount paid under the interim discount. Under NDTC's proposal, if Midcontinent pays more than would have been required by the final discount, it will receive a refund from NDTC; if the final discount is lower than the interim discount, Midcontinent will make an additional payment to NDTC. Mr. Meredith further proposed that any payment should be made within 30 days of the date when the Commission establishes a final discount rate. Midcontinent offered an exhibit during the hearing showing an example of how Mr. Meredith's formula would work, and he agreed that the example was correct.[65]

Based on the testimony and Mr. Meredith's statements concerning the operation of the true up formula, Midcontinent agrees that NDTC has proposed an appropriate true up mechanism. Consequently, it urges the Commission to adopt the NDTC proposal as set forth in the testimony and described in the hearing.

V. Conclusion.

For all these reasons, the Commission should adopt an order consistent with Midcontinent's proposals in this proceeding.

---

[64] Meredith Direct at 3-4.
[65] Exhibit P17; Tr. at __ (Meredith Direct cross-examination).

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By: _____
Patrick W. Durick
J.G. Harrington*

Its Attorneys

*Admitted pro hac vice

Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

Dow Lohnes PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

July 17, 2006

JUL

PROPOSED FINDINGS OF FACT

1. A discount rate formula that is based on the incumbent carrier's expenses for all services, including services not subject to resale, is inappropriate because it understates the discount and could result in excess profits for the incumbent carrier.

2. A discount rate formula that is based on the incumbent carrier's retail revenues from services subject to resale is appropriate because it ensures that avoided costs are matched with the services for which the costs are avoided and should not affect the incumbent's profits.

3. It is a standard practice for state commissions and carriers to calculate wholesale discount rates by dividing avoided costs by retail revenues from services subject to resale.

4. The methodology of NDTC's cost study is inconsistent with the requirements of the Communications Act, the FCC's interpretation of the Communications Act and the practices of other state commissions and carriers.

5. The underlying data in NDTC's cost study was not authenticated by any witness with personal knowledge of the information.

6. There are significant discrepancies between the data in the cost study and the data in NDTC's annual report that were not explained.

7. NDTC was unable to explain what specific activities were covered by certain relevant accounts and where the costs of certain activities relevant to avoided cost calculations were addressed in the data it provided to the Commission.

8. NDTC did not account for avoided costs associated with DSL service, even though that service is subject to wholesale resale.

9. NDTC's calculation of severance pay expense is unreasonable because it assumes too long a period for such pay, because it did not support the claim that the employees would be terminated and because it is inappropriate for NDTC to be compensated for losses caused by competition.

10. NDTC's calculation of customer service expenses is unreasonable because it assumes that Midcontinent will have more inquiries, not fewer, than a retail customer and because NDTC is fully compensated under the parties' proposed resale agreement for costs associated with initiating service and PIC changes.

11. NDTC's calculation of audit costs is unreasonable because audits are optional, not required, and because NDTC assumes that they will occur every year.

12. NDTC's amortization period of two years is unreasonable because it assumes that no resale will occur after that time.

13. The significant methodological and numerical errors in NDTC's cost study make it unreasonable for the Commission to rely on it in setting an interim wholesale discount.

14. The Midcontinent discount calculation methodology is consistent with the requirements of the Communications Act, the FCC's interpretation of the Communications Act and the practices of other state commissions and carriers.

15. Midcontinent's adjustments to NDTC's proposed avoided costs are reasonable and consistent with the FCC's rules.

16. It is reasonable for Midcontinent to base its avoided cost calculations on the information provided by NDTC.

17. The results of Midcontinent's cost study are consistent with the FCC's safe harbor and with alternative approaches to calculating a discount rate that are in conformance with basic principles of the statute.

18. The true up mechanism proposed by NDTC and ratified by Midcontinent is reasonable and will address any differences between the interim and final discount rates.

The next two findings are appropriate only to the extent the Commission adopts an interim discount rate based on the FCC's safe harbor:

19. The use of the FCC safe harbor is consistent with the data provided to the Commission in this proceeding.

20. The use of the FCC safe harbor is consistent with the Qwest discount rate and the discount rate adopted voluntarily by another rural carrier, Missouri Valley, and therefore should not be unreasonably burdensome on either NDTC or Midcontinent.

PROPOSED CONCLUSIONS OF LAW

1. Section 252(d)(3) of the Communications Act requires that calculations of wholesale discount rates be based on a comparison of the incumbent carrier's avoided costs and the revenues for services subject to wholesale resale.

2. It would be inconsistent with the requirements of the Communications Act to adopt a model for calculation of wholesale discount rates that compared avoided costs to a carrier's total expenses or to otherwise include expenses for services not subject to wholesale resale in the calculation of the wholesale discount rate.

3. The FCC has not adopted any specific cost model to be used in calculating wholesale discount rates and has not adopted different models for calculating interim and final wholesale discount rates.

4. It would be impermissible to adopt a wholesale discount rate based on data that cannot be authenticated or that is otherwise unreasonable.

5. The discount rate calculation proposed by NDTC (9.36%) is inconsistent with the requirements of the Communications Act and therefore cannot be adopted.

6. The discount rate calculation proposed by Midcontinent (25.39%) is consistent with the requirements of the Communications Act and therefore can be adopted.

7. The true up calculation proposed by NDTC is consistent with the requirements of the FCC rules governing interim rates and therefore can be adopted.

The next three conclusions are appropriate only to the extent the Commission adopts an interim discount rate based on the FCC's safe harbor:

8. The FCC's rules permit the Commission to adopt an interim wholesale discount rate from 17 to 25 percent if it does not have sufficient evidence to calculate a specific discount rate.

9. The Commission does not have sufficient evidence to adopt an interim discount rate based on the studies provided to it in this proceeding.

10. A discount rate of [insert number from 17 to 25] percent is consistent with the requirements of the FCC's rules.

RESTATEMENT OF NDTC AVOIDABLE COST DISCOUNT
FOR THE YEAR ENDED 12/31/2005

#	ITEM	AS PROPOSED BY NDTC	AS RESTATED BY MIDCONTINENT
1	Direct Avoidable Costs	1,014,734	1,080,621
2	Indirect Avoidable Costs	229,003	243,871
3	Total Avoidable Costs	1,243,737	1,324,492
4	Total Expenses	12,048,268	N/A
5	Total Revenue Subject to Resale	N/A	4,927,959
6	Avoidable Cost Percentage	10.32%	26.88%
7	Cost Onsets	115,352	73,152
8	Total Expenses	12,048,268	N/A
9	Total Revenue Subject to Resale	N/A	4,927,959
10	Onset Cost Percentage	0.96%	1.48%
11	**Net Avoidable Cost Percentage**	**9.37%**	**25.39%**

Pages: 5
153 PU-05-451
Restatement of NDTC Avoidable Cost Discount
for Year Ended 12/31/05
by Midcontinent Communications
07/10/2006 CC: Comm Legal Mona, Pat, Annette
Exhibit # P20

EXHIBIT P20

RESTATEMENT OF NDTC AVOIDABLE COST DISCOUNT
DIRECT AVOIDED COSTS
FOR THE YEAR ENDED 12/31/2005

				PER NDTC			PER MIDCONTINENT	
#	Item	Account	Per Study 12/31/05	Percent Avoidable	Avoided Costs (As Filed)	Avoided Costs (Corrected)	Percent Avoidable	Avoided Costs
1	Product Management	6611	$ 162,069	90%	$ 145,862	$ 145,862	90%	$ 145,862
2	Sales	6612	$ -	90%	$ -	$ -	90%	$ -
3	Product Advertising	6613	$ -	90%	$ -	$ -	90%	$ -
4	Operator - Information	6621	$ -	0%	$ -	$ -	0%	$ -
5	Operator - ONI	6621	$ -	0%	$ -	$ -	0%	$ -
6	Operator - Other	6621	$ -	0%	$ -	$ -	0%	$ -
7	Outside Operator - Information	6621	$ -	0%	$ -	$ -	0%	$ -
8	Outside Operator - ONI	6621	$ -	0%	$ -	$ -	0%	$ -
9	Outside Operator - Other	6621	$ -	0%	$ -	$ -	0%	$ -
10	White Page Directory	6622	$ 134,769	0%	$ -	$ -	0%	$ -
11	Foreign Directories	6622	$ -	0%	$ -	$ -	0%	$ -
12	Local Order Processing	6623	$ 339,859	76%	$ 249,620	$ 258,293	90%	$ 305,873
13	PIC Change Charges	6623	$ 68,811	76%	$ 52,296	$ 52,296	90%	$ 61,930
14	Payment & Collection	6623	$ 188,246	90%	$ 169,421	$ 169,421	90%	$ 169,421
15	Local Bill Inquiry	6623	$ 238,871	100%	$ 238,871	$ 238,871	100%	$ 238,871
16	Toll Bill Inquiry	6623	$ -	90%	$ -	$ -	90%	$ -
17	Special Service Bill Inquiry	6623	$ -	90%	$ -	$ -	90%	$ -
18	SLC Bill Inquiry	6623	$ -	90%	$ -	$ -	90%	$ -
19	IXC Switched Order Processing	6623	$ 21,056	0%	$ -	$ -	0%	$ -
20	IXC Special Order Processing	6623	$ -	0%	$ -	$ -	0%	$ -
21	IXC B&C Order Processing	6623	$ -	0%	$ -	$ -	0%	$ -
22	IXC Payment & Collection	6623	$ -	0%	$ -	$ -	0%	$ -
23	IXC Switched Bill Inquiry	6623	$ -	0%	$ -	$ -	0%	$ -
24	IXC Special Bill Inquiry	6623	$ -	0%	$ -	$ -	0%	$ -
25	IXC B&C Bill Inquiry	6623	$ -	0%	$ -	$ -	0%	$ -
26	Coin Collection & Counting	6623	$ -	90%	$ -	$ -	90%	$ -
27	Rating	6623	$ 42,423	90%	$ 38,181	$ 38,181	90%	$ 38,181
28	Message Processing	6623	$ 63,634	0%	$ -	$ -	0%	$ -
29	Other Billing & Collection	6623	$ 133,870	90%	$ 120,483	$ 120,483	90%	$ 120,483
30	CABs Billing Expense	6623	$ 283,272	0%	$ -	$ -	0%	$ -
31	Cost of Avoided Investment							
32	**Total Direct Avoided Costs**		**$ 1,676,880**		**$ 1,014,735**	**$ 1,023,407**		**$ 1,080,621**

RESTATEMENT OF NDTC AVOIDABLE COST DISCOUNT
INDIRECT AVOIDED COSTS
FOR THE YEAR ENDED 12/31/2005

	Item	AS FILED BY NDTC	CORRECTED BY MIDCONTINENT	RESTATED BY MIDCONTINENT
1	Direct Avoided Costs (Schedule 2)	$ 1,014,735	$ 1,023,407	$ 1,080,621
2	Total Expenses	$ 12,048,268	$ 12,048,268	$ 12,048,268
3	**Percent Avoided of Total Expenses**	**8.42%**	**8.49%**	**8.97%**

				PER NDTC					RESTATED BY MIDCONTINENT	
#	Item	Account	Per Study 12/31/05	Percent Avoidable (As Filed)	Avoided Costs (As Filed)	Percent Avoidable (Corrected)	Avoided Costs (Corrected)	*-	Percent Avoidable	Avoided Costs
4	Executive	6711	$ 552,805	8.42%	$ 46,559	8.49%	$ 46,957		8.97%	$ 49,582
5	Planning	6712	$ -	8.42%	$ -	8.49%	$ -		8.97%	$ -
6	Accounting & Finance	6721	$ 480,271	8.42%	$ 40,450	8.49%	$ 40,795		8.97%	$ 43,076
7	External Affairs	6722	$ 268,820	8.42%	$ 22,641	8.49%	$ 22,834		8.97%	$ 24,111
8	Human Resources	6723	$ 175,310	8.42%	$ 14,765	8.49%	$ 14,891		8.97%	$ 15,724
9	Information Management	6724	$ 68,671	8.42%	$ 5,784	8.49%	$ 5,833		8.97%	$ 6,159
10	Legal	6725	$ 43,588	8.42%	$ 3,671	8.49%	$ 3,702		8.97%	$ 3,909
11	Procurement	6726	$ -	8.42%	$ -	8.49%	$ -		8.97%	$ -
12	Research & Development	6727	$ -	8.42%	$ -	8.49%	$ -		8.97%	$ -
13	Other General & Admin.	6728	$ 322,082	8.42%	$ 27,127	8.49%	$ 27,358		8.97%	$ 28,888
14	Repair of Buildings	6121	$ 264,603	8.42%	$ 22,286	8.49%	$ 22,476		8.97%	$ 23,733
15	Repair of Furniture	6122	$ 1,730	8.42%	$ 146	8.49%	$ 147		8.97%	$ 155
16	Repair of Office Equipment	6123	$ 166,254	8.42%	$ 14,002	8.49%	$ 14,122		8.97%	$ 14,911
17	Repair of Computers	6124	$ 374,875	8.42%	$ 31,573	8.49%	$ 31,843		8.97%	$ 33,623
18	Uncollectibles	5301	$ -	8.42%	$ -	8.49%	$ -		8.97%	$ -
19	**Total Indirect Avoided Costs**		**$ 2,719,009**		**$ 229,002**		**$ 230,959**			**$ 243,871**

RESTATEMENT OF NDTC AVOIDABLE COST DISCOUNT
COST ONSETS
FOR THE YEAR ENDED 12/31/2005

#	RECURRING ONSETS	AS FILED AMOUNT	RESTATED BY MIDCONTINENT
1	Billing Wholesalers	$ 90	$ 90
2	Wholesaler Bill Inquiry	$ 29,859	$ 29,859
3	Customer Inquiry Referrals	$ 19,906	$ 19,906
4	Wholesaler Payment & Collection	$ 11	$ 11
5	Audit of Cross-Class Usage	$ 3,500	$ 3,500
6	Onset Indirect	$ 4,495	$ 4,786
7	**Total Recurring Onsets**	**$ 57,861**	**$ 58,152**

#	NON-RECURRING ONSETS	AS FILED AMOUNT	RESTATED BY MIDCONTINENT
8	Cost of Study	$ 5,000	$ 5,000
9	Severance Pay	$ 84,982	$ -
10	Software Billing Development	$ 5,000	$ 5,000
11	Cost of Tariff and Wholesale Legal	$ 20,000	$ 20,000
12	Total Non-Recurring Onsets	$ 114,982	$ 30,000
13	Amortization Over 2 Years	$ 57,491	$ 15,000
14	**Total Onsets**	**$ 115,352**	**$ 73,152**

Source: NDTC 2005 Annual Report

North Dakota Telephone Company
Statement of Operating Revenue and Operating Expenses
For the Year December 31, 2005

				Percentage Not Subject to Resale
OPERATING REVENUES				
Local Service				
1.5001.	Local Service	4,912,529		
	Total Local Service Revenues		4,912,529	
Network Access				
1.5081.	End User Revenue			
1.5082.	Interstate Switched Access Revenue			
1.5083.	Special Access Revenue			
1.5086.	Intrastate Switched Access Revenue			
	Total Network Access Revenues		10,850,856	100%
Long Distance Message Revenue				
1.5100.	Long Distance Message Revenue	15,430		
1.5160.	Other Long Distance Revenue			
	Total Long Distance Network Services		15,430	
Billing and Collection Revenue				
1.5270.	Carrier Billing and Collection Revenue	339,860		
	Total Billing and Collection Revenue		339,860	100%
Miscellaneous Revenue				
1.5230.	Directory Revenue			
1.5240.	Rent Revenue			
1.5260.	Miscellaneous Revenue			
	Total Miscellaneous Revenue		908,893	100%
	TOTAL OPERATING REVENUES		**17,027,568**	
	REVENUE SUBJECT TO RESALE		**$ 4,927,959**	

NDTC™
North Dakota Telephone Company

More Than a Telephone Company!

211 22nd St NW, PO Box 180
Devils Lake, ND 58301-0180
701-662-1100 or 1-800-880-4213
Fax 701-662-6446
www.goNDTC.com

RECEIVED
MAR 22 2006
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

March 22, 2006

Mike Diller
North Dakota Public Service Commission
600 E Boulevard Ave, Dept. 408
Bismarck, ND 58505-0480

Mike,

Enclosed is the 2005 Annual Report for North Dakota Telephone Company, the same information in the same format that was provided last year, including a Rate of Return calculation, Income Statement and Balance Sheet.

Please contact me if you have any questions.

Sincerely,

Shawna Senger
Accounting Manager

Enclosure

PENGAD 800-631-6989
EXHIBIT
P 18

152 PU-05-451 Pages: 5
NDTC 2005 Annual Report
by Midcontinent Communications
07/10/2006 CC: Comm Legal Ilona, Pat, Annette . .
Exhibit # P 18

1 PU-06-106 Pages: 5
2005 Annual Report
by North Dakota Telephone Company by
03/22/2006

cc: J.G Harrington

North Dakota Telephone Company
2005 Annual Report

Statement of Operating Revenues and Expenses
For the Year Ended December 31, 2005

Operating Revenues	
Local Network Services	4,912,529
Network Access Services	10,850,856
Long Distance Network Services	15,430
Billing and Collection Services	339,860
Miscellaneous Services	908,893
Less: Uncollectible Revenues	0
Total Operating Revenues	17,027,568
Operating Expenses	
Plant Specific Operations	3,352,374
Plant Nonspecific Operations	1,419,463
Customer Operations	1,740,029
Corporate Operations	1,911,545
Depreciation Expense	3,860,200
Amortization Expense	543,902
Operating Taxes - Income	2,148,948
Operating Taxes - Other	129,177
Total Operating Expenses	15,105,638
Net Operating Margin	1,921,930

Rate Base Calculation

Description	Beginning Balance	Ending Balance	Average Balance
Plant In Service	68,726,493	73,525,615	71,126,054
Accumulated Depreciation	(52,037,286)	(55,072,000)	(53,554,643)
Plant Under Construction	1,383,219	2,760,537	2,071,878
Plant Adjustment and Goodwill	8,134,879	8,134,879	8,134,879
Accumulated amortization	(4,654,957)	(5,197,282)	(4,926,120)
Prepayments	316,605	270,134	293,370
Materials and Supplies	299,270	316,772	308,021
Deferred Income Taxes	(1,402,094)	(1,202,563)	(1,302,329)
Customer Advances and Deposits	(288,298)	(286,314)	(287,306)
Post Retirement Benefit Obligation	(1,542,833)	(1,763,561)	(1,653,197)
Average Rate Base			20,210,608

Rate of Return Calculation

Rate of Return on Average Rate Base	9.51%
Less: Weighted Average Cost of Debt	0.00%
Average Rate of Return On Common Equity	9.51%
Percent Of Common Equity to Total Capital	100.00%
Rate of Return on Weighted Common Equity	9.51%

NORTH DAKOTA TELEPHONE COMPANY
STATEMENT OF INCOME
December 2005

OPERATING REVENUES:	
Local Network	4,912,529
Network Access	10,850,856
Long Distance network	15,430
Billing and Collection	339,860
Miscellaneous - NDTC	908,893
Uncollectable Operating	0
Total Operating Revenues	17,027,568
OPERATING EXPENSES:	
Plant Specific	3,352,374
Plant Non-Specific	1,419,463
Depreciation	3,860,200
Amortization of Cust Lists and TPA	542,325
Customer Operations	1,740,029
Corporate Operations	1,911,545
Operating Taxes - Income	1,838,854
Operating Taxes - Other	129,177
Total Operating Expenses	14,793,967
Net Operating Income	2,233,601
NONOPERATING INCOME:	
Interest Income	308,992
Special Charges	(66,495)
Other Nonoperating	0
Nonregulated Net Income	76,238
Internet Net Income	520,499
Net Income from LLC	482,722
Amortization Debt Issue	(1,577)
Nonoperating Income Taxes	(310,094)
Total Nonoperating Income	1,010,285
Interest Expense	934
Net Income	3,242,952

NORTH DAKOTA TELEPHONE COMPANY
BALANCE SHEET
December 2005

ASSETS

CURRENT ASSETS	
Cash	4,921,712
Account Receivable	
Telecommunication	537,061
Other	1,700,356
Affiliates	576
Interest Receivable	69,966
Materials	316,772
Prepayments	270,134
Other Current	0
Total Current Assets	7,816,577
INVESTMENTS AND NONCURRENT ASSETS	
Investment in Affiliates	0
Investment in Affiliates NDTC	4,017,720
Investments in Nonaffiliates	2,481,519
Nonregulated Investments	490,065
Other Noncurrent	8,542
Deferred Charges	0
Total Other Assets	6,997,846
TELECOMMUNICATIONS PLANT	
In Service	73,525,615
Under Construction	2,760,537
Plant Adjustment	2,937,596
Goodwill	0
Total Plant	79,223,748
Less:	
Accumulated Depreciation	55,072,000
Net Plant	24,151,748
TOTAL ASSETS	38,966,171

NORTH DAKOTA TELEPHONE COMPANY
BALANCE SHEET
December 2005

LIABILITIES AND EQUITIES

CURRENT LIABILITIES:	
Accounts Payable	
Other	1,668,142
Affiliated	2,438,961
Current Maturities LTD	0
Note Payable	0
Advance Payments	197,322
Customer Deposits	88,992
Taxes Payable - Income	26,555
Taxes Payable - Other	123,785
Other Current	244,145
Total Current Liabilities	4,787,902
LONG TERM DEBT	
LT Debt Less Current Maturities	0
OTHER LONG TERM LIABILITIES:	
Accum Post Retirement Benefits	1,763,561
Investment Tax Credits	0
Deferred Income Taxes	496,459
Total Other LT Liabilities	2,260,020
EQUITIES:	
Common Stock	807,950
Additional Paid in Capital	25,341,289
Other Equity	7,246,370
Retained Earnings	(1,477,360)
Total Equities	31,918,249
TOTAL LIABILITIES AND EQUITIES	38,966,171

EXAMPLE OF TRUE UP CALCULATION

Formula:

True up = [Wholesale Revenues Paid/(1-Interim discount)*(1-Final discount)] –
Wholesale Revenues Paid

Assumptions:

Wholesale Revenues Paid = $90,000
Interim discount = 10%
Final discount = 15%

Calculation:

True up = [$90,000/(1-0.10)*(1-0.15)]-$90,000
= [$90,000/0.9*0.85]-$90,000
= [$100,000*0.85]-$90,000
= $85,000-$90,000
= -$5,000 owed to Midcontinent

EXHIBIT
P17
PENGAD 800-631-6989

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

TESTIMONY

OF

DOUGLAS DUNCAN MEREDITH

ON BEHALF OF

NORTH DAKOTA TELEPHONE COMPANY

July 10, 2006

Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND BUSINESS ADDRESS.

A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis, Inc. (JSI). JSI is a telecommunications consulting firm headquartered in Greenbelt, Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah 84010.

Q: ARE YOU THE SAME MR. MEREDITH THAT TESTIFIED PREVIOUSLY IN THIS PROCEEDING?

A: Yes. I previously testified in this matter on January 23, 2006, when the North Dakota Public Service Commission (the "Commission") examined the rural exemption issue in this matter.

Q: ON WHOSE BEHALF ARE YOU PRESENTING THIS PRE-FILED DIRECT TESTIMONY?

A: I am testifying on behalf of North Dakota Telephone Company ("NDTC"), a rural telephone company operating in North Dakota.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to respond to the request by the Commission that information be provided to assist the Commission in determining an appropriate interim discount rate for NDTC to provide wholesale resold service in the Devils

Lake, North Dakota, exchange to Midcontinent Communications ("Midcontinent") pursuant to 47 U.S.C. Section 251(c) of the Act.

Q: WHAT IS YOUR UNDERSTANDING OF WHAT NEEDS TO BE DONE IN THIS PROCEEDING?

A: My understanding is that this hearing is being conducted to determine an appropriate interim discount rate for retail services subject to being sold at a wholesale discount under Section 251(c)(4) of the Act. This rate would be used for an interim period, subject to true-up, until a final discount rate is approved by the Commission. The Federal Communications Commission ("FCC") has provided guidance in the form of Federal Regulations which are contained at 47 C.F.R. Section 51.607, *et seq.*, and its discussion of these regulations in Section 8 of its Local Competition Order, FCC 96-325.

Q: HAVE YOU COMPUTED AN APPROPRIATE INTERIM DISCOUNT RATE IN ACCORDANCE WITH THESE FCC GUIDELINES?

A: Yes.

Q: IS YOUR STUDY ATTACHED TO THIS TESTIMONY AS EXHIBIT DDM-01?

A: Yes. Exhibit DDM-01 contains 11 schedules. It provides a summary of the avoidable cost rate and thereafter provides cost details for direct, indirect costs

and cost onsets, including specific evidence rebutting certain FCC presumptions that are not appropriate for the NDTC contract with Midcontinent.

Exhibit DDM-01 is suitable for an interim wholesale rate. I am currently evaluating certain other FCC presumptions and will be prepared to rebut these other presumptions at a later hearing establishing a final wholesale discount for NDTC.

Q: BASED ON EXHIBIT DDM-01 WHAT INTERIM WHOLESALE DISCOUNT RATE DO YOU RECOMMEND THE COMMISSION ADOPT IN THIS PROCEEDING?

A: I recommend the Commission adopt an interim wholesale discount of 9.36 percent, subject to true-up to a final discount rate approved by the Commission. This rate is based on NDTC specific costs and the methodology establishing this rate is consistent with FCC regulations and policies pertaining to the establishment of this discount.

Q: HOW WOULD YOU PROPOSE THAT THE COMMISSION "TRUE UP" ANY DIFFERENCE IN THE INTERIM WHOLESALE DISCOUNT RATE VERSUS THE FINAL WHOLESALE DISCOUNT RATE?

A: From my perspective, it could be accomplished using a simple mathematical calculation and payment method. Specifically, one would only need to take the total amount of NDTC wholesale revenues (revenues for services subject to the

wholesale discount) received from Midcontinent during the interim period and apply the following equation to calculate the true up payment:

True up revenues due NDTC = [Wholesale Revenues Paid/(1-interim discount)(1-final discount)] – Wholesale Revenues Paid.*

This equation calculates the difference between what is due using the final discount and subtracts the amount that has been paid using the interim discount. If the final wholesale discount is less than 9.36 percent, this equation yields a positive number representing the true up amount Midcontinent owes NDTC. In the unlikely event the final wholesale discount were greater than 9.36 percent this equation will yield a negative number representing the true up amount NDTC owes Midcontinent. Any difference in the amount of money either due NDTC or Midcontinent would be paid to the proper party within 30 days of the establishment of the final wholesale discount rate by the Commission.

Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY FOR THIS HEARING?

A: Yes

Exhibit DDM-01

North Dakota Telephone Company Schedule 1

Avoidable Cost Discount

For Year Ended 12/31/2005

Date: 7/5/2006

#	Item	Source	Amount
1	Direct Avoidable Costs	Schedule 2, Ln 32	$1,014,734
2	Indirect Avoidable Costs	Schedule 3, Ln 19	$229,003
3	Total Avoidable Costs	Ln 1 + Ln 2	$1,243,737
4	Total Expenses	Schedule 6, Ln 65	$12,048,268
5	**Avoidable Cost Percentage**	**Ln 3 / Ln 4**	**10.32%**
6	Cost Onsets	Schedule 5, Ln 13	$115,352
7	Total Expenses	Ln 4	$12,048,268
8	Onset Cost Percentage	Ln 6 / Ln 7	0.96%
9	**Net Avoidable Cost Percentage**	**Ln 5 - Ln 8**	**9.36%**

North Dakota Telephone Company Schedule 2

Direct Avoided Costs

For Year Ended 12/31/2005

Date: 7/5/2006

#	Item	Account	Per Study 12/31/05	Percent Avoidable [2]	Avoided Costs
1	Product Management	6611	$162,069	90%	$145,862
2	Sales	6612	$0	90%	$0
3	Product Advertising	6613	$0	90%	$0
4	Operator - Information	6621	$0	*0%*	$0
5	Operator - ONI	6621	$0	*0%*	$0
6	Operator - Other	6621	$0	*0%*	$0
7	Outside Operator - Information	6621	$0	*0%*	$0
8	Outside Operator - ONI	6621	$0	*0%*	$0
9	Outside Operator - Other	6621	$0	*0%*	$0
10	White Page Directory	6622	$134,769	*0%*	$0
11	Foreign Directories	6622	$0	*0%*	$0
12	Local Order Processing [1]	6623	$339,859	*76%*	$249,620
13	PIC Change Charges	6623	$68,811	*76%*	$52,296
14	Payment & Collection	6623	$188,246	90%	$169,421
15	Local Bill Inquiry	6623	$238,871	*100%*	$238,871
16	Toll Bill Inquiry	6623	$0	90%	$0
17	Special Service Bill Inquiry	6623	$0	90%	$0
18	SLC Bill Inquiry	6623	$0	90%	$0
19	IXC Switched Order Processing	6623	$21,056	*0%*	$0
20	IXC Special Order Processing	6623	$0	*0%*	$0
21	IXC B&C Order Processing	6623	$0	*0%*	$0
22	IXC Payment & Collection	6623	$0	*0%*	$0
23	IXC Switched Bill Inquiry	6623	$0	*0%*	$0
24	IXC Special Bill Inquiry	6623	$0	*0%*	$0
25	IXC B&C Bill Inquiry	6623	$0	*0%*	$0
26	Coin Collection & Counting	6623	$0	90%	$0
27	Rating	6623	$42,423	90%	$38,181
28	Message Processing	6623	$63,634	*0%*	$0
29	Other Billing & Collection	6623	$133,870	90%	$120,483
30	CABs Billing Expense	6623	$283,272	*0%*	$0
31	Cost of Avoided Investment				$0
32	**Total Direct Avoided Costs**		**$1,676,880**		**$1,014,734**

Notes:

(1) Service Orders from resellers will come from Midcontinent in manual format. NDTC will continue to process orders. (See Schedule 2A). Direct assignments are not avoidable (See Sch 9).

(2) North Dakota Telephone Company rebuts certain percentages (represented in italics) presumed avoidable by FCC rule in Local Competition Order at 928. (See Schedule 4).

North Dakota Telephone Company Schedule 2A

Account 6623 - Local Order Processing Rebuttal

For Year Ended 12/31/2005

Date: 7/5/2006

Current Customer Service Operations Workforce	*Number*	*Loaded Labor Rate*
Supervisor	1	$ 49.66
CSR (Business Office)	10	$ 30.75
CSR (Marketing)	2	$ 28.41

Annual Work Hours 2005 Actual Activity)	*Hours*
Supervisor	1,836
CSR (Business Office)	1,763

Retained 6623 Local Order Processing Activities	*2005 Contacts*	*Est. Time per Contact (Min.)*	*Est. Retained Activity Percentage*	*Est. Annual Wholesale Time (Min)*
Connects	2,301	12.5	66%	18,983
Reconnects	2,495	12.5	66%	20,584
Disconnects	4,546	5	66%	15,002
General	21,874	10	66%	144,368
Move	170	9	66%	1,010
Number Change	202	5	0%	-
Account Change	24	5	0%	-
Estimated Retained Activity (Minutes)				199,947
Estimated Retained Activity (Hours)				3,332

Retained 6623 - Local Order Processing Expenses	*Number*	*Amount*
Supervisor Workforce	1	$ 91,151
CSR workforce	2	$ 108,443
Total		$ 199,594
Percentage of Total Labor in Account 6623		24%
Avoidable Percentage for Local Order Processing		76%

North Dakota Telephone Company Schedule 3
Indirect Avoided Costs
For Year Ended 12/31/2005
Date: 7/5/2006

#	Item	Source	Amount
1	Direct Avoided Costs	Schedule 2, Ln 32	$1,014,734
2	Total Expenses	Schedule 6, Ln 65	$12,048,268
3	Percent Avoided of Total		8.42%

#	Item	Account	Per Study Amount	Percent Avoidable	Avoided Costs
4	Executive	6711	$552,805	8.42%	$46,559
5	Planning	6712	$0	8.42%	$0
6	Accounting & Finance	6721	$480,271	8.42%	$40,450
7	External Affairs	6722	$268,820	8.42%	$22,641
8	Human Resources	6723	$175,310	8.42%	$14,765
9	Information Management	6724	$68,671	8.42%	$5,784
10	Legal	6725	$43,588	8.42%	$3,671
11	Procurement	6726	$0	8.42%	$0
12	Research & Development	6727	$0	8.42%	$0
13	Other General & Admin	6728	$322,082	8.42%	$27,127
14	Repair of buildings	6121	$264,603	8.42%	$22,285
15	Repair of Furniture	6122	$1,730	8.42%	$146
16	Repair of Office Equipment	6123	$166,254	8.42%	$14,002
17	Repair of Computers	6124	$374,875	8.42%	$31,573
18	Uncollectibles	5301	$0	8.42%	$0
19	**Indirect Avoidable Costs**		**$2,719,009**		**$229,003**

Notes:
(1) North Dakota Telephone Company rebuts certain percentages (represented in italics) presumed avoidable by FCC rule in Local Competition Order at 928. (See Schedule 4). More investigation is currently being conducted for these accounts.

North Dakota Telephone Company Schedule 4
Explanation of Avoidable Percentage Rebuttals
For Year Ended 12/31/2005
Da 7/5/2006

#	Account - Item	FCC Default Avoidable Percentage	NDTC Avoidable Percentage	Description
1	6622 -White Page Directory Expense	90%	0%	This expense account will not be avoidable because according to the resale agreement NDTC will continue to provide white page directories to resold customers.
2	6623 - Local Order Processing	90%	76%	This expense account will not be avoidable at the FCC 90 percent level. Local order processing will continue to be provided by NDTC through a manual ordering process. (See Schedule 2A)
3	6623 - PIC Changes	90%	76%	This function follows local order processing. The same avoidable cost percentage is used.
4	6623 - Local Bill Inquiry	90%	100%	NDTC will avoid all retail local bill inquiry. Wholesale bill inquiry is listed separately as a cost onset.
4	6623 - IXC functions	90%	0%	NDTC will continue to provide IXC interface functionality. Expenses related to IXC activity will not be avoidable.
5	6623 - Message Processing and CABs	90%	0%	NDTC will continue to provide IXC interface functionality. Expenses related to these IXC activities will not be avoidable.

North Dakota Telephone Company Schedule 5

Cost Onsets

For Year Ended 12/31/2005

Date: 7/5/2006

#	*Recurring Onsets*	*Amount*
1	Billing Wholesalers	$90
2	Wholesaler Bill Inquiry	$29,859
3	Customer Inquiry Referrals	$19,906
4	Wholesaler Payment & Collection	$11
5	Audit of Cross-Class Usage	$3,500
6	Onset Indirect	$4,495
7	Total Recurring Onsets	$57,861

#	*Non-Recurring Onsets*	*Amount*
8	Cost of Study	$5,000
9	Severance Pay	$84,982
10	Software Billing Development	$5,000
11	Cost of Tariff and Wholesale Legal	$20,000
12	Total Non-recurring Onsets	$114,982
13	Amortization Over 2 Years	$57,491
14	**Total Onsets**	**$115,352**

Notes: [reserved]

North Dakota Telephone Company
Expense Summary by Account
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 6

#	Item	Account	Per Ledger 12/31/05	Part 64 Adjustments	Other Adjustments	Per Study 12/31/05
1	Network Support Expense	6110	$0	$0	$0	$0
2	Repair of Buildings	6121	$274,712	($10,109)	$0	$264,603
3	Repair of Furniture	6122	$1,730	$0	$0	$1,730
4	Repair of Office Equipment	6123	$166,254	$0	$0	$166,254
5	Repair of Computers	6124	$374,875	$0	$0	$374,875
6	Central Office Switching	6210	$1,111,017	($149,210)	$0	$961,807
7	Operator Expense	6220	$0	$0	$0	$0
8	Central Office Transmission	6230	$439,843	($4,486)	$0	$435,357
9	Info Orig & Term	6310	$0	$0	$0	$0
10	Cable & Wire	6410	$983,942	($26,173)	$0	$957,769
11	**Total Plant Specific**		**$3,352,373**	**($189,978)**	**$0**	**$3,162,395**
12	Other Prop & Equip	6510	$44	$0	$0	$44
13	Network Operations	6530	$1,105,548	$0	$0	$1,105,548
14	Access Expense	6540	$313,872	$0	$0	$313,872
15	Depreciation	6561	$3,860,200	($54,815)	$0	$3,805,385
16	Amortization	6563	$0	$0	$0	$0
17	**Total Plant Non-Specific**		**$5,279,664**	**($54,815)**	**$0**	**$5,224,849**
18	Product Management	6611	$162,069	$0	$0	$162,069
19	Sales	6612	$0	$0	$0	$0
20	Product Advertising	6613	$0	$0	$0	$0
21	Operator - Information	6621	$0	$0	$0	$0
22	Operator - ONI	6621	$0	$0	$0	$0
23	Operator - Other	6621	$0	$0	$0	$0
24	Outside Operator - Information	6621	$0	$0	$0	$0
25	Outside Operator - ONI	6621	$0	$0	$0	$0
26	Outside Operator - Other	6621	$0	$0	$0	$0
27	White / Yellow Page Directory	6622	$134,769	$0	$0	$134,769
28	Foreign Directories	6622	$0	$0	$0	$0
29	Order Processing	6623	$339,859			$339,859
30	PIC Change Charges	6623	$68,811			$68,811
31	Payment & Collection	6623	$188,246			$188,246
32	Local Bill Inquiry	6623	$238,871			$238,871
33	Toll Bill Inquiry	6623	$0			$0
34	Special Service Bill Inquiry	6623	$0			$0
35	SLC Bill Inquiry	6623	$0			$0
36	IXC Switched Order Processing	6623	$21,056			$21,056
37	IXC Special Order Processing	6623	$0			$0
38	IXC B&C Order Processing	6623	$0			$0
39	IXC Payment & Collection	6623	$0			$0
40	IXC Switched Bill Inquiry	6623	$0			$0
41	IXC Special Bill Inquiry	6623	$0			$0
42	IXC B&C Bill Inquiry	6623	$0			$0
43	Coin Collection & Counting	6623	$0			$0
44	Other Commercial	6623	$95,616	$0	($95,616)	$0
45	Rating	6623	$42,423			$42,423
46	Message Processing	6623	$63,634			$63,634
47	Other Billing & Collection	6623	$133,870			$133,870

North Dakota Telephone Company Schedule 6

Expense Summary by Account

For Year Ended 12/31/2005

Date: 7/5/2006

#	Item	Account	Per Ledger 12/31/05	Part 64 Adjustments	Other Adjustments	Per Study 12/31/05
48	CABs Billing Expense	6623	$283,272			$283,272
49	Other Revenue Accounting	6623	$0	$0	$0	$0
50	**Total Customer Services**		**$1,772,496**	**$0**	**($95,616)**	**$1,676,880**
51	Executive	6711	$552,805	$0	$0	$552,805
52	Planning	6712	$0	$0	$0	$0
53	Accounting & Finance	6721	$480,271	$0	$0	$480,271
54	External Affairs	6722	$268,820	$0	$0	$268,820
55	Human Resources	6723	$175,310	$0	$0	$175,310
56	Information Management	6724	$68,671	$0	$0	$68,671
57	Legal	6725	$43,588	$0	$0	$43,588
58	Procurement	6726	$0	$0	$0	$0
59	Research & Development	6727	$0	$0	$0	$0
60	Other General & Admin	6728	$322,082	$0	$0	$322,082
61	**Total Corporate**		**$1,911,547**	**$0**	**$0**	**$1,911,547**
62	Ad Valorem Taxes	7240	$6,102	$0	$0	$6,102
63	Special Charges	7370	$66,495	$0	$0	$66,495
64	Uncollectibles	5301	$0	$0	$0	$0
65	**Total Expenses**		**$12,388,677**	**($244,793)**	**($95,616)**	**$12,048,268**

North Dakota Telephone Company Schedule 7

Severence Calculation

For Year Ended 12/31/2005

Date: 7/5/2006

#	*Item*	*Amount*
1	Avoided Expenses	$1,014,734
2	Avoided Wages	$862,524
3	Average Commercial Wage Rate	$32.13
4	Avoided Labor Hours	17,633
5	Annual Pay for Lost Jobs	$566,548
6	Severance Costs (8 weeks wages)	$84,982
7	Amortized Over 2 Years	$42,491

Notes:

(1) [reserved]

North Dakota Telephone Company
Cost of Avoided Investments
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 8

[Reserved]

North Dakota Telephone Company Schedule 9
Account 6623: Time Study Summary
For Year Ended 12/31/2005
Date: 7/5/2006

#	Item	Account	Time Study Percent	Direct Allocation	Allocate Labor Per Study	Total
1	Commercial Per Ledger					$919,992
2	Less Deregulated Expense					$0
3	Other Adjustments (Removals and Direct Assignments)					($95,616)
4	**Commercial Labor (Allocated Per Study)**					$824,376
5	Order Processing	6623	39.84%	$11,411	$328,448	$339,859
6	PIC Changes	6623	8.35%		$68,811	$68,811
7	Payment & Collection	6623	22.84%		$188,246	$188,246
8	Local Bill Inquiry	6623	28.98%		$238,871	$238,871
9	Toll Bill Inquiry	6623	0.00%		$0	$0
10	Special Service Bill Inquiry	6623	0.00%		$0	$0
11	SLC Bill Inquiry	6623	0.00%		$0	$0
12	IXC Switched Order Processing	6623	0.00%	$21,056	$0	$21,056
13	IXC Special Order Processing	6623	0.00%		$0	$0
14	IXC B&C Order Processing	6623	0.00%		$0	$0
15	IXC Payment & Collection	6623	0.00%		$0	$0
16	IXC Switched Bill Inquiry	6623	0.00%		$0	$0
17	IXC Special Bill Inquiry	6623	0.00%		$0	$0
18	IXC B&C Bill Inquiry	6623	0.00%		$0	$0
19	Coin Collection & Counting	6623	0.00%		$0	$0
20	**Total Commercial per Study**		100.0%			$856,843

North Dakota Telephone Company Schedule 10

Account 6627: Time Study Summary

For Year Ended 12/31/2005

Date: 7/5/2006

#	Item	Account	Time Study Percent	Allocate Per Study
1	Revenue Accounting Per Ledger			$523,199
2	Less Deregulated Expense			$0
3	Other Adjustments			$0
4	**Revenue Accounting Per Study**			**$523,199**
5	Rating	6627	8.1%	$42,423
6	Message Processing	6627	12.2%	$63,634
7	Other Billing & Collection	6627	25.6%	$133,870
8	CABs Billing Expense	6627	54.1%	$283,272
9	**Total Revenue Accounting per Study**		**100.0%**	**$523,199**

Algebraic Reduction of FCC Discount Rule Formula[1]

1. $$\text{Wholesale Price Discount} = 1 - \left(\frac{\text{Wholesale Service Revenue}}{\text{Total Operating Revenue}} \right)$$

2. $$\text{Wholesale Service Revenue} = \frac{\text{Total Wholesale Expenses}}{(1 - \text{Base Margin})}$$

3. $$\text{Total Wholesale Expenses} = \text{Total Operating Expenses} - \text{Total Avoided Costs}$$

4. $$\text{Base Margin} = \frac{\text{Total Operating Revenue} - \text{Total Operating Expenses}}{\text{Total Operating Revenue}}$$

since

$$1 - \frac{(a-b)}{a} = \frac{b}{a}$$

$$\Rightarrow 1 - \text{Base Margin} = \frac{\text{Total Operating Expenses}}{\text{Total Operating Revenue}}$$

by substituti on :

$$\text{Wholesale Service Revenue} = \frac{\text{Total Operating Expenses} - \text{Total Avoided Costs}}{\left(\frac{\text{Total Operating Expenses}}{\text{Total Operating Revenue}} \right)}$$

and

$$\text{Wholesale Price Discount} = 1 - \left[\frac{\text{Total Operating Expenses} - \text{Total Avoided Costs}}{\frac{\left(\frac{\text{Total Operating Expenses}}{\text{Total Operating Revenue}} \right)}{\text{Total Operating Revenue}}} \right]$$

since

$$\frac{\frac{a}{\left(\frac{b}{c}\right)}}{c} = \frac{a}{b}$$

$$\Rightarrow \text{Wholesale Price Discount} = 1 - \frac{\text{Total Operating Expenses} - \text{Total Avoided Costs}}{\text{Total Operating Expenses}}$$

which reduces to :

5. $$\text{Whole sale Price Discount} = \frac{\text{Total Avoided Costs}}{\text{Total Operating Expenses}}$$

EXHIBIT R20

PENGAD 800-631-6989

[1] Federal Communications Commission, *Local Competition Order*, FCC 96-325 at 892 note 2147.

Numeric Example of FCC Formula without Cost Onsets

Total Operating Revenue (TOR)		$16,975,497
Total Operating Expeneses (TOE)		$12,048,268
Base Margin (BM)	(TOR-TOE)/TOR	29.03%
Total Avoided Costs (TAC)		$1,243,737
Total Wholesale Expenses (TWE)	TOE - TAC	$10,804,531
Wholesale Service Revenue (WSR)	TWE / (1-BM)	$15,223,125
Wholesale Price Discount (WPD)	1 - (WSR / TOR)	10.32%

This formula yields the exact result of the simplified model TAC/TOE

	TAC/TOE	10.32%
	1-(WSR/TOR) = TAC/TOE	TRUE

Source: FCC, Local Competition Order, FCC 96-235, at 892 note 2147, See also paragraph 930.

Dakota Central 1 Telecommunications

Pricing Attachment

148 PU-05-451 Pages: 2

Dakota Central 1 Telecommunications Pricing Attachment
by North Dakota Telephone Company
07/10/2006 CC: Comm Legal Ilona, Pat, Annette . .
Exhibit # R18

EXHIBIT R18
PENGAD 800-631-6989

Pricing Attachment

General. The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement and are subject to change by the board of Directors of DCTI. DCTI shall provide updated versions of Tariffs 45 days prior to the effective date of such change

A. Resale:

1.	Discount from Tariffed Retail Rates	10.0%*
2.	Denial/Restoral charge	$ 15.00
3.	Selective Router/Line Class Code	
	Non-Recurring	$240.00
	Recurring	$ 40.00
1.	Service Order Charge (LSR)	$ 30.00 / request*
5	Service Order Cancellation Charge	$ 15.00 / request*
6	Expedited Due Date in addition to SOC	$ 50.00 / request*
7	Order Change Charge	$ 15.00 / request*

* All Tariff rate elements (both recurring and non-recurring) are applied as stated in the applicable tariff. Rate elements listed in this Attachment are not all inclusive. The services available for resale and subject to the resale discount are listed in the Resale Attachment.

B. General Charges:

1. Technical Labor

Install & Repair Technician:	
Basic Time (normally scheduled hours)	$60.00 / hr
Overtime (outside normally schld hrs on schld work day)	$90.00 /hr
Central Office Technician:	
Basic Time (normally scheduled hours)	$75.00 / hr
Overtime (outside normally schld hrs on schld work day)	$112.00 / hr
Call out	Min 2 hours
Customer Service Representative	
Basic Time (Normal Scheduled)	$42.50/hr

TERMS, CONDITIONS, RATES AND CHARGES

Applying to the provision of intrastate

EXCHANGE AND NETWORK SERVICES

within the operating territory of

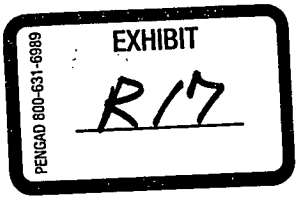
NORTH DAKOTA TELEPHONE COMPANY

in the State of

NORTH DAKOTA

This Tariff supercedes all previous tariffs filed by this Company or its predecessors.

147 PU-05-451 Pages: 178
Exchange and Network Services Tariff
by North Dakota Telephone Company by
07/10/2006 CC: Comm Legal Ilona, Pat, Annette . .
Exhibit # R17



1. APPLICATION AND REFERENCE

INDEX

SUBJECT	SECTION	PAGE	
Application of Tariff	1.1	2	
Table of Contents	1.2	3	
Subject Index	1.3	8	
Explanation of Tariff Change Symbols	1.4	14	(N)

1. APPLICATION AND REFERENCE

1.1 APPLICATION OF TARIFF

This Tariff contains the terms and conditions and charges applicable to intrastate exchange and network services and equipment furnished by North Dakota Telephone Company hereinafter referred to as the Company.

1. APPLICATION AND REFERENCE

1.2 TABLE OF CONTENTS

Page

SECTION 1. APPLICATION AND REFERENCE

	Index	1
1.1	Application of Tariff	2
1.2	Table of Contents	3
1.3	Subject Index	8
1.4	Explanation of Tariff Change Symbols	14 (N)

SECTION 2. GENERAL REGULATIONS

	Index	1
2.1	General	4
2.2	Undertaking of the Company	4
2.3	Liability of the Company	4
2.4	Use of Service	5
2.5	Applications for Service	7
2.6	Minimum Contract Periods	7
2.7	Cancellation of Application for Service Prior to Establishment of Service	7
2.8	Establishing Credit	8
2.9	Cash Deposits	10
2.10	Customer Billing	11
2.11	Payment for Service	11
2.12	Failure to Pay for Service	12
2.13	Restoral of Service	12
2.14	Telephone Numbers	12
2.15	Directories	13
2.16	Ownership of Facilities	13
2.17	Access to Facilities	13
2.18	Rearrangement, Repair, Maintenance, Disconnection and Removal of Facilities	13
2.19	Damage, Loss or Destruction of Company Facilities	14
2.20	Use of Customer-Provided Facilities	14
2.21	Power supply	14
2.22	Interruptions to Service	14
2.23	Identification of Parties to Communications	16
2.24	Limiting of Communications	16

1. APPLICATION AND REFERENCE

1.2 TABLE OF CONTENTS (CONT'D)

		Page
	SECTION 2. GENERAL REGULATIONS (CONT'D)	
	Termination of Service	16
2.25		
2.26	Disconnection of Service for Cause	17
2.27	Refusal of Service	17
2.28	Application of Rates and Charges	18
2.29	Special Construction	20
2.30	Special Assemblies of Equipment or Speculative Projects	21
2.31	Adjustments for Municipality Payments	22
2.32	Customer Premises Inside Wire	23
2.33	Suspension of Service	25
2.34	Grandfathered Services (Obsolete Services)	25
	SECTION 3. DEFINITIONS	
	Index	1
	Definitions	2
	SECTION 4. LOCAL EXCHANGE SERVICE	
	Index	1
4.1	General	2
4.2	Local Exchange Service Rate Components	2
4.3	North Dakota Telephone Company Exchanges	2 (T)
4.4	Local Exchange Component	3
4.5	Extended Area of Service Component	7
4.6	Taxes	7
4.7	Rates	8
4.8	Telephone Assistance Programs	11

1. APPLICATION AND REFERENCE

SECTION 5. GENERAL SERVICES

		Page
	Index	1
5.1	Semipublic Telephone Service	3
5.2	Customer Owned Pay Telephone Service	4
5.3	Directory Listings	7
5.4	Employees Telephone Service	10
5.5	Foreign Exchange Service	11
5.6	Home Intercall Service	14
5.7	Joint User Service	15
5.8	Line Construction Charges	16
5.9	Exchange Service Extensions (Point to Point)	18
5.10	Hunting Service	19
5.11	Seasonal Service	21
5.12	Selective Class of Call Screening	22
5.13	Custom Calling Features	23
5.14	Special Billing Number Service	26
5.15	Toll Restriction Service	27
5.16	Custom Local Area Signaling Service (CLASS)	29
5.17	Touch Tone Service	33
5.18	Vacation Rate Service	34
5.19	Voice Mail Service	35

SECTION 6. SERVICE CHARGES

	Index	1
6.1	General	2
6.2	Applications	3
6.3	Exceptions	3
6.4	Charges	4
6.5	Special Application	4

1. APPLICATION AND REFERENCE

SECTION 7. MISCELLANEOUS SERVICE OFFERINGS

		Page	
	Index	1	
7.1	Customer-provided Equipment	3	
7.2	Direct Inward Dialing Service to Customer Premises Located Switching Systems	5	
7.3	Automatic Wake-Up Service	7	
7.4	Billed Number Screening (BNS)	8	
7.5	E911 Charges	9	(D)
7.6	Twin Line Service	10	
7.7	Warm Line Service	11	
7.8	Remote Call Forward	12	
7.10	900 Blocking Service	14	
7.11	Centrex Service	15	

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

	Index	1
8.1	General Description	2
8.2	ISDN-PRI Service Arrangement	2
8.3	Circuit Switched Service Description	4
8.4	Technical Specifications	5
8.5	Regulations and Conditions	6
8.6	Rates and Charges	11

SECTION 9. RESERVED FOR FUTURE USE

SECTION 10. RESERVED FOR FUTURE USE

1. APPLICATION AND REFERENCE

Page

SECTION 11. OBSOLETE LOCAL EXCHANGE SERVICE

11.1 Measured Service 1
11.2 Message Rate Trunks ..... 4 (M)

SECTION 12. OBSOLETE GENERAL SERVICES

12.1 Mileage Charge 1

SECTION 13. OBSOLETE MISCELLANEOUS SERVICES

13.1 Residential Additional Line 1

1. APPLICATION AND REFERENCE

1.3 SUBJECT INDEX

	Section	Page	
-A-			
Access to Facilities	2	13	
Additional Listings, Directory	5	8	
Adjustments for Municipality Payments	2	22	
Advance Payments (see Establishing Credit)	2	8	
Alternate Listings, Directory	5	8	
Applications for Service	2	7	
Application of Rates for Business and Residence Service	2	18	
Application of Service Charges	6	3	
Automatic Wake-Up Service	7	7	
-B-			
B-Channel (ISDN Bearer Channel)	8	2	
Billed Number Screening (BNS)	7	8	
Business Class (Description)	2	19	
Business Class (Rates)	4	8	
Business Service	4	3	
-C-			
Cancellation of Application Prior to Service	2	7	
Cash Deposits	2	10	
Centrex Service	7	15	
Classes of Service	4	3	
Classification of Service	2	18	
Custom Calling Services	5	23	(D)
Customer Billing	2	11	
Failure to Pay For Service	2	12	
Payment For Service	2	11	
Customer Local Area Signaling Service (CLASS)	5	30	
Customer-Owned Pay Telephone Service	5	4	
Customer Premise Equipment – ISDN-PRI	8	5, 8	
Customer-Premises Inside Wire	2	23	
Customer-Provided Equipment	7	3	

1. APPLICATION AND REFERENCE

1.3 SUBJECT INDEX (CONT'D)

	Section	Page
-D-		
Damage of Company Facilities	2	14
D Channel (ISDN Data Channel)	8	2
D- Channel – Backup	8	3
Definitions	3	1
Deposits, Cash	2	10
Direct Inward Dialing Service to Customer Premises Located Switching Systems	7	5
Directories	2	13
Directory Listings	5	7
Disconnection of Service For Cause	2	17
-E-		
E911 Charges	7	9
Employees' Telephone Service	5	10
Enhanced Lifeline	4	15
Establishing Credit	2	8
Exceptions to Service Charges	6	3
Exchange Rates	4	8
Exchange Service Extension (Point to Point)	5	18
Expanded Link Up for Eligible Residents of Tribal Lands	4	14
Extended Area Service	4	7
-F-		
Facility Administration Charge	6	2
Failure to Pay for Service	2	12
Foreign Exchange Service	5	11
Foreign Listings, Directory	5	12
Fraudulent Use of Service	2	6
-G-		
General Regulations	2	4
Grandfathered Services (Obsolete Services)	2	25

(D)

1. APPLICATION AND REFERENCE

1.3 SUBJECT INDEX (CONT'D)

	Section	Page	
-H-			
Home Intercall Service	5	14	
Hunting Service	5	19	
Hunting Service – ISDN-PRI	8	5	(N)
-I-			
Identification of Parties to Communications	2	16	
Inside Wiring Maintenance (Lineskeeper)	2	24	
Integrated Services Digital Network (ISDN)	8	2	(N)
Integrated Services Digital Network (ISDN) Primary Rate Interface (PRI)	8	2	
Interruptions to Service	2	14	
ISDN B-Channel (Bearer Channel)	8	2	
ISDN D-Channel (Data Channel)	8	2	
ISDN D-Channel Backup	8	3	
ISDN-PRI Access Facility	8	3	
ISDN-PRI Circuit Switched Service Description	8	4	
ISDN-PRI Service Arrangement	8	2	(N)
-J-			
Jack/Wire Charge	6	2	
Joint User Service	5	15	
-L-			
Labor Charge	6	2	
Liability of the Company	2	4	
Limiting of Communications	2	16	
Lineskeeper (Inside Wiring Maintenance)	2	24	
Lifeline	4	12	
Line Construction Charges	5	16	
Link Up	4	11	
Listings, Directory	5	7	
Local Exchange Service	4	2	

(M)
(M)

1. APPLICATION AND REFERENCE

1.3 SUBJECT INDEX (CONT'D)

	Section	Page	
-M-			
Maintenance and Repair of Service (Rearrangement, Repair, Maintenance, Disconnection and Removal of Facilities)	2	13	
Measured Service	11	1	
Message Rate Trunks	11	4	(M)
Mileage Charges	12	1	
Minimum Contract Periods	2	7	
-N-			
900 Blocking	7	14	
Nonpublished Number	5	9	
Nonpublished Service	5	9	
North Dakota Telephone Company Exchanges	4	2	(T)
-O-			
Obsolete Services (Grandfathered Services)	2	25	
Obsolete Local Exchange Service	11	1	
Obsolete General Services	12	1	
Obsolete Miscellaneous Services	13	1	
Ownership of Facilities	2	13	
-P-			
Payment for Service	2	11	
Power Supply	2	14	
Primary Listings, Directory	5	8	

1. APPLICATION AND REFERENCE

1.3 SUBJECT INDEX (CONT'D)

	Section	Page	
-R-			
Rearrangement, Repair, Maintenance, Disconnection and Removal of Facilities	2	13	(D)
Refusal of Service	2	17	
Regulations, General	2	4	
Remote Call Forward	7	12	
Resale of Service	2	6	
Residential Additional Lines	13	1	
Residence Class (Description)	2	19	
Residence Class (Rates)	4	8	
Restoral of Service	2	12	
-S-			
Seasonal Service	5	21	
Selective Class of Call Screening	5	22	
Semipublic Telephone Service (Regulations)	5	3	
Semipublic Telephone Service (Description)	4	4	
Semipublic Telephone Service (Rates)	4	8	
Service Charges	6	2	
Service Guarantee Credit	2	14	
Special Application	6	4	
Special Assemblies of Equipment	2	21	
Special Billing Number Service	5	26	
Special Construction	2	20	
Suspension of Service	2	25	
-T-			
Tax Adjustments	2	22	
Telephone Assistance Programs	4	11	
Telephone Numbers	2	12	
Termination of Service	2	16	
Toll Restriction Service	5	27	
Touch Tone Service	5	33	
Trip Charge	6	2	
Twin Line Service	7	10	

1. APPLICATION AND REFERENCE

1.3 SUBJECT INDEX (CONT'D)

	Section	Page	
-U-			(M)
Underground Construction on Private Property	2	20	
Undertaking of the Company	2	4	
Unlawful Use of Service	2	5	
Unlisted Number	5	8	
Unlisted Service	5	8	
Use of Customer-provided Facilities	2	14	
Use of Service	2	5	
Fraudulent Use	2	6	
General	2	5	
Harassment	2	5	
Impersonation	2	5	
Interference With or Impairment of Service	2	6	
Location of Service	2	6	
Obscenity	2	5	
Resale of Service	2	6	
Subscribing to Adequate Service	2	6	
Unlawful Use of Service	2	5	(M)
-V-			
Vacation Rate Service	5	34	
Voice Mail Service	5	35	
-W-			
Warm Line Service	7	11	

1. APPLICATION AND REFERENCE

1.4 EXPLANATION OF TARIFF CHANGE SYMBOLS

(N)

The following symbols will be utilized for all changes of material within the Exchange and Network Services Tariff:

C - Change in Regulation

D - Discontinued Rate, Regulation or Text

E - Correction of an error made prior to current revision of Tariff

I - Increase in Rate

L - Material relocated from or to another part of the Tariff, with no change in Text, Regulation, Rate or Condition

M - Matter Relocation

N - New Rate, Regulation or Text

O - Obsoleted Rate, Regulation or Text

R - Reduction in Rate

T - Text Change, but no change in Rate or Regulation

(N)

2. GENERAL REGULATIONS

INDEX

SUBJECT	SECTION	PAGE	
Access to Facilities	2.17	13	
Adjustments for Municipality Payments	2.31	22	
Advance Payments (see Establishing Credit)	2.8	8	
Application of Rates and Charges	2.28	18	
Applications for Service	2.5	7	
Business Class	2.28	18	
Cancellation of Application Prior to Service	2.7	7	
Cash Deposits	2.9	10	(D)
Classification of Service	2.28	18	
Customer Billing	2.10	11	
Customer Premises Inside Wire	2.32	23	
Damage, Loss or Destruction of Company Facilities	2.19	14	
Deposits, Cash	2.9	10	
Directories	2.15	13	
Disconnection of Service for Cause	2.26	17	
Establishing Credit	2.8	8	
Failure to Pay for Service	2.12	12	
Fraudulent Use of Service	2.4	6	

2. GENERAL REGULATIONS

INDEX (CONT'D)

SUBJECT	SECTION	PAGE
General	2.1	4
Grandfathered Services (Obsolete Services)	2.34	25
Identification of Parties to Communications	2.23	16
Inside Wiring Maintenance (Lineskeeper)	2.32	24
Interruptions to Service	2.22	14
Late Payment Charge	2.11	11
Liability of the Company	2.3	4
Limiting of Communications	2.24	16
Lineskeeper (Inside Wiring Maintenance)	2.32	24
Maintenance and Repair of Service	2.18	13
Minimum Contract Periods	2.6	7
Obsolete Services (Grandfathered Services)	2.34	25
Ownership of Facilities	2.16	13
Payment for Service	2.11	11
Power Supply	2.21	14
Rearrangement, Repair, Maintenance, Disconnection, and Removal of Facilities	2.18	13
Refusal of Service	2.27	17
Resale of Service	2.4	6
Residence Class	2.28	19
Restoral of Service	2.13	12
Service Guarantee Credit	2.22	14

2. GENERAL REGULATIONS

INDEX (CONT'D)

SUBJECT	SECTION	PAGE
Special Assemblies of Equipment	2.30	21
Special Construction	2.29	20
Suspension of Service	2.33	25
Tax Adjustments	2.31	22
Telephone Numbers	2.14	12
Termination of Service	2.25	16
Underground Construction on Private Property	2.29	20
Undertaking of the Company	2.2	4
Unlawful Use of Service	2.4	5
Use of Customer-Provided Facilities	2.20	14
Use of Service	2.4	5
Fraudulent Use	2.4	6
General	2.4	5
Harassment	2.4	5
Impersonation	2.4	5
Interference With or Impairment of Service	2.4	6
Location of Service	2.4	6
Obscenity	2.4	5
Resale of Service	2.4	6
Subscribing to Adequate Service	2.4	6
Unlawful Use of Service	2.4	5

2. GENERAL REGULATIONS

2.1 GENERAL

The regulations contained in this Section are applicable to intrastate telecommunications services offered in this Tariff by the North Dakota Telephone Company, hereinafter referred to as the Company, unless otherwise stated or unless modified by specific regulations contained elsewhere in this Tariff.

2.2 UNDERTAKING OF THE COMPANY

The Company undertakes to provide the services offered in this Tariff on the terms and conditions and at the rates and charges specified. This undertaking is dependent upon the availability of facilities. The facilities used to provide a particular service shall be chosen by the Company and are not represented to be suitable for any one service. The Company does not undertake to transmit messages.

2.3 LIABILITY OF THE COMPANY

A. The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission occurring in the course of furnishing service or other facilities, and not caused by the negligence of the customer shall in no event exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission occurs. The maximum refund or charge will not exceed an estimated amount equal to such charge or refund for a 3-year period. No other liability shall in any case attach to the Company.

B. The Company shall be indemnified and saved harmless (including costs and reasonable attorneys' fees) by the customer or customers against claims for libel, slander, or the infringement of copyright arising directly or indirectly from the material transmitted over the facilities or the use thereof; against claims for infringement of patents arising from combining with, or using in connection with, facilities furnished by the Company, apparatus, systems and their associated wiring of the customer; and against all other claims arising out of any act or omission of a customer in connection with the facilities provided by the Company.

C. The Company is not liable for any defacement of or damage to the premises or property of a customer resulting from the existence of facilities furnished by the Company on the premises, or the installation or removal of such facilities, unless such defacement or damage is the result of the negligence of the Company.

D. When lines of another telephone company are used in establishing connections to points not reached by the lines of the Company, the Company is not liable for any act or omission of that other company.

2. GENERAL REGULATIONS

2.4 USE OF SERVICE

A. General

Service is furnished for use by the customer and may be used only by others as specifically provided elsewhere in this Tariff.

B. Unlawful Use of Service

Service shall not be used for any unlawful purpose. The Company may refuse to furnish service to an applicant or may disconnect the service of a customer when:

1. A government law enforcement agency, acting within its jurisdiction, advises the Company that such service is being used or will be used unlawfully or for an unlawful purpose, or

2. The Company has other information, which reasonably causes it to believe that such service is being used or will be used unlawfully or for an unlawful purpose.

C. Obscenity

Service shall not be used to make any oral or written comment, request, suggestion or proposal, or to transmit any nonverbal material, which is obscene, lewd, lascivious, filthy or indecent.

D. Impersonation

Service shall not be used to impersonate another person with fraudulent or malicious intent.

E. Harassment

Service shall not be used to call another person so frequently or at such times of day or in any other manner so as to annoy, abuse, threaten or harass such other person.

2. GENERAL REGULATIONS

2.4 USE OF SERVICE (CONT'D)

F. Fraudulent Use

1. Service shall not be used to transmit a message, to locate a person, or to otherwise give or obtain information without payment of the charges applicable to such use.

2. No device shall be used by a customer with the service or facilities of the Company for the purpose of avoiding payment of the applicable charge.

G. Interference With or Impairment of Service

Service shall not be used in any manner that interferes with another person in the use of his service, prevents another person from using his service, or otherwise impairs the quality of service to other customers.

H. Subscribing to Adequate Service

If a customer's use of service interferes unreasonably with the service of other customers, he will be required to take service in sufficient quantity or of a different class or grade.

I. Resale of Service

The resale of service is not permitted unless the customer is in compliance and certified under Section 214 of the Communications Act, and as may be excepted in this Tariff.

J. Location of Service

Service, except Semi-Public Telephone Service and Customer Owned Pay Telephone Service, shall not be so located in such a manner as to enable other than authorized users to use the service.

2. GENERAL REGULATIONS

2.5 APPLICATIONS FOR SERVICE

An application for service, whether made orally or in writing, establishes the contract between the Company and the customer on the terms and conditions set forth in this Tariff. Neither the contract nor any rights acquired thereunder may be assigned or in any manner transferred.

2.6 MINIMUM CONTRACT PERIODS

A. Except as otherwise provided, the minimum contract period is one month for all services furnished.

B. Where monthly construction charges are involved, such charges are payable as set forth in Section 5.8.C of this Tariff.

C. The length of minimum contract period for directory listings, and Joint User Service, where the listing actually appears in the directory is the directory period. The directory period is from the day on which the directory is first distributed to the customers to the day succeeding directory is first distributed to customers.

D. The Company may require a minimum contract period longer than one month at the same location in connection with special (nonstandard) types or arrangements of equipment, or for unusual construction, necessary to meet special demands and involving extra costs.

2.7 CANCELLATION OF APPLICATION FOR SERVICE PRIOR TO ESTABLISHMENT OF SERVICE

A. Where the applicant cancels an order for service prior to the start of installation or special construction of facilities, no charge applies.

B. Where installation of facilities, other than those provided by special construction, has been started prior to the cancellation, the lower of the following charges applies:

1. The total costs (including overheads) in connection with providing and removing such facilities.

2. The monthly charges for the entire initial contract period of service ordered by the customer as provided in this Tariff plus full amount of any installation and termination charges applicable.

C. Where special construction of facilities has been started prior to cancellation, and there is another requirement for the specially constructed facilities in place, no charge applies.

2. GENERAL REGULATIONS

2.7 CANCELLATION OF APPLICATION FOR SERVICE PRIOR TO ESTABLISHMENT OF SERVICE (CONT'D)

D. Where special construction of facilities has been started prior to cancellation, and there is no other requirement for the specially constructed facilities, a charge equal to the costs incurred in the special construction (including overheads) applies. Where one or more, but not all, of the services involved in the special construction are cancelled, a charge equal to the cost (including overheads) incurred for the discontinued service applies.

E. Installation or special construction of facilities for a customer begins when the Company incurs any expense in connection therewith which would not otherwise have been incurred and the customer has advised the Company to proceed with the installation or special construction.

2.8 ESTABLISHING CREDIT

A. The Company, in order to assure the payment of its charges for service, will require applicants and customers to establish and maintain credit.

B. The establishment or re-establishment of credit as provided in this Section shall not relieve the applicant or customer from compliance with other provisions of this Tariff as to advance payments and the payment of bills, and shall in no way modify the provisions regarding disconnection and termination of service for failure to pay bills due for service furnished.

1. Applicants for Service

The Company may refuse to furnish service to an applicant that has not established credit or has not paid charges for service of the same classification (residence or business) previously furnished by the Company at the same or another location, until arrangements suitable to the Company have been made to pay such charges.

a. Residence service applicants may establish credit in one of the following ways:

(1) Demonstrating to the satisfaction of the Company that his credit is acceptable by providing information that is pertinent to the applicant's prior telephone service.

(2) Payment of a cash deposit to the Company in accordance with Section 2.9 following.

(3) Providing a sufficient written guarantee of payment for service by a guarantor satisfactory to the Company.

b. Business service applicants may establish credit by meeting the requirements of Section 2.8.B.1.a(1) or Section 2.8.B.1.a(2) preceding.

2. GENERAL REGULATIONS

2.8 ESTABLISHING CREDIT (CONT'D)

B. (Cont'd)

1. Applicants for Service (Cont'd)

   c. Prior to the establishment of an applicant's credit the Company may, at its option, permit service to be installed upon the payment by the applicant of an amount equal to applicable charges and initial nonrecurring charges applicable for installation plus the estimated amount of the applicant's bill for service. The recurring portion of such advance payment will be credited to the applicant's service account but does not relieve the applicant of his responsibility to subsequently establish credit in accordance with Section 2.8.B.1.a or Section 2.8.B.1.b preceding.

   If credit is not so established, the Company may disconnect the service not sooner than ten days after mailing or delivery of written notice of intention to disconnect.

   When a customer's service has been disconnected in accordance with the above, service will not be reconnected until the customer has established credit.

2. Customers

   a. A customer may be required to re-establish credit by the payment or increase of a cash deposit in accordance with Section 2.9 following when any of the following conditions occur:

      (1) The customer's service has been disconnected by the Company for failure to pay a delinquent bill, in accordance with Section 2.12 following.

      (2) The customer has been delinquent in the payment of any two consecutive bills.

      (3) The customer has been delinquent in the payment of any three bills during the preceding twelve months.

      (4) The Company has reason to question the customer as a credit risk.

   b. Payment by the customer of delinquent bills will not of itself relieve the customer from the obligation of establishing his credit with respect to the account involved or with respect to any other account in connection with the same or any other class of service which the Company may be providing such customer.

   c. A residence customer may be required to re-establish credit in accordance with Section 2.8.B.1.a preceding when the amount of service furnished or the basis on which credit was formerly established has significantly changed.

   d. If a customer fails to re-establish his credit as required by the Company, his service may be disconnected not sooner than ten days after mailing or delivery of written notice of intention to disconnect.

2. GENERAL REGULATIONS

2.9 CASH DEPOSITS

A. General

1. A customer may be required to pay, as a deposit, an amount not to exceed two times the estimated amount of one month's average bill. The determination of a customer's (as distinguished from an applicant's) estimated monthly bill shall be based upon his prior or current use of the class of service involved (monthly rates and message charges).

2. The amount of a deposit may be adjusted on the basis of Section 2.9.1 preceding, at the option of the customer or the Company, at any time when the character or degree of the customer's use of the service has materially changed, or when it develops that the character or degree of such use will materially change, and such change is not temporary.

B. Interest to be Paid on Deposits

Interest shall be paid on customer deposits at the percentage rate per annum and in the manner provided in the rules of the Public Service Commission of the State of North Dakota. The Company may, at its option, pay interest at intervals it chooses, but at least annually as specified on following page.

1. By credit to the customer's account annually, or

2. By payment, no more than once in any twelve months' period, when requested by the customer, or

3. By adding the accrued interest to the amount of the deposit at the time such deposit is refunded or applied to an unpaid bill of the customer in accordance with Section 2.9.C following.

C. Refund or Application of Deposits

1. The Company will automatically refund deposits, including accrued interest, when one of the following conditions occurs:

   a. The customer establishes credit by other means in accordance with Section 2.8. preceding, or

   b. The service is terminated and the bills are paid in full, or

   c. The applicant cancels his application for service and any charges incurred are paid in full.

2. When the service is terminated or the application is cancelled and there are charges due the Company, the deposit plus interest will be applied to the charges, and the balance, if any, returned to the customer.

3. Refunds on active accounts will be made by issuing a credit in the amount of deposit to the account.

2. GENERAL REGULATIONS

2.10 CUSTOMER BILLING

A. Regular bills will be issued once each month.

B. Special bills for long distance telecommunications service may be issued at any time when charges are unusually high and the Company is uncertain as to the customer's ability to pay such charges.

C. Services that are charged for at monthly rates are billed in advance for one month's service.

D. Services which are charged for at other than monthly rates are billed in arrears, except when payment for messages is made by cash deposit in the coin telephone.

E. Detail call information, such as the time at which made, duration and destination, may be provided for long distance telecommunications message service.

2.11 PAYMENT FOR SERVICE

A. The customer is responsible for the payment of rates and charges for all services furnished including, but not limited to, calls originated or accepted at a customer's service location.

B. Bills are due by the due date posted on the billing statement and may be paid by any of the following methods:

1. At the Company Business Office.
2. At the office of any authorized payment agent of the Company.
3. By U.S. Mail, by check or money order.

C. Charges for a message originated or accepted at a coin telephone shall be paid by cash deposit in the coin telephone unless arrangements for billing have been made through an operator service provider or interexchange carrier.

D. Late Payment Charge

1. A charge at the rate of 1 ½% applies to all amounts greater than $30.00 previously billed on customer's bills and remaining unpaid at the time the next bill is prepared.

2. Collection procedures and the requirement for a deposit are unaffected by the application of a late payment charge.

3. The late payment charge applies to customer's accounts with an unpaid balance of greater than $30.00.

2. GENERAL REGULATIONS

2.12 FAILURE TO PAY FOR SERVICE

A. Regular Monthly Bills

When a customer is delinquent in the payment of a regular monthly bill, the Company may disconnect the service not sooner than ten days after mailing or delivery of written notice of intention to disconnect.

B. Special Bills

1. A customer is delinquent in the payment of a special bill, as described in Section 2.10.B preceding, when the sum due is not paid upon presentation.

2. When a customer is delinquent in the payment of a special bill, the Company may disconnect the service not sooner than ten days after mailing or delivery of written notice of intention to disconnect.

2.13 RESTORAL OF SERVICE

A. If a customer's service is restored after having been disconnected in accordance with this Tariff and a Company service order to terminate such service has not been completed when such service is restored, the customer will be required to pay Service Charges specified in Section 6 of this Tariff. Monthly service rates will not apply for the period between the disconnection and reconnection.

B. When a customer's service has been disconnected in accordance with this Tariff and the service has been terminated through the completion of a Company service order, service will be re-established only upon the basis of an application for new service.

2.14 TELEPHONE NUMBERS

The customer has no proprietary right to a telephone number and the Company may change the telephone number of a customer whenever, in the conduct of its business, it deems it desirable to do so.

2. GENERAL REGULATIONS

2.15 DIRECTORIES

A. The Company will furnish to its customers, without charge, its directory as necessary for the efficient use of the service. Copies of other directories may be provided at a nominal charge.

B. Directories regularly furnished to customers remain the property of the Company. No binder, holder or auxiliary cover, except as provided or authorized by the Company, shall be used in conjunction with a directory furnished by the Company.

C. No liability for damages arising from errors in or omissions of directory listings, or listing obtained from the Directory Assistance operator, shall attach to the Company. In the case of additional extra listings for which a charge is made, its liability shall be limited to the monthly rate for each such listing for the charge period during which the error or omission continues.

2.16 OWNERSHIP OF FACILITIES

Facilities furnished by the Company remain the property of the Company until transferred or abandoned.

2.17 ACCESS TO FACILITIES

The customer shall provide employees and agents of the Company access to Company facilities, at all reasonable times.

2.18 REARRANGEMENT, REPAIR, MAINTENANCE, DISCONNECTION AND REMOVAL OF FACILITIES

A. The customer is responsible for installation, maintenance and repairs of customer premise equipment and inside wire.

B. Customers may not rearrange, disconnect, remove or otherwise tamper with, or permit others to rearrange, disconnect, remove or tamper with any facilities owned by the Company, except with the Company's written consent, or as specified elsewhere in this Tariff.

2. GENERAL REGULATIONS

2.19 DAMAGE, LOSS OR DESTRUCTION OF COMPANY FACILITIES

If any of the Company's facilities are damaged, lost or destroyed and not due to ordinary wear and tear, the customer is held responsible for the cost of replacing the lost or destroyed facilities or restoring the damaged facilities to their original condition, except when caused by the negligence of the Company.

2.20 USE OF CUSTOMER-PROVIDED FACILITIES

Customer-provided terminal equipment and/or customer-provided communications systems with their associated wiring may be used with facilities provided the Company as specified elsewhere in this Tariff.

2.21 POWER SUPPLY

The customer is responsible for providing commercial electrical power, in suitable outlets, when and where required by the Company for the operating of any Company-provided telecommunications equipment on the customer premises.

2.22 INTERRUPTIONS TO SERVICE

A. Service Guarantee Credit

1. The Company will provide credit for one month of Local Exchange Service should the customer experience an "out of service" condition on the local access line over 24 hours from the time the "out of service" condition is reported to or discovered by the Company. The credit will be applicable to all single-line, business and residence service.

2. The credit will be applicable to one month's billing for all Local Exchange Service charges.

3. For each repeat occurrence of a local access line "out of service" condition lasting over 24 hours from the time the outage is reported or discovered by the Company, the customer will receive an additional one month's credit.

2. GENERAL REGULATIONS

2.22 INTERRUPTIONS TO SERVICE ( )

A. Service Guarantee Credit (Cont'd)

4. The credit will not apply to "out of service" conditions resulting from the willful neglect, misuse or abuse by the customer. The credit will not apply to "out of service" conditions where the outage is in the customer's inside wire or customer's premises equipment. This credit will not apply to "out of service" conditions resulting from natural disasters, or circumstances beyond the control and knowledge of the Company. This credit also will not apply to "out of service" conditions where service has been temporarily or permanently discontinued for nonpayment of bills.

5. Service Guarantee Program Specifics

   The following criteria will be used in the administration of North Dakota Telephone Company's Service Guarantee Program:

   a. Any customer experiencing an out-of-service condition that is not restored within 24 hours will be credited with one month's exchange service.

   b. Out-of-service is defined as not being able to receive calls **or** not being able to make calls.

   c. The outage period will be measured from the time reported by the customer (or company detected) until the time cleared by repair service.

   d. One-month exchange service is outlined as follows:

      Includes:
      -Local Exchange Access Line Charge
      -Extended Area Service
      -Custom Calling Features
      -Touch Calling Service
      -Directory Listing Service

      Excludes:
      -Special Service/Private Line
      -Directory Advertising
      -Business System/Centrex
      -Toll Plans
      -Toll Message Charges
      -Installation Charges (Service Charges)
      -NSF Check Charges
      -Charges for Nonregulated Services
      -Services provided pursuant to tariffs other than the Company's Exchange and Network Services Tariff

   e. The Credit will be generated on a per-incident basis. There is no maximum number of credits per month.

2. GENERAL REGULATIONS

2.23 IDENTIFICATION OF PARTIES TO COMMUNICATIONS

The calling party shall establish his identity as often as may be necessary in the course of any communication.

The calling party shall be solely responsible for establishing the identity of the party with whom connection is made at the called station or stations.

2.24 LIMITING OF COMMUNICATIONS

The Company may limit communications over its facilities during emergencies, which result in a shortage of facilities.

2.25 TERMINATION OF SERVICE

A. Service may be terminated prior to the expiration of the minimum contract period upon notice being given to the Company in advance and upon payment of the termination charges given below in addition to all charges due for service which has been furnished.

1. In the case of service for which the minimum contract period is one month, the termination charges are the charges due for the balance of the initial month.

2. In case of additional directory listings and Joint User Service, where the listing has appeared in the directory, the termination charges are the charges due to the end of the directory period. In the following cases, however, charges will continue only to the date of termination of the extra listing or Joint User Service, subject to a minimum charge for one month:

   a. The contract for the main service is terminated.

   b. The listed party or joint user becomes a customer to telephone exchange service.

   c. The listed party moves to a new location.

   d. The listed party or joint user dies.

3. In the case of special equipment for which the minimum contract period is in excess of one month at the same location, such proportion of the sum of the cost of the equipment and of its installation, plus the cost of removal, less the salvage value of the equipment removed, as the unexpired portion of the minimum contract period bears to the full minimum contract period.

B. Service may be terminated after the expiration of the minimum contract period, upon the Company being notified in advance and upon payment of all charges due to the date of termination of the service.

2. GENERAL REGULATIONS

2.26 DISCONNECTION OF SERVICE FOR CAUSE

The Company may disconnect the service of a customer upon the violation of, or noncompliance with, any of the regulations or other conditions contained in this Tariff governing the furnishing of service. Such disconnection shall take place only after notification to the customer by the Company of its intent to disconnect service; provided, however, despite this requirement of notice by other provisions of this Tariff, the service may be disconnected without notification to the customer in the event of any of the following:

A. Customer use of facilities in such a manner as to adversely affect the Company's equipment or the Company's service to others.

B. Tampering with the equipment furnished and owned by the Company.

C. Circumstances which will endanger the safety of Company employees or others.

When service is disconnected for cause, the customer has the right to complain to the North Dakota Public Service Commission. If the Commission shall, upon hearing such complaint, determine that service has not and will not be used in violation of any of the regulations or other conditions contained in the Tariff, the service will be promptly restored.

2.27 REFUSAL OF SERVICE

The Company may refuse to furnish service if it has reasonable cause to believe that the service will be used in violation of, or noncompliance with, any of the regulations or other conditions contained in this Tariff governing the furnishing of such service. If the Company so refuses to furnish service it will inform the applicant of his right to complain to the North Dakota Public Service Commission. If the Commission shall, upon hearing such complaint, determine that the service will not be used in violation of any of the regulations or other conditions contained in this Tariff, the service will be promptly furnished.

2. GENERAL REGULATIONS

2.28 APPLICATION OF RATES AND CHARGES

A. General

1. Rates and charges are applied based on the classification of service provided to the customer. Classes of service include business and residence. (T)

2. Classification of Service

   The determination as to whether telephone service should be classified as business or residence is based on the character of the use to be made of the service. Service is classified as business service where the use is primarily or substantially of a business, professional, institutional, or otherwise occupational nature. Service is classified as residence where the use is of a social and domestic nature and other use, if any, is merely incidental. (T)

   While the location at which service is furnished is, in most cases, a dependable index of the character of use and rates for business and residence service are generally applied on this basis, the character of use is controlling in all instances regardless of the location.

B. Business Class

Business rates apply to business class service. Business class service includes service provided as follows:

1. In offices, stores, factories and all other places of a strictly business nature.

2. In boarding houses (except as noted under Section 2.28.C.2 following), offices of hotels, halls and offices of apartment buildings, schools, hospitals, libraries, college fraternity houses and other similar institutions (but excluding dormitory rooms).

3. To quarters which are specifically occupied by individual clubs or lodges for the sole purpose of conducting club/lodge organizational affairs or activities.

4. To churches where the service is used for the administration of other churches or in the conduct of the affairs of a parochial school or other schools affiliated with or located at a church. To churches where the church is staffed/manned on a full-time basis to administer the affairs and activities of that church.

5. At residence locations when the customer has no regular business telephone and the use of the service can be considered as more of a business than of a residence nature; or when such business use passes over to residence telephones; for example when business places are closed in compliance with the law or established custom.

6. Where the place of business and residence of a customer are on the same premises and no telephone service is installed in the place of business the business rate shall be charged for the telephone service installed in the residence.

2. GENERAL REGULATIONS

2.28 APPLICATION OF RATES AND CHARGES (CONT'D)

B. Business Class (Cont'd)

7. At residence locations, when a line termination is located in a shop, office or other place of business.

8. At any location where the listing of service at that location indicates a business, trade or profession, except as specified in Section 2.28.C or 2.28.D following.

C. Residence Class

Residence rates apply to residence class service. Residence class service includes service provided as follows:

1. In private residences where business alphabetical or classified telephone directory listings are not provided.

2. In private apartments of hotels, rooming houses or boarding houses where service is confined to the customer's use, and elsewhere in rooming houses which are not advertised as a place of business or which have less than five rooms for roomers or which furnish meals to less than ten boarders, provided business telephone directory listings are not furnished.

3. In the residence of a clergyman, physician, dentist, veterinarian, surgeon or other medical practitioner, provided the customer does not maintain an office in the residence. In the residence of a Christian Science practitioner, nurse or midwife, or in the office of any of these groups of persons, provided the office is located in the customer's residence and is not part of an office building. In any of such cases the listing may indicate the customer's profession, but only in connection with an individual name. If listings of firms or partnerships, etc., or additional listings of persons not residing in the same household are desired, business rates apply.

(D)

2. GENERAL REGULATIONS

2.29 SPECIAL CONSTRUCTION

A. Private Property

1. An average amount of entrance and distribution facilities may be furnished by the Company, provided the facilities are of the standard type normally furnished for the particular location or kind of service.

2. If additional entrance or distribution facilities are required; if the conditions are such as to require special equipment, maintenance or methods of construction; if the stability of the customer has not been established; if the installation is for a temporary or semi-permanent purpose or if for any other reason the construction costs are excessive as compared with the revenue to be derived, the applicant shall be required to pay the costs over and above those applicable for a normal installation.

3. The customer will provide the Company, without charge, written permission for the placing of the Company's facilities on the property.

B. Underground

1. Conduit may be furnished by the Company, or conduit may be provided by the applicant subject to the Company's specifications. Conduit used for Company facilities may not be used for any other purpose without the consent of the Company. The distance between the conduit and any electric light or power conduit or conductor shall be in accordance with the Company's specifications. The customer shall be required to pay the entire cost of maintenance of conduit including subsequent excavations and replacements necessary because of damage resulting from negligence on the part of the customer or his representatives or from freezing or improper drainage.

2. The cost of relocating underground entrance facilities at the customer's request will be borne by the customer.

2. GENERAL REGULATIONS

2.30 SPECIAL ASSEMBLIES OF EQUIPMENT OR SPECULATIVE PROJECTS

A. Special Assemblies of Equipment or Speculative Projects, for which provision is not otherwise made in this Tariff or those involving unusual costs, may be provided where practical, if not detrimental to any of the services furnished by the Company.

1. The charge for such facilities may be in the form of an installation charge, a monthly charge, a termination charge or any combination thereof, and will include but not be limited to, when applicable, one or more of the following estimated expense items associated with the special equipment or service provided:

   a. Maintenance expense
   b. Depreciation expense - including reusable and nonrecoverable items
   c. Administration expense
   d. Taxes - including Federal Income Tax
   e. Any other specific items of expense that may be associated with the facility provided
   f. A reasonable return on investment

2. The estimated installation cost used in the derivation of the various expense items shall include, but not be limited to, the following:

   a. Material
   b. Material overhead
   c. Installation labor
   d. Installation labor overhead

B. In connection with Marketing and Sales studies or programs, the Company reserves the right to waive Service Connection Charges within specified areas for such periods of time as designated by the Company and filed with the Commission.

2. General Regulations

2.31 Adjustments for Municipality Payments

A. If, at any future time, a municipality acquires the legal right to impose an occupation tax, license tax, permit fee, franchise fee or other similar charge upon the Company, and imposes the same by ordinance or otherwise, such taxes, fees or charges shall be billed to the customers receiving service within the territorial limits of such municipality. Such billing shall allocate the tax, fee or charge among customers uniformly on the basis of each customer's monthly charges for the types of service made subject to such tax, fee or charge.

2. General Regulations

2.32 Customer Premises Inside Wire

A. General

1. Customer premises inside wire is defined as that wire, including connectors, blocks and jacks, on the customer's side of the Point of Demarcation, that runs between the termination of the Exchange Line and those standard jack locations on the customer's side of the Point of Demarcation to which terminal equipment can be connected for access to the Exchange Line.

2. Customer premises inside wire provided by the customer must be installed in accordance with the technical standards and installation guidelines complying with industry standards and regulations under Part 68 of the Federal Communications Commission Rules and Regulations.

3. Customer premises inside wire provided by the customer may be connected to Local Exchange Service furnished by the Company according to Part 68 of the Federal Communications Commissions Rules and Regulations.

4. The Network Interface for the connection of customer premises inside wire consists of a standard miniature modular jack and is provided as part of the Exchange Line. The normal location of the Network Interface would be in close proximity to the protector or equivalent if located outside or where the Company's facilities enter the customer's premises when located inside. When at the request of the customer, an existing Network Interface is moved, the applicable nonrecurring Service Charges specified in Section 6.1 of this Tariff apply. There will be no charge to the customer when the Company retrofits existing Exchange Line terminations in connection with other maintenance or installation work at the customer's premises.

5. The rates and charges for the Exchange Access Line do not include Company maintenance of customer premises inside wire associated with residence and business individual line. (T)

2. GENERAL REGULATIONS

2.32 CUSTOMER PREMISES INSIDE WIRE (CONT'D)

B. Responsibility of the Customer

1. Where the customer elects to provide inside wire and jacks, the installation must be in accordance with technical standards under Part 68 of the Federal Communications Commissions Rules and Regulations.

2. In the event that the customer provides, maintains or attempts to provide or maintain inside wire, the customer assumes the risk of loss of service, damage to property or death to or injury of the customer or anyone acting on behalf of the customer.

C. Lineskeeper Service

1. Under its Lineskeeper service, the Company will maintain the customer's inside wiring at the customer's option for a monthly fee under the regulations and rates included in this Section 2.32.C together with other applicable regulations in this Tariff.

2. If a customer is found to be using nonstandard wire and has Lineskeeper, the Company will bill the customer labor and material charge to repair faulty wiring. If the customer refuses repair, we will disconnect faulty wiring and customer will receive no charge.

3. Key System and PBX customers cannot have Lineskeeper on any lines that terminate into their Key System or PBX.

4. Rates

Lineskeeper	NDTC Monthly Rate	
Residence	$1.75	(N)
Business	$1.75	

2. GENERAL REGULATIONS

2.33 SUSPENSION OF SERVICE

Upon request, a customer receiving business or residence services may arrange for the temporary suspension of such service, for vacation or other similar purposes, subject to the terms and conditions specified in Section 5.18 of this Tariff. Customer requested suspension of service under circumstances other than those provided for under Section 5.18 of this Tariff shall be treated as disconnection unless otherwise provided for under this Tariff.

2.34 GRANDFATHERED SERVICES (OBSOLETE SERVICES)

The Company provides certain services to customers on a Grandfathered Service basis as Obsolete Services. Obsolete Services are services and/or rate structures provided by the Company to customers who ordered the service under a previous tariff that are not available for ordering under this Tariff. Obsolete Services and related rate structures are available only on a continuing basis to customers who ordered the service when the service and/or rate structure was included in an effective tariff of the Company or the Company's predecessor. The rates, terms and conditions applicable to Obsolete Services are contained in the Tariff sections for Obsolete Local Exchange Service, Section 11, Obsolete General Services, Section 12, and Obsolete Miscellaneous Services, Section 13. Not all services formerly provided under tariff are provided as Obsolete Services. In the event a customer moves, the Obsolete Service will be terminated and any new services ordered by the customer will be available at the current effective North Dakota Telephone Company tariffed rates, terms and conditions.

3. DEFINITIONS

INDEX

	Page	
A-C	2	
D	4	
E	5	
F-H	6	
I	7	
J-L	8	
M	9	
N	10	(T)
O	10.1	(T)
P	11	
R-S	12	
T	13	
U-Z	15	

3. DEFINITIONS

-A-

ACCESS LINE - A central office circuit or channel which provides access to the telephone network for Local Exchange Service and interexchange telephone services (also called Exchange Access Line or Exchange Line).

ACOUSTICAL CONNECTION - A connecting arrangement without electrical connections that permits transmission of sound between a company provided telephone instrument and customer-provided equipment.

ADDITIONAL LISTING - Any listing of a name or other authorized information in connection with a customer's telephone number in addition to that which he is entitled in connection with his regular service.

APPLICATION - A request made orally or in writing for telephone service.

AUTHORIZED USER - A person, firm or corporation (other than the customer) on whose premises a telephone, PBX or private-line service or channel is located and who may communicate over such channels in accordance with the terms of the Tariff.

-B-

BASE RATE - A rate for exchange service available to customers located within a Base Rate Area.

BASE RATE AREA - A specific area within which local telephone exchange service, is furnished at rates quoted in the Local Exchange Service Tariffs without extra mileage charges.

B-CHANNEL – See ISDN Bearer Channel. (N)

BUSINESS SERVICE - Telephone service furnished to customers where the actual or obvious use is of a business, professional or occupational nature.

-C-

CENTRAL OFFICE - A switching unit in a telephone system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.

CENTRAL OFFICE LINE - A circuit directly connecting an individual or party-line main station, PBX switchboard, or an intercommunicating system with a central office.

CHANNEL - A path for communication between two or more stations or central offices furnished in such a manner as the Company may elect, whether by wire, radio or a combination thereof and whether or not by a single physical facility or route.

3. DEFINITIONS

-C- (Cont'd)

CIRCUIT - A channel used for the transmission of telephone and other communication services by means of an electrical or photonic, in the case of fiber optic-based transmission systems, communications path between two or more points of termination.

CLASS OF SERVICE - The various categories of service generally available to the customer such as business, residence, or semi-public service.

COIN TELEPHONE SERVICE - See "Public Telephone."

COMMUNICATIONS SYSTEM - Channels and other facilities which are capable, when not connected to exchange telecommunications service, of two-way communications between customer-provided terminal equipment or company stations. (D)

COMPANY – Wherever used in this Tariff, "Company" refers to North Dakota Telephone Company unless the context clearly indicates otherwise.

CONNECTING ARRANGEMENT - The equipment provided by the company to accomplish the direct electrical connection of customer-provided facilities with the facilities of the Company or of facilities of the Company with other facilities of the Company.

CONNECTING COMPANY - A corporation, association, partnership or individual owning or operating one or more exchanges and with which communications services are interchanged.

CONNECTOR - See "Switch."

CONNECTION CHARGE - See "Service Charges."

CONSTRUCTION CHARGE - A separate nonrecurring charge made for the construction of facilities in excess of those contemplated under the rates quoted in the Exchange Tariffs.

CONTINUOUS PROPERTY - The plot of ground, together with any building thereon, occupied by the customer that is not divided by public highways or separated by property occupied by others.

3. DEFINITIONS

-C- (Cont'd)

CONTRACT - The agreement between a customer and the Company under which service and facilities are furnished in accordance with the applicable provisions of the tariffs.

COST - The cost of labor and materials, which includes appropriate amounts to cover the Company's general operating and administrative expenses.

CUSTOMER - The individual, partnership, association or corporation which contracts for telephone service and is responsible for the payment of rates and charges and compliance with the rules and regulations of the Company.

CUSTOMER OWNED PAY TELEPHONE SERVICE - Customer-provided, customer owned coin or non-coin operated telephones at locations accessible to the public, e.g., stores, business places, including boarding or rooming houses, employee lounges and school or college buildings, where desired by the owner. Customer Owned Pay Telephone Service is also referred to as Customer Owned Coin Operated Telephone (COCOT) Service.

CUSTOMER PREMISES EQUIPMENT - Terminal Equipment located on the customer premise owned by the customer or owned by the Company or some other supplier and leased to the customer.

-D-

D-CHANNEL – See ISDN Data Channel (N)

DEMARCATION POINT - See Point of Demarcation.

DIAL SWITCHING EQUIPMENT - A unit of electromechanical or electronic switching used in a central office or in connection with a PBX system.

(M)

(M)

3. DEFINITIONS

-D- (Cont'd)

DID – See Direct Inward Dialing (N)

DID EXTENSION OR DID STATION. A DID Extension or DID Station is a specific phone within a PBX which can be called from the public telephone network without going through an attendant or auto-attendant.

DID NUMBER A phone number used to route calls from the public switched telephone network to a specific phone in a PBX (the DID extension). DID requires special DID Trunks or ISDN-PRI "two-way DID" trunks. Blocks of DID numbers are purchased from the Company for use on the PBX under Section XX of this tariff. The number of DID numbers usually substantially exceeds the number of trunks in the system. (N)

DIRECT CONNECTION - Connection of terminal equipment to the telephone network by means other than acoustic or inductive coupling. (M) (M)

DIRECT INWARD DIALING (DID). Direct Inward Dialing (DID) is the ability for an outside caller to dial to a PBX extension without going through an attendant or auto-attendant. The Company facilitates DID through translation of a number in a DID Block of numbers to the PBX or Key System trunk connecting the central office with the customer's PBX or Key System. DID is distinguishable from DID Trunks (see Direct Inward Dialing Trunk following). (N)

DIRECT INWARD DIALING TRUNK (DID TRUNK). A Direct Inward Dialing Trunk (DID Trunk) is a trunk or channel which can only receive calls. A group of telephone numbers (DID numbers) are associated with a given trunk group, however there is no one-to-one correspondence between the individual channels and these numbers. The PBX uses the DID number given it by the phone company to route the channel to the correct DID extension within the PBX extension. This allows some or all PBX stations to receive calls directly without going through an attendant (or auto attendant). (N)

DIRECTORY LISTING - A publication in the Company's alphabetical directory of information relative to a customer's name or other identification and telephone number. (M)

DISCONNECT NOTICE - The written notice sent to a customer notifying him that his service will be discontinued if charges are not satisfied by the date specified on the notice.

DROP WIRE - Wires used to connect the circuits of open wire, aerial or underground distribution facilities to the point where connection is made between the Company's network and the customer's premises with the standard Network Interfaces at the Point of Demarcation.

DUE NOTICE - See "Disconnect Notice." (M)

3. DEFINITIONS

-E-

ENTRANCE FACILITIES - Facilities extending from the point of entrance on private property to the premises on which service is furnished.

EXCHANGE - A geographical area established for the administration of telephone service in a specified area, called the "exchange area," which usually embraces a city, town or village and its environs. It may contain one or more central offices together with the associated plant, equipment and facilities used in furnishing communication service within that area.

EXCHANGE ACCESS LINE - A central office circuit or channel which provides access to the telephone network for Local Exchange Service and interexchange telephone services (also called Access Line or Exchange Line).

EXCHANGE AREA - The territory served by an exchange.

EXCHANGE LINE - A central office circuit or channel which provides access to the telephone network for Local Exchange Service and interexchange telephone services (also called Access Line or Exchange Line).

EXCHANGE SERVICE - The furnishing of facilities for the telephone communication within an exchange area in accordance with the regulations and charges specified in the Company's Exchange and Network Services Tariff. Exchange facilities are used to establish and maintain connection between an exchange station and the other telephone plant and facilities in the Exchange Area and also for access to interexchange service provided by the Company for Extended Area Service or by interexchange carriers for Toll Service (long distance service).

EXCHANGE STATION - A unit of service, complete with all instrumentalities (e.g., telephone set, connecting block, inside wiring, protection apparatus, drop or block wiring) and lines (circuits), so arranged as to permit sending and receiving messages through the exchange and long distance network.

EXTENDED AREA SERVICE - Interexchange telephone service furnished at a flat rate between two or more exchange areas.

EXTRA LISTING - See "Additional Listing."

3. DEFINITIONS

-F-

FCC –Federal Communications Commission

FLAT-RATE SERVICE - Service furnished at a fixed monthly charge including Extended Area Service where applicable.

FOREIGN ATTACHMENT - Equipment or facilities not owned or furnished by the Company which are attached or connected to, and used with, exchange telephone service.

FOREIGN CENTRAL OFFICE - Any central office other than that which serves the area in which the customer is located.

FOREIGN EQUIPMENT - See "Foreign Attachment."

FOREIGN EXCHANGE LINE MILEAGE - The measurement applying to that portion of a central office line connecting a customer with a foreign central office, from the common boundary line to the customer's station, for which a monthly charge is made in addition to the base rate for exchange service.

FOREIGN EXCHANGE SERVICE - Telephone exchange service furnished to a customer through a central office of an exchange other than the exchange regularly serving the area in which the customer is located.

-G-

GRADE OF SERVICE - The term used in describing exchange service with respect to the number of main terminals which may be connected to one central office line.

GRANDFATHERED SERVICE (also called OBSOLETE SERVICE) - Grandfathered Services, also called Obsolete Services, are services and/or rate structures provided by the Company to customers who ordered the service under a previous tariff that are not available for ordering under this Tariff. Grandfathered Services and related rate structures are available only on a continuing basis to customers who ordered the service when the service and/or rate structure was included in an effective tariff of the Company or the Company's predecessor.

-H-

HARM - Harm consists of hazards to personnel, damage to Company equipment, and impairment of service to persons other than the user of the customer-provided equipment. Types of harm include, but shall not be limited to, voltages dangerous to personnel, destruction of or damage to equipment, induced noise or cross talk, incorrect dial pulsing, failure of supervision, false answer, incorrect billing, absence of voice band transmission path for call progress signals, and loss of capability to answer an incoming call.

3. DEFINITIONS

-I-

INDIVIDUAL LINE - An exchange line necessary for the connection of a telephone set.

INDUCTIVE CONNECTION - Electromagnetic coupling between customer-provided equipment and Company equipment by means of mutual inductance between an inductor in the Company equipment and a customer provided inductor external to the Company equipment.

INITIAL SERVICE PERIOD - The minimum length of time for which a customer is obligated to pay for service, facilities and equipment whether or not retained by the customer for such minimum length of time.

INSTALLATION CHARGE - A nonrecurring charge made at the time of installation of communications service or equipment which may apply in place of or in addition to service charges and other applicable charges for service or equipment.

INTERCOMMUNICATIONS - An arrangement involving two or more stations which enables a user to signal and connect with other stations in the system.

INTERCONNECTION - The method by which telecommunications facilities of the Company are arranged to transmit to, or receive information from, customer-provided equipment.

INTEGRATED SERVICES DIGITAL NETWORK (ISDN) - Integrated Services Digital Network (ISDN) is a public network-based set of communications services that make it possible to send, receive, and modify information using regular telephone facilities. ISDN provides end-to-end digital communications and gives the ability to transmit data and voice over the same telephone line simultaneously. This functionality is provided via channelized transport facilities. The ISDN architecture provides for Primary Rate Interface (PRI) which is typically used when a customer wants to connect large quantities of digital lines to the network. (N)

INTEGRATED SERVICES DIGITAL NETWORK-PRIMARY RATE INTERFACE (ISDN-PRI) - Integrated Services Digital Network-Primary Rate Interface (ISDN-PRI) uses the ISDN architecture to provide the customer with the capability to transmit voice and data simultaneously over the same digital facility. Under various optional arrangements, ISDN-PRI provides the customer with access to Circuit-Switched Voice Services and Circuit-Switched Data Services. (N)

(M)

(M)

3. DEFINITIONS

-I- (Cont'd)

INTEREXCHANGE CARRIER (IXC) - A carrier providing interexchange service, also called toll service or long distance service, under the IXC's rates terms and conditions as documented in a tariff, contract or other document. (M)

INTEREXCHANGE MESSAGE – Interexchange messages are calls between exchange lines in different exchange areas. Interexchange messages include both calls between exchanges included in an Extended Area Service arrangement provided by the Company and Toll Messages carried by interexchange carriers.

INTEREXCHANGE SERVICE – Interexchange service is telecommunications service between exchange lines in different exchange areas. Interexchange service includes calls included in flat rate charges for Extended Area Service provided by the Company as established in this Exchange and Network Services Tariff and Toll Messages provided by interexchange carriers (IXCs). For customer calls made to a rate center not included in the Base Rate Area for the customer's exchange or under Extended Area Service associated with the customer's exchange, the Company will route customer calls to the appropriate interexchange carrier based on the type of call. For customer's dialing 1+ calls who have presubscribed their line to a Presubscribed Interexchange Carrier or Carriers for InterLATA and IntraLATA service, the call will be routed to the customer's Presubscribed Interexchange Carrier. (M)

ISDN BEARER CHANNEL (B CHANNEL) - The B Channel is a bi-directional synchronous channel capable of supporting digital transmission speeds of 64 kilobits per second (kbps). Each B Channel of an ISDN-PRI may carry circuit-switched voice and circuit-switched data. (N)

ISDN DATA CHANNEL (D CHANNEL) - The D Channel is a 64 kbps digital signaling channel that carries signaling and control for the B Channels. The D Channel provides Common Channel signaling whereby one channel for a link is used for signaling to control and manage traffic on all channels on the link. (N)

3. DEFINITIONS

-J-

JACK - Common term for communications terminals found at the end of cables. Also known as modular jack.

JOINT-USER SERVICE - An arrangement whereby an individual, firm or corporation whose telephone needs are not such as to justify the provision of separate customer service is permitted to use the service of a customer.

-K-

KEY SYSTEM (or KEY TELEPHONE SYSTEM) - A key system, also called a key telephone system, is customer premises equipment comprising terminals and equipment that provide immediate access from all terminals to a variety of telephone services without attendant assistance. For purposes of this Tariff, references to key systems are for key systems connected to a Company central office by a key business trunk or trunks for purposes of business class Local Exchange Service.

KEY BUSINESS LINE (or TRUNK) - A key business line is or trunk is a trunk providing local exchange service through connection to a key telephone system located at the customer's premises.

-L-

LINE CONSTRUCTION CHARGES - The charges applied for additions to existing central office line facilities outside a Base Rate Area to provide service to business or residence customers.

LINE EXTENSION - A circuit extending from a main terminal to an auxiliary terminal such as a line from a PBX switchboard to a telephone set or to a key system.

LINE EXTENSION MILEAGE - The charges made for off-premises circuit extending from the main terminal.

LINESKEEPER - Maintenance agreement where company will maintain customer's inside wiring for a monthly fee.

LOCAL CHANNEL - That portion of a channel which connects a station to an inter-exchanging channel or channel connecting two or more stations within an exchange area.

3. DEFINITIONS

-L- (Cont'd)

LOCAL EXCHANGE SERVICE - Telephone communications within a local service area in accordance with the provisions of the Company's Exchange and Network Services Tariff.

LOCAL MESSAGE - A completed communication between customer's stations located within the same exchange area or local service area.

LOCAL SERVICE AREA - The area within which telephone service is furnished under a specific schedule of rates without the application of specific charges for each message.

LONG-DISTANCE MESSAGE - See "Toll Message".

LONG-DISTANCE SERVICE – See "Toll Service."

-M-

MAIN TERMINAL - The termination of a central office line on a customer's premises, usually at a protector.

MAINTENANCE OF SERVICE CHARGE - A charge applied when the use of customer-provided equipment or facilities causes impairment or harm to the Company's service or facilities.

MEASURED SERVICE - A local exchange service whereby a customer is billed a flat monthly charge and a charge for local and EAS calls based on usage.

MESSAGE - A completed customer call.

MILEAGE - A measurement upon which charges are computed. See "Line Extension Mileage".

MINIMUM CONTRACT PERIOD - The minimum length of time for which a customer is obligated to pay for service, facilities and equipment whether or not retained by the customer for such minimum length of time.

MOBILE TELEPHONE SERVICE - A communication service provided by means of radio frequencies through a land radio telephone base station. Connections may be established between a wire station and a mobile or fixed unit or between two mobile or fixed units.

MODULAR CONNECTING DEVICE - A type of jack and plug arrangement as defined by the FCC.

3. DEFINITIONS

-N-

NETWORK INTERFACE - The Network Interface is a standard jack or equivalent provided by the Company as a part of exchange access for the connection of customer inside wire and/or equipment to the telephone network. The Network Interface will be located at the Point of Demarcation.

NETWORK CONTROL SIGNALING UNIT - The terminal equipment furnished, installed and maintained by the Company for the provision of network control signaling.

NONPUBLISHED NUMBER – A nonpublished number is a number omitted from both the telephone directory and Directory Assistance records at the request of the customer.

NONPUBLISHED SERVICE - Nonpublished service is the omission of a customer's listing from both the telephone directory and Directory Assistance records. Listings so omitted from both the telephone directory and Directory Assistance records are referred to as nonpublished numbers.

NONREGULATED SERVICES – Nonregulated services are services provided by the Company that are not subject to rate regulation by the North Dakota Public Service Commission or Federal Communications Commission. Available nonregulated services may be ordered by the customer and the Company may bill the Customer on the same bill as that for Local Exchange Service and other charges billed under the Company's Exchange and Network Services Tariff. Notwithstanding the nonregulated status of services, billing by the Company of such services shall be in compliance with all applicable Federal Communications Commission and North Dakota Public Service Commission rules and regulations governing billing in addition to the regulations of the Company's Exchange and Network Services Tariff respecting billing and payment.

NOTICE - See "Disconnect Notice".

NRC - See "Nonrecurring Charge".

(M)

(M)

3. DEFINITIONS

-O-

ONE-WAY INBOUND TRUNK - A one-way inbound trunk provides the customer with a single analog connection which can carry one-way inbound traffic. (N)

ONE-WAY OUTBOUND TRUNK - A one-way outbound trunk provides the customer with a single analog or, if provided over ISDN, a digital connection which is restricted to carry outbound traffic only. (N)

OPERATOR SERVICES - Operator services are telecommunications services that include, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interexchange telephone call through a method other than 1) automatic completion with billing to the telephone from which the call originated or 2) completion through an access code used by the consumer, with billing to an account previously established by the consumer. Operator services include calls completed by use of 0+, 0- or 00 methods of access to the operator service provider including third number billed calls, collect calls and calling card calls. (M)

OPERATOR SERVICES PROVIDER (OSP) - A common carrier that provides operator services from public phones, including payphones and hotel/motel phones. (M)

3. DEFINITIONS

-P-

(D)

PBX - See Private Branch Exchange (PBX) Service

POINT OF DEMARCATION - The Point of Demarcation and/or interconnection between Company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. Company-installed facilities at, or constituting, the Point of Demarcation shall consist of wire or a jack conforming to Subpart F of Part 68 of the Federal Communications Commission's rules.

PREMISES - The buildings, portion or portions of a building on continuous property used and/or occupied at one time by the customer in the conduct of his business or as a residence. Where floor space in adjoining buildings is made continuous at one or more floor levels, all floor space in both buildings is considered as the same premises in so far as the customer who uses and occupies such continuous floor space is concerned, the two buildings otherwise being considered as separate buildings.

PRIVATE BRANCH EXCHANGE (PBX) SERVICE - A switching system that provides internal telephone communication between lines located on a customer's premises, or the customer's off-premises location, as well as connection to the telecommunications network through PBX trunks to the Company's central office.

PRIVATE LINE - A circuit provided to furnish communication between two or more terminals directly connected to it. Such terminals do not have access to the general exchange and interexchange networks. The Company provides private line service under the rates, terms and conditions established in the North Dakota Telephone Company Private Line Transport Services Tariff.

PROTECTOR - A protector, also called a protector block, is a device connected to an Exchange Line to protect connected Company equipment, customer premises equipment and inside wire from over-voltage and/or over-current. Hazardous voltages and currents are shunted to ground.

PUBLIC TELEPHONE - An exchange station, either attended or equipped with a coin-collecting device, designed and placed in general locations for use by the public.

3. DEFINITIONS

-R-

REGISTERED TERMINAL EQUIPMENT - Terminal equipment registered in accordance with FCC regulations which may be connected to access services of the Company.

RESIDENCE SERVICE - Telephone service furnished to customers when the actual or obvious use is for domestic purposes.

RURAL AREA - See "Suburban Area.

-S-

SEMIPUBLIC TELEPHONE - An exchange station, equipped with a coin-collecting device, designed for a combination of customer and public use at locations more or less public in character.

SERVICE CHARGES - The charges a customer is required to pay for establishing telephone service. (D)

STATION - A specific unit of service, complete with all instrumentalities (e.g., telephone set, connecting block, inside wiring, protection apparatus, drop or block wiring) and lines (circuits), so arranged as to permit sending and receiving messages through the exchange and long distance network, for which a specific identifying number is assigned by the telephone company.

SUBSCRIBER - See "Customer."

SWITCH - A unit of dial switching equipment which provides interconnection between station lines or trunks.

SWITCHBOARD - See "Private Branch Exchange System".

3. DEFINITIONS

-T-

TARIFF - The rates, charges, rules and regulations adopted and filed by the Company with the North Dakota Public Service Commission.

TELEPHONE COMPANY - See "Company".

TERMINATION CHARGE - A charge applied under certain conditions when a contract for service is terminated by the customer before the expiration of the minimum contract period.

TERMINAL - The point at which a telephone line ends, or is connected to other circuits of a network.

TERMINAL EQUIPMENT ACCESSORIES - Devices, apparatus and their associated wiring, provided by a customer, which do not constitute a communications and which when connected to the telecommunications system of the Company are connected electrically, acoustically or inductively. (D)

TOLL CENTER - A telephone switching center at which the operations function (message timing, switching and recording) takes place in connection with the provision of toll message service.

TOLL LINE - A circuit used exclusively for the transmission of messages between points located in different exchange areas where specific charges for each such message are applicable.

3. DEFINITIONS

-T- (Cont'd)

TOLL MESSAGE – An interexchange message between exchange lines in different exchange areas and furnished by an interexchange carrier under the applicable Toll Tariff or other rates, terms and conditions document or contract applicable to the interexchange service. Toll Messages are also called long distance calls.

A. Person-to-Person Toll Message: A toll message in which the user stipulates a desire for communication with a specified person or extension station at a specified location.

B. Station-to-Station Toll Message: A toll message in which the user stipulates a desire for communication only with a specified telephone or switchboard.

C. Collect Message: A toll message in which the charge may be reversed provided the charge is accepted at the called station. A collect call may be billed to a Credit Card or third-party number. In case of a public or semi-public coin telephone, the charges must be billed to a Credit Card or third-party number, or the call may be reoriginated from the called station.

D. Third Number Message: A toll message in which associated charges are billed neither to the calling station nor to the called station but rather to a station not involved in the message.

E. Calling Card Message: A toll message in which associated charges are billed to a credit card number assigned by a telephone company and issued to either the called or calling party.

TOLL RATE - The initial period charge prescribed for a toll message usually based upon a minimum initial period and distance between exchanges.

TOLL SERVICE - Toll service (long distance service or interexchange service) is telephone service rendered by an interexchange carrier which is furnished between customers and different exchange areas in accordance with the rates and regulations specified in the interexchange carrier's applicable tariff or other rates, terms and conditions document or contract.

TRUNK LINE - A circuit over which customers' messages are sent between two central offices or between a central office and a PBX system

3. DEFINITIONS

-T- (Cont'd)

TWO-WAY ISDN DID TRUNK - A two-way ISDN trunk is an ISDN B-Channel equipped for direct inward dialing. Under ISDN PRI, the DID information signaling is transmitted over the D-Channel. Two-way ISDN DID trunks allow for both inward dialed calls and outward dialed calls.

TWO-WAY TRUNK - A two-way trunk interfaces to a customer's phone system providing shared access to the phone system's users for placing outgoing calls, and receiving incoming calls. When the customer picks up a telephone attached to the phone system, their PBX or Key System will seize an analog two-way trunk to place the outgoing call. When a call is incoming, it can use the same trunks (not simultaneously) so that the customer can receive the call. Trunks do not have any features associated with them — the customer gets these features from their equipment.

-U-

UNDERGROUND SERVICE CONNECTION - A customer's "drop" wire, which is run underground from a pole line or an underground distributing cable.

UNLISTED NUMBER – An unlisted number is a listing omitted from the telephone directory at the request of the customer. Unlisted numbers may be obtained from the Directory Assistance Operator.

UNLISTED SERVICE - Unlisted service is the omission of a customer's listing from the telephone directory only. It may be obtained from the Directory Assistance Operator. Listings so omitted from the telephone directory are referred to as unlisted numbers.

(D)

4. LOCAL EXCHANGE SERVICE

INDEX

SUBJECT	SECTION	PAGE	
Business Service	4.4	3	
Classes of Service	4.4	3	
Customer Owned Pay Telephone Service	4.4	4	(D)
Enhanced Lifeline for Residents of Tribal Lands	4.8	15	
Exchange Rates	4.7	8	
Expanded Link Up for Residents of Tribal Lands	4.8	14	
Extended Area of Service Component	4.5	7	
Lifeline	4.8	12	
Link Up	4.8	11	
Local Exchange Rate Component	4.4	3	(M)
North Dakota Telephone Company Exchanges	4.3	2	(T)
Rate Groups	4.4	5	
Rate Regions	4.3	2	
Residence Class	4.4	3	
Semipublic Telephone Service	4.4	4	
Taxes	4.6	7	
Telephone Assistance Programs	4.8	11	

4. LOCAL EXCHANGE SERVICE

4.1 GENERAL

This Tariff section identifies the areas where North Dakota Telephone Company provides Local Exchange Services. This section lists monthly rates applicable to each exchange. (T)

4.2 LOCAL EXCHANGE SERVICE RATE COMPONENTS

The charges for Local Exchange Service for each Company exchange include a Local Exchange Component and, if applicable, an Extended Area of Service (EAS) Component. The Local Exchange Component is described at Section 4.4 following. The EAS Component is described at Section 4.5 following. For those exchanges with an EAS Component, the EAS charge is mandatory and the customer's charges from the Company for Local Exchange Service will include both the Local Exchange Component and the EAS Component.

4.3 NORTH DAKOTA TELEPHONE COMPANY EXCHANGES

The following indicates the exchanges for NDTC: (T)

Cando	Balta
Crary	Drake
Devils Lake	Esmond
Ft. Totten	Fessenden
Hampden	Harvey
McVille	Knox
New Rockford	Leeds
Oberon	Maddock
Pekin	Minnewaukan
Penn	Rugby
Sheyenne	Velva
Starkweather	
Tolna	
Warwick	
Webster	

4. LOCAL EXCHANGE SERVICE

4.4 LOCAL EXCHANGE COMPONENT

The Local Exchange Component is determined by the class of service provided by the Company to the customer for each exchange. (T)

A. Classes of Service

Rates for the Local Exchange Component of Local Exchange Service are based on the class of service provided by the Company to the customer. Local Exchange Service is provided by the Company under two major classes of service as follows:

Business
Residence

The above classes of service are described at Section 2.28 of this Tariff.

B. Business Services

In addition to the classes of service listed in Section 4.4.A preceding, the Business class of service includes the following categories of service:

1. Individual Business Line

   A Business Individual Line is a line providing Local Exchange Service to a customer classified as a Business under Section 2.28 of this Tariff when the line is not connected to a Key System or PBX.

2. Business Trunk (T)

   A Business Trunk is a line providing Local Exchange Service through connection to a PBX or other terminal equipment located at the customer's premises.

3. Key Business Line

   A Key Business Line is a trunk providing Local Exchange Service through connection to a key telephone system located at the customer's premises.

4. LOCAL EXCHANGE SERVICE

4.4 LOCAL EXCHANGE COMPONENT (CONT'D)

C. Semipublic Telephone Service and Customer Owned Pay Telephone Service

In addition to the Residence and Business classes of service, the Company provides local exchange connections for Semipublic Telephone Service and Customer Owned Pay Telephone Service. (T)

1. Semipublic Telephone Service [1] (T)

   Semipublic Telephone Service is a line provided by the Company for Local Exchange Service connecting to the central office an exchange station equipped with a coin-collecting device designed for a combination of customer and public use at locations more or less public in character. Regulations respecting provision of Semipublic Telephone Service Lines are described at Section 5.1 following. Rates for Semipublic Telephone Service Lines are listed at Section 4.7 following.

2. Customer Owned Pay Telephone Service

   Customer Owned Pay Telephone Service is a line provided by the Company for Local Exchange Service connecting a Customer Owned Pay Telephone to the central office. Regulations respecting provision of Customer Owned Pay Telephone Service Lines are described at Section 5.2 of this Tariff following. Rates for Customer Owned Pay Telephone Service Lines are listed at Section 4.7 following.

[1] Semipublic Telephone Service is no longer offered by NDTC. (T)

4. LOCAL EXCHANGE SERVICE

RESERVED FOR FUTURE USE

4. LOCAL EXCHANGE SERVICE

RESERVED FOR FUTURE USE

4. LOCAL EXCHANGE SERVICE

4.5 EXTENDED AREA OF SERVICE COMPONENT

In addition to the Flat Rate Calling Scope covered by each of the Company's exchanges, certain exchanges include Extended Area Service (EAS) whereby interexchange service is provided by the Company between two or more exchange areas at a flat rate. EAS flat rate charges are in addition to the Local Exchange Component rate.

1. Establishing Routes

   A new route between contiguous exchanges may be established by vote of seventy percent of the total number of customers in both exchanges. When one of the exchanges belongs to another company both companies must agree to the route before the vote will be taken.

2. Discontinuing Routes

   An EAS route will be discontinued by vote of a majority of the total number of customers in both exchanges.

3. Flat EAS Rates do not apply to local measured service.

4.6 TAXES

State, County and local taxes apply in addition to the rates set forth in this Tariff. (See also General Regulations – Section 2)

4. LOCAL EXCHANGE SERVICE

4.7 RATES

A. Local Exchange Component

The following rate table contains the Local Exchange Component rates for flat rate local service. The Local Exchange Component is described at Section 4.4 preceding. In addition to the Local Exchange Component, the charges for Local Exchange Service for some Company exchanges include an Extended Area of Service (EAS) Component (see Section 4.2 preceding). (N)

	Individual Line
BUSINESS SERVICE	
Individual Line	$ 27.87
Business Trunk	$ 43.75
Key Business Line	$ 27.87
RESIDENCE SERVICE	
Individual Line	$ 13.12
2-Party-Grandfathered	-----
CUSTOMER OWNED PAY TELEPHONE SERVICE	$ 27.87

(N)

B. Extended Area of Service (EAS) Component

The following rate table contains the Extended Area of Service (EAS) Component rates applicable to each exchange. The EAS Component is described at Section 4.5 preceding. For exchanges with EAS charges indicated on the table, EAS charges are a mandatory component of charges for Local Exchange Services.

4. LOCAL EXCHANGE SERVICE

4.7 RATES (CONT'D)

B. Extended Area of Service Component (Cont'd)

Originating Exchange Name	Business	Residential	Trunk	EAS Points
NDTC East Exchanges				
Cando	$ -	$ -	$ -	None
Crary	$ 7.80	$ 3.90	$ 7.80	Devils Lake
Devils Lake	$ 6.20	$ 3.10	$ 6.20	Crary, Ft. Totten, Starkweather, Penn, Warwick, Webster
Ft. Totten	$ 7.40	$ 3.70	$ 7.40	Devils Lake, Warwick
Hampden	$ 1.60	$ 0.80	$ 1.60	Starkweather
McVille	$ 1.90	$ 0.95	$ 1.90	Pekin, Tolna
New Rockford	$ 1.40	$ 0.70	$ 1.40	Sheyenne
Oberon	$ 1.90	$ 0.95	$ 1.90	Sheyenne
Pekin	$ 7.00	$ 3.50	$ 7.00	McVille, Tolna
Penn	$ 6.20	$ 3.10	$ 6.20	Devils Lake
Sheyenne	$ 4.90	$ 2.45	$ 4.90	New Rockford, Oberon
Starkweather	$ 9.10	$ 4.55	$ 9.10	Devils Lake, Hampden, Webster
Tolna	$ 4.30	$ 2.15	$ 4.30	McVille, Pekin
Warwick	$ 8.40	$ 4.20	$ 8.40	Devils Lake, Ft. Totten
Webster	$ 8.80	$ 4.40	$ 8.80	Devils Lake, Starkweather
NDTC West Exchanges				
Balta	$ 5.38	$ 2.69	$ 8.07	Rugby
Drake	$ 0.82	$ 0.41	$ 1.23	Butte
Esmond	$ -	$ -	$ -	None
Fessenden	$ 4.04	$ 2.03	$ 6.07	Harvey
Harvey	$ 1.63	$ 0.82	$ 2.45	Fessenden, Martin
Knox	$ 5.38	$ 2.69	$ 8.07	Rugby
Leeds	$ 0.82	$ 0.41	$ 1.23	York
Maddock	$ -	$ -	$ -	None
Minnewaukan	$ -	$ -	$ -	None
Rugby	$ 1.63	$ 0.82	$ 2.45	Balta, Knox
Velva	$ 2.45	$ 1.23	$ 3.68	Butte, Sawyer, Karlsruhe

4. LOCAL EXCHANGE SERVICE

RESERVED FOR FUTURE USE

4. LOCAL EXCHANGE SERVICE

4.8 TELEPHONE ASSISTANCE PROGRAMS

A. Link Up Program

1. North Dakota residents who are eligible to receive assistance under one of the four major economic assistance programs administered by the Department of Human Services including Public Assistance (formerly Aid to Families with Dependent Children), Food Stamps, Energy Assistance, or Medicaid may qualify for the Link Up Program.

   The Link Up Program consists of the following:

   a. It is a reduction in the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence.

   b. The reduction shall be 50% of the customary charge or $30.00, whichever is less.

   c. The Link Up Program includes a deferred schedule for payment of the charges assessed for commencing service, for which the subscriber does not pay interest. The reduced Link Up connection charge will be payable in the first billing cycle following connection of service.

   d. Charges assessed for commencing service included any charge customarily assessed to connect a subscriber to the network. The charges do not include any permissible security deposit requirement.

   e. The Link Up Program allows a subscriber to receive the benefit of the Link Up Program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link Up assistance was provided previously.

4. LOCAL EXCHANGE SERVICE

4.8 TELEPHONE ASSISTANCE PROGRAMS (CONT'D)

B. Lifeline Program

North Dakota residents who are eligible to receive assistance under one of the four major economic assistance programs administered by the Department of Human Service including Public Assistance (formerly Aid to Families with Dependent Children), Food Stamps, Energy Assistance or Medicaid may qualify for the Lifeline Program.

The Lifeline Program consists of the following:

a. Lifeline means retail residential local telecommunications service for which qualifying low-income subscribers pay reduced charges.

b. Lifeline service includes voice grade access to the public switched network, local usage, dual tone multi-frequency signaling (Touch Tone) or its functional equivalent, single-party service, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, primary published directory listing, and toll limitation (toll blocking).

c. Toll limitation shall be offered at no charge to a qualifying low-income subscriber when that subscriber subscribes to Lifeline assistance.

d. A service deposit shall not be collected in order to initiate Lifeline service if the qualifying low-income subscriber voluntarily elects toll blocking.

e. North Dakota Telephone Company will not disconnect Lifeline service for non-payment to toll (long distance) charges. (See section 2 regarding disconnections).

4. LOCAL EXCHANGE SERVICE

4.8 TELEPHONE ASSISTANCE PROGRAMS (CONT'D)

B. Lifeline Program (Cont'd)

f. Lifeline credits applied to retail residential local telecommunication service rates are as follows:

	NDTC*	Code	NDTC**	Code	(T)
Federal End User Common Line Charge (Subscriber Line Charge) Waiver[1]	$6.50	LFLNC	$6.50	LFLNC	
Interstate Lifeline Credit	$1.75	LLCRE	$2.33	LLCRW	
Intrastate Lifeline Credit			$1.17	LLCR	

[1] The Company bills the Federal Subscriber Line Charge (Subscriber Line Charge) pursuant to National Exchange Carrier Association (NECA) Tariff F.C.C. No. 5, for which the Company is an issuing carrier. The Federal End User Common Line Charge (Subscriber Line Charge) Waiver amount will be adjusted prospectively for any changes in the End User Common Line-Residence rate in National Exchange Carrier Association (NECA) Tariff F.C.C. No. 5. (T)

** NDTC Exchanges: Cando, Crary, Devils Lake, Fort Totten, Hampden, McVille, New Rockford, Oberon, Pekin, Penn, Sheyenne, Starkweather, Tolna, Warwick, Webster.

(T)

** NDTC Exchanges: Balta, Drake, Esmond, Fessenden, Harvey, Knox, Leeds, Maddock, Minnewaukan, Rugby,Velva.

4. LOCAL EXCHANGE SERVICE

4.8 TELEPHONE ASSISTANCE PROGRAMS (CONT'D)

C. Expanded Link Up for Eligible Residents of Tribal Lands

1. North Dakota residents of Tribal lands who are eligible to receive Enhanced Lifeline for residents of Tribal lands under Section 4.8.D, and make the certification required for Enhanced Lifeline are also eligible to receive Expanded Link Up.

   a. Expanded Link Up provides eligible residents of Tribal lands with an additional benefit of up to $70.00 in addition to regular Link Up. The additional benefit will apply towards 100% of the charges assessed for commencing service at a subscriber's principal place of residence between $60.00 and $130.00. Expanded Link Up does not apply to connection charges that are less than $60.00.

   b. For purposes of Expanded Link Up, charges assessed for commencing services are those defined for regular Link Up at Section 4.8.A preceding Link Up Program Section 1.e with the addition of any applicable Line Construction Charges under Section 5.8 of this Tariff following.

2. Expanded Link Up Credit Amounts-No Line Construction Charges

Exchange With Tribal Land	Credit
Fort Totten	$0.00
Warwick	$0.00
Sheyenne	$0.00
Tolna	$0.00
Oberon	$0.00

(T)

Note: North Dakota Telephone Company's connection charges, are below $60.00 when line construction is not required, thus the additional Link Up support amounts is $0.00 for all exchanges.

3. Expanded Link Up Credit Amounts-With Line Construction Charges

Eligible residents of Tribal lands who are required to pay Line Construction Charges pursuant to Section 5.8 of this Tariff following, will receive Expanded Link Up equal to $70.00, in addition to the regular Link Up under Section 4.8 preceding. Expanded Link Up shall equal 100% of the portion of combined connection/line construction applicable to the subscriber that exceed $60.00 and do not exceed $130.00. Regulations and determination of charges applicable to Line Construction are provided at Section 5.8 of this Tariff following.

4. LOCAL EXCHANGE SERVICE

4.8 TELEPHONE ASSISTANCE PROGRAMS (CONT'D)

D. Enhanced Lifeline for Eligible Residents of Tribal Lands

1. North Dakota residents of Tribal lands who are eligible to receive one of the following thirteen assistance programs are eligible to receive Enhanced Lifeline for eligible residents of Tribal Lands.

   Major assistance programs administered by the North Dakota Department of Human Service:

   Public Assistance (formerly Aid to Families with Dependent Children)
   Food Stamps
   Energy Assistance
   Medicaid

   Other programs:

   Federal public housing assistance
   Bureau of Indian Affairs general assistance
   Tribally administered Temporary Assistance for Needy Families
   Head Start (only those meeting its income qualifying standard)
   National School Lunch Program's free lunch program
   SSI
   Food Distribution Program on Indian Reservations
   Special Nutrition Program for Women, Infants, and Children (WIC)
   ND Healthy Steps (CHIP)

   a. The effective date for Enhanced Lifeline shall be residential service periods beginning on or after October 1, 2000.

   b. A resident of Tribal lands is a consumer living on a reservation as defined by Section 20.1(v) of the Bureau of Indian Affairs regulations (25 C.F.R. § 20.1(v)).

   c. Enhanced Lifeline for eligible residents of Tribal lands provides additional Lifeline support above the Lifeline received under the regular Lifeline program described in Section 4.8.B, of up to $25.00 per month. The amount of Enhanced Lifeline shall equal the tariffed monthly charges for basic local residential service less the Interstate Lifeline Credit or Intrastate Lifeline Credit received pursuant to the regular Lifeline program provided that the combined regular Lifeline and Enhanced Lifeline credits do not bring the basic local residential rate for a single residential line below $1.00 per month and the total Enhanced Lifeline credit does not exceed $25.00 per month.

4. LOCAL EXCHANGE SERVICE

4.8 TELEPHONE ASSISTANCE PROGRAMS (CONT'D)

D. Enhanced Lifeline for Eligible Residents of Tribal Lands (Cont'd)

1. (Cont'd)

   d. Enhanced Lifeline benefits apply to the primary flat local residential access charges, including applying to nonoptional extended area of service charges and touch-tone charges.

2. In order to receive Enhanced Lifeline for residents of Tribal lands, a consumer must complete and sign a certification form provided by North Dakota Telephone Company as described below. The Enhanced Lifeline certification form will include the following:

   a. a statement that the consumer is certifying the information conveyed in the completed certification under penalty of perjury,

   b. indication that the consumer is receiving benefits under one of the programs listed under Section 4.8.D.1 for Enhanced Lifeline,

   c. indication that the consumer lives on Tribal lands, and

   d. a statement that the consumer agrees to notify North Dakota Telephone Company if the consumer ceases to participate in the program or programs.

3. In the event a consumer qualifies for Enhanced Lifeline but does not qualify for regular Lifeline under the regular Lifeline Program, the consumer shall also receive, in addition to Enhanced Lifeline, a Lifeline Credit equal to the amount of the federal end user charge, currently $6.50 per month, plus an additional $1.75 regular Lifeline credit for basic local service.

4. Enhanced Lifeline Credit Amounts

Exchange with Tribal Land	Subscriber Has Touch Tone	
Fort Totten	$14.07	
Warwick	$14.57	(N)
Sheyenne	$12.82	
Tolna	$12.52	
Oberon	$11.32	

5. GENERAL SERVICES

INDEX

SUBJECT	SECTION	PAGE
Additional Listings, Directory	5.3	8
Custom Calling Services	5.13	23
Custom Local Area Signaling Services (CLASS)	5.16	29
Customer Owned Pay Telephone Service	5.2	4
Directory Listings	5.3	7
Employees' Telephone Service	5.4	10
Exchange Service Extension (Point to Point)	5.9	18
Foreign Exchange Service	5.5	11
Foreign Listings, Directory	5.5	12
Home Intercall Service	5.6	14
Hunting Services	5.10	19
Joint User Service	5.7	15
Line Construction Charges	5.8	16
Listings, Directory	5.3	7
Nonpublished Number	5.3	9
Nonpublished Service	5.3	9
Primary Listings, Directory	5.3	8

5. GENERAL SERVICES

INDEX

SUBJECT	SECTION	PAGE
Seasonal Service	5.11	21
Selective Class of Call Screening	5.12	22
Semipublic Telephone Service	5.1	3
Special Billing Number Service	5.14	26
Toll Restriction Service	5.15	27
Touch Tone Service	5.17	33
Unlisted Number	5.3	8
Unlisted Service	5.3	8
Vacation Rate Service	5.18	34
Voice Mail Service	5.19	35

5. GENERAL SERVICES

5.1 SEMIPUBLIC TELEPHONE SERVICE

A. General

Semipublic Telephone Service [1] may be furnished where there is a shared use of the service by the customer and the general public. (T)

B. Conditions

1. Semipublic Telephone Service may be provided at the option of the Company where the use is shared by the customer and general public, and where the customer permits such signs to be placed as the Company deems necessary.

2. Telephone sets, without dials, for answering incoming calls only, may be provided.

3. One directory listing per Semipublic Telephone may be provided without additional charge.

(D)

[1] Semipublic Telephone Service is no longer offered by NDTC.

5. GENERAL SERVICES

5.2 CUSTOMER OWNED PAY TELEPHONE SERVICE

A. General

1. Customer Owned Pay Telephone Service will apply for use with customer-provided coin operated or non-coin operated telephones at locations accessible to the public, e.g., stores, business places, including boarding or rooming houses, employee lounges and school or college buildings, where desired by the owner of the premises.

2. Only one customer-provided coin operated telephone may be connected to each Company access line.

3. Joint User Service may be furnished in connection with Customer Owned Pay Telephone Service.

4. Directory listings may be provided under the regulations governing the furnishing of listings for business main line subscribers. However, listings (not indicated as a business or profession) provided in connection with Customer Owned Pay Telephone Service furnished at boarding or rooming houses or at other locations where the party desiring the additional listing resides, are furnished under the regulations covering the furnishing of listing in connection with residence main line service.

B. Responsibility of the Customer

1. The customer shall be responsible for the installation, operation and maintenance of any customer-provided coin operated or non-coin operated telephones used in connection with this service.

2. The customer shall be responsible for the payment of charges as provided in Section 2, GENERAL REGULATIONS, for visits by a Company employee to the customer's premises when a service difficulty or trouble report results from the use of customer-provided coin operated telephones.

3. The customer shall be responsible for payment of charges for all calls originating from or accepted at this type of service.

4. Customer-provided coin operated telephone and non-coin operated telephones must be registered in compliance with Part 68 of the FCC Registration Program or connected behind FCC registered coupler.

5. GENERAL SERVICES

5.2 CUSTOMER OWNED PAY TELEPHONE SERVICE (CONT'D)

B. Responsibility of the Customer (Cont'd)

5. Such customer-provided coin operated telephones and non-coin operated telephones must have the following operational characteristics:

   a. Must be able to access the Company operator (0-level) at no charge and without using a coin where 911 Emergency Service is not available.

   b. Must be able to access 911 Emergency Service, where available, at no charge, without using a coin, and, when such instrument can only access 911 Emergency Service by use of a dialing sequence other than 911. Must prominently display on such instrument, the appropriate dialing sequence to access 911 Emergency Service, where available.

   c. Must be able to access all interexchange carriers unless the customer is an interexchange carrier in which case access may be limited to that owner.

   d. Must comply with all applicable federal, state and local laws and regulations concerning the use of these telephones by disabled persons and the hearing impaired.

   e. Must allow the completion of both local calls and long distance calls from the 0-level and O+ direct dialed level.

6. Each customer owned pay telephone must display prominently the name and a contact telephone number of the provider of that telephone. The charges for local service, and any surcharges on long distance calls, must also be prominently displayed.

7. The customer shall not program or cause to be programmed any such telephone used in connection with this service to limit the duration of a local message.

5. GENERAL SERVICES

5.2 CUSTOMER OWNED PAY TELEPHONE SERVICE (CONT'D)

C. Violation of Regulations

1. Where any customer-provided coin operated or non-coin operated telephone is in violation of this Tariff, the Company will promptly notify the customer of the violation and will take immediate action, including the disconnection of service as is necessary for the protection of the telecommunications network and Company employees.

2. The customer shall discontinue use of the customer-provided coin operated or non-coin operated telephone or correct the violation and notify the Company in writing within 5 days after receipt of such notice that the violation has been corrected.

3. Failure of the customer to discontinue such use or to correct the violation will result in the suspension of the customer's service until such time as the customer complies with the provisions of this Tariff.

D. Rates

1. Local Exchange Business Individual Line Rates and Regulations apply as set forth in Section 4, Local Exchange Service.

2. Nonrecurring Charges, as specified in Section 6, Service Charges, apply in addition to other charges specified for Customer Owned Pay Telephone Service in the Local Exchange Tariff.

3. A "local message" from Customer Owned Pay Telephone Service served by a given exchange is a completed local call, originating at such service and terminating at any service which may be called, without toll charge, from all other service served by the exchange concerned.

4. The subscriber to Customer Owned Pay Telephone Service may not charge users of their telephones more for particular local message than the Company is authorized to charge for the placement of a similar message through its coin telephone service.

5. The subscriber to Customer Owned Pay Telephone Service may charge users of their telephones for calls to Directory Assistance.

5. GENERAL SERVICES

5.3 DIRECTORY LISTINGS

A. General

The following rates are applicable to the alphabetic section of the Telephone Directory for business or residence customers.

B. Rates

1. Service Charges apply:

a. Primary Listings (See Condition 1)*	-	
b. Additional Listings		
(1) Business	$2.00	(N)
(2) Residence	$2.00	
(3) Residence Discounted-Grandfathered	-	
c. Alternate Listings		
(1) Business	$2.00	
(2) Residence	$2.00	
d. Nonlisted Service, per listing (See Condition 8)**	$1.50	
e. Nonpublished Service, per listing (See Condition 8)	$1.50	
f. Foreign Exchange Listing (See condition 4)***		
(1) Business	$5.00	
(2) Residence	$5.00	
g. Line of Information		
(1) Business	$2.00	
(2) Residence	$2.00	(N)

2. NDTC customers in the following exchanges of Balta, Drake, Esmond, Fessenden, Harvey, Knox, Leeds, Maddock, Minnewaukan, Rugby, and Velva receive a discount on certain directory listings if the customer has one or more of the following services (T)

   a. Additional lines
   b. Call Waiting
   c. Caller Identification
   This discount is grandfathered as of 6/99

* Condition 1, Section 5; page 8.
** Condition 8, Section 5; page 9.
*** Condition 4, Section 5; page 8.

5. GENERAL SERVICES

5.3 DIRECTORY LISTINGS (CONT'D)

C. Conditions

1. A primary listing is furnished as part of and in the rates for telephone service. The primary listing may include the name, address and telephone number of:

   a. The individual, organization, firm or corporation contracting for the service.

   b. The same surname with no more than two individual given names. Each given name for the purposes of this Tariff is defined as any combination, not to exceed two, of the following:

      (1) First name
      (2) Middle name
      (3) Initial
      (4) Nickname
      (5) Maiden name

   c. An additional listing reversing the order of the individual's given names in Section 5.3.C.b preceding may be provided at the rates for Additional Listings, shown in Section 5.3.B.1 preceding.

2. An additional listing may include the same address and telephone number as the primary listing, except that a different address may be shown for off-premises station located on other premises occupied solely by the customer.

   a. Additional listings may be furnished with business or residence service for persons who occupy the same premises at the rates shown above. (See Joint User Service).

3. An alternate call listing refers a calling party to certain other telephone numbers after business hours or on Sundays or holidays or if there is no answer on the first listed number.

   a. Where the alternate call number is to be that of another customer, the listing will be furnished only with written approval of the other customer.

4. A foreign or noncustomer listing may be furnished customers requesting that their listing be included in a directory of an exchange other than that from which service is rendered. The rate for a foreign company listing will be the rate of the company in whose directory the listing appears.

5. Unlisted service is the omission of a customer's listing from the telephone directory only. It may be obtained from the Directory Assistance Operator. Listings so omitted from the telephone directory are referred to as unlisted numbers.

5. GENERAL SERVICES

5.3 DIRECTORY LISTINGS (CONT'D)

C. Conditions (Cont'd)

6. Nonpublished service is the omission of a customer's listing from both the telephone directory and Directory Assistance records. Listings so omitted from both the telephone directory and Directory Assistance records are referred to as nonpublished numbers.

   a. When nonpublished service is to be furnished, the customer will hold the Company harmless from any damages which might arise, and will absolve the Company from any responsibility for the failure of the customer to receive calls because of the nonpublished listing

   b. The rate for a nonpublished service is specified in Section 5.3.B.1.e preceding.

   c. No charge will apply to nonpublished numbers for customers having other listed services.

7. Line of Information is listed information in addition to a primary or extra listing that is intended to supply additional or special instructions to the calling parties.

8. Service Charges apply to change listed directory service to nonpublished or nonlisted directory service. Service Charges DO NOT apply to change from nonpublished or nonlisted service to listed primary directory listing service.

9. The charge for additional, alternate, nonlisted, nonpublished or line of information listings begins on the day the Directory Assistance records are posted.

10. The length of contract period for directory listings, where the listing actually appears in the directory, is the directory period. The directory period is from the day on which the directory is distributed to the customers to the day the succeeding directory is distributed to the customers. Unless the listing no longer serves the customer because of disconnection, removal, etc., of the service, the minimum contract period will be for at least 30 days.

11. Listings will be limited to such information as is necessary for proper identification.

12. The length of a listing may be limited by the use of abbreviations where the clarity of the listing and the identification of the customer will not be impaired.

13. The Company may refuse to insert any listing which in its judgment does not facilitate the use of the directory.

5. GENERAL SERVICES

5.4 EMPLOYEES' TELEPHONE SERVICE

A. General

Employees' Telephone Service is offered to all permanent full-time employees at their listed permanent residence, when such service is provided by the Company.

B. Rates

1. All craft and clerical personnel who reside within an area served by the Company shall be granted an employee credit on their monthly bill equal to the local rate for one residence access line.

2. All management personnel who reside within an area served by the Company shall be granted an employee credit on their monthly bill equal to the local rate for one residence access line. Additional credit for three Custom Calling Services (Call Waiting, Call Forwarding, Three-Way Calling) will be given where such service is available and subscribed for by the employee. (N)

3. No concession for toll message services is made to employees.

4. This concession does not extend to nonrecurring charges for initial service, subsequent moves and/or changes, mileage charges, or inside wiring charges.

C. Conditions

1. Employees' Telephone Service at their residence is available to permanent full-time employees of the Company having at least three months continuous service with the company.

2. One primary listing may be provided in the employee's last name (the listing of a married woman may include her or her husband's first name).

3. Retired Company employees who reside in exchanges operated by the Company shall receive Employees' Telephone Service at the same rate as at their time of retirement.

4. Services provided to employees other than as listed in B. Rates above will be provided at regularly filed tariff rates.

5. GENERAL SERVICES

5.5 FOREIGN EXCHANGE SERVICE

A. Description

Foreign Exchange Service is a service whereby a customer may obtain local service from an exchange foreign to the exchange in which the customer is located.

B. Definitions

Normal Exchange The exchange area within which the customer's premises are located.

Foreign Exchange The exchange area from which the service is being provided.

Principal Central Office The central office in a single office exchange or that office of a multi-office exchange (usually the toll office) in which toll facilities are normally terminated.

C. Terms and Conditions

1. The terms, conditions, rates and charges as specified in the North Dakota Telephone Company Private Line Transport Services Tariff for Foreign Exchange Service apply for the interexchange facilities required to provide Foreign Exchange Service.

2. The terms, conditions, rates and charges of the foreign exchange apply for the main station.

3. Except as provided in Section 5.5.C.2, above, the terms, conditions, rates and charges applicable to the normal exchange apply for service provided in the normal exchange.

4. Foreign Exchange Service is limited to individual line and private branch exchange trunks only and is suitable for the same connections between a station located on the premises in which the foreign exchange line terminates, and any other station, as the customer would receive if he were actually located in the exchange to which the line is connected.

5. Foreign Exchange Service is normally furnished from the principal central office of the foreign exchange. If, at the customer's request, the service is furnished from a central office other than the principal central office, foreign central office mileage charges apply for the channel between the principal and serving central offices.

5. GENERAL SERVICES

5.5 FOREIGN EXCHANGE SERVICE (CONT'D)

D. Rates and Charges

1. Interexchange channels

The rates and charges, as specified in the Private Line Transport Services Price Schedule, for Foreign Exchange Service apply.

2. Exchange Service

a. Main Station

The monthly rates shall be the regularly established rates of the foreign exchange, applicable within the Base Rate Area of that exchange, for individual line or private branch exchange trunk line service.

The Service Charges shall be those regularly applicable to the class of service in the normal exchange.

b. Extension Service

Extension Service may be installed in the normal exchange at the rates and charges of the normal exchange.

Extension Service may be provided in the foreign exchange at the rates and charges of the foreign exchange, with off-premises extension line mileage charges applicable between the principal central office and the extension location Point of Demarcation. When special equipment is required to provide proper transmission and supervision, charges based on cost will apply.

c. Directory Listings

Primary and additional directory listings are provided in the directory serving the foreign exchange as described in Section 5.3.B.f preceding.

d. Auxiliary and Supplemental Services

All facilities and services offered in other sections of this Price Schedule which are compatible with this offering of Foreign Exchange Service are provided at the rates and charges set forth for such facilities and services.

5. GENERAL SERVICES

5.5 FOREIGN EXCHANGE SERVICE (CONT'D)

D. Rates and Charges (Cont'd)

3. Other Rates and Charges

a. The rates and charges, as specified in the North Dakota Telephone Company Private Line Transport Services Tariff, for Foreign Exchange Service apply when Foreign Exchange Service is provided solely by this Company. Additionally, the terms and conditions established in Sections 5.5.D.1 and 5.5.D.2 preceding apply when Foreign Exchange Service is provided solely by this Company.

b. When the service is provided jointly by this Company and a connecting company, additional rates and charges, as specified in the tariffs of the connecting company may also apply.

5. GENERAL SERVICES

5.6 HOME INTERCALL SERVICE

A. General

The Intercall Service provides a special calling feature to a Residence or Business line. It allows customers to use their standard Residence or Business telephone line to provide an intercom system between their primary telephone and any extension telephone. This is accomplished by the subscriber dialing their phone number, hanging up, letting the telephone ring, and allowing both primary and extension to talk to each other. The ringing supplied to the line is a distinctive ring, which allows the customer to distinguish between a normal incoming call and an Intercall.

B. Rates

	NDTC Monthly Rate	
Home Intercall Service, per line	$0.90	(N)

C. Conditions

1. The access code may be the customer's own telephone number or a special three-digit code depending on the type of Central Office from which the customer is served.
2. Home Intercall Service will not be available to customers who subscribe to Public Access Line Service, Public Interexchange Carrier Access Service, Trunks, Foreign Exchange Service, Mobile Exchange Service, Multiparty Service or lines in a rotary hunt group.
3. This service is provided only where facilities permit.
4. Minimum charge will be one month's service.
5. Charge will not apply when Home Intercall Service is changed due to Company initiated change.

5. GENERAL SERVICES

5.7 JOINT USER SERVICE

A. General

Joint Use of Service [1] permits a person, firm or corporation to share the use of the telephone service provided by the Company with another business customer. (D)

B. Rates

	Monthly Rate
1. Joint Use of Service	50% of applicable business rate

C. Conditions

1. Joint use of Service will be furnished with the approval of the Company only with business individual line or PBX Trunk Service.
2. Joint Use of Service will not be furnished to a customer who is in a business of a secretarial nature, or of renting or leasing space to transient or permanent tenants.
3. The Joint User must be located on the premises or in the same office, or in the same suite of offices, as the customer, or in an office adjacent to and directly accessible from the customer's office.
4. A Joint User will be furnished one directory listing without charge.
5. Applications for Joint Use of Service shall be made by the customer.
6. The customer will be responsible for all charges incurred by the Joint User.
7. Additional listings and supplement services may be furnished to the Joint User at the request of the customer and at regular rates.
8. After the listing for the Joint User has been included in the directory, Joint Use of Service may not be discontinued during the life of the directory, except under the following conditions:
   a. the customer's service is discontinued;
   b. the Joint User moves from the premises where the customer's service is located;
   c. the Joint User establishes his own primary service on the same premises.

[1] This service is no longer offered by NDTC.

5. GENERAL SERVICES

5.8 LINE CONSTRUCTION CHARGES

A. General

Line Construction Charges are applied to additions made by the Company to its central office line facilities outside the Base Rate Area, beyond those now existing to provide for service to business or residence customers.

B. Charges

1. For permanent customers or seasonal customers with permanent service:

   a. For construction provided as part of a major project within an exchange and covered by an Area Coverage Survey, no Line Construction Charges apply.

   b. For construction provided outside the Base Rate Area, the customer shall be responsible for payment of costs of construction exceeding seven (7) times the annual primary service revenue. For purposes of determining costs of construction, costs include, but are not limited to, the following:

      (1) Material
      (2) Material overhead
      (3) Installation labor
      (4) Installation labor overhead
      (5) Obtaining Rights-of-way

      For purposes of determining costs, the Company may in its sole discretion use reasonable estimates based on materials, work and distances for similar line construction or accumulated actual costs.

2. For customers ordering temporary service:

   a. For Line Construction to temporary locations, payment may be requested in advance based on estimated costs.

   b. For purposes of determining costs for Line Construction to temporary locations, costs include, but are not limited, to the following:

      (1) Material
      (2) Material overhead
      (3) Installation labor
      (4) Installation labor overhead
      (5) Obtaining Rights-of-way
      (6) Cost of removal, less salvage

5. GENERAL SERVICES

5.8 LINE CONSTRUCTION CHARGES (CONT'D)

C. Conditions

1. All charges may be paid fully in advance or, one-fourth of the charges paid in advance and the balance in equal monthly payments throughout the first year during which service is provided.

2. All facilities provided in extending the Company's line facilities remain the property of the company.

3. Savings Clause:

   a. Arrangements may be made, other than as provided for above in this schedule when required, when the:

      (1) Applicant requests a particular type of construction or a specific route for extensions to meet the applicant's special requirements and where the construction or route requested differs from the normal standards of the Company and is not required by law.

      (2) Construction involves underground crossings of railroads, highways, or power lines, submarine cable or long river crossings.

      (3) Construction involves unusual or disproportionately large expenditures.

      (4) Applicant desires service to be provided outside of the filed exchange area, the Company at its option may provide such extension of its lines or facilities at cost.

5. GENERAL SERVICES

5.9 EXCHANGE SERVICE EXTENSIONS (POINT TO POINT)

	Monthly	NRC
Network Access Channel Termination per Pair	$6.65	$20.00
Channel Performance per Pair	$6.20	

A. Descriptions

1. Network Access

   The Network Access Channel provides a two-wire or four-wire communications path between the POT and the central office or the nearest most logical point of access to the customer premise. One Network Access Channel charge applies per channel terminated at the POT.

2. Channel Performance

   The Channel Performance modifies the circuit with the basic performance necessary for the circuit to function. If various signaling parameters are needed, refer to the North Dakota Telephone Company Private Line Transport Services Tariff. One Channel Performance charge will apply per Network Access Channel.

Notes:
1. Non-recurring service order charge will apply as indicated in section 6
2. CO will not be considered as a termination (will be a cross connect point only)
3. If circuit extends from Point A through CO to Point B, a minimum of 2 Channel Performance charges will apply.

5. GENERAL SERVICES

5.10 HUNTING SERVICE

A. General

1. Allows a Business customer the ability to have calls rolled over to another line when a busy signal is indicated in conjunction with a multi-line application.

2. Hunting Service is furnished only where necessary facilities are available. Hunting Service is not available to residential customers. (T)

B. Rates

1. The hunting rate is in addition to the Business Line rate. The monthly charge is applied to each line with the rollover feature.

Hunting Service Per Line	Monthly Charge
Linear	$2.40
Circular	$2.40

(N)

5. GENERAL SERVICES

5.10 HUNTING SERVICE (CONT'D)

C. Optional Features

1. Circular Hunt

   Permits a complete hunt of incoming calls over all lines in a multiline hunting group regardless of which line in the group is dialed.

2. Linear Hunt

   Where a call to one or more lines in a group will be completed to an idle line in that group when the called line is in use.

5. GENERAL SERVICES

5.11 SEASONAL SERVICE

A. General

Seasonal Service is provided to residence and single business customers whose requirements for telephone services are less than that which might normally be provided in any 12 month period.

B. Rates

1. The monthly rate will be based on a combination of a uniform monthly rate, which is calculated on six (6) months full rate combined and distributed evenly over a twelve (12) month period.

2. No charges will apply for the suspension and subsequent restoral of seasonal service.

C. Conditions

1. Seasonal Service will be furnished under the following conditions.

   a. Available to all grades of residence and single line business exchange service where the usage is of a seasonal nature.

   b. Unless notified otherwise by the customer, seasonal will automatically be placed on intercept between the period of January 1 to May 1.

5. GENERAL SERVICES

5.12 SELECTIVE CLASS OF CALL SCREENING

A. General

1. Selective Class of Call Screening Service[2] enables a customer, by means of Company operator identification, to restrict outgoing toll calls from station users to only those calls which are charged to the called telephone, a third number or a Company credit card account. (D)

B. Rates

	Monthly Rate[1]	NRC
1 Per Access Line Equipped	$1.25	$47.00

C. Conditions

1. All local calls and calls to Company numbers such as repair service, Directory Assistance Service and public emergency service numbers such as 911 will be permitted from the establishment.

2. This service is available to hospitals, hotels, motels, and other such institutions only where facilities permit.

3. Service Charges will apply when customers change the existing Call Screening on the line or add Call Screening to a line.

[1] The above monthly rate is in addition to any other appropriate rates or charges on file in this Tariff.

[2] This service is no longer available.

5. GENERAL SERVICES

5.13 CUSTOM CALLING SERVICES

A. General

1. Custom Calling Services are limited to those customers serviced by central offices arranged for this service and is furnished only in connection with individual line service.

2. Description of Features

   a. Call Forwarding Variable

      Call Forwarding enables a station user to divert all incoming calls to another directory number. Call Forwarding is activated by first dialing a code, then the telephone number that calls are to be transferred to. Activation, deactivation and the forward-to destination are controlled by the station user. While in the active state, a reminder tone is generated to the line with the Call Forwarding Variable Service as each call is transferred. Calls may be transferred to a location outside the Company's local calling area so long as the transferred to number does not exceed 16 digits in length. In such event, the transferred number will incur toll charges.

   b. Call Forward Busy

      Allows a customer to have incoming calls forwarded to another predetermined number if the called number is busy. A customer cannot activate and deactivate this service.

   c. Call Forward Fixed

      Call Forward Fixed allows a customer to have incoming calls forwarded to another predetermined number at all times. A customer cannot activate and deactivate this service. Call Forward Fixed has no rings prior to being forwarded. (T)

   d. Call Forward No Answer

      Call Forward No Answer provides rerouting for incoming calls when the called line is not answered within a predetermined length of time, as defined by ring count (selectable by the customer). Forwarded calls are always routed to the same pre-assigned destination. (L)

   e. Call Forward Remote Access

      Call Forward Remote Access allows subscribers to activate their call-forwarding feature from locations other than their base telephone to make forwarding changes. (T)

5. GENERAL SERVICES

5.13 CUSTOM CALLING SERVICES (CONT'D)

A. General (Cont'd)

2. Description of Features (Cont'd)

f. Call Waiting (M)

Call Waiting provides a burst of tone to inform a station user with a call already in progress that another call is waiting to be answered. The station user may answer the waiting call by hanging up or hitting the switch hook.

g. Cancel Call Waiting

Cancel Call Waiting allows a station user, on a per-call basis, to deactivate Call Waiting by dialing an access code.

h. Three-Way Calling

Three-Way Calling allows a station user to add a third party to the existing call, enabling a simultaneous conference between parties at multiple locations. If multiple parties of the conversation subscribe to this service, each may establish an additional line, to a maximum of six lines.

i. Speed Calling

Speed Calling 8 Code enables a station user to call a list of up to eight (8) preselected directory numbers by dialing one-digit codes instead of the directory numbers. Up to thirty (30) numbers may be accessed by a two-digit code with Speed Calling 30 Code.

B. Rates and Charges (M)

1. Service Charges may apply with the following exceptions:

a. The Company will waive applicable service charges during special promotions in exchanges equipped with available facilities.

b. Upon conversion to a "Stored Program Control" switch in an exchange a 90 day grace period will follow to allow those customers wishing to subscribe to Custom Calling features without application of service charges.

2. Service Charges do not apply when Custom Calling Service is provided with associated services for which appropriate services charges are charged.

5. GENERAL SERVICES

5.13 CUSTOM CALLING SERVICES (CONT'D)

B. Rates and Charges (Cont'd)

3. Thirty (30) Day Money Back Guarantee

If the customer notifies the Company he is not satisfied with the service(s), the customer will be entitled to a full refund on one (1) month's monthly recurring charge (MCR), or portion thereof if the subscription is less than 30 days. The feature(s) for which credit is being issued will be discontinued from the customer's line. This refund will be applied as a credit on the customer's bill. Each customer will be entitled to the credit one time per service. Customers who initially request a Custom Calling feature(s) as listed following, will have 45 days from initiation of service to notify the Company of their intent to cancel the feature(s) and receive the full 30 day refund. Any customer that has had a Custom Calling feature in service more than 45 days will be not be eligible for the refund. The Thirty-Day Money Back Guarantee will apply to the following services:

a. Call Forward Variable
b. Call Forward Busy
c. Call Waiting
d. Speed Call 8 and 30
e. Three Way Calling

		Per Line Monthly Rate	
Call Forward Variable	Business	$1.00	(N)
	Residence	$1.00	
Call Forward Busy	Business	$1.00	
	Residence	$1.00	
Call Forward Fixed	Business	$1.00	
	Residence	$1.00	
Call Forward No Answer	Business	$1.00	
	Residence	$1.00	
Call Forward Remote Access	Business	$1.00	
	Residence	$1.00	
Call Waiting	Business	$2.45	
	Residence	$2.45	
Three Way Calling	Business	$1.00	
	Residence	$1.00	
Speed Calling, 8 Codes	Business	$1.00	
	Residence	$1.00	(N)
Speed Calling, 30 Codes	Business	$2.00	
	Residence	$2.00	

5. GENERAL SERVICES

5.13 CUSTOM CALLING SERVICES (CONT'D)

C. Conditions

1. Restriction of service to three-way and Speed Call Features may be inherent due to equipment limitations; i.e., "within same hunting group."

2. Custom Calling Services may be provided on individual line, Private Branch Exchange trunks and key system business lines and may not be provided in conjunction with coin telephone services.

5.14 SPECIAL BILLING NUMBER SERVICE

A. General

Special Billing Number Service is the provision of a separate listing of toll telephone messages each month for each special billing number used in placing a call.

B. Rates

	Monthly Rate
1. Special Billing Numbers, each	$1.70

C. Conditions

1. Special Billing Number Service may be provided in conjunction with all classes and grades of service.

2. The minimum period for which this service may be offered is two months.

5. GENERAL SERVICES

5.15 TOLL RESTRICTION SERVICE

A. General

1. Toll Restriction Service is an optional service that prevents the origination of unauthorized toll calls from a customer's line, by means of blocking at the Company's central office.

2. This arrangement denies all outgoing calls starting with the digit "1" or "0".

3. All local calls will be permitted from the customer's line.

4. All local calls to directory assistance will be permitted, except those that require 1+ or 0+dialing.

5. This service will not block all toll calls a customer might make or receive, such as collect calls and/or long distance calls placed by dialing digits other than "1" (i.e., **976,** if available).

6. The customer accepts full responsibility for denial of access to the toll network.

7. The customer accepts full responsibility for collect calls and/or long distance calls placed by dialing digits other than "1" or "0".

8. The customer holds the Company harmless from any and all liabilities and/or damages which may be alleged or incurred by the use of toll restriction, acceptance of collect calls, and/or long distance calls placed by dialing digits other than "1" or "0".

9. This service is available only where facilities permit.

10. This service does allow calls to 911, 811, 411, and 1-800 (888, 877, 866, or any additional toll free prefixes).

5. GENERAL SERVICES

5.15 TOLL RESTRICTION SERVICE (CONT'D)

B. Rates and Charges

1. The following rates and charges apply in addition to the established rates and charges for each access line with which these features are associated.

	Monthly Rate
Per access line:	(T)
Toll Restriction allow local & 800	$1.00
Toll Restriction with PIN	$2.00

Toll Restriction with PIN only allows local calling without the PIN being entered.

2. Service Charges

Non-recurring charge will apply as indicated in Section 6.

5. GENERAL SERVICES

5.16 CUSTOM LOCAL AREA SIGNALING SERVICES (CLASS)

A. General

1. Custom Local Area Signaling Services (CLASS) are enhanced services associated with Signal System Seven (SS7). CLASS is furnished only in connection with individual line service exclusive of semi-public telephone service and business line service on which the Customer Premise Equipment (CPE) is a coin operated instrument.

2. Description of Features

   a. Anonymous Call Rejection

      Anonymous Call Rejection allows a customer with Calling Number Delivery to block any incoming call, which does not come through with an identifiable name or number.

   b. Automatic Call Back

      Automatic Call Back in an ongoing call management feature which will enable the subscriber to have the system redial the last number called from his/her station. This will apply regardless of whether the original call was answered, unanswered, or encountered a busy tone. The system will monitor the calling and called lines and will attempt to connect the call for up to thirty (30) minutes. The activation of this feature can be canceled by the customer when desired.

   c. Automatic Recall

      Automatic Recall is an incoming call management feature which will enable a subscriber to have a call setup performed automatically to the calling party of the last incoming call. This will apply whether the incoming call was answered, unanswered, or encountered a busy tone.

   d. Calling Name Delivery

      Calling Name Delivery will enable the subscriber to receive the name of a caller and the date and time of the call on incoming calls. The name will be delivered to the called party's Customer Premise Equipment (CPE) in the interval between the first and second ring. The displayed name is the name associated with the calling party number.

5. GENERAL SERVICES

5.16 CUSTOM LOCAL AREA SIGNALING SERVICES (CLASS) (CONT'D)

A. General (Cont'd)

2. Description of Features (Cont'd)

e. Calling Number Delivery (Caller ID)

Calling Number Delivery will enable the subscriber to receive the calling number on incoming calls. The number will be delivered to the called party's Customer Premises Equipment (CPE) in the interval between the first and second ring. The calling number will remain for the duration of the call and can be viewed from the display on the CPE.

f. Calling Number Delivery Blocking (Caller ID Blocking)

Calling Number Delivery Blocking will allow the calling party to suppress a Directory Number such that the called party with Calling Number Delivery does not receive the information. The called party will receive a "private" message instead of the calling party's DN.

Calling Number Delivery Blocking is provided to all subscribers on a per call basis at ***no charge***. To activate this feature, there must be a two (2) digit code for touch tone, and four (4) digit for rotary dialed prior to placing a call. Calling Number Delivery Blocking on a per line basis is also available for ***no charge***. This feature blocks Calling Number Delivery on all calls without the necessity of dialing a code with each call.

Law enforcement agencies, domestic violence intervention agencies, and certain other governmental agencies may be granted Calling Number Delivery Blocking on a per line basis without charge.

g. Customer-Originated Trace

Customer-Originated Trace allows the subscriber to initiate a trace on the last incoming call. The results of the trace will not be provided directly to the subscriber initiating the trace. The trace log will be printed at the Telephone Company or at some designated law enforcement agency premises. The subscriber will contact the agency to determine further action to be taken.

5. GENERAL SERVICES

5.16 CUSTOM LOCAL AREA SIGNALING SERVICES (CLASS) (CONT'D)

A. General (Cont'd)

2. Description of Features (Cont'd)

h. Custom Ringing or Distinctive Ringing

Distinctive Ringing is an incoming call management feature, which will allow the subscriber to define Directory Numbers that will provide the subscriber with special incoming call treatment. Any incoming calls on this list will be indicated by a distinctive ringing pattern or a distinctive Call Waiting tone, if applicable. Terminating calls from telephone numbers which are not on the list, or which cannot be identified, will be given standard treatment.

i. Selective Call Acceptance

Selective Call Acceptance will allow subscribers to define a list of calling Directory Numbers that will be accepted. Any calling numbers not on that list will be routed to announcements and rejected. The calling party not on the acceptance list will receive an announcement stating that the call is not presently being accepted by the called party. Subscribers can review and change the list of accepted Directory Numbers as desired.

j. Selective Call Forwarding

Selective Call Forwarding will allow the subscriber to have certain terminating calls forwarded to a designated remote station. The activity will occur whenever a call is received from a telephone number which has been indicated on a list of numbers, referred to as the Selective Call Forwarding screening list. Terminating calls from telephone numbers, which cannot be identified or have not been indicated on the list will be given standard terminating treatment.

k. Selective Call Rejection

Selective Call Rejection will allow the subscriber to define a list of, at a maximum of **six (6),** Directory Numbers to be screened. Any calling numbers on this list will be routed to announcements and rejected. All other calls will be treated normally. The calling party on the rejection list will receive an announcement stating the call is not presently being accepted by the called party.

5. GENERAL SERVICES

5.16 CUSTOM LOCAL AREA SIGNALING SERVICES (CLASS) (CONT'D)

A. Rates and Charges

	Per Line Monthly Rate*
Anonymous Call Rejection	$2.00
Automatic Callback	$2.00
Automatic Recall	$2.00
Calling Name Delivery	$2.00
Calling Number Delivery	$2.00
Caller Name/Number Package	$3.00
Customer-Originated Trace Per Trace (Maximum Monthly Charges $25.00)	$5.00
Custom Ringing	$2.00
Selective Call Acceptance	$2.00
Selective Call Forwarding	$2.00
Selective Call Rejection	$2.00
A Package of any 4 or more of the above services is(1)	$7.00

*Service Order Charges found in Section 6.1 also apply.

Note 1: Customer-Originated Trace (per trace) is not available as part of the package price.

5. GENERAL SERVICES

5.17 TOUCH TONE SERVICE

A. General (T)

Touch Tone Service is provided to all subscribers of NDTC at no additional charge. Touch Tone Service charges are incorporated in the Local Exchange Service (Local Exchange Component) rates at Section 4.7.A of this Tariff.

5. GENERAL SERVICES

5.18 VACATION RATE SERVICE

A. General

Vacation Rate Service is provided to all classes and grades of residence and business customers whose requirements for telephone services are less than that which might normally be provided on any 12 month period.

B. Rates

1. The monthly rate will be based upon 50% of the regular rate for the basic and associated additional services during the period of suspension.

2. No other charges will apply for the suspension and subsequent restoral of service.

C. Conditions

1. Vacation Rate Service will be furnished under the following conditions:

   a. Available to all grades of residence and business exchange service where the usage is of a seasonal nature.

   b. Charges may be billed in total prior to the connection of service or monthly at the option of the Company.

   c. Service may be suspended for periods of not less than one month nor more than six (6) months out of a 12-month period.

   d. No discount allowed with respect to directory advertising or special assemblies of equipment.

5. GENERAL SERVICES

5.19 VOICE MAIL SERVICE

A. General

1. Voice Mail

   Voice Mail will provide a twenty-four (24) hour voice mail answering and message storage system. Messages may be retrieved from any touch-tone telephone. Voice Mail has a one (1) minute greeting and the capacity to store up to 20 five (5) minute messages. A new message will generate a "reminder" dial tone when the subscriber picks up his/her receiver. Each voicemail box will be provided with call forwarding-busy and call forwarding-no-answer where central office equipment permits. Unplayed messages will purge after 28 days. Played messages will purge after 28 days.

2. Fixed or Remote Call Forward Voice Mail subscribers that have no other Local Service

   Fixed or Remote Call Forward service can be used in conjunction with a Voice Mail number. This service allows calls that are directed to your voice mailbox to be forwarded out to a predetermined location (Number is not changeable by the user). Subscribing party is responsible for associated charges such as toll, fixed or remote call forward and voice mailbox charge.

3. TDD Memo

   TDD Memo provides an interface to telecommunications devices for the deaf (TDD), allowing TDD users to use Voice Mail and Fax Memo.

4. Fax Memo

   Fax Memo allows the user to leave a fax message on another users mailbox. The fax message can be delivered to the users default fax number or another fax number.

5. Family Voice Mail

   Family Voice Mail allows the caller to reach the main greeting of the mailbox and press options 1 through 4 for individual mailboxes. Each individual mailbox would have the security of its own password. This service is available for residential customers only. Each voice mailbox will be provided with call forwarding-busy and/or call forwarding-no-answer where central office equipment permits.

5. GENERAL SERVICES

5.19 VOICE MAIL SERVICE (CONT'D)

B. Voice Mail Notification

1. Paging

   Allows for real-time notification of voice and fax messages. Mailbox owner can designate up to two primary and two alternate pager numbers. The pager number must be within the local calling area of the host system.

2. Message Delivery

   Allows the delivery of new messages to mailbox owners who are away from their telephone. The system will call a local number that the mailbox owner has preset in his voice mailbox. The system will notify the owner every time a new message arrives. Along with the capability to set the telephone numbers, the mailbox owner can also specify the hours available for message delivery. The "deliver to" number has to be within the local calling area of the host system.

C. Rates and Charges

	Per Line Monthly Rate
Voice Mail	$ 4.00
Voice Mail Number Change with Unassociated Local Service Using Fixed or Remote Call Forward	$ 12.00
TDD Memo	$ 1.00
Fax Memo	$ 4.50
Family Voice Mail	$ 5.00
Voice Mail Notification	
Paging	$ 2.00
Second Primary Number	$ 1.00
Each Alternate Number	$ 1.00
Message Delivery	$ 2.00

6. SERVICE CHARGES

INDEX

SUBJECT	SECTION	PAGE
Application of Service Charges	6.2	3
Charges	6.4	4
Exceptions to Service Charges	6.3	3
Facility Administration Charge	6.1	2
Jack/Wire Charge	6.1	2
Labor Charge	6.1	2
Service Order Charge	6.1	2
Special Application	6.5	4
Trip Charge	6.1	2

6. SERVICE CHARGES

6.1 GENERAL

Service charges are nonrecurring charges for establishing service, connecting equipment and modifying existing service, when applicable. Service charges are caused by customer requests only.

A. Service Order Charge

The charge for receiving and recording information from a customer or applicant. One of the following will apply.

a. A primary charge applies to customer requests initiating service, re-establishing service at a new location, and/or changes in telephone numbers.

b. A subsequent charge applies to all other customer requests.

B. Facility Administration Charge

The charge for work associated with provision of initial service from the central office including, but not limited to, central office connections, cable cross connections and/or outside plant connections up to and including the protector and/or the Point of Demarcation.

C. Trip Charge

The charge for a trip to the customer's premises.

D. Labor Charge

The charge for performing work on wiring from the Point of Demarcation up to and including a jack or other termination.

E. Jack/Wire Charge

The charge for installing, moving or changing terminal equipment.

6. SERVICE CHARGES

6.2 APPLICATION

A. Charges in this section apply in addition to all other rates and charges in this Tariff unless specifically excepted.

B. One or more charges may be applicable, based on the services or equipment requested by the customer.

C. Only one Service Order charge applies per customer contact.

6.3 EXCEPTIONS

Service charges do not apply to:

A. Removal or discontinuance of equipment or service.

B. Calling card requests.

C. Suspension or reconnection of vacation service.

D. The Company may waive applicable service charges during special promotions.

6. SERVICE CHARGES

6.4 CHARGES

Service Charges for initial establishment of service may be paid in three equal monthly installments beginning with the first bill.

		Business	Residence
A.	Service Order, per request		
	1. Primary	$18.00	$18.00
	2. Subsequent	$12.00	$12.00
B.	Facility Administration, per line, per central office	$20.00	$20.00
C.	Trip, per visit, per premises	$20.00	$20.00
* D.	Wiring, per outlet (1)	$25.00	$20.00
* E	Equipment handling, per item (1)	$6.00	$5.00
* F.	Jack conversion each (1)	$14.00	$14.00
G.	Labor Charge	$58.00/hr.	$58.00/hr.
H.	Jack/Wire Charge	$10.00/ea.	$10.00/ea.

6.5 SPECIAL APPLICATION

Only the Subsequent service charge of $12.00 will apply to any existing account adding the following features:

1. Custom Calling Features
2. Class Features
3. Voice Mail
4. Toll Restriction
5. Toll Restriction with pin

(1) Applicable only with Semipublic Telephone Service.
* Charge no longer applies.

7. MISCELLANEOUS SERVICE OFFERINGS

INDEX

SUBJECT	SECTION	PAGE	
Automatic Wake-Up Service	7.3	7	
Billed Number Screening (BNS)	7.4	8	
Centrex	7.11	15	
Customer-Provided Equipment	7.1	3	
Direct Inward Dialing Service to Customer-Premises Located Switching Systems	7.2	5	
E911 Charges	7.5	9	(D)
900 Blocking	7.10	14	
Remote Call Forward	7.8	12	
Twin Line Service	7.6	10	
Warm Line Service	7.7	11	

7. MISCELLANEOUS SERVICE OFFERINGS

(RESERVED FOR FUTURE USE)

7. MISCELLANEOUS SERVICE OFFERINGS

7.1 CUSTOMER-PROVIDED EQUIPMENT

A. General

1. Customer-provided equipment may be connected at the customer's premises to facilities of the Company for use with individual-line, multi-party line, PBX and Key Systems exchange service in compliance with FCC regulations.

2. Customers may connect equipment or systems registered or grandfathered by the FCC directly to the Company network subject to the provisions as stated elsewhere in this Tariff.

3. The General Regulations contained in Section 2 of this Tariff apply when the customer provides his own equipment. In any instance where the Tariff of the Company conflicts with an effective order of the FCC, the FCC order will have precedence.

4. Responsibility of the Customer

   a. Upon notification from the Company that the customer-provided equipment is causing or is likely to cause harm, the customer shall make such change as is necessary to remove such harm. Failure to make such change will result in disconnection of service until such change is completed to the satisfaction of the Company.

   b. The customer will be responsible for the payment of charges for service calls by company employees to the customer's premises where a service difficulty or trouble report results from customer-provided equipment.

   c. The customer may be required, as a condition of service, to pay in full all sums due the Company including, but not limited to, installation charges, service charges, termination charges, minimum charges, and reimbursement for loss of damage to company facilities as may apply.

   d. A customer must subscribe to, and be capable of providing operation for, sufficient quantities of main terminals to provide adequate access to his customer-provided equipment in accordance with accepted communications industry standards.

   e. When a customer elects to connect his own equipment, he must provide all of the terminal equipment on the customer's side of the Point of Demarcation.

   f. Use of Company facilities or service in connection with any device for recorded public announcements is subject to the following conditions:

      (1) Nonpublished telephone service will not be furnished for use with recorded public announcements.

      (2) Failure to comply with the provisions of this Tariff shall be cause for termination of the service.

7. MISCELLANEOUS SERVICE OFFERINGS

7.1 CUSTOMER-PROVIDED EQUIPMENT (CONT'D)

A. General (Cont'd)

5. Responsibility of the Company

   a. The Company shall not be responsible to the customer for changes in the technical criteria or in any of the facilities, operations or procedures initiated by the Company or appropriate regulatory agencies which might render any customer-provided equipment obsolete or require modification or alteration of such equipment or otherwise affect its use or performance. The Company will make a reasonable effort to notify a customer in advance of changes in technical criteria, operations or procedures which might affect customer- provided equipment or systems.

   b. The Company shall not be responsible for the installation, operation or maintenance of any customer-provided communications systems or equipment.

   c. The Company will not provide systems or equipment beyond the Point of Demarcation.

7. MISCELLANEOUS SERVICE OFFERINGS

7.2 DIRECT INWARD DIALING SERVICE TO CUSTOMER-PREMISES LOCATED SWITCHING SYSTEMS

A. General

1. Direct Inward Dialing Service to customer-premises located switching systems is furnished subject to the availability of facilities and the availability of telephone numbers.

2. The service includes the central office switching equipment necessary for direct inward dialing from the exchange and long distance message telecommunications network directly to the Point of Demarcation associated with customer-premises located switching systems.

3. The service must be provided on all lines in a trunk or Network Access Line group arranged for inward service. Routing of calls to selected numbers within the direct inward dialing number group over a separate trunk or Network Access Line group is not contemplated.

4. The charges for the service, as provided in B., following, are in addition to all applicable charges for PBX service with which this service is associated and the applicable Network Access Line and connecting arrangement charges.

5. Operational characteristics of interface signal between the Company-provided connecting arrangements and the customer-provided switching equipment must conform to the rules and regulations the Company considers necessary to maintain proper standards or service.

6. The Company shall not be responsible to the customer or authorized user or joint user if changes in protection criteria or in any of the facilities, operations or if procedures of the Company render any facilities provided by a customer, authorized user or joint user obsolete or require modification or alteration of such equipment or system or otherwise affect its use or performance.

7. Directory listings will be provided in accordance with the regulations of Section 5 of this Tariff for PBX listed number trunks. Direct inward dialing numbers furnished herein are not entitled to free directory listings.

8. The customer-premises located switching equipment must be arranged to provide for intercepting of unused numbers transmitted to the switching equipment.

9. The rates and charges for the service contemplate the use of standard Company equipment and serving arrangements.

10. The minimum contract period for the service from a step-by-step or crossbar central office is three years. In case of discontinuance of service within the minimum contract period, the basic termination charge reduced by 1/36 for each month the service is retained in service at the same location, will be applied.

11. Subscribers to direct inward dialing shall be responsible for the mechanical or manual interception of calls placed to station lines or numbers not connected for service.

7. MISCELLANEOUS SERVICE OFFERINGS

7.2 DIRECT INWARD DIALING SERVICE TO CUSTOMER-PREMISES LOCATED SWITCHING SYSTEMS (CONT'D)

A. General (Cont'd)

12. Foreign central office mileage charges will apply if a subscriber is provided direct inward dialing service from a foreign central office, except they will not apply to the provision of (a) direct inward dialing service if two or more customers in the same central office subscribe to the service or (b) direct inward dialing service if a single customer in a central office subscribes to more than 1,000 direct inward dialing service numbers, and at the option of the Company the service is furnished from a foreign central office in the same exchange.

13. Construction charges may apply where equipment or facilities required to provide a requested service is not available. Construction charges will not apply to the provision of (a) direct inward dialing service if two or more customers in the same central office subscribe to the service or (b) direct inward dialing service if a single customer in a central office subscribes to more than 1,000 direct inward dialing service numbers.

14. The Company will assign station numbers for direct inward dialing in blocks of 20 numbers. Station numbers assigned to the subscriber will not exceed 19 vacant numbers. When additional station numbers are required, they will be made available as soon as the Company has equipment available for this purpose. The Company does not guarantee that station numbers will be made available in all cases.

B. Rates

Service Charges apply to all services and equipment and apply in addition to any listed nonrecurring charges.

	Monthly Rate	NCR *
1. 20 station numbers assigned	$8.25 (Per Group of 20)	$100.00
2. Trunk termination, per trunk	$18.25	

***NCR Charge:** $100.00 for each block of 100 numbers assigned or any increment less than 100 in increments of 20 numbers.

E.g.:	Activate 20 numbers	$100.00
	Activate 60 numbers	$100.00
	Activate 100 numbers	$100.00
	Activate 120 numbers	$200.00

7. MISCELLANEOUS SERVICE OFFERINGS

7.3 AUTOMATIC WAKE-UP SERVICE

A. General

1. Automatic Wake-Up features allow the customer to program the Digital Central Office (DCO) to initiate a wake-up call on their access line.

2. The features in the customer controllable program enables the customer to perform the following functions:

   a. Determine the time(s) the access line is to be activated.

   b. Determine the number of rings (2 to 20) to be made before the call is cancelled.

   c. Change their wake-up time.

   d. Cancel the feature.

3. Automatic Wake-Up Service is available only through central offices, which, at the Company's option, are appropriately equipped.

4. There is no charge to cancel the feature.

B. Rates

1. Service Charges apply, except the Company may waive certain applicable service charges during special promotions being conducted from time-to-time to market the service.

	Monthly Rate
2. Each Equipped Access Line	$1.85

C. Conditions

1. This service is compatible with all Custom Calling Features. The following exceptions apply:

   a. Wake-Up calls will not be forwarded even though Call Forwarding might be active on the line.

   b. A Wake-Up call will not Call Wait on another call (i.e., if the line is busy, the Wake-Up call will be rescheduled for seven minutes later).

   c. Three Way Calling cannot be activated from a Wake-Up call (i.e., the customer cannot hookflash from the Wake-Up call and make another call).

   d. Speed Calling has no affect on Automatic Wake-Up Service.

7. MISCELLANEOUS SERVICE OFFERINGS

7.4 BILLED NUMBER SCREENING (BNS)

A. General

BNS prohibits collect and/or third number billed calls from being charged to BNS equipped numbers. Callers attempting to place a collect or third number billed call using a BNS number for billing will be advised by an operator that such billing is unauthorized and the call will not be completed until other payment or billing arrangements are made.

B. Rates

This service is available to customers at no charge.

C. Conditions

1. BNS is subject to the availability of facilities.

2. Collect and/or third number billed calls originating from locations that do not have screening capabilities may not be capable of being intercepted and denied and will be billed, (e.g., International calls and calls that do not go through the Billing Validation Authority (BVA) data base).

3. Provision of BNS does not alleviate customer responsibility for completed toll calls.

4. BNS may be used with other Company toll screening/blocking service (e.g., Toll Restriction, Blocking for 101XXXX1+/101XXXX011, etc.).

7. MISCELLANEOUS SERVICE OFFERINGS

7.5 E911 CHARGES

A. General

The E911 surcharge is a charge levied against access lines in particular counties to fund the E911 System of that particular county.

B. Rates

The following counties are billed monthly:

Counties	Monthly Charge
Ramsey	$1.00
Nelson	$1.00
Benson	$1.00
Eddy	$1.00
Towner	$1.00
Wells	$1.00
Sheridan	$1.00
McHenry	$1.00
Pierce	$1.00
Griggs	$1.00
Foster	$1.00
Cavalier	$1.00

C. Conditions (T)

1. Applies to all business, residence, trunk, public, and semi-public paystations.

2. Normally billed to access lines on a countywide basis.

7. MISCELLANEOUS SERVICE OFFERINGS

7.6 TWIN LINE SERVICE

A. General

1. Twin Line Service is an option of digital central office equipment, which requires coded ringing and allows two (2) distinct ring codes to be assigned with an individual line.

2. Twin Line Service provides two directory numbers on the line and distinctive ring codes are utilized to alert the customer.

3. An additional directory listing is included in the rate listed below.

B. Rates

	Monthly Rate
Each line equipped	$4.95

C. Conditions

1. The customer must have an established primary residence flat rate service on the same premises to participate in this offering.

2 Twin Line Service is offered where facilities and operating conditions permit.

3. Twin Line Service is billed to the primary service. Service will be denied on both lines for non-payment of the customer's bill.

4. All general rules, regulations and definitions applicable to local exchange service as set forth in Section 2 of this Tariff, GENERAL REGULATIONS and Section 3 of this Tariff, DEFINITIONS, also apply to this service.

D. Promotional Options

At the option of the Company, during specific promotional periods, service connection charges may be waived in total or in part.

7. MISCELLANEOUS SERVICE OFFERINGS

7.7 WARM LINE SERVICE

A. General

1. Warm Line Service enables a user to call a specific destination without dialing any digits.

2. To activate this feature, the user removes the receiver from the switchhook. When the off-hook indication is received at the digital central office, the directory number or code of the destination is read from memory and the call is automatically routed to its destination.

3. If the line is also used for regular telephone service, a critical timeout is required after dial tone is returned to the line. If no digits are received within its customer specified time period, the call is routed to the specified destination. Otherwise, it is routed in accordance with the dialed digits.

4. Calls can be routed to the following destinations:

   a. To an operator.

   b. To a terminal in the digital central office (DCO) system.

   c. To a terminal in another central office.

5. Warm Line Service will be offered where facilities and operating conditions permit.

B. Rates

	Monthly Rate
1. Each equipped line	$1.00

7. MISCELLANEOUS SERVICE OFFERINGS

7.8 REMOTE CALL FORWARD

A. Description

Remote Call Forward[1] is a service whereby a call placed from a station to a customer's telephone number in one central office is automatically forwarded by Company central office equipment to another customer designated station. Remote Call Forward is offered for Local Exchange Service only where, in the Company's judgment, central office equipment and facilities allow a measured service offering.

B. Terms and Conditions

1. One listing in the directory covering the exchange in which the call forwarding central office is located is provided with this service.

2. Remote Call Forward is offered subject to the availability of facilities.

3. Remote Call Forward may not be terminated in a coin telephone.

4. Identification of the originating telephone number will not be provided to Remote Call Forward customers.

5. The calling party is responsible for charges associated with calls between the originating station and the call forwarding location. The Remote Call Forward customer is responsible for the applicable customer dialed station-to-station charges associated with messages between the call forwarding location and the terminating station. On local calls, the Remote Call Forward customer is responsible for the payment of applicable local measured service usage charges.

6. The Remote Call Forward customer does not get charged a Federal Access charge, 911 charge, or TRS charge.

C. Rates

	Monthly Rate	
1. Remote Call Forward	$16.00	(D)

[1] Remote Call Forward Service will be offered where facilities and operating conditions permit.

7. MISCELLANEOUS SERVICE OFFERINGS

RESERVED FOR FUTURE USE

7. MISCELLANEOUS SERVICE OFFERINGS

7.10 900 BLOCKING SERVICE

A. General

900 Blocking Service provides residence and business customers with the ability to block access from a particular network access line to all telephone numbers for which 900 must be dialed.

B. Regulations

1. The Company's obligation to furnish network facilities for the 900 Blocking Service is dependent upon the availability of suitable facilities. Because of central office and other facility limitations, it may not be possible for the Company to provide all of the services that may be requested.

2. The 900 Blocking Service is available only for blocking access to all 900 telephone numbers from a particular network access line, and not for blocking access to a specific 900 telephone number.

3. North Dakota Telephone Company policy does not allow denial of local service for nonpayment of 900 charges.

C. Rates and Charges

1. The 900 Blocking Service for residence and business network access line customers is provided upon request without a recurring charge.

2. Service Order charges do not apply on first request to add blocking service. If subsequent requests to reinstate blocking service occur, Service Order charges will apply.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE

A. General

1. Centrex Service is a Central Office-based business communications service, which provides capabilities similar to those offered on a Private Branch Exchange, but without requiring switching equipment on the customer's premises. Centrex enables a customer to integrate all of his business lines into a single telecommunications system.

2. All Centrex Service station lines will be equipped with the standard features, which are identified in, paragraph D.1.b. Additional optional features may also be selected subject to the applicable charges as specified in paragraphs D.3 and D.5.

B. Regulations and Conditions

1. A Centrex customer must have a minimum of two Centrex Lines.

2. The minimum period for Centrex Service provided under this Tariff shall be for one month.

3. Centrex is offered subject to the availability of outside plant and/or Central Office facilities.

4. One directory listing is provided without charge for each Centrex customer.

5. The customer may choose to pay for the service on a month-to-month basis or under a service contract plan. A month-to-month customer may, at any time, convert to a service contract plan by executing the chosen service contract and by paying the applicable service period plan rate currently in effect.

6. The monthly rate for customers choosing the service period contract is guaranteed against Company initiated charges during the selected service contract period.

7. Subsequent line additions/deletions to the original service contract period are treated as follows:

   a. Subsequent additions will be rated under a new contract or added to an existing contract, based upon the remaining period of the initial contract. If the line addition causes the customer's total Centrex line count to exceed the threshold of the line count previously contracted, all lines will be billed at the rate for the larger line count.

   b. Subsequent line deletions, resulting in reductions equal to or exceeding **20%** of the initial quantity of lines under contract, will be considered a termination liability and treated as specified in paragraph B.8. If the reduction causes the total number of lines to fall into a different line size group, all remaining lines will be billed at rates for the smaller line size group.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

B. Regulations and Conditions (Cont'd)

8. Termination Liabilities shall be treated as follows:

   a. If the service is cancelled by the customer after installation of the service, but prior to the completion of the service period, the customer shall be obligated to pay a termination liability charge. The charge is calculated by multiplying the monthly rate by the remaining months in the contract period times **fifty percent (50%)**.

   b. A customer who reduces the quantity of Centrex lines under contract has the following options for the duration of the contract period:

      (1) Continue to pay an amount equal to the monthly rate for the number of Centrex lines that are disconnected under contract, or

      (2) Pay termination charges as described in Section 7.11.B.8.a above on the number of Centrex lines disconnected.

9. A reduction or waiver of the service establishment charges may be offered, by the Company, as follows:

   At the Company's discretion, the following non-recurring service establishment charges may be reduced or waived during promotional campaigns and/or as part of customer negotiations.

   a. Non-recurring per line service establishment charge.

   b. Non-recurring service establishment charge for OUTWATS-Simulated Facility Group Automatic Flexible Routing/Overflow Hunting Arrangements.

   c. Non-recurring service establishment charge for creating hunt groups.

10. Customers who subscribe to Centrex Service for more than **100** lines may, at the Company's discretion, be offered customer specific pricing on a contract basis. The rate will be offered in writing to the customer for acceptance. An individual service agreement will specify the length of the contract period and the applicable rates. With the exception of the customer specific rates, all other rates, charges, and regulations specified herein shall continue to apply.

11. All exchange lines in a Centrex group must have the same billing arrangement, either flat rate or measured service (where offered).

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

B. Regulations and Conditions (Cont'd)

12. Intercom calls between lines in a Centrex group are not subject to local measured service.

13. When used with Call Forwarding or Call Transfer, the Centrex customer is responsible for the payment of the applicable toll charge for each billable call connected over the public network between the Centrex station and the station at which the call is answered. It also applies to collect and person-to-person calls, which may be refused at the answering station.

14. This Centrex Tariff does not include terminal equipment on the customer's premises. Terminal equipment may be provided by the Company or by the customer.

15. Unless specifically exempted, Centrex shall be subject to all general regulations applicable to the provision of service by the Company as stated in other provisions of the General Exchange Tariff.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features

1. The following standard and optional features may be provided as part of the Centrex Service:

   a. Automatic Recall Blocking

      Automatic Recall Blocking is a call management feature that allows a subscriber to block automatic recall and call back features.

   b. Business Group Automatic Identified Outward Dialing

      Business Group Automatic Identified Outward Dialing provided identification of the calling line or the Centrex Group billing/pilot number on billable calls directed to the public network.

   c. Business Group Dialing Plan

      A Business Group Dialing Plan enables a Centrex group to have the following: a unique dialing scheme which includes Intercom Dialing; access to an attendant, private network and/or special facilities using 1 or 5 digit codes; and/or Single-Digit Dialing and customized feature activation/deactivation codes. Each Centrex group may use either a standardized or a customized Business Group Dialing Plan.

   d. Call Forwarding Busy Line

      Call Forwarding Busy Line causes all calls to be redirected to an alternate station when the called station is busy.

   e. Call Forwarding Distinctive Ringing

      Call Forwarding Distinctive Ringing allows station users to distinguish between forwarded and non-forwarded calls. The distinctive ringing pattern is two short rings. This option is assigned to the base or forwarding station, but is active (rings) on the forward-to-station.

   f. Call Forwarding Don't Answer

      Call Forwarding Don't Answer allows all calls that terminate to a user's station to be redirected to an alternate station after a predetermined number of rings.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (Cont'd)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

   g. Call Forwarding Incoming Only

      Call Forwarding Incoming Only can be used with any of the Call Forwarding features (Call Forwarding Variable, Don't Answer, and Busy Line) and allows incoming calls (calls that originate outside the Centrex group) to be forwarded. Calls from within the group or a private facility are not forwarded.

   h. Call Forwarding Variable (All Calls)

      Call Forwarding Variable enables a station user to divert all incoming calls to another directory number. Activation, deactivation and forward-to-destination are controlled by the station user.

   i. Call Forwarding within Group Only

      Call Forwarding Within Group Only can be used with any of the Call Forwarding features (Call Forwarding Variable, Don't Answer, and Busy Line) and restricts call forwarding to only directory numbers within the same Centrex group, thus preventing the station user from forwarding calls outside the Centrex group.

   j. Call Hold

      Call Hold allows a station user to place a call on hold in order to initiate a second call, answer a waiting call, consult privately with another party or return to the previously held call.

   k. Call Park

      Allows calls to be parked to a queue where the call can be picked up via access code by the original subscriber or a member of the park group.

   l. Call Pick-Up

      Call Pick-Up permits a station user to answer incoming calls directed to another station within the same pick-up group by dialing an access code.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (Cont'd)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

   m. Call Transfer

   Call Transfer allows a station user to transfer calls to another station by flashing the switch hook and dialing the transfer-to-number.

   n. Call Waiting

   Call Waiting provides a burst of tone to inform a station user with a call already in progress that another call is waiting to be answered. The station user may answer the waiting call by hanging up or hitting the switch hook.

   o. Call Waiting/Incoming Only

   Enables the member of a business group to receive the call waiting tone only when the call has originated from outside the business group.

   p. Cancel Call Waiting

   Cancel Call Waiting allows a station user, on a per-call-basis, to deactivate Call Waiting by dialing an access code.

   q. Circle Hunting

   Circle Hunting allows calls directed to busy stations in the middle of the hunt group to search through the end of the hunt group and then return to the beginning of the hunt group in search of an idle station. The caller is connected to the first idle station (number) encountered.

   r. Code Restriction

   Code Restriction blocks the completion of calls that are directed to customer-specified area codes (NPAs) and/or central office codes (NXXs). Code Restriction may be assigned to either an individual line or shared by multiple lines.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

   s. Customer Access Treatment Code Restrictions

   Customer Access Treatment Code Restrictions (CAT Codes) can be used to prevent a Centrex station from dialing certain codes. For example, CAT Codes could be used to prevent a station from gaining access to the public network, using private facilities, or dialing specific stations within the Centrex group.

   t. Delay Announcements for Queued Calls

   Delay Announcements can optionally be used to inform a caller that his or her call has been placed in a queue. The delay announcement can be repeated at regular intervals until an idle station becomes available.

   u. Direct Connect Service

   Direct Connect Service allows a station user to automatically place a call to a preselected directory number by lifting the receiver off the switch hook. No dialing is required for the calling party to reach the specified destination.

   v. Direct Inward Dialing

   Direct Inward Dialing allows Centrex station users to directly receive incoming calls without the assistance of an attendant.

   w. Direct Outward Dialing

   Direct Outward Dialing enables Centrex station users to call outside the Centrex group directly without the assistance of an attendant.

   x. Directed Call Pick-Up

   Directed Call Pick-Up enables a station user to answer a call that is ringing at another station within the Centrex group by dialing an access code and the ringing station number.

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

y. Distinctive Alerting/Call Waiting Indication

Distinctive Alerting/Call Waiting Indication allows a Centrex user to determine the source of incoming calls (from within or outside the business) by the Distinctive Ringing pattern or the Call Waiting tone. Normal ringing and Call Waiting tones are used to identify intra-Centrex group calls. Calls which originate from outside the Centrex group are identified by either two short rings and/or Call Waiting tones.

z. Do Not Disturb

Do Not Disturb allows a station user to prevent incoming calls from ringing his/her station by diverting such calls to a tone or recorded announcement. This feature can be offered with a Personal Identification Number (PIN) override option that selected callers can dial to override the Do Not Disturb.

aa. Fully-Restricted Line

A Fully-Restricted Line prevents calls to and/or receiving calls from stations outside the Centrex group and prevents calls to and/or receiving calls from the attendant, thereby, denying it indirect access to/from outside the Centrex group.

ab. Group Make Busy

Make Busy can be used to temporarily make a group of stations or an entire Multiline Hunt Group appear busy to incoming callers. Make Busy causes the hunt to skip over a group of stations during the search for an idle station and is operated via a physical switch.

ac. Intercom Dialing

Intercom Dialing allows Centrex station users to call other stations within their Centrex groups by dialing abbreviated codes.

ad. Loud Speaker Paging

Intercom dialing or single digit code access allows activation of loud speaker paging equipment via a line or tie trunk connection to external equipment.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

ae. Make Busy

Make Busy can be used to temporarily make a particular station in a Multiline Hunt Group appear busy to incoming callers. Make Busy causes the hunt group to skip over a station during the search for an idle station.

af. Manual Line Service.

Manual Line Service automatically places a call to the operator when the station user lifts the receiver off the switch hook.

ag. Meet-Me Conference

Allows parties to hold a conference on a six party bridge by calling a specified directory number at a certain time.

ah. Music On Hold

Provides High Quality audio connection to stations placed on hold via the hold software feature.

ai. Night Service

Night Service allows calls directed to the attendant to be rerouted to predesignated station lines within the same Centrex group when the attendant position is not staffed (i.e., evening hours, weekends).

aj. Off-Premises Stations

Off-Premises Stations enable a secondary business location to access the same Centrex features and services as the main business location. The secondary locations must be served by the same Central Office as the primary location.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

ak. Outgoing Call Screening

Outgoing Call Screening blocks the completion of calls to specific directory numbers on either 3, 6, 7, or 10 digit basis. Outgoing Call Screening may be assigned either to an individual line or to multiple lines shared by multiple station users.

al. OUTWATS

OUTWATS is a form of direct distance dialing service that allows a station user to place long distance calls to specified geographical areas at reduced rates. Each OUTWATS call is screened to ensure that the call destination is within the band limits of the OUTWATS user.

am. OUTWATS - Simulated Facility Group

OUTWATS - Simulated Facility Groups control the number of simultaneous OUTWATS calls that can be made from a business. OUTWATS - Simulated Facility Groups allow the following capabilities:

(1) "OUTWATS-Automatic Flexible Routing OUTWATS" is an OUTWATS – Simulated Facility Group option which permits calls to be automatically routed to a lower or less expensive OUTWATS band.

(2) "OUTWATS Overflow Hunting" is an OUTWATS - Simulated Facility Group option which permits OUTWATS calls to automatically overflow or hunt to a higher band if the simulated facility group associated with the lower band is busy.

an. Paging Access

Paging Access allows selected stations to have dial access to customer-provided loud speaker paging equipment. A line or tie-trunk is required to support the customer's paging equipment.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

ao. Queuing

Queuing may optionally be used when all stations in a hunt group are busy. When this occurs a call is placed into the queue. The call remains in the queue until an idle station is located. Up to ten calls can be in queue for a Multiline Hunt Group. Queuing cannot be provided for Preferential Hunt Groups or Series Completion groups.

ap. Recorded Telephone Dictation

Provides access to and control of customer premise dictation equipment by station users within a business group.

aq. Regular Hunting

Regular Hunting or Linear Hunting is performed in a sequential fashion across all members of a multiline hunt group. The search for an idle station starts with the first number. If the first station is busy, the group of numbers is sequentially hunted until an idle station (number) is found. If there are no idle stations available, the caller receives a busy signal.

ar. Semi-Restricted Line

A Semi-Restricted Line is prevented from making calls to and/or receiving calls from stations outside the Centrex group. It may, however, make and/or receive outside calls indirectly via the attendant, Call Forwarding, Call Transfer, and Call Pick-Up features.

as. Series Completion

Series Completion is similar to Multiline Hunt Service; however, a significant difference between the two services is that Centrex stations equipped with "Series Completion" always have their own directory number and their own classes of service. "Linear" or "Circle" hunting arrangements can be selected with Series Completion.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

at. Simulated Facility Groups

Simulated Facility Groups restrict the number of simultaneous calls between the Centrex group and the public network. For example, a 100-line Centrex group could be limited to 20 simultaneous calls to/from the public-network.

au. Single-Digit Dialing

Single-Digit dialing permits a Centrex user to reach a line or facility, or to access a feature by dialing a single-digit code. The Single-Digit Dialing codes are shared by all users within a Centrex group and are preprogrammed by the Company.

av. SMDI-Call Retrieval Billing

Allows support of multiple message desk numbers over a common link or single messaging system.

aw. SMDI-KSH Support

Provides 1AESS function for calling number delivery and Key Short Hunt.

ax. SMDI-Simplified Message Desk Interface

Provides an integrated, automated interface between the central office switch and messaging systems compliant with TR-TSY-000283.

ay. SMDR-Account Code Recording

Allows a station user to enter an account code into the SMDR call record for charge back purposes. System screens account codes on a voluntary and mandatory basis via class mark.

az. SMDR-Attendant Call Detail Entry

Allows the attendant to enter station or through dialing account code information into the system.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

ba. SMDR-Authorization Codes

Used to identify callers for billing, routing, and network access control purposes.

bb. SMDR-Authorization Codes for ASR

Allows an authorized station user to over-ride call blocking during selective routing control periods.

bc. SMDR-Separate Centrex Output Files

This feature provides for two data streams, one to the AMA and one to the SMDR.

bd. SMDR-Separate Files By Customer Group

Allows each of the separate customer groups to have SMDR files.

be. SMDR-Station Message Detail Recording

Provides an SMDR type record of all chargeable and non-chargeable calls from each group.

bf. SMDR-Station Specific Authorization Codes

Allows customers to administer their own authorization codes through connection to a recent change facility.

bg. SMDR-Trunk Identifier

Allows recording of the incoming and outgoing trunk identifiers along with the usual billing information provided by SMDR.

bh. Special Intercept Announcement

A Special Intercept Announcement may optionally be used to address the following Conditions:

(1) if a Centrex user dials a code, which is not defined or assigned in the Business Group Dialing Plan: or

(2) if the call is restricted due to various restriction arrangements (i.e., Semi-Restricted, etc.).

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

bi. Speed Calling 8 Code

Speed Calling 8 Code enables a station user to call a list of up to 8 preselected directory numbers by dialing one-digit codes instead of the directory numbers.

bj. Speed Calling 30, 50, or 70 Code

Speed Calling 30, 50, or 70 Code enables a station user to call a list of up to 30, 50, or 70 preselected directory numbers by dialing two-digit codes instead of the directory number.

bk. Station-Automatic Line

Provides an automatic connection between a calling station and predetermined destination upon initiation of the off-hook sequence.

bl. Station-Blind Transfer Recall

Allows a station user to transfer a call to another station without waiting for the station to answer.

bm. Station-Call Forward/Remote Activation of Station

Enables call forward station users to activate the call forward feature to a station from anywhere that direct dial access is possible.

bn. Station-Call Park

Allows a station to park a call against it's own directory number to be retrieved by dialing an access code.

bo. Station-Camp-On With Music

Allows connection of music to a calling party when the caller is camped-on to the destination.

bp. Station-Direct Call Park

Allows a station to park a call against any directory number appearance rather than the stations directory number.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

bq. Station-Distinctive Call Waiting

Provides distinctive ringback tone to the caller or distinctive call waiting tone to the called party or both based on station optioning.

br. Station-Distinctive Ringing

Provides different ringing cadence for intragroup and DID calls for Identification to the station user.

bs. Station-Executive Busy Over-Ride

Allows a station to access a busy line via access code. Priority stations can be exempted from Busy Over-Ride.

bt. Station Flash Translator

Allows translations to be established that will continue call processing after a call is established and when a hook flash is received.

bu. Station-Intergroup Calling

Allows customers calling in different calling groups to call each other through the use of abbreviated dialing.

bv. Station-Last Number Redial

Allows a station to redial the last number called by the station dialing a single key.

bw. Station-Message Waiting

Permits a station code access to the attendant or station that left a message waiting.

bx. Station-Message Waiting Lamp

Provides a station visual indication that a message is waiting at the message center.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

by. Station-Multiple Call Forward Attempts

Allows terminating of calls on a station if a call has been forwarded and allows the user to forward multiple calls.

bz. Station-Permanent Hold

Allows a station to hold a call against its directory number without attendant assistance.

ca. Station-Personal Call Screening for CFU/CFI

Allows a remote station to whom a base station has programmed Call Forward to transfer a call back to the base station regardless of the state of Call Forward activation.

cb. Station-Ring Again

Allows a station user encountering a busy station to be notified when the call station is idle.

cc. Station-Ring Splash For CFI

Provides a reminder ring splash to a station before forwarding a call to indicate that call forward is active.

cd. Station-Ringing Message Waiting Reminder

Provides periodic ring notification to indicate that a message is waiting.

ce. Station-Security Codes for Standard Features

Allows assignment of a variable length code to a valid directory number to restrict retrieval of calls parked by a directed call park command.

cf. Station-Speed Calling/Individual

Abbreviated dialing feature restricted to a single station user.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

cg. Station-Transfer Call to Uniform Distribution

Allows members of uniform call distribution groups to transfer calls to other members or other uniform call distribution groups.

ch. Station-Uniform Call Distribution

Allows for a uniform distribution of incoming calls to listed directory numbers over a group of stations.

ci. Station-Variable Speed Call Access Code

Allows assigned stations to dial abbreviated dialing access codes without the normal prefix (* or Y).

cj. Stop Hunt

Stop Hunt allows a station user to stop the normal hunting process at a predetermined point. Activating this feature at a particular station in a Multiline Hunt Group will cause the search for an idle line to stop there.

ck. System Automatic Route Selection

Selection of outgoing trunks are made through a linear search of a trunk route list.

cl. System-Call Back Queuing

Allows a system user encountering an all trunks busy condition the option of being notified when a trunk becomes idle.

cm. System-Confidential Altering

Prevents the controller of a three-way conference from eavesdropping without the knowledge of the other two parties.

cn. System-Cut Through Dialing

Allows a processing of calls in the cut-through mode.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

co. System-Data Call Protection

Protects data transmission by preventing busy verification and test access of the line while busy.

cp. System-Dial Pulse Conversion

Allows conversion of dial pulse signals to DTMF signals to complete a call.

cq. System-Dictation Access Control

Provides station access to customer-provided dictation recording equipment through the use of an access code.

cr. System-Expensive Route Warning Tone

Provides a warning tone to indicate the selection of an expensive route as defined by the least cost routing parameters.

cs. System-MultiLine Variety Package Dial Plan

Provides group intercom, call hold, call pickup, call transfer, conference, call waiting, convenience dialing, and distinctive ringing to multi-line groups not part of a Centrex service.

ct. System-Music on Hold

Provides a continuous broadcast of music with optional recorded announcement to subscribers placed on hold by a Centrex group member or attendant.

cu. System-Semi-Restricted Service

Stations are allowed to access the network only through the attendant intervention.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

cv. System-Special Service Facility Access

Access code connection to special facilities such as tie trunks, WATS circuits and FX lines.

cw. System-Time-of-Day-Routing

Allows flexible routing based upon time-of-day selection.

cx. System-Toll-Restricted-Service

Allows stations to be toll denied or diverted to the attendant upon attempt to access the toll network.

cy. System-Uniform Number Plan

This feature allows a multi-location customer to have a uniform numbering plan among group stations at various locations.

cz. System-Unrestricted Service

Allows a station to access any service allowed by the group dialing plan.

da. System-Virtual Facility Group

This feature restricts a station to a specific service or constrains the group access capacity by limiting the number of incoming or out-going calls allowed in by the group at any one time.

db. System-Voice Message Exchange

Allows integration of the Centrex group with a customer furnished voice messaging service.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

dc. Toll Restriction

Toll Restriction blocks the completion of calls that are directed to the outside operator or to numbers outside the local calling area. Toll Restriction may be assigned to either an individual line or shared by multiple lines.

dd. Toll Restriction with PIN

Toll Restriction with PIN blocks the completion of calls that are directed to the outside operator or to numbers outside the local calling area unless a PIN is entered. Toll Restriction may be assigned to either an individual line or shared by multiple lines.

de. Three-Way Calling

Three-Way Calling allows a station user to add additional parties to the existing call, and thus enables a simultaneous conference between parties at multiple locations.

de.1 Six-Way Calling

Six-Way Calling allows a station user to add additional parties to the existing call, and thus enables a simultaneous conference between parties at multiple locations.

df. Uniform Call Distribution

Uniform Call Distribution is intended to distribute calls evenly among the stations in a Multiline Hunt Group. When a caller is connected to an idle station, the location of the next station is marked as the starting point for hunting for the next incoming call received. Once hunting begins, it proceeds in a circular manner until an idle station (number) is found.

dg. Voice/Data Protection

Voice/Data Protection allows a station user to deactivate features such as Call Waiting and Operator Verification when the user's line is in use.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

C. Description of Features (Cont'd)

1. The following standard and optional features may be provided as part of the Centrex Service: (Cont'd)

dh. Voice Mail Integration

Voice Mail Integration allows calls to be redirected to a voice mail system. Call Forwarding Busy Line and Call Forwarding Don't Answer are provided with this feature along with the following capabilities:

1. Called party identification (to the voice mail system) on forwarded calls; and

2. Message Waiting activation/deactivation (stutter dial tone)

di. Warm Line

Warm Line provides a time-out option with either Direct Connect Service or Manual Line Service. The time-out interval may be set at 1 to 14 seconds. During the time-out interval, a station user will receive normal dial tone and can originate calls. However, after the time-out interval expires, a call is automatically set up and routed to the specified destination.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

D. Rates

1. Centrex Line Rates

   a. In addition to the rates specified below, individual access line rates for Local Exchange Service, Section 4, apply as appropriate.

   b. The monthly rate for Centrex Service Lines specified in Section 7.11.D.3 following includes the following standard features:

   (1) Anonymous Call Rejection
   (2) Automatic Call Back
   (3) Automatic Recall
   (4) Automatic Recall Blocking
   (5) Business Group Dialing Plan - System-Simplified Dialing
   (6) Call Forward/Busy Line
   (7) Call Forward/All Calls
   (8) Call Forward/Don't Answer
   (9) Call Forward/Distinctive Ring
   (10) Call Forward/Remote Activation
   (11) Call Forward/Remote Toll
   (12) Call Hold
   (13) Calling Number Delivery
   (14) Calling Number Delivery Blocking
   (15) Calling Name Delivery
   (16) Calling Name Delivery Blocking
   (17) Call Park
   (18) Call Pickup
   (19) Call Transfer
   (20) Call Waiting/Cancel Call Waiting
   (21) Call Waiting/Incoming Only
   (22) Code Restriction
   (23) Customer Originated Trace
   (24) Denied Origination
   (25) Denied Termination
   (26) Direct Inward Dialing
   (27) Direct Outward Dialing
   (28) Do Not Disturb

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

D. Rates (Cont'd)

1. Centrex Line Rates (Cont'd)

   b. The monthly rate for Centrex Service Lines specified in Section 7.11.D.3 following includes the following standard features: (Cont'd)

(29) DTMF Signaling (Touchtone)
(30) Fully-Restricted Line
(31) Intercom Dialing
(32) Music On Hold
(33) Night Service
(34) Outwats/Simulated Facility Group
(35) Outwats/Flexible Routing
(36) Recorded Telephone Dictation
(37) Screen List Editing
(38) Selective Call Forwarding
(39) Selective Call Rejection
(40) Semi-Restricted Line
(41) Speed Calling/8 Numbers
(42) Subscriber Identification Ringing Assignment
(43) System-Automatic Route System
(44) System-Call Back Queuing
(45) System-Call Code Access
(46) System-Code Restrict
(47) System-Confidential Alerting
(48) System Cut Through Dialing
(49) System-Data Call Protection
(50) System-Dial Pulse Conversion
(51) System-Dictation Access Control
(52) System-Expensive Route Warning Tone
(53) System-Loud Speaker Paging
(54) System-Multi Line Variety Package Dial Plan
(55) System-Music on Hold
(56) System-Simplified Dialing
(57) System-Special Service Facility Access
(58) System-Time of Day Routing
(59) System-Toll Restricted Service
(60) System-Uniform Number Plan
(61) System-Unrestricted Service
(62) System-Virtual Facility Group
(63) System-Voice Message Exchange
(64) Three-Way Calling
(65) Toll Restriction

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

D. Rates (Cont'd)

2. Individual Station Features

a. Non-Chargeable Individual Station Features

(1) Station-Automatic Line
(2) Station-Blind Transfer Recall
(3) Directed Call Park
(4) Distinctive Call Waiting
(5) Distinctive Ringing
(6) Executive Busy Over-Ride
(7) Station-Flash Translator
(8) Station-Intergroup Calling
(9) Station-Last Number Redial
(10) Meet Me Conference
(11) Station-Multiple Call Forward Attempts
(12) Station-Permanent Hold
(13) Station Personal Call Screening for CFU/CFI
(14) Station Ring Again
(15) Station Ring Splash for CFI
(16) Station Security Codes for Standard Features
(17) Station Speed Calling/Individual
(18) Station Transfer Call to Uniform Distribution
(19) Station Uniform Call Access Code
(20) Variable Speed Call Access Code

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

D. Rates (Cont'd)

2. Individual Station Features (Cont'd)

   b. The following individual station features are offered at no charge - SMDI Group:

      (1) Call Retrieval Billing
      (2) KSH Support
      (3) Simplified Message Desk Interface

3. Centrex Line Rates

   a. The following rates will apply.

Business, per trunk, per month	$39.00
Residence, per trunk, per month	$16.00

   b. Centrex Service Establishment Charge

Standard Subsequent Service Order Fee	$12.00
Plus Standard Facility Administrative Fee	
Charge for all new or additional lines	$20.00/Line

   Additions and changes to establish line features:

Standard Subsequent Service Order Fee	$12.00
Plus per feature charge	$ 5.00/Feature
Not to exceed $20.00 per Line.	

4. Individual Station Features

   a. Chargeable individual station features

   The monthly rates shown below applies to the following individual station features:

      (1) Station-Camp on With Music
      (2) Centrex Paging

Individual feature per line	$0.75

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

D. Rates (Cont'd)

4. Individual Station Features (Cont'd)

   b. Centrex with Voice Mail

Centrex Mail, per mailbox equipped	$4.00

   c. Additions and changes to individual station features

Feature Additions/Changes Per Line	Refer to D.3.b

5. The following individual station features are offered as part of the SMDR Group:

   (1) SMDR-Account Code Recording
   (2) SMDR-Attendant Call Detail Entry
   (3) SMDR-Authorization Codes
   (4) SMDR-Authorization Codes for ASR
   (5) SMDR-Automatic Station Identification
   (6) SMDR-Separate Centrex Output Files
   (7) SMDR-Separate Files by Customer Group
   (8) SMDR-Station Message Detail Recording
   (9) SMDR-Station Specific Authorization Codes
   (10) SMDR-Trunk Identifier

	Monthly Charge	**Non-Recurring Charge**
SMDR Group, per group		Refer to D.3.b

6. Toll Restriction with PIN

   Up to 8 stations and 10 PINS for ***$5.00*** per month Standard Service Order Charge.

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

D. Rates (Cont'd)

7. Features Associated with Groups of Lines

	Monthly Charge	Non-Recurring Charge
a. Speed Calling 30 Numbers		
Per List	$4.50	Refer to D.3.b
Per Line Using List	$ .50	Refer to D.3.b
b. Speed Calling 50 Numbers		
Per List	$6.50	Refer to D.3.b
Per Line Using List	$ .50	Refer to D.3.b
c. Speed Calling 70 Numbers		
Per List	$8.50	Refer to D.3.b
Per Line Using List	$ .50	Refer to D.3.b
d. Direct Call Pick-up		
Per Group	$2.00	Refer to D.3.b
Per Line in Pick-up Group	$ .50	Refer to D.3.b
e. Special Intercept Announcement		
Standard Announcement	$20.00	$20.00
Customer Worded Announcement	$40.00	$40.00
Announcement Trunk	$25.00	$20.00
f. Six-Way Calling		
Per User	$2.00	Refer to D.3.b
g. Paging Access		
Per Paging Circuit	$15.00	

7. MISCELLANEOUS SERVICE OFFERINGS

7.11 CENTREX SERVICE (CONT'D)

D. Rates (Cont'd)

8. Multiline Hunt Services

a. Hunting Arrangements

The following monthly rates for hunting arrangements are applied in addition to the per-line rates for Centrex lines. The nonrecurring service establishment charges are assessed on a per-hunt group basis.

b. Changes to Hunting Group Arrangements/Patterns

Additional Lines/Change Hunting Order	Refer to D.3.e

c. Hunt Group Options

(1) Queuing For Hunt Group	$20.00 per month
(2) Delay Announcements for Queued Calls	
Announcement Trunk	$25.00 per month
(3) Stop Hunt/Make Busy	
Access Code Activation	$ 0.50 per month
Key/Switch Activation	$ 5.00 per month

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI) (T)

INDEX

(N)

SUBJECT	SECTION	PAGE
B-Channel	8.2	2
Circuit Switched Service Description	8.3	4
Customer Premise Equipment (CPE)	8.2	2
Customer Premise Equipment (CPE)	8.5	8
D-Channel	8.2	2
D-Channel Backup	8.2	3
Directory Listing	8.5	8
End User Common Line Charges – ISDN-PRI	8.5	10
General Description	8.1	2
Hunting Service (ISDN-PRI)	8.3	5
ISDN-PRI Access Facility	8.2	3
ISDN-PRI Service Arrangement	8.2	2
Moves	8.5	9
Multiple ISDN-PRI Arrangement	8.2	3
Number Assignment (ISDN-PRI)	8.3	4
Payment for Service	8.5	6
Rates and Charges	8.6	11
Regulations and Conditions	8.5	6
Technical Specifications	8.4	5

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI) (N)

8.1 GENERAL DESCRIPTION

A. Integrated Services Digital Network (ISDN) is a public network-based set of communications services that make it possible to send, receive, and modify information using regular telephone facilities. ISDN provides end-to-end digital communications and gives the ability to transmit data and voice over the same telephone line simultaneously. This functionality is provided via channelized transport facilities. The ISDN architecture provides for Primary Rate Interface (PRI) which is typically used when a customer wants to connect large quantities of digital lines to the network.

B. Integrated Services Digital Network-Primary Rate Interface (ISDN-PRI) uses the ISDN architecture to provide the customer with the capability to transmit voice and data simultaneously over the same digital facility. Under various optional arrangements, ISDN-PRI provides the customer with access to Circuit-Switched Voice Services and Circuit-Switched Data Services.

8.2 ISDN-PRI SERVICE ARRANGEMENT

A. ISDN-PRI Service Arrangement Connections - An ISDN-PRI arrangement connects an ISDN-capable Company central office switch to ISDN-capable customer premise equipment (CPE). Depending on the application, that CPE might be a PBX, a router, a multiplexer, etc. The ISDN-PRI arrangement provides a total of twenty-four digital communications channels within a single physical facility. Twenty-three of these channels are called Bearer, or B Channels and they carry the actual voice or data. Another channel, called the Delta or D Channel, is used to transport signaling for the other 23 channels. This configuration is known as 23B+D.

1. B Channel - The B Channel is a bi-directional synchronous channel capable of supporting digital transmission speeds of 64 kilobits per second (kbps). Each B Channel of an ISDN-PRI may carry:

   a. Circuit-Switched Voice
   b. Circuit-Switched Data

2. D Channel - The D Channel is a 64 kbps digital signaling channel that carries signaling and control for the B Channels. The D Channel provides Common Channel signaling whereby one channel for a link is used for signaling to control and manage traffic on all channels on the link. (N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI) (N)

8.2 ISDN-PRI SERVICE ARRANGEMENT (CONT'D)

B. ISDN-PRI Access Facility - The ISDN-PRI Access Facility provides a high capacity digital link over which the ISDN-PRI services are delivered. This facility is based on a 1.544 Mbps DS1 carrier (T1 facility) connecting the customer's premises to the Company central office serving the customer's premises.

C. Customer Premises Location For provision by the Company of ISDN-PRI service, the customer's premises must be located in the Company's local service area.

D. Multiple ISDN-PRI Arrangement - There may be situations where more than 23 B Channels are needed at a particular customer premise. In those situations, multiple ISDN-PRI facilities can be assigned to an ISDN-PRI arrangement. With the multiple ISDN-PRI arrangement, the D Channel in the first ISDN-PRI facility is used to transport signaling for additional PRI facilities. The first ISDN-PRI would be configured as 23B+D and the other ISDN-PRIs would be configured as 24B. This use of Non-Facility Associated Signaling (NFAS) allows the overhead of the D Channel to be distributed over multiple ISDN-PRI facilities, thereby increasing channel efficiency.

E. D Channel Backup - In Multiple ISDN-PRI Arrangements, a second D Channel can be assigned (where available) as an automatic backup to the primary D Channel. This can be offered when more than one ISDN-PRI is provided to the same customer in order to provide redundancy of the signaling channel. D Channel Backup lines are not subject to the Federal End User Common Line Charges described at Section 8.5.I of this Tariff. Where the customer orders D Channel Backup on a single PRI-Arrangement, the number of available B Channels shall be limited to 22. (N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.3 CIRCUIT SWITCHED SERVICE DESCRIPTIONS

Circuit Switching is a switching arrangement in which an entire circuit or B Channel is dedicated to a given call. The circuit is connected on a per call basis and can carry circuit-switched voice or circuit-switched data. Circuit switched related services include:

A. Clear Channel Capability - A characteristic of the transmission paths on the "B" channel that allows the full bandwidth on the "B" channel, 64 kbps, to be available to the customer. However, ISDN interconnection to non-ISDN equipped central offices will be potentially subjected to analog transmission or sub-rated to 56 kbps.

B. Dedicated Trunk Groups - The B Channels of an ISDN-PRI can be dedicated for calls to and from the public network. Available Trunk Group types include: One-Way Inbound Trunks, One-Way Outbound Trunks or Two-Way ISDN DID Trunks. Configuration of more than one type of dedicated trunk group among the B Channels on a single ISDN-PRI Arrangement requires additional charges under Multiple Trunk Type Charges at Section 8.6.B.4.

C. Primary Rate Call-By-Call Service - The Primary Rate Call-By-Call (CBC) feature offers access to additional services such as Tie Trunks via the B Channels of an ISDN-PRI. With this feature, any B Channel on the ISDN-PRI can be used to offer the above services on a per-call basis in addition to trunk calls to/from the public network (i.e., DOD/DID).

D. Number Assignment

Assignment of numbers related to ISDN-PRI service shall be limited to numbers assigned to the Company local service exchange for the Company central office in which the Customer premises is located.

1. Individual Directory Number - Each ISDN-PRI arrangement includes up to 5 directory listings.

2. Multiple Directory Numbers - Additional directory numbers, a range of directory numbers, or several ranges of directory numbers can be optionally added. Additional directory listings are available as specified in Section 5.3 of this Tariff.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.3 CIRCUIT SWITCHED SERVICE DESCRIPTIONS (CONT'D)

E. Hunt Service See Section 5.19 for applicable charges.

F. Advanced Calling Services - ISDN-PRI can support access to the following Advanced Calling Services (also called CLASS services) from suitably equipped CPE:

1. Caller ID – Name & Number- This feature allows the central office and the customer's equipment to communicate the calling party's directory number on calls carried by the ISDN-PRI service. The name & number can then be made available to be displayed on a properly equipped telephone set or adjunct equipment.

8.4 TECHNICAL SPECIFICATIONS

A. Transmission Specifications - The ISDN-PRI Access Facility provides a high capacity digital link over which the ISDN-PRI services are delivered. This facility is based on a 1.544 Mbps DS1 carrier (T1 facility) whose characteristics are as follows:

- Line Code = Bipolar 8 Zero Substitution (B8ZS)
- Framing Format = Extended Super Frame (ESF)
- Signaling = Common Channel Signaling
- Data Rate = 64 kbps clear or 56 kbps restricted
- D Channel = 24th channel on the T1 facility

B. Customer Premise Equipment (CPE) and Facilities – Customer Premises Equipment (CPE) that is compatible with the Company's ISDN-PRI interface is the responsibility of the customer.

The Company shall not be responsible if changes in any of the equipment, operations, or procedures of the Company utilized in the provisioning of ISDN services render any facilities provided by the customer obsolete or require modification of such equipment or system, or otherwise affect its use or performance.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.5 REGULATIONS AND CONDITIONS

A. Unless specifically exempted, ISDN services shall be subject to all general regulations applicable to the provision of service by the Company as stated in the General Regulations at Section 2 of this tariff.

B. ISDN-PRI is provided at the option of the Company. These services are furnished subject to central office switching capacity, capability, and the availability of outside plant facilities.

The availability, functionality, and capabilities of ISDN-PRI may vary, or may not be available, dependent upon type of serving central office switch, related software controlling that switch and associated outside plant.

1. Where facilities are not available, or unusual expenditures are involved in making them available, the customer may be required to pay additional charges to cover the unusual expenditure, or to contract for services beyond the normal service term, or both.

C. Payment for Service:

1. The minimum charge period for services provided under this tariff is one year.

2. Customers have the option to qualify for term discounts by committing under contract to either a three-year or five-year term. The discounts for three-year or five-year term commitment contracts are established at Section 8.6.C following. The discounts apply to the monthly rates for ISDN-PRI Access Facility charges and ISDN-PRI Service Arrangement Connection Interface Charges set forth at Sections 8.6.A and 8.6.B.1, respectively. The discounts do not apply to ISDN-PRI B-Channel or to any other rates. The discount for the applicable contract period will continue to apply after completion of the contract period unless the customer orders service under a longer contract period in which case rates will be reduced pursuant to the higher discount rate.

3. Customers who order five or more ISDN-PRI Arrangements at the same customer premises qualify for discounted pricing on a per-PRI Arrangement basis as established at Section 8.6.B.2.b.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.5 REGULATIONS AND CONDITIONS (CONT'D)

C. Payment for Service: (Cont'd)

4. Suspension of service is not allowed.

5. Termination Liability

a. For ISDN-PRI service ordered on a month-to-month basis, the customer disconnects ISDN-PRI service prior to completion of the minimum charge period of one year, the customer shall pay a charge equal to the undiscounted ISDN-PRI monthly rate applicable to the service ordered by the customer multiplied by the number of months remaining in the minimum charge period at the time of disconnection. For service ordered on a month-to-month basis, after completion of the minimum charge period, there is no penalty for disconnection.

b. For ISDN-PRI service ordered on a month-to-month basis, if the customer disconnects prior to completion of the minimum charge period, the customer shall pay an amount equal to the monthly rate applicable to the service ordered by the customer, multiplied by the number of months required to complete the minimum charge period. After completion of the minimum charge period there is no penalty for disconnection.

c. For ISDN-PRI service ordered on a three or five year term contract basis, if the customer disconnects prior to completion of the minimum charge period, the customer shall pay an amount equal to the monthly non-discounted rate applicable to the service ordered by the customer, multiplied by the number of months required to complete the minimum charge period, plus an amount equal to the difference between the contract rate and the non-discounted monthly rate multiplied by the number of months since service was established. If service is disconnected prior to the end of the contract term, but after completion of the minimum charge period, the customer shall pay an amount equal to the difference between the contract term rate and the non-discounted monthly rate, multiplied by the number of months since service was established.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.5 REGULATIONS AND CONDITIONS (CONT'D)

D. Directory Listings: Up to 5 directory listings are provided without charge for each ISDN-PRI customer. Additional listings may be provided as specified under Section 5.3 of this Tariff.

E. Billable Call Treatment: Normal toll charges (including InWATS and OutWATS charges) shall apply to calls that are made outside of the Local Service Area or applicable Extended Area of Service.

F. Customer Premise Equipment (CPE):

1. This tariff does not include terminal equipment on the customer's premises. Terminal equipment may be sold or leased separately by the Company (under a separate contract) or may be provided by the customer.

2. The customer is responsible for providing the power required for any and all CPE connected to an ISDN-PRI.

G. The Company shall not be liable for any loss or damages arising out of error, interruptions, defects, failure, or malfunctions of ISDN services or associated equipment. Damages arising out of such interruptions, defects, failures, or malfunctions of the services after the Company has been notified, and has reasonable time for repair, shall in no event exceed an amount equivalent to the charges made for the service affected for the period following notice from the customer until service is restored.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.5 REGULATIONS AND CONDITIONS (CONT'D)

H. Moves

A move involves a change in the physical location of one of the following:

- the location of the ISDN-PRI Arrangement interface at the customer premises within the same building,
- the customer premises at a different building.

The charges for the move are dependent on whether the move is to a new location within the same building or to a different building.

1. Moves Within the Same Building

   When the move is to a new location within the same building, the charges for the move will comprise labor charges and a trip charge as established at Section 8.6.B.4 of this Tariff.

2. Moves to a Different Building

   Moves to a different building will be treated as a discontinuance and start of service and all associated nonrecurring charges will apply. New minimum period requirements will be established for the new service.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.5 REGULATIONS AND CONDITIONS (CONT'D)

I. Federal End User Common Line Charges: ISDN-PRI service is subject to Federal Communications Commission (FCC) Interstate End User Common Line charges under the rates and application rules specified by the FCC. These charges are in addition to the charges for ISDN-PRI service specified in Section 8.6 of this tariff following. Interstate End User Common Line charges applicable to ISDN-PRI service provided by the Company are billed by the Company pursuant to National Exchange Carrier Association (NECA) Tariff F.C.C. No. 5.

Applicable ISDN-PRI charges billed by the Company pursuant to NECA Tariff F.C.C. No. 5 include the following:

1. End User Common Line (EUCL) Pursuant to NECA Tariff F.C.C. No. 5, Section 4.6.8, the End User Common Line (EUCL) – Multiline Business rate will be billed for each ISDN-PRI arrangement provided by the Company at the rate of five EUCL-Multiline Business Individual line or trunk charges as set forth in NECA Tariff F.C.C. No. 5., Section 17.1.2(C).

2. ISDN-PRI Line Port Charge Pursuant to NECA Tariff F.C.C. No. 5, Section 3.10, the ISDN PRI Line Port charge will be billed for each ISDN-PRI arrangement provided by the Company at the rate set forth in NECA Tariff F.C.C. No. 5., Section 17.1.4.

3. Federal Universal Service Charge (FUSC): Pursuant to NECA Tariff F.C.C. No. 5, Section 3.9, the Federal Universal Service Charge (FUSC) will be billed for each ISDN-PRI arrangement provided by the Company at the rate set forth in NECA Tariff F.C.C. No. 5., Section 17.1.3.

The Company will bill the current NECA Tariff F.C.C. No. 5 rates applicable to ISDN-PRI service. In the event NECA revises any of the rates applicable to ISDN-PRI service pursuant to NECA Tariff F.C.C. No. 5, the revised rates apply to the ISDN-PRI service provided by the Company to the customer based on the effective date of the change in NECA Tariff F.C.C. No. 5. In the event NECA revises the terms and conditions in NECA Tariff F.C.C. No. 5 applicable to ISDN-PRI service, including any revisions of section numbers referenced herein, the revised terms and conditions and/or section numbers shall apply to charges under NECA Tariff F.C.C. No. 5 billed by the Company to company applicable to ISDN-PRI service provided by the Company notwithstanding any references in this section made obsolete by the revisions in NECA Tariff F.C.C. No. 5.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.6 RATES AND CHARGES

		Monthly Rate	Service Establishment
A.	ISDN-PRI Access Facility		
1.	ISDN-PRI Access Facility-First Mile	N/A[1]	N/A[1]
2.	ISDN-PRI Access Facility-Each Additional Mile	$20.00	N/A[1]
B.	ISDN-PRI Service Arrangement Connections		
1.	ISDN-PRI Interface	$180.00	$700.00
2.	ISDN-PRI B-Channels		
a.	Per B Channel – If Fewer than Five ISDN-PRI Service Arrangements provided at the same customer designated premises.	*	$5.00
b.	Per PRI Arrangement – If five or more ISDN-PRI Service Arrangements are provided at the same customer designated premises	$500	$100.00

* Monthly charges for ISDN-PRI B-Channels where fewer than five PRI Arrangements are provided at the same customer premises will be at the applicable Local Exchange Component Business Trunk rate at Section 4.7.A of this Tariff plus the Extended Area of Service Component at Section 4.7.B for the exchange in which the Customer premises is located.

[1]The charges associated with the ISDN-PRI Access Facility, other than monthly charges for additional miles beyond the first mile, are included in the ISDN-PRI Interface charges.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.6 RATES AND CHARGES (CONT'D)

		Monthly Rate	Service Establishment
B.	ISDN-PRI Service Arrangement Connections (Cont'd)		
3.	D-Channel Backup	$100.00	$150.00
4.	Multiple Trunk Type Charges		
	Where more than one type of trunk (One-Way Inbound Trunks, One-Way Outbound Trunks or Two-Way ISDN DID Trunks) is ordered on a single ISDN-PRI Arrangement.	$100.00	$200.00

5. Move Charge

To move ISDN-PRI Service Arrangement interface within the same customer building, the Company will charge the customer the following:

a. Labor charges for ISDN-PRI Arrangement interface moves will be billed at half-hour increments at the hourly rate established at Section 6.4.G. Charges for a half hour shall be assessed for any portion of a half hour period during which the company's technician is at the customer premises beginning at the time of arrival. The minimum labor charge per visit to the customer premises for an ISDN-PRI Arrangement interface move is the charge for one half hour.

b. A trip charge at the rate established at Section 6.4.C of this Tariff shall apply to each visit to the customer premises for purposes of a ISDN-PRI Arrangement interface move.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.7 RATES AND CHARGES (CONT'D)

			Monthly Rate	Service Establishment
C.	Circuit Switched Features			
	1.	Clear Channel Capability	No Charge[1]	No Charge[2]
	2.	Call-by-Call Capability – Per ISDN-PRI Facility	No Charge[1]	No Charge[2]
	3.	Advanced Calling Services Caller ID – Basic	No Charge[1]	No Charge[2]
	4.	Subsequent Feature Additions/Changes – Per ISDN-PRI Facility	N/A	$100.00

[1]The charges associated with Circuit Switched Features are included in the ISDN-PRI Interface charges.

[2]In the event the customer orders a Circuit Switched Feature subsequent to the initial installation of the ISDN-PRI Arrangement or changes a Circuit Switched Feature, the Subsequent Feature Additions/Changes Charge applies.

(N)

8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN) PRIMARY RATE INTERFACE (PRI)

(N)

8.6 RATES AND CHARGES (CONT'D)

D. Term Discounts

The following term discounts are provided pursuant to Section 8.5.C preceding. The term discounts are applicable to monthly ISDN-PRI Access Facility mileage charges at Section 8.6.A and ISDN-PRI Service Arrangement Connection Interface charges at Section 8.6.B.2. The term discounts do not apply to ISDN-PRI B-Channel monthly charges.

Three Year Contract	5%
Five Year Contract	10%

(N)

9. RESERVED FOR FUTURE USE

10. RESERVED FOR FUTURE USE

11. OBSOLETE LOCAL EXCHANGE SERVICE

11.1 MEASURED SERVICE[1]

A. General

Measured Service is local Residence and Combination Residence/Business exchange service, for which rates are based upon exchange access line and usage. Measured Service is not provided for Business customers. Rates for local usage vary and are based upon the total number of local messages, the duration (holding time) of each message, the distance between calling and called numbers, and the time of day and day of week the message originates.

B. Terms and Conditions

1. This offering is optional and limited to where facilities and equipment are available.

2. Service Charges do not apply for changing to or from Measured Service.

3. Measured Service usage charges do not apply to calls placed to the Company Business Office, Directory Assistance, Long Distance, 911, or "0" for Emergency agencies such as police, fire, rescue, or ambulances.

4. Usage billing will be provided in bulk or summary form and not by call detail.

5. For purposes of this Measured Service offering, the maximum one-party Residence and Combination Residence/Business Measured Service monthly billing for fixed monthly rates and usage charges for sent paid local calls originating on the measured line will not exceed 150% of the then current one-party Residence and Combination Residence/Business flat rate charge in that exchange. This maximum charge shall be referred to as the topping rate. Sent-paid local calls include all Dial Station-to-Station and Person-to-Person calls which are billed to the same telephone number from which they are also originated. All local Operator Assistance Charges and those usage charges for non-sent paid local calls are separate billing entities and will apply in addition to the topping rate.

6. For local Station-to-Station calls placed from Measured Service Lines which require operator assistance, an operator assistance charge will apply in addition to usage charges listed in C., following.

[1] Measured Service is available only on a Grandfathered Service basis as described in Section 2.34 of this Tariff for customers who were subscribers to Measured Service as of June of 1996.

11. OBSOLETE LOCAL EXCHANGE SERVICE

11.1 MEASURED SERVICE (CONT'D)

B. Terms and Conditions (Cont'd)

7. For local Person-to-Person calls placed from Measured Service Lines, an operator assistance charge will apply in addition to usage charges listed in C., following.

8. The quotation of time and charges will not be provided for local telephone calls. This includes information concerning duration of messages and the associated charge to be billed the customer.

9. The method of applying usage rates will be as shown below:

   a. Usage Rates

      (1) Initial minute rates indicated in C.2, following are for connections of one minute or any fraction thereof.

      (2) All additional minute rates indicated in C.2, following, are for each additional minute or any fraction thereof that the connection continues beyond the initial period.

11. OBSOLETE LOCAL EXCHANGE SERVICE

11.1 MEASURED SERVICE (CONT'D)

C. Rates and Charges

1. The following monthly rates are applicable to individual line Measured Service:

	Monthly Rate
* Residence, each line	$9.01
* Combination Residence/Business, each line	$13.51

2. The following exchange usage charges apply in addition to the above exchange access line rates:

	Dial Station-To-Station	
Call Area	Initial Minute Rate	Each Additional Minute Rate
A.	$0.05	$0.01
B.	$0.10	$0.02

Calls made to points within the exchange are included in Call Area A.
Calls made to exchanges which are considered to be Extended Area Service (EAS) under the flat rate environment are included in Call Area B.

3. The exchange usage charges shown in 2., above, will be discounted based on time of day and day of week originated as specified below.

Discounts below apply to certain Holidays such as Christmas Day, New Year's Day, Independence Day, Thanksgiving Day, and Labor Day. The discount for each minute is the discount in effect at the beginning of each minute.

Time Period		Discount
*Evening		
-Sunday through Friday	5:00 p.m. to 11:00 p.m.	35%
*Weekend		
-Saturday	8:00 a.m. to 11:00 p.m.	60%
-Sunday	8:00 a.m. to 5:00 p.m.	60%
*Night		
-All Days	11:00 p.m. to 8:00 a.m.	60%

11. OBSOLETE LOCAL EXCHANGE SERVICE

11.2 Message Rate Trunks (M)

1. General

   Message Rate Trunk Service is offered only to hotels, motels, time share condominiums, nursing homes, and hospitals, where facilities and equipment are available. Two types of recurring charges are associated with Message Rate Trunk Service, a fixed monthly recurring charge and a usage sensitive charge assessed on each Local Message carried over the trunk ("Local Message". is defined at Section 3, Definitions).

2. Rates

Two way trunk, each (3)	$ 0.70
Outward trunk, each (3)	$ 0.70
Toll Access Service (1,2,3)	$ 26.24
Local Messages, each	$ 0.15

(1) Toll Access Service provides facilities for Long Distance direct access to the operator or the Direct Distance Dial Network. The service is primarily designed for, but not limited to hospital, nursing homes and the hotel/motel industry. This service enables patients, guests or other users to dial operator handled, non-sent paid and sent paid toll messages without the assistance of the attendant position.

(2) Message Service usage charges do not apply. (M)

(3) Only applicable to NDTC West Exchanges.

12. OBSOLETE GENERAL SERVICES

12.1 MILEAGE CHARGES[1]

A. General

Mileage Charges apply to line extensions, to Local Exchange Service outside the Base Rate Area.

B. Rates

Service Charges apply to all services and apply in addition to any listed nonrecurring charges.

	S&E CODE	Monthly Rate Per 1/4 Mile or Fraction
1. Line extensions including Signal 1 Circuits		
a. Off-premises	OPM	$1.90

Non-recurring charges will apply as indicated in Section 6

C. Conditions

1. Off-premises extension line mileage will be determined in the following manner:
   a. When the terminals are located in the same central office area, the off-premises mileage measurement is the air line distance between the terminals.
   b. If the line passes through a central office, the air line mileage must include the central office.
2. On-premises extension line mileage will be determined in the following manner:
   a. The on-premises mileage measurement is the air line between access points located on the same premises but in unattached locations.
3. Suburban mileage will be based upon air line mileage between the location of the main station or PBX switchboard service and the nearest point on the Base Rate or Special Rate Area boundary.
4. When facilities must be constructed to provide service to an applicant beyond the Base Rate or Special Rate Area boundary, charges shall be determined as set forth under Line Construction Charges filed in Section 5.8.

[1] Mileage Charge service is available only on a Grandfathered Service basis as described in Section 2.34 of this Tariff for customers who were subscribers to Mileage Charge service as of July 31, 2001.

13. OBSOLETE MISCELLANEOUS SERVICES

13.1 RESIDENTIAL ADDITIONAL LINE [1]

A. General

Residential Additional Line service is a Local Exchange Service offering to one-party, residential customers where facilities exist. This service offering provides a discount for each additional access line requested per customer. Additional access lines will terminate at the same location.

B. Rates

Service charges apply, except that the Company may waive certain applicable service charges during special promotions.

1. Each additional line is equal to 80% of the applicable residential individual access line rate.

	Monthly Rate
a. Additional Access Line Within the Base Rate Area	80% of R1 Rate
b. Additional Access Line Outside the Base Rate Area, flat rate	80% of AR1 Rate

C. Conditions

1. This service will be provided only where the necessary facilities are available.
2. This discount does not apply to set charges, EAS components, touch tone or mileage charges.

[1] Residential Additional Line service is available only on a Grandfathered Service basis as described in Section 2.34 of this Tariff for customers who were subscribers to Residential Additional Line service as of November 1, 1993.

05-451

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Kathryn Crawford
C. Date of Delivery 7/28/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

USPS 58501 JUL 28 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 1200

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dave Dircks Manager
North Dakota Telephone Comp
P O Box 180
Devils Lake ND 58301-0180

A. Signature
X Pat McLean ☒ Agent ☐ Addressee

B. Received by (Printed Name) Pat McLean
C. Date of Delivery 7-28-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 1217

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

05-451

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Scott M Knudsvig
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson
C. Date of Delivery 7/28/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

JUL 28 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 4274

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

05-451

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson
C. Date of Delivery 7/28/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

JUL 28 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 4267

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

05-451

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas J Moorman
Kraskin Moorman& Cosson LLC
21[redacted] L St NW Ste 520
Washington D C [redacted]

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sri Devarapalli
C. Date of Delivery 8/2/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

2154 K St NW Ste 520 Washington DC 20037

AUG 2 2006

3. Service Type
☑ Certified Mail
☑ Registered
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2410 0003 4912 1224

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-451

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

J. D. Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW
Ste 800
Washington DC 20036

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Octavia Dorn
C. Date of Delivery 10-18-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 3110 0003 6265 6489

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X C A Cole ☐ Agent ☐ Addressee

B. Received by (Printed Name) C A Cole — C. Date of Delivery 7-31-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

J G Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington D C 20036

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 4250

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

BISMARCK OCT 17 2006 USPS 58504-9997

1. Article Addressed to:
Patrick W Durick
Pearce & Durick #300
314 E Thayer Ave
Bismarck ND 58502-0400

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 3110 0003 6265 6458

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson — C. Date of Delivery 10/17/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 17 2006

1. Article Addressed to:
Scott Knudson
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 3110 0003 6265 6502

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

TH

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Riegaard
Ainge & Heriptad
PO Box 1000
Minot ND 58702-1000

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson | C. Date of Delivery 10/17/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 17 2006 USPS

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 3110 0003 6265 6496

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-06-419; PU-06-420

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

A. Signature
X Maria Keefe ☒ Agent ☐ Addressee

B. Received by (Printed Name) Maria Keefe | C. Date of Delivery 10-17-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 3110 0003 6265 6526

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Morrman
Kirkin Morrman & Casson
2154 Wisconsin Ave NW
Washington DC 20007

A. Signature
X Thomas Morrman ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery 10-18-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 20

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 3110 0003 6265 6472

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Don Negaard

From: Don Negaard [donn@srt.com]
Sent: Monday, June 12, 2006 9:56 AM
To: 'Patrick W. Durick'
Cc: 'Mary Lohnes'; 'Dave Dircks'; 'Valerie Wimer'
Subject: FW: Agreements for Midco
Attachments: NDTC Resale Guide6-10.doc; NDTC Resale w Discount6-10 (2).doc; Pricing Attachement 6-10-06.doc; NDTC Ordering Attach6-10.doc; NDTC General Terms Conditions6-10.doc

Attached are drafts of the terms and conditions for wholesale/resale in the Devils Lake exchange. I understand the documents are still being reviewed by NDTC for accuracy and for that reason we would reserve the right to make corrections, if needed.

If you have any reply this week it would be appreciated. Next week I am not available and in my absence please send any replies directly to Dave Dircks and Valerie Wimer so they can try follow up if need be.

GENERAL TERMS AND CONDITIONS OF RESALE

BETWEEN

North Dakota Telephone Company

AND

Midcontinent Communications of North Dakota

Table of Contents

Agreement 1
Witneseth 1
1. Purpose 1
2. Term of the Agreement 1
3. Termination of the Agreement 2
4. Contact Exchange 2
5. Amendments 2
6. Assignment 2
7. Authority 3
8. Responsibility of Payment 3
9. Billing and Payment 3
10. Compliance with Laws and Regulations 5
11. Confidential Information 5
12. Fraud 6
13. Dispute Resolution 6
14. Entire Agreement 7
15. Expenses 8
16. Force Majeure 8
17. Good Faith Performance 8
18. Governing Law 8
19. Heading 8
20. Independent Contractor Relationship 8
21. Law Enforcement Interface 9
22. Liability 9
23. Joint Work Product 10
24. Multiple Counterparts 10
25. No Third Party Beneficiaries 10
26. Notices 10
27. Impairment of Service 11
28. Change in Law 11
29. Regulatory Approval 12
30. Taxes and Fees 12
31. Trademarks and Trade Names 12
32. Non-Waiver 13
33. Bankruptcy 13
34. Operations Handbook 13
35. Intercept Messaging 13
Glossary 15

ATTACHMENTS:

Resale Attachment	Attachment 1
Pre-Ordering and Ordering Attachment	Attachment 2
Pricing Attachment	Attachment 3

AGREEMENT

THIS AGREEMENT ("Agreement") is effective as of the ____ day of _____, 2006 (the "Effective Date"), by and between Midcontinent Communications, a South Dakota Partnership ("Midcontinent") with offices at _____ and North Dakota Telephone Company ("NDTC") with offices at 211 22nd St NW, PO Box 180, Devils Lake, ND 58301. This Agreement may refer to either NDTC or Midcontinent or both as a "Party" or "Parties."

WITNESETH

WHEREAS, NDTC is a local exchange telecommunications company authorized to provide telecommunications services in the state of North Dakota; and

WHEREAS, Midcontinent is a competitive local exchange telecommunications company ("CLEC") authorized to provide telecommunications services in the state of North Dakota; and

WHEREAS, The Parties agree to work cooperatively to implement the processes in the NDTC Operations Resale Handbook pending approval of this Agreement by the North Dakota Public Service Commission, so as to be in a position to comply with the Commission's order concerning the timing of implementation of resale and:

WHEREAS, the Parties wish to resale specifically for the purposes of fulfilling their obligations pursuant to Sections 251 of the Telecommunications Act of 1996 ("the Act").

NOW THEREFORE, in consideration of the mutual agreements contained herein, NDTC and Midcontinent agree as follows:

1. Purpose

The Parties agree that the rates, terms and conditions contained within this Agreement, including all Attachments, comply and conform to each Party's obligations under Sections 251 of the Act.

2. Term of the Agreement

2.1 The initial term of this Agreement shall be two years ("Initial Term"), beginning on the above Effective Date and shall apply to the State of North Dakota. If, as of the expiration of this Agreement, a subsequent agreement has not been executed by the Parties, this Agreement shall automatically renew for successive six-month periods, unless, not less than one hundred twenty (120) days prior to the end of the Initial Term or any renewal term, either Party notifies the other Party of its intent to renegotiate a new agreement. In the event of such renegotiation, this Agreement shall remain in effect until such time that a subsequent agreement becomes effective. If the Parties cease to order services under this Agreement, then either Party may terminate this Agreement upon thirty (30) days written notice.

3. Termination of the Agreement

3.1 Termination Upon Default

Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; provided however, that the non-defaulting Party has notified the defaulting Party in writing of the alleged default and the defaulting Party has not cured the alleged default within thirty (30) calendar days of receipt of written notice thereof. Default is defined to include:

3.1.1 A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or

3.1.2 A Party's refusal or failure in any material respect to properly perform its obligations under this Agreement, or the violation of any of the material terms or conditions of this Agreement.

3.1.3 A Party's assignment of any right, obligation, or duty, in whole or in part, or of any interest, under this Agreement without any consent required under Section 6 below.

3.2 Liability Upon Termination

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

4. Contact Exchange

The Parties agree to exchange and to update contact and referral numbers for order inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government.

5. Amendments

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

6. Assignment

This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party. Any attempted assignment or transfer that is not permitted is void *ab initio*. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

7. Authority

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement. Each Party represents he or she has had the opportunity to consult with legal counsel of his or her choosing.

8. Responsibility for Payment

NDTC will render to Midcontinent monthly bill(s) for interconnection and facilities provided hereunder at the rates set forth in the NDTC's applicable tariffs. Midcontinent shall pay bills in accordance with terms of this Agreement. In the event that Midcontinent defaults on its payment obligation to NDTC, NDTC's service to Midcontinent will be terminated and any security deposits held will be applied to the outstanding balance owed by Midcontinent to NDTC.

9. Billing and Payment

9.1 In consideration of the services and facilities provided under this Agreement, the Parties shall bill the other Party on a monthly basis all applicable charges set forth in this Agreement or in NDTC's applicable tariff. The Party billed ("Billed Party") shall pay to the invoicing Party ("Billing Party") all undisputed amounts within twenty (20) days from the bill date. If the payment due date is a Saturday,

Sunday or a designated bank holiday, payment shall be made the prior business day.

9.2 Billing Disputes Related to Unpaid Amounts:

9.2.1 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment is required, the Non-Paying Party shall pay the disputed amounts with interest at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under North Dakota's applicable law. In addition, the Billing Party may cease terminating traffic for the Non-Paying Party after undisputed amounts not paid become more than 90 days past due, provided the Billing Party gives an additional 30 days' written notice and opportunity to cure the default.

9.2.2 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under North Dakota's applicable law.

9.2.3 Issues related to Disputed Amounts shall be resolved in accordance with all of the applicable procedures identified in the Dispute Resolution provisions set forth in Section 13 of this Agreement.

9.3 Except for amounts disputed pursuant to Section 9.2 herein, the following shall apply:

9.3.1 If payment is not received within thirty (30) days from the bill date, NDTC may provide written notice to Midcontinent that additional applications for service will be refused, and that any pending orders for service will not be completed if payment is not received by the fifteenth (15^{th}) day following the date of the notice. If NDTC does not refuse additional application for service on the date specified in the notice, and Midcontinent's noncompliance continues, nothing contained herein shall preclude NDTC's right to refuse additional application for service without further notice.

9.3.2 If Midcontinent should fail to make any payment following the notice under Section 9.3.1, NDTC may on thirty (30) days written notice to Midcontinent discontinue the provision of existing services to Midcontinent at any time thereafter. Notice shall be as provided in Section 26 below. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If NDTC does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and Midcontinent noncompliance continues, nothing contained herein shall preclude NDTC's right to discontinue the provision of the services to Midcontinent without further notice.

9.3.3 If payment is not received within sixty (60) days of notice under Section 9.3.2, NDTC may terminate this Agreement.

9.3.4 After disconnect procedures have begun, NDTC shall not accept service orders from Midcontinent until all unpaid charges are paid in full in immediately available funds.

9.4 Audits:

Either Party may conduct an audit of the other Party's books and records pertaining to the services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data, and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least thirty (30) days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

10. Compliance with Laws and Regulations

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

11. Confidential Information

11.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving

Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with §11.2 of this Agreement.

11.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief that such Disclosing Party chooses to obtain.

11.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

12. Fraud

Neither Party shall bear responsibility for, nor be required to make adjustments to the other Party's account in cases of fraud by the other Party's end-users or on the other Party's end-user customer accounts. The Parties agree to reasonably cooperate with each other to detect, investigate, and prevent fraud and to reasonably cooperate with law enforcement investigations concerning fraudulent use of the other Party's services or

network. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.

13. Dispute Resolution

Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without, to the extent possible, litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

13.1 Informal Resolution of Disputes. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

13.2 Formal Dispute Resolution. If negotiations fail to produce an agreeable resolution within ninety (90) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.

13.3 Continuous Service. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure (other than a dispute related to payment for service), and the Parties shall continue to perform their payment obligations including making payments in accordance with this Agreement.

14. Entire Agreement

This Agreement and applicable attachments, constitute the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied have been made or relied upon in the making of this Agreement other than those specifically set forth herein. In the event there is a conflict between any term of this Agreement, the provisions shall be construed to give the greatest possible effect to the intent of this Agreement.

15. Expenses

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

16. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the Force Majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

17. Good Faith Performance

In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval, or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld, or delayed.

18. Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Dakota without regard to its conflict of laws principles and, when applicable, in accordance with the requirements of the Act and the FCC's implementing regulations.

19. Headings

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.

20. Independent Contractor Relationship

Neither this Agreement, nor any actions taken by Midcontinent or NDTC in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between Midcontinent and NDTC, or any relationship other than that of co-carriers. Neither this Agreement, nor any actions taken by Midcontinent or NDTC in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between Midcontinent and NDTC End Users Customers or others.

21. Law Enforcement Interface

21.1 With respect to requests for call content interception or call information interception directed at Midcontinent's End User Customer, NDTC will have no direct involvement in law enforcement interface. In the event a Party receives a law enforcement surveillance request for an end-user of the other Party, the Party initially contacted shall direct the agency to the other Party.

21.2 Notwithstanding 21.1, the Parties agree to work jointly in security matters to support law enforcement agency requirements for call content interception or call information interception.

22. Liability

22.1 DISCLAIMER

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, EACH PARTY MAKES NO REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES OR FACILITIES IT PROVIDES UNDER THIS AGREEMENT. EACH PARTY DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE

22.2 Limitation of Liability

22.2.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities

(including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

22.2.2 Except as otherwise provided in Section 22, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

22.2.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

22.3 Intellectual Property

Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

23. Joint Work Product

This Agreement is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

24. Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

25. No Third Party Beneficiaries

This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a party as a legal

representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

26. Notices

Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; or (iii) mailed, certified mail, return receipt to the following addresses of the Parties:

To: **Midcontinent**	To: **NDTC**
Mary Lohnes 5001 W 41st Street Sioux Falls, SD 57106	Dave Dircks P.O. Box 180 Devils Lake, ND 58301
With a copy to:	With a copy to: Don Negaard Pringle & Herigstad 2525 Elk Drive PO Box 1000 Minot, North Dakota 58702-1000

Or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent *via* express mail or personal delivery; or (iii) three (3) days after mailing in the case of certified U.S. mail.

27. Impairment of Service

The characteristics and methods of operation of any circuits, facilities or equipment of Midcontinent connected with the services, facilities or equipment of NDTC pursuant to this Agreement shall not interfere with or impair service over any facilities of NDTC, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to its plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over NDTC's facilities or create hazards to the employees of NDTC or to the public (each hereinafter referred to as an "Impairment of Service").

28. Change in Law

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Telecommunications Act of 1996 and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment to the Telecommunications Act of 1996, any effective legislative action or any effective, final regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Telecommunications Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, Amended Rules), either Party may, to the extent permitted or required, by providing written notice to the other party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

29. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under §252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s).

30. Taxes and Fees

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to provide in a timely manner such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party. If either party (Contesting Party) contests the application of any tax collected by the other party (the Collecting party), the Collection party shall reasonably cooperate in good faith with the Contesting party's challenge, provided that the Contesting Party pays any costs incurred by the

Collecting party. The Contesting party is entitled to the benefit of any refund or recovery resulting from the contests, provided that the Contesting Party is liable for and has paid the tax contested.

Midcontinent is responsible for collecting and remitting directly to the proper agency the 911/E911 fees and telecommunication relay service fees and applicable taxes. NDTC will not pay these fees for the resold services.

31. Trademarks and Trade Names

No patent, copyright, trademark or other proprietary right is licensed, granted, or otherwise transferred by this Agreement. Each Party is strictly prohibited from any use, including but not limited to in sales, in marketing or advertising of telecommunications services, of any name, copyrighted material, service mark, or trademark of the other Party.

32. Non-Waiver

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

33. Bankruptcy

If any voluntary or involuntary petition or similar pleading under any Section or Sections of any bankruptcy act shall be filed by or against a Party, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare the Party insolvent or unable to pay the Party's debts, or the Party makes an assignment for the benefit of its creditors, or a trustee or receiver is appointed for the Party or for the major part of the Party's property, the other Party may, if that Party so elects but not otherwise, and with or without notice of such election or other action by that Party, forthwith terminate this Agreement.

34. Operations Handbook

Each Parties Operations Manual will contain it's standard operating procedures. It will not supersede this Agreement and if contrary to the terms of the contract, the contract shall control.

35. Intercept Messaging

Each party will make available the following intercept messaging services:

i. Temporary Disconnects for Non-Pay. NDTC will have control of the customer's line and will be responsible to provide the intercept message. Both service order and central office non-recurring charges are not applicable but a restoral of service charge will be applied if and when service is restored.

ii. Transfer of Service Announcements. For services other than NDTC resold and ported number services, when an end user customer transfers service from one Party to the other Party, and does not retain its original telephone number, the Party formerly providing service to the end user will provide, upon request and if such service is provided to its own customers, a referral announcement on the original telephone number. This announcement will provide the new number of the end user customer and will remain in effect for the same time period this service is provided to Party's own end users. For NDTC resold, NDTC shall provide an intercept referral on behalf of Midcontinent

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

NDTC	**Midcontinent**
By: _____	By: _____
Name: __Dave Dircks	Name: _ Nancy Vogel _____
Title: _General Manager	Title: __Director of Revenue Assurance__
Date: _____	Date: _____

GLOSSARY

1. General Rule

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this agreement are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

2. Definitions

2.1 ACCESS SERVICE REQUEST (ASR).

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of interconnection.

2.2 ACT.

The Communications Act of 1934 (47 U.S.C. §151 et. seq.), as from time to time amended (including, without limitation by the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996), and as further interpreted in the duly authorized and effective rules and regulations of the FCC or the Commission.

2.3 AFFILIATE.

Shall have the meaning set forth in the Act.

2.4 APPLICABLE LAW.

All effective laws, government regulations and orders, applicable to each Party's performance of its obligations under this agreement.

2.5 AUTOMATIC NUMBER IDENTIFICATION (ANI).

The signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.

2.6 CALLING PARTY NUMBER (CPN).

A Signaling System 7 (SS7) parameter that identifies the calling party's telephone number.

2.7 CENTRAL OFFICE.

A local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.8 CENTRAL OFFICE SWITCH.

A switch used to provide Telecommunications Services including but not limited to an End Office Switch or a Tandem Switch. A Central Office Switch may also be employed as combination End Office/Tandem Office Switch.

2.9 COMMISSION.

Means the North Dakota Public Service Commission.

2.10 COMMON CHANNEL SIGNALING (CCS).

A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.

2.11 COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC).

Any corporation or other person legally able to provide Local Exchange Service in competition with NDTC.

2.12 CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI).

Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. § 222.

2.13 DIGITAL SIGNAL LEVEL 1 (DS1).

The 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

2.14 DIGITAL SIGNAL LEVEL 3 (DS3).

The 44.736 Mbps third-level signal in the time-division multiplex hierarchy.

2.15 END OFFICE SWITCH OR END OFFICE.

End Office Switch is a switch in which the End User Customer station loops are terminated for connection to trunks. The End User Customer receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an End Office Switch.

2.16 END USER CUSTOMER.

A retail business or residential end-user subscriber to Telephone Exchange Service provided by either of the Parties.

2.17 END USER CUSTOMER LOCATION

The physical location of the premise where an End User Customer makes use of Telephone Exchange Service.

2.18 EXCHANGE AREA.

Means the geographic area that has been identified by NDTC for its provision of Telephone Exchange Service.

2.19 FCC.

The Federal Communications Commission.

2.20 INCUMBENT LOCAL EXCHANGE CARRIER (ILEC).

Shall have the meaning stated in the Act. For purposes of this Agreement, NDTC is an ILEC .

2.21 INTEREXCHANGE CARRIER (IXC).

A Telecommunications Carrier that provides, directly or indirectly, InterLATA or IntraLATA telephone toll services.

2.22 INTERLATA TRAFFIC.

Telecommunications traffic that originates in one LATA and terminates in another LATA.

2.23 INTERCEPT MESSAGE

An Intercept Message is an announcement on the abandoned telephone number which provides the Customer's new number or other appropriate information.

2.24 INTRALATA TRAFFIC

Telecommunications traffic that originates and terminates in the same LATA.

2.25 INTERNET PROTOCOL CONNECTION

The IPC is the connection between the ISP and the customer where end user information is originated or terminated utilizing internet protocol.

2.26 ISDN USER PART (ISUP).

A part of the SS7 protocol that defines call setup messages and call takedown messages.

2.27 LOCAL ACCESS AND TRANSPORT AREA (LATA).

Shall have the meaning set forth in the Act.

2.28 LOCAL NUMBER PORTABILITY (LNP)

LNP is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

2.29 LINE INFORMATION DATABASE (LIDB).

One or all, as the context may require, of the Line Information databases used by NDTC and owned by other entities which provide, among other things, calling card validation functionality for telephone line number cards issued by NDTC and other entities. A LIDB also contains validation data for collect and third number-billed calls; i.e., Billed Number Screening.

2.30 LOCAL EXCHANGE CARRIER (LEC).

The term "local exchange carrier" means any company that is authorized by the state public utility commission to provide local exchange and exchange access services. Such term does not include a company engaged in the provision of a commercial mobile service.

2.31 LOCAL EXCHANGE ROUTING GUIDE (LERG).

The Telcordia Technologies reference customarily used to identify NPA/NXX routing and homing information, as well as network element and equipment designation.

2.32 LOCAL/EAS TRAFFIC.

Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange, or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in NDTC's tariff. As clarification of this definition and for reciprocal transport and termination compensation, Local/EAS Traffic does not include traffic that originates from or is directed to or through an ISP.

2.33 NORTH AMERICAN NUMBERING PLAN (NANP).

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as area code), followed by a 3-digit NXX code and 4 digit line number.

2.34 NUMBERING PLAN AREA (NPA).

Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized Telecommunications Service that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.

2.35 NXX, NXX CODE, CENTRAL OFFICE CODE OR CO CODE.

The three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number). Each NXX Code contains 10,000 station numbers.

2.36 POINT OF INTERCONNECTION (POI).

The physical location(s) within NDTC's network, at which the Parties' networks meet for the purpose of exchanging Local/EAS Traffic.

2.37 RATE CENTER AREA.

A Rate Center Area is a geographic location, which has been designated by NDTC as being associated with a particular NPA-NXX code, which has been assigned to NDTC for its provision of Telephone Exchange Service. Rate Center Area is normally the same as the boundary of the NDTC Exchange Area as defined by the Commission.

2.38 RATE CENTER

A Rate Center is the finite geographic point identified by a specific V&H coordinate which is used by NDTC to measure, for billing purposes, distance sensitive transmission services associated with the specific rate center; provided that a Rate Center cannot exceed the boundaries of the NDTC Exchange Area as defined by the Commission.

2.39 SIGNALING SYSTEM 7 (SS7).

The common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). NDTC and Midcontinent currently utilize this out-of-band signaling protocol.

2.40 SWITCHED ACCESS SERVICE.

The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 8XX access, and 900 access.

2.41 TANDEM SWITCH.

A switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among end office switches and between and among end office switches and carriers' aggregation points, points of termination, or point of presence, and to provide Switched Exchange Access Services.

2.42 TANDEM TRANSIT TRAFFIC OR TRANSIT TRAFFIC

Telephone Exchange Service traffic that originates on Midcontinent's network, and is transported through an NDTC Tandem to the Central Office of a Midcontinent, Interexchange Carrier, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant NDTC Tandem to which Midcontinent delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide ("LERG"). Switched Exchange Access Service traffic is not Tandem Transit Traffic.

2.43 TARIFF.

Any applicable Federal or State tariff of a Party, as amended from time to time.

For purposes of this agreement, the term tariff shall also be deemed to include any policies or terms and conditions of service that has been adopted by NDTC and filed with a regulatory or governmental agency.

2.44 TELCORDIA TECHNOLOGIES.

Formerly known as Bell Communications Research, a wholly owned subsidiary of Science Applications International Corporation (SAIC). The organization conducts research and development projects for its owners, including development of new Telecommunications Services. Telcordia Technologies also provides generic requirements for the telecommunications industry for products, services and technologies.

2.45 TELECOMMUNICATIONS CARRIER.

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services. A telecommunications carrier shall be treated as a common carrier under the Telecommunications Act only to the extent that it is engaged in providing telecommunications services.

2.46 TELECOMMUNICATIONS SERVICE.

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

2.47 TELEPHONE EXCHANGE SERVICE.

The term "telephone exchange service" means shall have the meaning set forth in 47 U.S.C. Section 3 (47) of the Act.

2.48 VOIP or IP-ENABLED TRAFFIC.

VoIP means any IP-enabled, real-time, multidirectional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes:

(i) Voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and

(ii) Voice traffic originated on the PSTN, and which terminates on IPC.

North Dakota Telephone Company(NDTC)

Resale Operations

and

Planning Guide

This document in whole or in part contains proprietary data and is the industrial property of NDTC and shall not be used for any purposes other than those expressly defined herein. The reproduction or disclosure of the contents of this document to third parties is strictly prohibited without the expressed written approval of NDTC.

RESALE GUIDE

Table of Contents

1. Introduction
2. Getting Started as a Reseller
   - 2.1 Doing business with NDTC
   - 2.2 Roles and Responsibilities
     - 2.2.1 NDTC Roles and Responsibilities
     - 2.2.2 Reseller Roles and Responsibilities

3. Forecasting
   - 3.1 Implementation Meeting
   - 3.2 Service Order Forecast
   - 3.3 Implementation Plan

4. Ordering and Provisioning
   - 4.1 Pre-Ordering Rules
     - 4.1.1 Customer Service Record Request
   - 4.2 Reseller Ordering Procedures Overview
   - 4.3 NDTC Local Service Order
   - 4.4 Types of Local Service Requests
   - 4.5 NDTC Firm Order Confirmation Process
     - 4.5.1 Expedited Orders
     - 4.5.2 Rejected Orders
   - 4.6 NDTC Customer Support Center
   - 4.7 Ordering Expectations
   - 4.8 E911
   - 4.9 Operator Service
   - 4.10 Directory Assistance

5. Local Number Portability
   - 5.1 NDTC Role
     - 5.1.1 Loss Notification
   - 5.2 Reseller LNP Procedures

6. Trouble Administration
   - 6.1 Trouble Resolution Process
   - 6.2 Reseller Reporting
   - 6.3 NDTC Trouble Resolution

7. Billing
   - 7.1 Compliance
   - 7.2 Date
   - 7.3 Billing Account Number
   - 7.4 Charges
   - 7.5 Usage Identification
   - 7.6 Distribution

8. Application of General Charges
9. Exclusions & Limitations On Services Available For Resale

Appendices

Appendix A	Reseller Account Profile
Appendix B	Customer Service Record Request Form
Appendix C	Reseller Service Order Forecast
Appendix D	Sample CSR Letter Of Authority
Appendix E	Loss Notification Form
Appendix F	Local Service Request
Appendix G	Firm Order Confirmation
Appendix H	Trouble Repair Questionnaire
Appendix I	NDTC & Reseller Contact List
Appendix J	Blanket Letter of Authority
Appendix K	Trouble Resolution Report

1. Introduction

Resale retail telecommunications services are available for resale from NDTC pursuant to the Telecommunications Act of 1996. Resale refers to the 'resale' of fully finished Residential and Business Line services and features in which NDTC provides the end-to-end service from the end-user premise, with the Reseller's brand instead of NDTC's. The Reseller may also offer its own services packaged with the end-user's existing services and features through NDTC. Resale provides a Reseller the ability to act as the end-user's single point of contact for all activities, including ordering, repair calls, inquiry and billing questions for their local exchange service.

The purpose of this handbook is to provide guidelines to the Reseller for ordering resale service(s) from NDTC. This handbook provides NDTC's procedures and operations for handling resold service and is not a contract between the parties. The terms and conditions under which NDTC provides resale services are set forth in the Company's executed Resale Agreement with Midcontinent.

This handbook provides procedures and forms for Ordering, Repair, and Billing. It also addresses information that must be communicated between companies to ensure a high quality of service is maintained.

2. Getting Started as a Reseller

The following is a quick reference list of items a Reseller will need in order to initiate business with NDTC as well as assist them in doing business once they get started. All of the information listed below is required prior to processing orders for local service:

- PSC Certification Approval
- Signed and State Commission Approved Resale Agreement
- Operating Company Number (OCN)
- Reseller Profile
- Proof of Tax Exempt Status (if applicable)
- Credit Policy/Deposits (if applicable)
- Company Contacts
- Blanket Letter of Agency
- Local Services Forecast

2.1 Doing Business with NDTC:

PSC Approval – Approval is required from the public service commission in the state you want to do business. This approval will include a Certificate of Operating Authority. Certification is the process by which the state PSC/PUC authorizes a Reseller to conduct business in that state. A contact number for your state commission can be found in the local telephone directory or via the Internet at www.naruc.org/stateweb.htm. The Reseller must provide proof of certification to NDTC. A copy of the letter received from the appropriate state commission will suffice. NDTC will be unable to provide service to any company not meeting the appropriate PSC/PUC certification process. If proof of certification is not provided, orders will not be processed.

Resale Agreement – The signed Resale Agreement must be approved by the state commission prior to the Reseller submitting orders for service to NDTC.

Operating Company Number (OCN) – An Operating Company Number (OCN) will be required by a Reseller for each state in which it will operate. The Reseller must provide NDTC with the four-digit Operating Company Number (OCN) assigned by the National Exchange Carrier Association (NECA). It is the responsibility of the Reseller to obtain this code from NECA. Service requests cannot be processed without an OCN. A copy of the notification from NECA will suffice. To obtain an OCN application, visit NECA at: www.necaservices.com

Reseller Profile – This document provides NDTC with legal, tax and fee exemptions, contact numbers and other miscellaneous pieces of information that are necessary to provide and bill services to the Reseller. The Reseller Account Profile is located in Appendix A.

Proof of Tax Exemption Status – The Reseller must provide tax exemption documentation for federal, state, county, local, or other taxes. If proof of tax exemption is not provided, the Reseller will be billed the applicable taxes. The tax exempt documents should be submitted with the Reseller Profile.

Credit Policy – Before a new account can be established, NDTC may request information to determine deposit and advance payment requirements. The Reseller may be required to provide proof of satisfactory credit with NDTC or pay a deposit and/or an advance payment prior to processing service requests. NDTC will accept an irrevocable Bank Letter of Credit in lieu of a deposit.

Deposits – A deposit is a sum of money or security obtained from a customer to be held by NDTC to assure payment of an account. Deposits may be requested in connection with either new or existing services as deemed necessary by NDTC. Upon processing the Reseller Profile, if it is discovered that your company has not established 12-months of good payment history as a Reseller with NDTC, a deposit maybe required. The deposit amount will be determined by the information provided in the requested documents below:

- Acceptable Financial Statement documents are: Statements of Cash Flows, Balance Sheets, Income Statements

-and-

- Service Order Forecast: The forecast should state NDTC locations in which Reseller will offer service, the type of service Reseller will offer end-users, the number of end-users Reseller anticipates, and the types of service Reseller will order from NDTC.

NOTE: If a deposit is required, the Reseller single point of contact will be notified via a certified letter.

Contacts – The respective contacts that will assist you in doing business with NDTC will be listed on the Reseller Profile. The Reseller profile is located in Appendix A.

Products and Services – NDTC's tariffed local services are available for resale. One copy of the tariff is provided to each company reselling NDTC service. The Reseller's copy may be requested by contacting NDTC's single point of contact listed on the Reseller Profile and the Contact List. Tariff updates will be provided. The updates will be directed to the Reseller's single point of contact.

Blanket Letter of Agency – The Reseller may complete a Blanket Letter of Agency prior to processing Local Service Requests (LSR) involving existing NDTC end users. Refer to Appendix J for a template of the letter. The Blanket Letter of Agency does not relieve the Reseller of securing and maintaining end-user authorization, but it does alleviate the need to submit an LOA each time an LSR is submitted. NDTC may request a copy of the end-user authorization in the event of an end-user dispute.

Service Order Forecast – A forecast of the volume of services the Reseller estimates it will be requesting from NDTC is required prior to commencement of the ordering process. The forecast template is located in Appendix C of this guide.

Misdirected Calls Contact Number – Reseller shall designate a single point of contact for its end users' service needs, including without limitation, sales, service design, order taking, provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. The Reseller shall make it clear to its end users that they are the end users of Reseller for resold services. NDTC requires Business Office and/or Repair Center numbers, which will be used by NDTC for referring misdirected end users to the Reseller. Reseller's end users contacting NDTC will be instructed to contact Reseller. If an end user calls NDTC in error, the end user will be referred to the numbers provided by the Reseller. This information should be listed on the Reseller Profile.

2.2 Roles and Responsibilities

2.2.1 The following list provides an overview of the roles and responsibilities NDTC has in its relationship with the Reseller.

NDTC Roles & Responsibilities
Assist the Reseller in understanding how to do business with Reseller
Provide Reseller information on available Operational Support Systems (if applicable)
Manage service inquiries regarding resale products and services in a timely manner
Administer the service order process i.e. such as examine service orders for accuracy and communicate enhancement recommendations to Reseller
Designate a single point of contact for ordering issues with the Reseller after the testing period (if appropriate)
Respond proactively and resolve trouble reports in a timely manner
Notify Reseller of Account Establishment upon completion
Provide Reseller with the proper Ordering Processes and Procedures

2.2.2 The following list provides an overview of the roles and responsibilities the Reseller has in its relationship with NDTC.

Reseller Roles & Responsibilities
Provide customer service to end-users
Maintain all end-user records
Serve as the end-user's single point of contact regarding NDTC resold products and services
Provide end-user maintenance and repair
Provide billing to end-users
Handle all telecommunications support for end-users
Familiarize staff with proper ordering processes and procedures
Become knowledgeable of all information provided by NDTC to Reseller available in this guide

3. Forecasting

3.1 Implementation Meeting

This section sets forth the overall standards of performance for services, processes, and systems capabilities that the Parties will provide to each other, and the intervals at which those services, processes and capabilities will be provided. The Parties understand that the arrangements and provision of services described in this section shall require technical and operational coordination between the Parties. Accordingly, the Parties agree to form a team (the "Implementation Team") that shall develop and identify those processes, guidelines, specifications and standards. The implementation team will meet as needed to review the provisions contained within this document.

3.2 Service Order Forecast

A Service Order Forecast must be completed and submitted to NDTC prior to ordering services. The forecast will include such information as NDTC locations in which Reseller will offer service, the type of service Reseller will offer end-users, service features, the number of end-users Reseller anticipates, any potential large resale accounts, and the types of service Reseller will order from NDTC requirements for both new growth and change in volumes.

Reseller will be required to provide NDTC with at least a two-year detailed forecast of traffic and volume requirements for its resale service. The Reseller will provide updated forecasts twice a year – January and June - as changes in the forecast occur. The forecast will be discussed during the implementation meetings and used for informational and planning purposes. The forecast template is located in Appendix C.

3.3 Implementation Plan

After the Reseller has completed and submitted the Reseller Profile, and Local Services Forecast and all other required documentation, NDTC will schedule an implementation meeting. This meeting must be held prior to the Reseller processing orders with NDTC for resale services. The meeting purpose is to establish an Implementation Plan. The Implementation Plan shall address the following matters, and may include any other matters agreed upon by the Implementation Team:

- Disaster recovery and escalation provisions
- Escalation procedures for ordering, provisioning, billing, and maintenance
- Single points of contact for ordering, provisioning, billing, and maintenance
- Service ordering and provisioning procedures
- Provisioning and maintenance support
- Procedures and processes for Directories and Directory Listings
- Billing processes and procedures
- Monitoring of inter-company operational processes

4. Ordering and Provisioning

4.1 Pre-Ordering Rules

Pre-Ordering is the first step in the resale ordering process with NDTC. The Reseller may complete validation functions prior to submitting a request for service to NDTC. Prior to submitting a Customer Service Record Request, the Reseller must obtain a Letter of Authorization ("LOA") from the end user in order to access records associated with their service accounts. NDTC will not process a Customer Service Record Request without a signed blanket LOA from the Reseller on file. The end-user's signed LOA must be available to NDTC upon demand. The Pre-Ordering process begins when the Reseller submits a completed Customer Service Record Request form to NDTC.

4.1.1 Customer Service Record Request

Customer Service Records (CSRs) provide end-user account information. A Reseller cannot access any other NDTC information that concerns the services provided its end-users. NDTC's CSRs will be submitted to the Reseller upon NDTC's CSC's (Customer Support Center) receipt of a valid CSR Request form. The CSR form may be faxed to NDTC's CSC or emailed. A copy of the form can be found in Appendix B of this document.

Upon receipt of a **valid CSR Request**, NDTC will provide CSR information to the Reseller via fax, or electronic mail address provided by the Reseller. The following verification end-user data will be provided to the Reseller:

- Telephone Number
- Listed Name
- Listed Address
- Billing Name
- Billing Address
- Service Address
- Directory Listing Information
- Directory Delivery Information
- Product and Service Information
- Long distance carrier identity
- PIC freeze indication

4.2 Reseller Ordering Procedures Overview

The ordering process enables Resellers to request services provided by NDTC on behalf of the Reseller's new end users.

The Reseller will place all requests for local resale, disconnection, directory listing and directory assistance information on an LSR. NDTC has provided a complimentary LSR template for requesting resale service with NDTC. In addition to the templates, NDTC has included the required fields for the form. The LSR template is derived from the eighth edition of Local Service Ordering Guidelines (LSOG 8).

The sections included on the LSR are as follows:

- Resale
- End User
- Administrative
- Directory Service
- Directory Listing
- Contact Information

Summary of the Ordering Process:

- Customer contacts Reseller for service.
- Reseller takes order information from the customer and prepares the Local Service Request (LSR).
- Reseller transmits LSR to NDTC's CSC.
- NDTC's CSC enters the order into NDTC's Service Order System and provides a Firm Order Confirmation (FOC) or a Reject Notification to the Reseller.

4.3 NDTC Local Service Order

Local Service Request Form (LSR)	The Local Service Request Form (LSR) as a whole contains information required for administrative, billing, contact and other details necessary to provide resold service to end-users.
Billing Section	The Billing section provides the name and address information required to bill the customer.
End User Form Section	The End User section contains location and access information required for ordering local service. Ordering options, such as disconnect information, are entered in the EU section.
Contact Section	The contact section contains initiator information, address, and telephone number, as well as implementation contact name and telephone number.
Resale Section	The Resale Section primarily contains service feature information pertaining to the service being resold, listing name, call features etc.
Administrative Section	The Administrative Section contains information pertaining to the service being ordered, such as Purchase Order Number (PON), requisition type and desired due date
Directory Section	The Directory Section includes sections for billing, key contact, advertising, service address, and delivery information.

4.4 Types of Local Service Requests

LSRs will be used to transfer an existing NDTC customer to Reseller or to request service for a new customer who is not an existing Reseller customer. Depending on the situation, different information will be required on the LSR. The following are examples of potential LSRs to be submitted by the Reseller and the required information:

Conversion of a NDTC local customer to Reseller:

The LSR must include information relating to all existing, new, and disconnected services for that customer including the customer's name, type of service desired, location of service and features or options the customer desires.

Identical services provided by NDTC are being changed to Reseller:

The LSR will indicate an "as is" transfer of service without the need for Reseller to complete the detailed listing of services.

A new customer who is not an existing Reseller customer:

The LSR must contain the customer's name, service address, service type, services, options, features and Reseller data. If known, the LSR should include the telephone number and due date/desired due date.

Disconnect Order
The LSR must include information relating to all services the customer requests for disconnection- including the customer's name, type of service to disconnect, location of service and features or options to disconnect.

4.5 NDTC Firm Order Confirmation (FOC) Process

NDTC will provide the FOC within forty-eight (48) hours after receipt of a valid service order. The FOC shall contain the appropriate data elements as defined by OBF standards, including the date the service requested on the order is to be initiated (due date).

Note: NDTC has provided a complimentary FOC in Appendix G of this guide.

4.5.1 Expedited Orders - LSRs submitted to and received by NDTC, from the Reseller, with a desired due date of less than 3-5 business days will be considered expedite orders. NDTC will give its best efforts to meet the expedite request.

4.5.2 Rejected Orders – NDTC shall reject and return any LSR request to Reseller that cannot be processed due to any technical reason, missing information or inaccurate information. When an order is rejected, the rejection notification shall describe the reason(s) for which the order was rejected.

4.6 NDTC Customer Support Center

NDTC's CSC has been designated as the single point of contact (SPOC) for processing all LSRs. The preferred method of transmitting orders is via electronic mail; however, NDTC's CSC will accept faxed orders. Faxed order forms must be typed. Handwritten forms will be rejected by the service center. These forms can be found in Appendix F.

4.7 Ordering Expectations

- Each party agrees to exchange and to update end user contact and referral numbers for order inquiry, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government.
- The parties also agree to exchange and to update internal order, repair, and billing points of contact.
- NDTC shall provide Reseller with a specified customer contact center for purposes of placing service orders and coordinating the installation of services.
- To initiate an order for services, Reseller will submit a Local Service Request ("LSR") to NDTC. The LSR will be submitted via either electronic email or facsimile.
- NDTC will process service orders during normal operating hours, at a minimum, on each business day between the hours of 8 a.m. to 4:30 p.m. **central** time and shall implement service orders within the same time intervals used to implement service orders for similar services for its own users.
- The LSR must be in NDTC's receipt by 3:00 p.m. each day local time. Orders received after 3PM will be considered as received the next business day.
- After the LSR is processed, NDTC will submit the Firm Order confirmation (FOC) to the Reseller indicating that the LSR has been processed and provide a record of the telephone number and the due date.
- Upon receipt of a clean LSR, NDTC will use its best efforts to meet the desired due date within the standard 3-5 business day timeframe.

4.8 E911

E911 Service is incorporated in Resale Service to the Reseller. A more precise guide to E911 can be found in the Resale Agreement Attachment 1, Section 7.1. Changes and/or updates to an end-user's E911 information in the ALI/DMS (Automatic Location Identification/Location Information) databases used to support 911/E911 services should be submitted to NDTC on the LSR.

4.9 Operator Services

Operator services shall be provided to Reseller for resale in the same manner as provided to NDTC customers. Charges for operator services shall be passed along to Reseller without discount.

4.10 Directory Assistance

NDTC shall populate the DA database based on the information submitted on the LSR. If there are charges to the DA listing, Reseller must submit a Change order to update the database.

5. Local Number Portability

5.1 NDTC Role

NDTC shall allow Reseller customers to change local service providers and retain their current telephone number, when technically feasible, within the same NDTC Wire Center. NDTC will not validate the end user information with Reseller prior to port.

5.1.1 Loss Notification

In the event a resold end-user number is requested to port to a new service provider, NDTC will notify the Reseller via the Loss Notification Form.

5.2 Reseller LNP Procedures

Should a New Service Provider (NSP) submit the Local Number Portability LSR for a resold end-user port to the Reseller, the Reseller must forward the LSR to NDTC's CSC as soon as the order is received. For resold numbers, NDTC must manage the port of the telephone number in the Number Portability Administration Center database. The Reseller should notify the NSP of the order being forwarded to NDTC for processing as the desired due date may be impacted. The Reseller should follow the procedures below for resold end-user port orders:

- Reseller receives LSR for LNP order.
- Reseller validates the end-user is a resold customer.
- Reseller notifies the New Provider of the resold status and that the LSR will be forwarded to NDTC.
- Reseller forwards LSR to NDTC's CSC upon validation. The normal service order time intervals shall commence upon NDTC's receipt of an LSR.
- Reseller receives the Port Notification form from NDTC
- Reseller prepares to perform port directly with the New Service Provider and perform any internal 'disconnects' of the end-user (if applicable) on the desired due date posted on NDTC's Port Notification Form

6. Trouble Administration

Before Reseller reports a trouble condition, it must first use its best reasonable efforts to isolate the trouble to NDTC's facilities, service, and arrangements. Reseller and NDTC will advise each other of any critical nature of the inoperative facilities, service, and arrangement. In cases where either NDTC or Reseller has indicated the essential or critical need for restoration of the facilities, services or arrangements, (i.e. law enforcement agencies, hospitals) Reseller or NDTC, respectively, shall use its best efforts to expedite the clearance of trouble.

6.1 Trouble Resolution Process

- Before Reseller reports a trouble condition, it must first use its best reasonable efforts to isolate the trouble to NDTC's facilities, service, and arrangements. Prescreening must be completed by the Reseller in order to obtain the information necessary for reporting the trouble to NDTC's CSC (Customer Support Center). A sample prescreening "Trouble Repair Questionnaire" for the Reseller has been provided in Appendix H.
- After verifying the service trouble cannot be resolved by the Reseller, The Reseller will report the trouble to NDTC's CSC via email or fax. The Reseller will provide NDTC all information listed in the Required Trouble Reporting Information section of this document.
- Upon receipt of the trouble report, NDTC will generate an internal trouble ticket and forward for internal processing. A trouble ticket number, for tracking purposes, may be provided to Reseller. The resold end-user trouble ticket will be worked in the same manner as NDTC's end-user trouble reports.
- NDTC's CSC will notify the Reseller of the trouble ticket status within 24 hours from receipt of the trouble report. The Reseller will be notified via a faxed or emailed NDTC Trouble Resolution Report.

6.2 Required Trouble Reporting Information

The following information will be required for trouble reports to NDTC Customer Support Center:

- Carrier Name
- Contact Information including name, phone number, fax number, and email address
- Service affected end user telephone number
- Description of service trouble
- Resolution date and time commitment given to the end user (if applicable)

Note: NDTC will assign a Trouble Ticket Number

6.3 Trouble Resolution Report

NDTC's CSC (Customer Support Center) will notify the Reseller once the trouble has been cleared via a faxed or emailed Trouble Resolution Report. Trouble Resolution Reports are faxed to the Single point of contact listed on the Reseller Contact List. A sample of the report is found in Appendix K. NDTC will only notify Reseller of trouble status. Reseller is responsible for notifying the end user of the trouble status.

7.0 Billing

7.1 Compliance

NDTC will comply with industry standards for display of billed charges.
Each bill will be labeled for the type of service being billed.

Billing labels currently established:

- Summary
- NDTC Services monthly charges
- Usage Charges
- Other credits & charges(if applicable)

Miscellaneous service charges:

- Directory assistance
- Operator assistance

7.2 Bill Date

The bill date will be present on each bill and must be a valid calendar date.

7.3 Billing Account Number (BAN)

A BAN will be provided consistently each month. Only once invoice is to be produced for each BAN each month on the same bill date each month.

7.4 Billing Charges

All billing charges will be itemized on the invoice.

7.5 Usage Identification

All usage will be identified, displayed and labeled on the invoice.

7.6 Billing Distribution

All invoices will be forwarded via mail paper format to the Billing Address listed

In the Billing Section of the Reseller Account Profile.

8. Application of Charges

This section defines the application of charges listed in the North Dakota Telephone Company and Midcontinent Communications of North Dakota General Terms and Conditions of Resale Pricing Attachment

Discount Rates - apply to tariff rates listed in the resale agreement's tariff rates table.

Discount Rates do not apply to the pricing listed in the resale agreement.

General Charges:

Service Order Charge - The Service Order Charge in the pricing attachment of the agreement shall apply to each **new** service order.

Cancellation Charge- A cancellation charge applies to any order canceled after the FOC has been issued.

Expedite Charge- An expedite charge applies if the Reseller requests a due date less than the standard 3 to 5 business day interval or less than the date listed on the FOC.

Technical Labor:

Technician charge - applies in addition to the SOC when physical installation is required at the central office for new service only.

Customer Service (Customer Service Representative Time) Charge - applies when Reseller requests a summary of the services currently subscribed to by the end user or CLEC request customer service support outside normal working practices (outside normal hours or processes).

9. Exclusions & Limitations on Services Available For Resale

	Type of Service	North Dakota	
		Resale	Discount
1	Grandfathered Services (Note 1)	Yes	Yes
2	Promotions - > 90 Days (Note 2)	Yes	Yes
3	Promotions - ≤ 90 Days (Note 2)	No	No
4	N11 Services	No	No
5	Federal Subscriber Line Charges	Yes	No
6	Nonrecurring Charges	Yes	No
7	Public Telephone Access Svc (PTAS)	Yes	Yes
8	Voice Mail	No	No
9	Private Line including FX (Note 3)	No	No
10	Employee Discount	No	No
11	Centrex	No	No
12	Line Information	No	No
13	Joint Use Service	No	No
14	Special Billing Number	No	No
15	Lifeline (Note 4)	No	No
16	Deregulated services – Inside wire, ISP, Toll, etc.	No	No
17	Volume Discounts	No	No

Applicable Notes:

1. Grandfathered services can be resold only to existing subscribers of the grandfathered service.
2. Where available for resale, promotions will be made available only to End User Customers who would have qualified for the promotion had it been provided by NDTC directly.
3. Midcontinent can order services from the access tariff
4. Midcontinent would apply directly for Lifeline support

Appendix A

[redacted]

This form should be completed by the Reseller and faxed or e-mailed to North Dakota Telephone Company at the address at the end of the form. Please return the form as soon as possible to avoid any delay in your company's implementation into the resale service market. Electronic copies of the form are preferred and can be requested, via e-mail, to the address listed at the end of the form.

A. NEW PROFILE ☐

B. UPDATE to an Existing Profile ☐ (please indicate changes in bold or a different color font)

Date: **mm/dd/yyyy**

I. GENERAL INFORMATION:

Business Name							
Address							
City, State, Zip							
Contact Name/Number							
E-Mail Address							
CCNA		CIC		RAO Code		OCN:	

Tax Exemption: Check the type of Tax Exemption Certificate that you have provided to NDTC. To be Tax Exempt, you **must** provide the appropriate Tax Exemption Certificate(s). If you are tax exempt, Federal and/or State Forms are **REQUIRED** before exemption is added. Please provide a copy.

Check Applicable Box	Type of Exemption	Tax Exemption Certification Number	Signed Date of Certificate	Date Received By NDTC
☐	Federal			
☐	State			
☐	Local			
☐	Other (Surcharges/Fees)			
☐	Letter of Indemnification			

Reseller Contacts: This information is needed by the NDTC for receiving or sending information to Reseller. Please provide the person(s) NDTC should contact regarding each individual issue.

	Name	Telephone Number	Fax Number	E-Mail Address
PRE-ORDERING				
ORDERING				
ORDER CONFIRMATION				
REPAIR				

Reseller End User Contact Numbers for Misdirected Calls: When your end user contacts NDTC, NDTC will provide them with the following numbers:

Department	Telephone Number
Order Center	
Repair Center	
Billing Center	
Billing Inquiry Center	
General Information	
Directory Center	

Trouble Reporting

Check Preferred Method	Method for reporting trouble to NDTC
☐	Verbal Notification
☐	E-mail
☐	Fax

II. Billing Information

Contact Name	
Contact Billing Address	
City, State and Zip	
Contact Telephone Number	

Contact Fax Number	
Contact E-Mail Address	

III. Credit Information

Does your company have an account established with NDTC?		☐ Yes	☐ No
If yes, Account ID:			
Ownership			
Sole Owner			
Owner Name			
Partnership			
Names of Partners			
Corporation			
City/State Incorporated			
Date Incorporated			
Primary Company Officers:			
Name	Address		Tel. No.
Parent Corporation			
How long in this line of business?			
Principal Bank Name			
Address			
Account Number			
Any suits, judgments, legal proceedings or bankruptcies? (Give details on the following page. Attach additional sheets, if necessary.)			

P. **CREDIT RELEASE:**

I hereby authorize our bank to release credit information to NDTC and further authorize NDTC to obtain other credit information including Credit Bureau Reports.

Company:_____ Date:_____

Signed By:_____

Printed Name:_____

_____

Signature of Applicant Date

IV. FOR NDTC USE ONLY

Name:	North Dakota Telephone Company
Point of Contact:	Rod Hoffmeyer
Telephone Number:	701.662.1100
Fax Telephone Number:	701.662.6446
E-mail address:	rodh@ndtel.com

Please e-mail or FAX completed form to the point of contact listed above.

The following instructions are to assist your company in properly completing the Reseller Account Profile. Please contact NDTC's Point of Contact should you have questions regarding the completion of this form.

General Information

Business Name
List the legal name of the entity.

Address
List the physical address of the entity.

City/State/Zip
List the city, state and zip of the entity's physical address.

Contact name/Number/email address
List the name, telephone number and email address of the person to contact regarding the Company's Account Profile.

CCNA:
Customer Carrier Name Abbreviation as assigned to your company by Telcordia.

CIC:
Carrier identificaton code as assigned to your company by NANPA.

RAO Code
Revenue accounting office code as assigned to your company by Telcordia.

OCN
Operating company number as assigned to your company by NECA.

Operator Services

Check Yes
If your company will rely on (NDTC) to provide Operator Services to your resold end-users.

Check No
If your company will not rely on (NDTC) to provide Operator Services to your resold end-users

Tax Exemption

Provide the proper type of tax exemption documentation for your company.

Reseller Contacts

List the contact name, telephone number, fax number and email address for Pre-Ordering, Ordering,Order Confirmation and Repair.

Misdirected Calls
List the proper telephone number for NDTC to distribute to your resold end-users in the event NDTC receives misdirected calls.

Trouble Reporting
Check the box corrolating to the method of trouble reporting your company prefers. List the applicable email address and/or fax number in the field provided.

Billing Information
List the contact information to direct NDTC in invoicing your company for services rendered.

Credit Information
If your company does not currently have an account established with NDTC, check no.
If your company currently has an account established with NDTC, check yes.
If yes, list the account Identification.

Ownership
Sole Owner: If yes, list the owner's name. If no, leave this section blank.
Partnership: If yes, list the names of the partners. If no, leave this section blank.
Corporation: If yes, list the city, state and date of incorporation. If no, leave this section blank.

Primary Officers
List the executive level personnel name, address and telephone number.

Credit Release
This section should be completed by a company official.

Appendix B

[redacted]

TN:_____

End User
Name:_____

Address:_____

Building/Room
Number:_____

City, State, Zip
Code:_____

[redacted]

Company Name:_____

Contact Name:_____

Contact Telephone Number: _____

Contact Fax
Number:_____

Contact E-mail
Address:_____

Contact
Address:_____

Building/Room
Number:_____

City, state, Zip
Code:_____

End User Authorization Obtained? ☐ YES ☐ NO

Appendix C

[redacted]

Forecast prepared on:			
Reseller Company Name:			
Reseller CCNA:			
Forecast Issued By:		**Contact Phone:**	
This Forecast is for:	**OCN:**		
	LATA:		
	STATE:		

Instructions: Complete one section per Service Location.

Service Location:	
Type of Service:	
Service Features	
Number of End-Users:	
No. of large resale accounts:	
Services ordering from NDTC:	
Estimated new growth and changes in volumes:	
REMARKS:	

Service Location:	
Type of Service:	
Service Features	
Number of End-Users:	
No. of large resale accounts:	
Services ordering from NDTC:	
Estimated new growth and changes in volumes:	
REMARKS:	

Appendix D

SAMPLE CSR LOA

ACME Food
8401 Washington Street
Denver, CO 80202
303 555-1000

DATE:

ABC CLEC, Inc.
Bob Walker, Sales Associate
1234 Anywhere Street
Anytown, WI 80202

Dear Mr. Jones:

This letter authorizes ABC Reseller, Inc. to act as our communications representative/agent when dealing with (CLEC Name Here).

We authorize ABC Reseller, Inc. to obtain information and/or copies of all our network services and to order and manage all negotiations for the installation of telecommunications services for the above listed address and with respect to the following numbers:

555-1000
555-1001
555-1002

This authorization shall remain in effect until canceled by us in writing. This letter of agency rescinds any other letter of agency previously entered into by Food for Less

Sincerely,

Angus O'Leary, President
ACME Food

Appendix E

NDTC Loss Notification Form

Pursuant to the Resale Operations Manual guidelines, this form is to notify **(Reseller name)** of its resold end-users that are ported out of North Dakota Telephone Company's network.

Reseller CONTACT SECTION:

Contact Name:_____

Contact Phone:_____

Contact Fax: _____

Reseller CUSTOMER SECTION:

Bill Account Name: (name of the end-user who ported their TN):_____

Bill Account Number:_____

Account Phone Number:_____

Port Authorization Name:_____

Date/Time of Port:_____

Remarks:

_____

_____

_____

_____

_____

_____

[redacted]

Administrative Section

CCNA: ___	PON: _____	LSR NO: _____
LOC QTY: ___	ATN: _____	PG: _ OF: _
D/T SENT: _____	DDD: _____	DDDO: _____
APP TIME: _____	REQ TYP: __	ACT: _ EXP: _
RTR: _ NSP: ____	OSP: ____ AGAUTH: _	DATED: _____
AUTHNM: _____		
REMARKS: _____		

Contact Section

INIT: _____	TEL. NO: _____
EMAIL: _____	FAX NO: _____
REMARKS:	

End User Section

NAME: _____	
STREET: _____	CITY: _____
STATE: __ ZIP: _____	TEL. NO: _____ ELT: _

REMARKS: _____

Billing Section

EATN: _____	FBI: _
BILLNM: _____	
STREET: _____	CITY: _____
STATE: __ ZIP: _____	
REMARKS: _____	

Resale Section

RSQTY: _____	LNA: _ FPI: _	PIC: ____
FA: _	FEATURE: _____	
FEATURE DETAIL: _____		
REMARKS: _____		

Directory Section

DOR: _____	LTN: _____
TOA: __ LACT: _ LTY: _	RTY: ___ STYC: __ EA: _

RT: _ DLNUM: ____
LISTNM: _____

E911 Data Changes

List ANY end-user E911 data changes in the box below. A FULL description of the change is necessary to ensure correct E911 database updates. If no E911 changes will occur on the end-user's account, leave the box blank.

Change From:	
End-User:	
Telephone Number:	
Service Address:	
City, St., Zip	

Change To:	
End-User:	
Telephone Number:	
Service Address:	
City, St., Zip	

This document is intended to assist Resellers in successfully completing the Resale LSR for submission to NDTC. The following are LSR field descriptions.

LSR Administrative Section

CCNA
Customer Carrier Name Abbreviation
Identifies the COMMON LANGUAGE IAC code for the customer.

PON
Purchase Order Number
Identifies the customer's unique purchase order or requisition number that authorizes the issuance of this request or supplement.

LSR NO
Local Service Request Number
Identifies the number that may be generated by the provider's mechanized systems, pre-assigned to the customer by the provider or manually assigned by the provider to identify a customer's request for service.

LOC QTY
Location Quantity
Identifies the number of service locations for the service requested.

ATN
Account Telephone Number
Identifies the end-user's account telephone number.

D/T SENT
Date/Time Sent
Identifies the date and time the LSR is sent to NDTC.

DDD
Desire Due Date
Identifies the customer's desired due date for service.

DDDO
Desired Due Date Out
Identifies the customer's desired due date for suspension or disconnection of service.

APP TIME
Appointment Time
Identifies the time period during which the end user's service will be established and/or a technician is scheduled to visit the end user's premises.

LSR Administrative Section – Cont'd.

REQ. TYP

Requisition Type and Status

Identifies the type of service being requested and the status of the request.

First Character

R = Resold Service

Second Character

A = Service Inquiry

B = Firm Order

ACT

Activity

Identifies the activity involved in this service request.

Valid Entries

N = New installation and/or account

C = Change an existing account, e.g., rearrangement, partial disconnect or addition

D = Disconnection

V = Conversion of service to new LSP as specified

EXP

Indicates that expedited treatment is requested and any charges generated in provisioning this request (e.g., additional engineering charges or labor charges if applicable) will be accepted.

VALID ENTRIES:

Y = Expedite charges authorized

N= Expedite NOT charges authorized

AFO

Additional Forms

Indicates which additional forms are being submitted with this request.

Character Position 1 = End user information form

Character Position 2 = Directory assistance

RTR

Response Type Request

Identifies the type of response requested by the Reseller.

VALID ENTRIES:

C = Confirmation

E = Errors only

H = Confirmation and errors

N = No response requested

NSP

New Service Provider
Identifies the Service Provider Identifier (SPI) of the New Service Provider (NSP).

OSP
Old Service Provider
Identifies the SPI of the current network service provider.

AGAUTH
Indicates that the customer is acting as an end user's agent and has authorization on file.

Dated
LOA Date
Identifies the date appearing on the agency authorization.

Authnm
LOA Authorizer
Identifies the end user who signed the authorization.

LSR Contact Section

INIT
Initiator Identification
Identified the customer representative who originated the request.

TEL NO
Telephone Number
Identifies the customer representative telephone number

EMAIL
Electronic Mail Address
Identifies the customer representative email address

FAX NO
Facsimile Number
Identifies the customer representative fax number

REMARKS
Identifies a free flowing field that can be used to expand upon and clarify other data on this form.

LSR End User Section

NAME
End User Name
Identifies the name of the end user.

STREET
Identifies the end-user's service address/location.

CITY
City

STATE
State/Province

ZIP
ZIP/Postal Code

TEL NO
Identifies the end-user's telephone number.

ELT
End User Listing Treatment
Identifies the listing changes desired by the end user when changing local service providers.

VALID ENTRIES:
A = Retain end user listings "as is" in both directory and/or directory assistance
B = Do not retain end user listings
C = Change end user listings

LSR Billing Section

EATN
Existing Account Telephone Number
Identifies the end user's existing account telephone number.

FBI
Final Bill Information Indicator
Indicates whether a final bill should be sent to either the existing billing address or a different address.

VALID ENTRIES:
D = Different
E = Existing

BILLNM
Bill Name
Identifies the name of the person, office or company to whom the customer has designated that the bill be sent.

STREET
Identifies the end-user's billing address for service.

CITY
City

STATE
State/Province

ZIP
ZIP/Postal Code

LSR Resale Section

RSQTY
Resale Quantity
Identifies the quantity of resale services (e.g., lines, circuits, trunks, etc.) involved in this service request.

LNA
Line Activity
Identifies the activity involved at the line level.

VALID ENTRIES:

B = Restore
C = Change, e.g., rearrangement, feature activity
D = Disconnection
H = Short term
L = Seasonal
M = Inside move of the physical termination within a building
N = New installation and/or account
P = PIC change
R = Record activity is for ordering administrative changes
S = Suspend
T = Outside move of end user location
V = Conversion of service to new LSP as specified
W = Conversion as is
X = Telephone number change
Y = Deny

FPI

Freeze PIC Indicator

Identifies a request that PIC activity on the Working Telephone Number (WTN) be restricted.

VALID ENTRIES:

A = Freeze IntraLATA PIC
B = Freeze Inter & IntraLATA PIC
E = Freeze InterLATA PIC
R = Remove InterLATA freeze
S = Remove IntraLATA freeze
T = Remove Inter & IntraLATA freezes

PIC

InterLATA Pre-subscription Indicator Code

Identifies the Pre-subscription Indicator Code (PIC) of the carrier the customer has selected for InterLATA traffic.

VALID ENTRIES:

Enter a valid PIC
NONE = Customer does not want to pre-subscribe.
NA = Service may not require a PIC.
DFLT = PIC will be assigned by the provider.
NC = Used in a conversion as is activity scenario or change activity when the PIC is not impacted.
UNDC = Customer has not decided which carrier to select.

FA

Feature Activity

Indicates the activity type for the feature.

VALID ENTRIES:

N = Add/install
C = Change to feature detail
D = Disconnect
I = Insert listing/data
O = Delete listing/data
V = Conversion to new LSP as specified
W = Conversion as is

FEATURE

Feature Codes

Identifies the type of feature associated with the line.

FEATURE DETAIL

Feature Detail

Identifies additional information for the type of feature associated with the line.

LSR Directory Section

LTN

Listed Telephone Number

Identifies the telephone number that may be included in the directory and/or quoted in Directory Assistance (DA).

DOR

Date of Receipt

Identifies the date this directory service request was received.

VALID ENTRIES:

U.S. Standard	Metric Format
Two Digit Month (01-12)	Two Digit Century (00-99)
Two Digit Day (01-31)	Two Digit Year (00-99)
Two Digit Century (00-99)	Two Digit Month (01-12)
Two Digit Year (00-99)	Two Digit Day (01-31)

TOA

Type of Account

Identifies the type of account for this listing.

VALID ENTRIES:

B = Business
C = County Government
F = Federal government
L = Local or city government
R = Residence
S = State government
BP = Business class, person name
MI = Military
PO = Port
RE = Regional
RP = Residence class, business name
SC = School
SD = Special district
TR = Tribal
TW = Township

LACT

Listing Activity Indicator

Identifies the activity involved for this listing request.

VALID ENTRIES:

N = New listing
D = Delete listing
I = Change listing (new data to be inserted)
O = Change listing (old data)
Z = No change to listing

LTY

Listing Type

Identifies the type of listing with respect to publication and Directory Assistance (DA) appearance rules.

VALID ENTRIES:

1 = **Listed**: appears in DA and the directory

2 = **Non-listed**: appears only in DA

3 = **Non-published**: does not appear in the directory and telephone number does not appear in DA

4 = **Non-published emergency**: does not appear in the directory, end user may be contacted in an emergency

5 = **Non-published special**: does not appear in the directory nor DA, end user never wants to be contacted

6 = **Omit DA**: listing only appears in the published directory

7 = **No appearance**: primary telephone number has no listing in the directory or DA, but additional station numbers may be listed

8 = **Temporary listing**: appears only in DA for a short interval

RTY

Record Type

Identifies the type of listing with respect to pricing and tariffs.

VALID ENTRIES:

First Character (Area)

F = Foreign

L = Local

S = Secondary

Second & Third Characters (Type of Listing)

AL = Additional listing

AM = Additional main

AS = Answer service

AU = Alternate user listing

CM = Client main

CR = Cross-reference listing

EN = Enterprise

ML = Main listing

STYC

Style Code

Identifies whether the listing is a straight line, Straight Line Under (SLU) header, caption header, etc.

VALID ENTRIES:

CH = Caption header

CI = Caption indent

CS = Caption sub-header
SH = SLU header
SI = SLU indent
SL = Straight line

EA
Existing Advertising
Identifies the end user's advertising status.

VALID ENTRIES:
N = End user does not have existing advertising
U = Unknown
Y = End user has existing advertising

RT
Response type
Identifies the type of response sent to the customer.

VALID ENTRIES:
B = Firm order with facility information
C = Firm order confirmation
D = Confirmation and DLR (private line)
E = Errors only (directory)
F = Facility confirmation
G = Confirmation and DL errors (directory)
H = Combined (service and directory listing) confirmation and DL errors
I = LIDB confirmation
J = Jeopardy notice
L = Directory services completion
N = Confirmation of customer requested cancellation
P = Provider initiated
S = Provider initiated cancellation of the service request
Z = Completion

DLNUM
Directory Listing Reference Number
Identifies each listing segment as a unique number.

LISTNM
Listed Name
Identifies the name contained in the listing.

PON:			
TN(s):			
STATUS:	☐ Confirmed ☐ Missed Due Date	☐ Suspended ☐ Held Order	☐ Canceled
Confirmed Due Date:			
Remarks:			

CLEC CONTACT SECTION	
Name:	
Phone:	
Fax:	
Email:	

Account Holder Name:	
Bill Account Number:	

Appendix H

To determine the degree of telephone service outage, the end-user should be asked the following questions:

1. Telephone number or circuit ID being reported
2. End-user/Business name
3. End-user premises address

4. City and State	Trouble reported by
5. End-user/Bus. Account #	Account Holder Name
6. Report received by (Reseller contact)	Reseller contact number

Do you consider yourself without telephone service? ☐ Yes ☐No

Does the problem occur when the end user:

a. Receives a call? ☐ Yes ☐No

If yes, provide the calling telephone number: (xxx) xxx-xxxx

b. Is calling a telephone number? ☐ Yes ☐No

Is the trouble on all the end-user telephone numbers (if applicable)? ☐ Yes ☐No
If no, which telephone number has the trouble?_____

The following are typical types of trouble:

- No dial tone
- Static or noise on the line
- Phones cut out
- Hearing busy or dial tone while talking
- Hearing clicking on the line
- Can't hear the other party
- Other party can't hear me
- Can't be called

After all the questions above are answered, call the NDTC CSC to report trouble.

The NDTC Customer Support Center (CSC) is staffed 8AM-5:00 PM CST. The telephone number is **701-662-1100.** For after hour trouble reports, please call **701-662-1100**.

Appendix I

		NDTC	Reseller
Joint Planning Meetings	***Name& Title***	Dave Dircks	
	Address/Mail code	211 22nd St NW	
	City, ST, ZIP	Devils Lake, ND 58301	
	Telephone	701.662.6435	
	Fax	701.665.7435	
	Email	daved@ndtel.com	
Service Order Forecasting	***Name& Title***	Rod Hoffmeyer/Customer Service Manager	
	Address/Mail code	211 22nd St NW	
	City, ST, ZIP	Devils Lake, ND 58301	
	Telephone	701.662.6443	
	Fax	701.662.6446	
	Email	rodh@ndtel.com	
Customer Support Center (CSC)	***Name& Title***	Kathy Young/Business Office Supervisor	
	Address/Mail code	211 22nd St NW	
	City, ST, ZIP	Devils Lake, ND 58301	
	Telephone	701.662.6426	
	Fax	701.662-6444	
	Email	kathyy@ndtel.com	
Network Maintenance	***Name& Title***	Richard Ellison/Network Services Manager	
	Address/Mail code	211 22nd St NW	
	City, ST, ZIP	Devils Lake, ND 58301	
	Telephone	701.662.6441	
	Fax	701.662.6446	
	Email	riche@ndtel.com	
Billing	***Name& Title***	Kathy Young/Business Office Supervisor	
	Address/Mail code	211 22nd St NW	
	City, ST, ZIP	Devils Lake, ND 58301	
	Telephone	701.662.6424	
	Fax	701.662.6444	
	Email	kathyy@ndtel.com	

Appendix J

RESALE SERVICE PROVIDER BLANKET AGENCY AGREEMENT LETTER

I am an official of (Reseller Name Here) _____ and am authorized to commit my company to the conditions stated herein:

1. (Reseller Name Here) will not submit any requests or inquiries for resale service provisioning under Blanket Agency Agreement procedures to NDTCfor which it does not have proper authorization from the End User upon whose behalf services is offered.

2. (Reseller Name Here) has entered into an agreement to provide local service for the End User.

3. The agreement between (Reseller Name Here) and the End User provides that the (Reseller Name Here) is solely responsible for representing the End User in all requests relating to local service. The agreement between (Reseller Name Here) and the End User holds the End User responsible to (Reseller Name Here) for all charges that may be incurred in connection with service requests for End Users regardless of whether the End User meets payment responsibilities to (Reseller Name Here) .

4. The End User will deal directly with (Reseller Name Here) on all inquiries concerning their Local Service. This may include, but is not limited to, billing, repair, directory listings, and number portability.

5. NDTC is authorized to release all information regarding the End User's local service to (Reseller Name Here) .

6. In the event that the End User challenges action taken by NDTC as a result of the above mentioned service requests, (Reseller Name Here) will provide evidence of proper End User authorization and indemnify and hold harmless NDTC and its affiliates for any damages or losses including, but not limited to unauthorized change charges, resulting from (Reseller Name Here) preparation and submission of service requests for which it did not have proper End User authorization.

7. In the event that the End User challenges billing which resulted from local service requests submitted to NDTC by (Reseller Name Here) under this Blanket Agency Agreement, then (Reseller Name Here) will indemnify and hold harmless NDTC and its affiliates for any damages, losses, costs and attorney's fees, if any, arising from NDTC provisioning and maintenance of the End User's local service due to errors in the ordering of said services by (Reseller Name Here) .

8. In the event that the End User disputes actions taken by NDTC as a result of a submission by (Reseller Name Here) of a service request for disconnection or termination of a previously submitted local service request for which it did not have proper End User Authorization, the (Reseller Name Here) will indemnify and hold harmless NDTC and its affiliates for any damages, losses, costs and attorney's fees, if any, resulting from said dispute.

9. This Agreement shall continue in effect unless canceled by prior written notice by NDTC or (Reseller Name Here) thirty (30) days prior to the effective date of cancellation. Cancellation shall not release or limit any matters occurring prior to the cancellation of this Blanket Agency Agreement.

_____	_____
Signature of Officer	Company Name
_____	_____
Title of Officer	Date (MM/DD/YYYY)

Appendix K

The following is North Dakota Telephone Company (NDTC's) response to the Trouble Ticket issued by (Reseller Name).

Trouble Report	
Company Name:	
Contact Name:	
Contact Phone No:	
Contact Fax No:	
Contact Email:	
Trouble Report Date and Time:	
Resolution date and time commitment given to the end user:	Date: mm/dd/yyyy Time: 00:00 pm
Description of Trouble Reported:	

Resolution	
Telephone Number:	
Trouble Ticket Number:	
Resolution Date:	
Ticket Status:	☐ Repaired ☐ Delayed ☐ No Response from (Reseller)
Remarks:	

NDTC Contact Information	
Contact Name:	**Repair Center**
Contact Phone No:	Business Office Supervisor
Contact Fax No:	701.662.6475
Contact email:	repair@ndtel.com

Attachment 1

Resale

Table of Contents

1. Scope **3**

2. General Provisions **3**

3. NDTC's Provision of Services to Midcontinent **5**

4. Establishment of Service **7**

5. Discontinuance of Service **7**

6. Maintenance of Services **8**

7. Ancillary Services **9**

8. Line Information Database (LIDB) **12**

9. Usage Records **12**

Exclusions & Limitations on Services Available for Resale ..... **Exhibit A**

Area of Resale ..... **Exhibit B**

Line Information Database (LIDB) Resale Storage Agreement ..... **Exhibit C**

RESALE

1. Scope

1.1 For the Purposes of the Agreement, Resale shall be provided under Section 251

1.2 The telecommunications services available for purchase by Midcontinent for the purposes of resale to Midcontinent's End User Customers shall be available at NDTC's tariffed rates less the wholesale discount and subject to the exclusions and limitations set forth in Exhibit A to this Agreement.

2. General Provisions

2.1 All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of NDTC's retail telecommunications services and other services specified in this Attachment. Subject to effective and applicable FCC and Commission rules and orders, NDTC shall make available to Midcontinent for resale those telecommunications services NDTC makes available, pursuant to its Local Exchange Services Tariff (LEST) to End User Customer customers who are not telecommunications carriers as listed in Exhibit A. When the provisions of the LEST conflict with the provisions of this Agreement, the provisions of this Agreement shall take precedence.

2.2 Midcontinent may purchase resale services from NDTC for its own use in operating its business.

2.2.1 Midcontinent must resell services to other End User Customers.

2.2.2 Midcontinent cannot be a CLEC for the single purpose of selling to itself.

2.3 Midcontinent will be the Customer of Record for all services purchased from NDTC. Except as specified herein, NDTC will take orders from, bill and receive payment from Midcontinent for said services.

2.4 Midcontinent (not Midcontinent agents or third parties hired by Midcontinent) will be NDTC's single point of contact for all services purchased pursuant to this Agreement. NDTC shall have no contact with the End User Customer except to the extent provided for herein. Each Party shall provide to the other a North Dakota toll-free contact number for purposes of repair and maintenance.

2.5 NDTC will continue to bill the End User Customer for any services that the End User Customer specifies it wishes to receive directly from NDTC. NDTC maintains the right to serve directly any End User Customer within the service area of Midcontinent. NDTC will continue to market directly its own telecommunications products and services and in doing so may establish

independent relationships with End User Customers of Midcontinent. Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.

2.6 When an End User Customer of Midcontinent or NDTC elects to change his/her carrier to the other Party, both Parties agree to release the End User Customer's service to the other Party concurrent with the due date of the service order, which shall be established based on the standard interval for the End User Customer's requested service as set forth in the NDTC Operations Handbook.

2.7 Except where otherwise required by law, Midcontinent shall not, without NDTC's prior written authorization, offer the services covered by this Appendix using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of NDTC's or its Affiliates, nor shall Midcontinent state or imply that there is any joint business association or similar arrangement with NDTC in the provision of Telecommunications Services to Midcontinent's customers.

2.8 Current telephone numbers may normally be retained by the End User Customer and are assigned to the service furnished. However, neither Party nor the End User Customer has a property right to the telephone number or any other call number designation associated with services furnished by NDTC, and no right to the continuance of service through any particular central office. NDTC reserves the right to change such numbers, or the central office designation associated with such numbers, or both, whenever NDTC deems it necessary to do so in the conduct of its business and in accordance with NDTC practices and procedures on a nondiscriminatory basis.

2.9 If Midcontinent or its End User Customers utilize a NDTC resold telecommunications service in a manner other than that for which the service was originally intended as described in NDTC's retail tariffs, Midcontinent has the responsibility to notify NDTC. NDTC will only provision and maintain said service consistent with the terms and conditions of the tariff describing said service.

2.10 Facilities and/or equipment utilized by NDTC to provide service to Midcontinent remain the property of NDTC.

2.11 Service Ordering

2.11.1 Midcontinent must order services according to the Pre-ordering and Ordering Attachment to this Agreement.

2.11.2 Denial/Restoral Charge. In the event Midcontinent provides a list of customers to be denied and restored, rather than a Local Service Request

(LSR), each location on the list will require a separate PON and therefore will be billed as one LSR per location.

2.11.3 Cancellation Charge. Midcontinent will incur a charge for an accepted LSR that is later canceled.

2.12 Midcontinent shall pay, the End User Customer common line charges and any other appropriate Commission approved charges. These charges are set forth in the appropriate NDTC federal and applicable state tariffs(s) and will apply to each local exchange line furnished to Midcontinent. This charge is not subject to the wholesale discount.

2.13 To the extent allowable by law, Midcontinent shall be responsible for Primary Interexchange Carrier (both PIC and LPIC) change charges associated with each local exchange line furnished to Midcontinent for resale.

2.14 Midcontinent is solely responsible for the payment of charges for all service furnished under this Agreement.

2.15 If Midcontinent does not wish to be responsible for toll, collect, third number billed, 900 calls, last call return, caller originated trace, directory assistance inquiries, and operator assistance charges, Midcontinent must order blocking services as outlined in NDTC's local exchange tariff and pay any applicable charges.

3. NDTC's Provision of Services to Midcontinent

3.1 Resale of NDTC services shall be as follows:

3.1.1 The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions. Midcontinent shall not use resold local exchange telephone service to provide access services to Interexchange Carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunication service providers or voice over internet protocol companies.

3.1.2 Service is furnished subject to the condition that it will not be used for any unlawful purpose.

3.1.3 Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.

3.1.4 NDTC can refuse service when it has grounds to believe that service will be used in violation of the law.

3.1.5 NDTC will cooperate with law enforcement agencies with subpoenas and court orders relating to Midcontinent's End User Customers, pursuant to Section 21 of the General Terms and Conditions.

3.1.6 NDTC is authorized, but not required to cooperate with law enforcement agencies with respect to their investigation of any alleged unlawful activity of Midcontinent or its End User Customers. Law enforcement agency subpoenas and court orders regarding the End User Customers of Midcontinent will be directed to Midcontinent. NDTC shall be entitled to bill Midcontinent for any cost associated with complying with any requests by law enforcement agencies regarding Midcontinent or Midcontinent's End User Customers.

3.1.7 NDTC reserves the right to periodically audit services purchased by Midcontinent to establish authenticity of use. Such audit shall not occur more than once in a calendar year. Midcontinent shall make any and all records and data available to NDTC or NDTC's auditors on a reasonable basis. NDTC shall bear the cost of said audit. Any information provided by Midcontinent for purposes of such audit shall be deemed Confidential Information pursuant to the General Terms and Conditions of this Agreement.

3.2 Subject to Exhibit A hereto, resold services can only be used in the same manner as specified in NDTC's Tariffs. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual End User Customer of NDTC in the appropriate section of NDTC's Tariffs. Specific tariff features (e.g. a usage allowance per month) shall not be aggregated across multiple resold services or End User Customers.

3.3 Midcontinent may resell services only within the specific service area as defined in Exhibit B. Midcontinent must have a certificate of operation approved by the Commission to operate in such areas.

3.4 Promotions of ninety (90) days or less are not available to CLEC for resale. Promotions of ninety-one (91) days or more are available to CLEC for resale.

3.5 If Midcontinent cancels an order for resold services, any costs incurred by NDTC in conjunction with provisioning of such order will be recovered in accordance with NDTC's LEST.

3.6 Service Jointly Provisioned within Third Party Company Areas

3.6.1 NDTC will in some instances provision resold services in accordance with the LEST jointly with a third party telecommunications company.

3.6.2 When Midcontinent assumes responsibility for such service, all terms and conditions defined in the Tariff will apply for services provided within the NDTC service area only.

3.6.3 Midcontinent must establish a billing arrangement with the third party prior to assuming an End User Customer account where such circumstances apply.

4. Establishment of Service

4.1 After receiving certification as a local exchange carrier from the applicable regulatory agency, Midcontinent will provide NDTC the necessary documentation to enable NDTC to establish accounts for resold services (master account) according to the NDTC Operations Handbook.

4.2 Requests for customer service records and local service requests shall be accepted in accordance with the Ordering Attachment.

4.3 NDTC will accept a request directly from the End User Customer for conversion of the End User Customer's service from Midcontinent to NDTC or will accept a request from another CLEC/CMRS for conversion of the End User Customer's service from Midcontinent to such other CLEC/CMRS. Upon completion of the conversion NDTC will notify Midcontinent that such conversion has been completed.

5. Discontinuance of Service

5.1 The procedures for discontinuing service to an End User Customer are as follows:

5.1.1 NDTC will deny service to Midcontinent's End User Customer on behalf of, and at the request of, Midcontinent. Upon restoration of the End User Customer's service, denial/restoral charges will apply and will be the responsibility of Midcontinent.

5.1.2 At the request of Midcontinent, NDTC will disconnect a Midcontinent End User Customer.

5.1.3 All requests by Midcontinent for denial or disconnection of an End User Customer for nonpayment must be in writing.

5.1.4 Midcontinent will be made solely responsible for notifying the End User Customer of the proposed disconnection of the service.

5.1.5 NDTC may report annoyance calls to Midcontinent when it is determined that annoyance calls are originated from one of its End User Customer's

locations. NDTC shall be indemnified, defended and held harmless by Midcontinent and/or the End User Customer against any claim, loss or damage arising from providing this information to Midcontinent. It is the responsibility of Midcontinent to take the corrective action necessary with its End User Customers who make annoying calls. (Failure to do so will result in NDTC's disconnecting the End User Customer's service.)

5.2 Permanent Disconnects. Midcontenent will return the disconnected resale number immediately following the disconnect. NDTC will be responsible for the message and aging of the number. Both service order and central office non-recurring charges are not applicable.

6. Maintenance of Services

6.1 Services resold pursuant to this Agreement and NDTC's LEST and facilities and equipment provided by NDTC shall be maintained by NDTC.

6.2 Midcontinent or its End User Customers may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by NDTC except with the written consent of NDTC.

6.3 Midcontinent accepts responsibility to notify NDTC of situations that arise that may result in a service problem.

6.4 Maintenance and repair process is addressed in the Ordering Attachment.

6.5 For all repair requests, Midcontinent shall adhere to NDTC's prescreening guidelines prior to referring the trouble to NDTC.

6.6 Midcontinent shall be NDTC's single point of contact for all repair calls on behalf of Midcontinent' End User Customers with respect to resold services.

6.6 For purposed of this Section, Telecommunications Services is considered restored or a trouble resolved when the quality of services is equal to that provided before the outage or trouble occurred.

6.7 NDTC reserves the right to contact Midcontinent's End User Customers, if deemed necessary, for maintenance purposes.

6.8 In responding to repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services. Either Party may respond with accurate information in answering customer questions.

7. Ancillary Services

7.1 NDTC shall provide 911/E911 for Midcontinent customers in the same manner that it is provided to NDTC customers. NDTC shall provide and validate Midcontinent customer information to the Public Service Answering Point (PSAP). NDTC shall use its service order process to update and maintain, on the same schedule that it uses for its customers, the Midcontinent customer service information in the ALI/DMS (Automatic Location Identification/Location Information) databases used to support 911/E911 services. NDTC shall not be responsible for any failure of Midcontinent to provide accurate End User Customer information for 911 or listings in any databases in which NDTC is required to retain and/or maintain such information.

7.2 Directory

7.2.1 Subject to NDTC's practices, as well as the rules and regulations applicable to the provision of White Pages directories, NDTC will include in appropriate White Pages directories the primary alphabetical listings of all Midcontinent End User Customers located within the local directory scope. The rules, regulations and NDTC practices are subject to change from time to time.

7.2.2 Additional Listing services, as set forth in Appendix Pricing, may be purchased by Midcontinent for its End User Customers on a per listing basis.

7.2.3 Liability relating to End User Customer Listings

7.2.3.1 Midcontinent hereby releases NDTC from any and all liability for damages due to errors or omissions in Midcontinent's End User Customer listing information as provided to NDTC under this Attachment, and/or Midcontinent's End User Customer listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages.

7.2.3.2 Midcontinent shall indemnify, protect, save harmless and defend NDTC and NDTC's officers, employees, agents, representatives and assigns from and against any and all losses, liability, damages and expense arising out of any demand, claim, suit or judgment by a Third Party in any way related to any error or omission in Midcontinent's End User Customer listing information, including any error or omission related to non-published or non-listed End

User Customer listing information. Midcontinent shall so indemnify regardless of whether the demand, claim or suit by the third party is brought jointly against Midcontinent and NDTC, and/or against NDTC alone. However, if such demand, claim or suit specifically alleges that an error or omission appears in Midcontinent's End User Customer listing information in the White Pages directory, NDTC may, at its option, assume and undertake its own defense, or assist in the defense of Midcontinent, in which event Midcontinent shall reimburse NDTC for reasonable attorney's fees and other expenses incurred by NDTC in handling and defending such demand, claim and/or suit.

7.2.4 Each Midcontinent subscriber will receive one copy per primary End User Customer listing of NDTC's White Pages directory in the same manner and at the same time that they are delivered to NDTC's subscribers.

7.3 Operator Services (Operator Call Processing and Directory Assistance)

7.3.1 NDTC Contracts with a Third Party for Operator Call Processing, (OCP) which provides operator handling for call completion (for example, collect, third number billing, and manual calling-card calls).

7.3.2 Upon request from Midcontinent for OCP, NDTC shall route calls to the Third Party Operator Services Provider for Call Processing. NDTC shall charge Midcontinent the same rates as other NDTC local service customers are charged for the following OCP services:

7.3.2.1 Process calls that are billed to Midcontinent End User Customer's calling card.

7.3.2.2 Process person-to-person calls.

7.3.2.3 Process collect calls.

7.3.2.4 Provide the capability for callers to bill a third party and shall also process such calls.

7.3.2.5 Process station-to-station calls.

7.3.2.6 Process operator-assisted DA calls.

7.3.2.7 Adhere to equal access requirements, providing Midcontinent local End User Customers the same IXC access that NDTC provides its own operator service.

7.3.2.8 Exercise at least the same level of fraud control in providing Operator Service to Midcontinent that NDTC provides for its own operator service.

7.3.2.9 Perform Billed Number Screening when handling Collect, Person-to-Person, and Billed-To-Third-Party calls.

7.4 Directory Assistance Service

7.4.1 DA Service provides local and non-local End User Customer telephone number listings with the option to complete the non-local call at the caller's direction separate and distinct from local switching.

7.4.2 DA Service shall provide up to two listing requests per call, if available and if requested by Midcontinent's End User Customer at rates charged to other NDTC customers. NDTC shall provide caller-optional directory assistance call completion service at rates set by third party service provider.

7.4.3 Directory Assistance Service Updates

7.4.3.1 NDTC shall update End User Customer listings changes on the same schedule as NDTC updates its own customer listings. These changes include:

7.4.3.1.1 New End User Customer connections
7.4.3.1.2 End user disconnections
7.4.3.1.3 End user address changes

7.4.3.2 These updates shall also be provided for non-listed and non-published numbers for use in emergencies.

7.5 Selective Call Routing using Line Class Codes (SCR-LCC)

NDTC is capable of providing SCR-LCC to Midcontinent so that Midcontinent can directly provide operator services to the resold customers. If Midcontinent decides to purchase this service, terms and conditions and pricing shall be negotiated between the Parties.

7.5.1 The interface requirements shall conform to the interface specifications for the platform used to provide Operator Services as long as the interface conforms to industry standards.

8. Line Information Database

8.1 NDTC will store in its Line Information Database (LIDB) records relating to service only in the NDTC region. The LIDB Storage Agreement is included in this Attachment as Exhibit C.

8.2 NDTC will provide LIDB Storage upon written request to Midcontinent's Account Manager stating a requested activation date.

9. Usage Records

9.1 NDTC shall bill Midcontinent for all the usage of operator assistance or directory services generated by their End User Customers.

9.2 NDTC will provide Usage Data for completed calls only for service offerings that NDTC records for itself (e.g., Local Measured Services) and recordings performed on behalf of NDTC for operator services and directory assistance.

9.3 The usage information shall be provided once per month on a paper bill.

Exhibit A

EXCLUSIONS & LIMITATIONS ON SERVICES AVAILABLE FOR RESALE

	Type of Service	North Dakota	
		Resale	Discount
1	Grandfathered Services (Note 1)	Yes	Yes
2	Promotions - > 90 Days (Note 2)	Yes	Yes
3	Promotions - ≤ 90 Days (Note 2)	No	No
4	N11 Services	No	No
5	Federal Subscriber Line Charges	Yes	No
6	Nonrecurring Charges	Yes	No
7	Public Telephone Access Svc (PTAS)	Yes	Yes
8	Voice Mail	No	No
9	Private Line including FX (Note 3)	No	No
10	Employee Discount	No	No
11	Centrex	No	No
12	Line of Information	No	No
13	Joint Use Service	No	No
14	Special Billing Number	No	No
15	Lifeline (Note 4)	No	No
16	Deregulated services – Inside wire, ISP, Toll, etc.	No	No
17	Volume Discounts	No	No

Applicable Notes:

1. Grandfathered services can be resold only to existing subscribers of the grandfathered service.
2. Where available for resale, promotions will be made available only to End User Customers who would have qualified for the promotion had it been provided by NDTC directly.
3. Midcontinent can order services from the access tariff
4. Midcontinent would apply directly for Lifeline support

AREA OF RESALE

Exchange Name

Devils Lake, North Dakota

LINE INFORMATION DATA BASE (LIDB)

RESALE STORAGE AGREEMENT

I. Definitions (from Exhibit)

A. Billing number - a number used by NDTC for the purpose of identifying an account liable for charges. This number may be a line or a special billing number.

B. Line number - a ten-digit number assigned by NDTC that identifies a telephone line associated with a resold local exchange service.

C. Special billing number - a ten-digit number that identifies a billing account established by NDTC in connection with a resold local exchange service.

D. Calling Card number - a billing number plus PIN number assigned by NDTC.

E. PIN number - a four-digit security code assigned by NDTC that is added to a billing number to compose a fourteen-digit calling card number.

F. Toll billing exception indicator - associated with a billing number to indicate that it is considered invalid for billing of collect calls or third number calls or both, by Midcontinent.

G. Billed Number Screening - refers to the query service used to determine whether a toll billing exception indicator is present for a particular billing number.

H. Calling Card Validation - refers to the query service used to determine whether a particular calling card number exists as stated or otherwise provided by a caller.

I. Billing number information - information about billing number or Calling Card number as assigned by NDTC and toll billing exception indicator provided to NDTC by Midcontinent.

J. Get-Data - refers to the query service used to determine, at a minimum, the Account Owner and/or Regional Accounting Office for a line number. This query service may be modified to provide additional information in the future.

K. Originating Line Number Screening (OLNS) - refers to the query service used to determine the billing, screening and call handling indicators, station type and Account Owner provided to NDTC by Midcontinent for originating line numbers.

L. Account Owner - name of the local exchange telecommunications company that is providing dialtone on a subscriber line.

II. General

A. This Agreement sets forth the terms and conditions pursuant to which NDTC agrees to store in its LIDB certain information at the request of Midcontinent and pursuant to which NDTC, its LIDB customers and Midcontinent shall have access to such information. In addition, this Agreement sets forth the terms and conditions for Midcontinent's provision of billing number information to NDTC for inclusion in NDTC's LIDB. Midcontinent understands that NDTC provides access to information in its LIDB to various telecommunications service providers pursuant to applicable tariffs and agrees that information stored at the request of Midcontinent, pursuant to this Agreement, shall be available to those telecommunications service providers. The terms and conditions contained herein shall hereby be made a part of this Agreement upon notice to Midcontinent's account team and/or Local Contract Manager activate this LIDB Storage Agreement. The General Terms and Conditions of the Agreement shall govern this LIDB Storage Agreement.

B. The Midcontinent LIDB information shall be used for the following purposes:

1. Billed Number Screening. NDTC is authorized to use the billing number information to determine whether Midcontinent has identified the billing number as one that should not be billed for collect or third number calls.

2. Calling Card Validation. NDTC is authorized to validate a 14-digit Calling Card number where the first 10 digits are a line number or special billing number assigned by NDTC, and where the last four digits (PIN) are a security code assigned by NDTC.

3. OLNS. NDTC is authorized to provide originating line screening information for billing services restrictions, station type, call handling indicators, presubscribed interLATA and local carrier and account owner on the lines of Midcontinent from which a call originates.

4. GetData. NDTC is authorized to provide, at a minimum, the account owner and/or Regional Accounting Office information on the lines of Midcontinent indicating the local service provider and where billing records are to be sent for settlement purposes. This query service may be modified to provide additional information in the future.

III. Responsibilities of the Parties

A. NDTC will administer all data stored in the LIDB, including the data provided by Midcontinent pursuant to this Agreement, in the same manner as NDTC's data for NDTC's End User Customer customers. NDTC shall not be responsible to Midcontinent for any lost revenue which may result from NDTC's administration

of the LIDB pursuant to its established practices and procedures as they exist and as they may be changed by NDTC in its sole discretion from time to time.

B. Billing and Collection Customers

NDTC currently has in effect numerous billing and collection agreements with various interexchange carriers (IXCs) and billing clearing houses and as such these billing and collection customers (B&C Customers) query NDTC's LIDB to determine whether to accept various billing options from End User Customers. Until such time as NDTC implements in its LIDB and its supporting systems the means to differentiate Midcontinent's data from NDTC's data, the following shall apply:

1. NDTC will identify Midcontinent End User Customer originated long distance charges and will return those charges to the IXC as not covered by the existing B&C agreement. Midcontinent is responsible for entering into the appropriate agreement with IXCs for handling of long distance charges by their End User Customers.

2. NDTC shall have no obligation to become involved in any disputes between Midcontinent and B&C Customers. NDTC will not issue adjustments for charges billed on behalf of any B&C Customer to Midcontinent. It shall be the responsibility of Midcontinent and the B&C Customers to negotiate and arrange for any appropriate adjustments.

IV. Fees for Service and Taxes

A. Midcontinent will not be charged a fee for storage services provided by NDTC to Midcontinent, as described in this LIDB Resale Storage Agreement.

B. Sales, use and all other taxes (excluding taxes on NDTC's income) determined by NDTC or any taxing authority to be due to any federal, state or local taxing jurisdiction with respect to the provision of the service set forth herein will be paid by Midcontinent in accordance with the tax provisions set forth in the General Terms and Conditions of this Agreement.

Pre-Ordering, Ordering, Provisioning, Maintenance and Repair

TABLE OF CONTENTS

1. PRE-ORDERING 3
2 ORDERING 3
3 MISCELLANEOUS 4

PRE-ORDERING, ORDERING, PROVISIONING, MAINTENANCE AND REPAIR

1. PRE-ORDERING

1.1. The Parties will provide access to pre-order functions to support the requesting Party's transfer of customers. The Parties acknowledge that ordering requirements necessitate the use of current pre-order information to accurately build service orders. The following lists represent pre-order functions that are available.

1.2. Release of retail Customer Proprietary Network Information (CPNI) and account information for pre-ordering will include: billing name, service address, billing address, service and feature subscription, directory listing information, long distance carrier identity, and PIC freeze indication. Parties agree that the Parties' representatives will not access the information specified in this subsection until after the End User Customer requests that his or her Local Service Provider be changed to that Party, and a Letter of Authorization (LOA) for release of CPNI complies with conditions as described in Section 3.3 of this Attachment.

1.3. The Parties will provide the information on the following pre-ordering functions: service address validation, telephone number selection, service and feature availability, due date information, and customer record information. NDTC and Midcontinent will include the development and introduction of the new change management process. The Parties shall provide such information in accordance with the procedures set out in the NDTC Operations Handbook via paper copies of End User Customer record information.

1.4. The Parties agree not to view, copy, or otherwise obtain access to the End User Customer record information of any customer without that End User Customer's permission. Midcontinent will obtain access to End User Customer record information only in strict compliance with applicable laws, rules, or regulations of the state in which the service is provided or FCC. NDTC reserves the right to audit Midcontinent's access to End User Customer record information. If an NDTC audit of Midcontinent's access to End User Customer record information reveals that Midcontinent is accessing End User Customer record information without having obtained the proper LOA, NDTC, upon reasonable notice to Midcontinent, may take corrective action. All such information obtained through an audit shall be deemed Information covered by the Proprietary and Confidential Information Section 11 in the General Terms and Conditions of this Agreement.

2. ORDERING

2.1. Midcontinent agrees to comply with the provisions of the NDTC Operations Handbook, which are incorporated by reference in this Agreement, and as amended from time to time, provided however, that NDTC furnishes Midcontinent with a copy of the Handbook and relevant amendments in a timely manner.

2.2. Ordering.

2.2.1. Midcontinent shall place orders for services by submitting a local service request ("LSR") to NDTC. NDTC shall bill Midcontinent a service order charge as

specified in this Attachment for each LSR submitted. An individual LSR will be identified for billing purposes by its Purchase Order Number ("PON").

2.2.2. NDTC will bill the service order charge, as applicable, for an LSR, regardless of whether that LSR is later supplemented, clarified or cancelled.

2.3. Provisioning.

2.3.1. NDTC shall provision services during its regular working hours. To the extent Midcontinent requests provisioning of service to be performed outside NDTC's regular working hours, or the work so requested requires NDTC's technicians or project managers to work outside of regular working hours, overtime charges shall apply.

2.3.2. Cancellation Charges. If Midcontinent cancels an LSR any costs incurred by NDTC in conjunction with the provisioning of that request will be recovered in accordance with the Pricing Attachment.

2.3.3. Expedited Service Date Charges . For Expedited Service Date Advancement requests by Midcontinent, expedited charges will apply for intervals less than the standard interval as outlined in the NDTC Operations Handbook. The charges as outlined in the Pricing Attachment, will apply as applicable.

2.3.4. Order Change Charges. If Midcontinent modifies an order after being sent a Firm Order Confirmation (FOC) from NDTC, the Order Change Charge will be paid by Midcontinent in accordance with the Pricing Attachment.

2.4. Maintenance and Repair

2.4.1. Requests for trouble repair are billed in accordance with the provisions of this Agreement. NDTC and Midcontinent agree to adhere to the procedures for maintenance and repair referenced in NDTC's Operations Handbook, as amended from time to time during this Agreement and as incorporated herein by reference.

2.4.2. If Midcontinent reports a trouble and no trouble actually exists on the NDTC portion, NDTC will charge Midcontinent for any dispatching and testing (both inside and outside the Central Office (CO)) required by NDTC in order to confirm the working status.

2.5. Rates

Unless otherwise specified herein, charges applicable to pre-ordering, ordering, provisioning and maintenance and repair, shall be as set forth in the Pricing Attachment.

3. MISCELLANEOUS

3.1 Customer Transfer.

3.1.1 Service orders will be in a standard format designated by NDTC.

3.1.2 When notification is received from Midcontinent that a current End User Customer of NDTC will subscribe to Midcontinent's service, standard service order intervals for the appropriate class of service will apply.

3.1.3 Midcontinent will be the single point of contact with NDTC for all subsequent ordering activity resulting in additions or changes to services except that NDTC will accept a request directly from the End User for conversion of the End User Customer's service from Midcontinent to NDTC.

3.1.4 If NDTC determines that an unauthorized change in local service to Midcontinent has occurred, NDTC will reestablish service with the appropriate local service provider and will assess Midcontinent as the carrier initiating the unauthorized change, any charges allowed under the FCC and State rules. Appropriate nonrecurring charges, as set forth in the applicable tariff will also be assessed to Midcontinent. These charges can be adjusted if Midcontinent provides satisfactory proof of authorization.

3.2 Misdirected Calls.

3.2.1 The Parties will employ the following procedures for handling any misdirected calls (e.g., Business office, repair bureau, etc.):

3.2.2 To the extent the correct provider can be determined; each Party will refer misdirected calls to the proper provider of local exchange service. When referring such calls, both Parties agree to do so in a courteous manner at no charge.

3.2.3 For misdirected repair calls, the Parties will provide their respective repair bureau contact number to each other on a reciprocal basis and provide the End User Customer the correct contact number.

3.2.4 In responding to misdirected calls, neither Party shall make disparaging remarks about each other, nor shall they use these calls as a basis for internal referrals or to solicit End User Customers or to market services.

3.3 Letter of Authorization.

3.3.1 NDTC will not release the Customer Service Record (CSR) containing CPNI to Midcontinent on NDTC's End User Customer accounts unless Midcontinent first provides to NDTC a written Letter of Authorization (LOA). Such LOA may be a blanket LOA or other form agreed upon between NDTC and Midcontinent authorizing the release of such information to Midcontinent.

3.3.2 An LOA will be required before NDTC will process an order for services provided in cases in which the End User Customer currently receives Exchange Service from NDTC or from a local service provider other than Midcontinent. Such LOA may be a blanket LOA or such other form as agreed upon between NDTC and Midcontinent.

3.3.3 Midcontinent and NDTC shall each execute a blanket letter of authorization with respect to End User Customer requests so that prior proof of End User Customer authorization will not be necessary with every request (except in the case of a local service freeze). The Parties shall each be entitled to adopt their own internal

processes for verification of customer authorization for requests, provided, however, that such processes shall comply with applicable state and federal law and industry and regulatory guidelines.

3.4 Pending Orders. Orders placed in the hold or pending status by Midcontinent will be held for a maximum of thirty (30) calendar days from the date the order is placed on hold. After such time, Midcontinent shall be required to submit a new service request. Incorrect or invalid requests returned to Midcontinent for correction or clarification will be held for thirty (30) calendar days. If Midcontinent does not return a corrected request within thirty (30) calendar days, NDTC will cancel the request.

3.5 Neither NDTC nor Midcontinent shall prevent or delay an End User Customer from migrating to another carrier because of unpaid bills, denied service, or contract terms.

3.6 The Parties shall return a Firm Order Confirmation (FOC) and Local Service Request (LSR) rejection/clarification in accordance with the intervals specified in NDTC's Operations Handbook.

3.7 Contact Numbers. The Parties agree to provide one another with contact numbers for the purpose of ordering, provisioning and maintenance of services. Contact numbers for maintenance/repair of services shall be answered in accordance to the NDTC Operations Handbook. NDTC will make a reasonable effort to notify Midcontinent when a trouble ticket has been closed. After making a reasonable effort to contact Midcontinent to request additional information or to request authorization for additional work deemed necessary, if NDTC is unsuccessful in obtaining information or authorization, NDTC will place trouble tickets in delayed maintenance status.

Pricing Attachment

Pricing Attachment

General. The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement and are subject to change. NDTC shall provide updated versions of the Tariff prior to the effective date of such change.

A. Resale:

1.	Discount from Tariff Retail Rates	10.0%*
2.	Denial charge	$ 15.00
3.	Restoral charge within 5 business days	
	Facility Administration Charge	$ 20.00
	Subsequent Charge	$ 12.00
4.	Restoral charge after 5 business days	
	Facility Administration Charge	$ 20.00
	Primary Charge	$ 18.00
5.	Selective Router/Line Class Code	
	Non-Recurring	$240.00
	Recurring	$ 40.00
6.	Service Order Charge (LSR)	
	Facility Administration Charge	$ 20.00/request*
	Primary Charge	$ 18.00/request*
	Subsequent Charge	$ 12.00/request*
7.	Service Order Cancellation Charge	$ 12.00/request*
8.	Expedited Due Date in addition to SOC	$ 32.00/request*
9.	Order Change Charge	$ 12.00/request*

* All Tariff rate elements (both recurring and non-recurring) are applied as stated in the applicable tariff. Rate elements listed in this Attachment are not all inclusive. The services available for resale and subject to the resale discount are listed in the Resale Attachment.

B. General Charges:

1. Technical Labor

Install & Repair Technician:	
Basic Time (normally scheduled hours)	$58.00/hr
Overtime (outside normally schld hrs on schld work day)	$87.00/hr
Trip Charge	$20.00
Call out	Min 2 hours

Central Office Technician:	
Basic Time (normally scheduled hours)	$ 75.00/hr
Overtime (outside normally schld hrs on schld work day)	$112.50/hr
Call out	Min 2 hours
Customer Service Representative	
Basic Time (Normal Scheduled)	$ 58.00/hr
Overtime (outside normally schld hrs on schld work day	$ 87.00/hr
Call out	Min 2 hours

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JUL - 5 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

July 5, 2006

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding are an original and seven copies of the following:

1. Testimony of Douglas Meredith and Supporting Schedules.

These documents were also transmitted via electronic means to your office this date.

[redacted]aard

jat

Enclosures

cc/encl: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission

145 PU-05-451 Pages: 2
Cover letter Testimony of Douglas Duncan Meredith
by North Dakota Telephone Company by
07/05/2006 CC: Comm Legal Illona, Pat, Annette ALJ

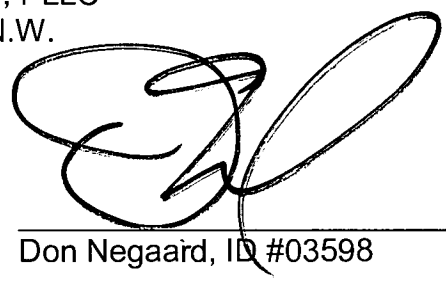
CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Testimony of Douglas Meredith and Supporting Schedules was served electronically and by regular mail on the 5th day of July, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
PWD@pearce-durick.com

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480
wbinek@state.nd.us

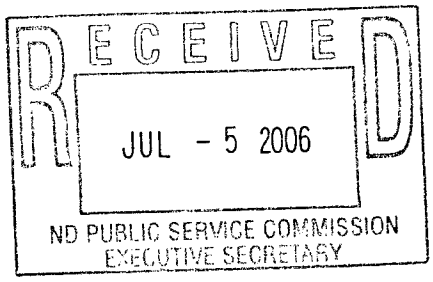
J.W. Harrington
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
jharrington@dowlohnes.com



Don Negaard, ID #03598

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



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

TESTIMONY

OF

DOUGLAS DUNCAN MEREDITH

ON BEHALF OF

NORTH DAKOTA TELEPHONE COMPANY

July 10, 2006

144 PU-05-451 Pages: 18

Testimony of Douglas Duncan Meredith

by North Dakota Telephone Company by Don Negaard, 07/05/2006 CC: Comm Legal Illona, Pat, Annette ALJ .

Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND BUSINESS ADDRESS.

A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis, Inc. (JSI). JSI is a telecommunications consulting firm headquartered in Greenbelt, Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah 84010.

Q: ARE YOU THE SAME MR. MEREDITH THAT TESTIFIED PREVIOUSLY IN THIS PROCEEDING?

A: Yes. I previously testified in this matter on January 23, 2006, when the North Dakota Public Service Commission (the "Commission") examined the rural exemption issue in this matter.

Q: ON WHOSE BEHALF ARE YOU PRESENTING THIS PRE-FILED DIRECT TESTIMONY?

A: I am testifying on behalf of North Dakota Telephone Company ("NDTC"), a rural telephone company operating in North Dakota.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to respond to the request by the Commission that information be provided to assist the Commission in determining an appropriate interim discount rate for NDTC to provide wholesale resold service in the Devils

Lake, North Dakota, exchange to Midcontinent Communications ("Midcontinent") pursuant to 47 U.S.C. Section 251(c) of the Act.

Q: WHAT IS YOUR UNDERSTANDING OF WHAT NEEDS TO BE DONE IN THIS PROCEEDING?

A: My understanding is that this hearing is being conducted to determine an appropriate interim discount rate for retail services subject to being sold at a wholesale discount under Section 251(c)(4) of the Act. This rate would be used for an interim period, subject to true-up, until a final discount rate is approved by the Commission. The Federal Communications Commission ("FCC") has provided guidance in the form of Federal Regulations which are contained at 47 C.F.R. Section 51.607, *et seq.*, and its discussion of these regulations in Section 8 of its Local Competition Order, FCC 96-325.

Q: HAVE YOU COMPUTED AN APPROPRIATE INTERIM DISCOUNT RATE IN ACCORDANCE WITH THESE FCC GUIDELINES?

A: Yes.

Q: IS YOUR STUDY ATTACHED TO THIS TESTIMONY AS EXHIBIT DDM-01?

A: Yes. Exhibit DDM-01 contains 11 schedules. It provides a summary of the avoidable cost rate and thereafter provides cost details for direct, indirect costs

and cost onsets, including specific evidence rebutting certain FCC presumptions that are not appropriate for the NDTC contract with Midcontinent.

Exhibit DDM-01 is suitable for an interim wholesale rate. I am currently evaluating certain other FCC presumptions and will be prepared to rebut these other presumptions at a later hearing establishing a final wholesale discount for NDTC.

Q: BASED ON EXHIBIT DDM-01 WHAT INTERIM WHOLESALE DISCOUNT RATE DO YOU RECOMMEND THE COMMISSION ADOPT IN THIS PROCEEDING?

A: I recommend the Commission adopt an interim wholesale discount of 9.36 percent, subject to true-up to a final discount rate approved by the Commission. This rate is based on NDTC specific costs and the methodology establishing this rate is consistent with FCC regulations and policies pertaining to the establishment of this discount.

Q: HOW WOULD YOU PROPOSE THAT THE COMMISSION "TRUE UP" ANY DIFFERENCE IN THE INTERIM WHOLESALE DISCOUNT RATE VERSUS THE FINAL WHOLESALE DISCOUNT RATE?

A: From my perspective, it could be accomplished using a simple mathematical calculation and payment method. Specifically, one would only need to take the total amount of NDTC wholesale revenues (revenues for services subject to the

wholesale discount) received from Midcontinent during the interim period and apply the following equation to calculate the true up payment:

True up revenues due NDTC = [Wholesale Revenues Paid/(1-interim discount)(1-final discount)] – Wholesale Revenues Paid.*

This equation calculates the difference between what is due using the final discount and subtracts the amount that has been paid using the interim discount. If the final wholesale discount is less than 9.36 percent, this equation yields a positive number representing the true up amount Midcontinent owes NDTC. In the unlikely event the final wholesale discount were greater than 9.36 percent this equation will yield a negative number representing the true up amount NDTC owes Midcontinent. Any difference in the amount of money either due NDTC or Midcontinent would be paid to the proper party within 30 days of the establishment of the final wholesale discount rate by the Commission.

Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY FOR THIS HEARING?

A: Yes

Exhibit DDM-01

North Dakota Telephone Company Schedule 1

Avoidable Cost Discount

For Year Ended 12/31/2005

Date: 7/5/2006

#	Item	Source	Amount
1	Direct Avoidable Costs	Schedule 2, Ln 32	$1,014,734
2	Indirect Avoidable Costs	Schedule 3, Ln 19	$229,003
3	Total Avoidable Costs	Ln 1 + Ln 2	$1,243,737
4	Total Expenses	Schedule 6, Ln 65	$12,048,268
5	**Avoidable Cost Percentage**	**Ln 3 / Ln 4**	**10.32%**
6	Cost Onsets	Schedule 5, Ln 13	$115,352
7	Total Expenses	Ln 4	$12,048,268
8	Onset Cost Percentage	Ln 6 / Ln 7	0.96%
9	**Net Avoidable Cost Percentage**	**Ln 5 - Ln 8**	**9.36%**

North Dakota Telephone Company Schedule 2

Direct Avoided Costs

For Year Ended 12/31/2005

Date: 7/5/2006

#	Item	Account	Per Study 12/31/05	Percent Avoidable [2]	Avoided Costs
1	Product Management	6611	$162,069	90%	$145,862
2	Sales	6612	$0	90%	$0
3	Product Advertising	6613	$0	90%	$0
4	Operator - Information	6621	$0	*0%*	$0
5	Operator - ONI	6621	$0	*0%*	$0
6	Operator - Other	6621	$0	*0%*	$0
7	Outside Operator - Information	6621	$0	*0%*	$0
8	Outside Operator - ONI	6621	$0	*0%*	$0
9	Outside Operator - Other	6621	$0	*0%*	$0
10	White Page Directory	6622	$134,769	*0%*	$0
11	Foreign Directories	6622	$0	*0%*	$0
12	Local Order Processing [1]	6623	$339,859	*76%*	$249,620
13	PIC Change Charges	6623	$68,811	*76%*	$52,296
14	Payment & Collection	6623	$188,246	90%	$169,421
15	Local Bill Inquiry	6623	$238,871	*100%*	$238,871
16	Toll Bill Inquiry	6623	$0	90%	$0
17	Special Service Bill Inquiry	6623	$0	90%	$0
18	SLC Bill Inquiry	6623	$0	90%	$0
19	IXC Switched Order Processing	6623	$21,056	*0%*	$0
20	IXC Special Order Processing	6623	$0	*0%*	$0
21	IXC B&C Order Processing	6623	$0	*0%*	$0
22	IXC Payment & Collection	6623	$0	*0%*	$0
23	IXC Switched Bill Inquiry	6623	$0	*0%*	$0
24	IXC Special Bill Inquiry	6623	$0	*0%*	$0
25	IXC B&C Bill Inquiry	6623	$0	*0%*	$0
26	Coin Collection & Counting	6623	$0	90%	$0
27	Rating	6623	$42,423	90%	$38,181
28	Message Processing	6623	$63,634	*0%*	$0
29	Other Billing & Collection	6623	$133,870	90%	$120,483
30	CABs Billing Expense	6623	$283,272	*0%*	$0
31	Cost of Avoided Investment				$0
32	**Total Direct Avoided Costs**		**$1,676,880**		**$1,014,734**

Notes:

(1) Service Orders from resellers will come from Midcontinent in manual format. NDTC will continue to process orders. (See Schedule 2A). Direct assignments are not avoidable (See Sch 9).

(2) North Dakota Telephone Company rebuts certain percentages (represented in italics) presumed avoidable by FCC rule in Local Competition Order at 928. (See Schedule 4).

North Dakota Telephone Company
Account 6623 - Local Order Processing Rebuttal
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 2A

Current Customer Service Operations Workforce	*Number*	*Loaded Labor Rate*
Supervisor	1	$ 49.66
CSR (Business Office)	10	$ 30.75
CSR (Marketing)	2	$ 28.41

Annual Work Hours 2005 Actual Activity)	*Hours*
Supervisor	1,836
CSR (Business Office)	1,763

Retained 6623 Local Order Processing Activities	*2005 Contacts*	*Est. Time per Contact (Min.)*	*Est. Retained Activity Percentage*	*Est. Annual Wholesale Time (Min)*
Connects	2,301	12.5	66%	18,983
Reconnects	2,495	12.5	66%	20,584
Disconnects	4,546	5	66%	15,002
General	21,874	10	66%	144,368
Move	170	9	66%	1,010
Number Change	202	5	0%	-
Account Change	24	5	0%	-
Estimated Retained Activity (Minutes)				199,947
Estimated Retained Activity (Hours)				3,332

Retained 6623 - Local Order Processing Expenses	*Number*	*Amount*
Supervisor Workforce	1	$ 91,151
CSR workforce	2	$ 108,443
Total		$ 199,594
Percentage of Total Labor in Account 6623		24%
Avoidable Percentage for Local Order Processing		76%

North Dakota Telephone Company
Indirect Avoided Costs
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 3

#	Item	Source	Amount
1	Direct Avoided Costs	Schedule 2, Ln 32	$1,014,734
2	Total Expenses	Schedule 6, Ln 65	$12,048,268
3	Percent Avoided of Total		8.42%

#	Item	Account	Per Study Amount	Percent Avoidable	Avoided Costs
4	Executive	6711	$552,805	8.42%	$46,559
5	Planning	6712	$0	8.42%	$0
6	Accounting & Finance	6721	$480,271	8.42%	$40,450
7	External Affairs	6722	$268,820	8.42%	$22,641
8	Human Resources	6723	$175,310	8.42%	$14,765
9	Information Management	6724	$68,671	8.42%	$5,784
10	Legal	6725	$43,588	8.42%	$3,671
11	Procurement	6726	$0	8.42%	$0
12	Research & Development	6727	$0	8.42%	$0
13	Other General & Admin	6728	$322,082	8.42%	$27,127
14	Repair of buildings	6121	$264,603	8.42%	$22,285
15	Repair of Furniture	6122	$1,730	8.42%	$146
16	Repair of Office Equipment	6123	$166,254	8.42%	$14,002
17	Repair of Computers	6124	$374,875	8.42%	$31,573
18	Uncollectibles	5301	$0	8.42%	$0
19	**Indirect Avoidable Costs**		**$2,719,009**		**$229,003**

Notes:
(1) North Dakota Telephone Company rebuts certain percentages (represented in italics) presumed avoidable by FCC rule in Local Competition Order at 928. (See Schedule 4). More investigation is currently being conducted for these accounts.

North Dakota Telephone Company
Explanation of Avoidable Percentage Rebuttals
For Year Ended 12/31/2005
Da 7/5/2006

Schedule 4

#	Account - Item	FCC Default Avoidable Percentage	NDTC Avoidable Percentage	Description
1	6622 -White Page Directory Expense	90%	0%	This expense account will not be avoidable because according to the resale agreement NDTC will continue to provide white page directories to resold customers.
2	6623 - Local Order Processing	90%	76%	This expense account will not be avoidable at the FCC 90 percent level. Local order processing will continue to be provided by NDTC through a manual ordering process. (See Schedule 2A)
3	6623 - PIC Changes	90%	76%	This function follows local order processing. The same avoidable cost percentage is used.
4	6623 - Local Bill Inquiry	90%	100%	NDTC will avoid all retail local bill inquiry. Wholesale bill inquiry is listed separately as a cost onset.
4	6623 - IXC functions	90%	0%	NDTC will continue to provide IXC interface functionality. Expenses related to IXC activity will not be avoidable.
5	6623 - Message Processing and CABs	90%	0%	NDTC will continue to provide IXC interface functionality. Expenses related to these IXC activities will not be avoidable.

North Dakota Telephone Company Schedule 5

Cost Onsets

For Year Ended 12/31/2005

Date: 7/5/2006

#	*Recurring Onsets*	*Amount*
1	Billing Wholesalers	$90
2	Wholesaler Bill Inquiry	$29,859
3	Customer Inquiry Referrals	$19,906
4	Wholesaler Payment & Collection	$11
5	Audit of Cross-Class Usage	$3,500
6	Onset Indirect	$4,495
7	Total Recurring Onsets	$57,861

#	*Non-Recurring Onsets*	*Amount*
8	Cost of Study	$5,000
9	Severance Pay	$84,982
10	Software Billing Development	$5,000
11	Cost of Tariff and Wholesale Legal	$20,000
12	Total Non-recurring Onsets	$114,982
13	Amortization Over 2 Years	$57,491
14	**Total Onsets**	**$115,352**

Notes: [reserved]

North Dakota Telephone Company
Expense Summary by Account
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 6

#	Item	Account	Per Ledger 12/31/05	Part 64 Adjustments	Other Adjustments	Per Study 12/31/05
1	Network Support Expense	6110	$0	$0	$0	$0
2	Repair of Buildings	6121	$274,712	($10,109)	$0	$264,603
3	Repair of Furniture	6122	$1,730	$0	$0	$1,730
4	Repair of Office Equipment	6123	$166,254	$0	$0	$166,254
5	Repair of Computers	6124	$374,875	$0	$0	$374,875
6	Central Office Switching	6210	$1,111,017	($149,210)	$0	$961,807
7	Operator Expense	6220	$0	$0	$0	$0
8	Central Office Transmission	6230	$439,843	($4,486)	$0	$435,357
9	Info Orig & Term	6310	$0	$0	$0	$0
10	Cable & Wire	6410	$983,942	($26,173)	$0	$957,769
11	**Total Plant Specific**		**$3,352,373**	**($189,978)**	**$0**	**$3,162,395**
12	Other Prop & Equip	6510	$44	$0	$0	$44
13	Network Operations	6530	$1,105,548	$0	$0	$1,105,548
14	Access Expense	6540	$313,872	$0	$0	$313,872
15	Depreciation	6561	$3,860,200	($54,815)	$0	$3,805,385
16	Amortization	6563	$0	$0	$0	$0
17	**Total Plant Non-Specific**		**$5,279,664**	**($54,815)**	**$0**	**$5,224,849**
18	Product Management	6611	$162,069	$0	$0	$162,069
19	Sales	6612	$0	$0	$0	$0
20	Product Advertising	6613	$0	$0	$0	$0
21	Operator - Information	6621	$0	$0	$0	$0
22	Operator - ONI	6621	$0	$0	$0	$0
23	Operator - Other	6621	$0	$0	$0	$0
24	Outside Operator - Information	6621	$0	$0	$0	$0
25	Outside Operator - ONI	6621	$0	$0	$0	$0
26	Outside Operator - Other	6621	$0	$0	$0	$0
27	White / Yellow Page Directory	6622	$134,769	$0	$0	$134,769
28	Foreign Directories	6622	$0	$0	$0	$0
29	Order Processing	6623	$339,859			$339,859
30	PIC Change Charges	6623	$68,811			$68,811
31	Payment & Collection	6623	$188,246			$188,246
32	Local Bill Inquiry	6623	$238,871			$238,871
33	Toll Bill Inquiry	6623	$0			$0
34	Special Service Bill Inquiry	6623	$0			$0
35	SLC Bill Inquiry	6623	$0			$0
36	IXC Switched Order Processing	6623	$21,056			$21,056
37	IXC Special Order Processing	6623	$0			$0
38	IXC B&C Order Processing	6623	$0			$0
39	IXC Payment & Collection	6623	$0			$0
40	IXC Switched Bill Inquiry	6623	$0			$0
41	IXC Special Bill Inquiry	6623	$0			$0
42	IXC B&C Bill Inquiry	6623	$0			$0
43	Coin Collection & Counting	6623	$0			$0
44	Other Commercial	6623	$95,616	$0	($95,616)	$0
45	Rating	6623	$42,423			$42,423
46	Message Processing	6623	$63,634			$63,634
47	Other Billing & Collection	6623	$133,870			$133,870

North Dakota Telephone Company
Expense Summary by Account
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 6

#	Item	Account	Per Ledger 12/31/05	Part 64 Adjustments	Other Adjustments	Per Study 12/31/05
48	CABs Billing Expense	6623	$283,272			$283,272
49	Other Revenue Accounting	6623	$0	$0	$0	$0
50	**Total Customer Services**		**$1,772,496**	**$0**	**($95,616)**	**$1,676,880**
51	Executive	6711	$552,805	$0	$0	$552,805
52	Planning	6712	$0	$0	$0	$0
53	Accounting & Finance	6721	$480,271	$0	$0	$480,271
54	External Affairs	6722	$268,820	$0	$0	$268,820
55	Human Resources	6723	$175,310	$0	$0	$175,310
56	Information Management	6724	$68,671	$0	$0	$68,671
57	Legal	6725	$43,588	$0	$0	$43,588
58	Procurement	6726	$0	$0	$0	$0
59	Research & Development	6727	$0	$0	$0	$0
60	Other General & Admin	6728	$322,082	$0	$0	$322,082
61	**Total Corporate**		**$1,911,547**	**$0**	**$0**	**$1,911,547**
62	Ad Valorem Taxes	7240	$6,102	$0	$0	$6,102
63	Special Charges	7370	$66,495	$0	$0	$66,495
64	Uncollectibles	5301	$0	$0	$0	$0
65	**Total Expenses**		**$12,388,677**	**($244,793)**	**($95,616)**	**$12,048,268**

North Dakota Telephone Company Schedule 7

Severence Calculation

For Year Ended 12/31/2005

Date: 7/5/2006

#	*Item*	*Amount*
1	Avoided Expenses	$1,014,734
2	Avoided Wages	$862,524
3	Average Commercial Wage Rate	$32.13
4	Avoided Labor Hours	17,633
5	Annual Pay for Lost Jobs	$566,548
6	Severance Costs (8 weeks wages)	$84,982
7	Amortized Over 2 Years	$42,491

Notes:

(1) [reserved]

North Dakota Telephone Company
Cost of Avoided Investments
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 8

[Reserved]

North Dakota Telephone Company
Account 6623: Time Study Summary
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 9

#	Item	Account	Time Study Percent	Direct Allocation	Allocate Labor Per Study	Total
1	Commercial Per Ledger					$919,992
2	Less Deregulated Expense					$0
3	Other Adjustments (Removals and Direct Assignments)					($95,616)
4	**Commercial Labor (Allocated Per Study)**					$824,376
5	Order Processing	6623	39.84%	$11,411	$328,448	$339,859
6	PIC Changes	6623	8.35%		$68,811	$68,811
7	Payment & Collection	6623	22.84%		$188,246	$188,246
8	Local Bill Inquiry	6623	28.98%		$238,871	$238,871
9	Toll Bill Inquiry	6623	0.00%		$0	$0
10	Special Service Bill Inquiry	6623	0.00%		$0	$0
11	SLC Bill Inquiry	6623	0.00%		$0	$0
12	IXC Switched Order Processing	6623	0.00%	$21,056	$0	$21,056
13	IXC Special Order Processing	6623	0.00%		$0	$0
14	IXC B&C Order Processing	6623	0.00%		$0	$0
15	IXC Payment & Collection	6623	0.00%		$0	$0
16	IXC Switched Bill Inquiry	6623	0.00%		$0	$0
17	IXC Special Bill Inquiry	6623	0.00%		$0	$0
18	IXC B&C Bill Inquiry	6623	0.00%		$0	$0
19	Coin Collection & Counting	6623	0.00%		$0	$0
20	**Total Commercial per Study**		100.0%			$856,843

North Dakota Telephone Company Schedule 10

Account 6627: Time Study Summary

For Year Ended 12/31/2005

Date: 7/5/2006

#	Item	Account	Time Study Percent	Allocate Per Study
1	Revenue Accounting Per Ledger			$523,199
2	Less Deregulated Expense			$0
3	Other Adjustments			$0
4	**Revenue Accounting Per Study**			**$523,199**
5	Rating	6627	8.1%	$42,423
6	Message Processing	6627	12.2%	$63,634
7	Other Billing & Collection	6627	25.6%	$133,870
8	CABs Billing Expense	6627	54.1%	$283,272
9	**Total Revenue Accounting per Study**		**100.0%**	**$523,199**

PEARCE & DURICK

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
JEROME C. KETTLESON
LARRY L. BOSCHEE • •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

RECEIVED
JUL - 5 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

July 5, 2006

VIA HAND DELIVERY

Illona Jeffcoat-Sacco
Executive Director
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:

Enclosed for filing herewith is an original and seven copies of Direct Testimony of Timothy J Gates. We are also electronically filing this document with the Commission.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Patrick W. Durick
J.G. Harrington*

Counsel to Midcontinent Communications

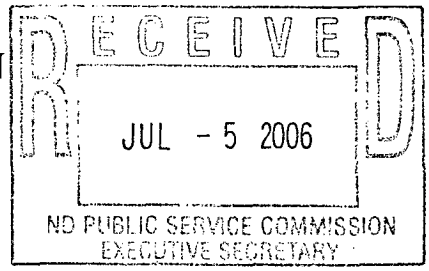
PWD/jf
Enclosures.
c: Donald Negaard (via email)
William Binek (via email)
Al Wahl (via email)
Tom Moorman (via email)

*Admitted pro hac vice

143 PU-05-451 Pages: 1

Cover letter re Direct Testimony of Timothy J Gates
by Midcontinent Communications by Patrick W Durick, A
07/05/2006 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

Direct Testimony of Timothy J Gates

On Behalf Of

Midcontinent Communications

July 5, 2006

142 PU-05-451 Pages: 51
Direct Testimony of Timothy J Gates
by Midcontinent Communications by Patrick W Durick, A
07/05/2006 CC: Comm Legal Illona, Pat, Annette ALJ

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PURPOSE OF THE TESTIMONY 3

III. LEGISLATIVE AND REGULATORY REQUIREMENTS 4

IV. CALCULATING AND APPLYING THE WHOLESALE DISCOUNT 6

A. Avoided Retail Costs 8
B. Services Available for Resale 10
C. Quality and Conditions for Resold Services 12
D. Calculating Avoided Costs and the Avoided Cost Discount 13

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

A. My name is Timothy J Gates. My business address is QSI Consulting, 819 Huntington Drive, Highlands Ranch, Colorado 80126.

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulated industries, econometric analysis and computer aided modeling. I currently serve as Senior Vice President and Partner.

Q. PLEASE PROVIDE A SYNOPSIS OF YOUR EDUCATIONAL BACKGROUND AND RELEVANT WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. Since I received my Masters, I have taken additional graduate-level courses in statistics and econometrics. I also have attended numerous courses and seminars specific to the telecommunications industry, including both the NARUC Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI, I was a Senior Executive Staff Member at MCI. I was employed by MCI and/or MCI/WorldCom for 15 years in various public policy positions. While at MCI I managed various functions, including tariffing, economic and financial analysis, competitive analysis, witness training and MCI's use of external consultants.

Prior to joining MCI, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. I also worked at the Bonneville Power Administration (United States Department of Energy) as a Financial Analyst doing total electric use forecasts while I attended graduate school. Prior to doing my graduate work, I worked for ten years as a reforestation forester in the Pacific Northwest for multinational and government organizations. Exhibit TJG-1, attached hereto to this testimony, is a summary of my work experience and education.

Q. HAVE YOU EVER TESTIFIED BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION ("COMMISSION")?

A. Yes. I have testified in North Dakota in the following dockets: PU-2320-90-183, PU-2065-02-465, PU-2342-01-296 and the earlier phase of this proceeding. I have testified more than 200 times in 44 states and I have filed comments with the FCC on various public policy issues ranging from costing, pricing, local entry and universal service to strategic planning, merger and network issues. As noted above, a list of proceedings in which I have filed testimony or provided comments is attached hereto as Exhibit TJG-1.

Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?

A. This testimony was prepared on behalf of the Midcontinent Communications ("Midcontinent").

II. PURPOSE OF THE TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. Pursuant to the prehearing order in this proceeding issued June 27, 2006, this testimony addresses the calculation of an interim wholesale discount rate.[1] This testimony will address the rules and guidelines associated with the calculation of a wholesale discount rate in the context of arbitrations under the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Specifically, this testimony will address the accounting requirements for the establishment of a wholesale discount rate for North Dakota Telephone Company's (NDTC) retail rates in the Devils Lake exchange.

Q. WHAT ARE THE MAJOR CONCLUSIONS OF THE TESTIMONY?

A. The major conclusions are as follows:

A properly conducted avoided cost study must reflect the jurisdictional allocation of expenses pursuant to the FCC rules.

If the Commission cannot establish a rate based on the July 5, 2006 filing by NDTC, then the Commission can order a discount rate from within the FCC's range of interim discounts. Those discounts range from at least 17 percent to no more than 25 percent below the ILEC's existing retail rates.

At a minimum, the interim discount rate should be no lower than the Commission approved Qwest wholesale discount rate which is 16.15 percent.[2]

---

1 See also, the Commission's Amended Findings of Fact, Conclusions of Law, and Order, filed June 7, 2006, at 6. (Amended Order)

2 Exhibit A to *Qwest's Statements of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services in North Dakota*, Section 6.

If an interim rate is approved, the rate should be subject to true-up once the Commission approves a final NDTC-specific wholesale discount rate.

III. LEGISLATIVE AND REGULATORY REQUIREMENTS

Q. PLEASE DISCUSS THE GOALS OF THE TELECOM ACT AND, SPECIFICALLY, THE RESALE REQUIREMENTS OF THE ACT.

A. The FCC and state commissions have recognized that the various subsections of section 251 impose escalating obligations on carriers depending upon their classifications (*i.e.*, telecommunications carrier, LEC, or ILEC). These classifications are based upon their market power and economic position (e.g. monopoly) and attendant public obligations (e.g., common carrier obligations). Section 251(a) of the Act requires all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[3] Section 251(b) imposes additional duties on local exchange carriers (LECs), such as dialing parity and number portability and section 251(c) imposes further obligations and specific interconnection duties on ILECs, including the duty to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." (Section 251(c)(4))

Q. PLEASE CITE THE SECTIONS OF THE ACT THAT REQUIRE ILECS TO OFFER RESOLD SERVICES AT WHOLESALE RATES.

---

[3] 47 USC § 251(a)(1).

A. The Act imposes a duty upon ILECs to offer services for resale at wholesale rates. Specifically, Section 251(c)(4) requires ILECs:

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications services, except that a state commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

NDTC is a rural carrier and would not normally be subject to this obligation. However, this Commission has lifted the rural exemption as it applies to the wholesale resale requirements in NDTC's Devils Lake exchange. In addition, this Commission has required NDTC to provide support for an interim wholesale rate for the Devils Lake exchange under an interconnection agreement no later than July 5, 2006. Further, NDTC shall begin providing to Midcontinent retail services at wholesale prices for resale in the Devils Lake exchange under an interconnection agreement no later than July 26, 2006.[4]

---

[4] Amended Order at 7.

IV. CALCULATING AND APPLYING THE WHOLESALE DISCOUNT

Q. WHAT GUIDANCE DOES THE ACT PROVIDE WITH RESPECT TO DETERMINING THE WHOLESALE PRICES FOR RESOLD SERVICE?

A. The Act provides very specific guidance on the determination of wholesale prices for telecommunications services. Section 252(d)(3) states that:

> For the purposes of Section 251(c)(4), a state commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

Using the FCC's rules for the avoided cost calculation, the Commission may review and approve a company-specific wholesale discount rate. The discount reflects the retail related costs that are considered avoided or avoidable by the incumbent LEC (ILEC).

Q. IF THE COMMISSION FINDS THE NDTC STUDY DOES NOT COMPORT WITH THE FCC RULES OR THAT THE DATA AND/OR ASSUMPTIONS ARE FLAWED, CAN THE COMMISSION REQUIRE A SPECIFIC INTERIM WHOLESALE DISCOUNT RATE?

A. Yes. The Commission can approve an interim wholesale discount rate between 17 and 25 percent.[5] At paragraph 910 of the *Local Competition Order*, the FCC identifies the conditions under which a state commission may use an interim wholesale rate:

---

[5] See 47 C.F.R. § 51.611.

> A default wholesale discount rate shall be used if: (1) an avoided cost study that satisfies the criteria we set forth below does not exist; (2) a state commission has not completed its review of such an avoided cost study; or (3) a rate established by a state commission before release of this Order is based on a study that does not comply with the criteria described in the following section.

Q. WOULD IT BE REASONABLE TO USE QWEST'S APPROVED WHOLESALE DISCOUNT RATE INSTEAD OF SELECTING A DISCOUNT FROM THE FCC'S WHOLESALE DISCOUNT RANGE?

A. As an interim rate, I would not oppose the use of Qwest's rate. But the Commission should recognize that Qwest's discount rate is likely to be much lower than NDTC's rate since Qwest has significant economies of scale and scope because of its size that NDTC could not achieve. In other words, because Qwest is much larger than NDTC, it is likely to be more efficient than NDTC and have fewer costs that it can avoid when it provides service on a wholesale basis. As such, although you could use the Qwest discount rate, it is likely to be far too low for NDTC and a significant true-up may be required once the final wholesale rate is approved.

Q. HAS THE FEDERAL COMMUNICATIONS COMMISSION ("FCC") PROVIDED AN OPINION ON THE NEED FOR RESALE DURING THE TRANSITION TO COMPETITION FOR LOCAL SERVICES?

A. Yes. The *Local Competition Order* discusses the need for resale.

> Resale will be an important entry strategy for many new entrants, especially in the short term when they are building their own facilities. Further, in some areas and for some new entrants, we expect that the resale option will remain an important entry strategy over the longer term. Resale will also be an important entry strategy for small businesses that

> may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks. In light of the strategic importance of resale to the development of competition, we conclude that it is especially important to promulgate national rules for use by state commissions in setting wholesale rates.[6] (Paragraph 907).

The *Local Competition Order* establishes ". . . a minimum set of criteria for avoided cost studies used to determine wholesale discount rates." (Paragraph 909) Sections 605 through 611 of Part 51 of the FCC Rules set forth the FCC's methodology. These Rules are attached as Appendix I to this testimony.

Beyond the minimum criteria, the FCC allows states "... broad latitude in selecting costing methodologies that comport with their own ratemaking practices for retail services." (Paragraph 910) As noted above, however, states are allowed to select interim "default" rates from within a range prescribed by the FCC if an avoided cost study is not available or is found to be flawed in some respect. (See FCC Rules Section 51.611.)

A. Avoided Retail Costs

Q. SHOULD WHOLESALE RATES INCLUDE ILEC RETAILING COSTS?

A. No. Retail competition will provide consumer benefits only if ILECs are not allowed to charge excessive wholesale service prices. In any market, resellers or retailers require a margin between the retail price and the wholesale price sufficient to allow recovery of their expenses, including a reasonable profit. The FCC points out that:

> There has been considerable debate on the record in this proceeding and before the state commissions on whether section 252(d)(3) embodies an

[6] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499 (1996) (*Local Competition Order).*

> "avoided" cost standard or an "avoidable" cost standard. We find that "the portion [of the retail rate] . . . attributable to costs that will be avoided" includes all of the costs that the LEC incurs in maintaining a retail, as opposed to a wholesale, business. In other words, the avoided costs are those that an incumbent LEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers. Thus, we reject the arguments of incumbent LECs and others who maintain that the LEC must actually experience a reduction in its operating expenses for a cost to be considered "avoided" for purposes of section 252(d)(3). We do not believe that Congress intended to allow incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable. We therefore interpret the 1996 Act as requiring states to make an objective assessment of what costs are reasonably avoidable when a LEC sells its services wholesale. We note that Colorado, Georgia, Illinois, New York, and Ohio commissions have all interpreted the 1996 Act in this manner. (*Local Competition Order*, Paragraph 911).

If avoided costs are estimated correctly, and then subtracted from retail prices, efficient resellers should be able to succeed in the retail market.

Q. CERTAIN COURT DECISIONS HAVE DISAGREED WITH THE FCC'S STANDARDS FOR SETTING RESALE DISCOUNTS. CAN YOU DESCRIBE HOW THOSE DECISIONS SHOULD AFFECT THIS COMMISSION'S ANALYSIS?

A. The U.S. Courts of Appeals for the Third and Eighth Circuits both have concluded that it is inappropriate to assume that an ILEC actually will avoid all costs that could potentially be avoided. At the same time, it is inappropriate to let the ILEC decide which costs it will avoid and which ones it won't, because every ILEC would then set the discount rate at zero percent. In the end, the Commission has to apply a common-sense test to determine which costs will be avoided and which ones will not. For instance, it's clear

that marketing and sales costs are avoided because that's the essence of retail (as opposed to wholesale) operations. It also is important to recognize that the courts have not disagreed with the categories of costs identified by the FCC in its orders. Consequently, any cost study must account for all of those categories of avoided costs.

B. Services Available for Resale

Q. WHICH SERVICES SHOULD BE OFFERED AT THE WHOLESALE DISCOUNT PRICE?

A. All of the telecommunications services offered to end-users must be made available to resellers at the wholesale discount. This includes optional calling plans, grandfathered services, promotions and contract services. This also includes government and state agency contracts as well as any "umbrella" contract that allows other entities to participate and obtain the benefits of a master contract. All ILEC retail services are at least partial substitutes for one another.[7] Therefore, absent this requirement, ILECs will be able to discriminate against resellers by making offers to customers that their retail competitors are unable to match.

Ancillary services must also be made available for resale. This includes custom calling services, CLASS features, and all Centrex features.[8] While some of these features may not be regulated, depending on the state jurisdiction or the jurisdictional nature of the service, they are all telecommunications services. If some features are not discounted, the

---

[7] The FCC Rules permit states to restrict "cross-class" selling. See Section 51.613(a)(1).

[8] These services are marketed by different names in different telephone company service areas.

ILECs' resale competitors effectively will be denied the opportunity to market to a significant group of customers because the lack of a discount on these features will reduce reseller margins to inadequate levels.

Q. DOES THE FCC PROHIBIT SERVICE-SPECIFIC DISCOUNTS?

A. No. The FCC Rules do not rule out service-specific discounts, but requiring the ILEC to provide such detailed information on a service-by-service basis would be an administrative burden for the ILECs and the responsible federal and state regulatory agencies. Moreover, the result would be highly debatable service-by-service discount levels.

Q. SERVICES FREQUENTLY CONTAIN MANY RATE ELEMENTS. DO YOU RECOMMEND USING THE UNIFORM DISCOUNT FOR ALL RATE ELEMENTS OF A PARTICULAR SERVICE?

A. Yes. The discount should apply to each rate element. Any other basis provides opportunities for abuse. For example, applying the discount on revenue per minute for a service may penalize resellers whose sales by rate element are weighted differently than those of the ILEC or other resellers.

Q. HAVE ANY STATE COMMISSIONS ADDRESSED THE RESALE AND WHOLESALE PRICING ISSUES?

A. Yes. Many state commissions have already addressed the need for identifying services available for resale and the need for unrestricted resale. Several of the initial decisions were described in the FCC's *Local Competition Order*. (See Paragraphs. 898-906.)

The FCC's Rules also require promotions to be offered at a discount in certain circumstances. (See Section 51.613(a)(2).) Granting exceptions to the requirement that all services be made available at wholesale discounts may lead to abuse. States should be alert to this possibility and be prepared to take corrective action against ILECs that abuse the exceptions.

C. Quality and Conditions for Resold Services

Q. PLEASE DISCUSS SERVICE QUALITY AND THE NEED FOR WHOLESALE-RESELLER INTERFACES.

A. The FCC has ruled that ILECs must provide resale services to competitors under the same terms and conditions it enjoys itself. For instance, 51.603 states as follows:

> 51.603 Resale obligation of all local exchange carriers.
>
> > (a) A LEC shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.
> >
> > (b) A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.

It is unknown at this time whether there will be any "service related" problems once Midcontinent begins to resell NDTC's services. While this hearing is limited to the pricing issues, the Commission should be aware that service provisioning issues may also become an issue once Midcontinent begins to offer services in Devils Lake.

D. Calculating Avoided Costs and the Avoided Cost Discount

Q. PLEASE DESCRIBE THE FCC'S CRITERIA FOR SETTING WHOLESALE PRICES.

A. The FCC's *Local Competition Order* establishes minimum criteria for the avoided cost methodology. Essentially, the costs in certain FCC Part 32 Uniform System of Accounts (USOA) accounts are identified as directly avoided while costs in other accounts are treated as indirectly avoided.[9] The avoided indirect costs are calculated by determining the ratio of directly avoided costs to total costs and then applying that proportion to the accounts containing indirectly avoided costs. The ILEC should use account data from the most recent year for the calculation of the discount. The data are immediately verifiable.

Q. WHICH USOA ACCOUNTS INCLUDE COSTS THAT ARE DIRECTLY AVOIDED?

A. The following specific accounts from the USOA are ***directly*** avoided (see Code of Federal Regulations, Title 47, Telecommunication, Part 32):

> **Account 6611**: Product management and sales - This account includes costs incurred in performing administrative activities related to marketing products and services. This includes competitive analysis, product and service identification and specification, test market planning, demand forecasting, product life cycle analysis, pricing analysis, and identification and establishment of distribution channels. This account also includes the costs of selling products and services – this includes determination of individual customer needs, development and presentation of customer proposals, sales order preparation and handling, and preparation of sales records. This account is one of the ILECs' marketing costs, which are

[9] The FCC rules indicate that all costs that can be reasonably avoided should be identified. As described above, it is Midcontinent's position that the Commission should identify costs that are expected to be avoided.

expressly listed as avoided by the 1996 Act. Product management is a function specifically tied to determining the market demand for retail sales, which the ILEC will offer in competition with the purchaser of wholesale services. Purchasers of wholesale service from the ILECs should not be required to subsidize the ILECs' costs of competing with them.[10]

Account 6613: Product advertising - This account includes costs incurred in developing and implementing promotional strategies to stimulate the purchase of products and services, but excludes non-product-related advertising, such as corporate image, stock and bond issue and employment advertisement, which are included in the appropriate functional accounts. This is another of the Marketing expenses specifically excluded by the 1996 Act. As in the case of Sales and Product Management costs, Product Advertising is a function that is required to make retail sales, and is therefore avoided if the ILEC sells a wholesale service.

Account 6621: Call completion services - This account includes costs incurred in helping customers place and complete calls, except directory assistance. This includes handling and recording, intercept, quoting rates, time and charges; and all other activities involved in the manual handling of calls. These expenses are incurred to serve the retail customers of the ILEC. Competing ILECs will either provide this service themselves or contract for it separately with the ILEC or some other service provider. In either case, the costs recorded in this account should not be bundled into the wholesale rate.

Account 6622: Number services - This account includes costs incurred in providing customer number and classified listings. This includes preparing or purchasing, compiling, and disseminating those listings through directory assistance or other means. As with Account 6621, a purchaser of the ILECs' wholesale services will either purchase this separately from the ILEC or some other provider, or provide this service itself. In either case, the costs recorded in this account should not be bundled into the wholesale rate.

Account 6623: Customer services -

---

[10] In the *Local Competition Order* the FCC referred to Accounts 6611 (product management) and 6612 (sales) as presumed to be avoided direct costs. Since that order was released, however, Account 6612 has been merged into the new Account 6611(product management and sales).

(a) This account includes costs incurred in establishing and servicing customer accounts. This includes:

(1) Initiating customer service orders and records;
(2) Maintaining and billing customer accounts;
(3) Collecting and investigating customer accounts, including collecting revenues, reporting receipts, administering collection treatment, and handling contacts with customers regarding adjustments of bills;
(4) Collecting and reporting pay station receipts; and
(5) Instructing customers in the use of products and services.

b) This account also includes amounts paid by interexchange carriers or other exchange carriers to another exchange carrier for billing and collection services.

Q. WHICH USOA ACCOUNTS INCLUDE COSTS THAT ARE INDIRECTLY AVOIDED IN THE WHOLESALE-RESELLER ARRANGEMENT?

A. Within the USOA there are a number of expense accounts that are either common costs or general overhead. By definition overhead costs, such as marketing, support all other functions, including those that are avoided. For example, the Human Resources department incurs expenditures in the staffing of the marketing department. As marketing expenses are avoided, so are the expenses incurred in supporting marketing. Therefore, the portion of these expense items equal to the proportion of direct avoided costs to total expense is excluded as an avoided cost.

The following USOA accounts include common costs or general overhead which support marketing and customer service operations:

6120 - General Support (6121 Land and Building Expense; 6122 Furniture and Artworks Expense; 6123 Office Equipment Expense; and 6124 General Purpose Computers Expense)
6720 – General and Administrative

5300 – Uncollectible Revenues

Expenses in these accounts are, at least, partially avoidable.

Q. WILL THE ILECS INCUR ANY ADDITIONAL COSTS ASSOCIATED WITH THE RESALE SERVICES?

A. While the ILECs will avoid substantial costs when they provide wholesale services, they will incur a small amount of incremental expenses to service the accounts of the resellers. However, these costs will be quite small. ILECs are already set-up to perform the wholesaling function because they provide wholesale-like functions to interexchange carriers and Enhanced Service Providers. The incremental cost of providing these services to resellers of wholesale local exchange service should be minimal. The FCC addresses this issue by treating only 90 percent of the costs in certain of the directly avoided cost categories as avoided for purposes of setting default discounts. Specifically, the FCC determined that 90 percent of accounts 6610 (Marketing), and 6623 (Customer Service) would be avoided, while 100 percent of accounts 6621 (Call Completion) and 6622 (Number Services) would be avoided.[11]

Q. HOW IS THE AVOIDED COST DISCOUNT DETERMINED ONCE AVOIDED OR REASONABLY AVOIDABLE COSTS ARE IDENTIFIED?

A. Total avoided retail costs are divided by total revenue subject to resale for the incumbent LEC. This requires identifying services that are subject to resale under the FCC's rules. As noted previously, 47 U.S.C. Section 251(c)(4)(A) requires an incumbent LEC to offer

---

[11] *Local Competition Order* at paragraph 928.

any carrier any telecommunications service that it offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates. This requirement excludes services such as switched and special access, billing and collection and other miscellaneous service that are not sold to retail customers. The resulting percentage is applied to retail rates charged by the incumbent LEC to determine the wholesale price to be paid by the CLEC for resold services.

Q. ARE THERE ANY SPECIAL ISSUES THAT ARISE WHEN A CARRIER OFFERS TELECOMMUNICATIONS AND NON-TELECOMMUNICATIONS SERVICES?

A. Yes. It is important to make sure that the carrier does not allocate marketing and other direct costs that really are attributable to its telecommunications services to non-telecommunications services like voice mail. If this kind of error is made, the resale discount will be too low.

Q. DOES DSL SERVICE RAISE ANY SPECIAL ISSUES?

A. Yes. If NDTC is continuing to treat DSL as a telecommunications service under the FCC's new broadband rules, then DSL-related costs must be included in the cost study, and NDTC's DSL service would be subject to wholesale resale. This is particularly important if NDTC shares resources between DSL and its traditional telephone services.

Q. IF THERE IS A DISPUTE OVER THE ACCURACY OF THE NDTC AVOIDED COST MODEL, WHAT AREAS OF THE MODEL WILL BE IN DISPUTE?

A. Hopefully the model will be done according to FCC rules and the avoided cost

calculations will be reasonable. In the past, however, the dispute with ILECs in general has been over the percent of costs in any particular account that is avoided or ought to be avoided. These percentages impact the resulting wholesale discount. I would hope and expect that directly avoided costs would not be controversial, but NDTC and Midcontinent may have a disagreement on the percentage of avoided costs for the indirectly avoided cost categories.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

QSI consulting, inc.

Qualifications of Timothy J Gates
Exhibit ____ (TJG-1)

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.

A. Prior to my current position with QSI Consulting, I was a Senior Executive Staff Member in MCI WorldCom's ("MCIW") National Public Policy Group. In this position, I was responsible for providing public policy expertise in key cases across the country and for managing external consultants for MCIW's state public policy organization. In certain situations, I also provided testimony in regulatory and legislative proceedings.

Prior to my position with MCIW in Denver, I was an Executive Staff Member II at MCI Telecommunications ("MCI") World Headquarters in Washington D.C.. In that position I managed economists, external consultants, and provided training and policy support for regional regulatory staffs. Prior to that position I was a Senior Manager in MCI's Regulatory Analysis Department, which provided support in state regulatory and legislative matters to the various operating regions of MCI. In that position I was given responsibility for assigning resources from our group for state regulatory proceedings throughout the United States. At the same time, I prepared and presented testimony on various telecommunications issues before state regulatory and legislative bodies. I was also responsible for managing federal tariff reviews and presenting MCI's position on regulatory matters to the Federal Communications Commission. Prior to my assignment in the Regulatory Analysis Department, I was the Senior Manager of Economic Analysis and Regulatory Policy in the Legal, Regulatory and Legislative Affairs Department for the Midwest Division of MCI. In that position I developed and promoted regulatory policy within what was then a five-state operating division of MCI. I promoted MCI policy positions through negotiations, testimony and participation in industry forums.

Prior to my positions in the Midwest, I was employed as Manager of Tariffs and Economic Analysis with MCI's West Division in Denver, Colorado. In that position I was responsible for managing the development and application of MCI's tariffs in the fifteen MCI West states. I was also responsible for managing regulatory dockets and for providing economic and financial expertise in the areas of discovery and issue analysis. Prior to joining the West Division, I was a Financial Analyst III and then a Senior Staff Specialist with MCI's Southwest Division in Austin, Texas. In those positions, I was responsible for the management of regulatory dockets and liaison with outside counsel. I was also responsible for discovery, issue analysis, and for the development of working relationships with consumer and business groups. Just prior to joining MCI, I was employed by the Texas Public Utility Commission as a Telephone Rate Analyst in the Engineering Division responsible for examining

telecommunications cost studies and rate structures.

I was employed as an Economic Analyst with the Public Utility Commissioner of Oregon from July, 1983 to December, 1984. In that position, I examined and analyzed cost studies and rate structures in telecommunications rate cases and investigations. I also testified in rate cases and in private and public hearings regarding telecommunications services. Before joining the Oregon Commissioner's Staff, I was employed by the Bonneville Power Administration (United States Department of Energy) as a Financial Analyst, where I made total regional electric use forecasts and automated the Average System Cost Review Methodology. Prior to joining the Bonneville Power Administration, I held numerous positions of increasing responsibility in areas of forest management for both public and private forestry concerns.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL CREDENTIALS.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. I have also attended numerous courses and seminars specific to the telecommunications industry, including the NARUC Annual and Advanced Regulatory Studies Program.

Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

A. Effective April 1, 2000, I joined QSI Consulting as Senior Vice President and Partner. In this position I provide analysis and testimony for QSI's many clients. The deliverables include written and oral testimony, analysis of rates, cost studies and policy positions, position papers, presentations on industry issues and training.

Q. PLEASE IDENTIFY THE JURISDICTIONS IN WHICH YOU HAVE TESTIFIED.

A. I have filed testimony or comments on telecommunications issues in the following 44 states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming and Puerto Rico. I have also filed comments with the FCC and made presentations to the Department of Justice.

I have testified or presented formal comments in the following proceedings and forums:

Alabama:

October 18, 2000; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

January 31, 2001; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Arkansas:

September 7, 2004; Docket No. 04-0999-U; In the Matter of Level 3 Petition for Arbitration with Southwestern Bell Telephone, L.P. D/B/A SBC Arkansas; Direct Testimony on Behalf of Level 3.

Arizona:

September 23, 1987; Arizona Corporation Commission Workshop on Special Access Services; Comments on Behalf of MCI.

August 21, 1996; Affidavit in Opposition to USWC Motion for Partial Summary Judgment; No. CV 95-14284, No. CV-96-03355, No. CV-96-03356, (consolidated); On Behalf of MCI.

October 24, 1997; Comments to the Universal Service Fund Working Group; Docket No. R-0000-97-137; On Behalf of MCI.

May 8, 1998; Comments to the Universal Service Fund Working Group; Docket No.R-0000-97-137; On Behalf of MCI.

November 9, 1998; Docket No. T-03175A-97-0251; Application of MCImetro Access Transmission Services, Inc. to Expand It's CCN to Provide IntraLATA Services and to Determine that Its IntraLATA Services are Competitive; Direct Testimony on Behalf of MCI WorldCom, Inc.

September 20, 1999; Docket No. T-00000B-97-238; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc.

January 8, 2001; Docket Nos. T-03654A-00-0882, T-01051B-00-0882; Petition of Level 3 Communications, LLC, for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

February 20, 2001; Superior Court of Arizona; Count of Maricopa; ESI Ergonomic Solutions, LLC, Plaintiff, vs. United Artists Theatre Circuit; No. CV 99-20649; Affidavit on Behalf of United Artists Theatre Circuit.

September 2, 2001; Docket No. T-00000A-00-0194 Phase II – A; Investigation into Qwest's Compliance with Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts; Rebuttal Testimony on Behalf of WorldCom, Inc.

January 9, 2004; Docket No. T-00000A-03-0369; In the Matter of ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

November 18, 2004; Docket No. T-01051B-0454; In the Matter of Qwest Corporation's Amended Renewed Price Regulation Plan; Direct Testimony on Behalf of Time Warner Telecom, Inc.

July 15, 2005; Docket No. T-03654-05-0350, T-01051B-05-0350; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation, Direct Testimony on Behalf of Level 3.

August 15, 2005; Docket No. T-03654-05-0350, T-01051B-05-0350; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation, Rebuttal Testimony on Behalf of Level 3.

Arkansas:

September 7, 2004; Docket No. 04-099-U; In the Matter of Level 3 Petition for Arbitration Pursuant to Section 252(b) with Southwestern Bell Telephone, L.P. D/B/A SBC Arkansas; Direct Testimony on Behalf of Level 3 Communications, LLC.

California:

August 30, 1996; Application No. 96-08-068; MCI Petition for Arbitration with Pacific Bell; Direct Testimony on Behalf of MCI.

September 10, 1996; Application No. 96-09-012; MCI Petition for Arbitration with GTE California, Inc.; Direct Testimony on Behalf of MCI.

June 5, 2000; Docket No. A0004037; Petition of Level 3 Communications for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company; Direct Testimony on Behalf of Level 3 Communications, LLC.

June 1, 2004; Docket No. A.04-06-004; Petition of Level 3 Communications for Arbitration with SBC; Direct Testimony on Behalf of Level 3 Communications LLC.

Colorado:

December 1, 1986; Investigation and Suspension Docket No. 1720; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

October 26, 1988; Investigation and Suspension Docket No. 1766; Mountain States Telephone and Telegraph Company's Local Calling Access Plan; Direct Testimony of Behalf of MCI.

September 6, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Direct Testimony on Behalf of MCI.

September 17, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Rebuttal Testimony on Behalf of MCI.

September 26, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. Docket No. 90A-665T (consolidated); Direct Testimony on Behalf of MCI.

October 7, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. Docket No. 90A-665T (consolidated); Rebuttal Testimony on Behalf of MCI.

July 18, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Direct Testimony on Behalf of MCI.

August 15, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Rebuttal Testimony on Behalf of MCI.

March 10, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Supplemental Direct Testimony on Behalf of MCI.

March 26, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Rebuttal Testimony on Behalf of MCI.

May 8, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Affidavit in Response to GTE.

November 4, 1998; Proposed Amendments to the Rules Prescribing IntraLATA Equal Access; Docket No. 98R-426T; Comments to the Commission on Behalf of MCI WorldCom and AT&T Communications of the Mountain States, Inc.

May 13, 1999; Proposed Amendments to the Rules on Local Calling Area Standards; Docket No. 99R-128T; Oral Comments before the Commissioners on Behalf of MCIW.

January 4, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Direct Testimony on Behalf of Level 3.

January 16, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Rebuttal Testimony on Behalf of Level 3.

January 29, 2001; Qwest Corporation, Inc., Plaintiff, v. IP Telephony, Inc., Defendant. District Court, City and County of Denver, State of Colorado; Case No. 99CV8252; Direct Testimony on Behalf of IP Telephony.

June 27, 2001; US WEST Statement of Generally Available Terms and Conditions; Docket No. 991-577T; Direct Testimony on Behalf of Covad Communications Company, Rhythms Links, Inc., and New Edge Networks, Inc.

January 26, 2004; Regarding the Unbundling Obligations of ILECs Pursuant to the Triennial Review Order; Docket No. 03I-478T; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

February 18, 2005; Regarding Application of Qwest for Reclassification and Deregulation of Certain Products and Services; Docket No. 04A-411T; Direct Testimony on Behalf of Time Warner Telecom.

July 11, 2005; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 05B-210T; Direct Testimony on Behalf of Level 3.

December 19, 2005; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 05B-210T; Rebuttal Testimony on Behalf of Level 3.

Connecticut:

November 2, 2004; Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) with Southern New England Telephone Company d/b/a/ SBC Connecticut; Level 3/SNET Arbitration; Direct Testimony on Behalf of Level 3 Communications, LLC.

Delaware:

February 12, 1993; Diamond State Telephone Company's Application for a Rate Increase; Docket No. 92-47; Direct Testimony on Behalf of MCI.

Florida:

July 1, 1994; Investigation into IntraLATA Presubscription; Docket No. 930330-TP; Direct Testimony on Behalf of MCI.

October 5, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Direct Testimony On Behalf of Level 3.

October 13, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Direct Testimony On Behalf of US LEC.

October 27, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Rebuttal Testimony On Behalf of US LEC.

November 1, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Rebuttal Testimony On Behalf of Level 3.

June 11, 2004; Petition of KMC Telecom for Arbitration with Sprint Communications; Docket No. 031047-TP; Direct Testimony on Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc., and KMC Data, L.L.C.

July 9, 2004; Petition of KMC Telecom for Arbitration with Sprint Communications; Docket No. 031047-TP; Rebuttal Testimony on Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc., and KMC Data, L.L.C.

December 19, 2005; Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC.; Docket Nos. 050119-TP/050125-TP; Direct Testimony on Behalf of CompSouth.

January 30, 2005; Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC.; Docket Nos. 050119-TP/050125-TP; Rebuttal Testimony on Behalf of CompSouth.

Georgia:

December 6, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

December 20, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Level 3.

Idaho:

November 20, 1987; Case No. U-1150-1; Petition of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

March 17, 1988; Case No. U-1500-177; Investigation of the Universal Local Access Service Tariff; Direct Testimony on Behalf of MCI.

April 26, 1988; Case No. U-1500-177; Investigation of the Universal Local Access Service Tariff; Rebuttal Testimony on Behalf of MCI.

November 25, 2002; Case No. GNR-T-02-16; Petition of Potlatch, CenturyTel, the Idaho Telephone Association for Declaratory Order Prohibiting the Use of "Virtual" NXX Calling; Comments/Presentation on Behalf of Level 3, AT&T, WorldCom, and Time Warner Telecom.

August 12, 2005; Case No. QWE-T-05-11; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

September 16, 2005; Case No. QWE-T-05-11; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Rebuttal Testimony on Behalf of Level 3.

Illinois:

January 16, 1989; Docket No. 83-0142; Appropriate Methodology for Intrastate Access Charges; Rebuttal Testimony Regarding Toll Access Denial on Behalf of MCI.

February 16, 1989; Docket No. 83-0142; Appropriate Methodology for Intrastate Access Charges; Testimony Regarding ICTC's Access Charge Proposal on Behalf of MCI.

May 3, 1989; Docket No. 89-0033; Illinois Bell Telephone Company's Rate Restructuring; Direct Testimony on Behalf of MCI.

July 14, 1989; Docket No. 89-0033; Illinois Bell Telephone Company's Rate Restructuring; Rebuttal Testimony on Behalf of MCI.

November 22, 1989; Docket No. 88-0091; IntraMSA Dialing Arrangements; Direct Testimony on Behalf of MCI.

February 9, 1990; Docket No. 88-0091; IntraMSA Dialing Arrangements; Rebuttal Testimony on Behalf of MCI.

November 19, 1990; Docket No. 83-0142; Industry presentation to the Commission re Docket No. 83-0142 and issues for next generic access docket; Comments re the Imputation Trial and Unitary Pricing/Building Blocks on Behalf of MCI.

July 29, 1991; Case No. 90-0425; Presentation to the Industry Regarding MCI's Position on Imputation.

November 18, 1993; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Direct Testimony on Behalf of MCI and LDDS.

January 10, 1994; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Rebuttal Testimony on Behalf of MCI and LDDS.

May 30, 2000; Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

July 11, 2000: Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Supplemental Verified Statement on Behalf of Level (3) Communications, LLC.

June 22, 2004; Docket No. 04-0428; Level 3 Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 3, 2004; Docket No. 04-0428; Level 3 Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Indiana:

October 28, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI.

December 16, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding GTE.

April 14, 1989; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding Staff Reports.

June 21, 1989; Cause No. 37905; Intrastate Access Tariffs -- Parity with Federal Rates; Direct Testimony on Behalf of MCI.

June 29, 1989; Cause No. 38560; Reseller Complaint Regarding 1+ IntraLATA Calling; Direct Testimony on Behalf of MCI.

October 25, 1990; Cause No. 39032; MCI Request for IntraLATA Authority; Direct Testimony on Behalf of MCI.

April 4, 1991; Rebuttal Testimony in Cause No. 39032 re MCI's Request for IntraLATA Authority on Behalf of MCI.

September 2, 2004; Cause No. 42663-INT-01; In the Matter of Level 3 Communications, LLC Petition for Arbitration with SBC Indiana; Direct Testimony on Behalf of Level 3 Communications, LLC.

October 5, 2004; Cause No. 42663-INT-01; In the Matter of Level 3 Communications, LLC Petition for Arbitration with SBC Indiana; Rebuttal Testimony on Behalf of Level 3 Communications, LLC.

Iowa:

September 1, 1988; Docket No. RPU 88_6; IntraLATA Competition in Iowa; Direct Testimony on Behalf of MCI.

September 20, 1988; Docket No. RPU_88_1; Regarding the Access Charges of Northwestern Bell Telephone Company; Direct Testimony on Behalf of MCI.

September 25, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 3, 1991; Docket No. NOI-90-1; Presentation on Imputation of Access Charges and the Other Costs of Providing Toll Services; On Behalf of MCI.

November 5, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

December 23, 1991; Docket No. RPU-91-4; Investigation of the Earnings of US WEST Communications; Inc.; Supplemental Testimony on Behalf of MCI.

January 10, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

January 20, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Surrebuttal Testimony on Behalf of MCI.

June 8, 1999; Docket NOI-99-1; Universal Service Workshop; Participated on numerous panels during two day workshop; Comments on Behalf of MCIW.

October 27, 1999: Docket NOI-99-1; Universal Service Workshop; Responded to questions posed by the Staff of the Board during one day workshop; Comments on Behalf of MCIW and AT&T.

November 14, 2003; Docket Nos. INU-03-4, WRU-03-61; In Re: Qwest Corporation; Sworn Statement of Position on Behalf of MCI.

December 15, 2003; Docket Nos. INU-03-4, WRU-03-61; In Re: Qwest Corporation; Sworn Counter Statement of Position on Behalf of MCI.

July 20, 2005; Docket No. ARB-05-4; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest; Direct Testimony on Behalf of Level 3.

August 12, 2005; Docket No. ARB-05-4; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest; Rebuttal Testimony on Behalf of Level 3.

August 24, 2005; Docket No. ARB-05-4; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest; Surrebuttal Testimony on Behalf of Level 3.

Kansas:

June 10, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Direct Testimony on Behalf of MCI.

September 16, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Rebuttal Testimony on Behalf of MCI.

August 31, 2004; Docket No. 04-L3CT-1046-ARB; In the Matter of Arbitration Between Level 3 Communications LLC and SBC Communications; Direct Testimony on Behalf of Level 3 Communications, LLC.

Kentucky:

May 20, 1993; Administrative Case No. 323, Phase I; An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality; Direct Testimony on Behalf of MCI.

December 21, 2000; Case No. 2000-404; Petition of Level 3 Communications, LLC for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

January 12, 2001; Case No. 2000-477; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

Louisiana:

December 28, 2000; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

January 5, 2001; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

Maryland:

November 12, 1993; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Direct Testimony on Behalf of MCI.

January 14, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

May 19, 1994; Case No. 8585; Re Bell Atlantic Maryland, Inc.'s Transmittal No. 878; Testimony on Behalf of MCI.

June 2, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

September 5, 2001; Case No. 8879; Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996; Rebuttal Testimony on behalf of the Staff of the Public Service Commission of Maryland.

October 15, 2001; Case No. 8879; Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996; Surrebuttal Testimony on behalf of the Staff of the Public Service Commission of Maryland.

Massachusetts:

April 22, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Direct Testimony on Behalf of MCI.

May 10, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Rebuttal Testimony on Behalf of MCI.

Michigan:

September 29, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Direct Testimony on Behalf of MCI.

November 30, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Rebuttal Testimony on Behalf of MCI.

June 30, 1989; Case No. U-8987; Michigan Bell Telephone Company Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

July 31, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

November 17, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

July 22, 1993; Case No. U-10138 (Reopener); MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

February 16, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Direct Testimony on Behalf of AT&T. (Adopted Testimony of Michael Starkey)

May 11, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Rebuttal Testimony on Behalf of AT&T.

June 8, 2000; Case No. U-12460; Petition of Level 3 Communications for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 27, 2000; Case No. U-12528; In the Matter of the Implementation of the Local Calling Area Provisions of the MTA; Rebuttal Testimony on Behalf of Focal Communications, Inc.

June 1, 2004; Case No. U-14152; Petition of Level 3 Communications LLC for Arbitration with SBC Michigan; Direct Testimony on Behalf of Level 3 Communications, LLC.

Minnesota:

January 30, 1987; Docket No. P_421/CI_86_88; Summary Investigation into Alternative Methods for Recovery of Non-traffic Sensitive Costs; Comments to the Commission on Behalf of MCI.

September 7, 1993; Docket No. P-999/CI-85-582, P-999/CI-87-697 and P-999/CI-87-695, In the Matter of an Investigation into IntraLATA Equal Access and Presubscription; Comments of MCI on the Report of the Equal Access and Presubscription Study Committee on Behalf of MCI.

September 20, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Direct Testimony on Behalf of MCI.

September 30, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Rebuttal Testimony on Behalf of MCI.

September 14-16, 1999; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc. re OSS Issues.

September 28, 1999; Docket No. P-999/R-97-609; Universal Service Group; Comments on Behalf of MCI WorldCom, Inc. and AT&T Communications.

April 18, 2002; Commission Investigation of Qwest's Pricing of Certain Unbundled Network Elements; Docket Nos. P-442, 421, 3012/M-01-1916; P-421/C1-01-1375; OAH Docket No. 12-2500-14490; Rebuttal Testimony on Behalf of McLeod USA Telecommunications Services, Inc., Eschelon Telecom of Minnesota, Inc., US Link, Inc., Northstar Access, LLC, Otter Tail Telecomm LLC, VAL-Ed Joint Venture, LLP, dba 702 Communications.

January 23, 2004; In the Matter of the Commission Investigation into ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order; Docket No.: P-999/CI-03-961; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

Mississippi:

February 2, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 16, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Montana:

May 1, 1987; Docket No. 86.12.67; Rate Case of AT&T Communications of the Mountain States, Inc.; Direct Testimony on Behalf of MCI.

September 12, 1988; Docket No. 88.1.2; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

May 12, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

June 1, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Amended Rebuttal Testimony on Behalf of MCI.

Nebraska:

November 6, 1986; Application No. C_627; Nebraska Telephone Association Access Charge Proceeding; Direct Testimony on Behalf of MCI.

March 31, 1988; Application No. C_749; Application of United Telephone Long Distance Company of the Midwest for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

New Hampshire:

April 30, 1993; Docket DE 93-003; Investigation into New England Telephone's Proposal to Implement Seven Digit Dialing for Intrastate Toll Calls; Direct Testimony on Behalf of MCI.

January 12, 2001; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Direct Testimony on Behalf of BayRing Communications.

April 5, 2002; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Rebuttal Testimony on Behalf of BayRing Communications.

New Jersey:

September 15, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

October 1, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Reply Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

April 7, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Direct Testimony on Behalf of MCI.

April 25, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Rebuttal Testimony on Behalf of MCI.

New Mexico:

September 28, 1987; Docket No. 87_61_TC; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

August 30, 1996: Docket No. 95-572-TC; Petition of AT&T for IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

September 16, 2002; Utility Case No. 3495, Phase B; Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Nonrecurring Charges, Spot Frames, Combination of Network Elements and Switching; Direct Testimony on Behalf of the Staff of the New Mexico Public Regulation Commission.

February 9, 2004; Case Nos. 03-00403-UT and 03-00404-UT; Triennial Review Proceedings (Batch Hot Cut and Local Circuit Switching); Testimony on Behalf of WorldCom, Inc. (MCI).

May 11, 2004; Case No. 00108-UT; Regarding Unfiled Agreements between Qwest Corporation and Competitive Local Exchange Carriers; Testimony on Behalf of Time Warner Telecom

September 14, 2005; Case No. 05-00211-UT; In the Matter of a Notice of Inquiry to Develop a Rule to Implement House Bill 776, Relating to Access Charge Reform, Oral Comments on Behalf of MCI.

December 5, 2005; Case No. 05-00094-UT; In the Matter of the Implementation and Enforcement of Qwest Corporations' Amended Alternative Form of Regulation; Direct Testimony on Behalf of the New Mexico Attorney General.

December 15, 2005; Case No. 05-00484-UT; In the Matter of Level 3 Communications, LLC's Petition for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

February 24, 2006; Case No. 05-00466-UT; In the Matter of the Development of an Alternative Form of Regulation for Qwest Corporation; Direct Testimony on Behalf of the New Mexico Attorney General.

March 31, 2006; Case No. 05-00466-UT; In the Matter of the Development of an Alternative Form of Regulation for Qwest Corporation; Rebuttal Testimony on Behalf of the New Mexico Attorney General.

New York:

April 30, 1992; Case 28425; Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

June 8, 1992; Case 28425; Reply Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

North Carolina:

August 4, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 18, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 18, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions of North Carolina, LP for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

December 8, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions of North Carolina, LP for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

North Dakota:

June 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Direct Testimony on Behalf of MCI.

October 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Rebuttal Testimony on Behalf of MCI.

December 4, 2002; Case No. PU-2065-02-465; Petition of Level 3 for Arbitration with SRT Communications Cooperative; Direct Testimony on Behalf of Level (3) Communications, LLC.

May 2, 2003; Case No. PU-2342-01-296; Qwest Corporation Price Investigation; Direct Testimony on Behalf of the CLEC Coalition (US Link, Inc., VAL-ED Joint Venture LLP d/b/a 702 Communications, McLeodUSA Telecommunications, Inc. and IdeaOne Telecom Group, LLC).

December 21, 2005; Case No. PU-05-451; Midcontinent Communications v. North Dakota Telephone Company; Direct Testimony on Behalf of Midcontinent.

January 16, 2006; Case No. PU-05-451; Midcontinent Communications v. North Dakota Telephone Company; Rebuttal Testimony on Behalf of Midcontinent.

Ohio:

February 26, 2004; Case No. 04-35-TP-COI; In the Matter of the Implementation of the FCC's Triennial Review Regarding Local Circuit Switching in the Cincinnati Bell Telephone Company's Mass Market; Direct Testimony on Behalf of AT&T.

Oklahoma:

April 2, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Direct Testimony on Behalf of MCI.

June 22, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Rebuttal Testimony on Behalf of MCI.

Oregon:

October 27, 1983; Docket No. UT 9; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

April 23, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

May 7, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Rebuttal Testimony on Behalf of the Public Utility Commissioner of Oregon.

October 31, 1986; Docket No. AR 154; Administrative Rules Relating to the Universal Service Protection Plan; Rebuttal Testimony on Behalf of MCI.

September 6, 1996; Docket ARB3/ARB6; Petition of MCI for Arbitration with U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Direct Testimony on Behalf of MCI.

November 5, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Rebuttal Testimony on Behalf of MCI.

November 6, 2002; Docket No. UM 1058; Investigation into the Use of Virtual NPA/NXX Calling Patterns; Comments/Presentation on Behalf of Level (3) Communications, LLC.

August 12, 2005; Docket No. ARB 665; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

September 6, 2005; Docket No. ARB 665; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Rebuttal Testimony on Behalf of Level 3.

Pennsylvania:

December 9, 1994; Docket No. I-00940034; Investigation Into IntraLATA Interconnection Arrangements (Presubscription); Direct Testimony on Behalf of MCI.

September 5, 2002; Docket No. C-20028114; Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Puerto Rico:

January 19, 2006; Case Nos. JRT-2005-Q-0121, JRT-2005-Q-0128, JRT-2003-Q-0297, JRT-2004-Q-0068; TELEFÓNICA LARGA DISTANCIA DE PUERTO RICO, INC., WORLDNET TELECOMMUNICATIONS, INC., SPRINT COMMUNICATIONS COMPANY, LP, and AT&T OF PUERTO RICO, INC., v. PUERTO RICO TELEPHONE COMPANY, INC., Direct Testimony on Behalf of Centennial Puerto Rico License Corporation

Rhode Island:

April 30, 1993; Docket No. 2089; Dialing Pattern Proposal Made by the New England Telephone Company; Direct Testimony on Behalf of MCI.

South Carolina:

October 2000; Docket No. 2000-0446-C; US LEC of South Carolina Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of US LEC.

November 22, 2000; Docket No. 2000-516-C; Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

December 14, 2000; Docket No. 2000-516-C; Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

South Dakota:

November 11, 1987; Docket No. F_3652_12; Application of Northwestern Bell Telephone Company to Introduce Its Contract Toll Plan; Direct Testimony on Behalf of MCI.

May 27, 2003; Docket No. TC03-057; Application of Qwest to Reclassify Local Exchange Services as Fully Competitive; Direct Testimony on Behalf of WorldCom, Inc., Black Hills FiberCom and Midcontinent Communications.

Tennessee:

January 31, 2001; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 7, 2001; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Texas:

June 5, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

June 12, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 10, 2002; PUC Docket No. 26431; Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.; Direct Testimony on Behalf of Level (3) Communications, LLC.

October 16, 2002; PUC Docket No. 26431; Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.; Reply Testimony on Behalf of Level (3) Communications, LLC.

July 19, 2004; PUC Docket No. 28821; Arbitration of Non-costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement; Direct Testimony on Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc. (d/b/a KMC Network Services, Inc.), and KMC Data, L.L.C.

August 23, 2004; PUC Docket No. 28821; Arbitration of Non-costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement; Rebuttal Testimony on Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc. (d/b/a KMC Network Services, Inc.), and KMC Data, L.L.C.

Utah:

November 16, 1987; Case No. 87_049_05; Petition of the Mountain State Telephone and Telegraph Company for Exemption from Regulation of Various Transport Services; Direct Testimony on Behalf of MCI.

July 7, 1988; Case No. 83_999_11; Investigation of Access Charges for Intrastate InterLATA and IntraLATA Telephone Services; Direct Testimony on Behalf of MCI.

November 8, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Direct Testimony on Behalf of MCI.

November 22, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Rebuttal Testimony on Behalf of MCI.

September 3, 1997; Docket No. 97-049-08; USWC Rate Case; Surrebuttal Testimony on Behalf of MCI.

September 29, 1997; Docket No. 97-049-08; USWC Rate Case; Revised Direct Testimony on Behalf of MCI.

February 2, 2001; Docket No. 00-999-05; In the Matter of the Investigation of Inter-Carrier Compensation for Exchanged ESP Traffic; Direct Testimony on Behalf of Level 3 Communications, LLP.

January 13, 2004; Docket No. 03-999-04; In the Matter of a Proceeding to Address Actions Necessary to Respond to the FCC's Triennial Review Order; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

Washington:

September 27, 1988; Docket No. U-88-2052-P; Petition of Pacific Northwest Bell Telephone Company for Classification of Services as Competitive; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. UT-96-0338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Direct Testimony on Behalf of MCI.

November 20, 1996; Docket No. UT-96-0338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Rebuttal Testimony on Behalf of MCI.

January 13, 1998; Docket No. UT-97-0325; Rulemaking Workshop re Access Charge Reform and the Cost of Universal Service; Comments and Presentation on Behalf of MCI.

December 21, 2001; Docket No. UT-003013, Part D; Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination; Direct Testimony on Behalf of WorldCom, Inc.

October 18, 2002; Docket No. UT-023043; Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.; Direct Testimony on Behalf of Level (3) Communications, LLC.

November 1, 2002; Docket No. UT-023043; Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

January 31, 2003; Docket No. UT-021569; Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns; Comments on Behalf of WorldCom, Inc. and KMC Telecom.

May 1, 2003; Docket No. UT-021569; Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns; Workshop Participation on Behalf of MCI, KMC Telecom, and Level (3) Communications, LLC.

August 13, 2003; Docket No. UT-030614; In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Exchange Telecommunications Services; Direct Testimony on Behalf of MCI, Inc.

August 29, 2003; UT-030614; In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Exchange Telecommunications Services; Rebuttal Testimony on Behalf of MCI, Inc.

September 13, 2004; Docket No. UT-033011; In the Matter of Washington Utilities and Transportation Commission, Petitioners, v. Advanced Telecom Group, Inc., et al, Respondents; Direct Testimony on Behalf of Time Warner Telecom of Washington, LLC.

West Virginia:

October 11, 1994; Case No. 94-0725-T-PC; Bell Atlantic - West Virginia Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

June 18, 1998; Case No. 97-1338-T-PC; Petition of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

Wisconsin:

October 31, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

November 14, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Rebuttal Testimony on Behalf of MCI.

December 12, 1988; Docket No. 05_TI_116; In the Matter of Provision of Operator Services; Rebuttal Testimony on Behalf of MCI.

March 6, 1989; Docket No. 6720_TI_102; Review of Financial Data Filed by Wisconsin Bell, Inc.; Direct Testimony on Behalf of MCI.

May 1, 1989; Docket No. 05_NC_100; Amendment of MCI's CCN for Authority to Provide IntraLATA Dedicated Access Services; Direct Testimony on Behalf of MCI.

May 11, 1989; Docket No. 6720_TR_103; Investigation Into the Financial Data and Regulation of Wisconsin Bell, Inc.; Rebuttal Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Disconnection of Local and Toll Services for Nonpayment -- Part A; Direct Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Examination of Industry Wide Billing and Collection Practices -- Part B; Direct Testimony on Behalf of MCI.

July 12, 1989; Docket No. 05-TI-112; Rebuttal Testimony in Parts A and B on Behalf of MCI.

October 9, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Direct Testimony on Behalf of MCI.

November 17, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Rebuttal Testimony on Behalf of MCI.

December 1, 1989; Docket No. 05-TR-102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

April 16, 1990; Docket No. 6720-TR-104; Wisconsin Bell Rate Case; Direct Testimony of Behalf of MCI.

October 1, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Direct Testimony on Behalf of MCI.

October 15, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Rebuttal Testimony on Behalf of MCI.

November 15, 1990; Docket No. 05-TR-103; Investigation of Intrastate Access Costs and Intrastate Access Charges; Direct Testimony on Behalf of MCI.

April 3, 1992; Docket No. 05-NC-102; Petition of MCI for IntraLATA 10XXX 1+ Authority; Direct Testimony on Behalf of MCI.

September 30, 2002; Docket No. 05-MA-130; Petition of Level 3 for Arbitration with CenturyTel; Direct Testimony on Behalf of Level (3) Communications, LLC.

October 9, 2002; Docket No. 05-MA-130; Petition of Level 3 for Arbitration with CenturyTel; Reply Testimony on Behalf of Level (3) Communications, LLC.

September 1, 2004; Docket No. 05-MA-135; Petition of Level 3 for Arbitration with Wisconsin Bell, Inc. d/b/a/ SBC Wisconsin; Direct Testimony on Behalf of Level (3) Communications, LLC.

Wyoming:

June 17, 1987; Docket No. 9746 Sub 1; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

May 19, 1997; Docket No. 72000-TC-97-99; In the Matter of Compliance with Federal Regulations of Payphones; Oral Testimony on Behalf of MCI.

September 8, 2005; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

November 18, 2005; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Rebuttal Testimony on Behalf of Level 3.

Comments Submitted to the Federal Communications Commission and/or the Department of Justice

March 6, 1991; Ameritech Transmittal No. 518; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates for OPTINET 64 Kbps Service.

April 17, 1991; Ameritech Transmittal No. 526; Petition to Suspend and Investigate on Behalf of MCI re Proposed Flexible ANI Service.

August 30, 1991; Ameritech Transmittal No. 555; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 30, 1991; Ameritech Transmittal No. 562; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates and Possible MFJ Violations Associated with Ameritech's OPTINET Reconfiguration Service (AORS).

October 15, 1991; CC Docket No. 91-215; Opposition to Direct Cases of Ameritech and United (Ameritech Transmittal No. 518; United Transmittal No. 273) on Behalf of MCI re the introduction of 64 Kbps Special Access Service.

November 27, 1991; Ameritech Transmittal No. 578; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 4, 1992; Ameritech Transmittal No. 650; Petition to Suspend and Investigate on Behalf of MCI re Ameritech 64 Clear Channel Capability Service.

February 16, 1995; Presentation to FCC Staff on the Status of Intrastate Competition on Behalf of MCI.

November 9, 1999; Comments to FCC Staff of Common Carrier Bureau on the Status of OSS Testing in Arizona on Behalf of MCI WorldCom, Inc.

November 9, 1999; Comments to the Department of Justice (Task Force on Telecommunications) on the Status of OSS Testing in Arizona and the USWC Collaborative on Behalf of MCI WorldCom, Inc.

Presentations Before Legislative Bodies:

April 8, 1987; Minnesota; Senate File 677; Proposed Deregulation Legislation; Comments before the House Committee on Telecommunications.

October 30, 1989; Michigan; Presentation Before the Michigan House and Senate Staff Working Group on Telecommunications; "A First Look at Nebraska, Incentive Rates and Price Caps," Comments on Behalf of MCI.

May 16, 1990; Wisconsin; Comments Before the Wisconsin Assembly Utilities Committee Regarding the Wisconsin Bell Plan for Flexible Regulation, on Behalf of MCI.

March 20, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Committee re SB 124 on behalf of MCI.

May 15, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Commission and the House Public Utilities Committee re MCI's Building Blocks Proposal and SB 124/HB 4343.

March 8, 2000; Illinois; Presentation to the Environment & Energy Senate Committee re Emerging Technologies and Their Impact on Public Policy, on Behalf of MCI WorldCom, Inc.

February 19, 2004; Presentation to the Iowa Senate Committee Regarding House Study Bill 622/Senate Study Bill 3035; Comments on Behalf of MCI.

November 30, 2004; A Report to the Wyoming Legislature: The Wyoming Universal Service Fund – Basis and Qualification for Funding.

Presentations Before Industry Groups -- Seminars:

May 17, 1989; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 15-18, 1989; Panel Presentation -- Interexchange Service Pricing Practices Under Price Cap Regulation; Comments on Behalf of MCI.

July 24, 1989; National Association of Regulatory Utility Commissioners -- Summer Committee Meeting, San Francisco, California. Panel Presentation -- Specific IntraLATA Market Concerns of Interexchange Carriers; Comments on Behalf of MCI.

May 16, 1990; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 14-18, 1990; Presentation on Alternative Forms of Regulation.

October 29, 1990; Illinois Telecommunications Sunset Review Forum; Two Panel Presentations: Discussion of the Illinois Commerce Commission's Decision in Docket No. 88-0091 for the Technology Working Group; and, Discussion of the Treatment of Competitive Services for the Rate of Return Regulation Working Group; Comments on Behalf of MCI.

May 16, 1991; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation Course; May 13-16, 1991; Participated in IntraLATA Toll Competition Debate on Behalf of MCI.

November 19, 1991; TeleStrategies Conference -- "Local Exchange Competition: The $70 Billion Opportunity." Presentation as part of a panel on "IntraLATA 1+ Presubscription" on Behalf of MCI.

July 9, 1992; North Dakota Association of Telephone Cooperatives Summer Conference, July 8-10, 1992. Panel presentations on "Equal Access in North Dakota: Implementation of PSC Mandate" and "Open Network Access in North Dakota" on Behalf of MCI.

December 2-3, 1992; TeleStrategies Conference -- "IntraLATA Toll Competition -- A Multi-Billion Dollar Market Opportunity." Presentations on the interexchange carriers' position on intraLATA dialing parity and presubscription and on technical considerations on behalf of MCI.

March 14-17, 1993; NARUC Introductory Regulatory Training Program; Panel Presentation on Competition in Telecommunications on Behalf of MCI.

May 13-14, 1993; TeleStrategies Conference -- "IntraLATA Toll Competition -- Gaining the Competitive Edge"; Presentation on Carriers and IntraLATA Toll Competition on Behalf of MCI.

May 23-26, 1994; The 12th Annual National Telecommunications Forecasting Conference; Represented IXCs in Special Town Meeting Segment Regarding the Convergence of CATV and Telecommunications and other Local Competition Issues.

March 14-15, 1995; "The LEC-IXC Conference"; Sponsored by Telecommunications Reports and Telco Competition Report; Panel on Redefining the IntraLATA Service Market -- Toll Competition, Extended Area Calling and Local Resale.

August 28-30, 1995; "Phone+ Supershow '95"; Playing Fair: An Update on IntraLATA Equal Access; Panel Presentation.

August 29, 1995; "TDS Annual Regulatory Meeting"; Panel Presentation on Local Competition Issues.

December 13-14, 1995; "NECA/Century Access Conference"; Panel Presentation on Local Exchange Competition.

October 23, 1997; "Interpreting the FCC Rules of 1997"; The Annenberg School for Communication at the University of Southern California; Panel Presentation on Universal Service and Access Reform.

February 5-6, 2002; "Litigating Telecommunications Cost Cases and Other Sources of Enlightenment"; Educational Seminar for State Commission and Attorney General Employees on Litigating TELRIC Cases; Denver, Colorado.

February 19-20, 2003; Seminar for the New York State Department of Public Service entitled "Emerging Technologies and Convergence in the Telecommunications Network". Presented with Ken Wilson of Boulder Telecommunications Consultants, LLC.

July 25, 2003; National Association of Regulatory Utility Commissioners Summer Committee Meetings; Participated in Panel regarding "Wireless Substitution of Wireline – Policy Implications."

December 8-9, 2005, CLE International 8th Annual Conference, "Telecommunications Law", "VoIP and Brand X – Legal and Regulatory Developments."

Appendix I -- FCC Resale Rules (47 C.F.R. Part 51)

Sec. 51.605 Additional obligations of incumbent local exchange carriers.

(a) An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates that are, at the election of the state commission--

(1) Consistent with the avoided cost methodology described in Sec. Sec. 51.607 and 51.609; or

(2) Interim wholesale rates, pursuant to Sec. 51.611.

(b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

(c) For purposes of this subpart, advanced telecommunications services sold to Internet Service Providers as an input component to the Internet Service Providers' retail Internet service offering shall not be considered to be telecommunications services offered on a retail basis that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

(d) Notwithstanding paragraph (b) of this section, advanced telecommunications services that are classified as exchange access services are subject to the obligations of paragraph (a) of this section if such services are sold on a retail basis to residential and business end-users that are not telecommunications carriers.

(e) Except as provided in Sec. 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

Sec. 51.607 Wholesale pricing standard.

The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, less avoided retail costs, as described in section 51.609. For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

Sec. 51.609 Determination of avoided retail costs.

(a) Except as provided in Sec. 51.611, the amount of avoided retail costs shall be determined on the basis of a cost study that complies with the requirements of this section.

(b) Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier.

(c) For incumbent LECs that are designated as Class A companies under Sec. 32.11 of this chapter, except as provided in paragraph (d) of this section, avoided retail costs shall:

(1) Include as direct costs, the costs recorded in USOA accounts 6611 (product management and sales), 6613 (product advertising), 6621 (call completion services), 6622, (number services), and 6623 (customer services) (Sec. Sec. 32.6611, 32.6613, 32.6621, 32.6622, and 32.6623 of this chapter);

(2) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121-6124 (general support expenses), 6720 (corporate operations expenses), and uncollectible telecommunications revenue included in 5300 (uncollectible revenue) (Secs. 32.6121 through 32.6124, 32.6720 and 32.5300 of this chapter); and

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (Sec. Sec. 32.6112-6114, 32.6211-6565 of this chapter).

(d) Costs included in accounts 6611, 6613 and 6621-6623 described in paragraph (c) of this section (Sec. Sec. 32.6611, 32.6613, and 32.6621-6623 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6112-6114 and 6211-6565 described in paragraph (c) of this section (Sec. Sec. 32.6112-32.6114, 32.6211-32.6565 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

(e) For incumbent LECs that are designated as Class B companies under Sec. 32.11 of this chapter and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of the specific USOA accounts listed in paragraphs (c) and (d) of this section.

Sec. 51.611 Interim wholesale rates.

(a) If a state commission cannot, based on the information available to it, establish a wholesale rate using the methodology prescribed in Sec. 51.609, then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.

(b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25 percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.

(c) A state commission that establishes interim wholesale rates shall, within a reasonable period of time thereafter, establish wholesale rates on the basis of an avoided retail cost study that complies with Sec. 51.609.

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JUL - 3 2006
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
EXECUTIVE SECRETARY

June 30, 2006

Illona A. Jeffcoat-Sacco, Executive Secretary
PUBLIC SERVICE COMMISSION
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

On behalf of North Dakota Telephone Company (NDTC), this letter is written in response to the June 8, 2006, action taken by the North Dakota Public Service Commission (Commission) in the above-referenced proceeding (the June 8th action). At this time, NDTC has decided that it will not seek further Commission or judicial review of the June 8th action.

NDTC respectfully informs the Commission, however, that NDTC's decision should not be construed as agreement with or acquiescence to the Commission's interpretation of the applicable law in this proceeding or the summarization of NDTC's position taken in this proceeding. Accordingly, should NDTC in the future need to address issues similar to those discussed in the June 8th action, NDTC reserves all rights with respect to both its positions on such issues as well as the proper interpretation and application of law to the record facts that may be developed in such proceeding.

Should the Commission have any questions, please direct them to the undersigned.

Don Negaard

jt

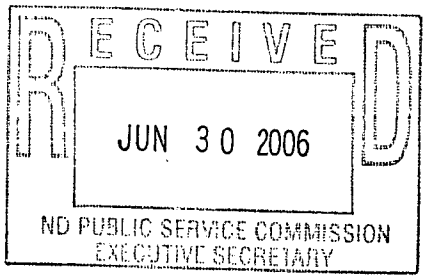
cc/enc: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission
David Dircks, North Dakota Telephone Company
Thomas J. Moorman, Woods & Aitken, LLP

141 PU-05-451 Pages: 1
Response to 6/8/06 Commission action
by North Dakota Telephone Company by Don Negaard.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451
OAH File No. 20060215



AMENDED PREHEARING ORDER

June 29, 2006

Upon a prehearing conference held June 27, 2006, to consider the request of Midcontinent Communications to establish a schedule for the filing of prehearing testimony and exhibits for the further hearing to be held July 10, 2006, for this matter; Patrick W. Durick, Pearce & Durick, and J. G. Harrington, Dow Lohnes, PLLC, appearing for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, P.C., appearing for North Dakota Telephone Company; and William A. Binek, Chief Counsel, North Dakota Public Service Commission, representing the Commission; it is

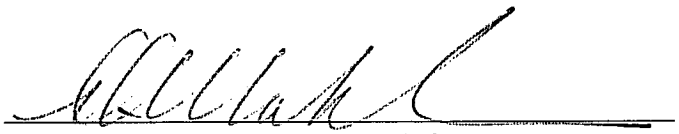
Ordered, that not later than July 5, 2006, Midcontinent Communications and North Dakota Telephone Company shall each serve upon the other and prefile with the Commission the anticipated direct testimony of each of the witnesses expected to testify on their behalf for the further hearing of July 10, 2006; provided, however, that either party may offer additional direct testimony and exhibits at the time of the further hearing; and it is further

Ordered, that not later than July 5, 2006, North Dakota Telephone Company shall serve upon Midcontinent Communications and prefile with the Commission a complete copy of its cost study prepared in support of the testimony and exhibits which will be offered on its behalf for the further hearing of July 10, 2006, together with a complete copy of any compilation of data relied upon for the preparation of the cost study; and it is further

Ordered, that North Dakota Telephone Company shall open and close for the further hearing on July 10, 2006, and may offer rebuttal testimony in response to the direct testimony prefiled by Midcontinent Communications.

Dated at Bismarck, North Dakota this 29th day of June, 2006.

State of North Dakota
Public Service Commission



Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451
OAH File No. 20060215

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **AMENDED PREHEARING ORDER** was mailed, regular mail, on the 29 day of June, 2006, to:

Mr. Patrick W. Durick
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502-0400

Mr. Don Negaard
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Mr. J. G. Harrington
Dow, Lohnes, PLLC
1200 New Hampshire Avenue NW
Suite 800
Washington, DC 20036

Mr. Thomas J. Moorman
Kraskin, Moorman & Cosson, LLC
2120 L Street NW - Suite 520
Washington, DC 20037

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 29 day of June, 2006, to:

Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

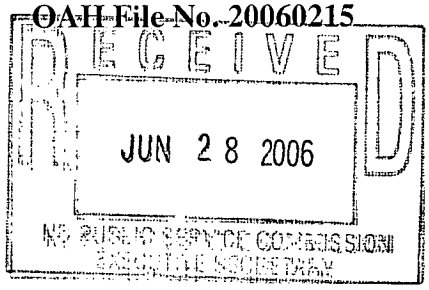
OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge

Louise Wetzel

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451
OAH File No. 20060215



PREHEARING ORDER

June 27, 2006

Upon a prehearing conference held June 27, 2006, to consider the request of Midcontinent Communications to establish a schedule for the filing of prehearing testimony and exhibits for the further hearing to be held July 10, 2006, for this matter; Patrick W. Durick, Pearce & Durick, and J. G. Harrington, Dow Lohnes, PLLC, appearing for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, P.C., appearing for North Dakota Telephone Company; and William A. Binek, Chief Counsel, North Dakota Public Service Commission, representing the Commission; it is

Ordered, that not later than July 5, 2006, Midcontinent Communications and North Dakota Telephone Company shall each serve upon the other and prefile with the Commission the direct testimony of each of the witnesses expected to testify on their behalf for the further hearing for this matter; and it is further

Ordered, that not later than July 5, 2006, North Dakota Telephone Company shall serve upon Midcontinent Communications and prefile with the Commission a complete copy of its cost study prepared in support of the testimony which will be offered on its behalf for the further hearing of this matter, together with a complete copy of any compilation of data relied upon for the preparation of the cost study; and it is further

Ordered, that North Dakota Telephone Company shall open and close for the further hearing of this matter, and may offer rebuttal testimony in response to the direct testimony prefiled by Midcontinent Communications.

Dated at Bismarck, North Dakota this 27th day of June, 2006.

State of North Dakota
Public Service Commission

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451
OAH File No. 20060215

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **PREHEARING ORDER** was mailed, regular mail, on the 27 day of June, 2006, to:

Mr. Patrick W. Durick
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502-0400

Mr. Don Negaard
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Mr. J. G. Harrington
Dow, Lohnes, PLLC
1200 New Hampshire Avenue NW
Suite 800
Washington, DC 20036

Mr. Thomas J. Moorman
Kraskin, Moorman & Cosson, LLC
2120 L Street NW - Suite 520
Washington, DC 20037

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 27 day of June, 2006, to:

Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge

Louise Wetzel

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451
OAH File No. 20060215

NOTICE OF PREHEARING CONFERENCE

June 21, 2006

To: Patrick W. Durick, Pearce & Durick, and J. G. Harrington, Dow, Lohnes & Albertson, PLLC, counsel for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, P.C., and Thomas A. Moorman, Kraskin, Moorman & Cosson, LLC, counsel for North Dakota Telephone Company; and William W. Binek, Chief Counsel, North Dakota Public Service Commisson

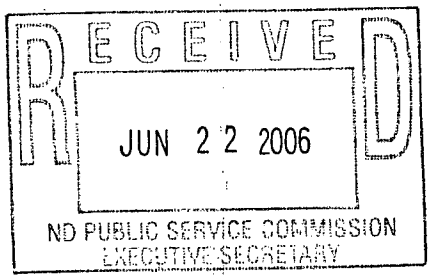
Please take notice that a prehearing conference will be held for this matter at 11:00 a.m. CDT, June 27, 2006. The prehearing conference will be conducted by telephone conference initiated by the administrative law judge. Mr. Harrington and Mr. Moorman are requested to advise the administrative law judge not later than 5:00 p.m. CDT, on June 26, 2006, if they will participate in the prehearing conference.

The purpose of the prehearing conference is to consider the request of Midcontinent Communications to establish a schedule for the filing of prehearing testimony and exhibits for the hearing. The parties may also request a determination concerning any question or problem regarding preparation for or the conduct of the hearing.

Dated at Bismarck, North Dakota this 21st day of June, 2006.

State of North Dakota
Public Service Commission

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260



138 PU-05-451 Pages: 2

Notice of Prehearing Conference (set for 6/27/06 @ 11 a.m.)
by Office of Administrative Hearings by Al Wahl, ALJ
06/22/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451
OAH File No. 20060215

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **NOTICE OF PREHEARING CONFERENCE** was mailed, regular mail, on the 21 day of June, 2006, to:

Mr. Patrick W. Durick
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502-0400

Mr. Don Negaard
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Mr. J. G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue NW
Suite 800
Washington, DC 20036

Mr. Thomas J. Moorman
Kraskin, Moorman & Cosson, LLC
2120 L Street NW - Suite 520
Washington, DC 20037

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 21 day of June, 2006, to:

Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge

Louise Wetzel

Affidavit of Publication

Docket Sequence number 137 missing

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JUN 12 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

June 9, 2006

Mr. William W. Binek
Hearing Administrator
PUBLIC SERVICE COMMISSION
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS
NORTH DAKOTA TELEPHONE COMPANY
RURAL EXEMPTION
CASE NO. PU-05-451

We are in receipt of your June 1 letter concerning the July 10, 2006, hearing of the above matter. We would respectfully ask the Commission to make the necessary arrangements to have a court reporter at that hearing.

Thank you.

Don Negaard

jt

cc: Patrick W. Durick

136 PU-05-451 Pages: 1

Request for Commission to make
arrangements for court reporter
by North Dakota Telephone Company by Don Negaard
06/12/2006 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **8th day of June, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order on Reconsideration
Amended Findings of Fact, Conclusions of Law and Order
Motion Granting Motion for Leave to File Supplemental Memorandum in Opposition to Petition for Reconsideration

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7005 1820 0002 3243 3222

Dave Dircks Manager
North Dakota Telephone Company
P O Box 180
Devils Lake ND 58301-0180
Cert. No. 7005 1820 0002 3243 3239

Thomas J Moorman
Kraskin Moorman & Cosson LLC
2120 L St NW Ste 520
Washington D C 20037
Cert. No. 7005 1820 0002 3243 3246

J G Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington D C 20036
Cert. No. 7005 1820 0002 3243 3253

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 1820 0002 3243 3260

Scott M Knudsvig
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 1820 0002 3243 3277

Sharon Helbling further deposes and says that on the **8th day of June, 2006,** she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **8th day of June, 2006**.

Sandra L Scott
Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **8th day of June, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of:

Order on Reconsideration
Amended Findings of Fact, Conclusions of Law and Order

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **8th day of June, 2006**.

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

Sandra L. Scott
Notary Public

SEAL

wbrudvik@ohnstadlaw.com
William Brudvik

mariep@telcogroupinc.com
Marie Pierre-Paul

cheryl.robins@thomson.com
Cheryl Robins

cforst@360.net
CHARLES FORST
360NETWORKS (USA) INC.
867 COAL CREEK CIRCLE SUITE 160
LOUISVILLE CO 80027

andrieu@3utelecom.com
HERVE ANDRIEU
3U TELECOM INC.
1802 N CARSON ST STE 212-2683
CARSON CITY NV 89701

rcleary@800response.com
ROBERT CLEARY
800 RESPONSE INFORMATION SERVICES LLC
200 CHURCH STREET
BURLINGTON VT 05401

CEO@ABLAZETECHNOLOGIES.COM
LARRY SUCHY
ABLAZE TECHNOLOGIES
513 E BISMARCK EXPY SUITE 6
BISMARCK ND 58504

ffarm@wtc-mail.net
Ann Faught
Absaraka Co-op Tele Co

Absaraka ND 58002

abby.knowlton@acceris.com
Abby Knowlton
Acceris Management & Acquisition LLC
9530 Padgett St Ste 101
San Diego CA 92126

backstrand@ncequity.net
DREW BACKSTRAND
ACCERIS MANAGEMENT AND ACQUISITION LLC
60 SOUTH SIXTH STREET SUITE 2535
MINNEAPOLIS MN 55402-4406

jason.brown@accesspointinc.com
JASON BROWN
ACCESS POINT INC.
1100 CRESCENT GREEN SUITE 109
CARY NC 27511

tseat@acninc.com
TIMOTHY SEAT
ACN COMMUNICATION SERVICES, INC.
32991 HAMILTON CT
FARMINGTON HILL MI 48334-3301

jlchapman@acomminc.com
Jerry Chapman
Acomm Inc
510 1st Ave N Ste 203
Minneapolis MN 55403-0343

alee@agmtelecom.com
ANDREW LEE
AGM TELECOM CORPORATION
1103 KELLER PARKWAY SUITE 106
KELLER TX 76248

ron.levitt@airespring.com
RON LEVITT
AIRESPRING, INC.
6060 SEPULVEDA BLVD
VAN NUYS CA 91411

robert.g.priebe@alltel.com
BOB PRIEBE
ALLTEL COMMUNICATIONS, INC.
ONE ALLIED DRIVE
LITTLE ROCK AR 72202

kimberly.k.bennett@alltel.com
KIMBERLY BENNETT
ALLTEL HOLDING CORPORATE SERVICES, INC.
ONE ALLIED DRIVE
1269-B5F04-E
LITTLE ROCK AR 72202

ccrowe@wbklaw.com
CHRISTINE CROWE
AMERICAN MESSAGING (AM), INC.
WILKINSON BARKER KNAUER LLP
2300 N STREET NW SUITE 700
WASHINGTON DC 20037

aares@americatel.net
AURORA ARES
AMERICATEL CORPORATION
4045 NW 97TH AVENUE
MIAMI FL 33178

kfranks@affinity4.com
KELLY FRANKS
AMERIVISION COMMUNICATIONS, INC.
ONE BROADWAY EXECUTIVE PARK
201 NW 63RD STREET SUITE 200
OKLAHOMA CITY OK 73116

michael@hellocomld.com
MICHAEL TU
ASIA TALK TELECOM, INC.
901 CORPORATE CENTER DRIVE SUITE 518
MONTEREY PARK CA 91754

rasher@att.com
MARY JANE RASHER
AT&T COMMUNICATIONS OF THE MIDWEST, IN
10005 GWENDELYN LANE
HIGHLANDS RANCH CO 80129-6217

doreen.flash@atx.com
DOREEN FLASH
ATX LICENSING, INC.
3094 VILLAGE GREEN DRIVE
WESTLAKE OH 44145

jcremer@bantzlaw.com
James Cremer
Bantz Gosh & Cremer LLC
305 6th Ave SE
Aberdeen SD 57402-0970

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

dbulawa@bektel.com
Derrick Bulawa
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

mario.soto@bellsouth.com
MARIO SOTO
BELLSOUTH LONG DISTANCE, INC.
400 PERIMETER CENTER TERRACE SUITE 400
ATLANTA GA 30346

rrife@diversifiedconsulting.net
ROBERT RIFE
BROADBAND DYNAMICS, L.L.C.
8757 EAST VIA DE COMMERCIA FIRST FLOOI
SCOTTSDALE AZ 85258

daniel.meldazis@broadwing.com
DANIEL MELDAZIS
BROADWING COMMUNICATIONS
200 NORTH LASALLE SUITE 1000
CHICAGO IL 60601

dan.meldazis@broadwing.com
Dan Meldazis
Broadwing Communications LLC
200 N LaSalle 10th Fl
Chicago IL 60601

diane.peters@globalcrossing.com
DIANE PETERS
BUDGET CALL LONG DISTANCE, INC.
1080 PITTSFORD VICTOR ROAD
REGULATORY DEPARTMENT
PITTSFORD NY 14534-3805

mbyrnes@tminc.com
MONIQUE BYRNES
BULLSEYE TELECOM, INC.
TECHNOLOGIES MANAGEMENT INC
210 N PARK AVENUE
WINTER PARK FL 32789

aeconomou@mettel.net
Andoni Economou
Business Productivity Solutions Inc
44 Wall St 6th FL
New York NY 10005

camurray@eschelon.com
CATHERINE MURRAY
BUSINESS PRODUCTIVITY SOLUTIONS, INC.
ESCHELON TELECOM INC
730 SECOND AVENUE SOUTH SUITE 900
MINNEAPOLIS MN 55402-2489

gerrya@midrivers.com
GERRY ANDERSON
CABLE & COMMUNICATIONS CORPORATION
904 C AVENUE
P O BOX 280
CIRCLE MT 59215-0280

scott.ringo@cinbell.com
D. SCOTT RINGO
CINCINNATI BELL ANY DISTANCE INC.
221 EAST FOURTH STREET 103-1280
CINCINNATI OH 45201-1201

astevens@czn.com
Scott Bohler
Citizens Telecomm Co of Minnesota
3 High Ridge Park
Stamford CT 06905

jmancuso@clearworld.net
JAMES MANCUSO
CLEAR WORLD COMMUNICATIONS CORP
3601 S HARBOR BLVD
SANTA ANA CA 92704

charlie@cicom.net
CHARLES BRENNEMAN
COAST INTERNATIONAL, INC.
14303 W 95TH STREET
LENEXA KS 66215-5210

glenda@ld.net
GARY COOK
COGNIGEN NETWORKS, INC.
9800 MT PYRAMID COURT SUITE 400
ENGLEWOOD CO 80112

kris@lokt.net
KRISTOPHER TWOMEY
COMMPARTERS, LLC
1519 E 14TH ST SUITE A
SAN LEANDRO CA 94577

mannawiz@pacbell.net
Larry Manna
Compuwiz
1012 Industrial Blvd
South Lake Tahoe CA 96150

gdrapeau@comtech21.com
GUY DRAPEAU
COMTECH21, LLC.
ONE BARNES PARK SOUTH
WALLINGFORD CT 06492

bgipson@vartec.net
BECKY GIPSON (ANTICIPATED)
COMTEL TELCOM ASSETS LP
2440 MARSH LANE
CARROLLTON TX 75006-2290

bryan@consolidatedtelcom.com
BRYAN PERSONNE
CONSOLIDATED COMMUNICATIONS NETWORKS, II
PO BOX 1408
DICKINSON ND 58602-1408

scott.kitchen@consolidated.com
SCOTT KITCHEN
CONSOLIDATED COMMUNICATIONS OPERATOR S
350 S LOOP 336 W
CONROE TX 77304

scott.kitchen@consolitated.com
SCOTT KITCHEN
CONSOLIDATED COMMUNICATIONS OPERATOR SEI
121 SOUTH 17TH STREET
MATTOON IL 61938

bryan@consolidatedtelcom.com
Bryan W Personne
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

ken@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

paul@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

joyce.tessier@future.ca
JOYCE TESSIER
CONVERGIA, INC.
237 HYMUS BLVD
POINTE-CLAIRE QC

pamela.hintz@ctcnet.com
PAMELA HINTZ
CTC COMMUNICATIONS CORP.
220 BEAR HILL ROAD
WALTHAM MA 02451

dmorgan@customteleconnect.com
DONNA MORGAN
CUSTOM TELECONNECT, INC.
3111 S VALLEY VIEW SUITE E-120
LAS VEGAS NV 89102-7707

ninaburslem@imagitel.com
NINA BURSLEM
D.D.D. CALLING, INC.
2400 AUGUSTA DRIVE SUITE 263
HOUSTON TX 77057-4922

keithl@daktel.com
Keith Larson
Dakota Central Tele Coop
PO Box 299
Carrington ND 58421-0299

keith@daktel.com
Keith Larson
Dakota Central Telecom I
PO Box 299
Carrington ND 58421-0299

htopp@daktel.com
HOLLY TOPP
DAKTEL COMMUNICATIONS LLC
PO BOX 299
CARRINGTON ND 58421-0299

mjrasher@msn.com
Mary Jane Rasher
DCI Group

jean.houck@deltacom.com
JEAN HOUCK
DELTACOM, INC.
7037 OLD MADISON PIKE SUITE 400
HUNTSVILLE AL 35806

pcrocker@earlylennon.com
PATRICK CROCKER
DELTEL, INC.
900 COMERICA BUILDING
KALAMAZOO MI 49007

mariep@telcogroupinc.com
MARIE PIERRE-PAUL
DIALAROUND ENTERPRISES INC.
30-50 WHITESTONE EXPRESSWAY 4TH FLOOR
FLUSHING NY 11354

tschilling@drtel.com
Troy Schilling
Dickey Rural Communications Inc
PO Box 69
Ellendale ND 58436-0069

tschilling@drtel.com
Troy Schilling
Dickey Rural Telephone Cooperative
PO Box 69
Ellendale ND 58436-0069

gdiamond@covad.com
GREG DIAMOND
DIECA COMMUNICATIONS, INC.
7901 LOWRY BLVD
DENVER CO 80230

kw@airmail.net
KEN WATSON
DIGICOM GLOBAL, LLC
PO BOX 20-0008
ARLINGTON TX 76006

greg@dizip.com
GREG SCHNEIDER
DIGIZIP.COM, INC.
168 IRVING AVENUE #302
PORT CHESTER NY 10573

shobbs@dsl.net
SCHULA HOBBS
DSLNET COMMUNICATIONS, LLC
545 LONG WHARF DRIVE 5TH FLOOR
NEW HAVEN CT 06511

rmocas@etel.com
ROBERT MOCAS
EASTON TELECOM SERVICES, L.L.C.
3046 BRECKSVILLE ROAD
SUMMITT II
RICHFIELD OH 44286

dan.f.kerling@sprint.com
DAN KERLING
EMBARQ COMMUNICATIONS, INC.
6360 SPRINT PARKWAY
MAILSTOP: KSOPHE0210 - 2B270
OVERLAND PARK KS 66251

wgandy@ecllc.com
WAYNE GANDY
ENCOMPASS COMMUNICATIONS, LLC
119 WEST TYLER STREET SUITE 260
LONGVIEW TX 75601

Carl.Billek@corp.idt.net
CARL BILLEK
ENTRIX TELECOM, INC.
520 BROAD STREET 4TH FLOOR
NEWARK NJ 07102-3111

rbrown@epixtar.com
ROBERT BROWN
EPIXTAR COMMUNICATIONS CORP
11900 BISCAYNE BLVD SUITE 700
MIAMI FL 33181

pmasters@ernestgroup.com
PAUL MASTERS
ERNEST COMMUNICATIONS, INC.
5275 TRIANGLE PARKWAY SUITE 150
NORCROSS GA 30092

lnelson@securustech.net
CURTIS HOPFINGER
EVERCOM SYSTEMS, INC.
14651 DALLAS PKWY SUITE 600
DALLAS TX 75254

bgipson@vartec.net
BECKY GIPSON
EXCEL TELECOMMUNICATIONS, INC.
2440 MARSH LANE
CARROLLTON TX 75006

charles.hartman@francetelecom.com
CHARLES HARTMAN
FRANCE TELECOM CORPORATE SOLUTIONS L.I
2355 DULLES CORNER BLVD
BLDG 3 FL 2
HERNDON VA 20171

sbohler@czn.com
SCOTT BOHLER
FRONTIER COMMUNICATIONS OF AMERICA, INC
2378 WILSHIRE BOULEVARD
MOUND MN 55364

glenn.richards@shawpittman.com
Glenn Richards
Glenn Richards
ShawPittman
2300 N St NW

diane.peters@globalcrossing.com
DIANE PETERS
GLOBAL CROSSING NORTH AMERICAN NETWORKS
1080 PITTSFORD VICTOR ROAD
REGULATORY DEPARTMENT
PITTSFORD NY 14534-3805

diane.peters@globalcrossing.com
DIANE PETERS
GLOBAL CROSSING TELECOMMUNICATIONS, IN
1080 PITTSFORD VICTOR ROAD
REGULATORY DEPARTMENT
PITTSFORD NY 14534-3805

cooperstown@mlgc.com
Ray Brown
Griggs County Telephone Co
P O Box 506
Cooperstown ND 58425-0506

legal@teamgtc.com
ALICE BRESLOW
GTC TELECOM CORP.
3151 AIRWAY AVENUE SUITE P-3
COSTA MESA CA 92626-4626

rlaqua@rrv.net
Ronald Laqua
Halstad Telephone Company
PO Box 55
Halstad MN 56548-0055

gsayler@rrv.net
GERRY SAYLER
HALSTAD TELEPHONE COMPANY
PO BOX 55
345 2ND AVENUE WEST
HALSTAD MN 56548-0055

nyoung@helio.com
NEIL YOUNG
HELIO LLC
10960 WILSHIRE BLVD 6TH FLOOR
LOS ANGELES CA 90024

cstein@dominionbusinessgroup.com
CHRIS STEIN
HORIZON TELECOM INC.
3993 HOWARD HUGHES PARKWAY SUITE 250
LAS VEGAS NV 89109

rlaqua@rrv.net

HTC Services Inc
P O Box 55
Halstad MN 56548

pcrocker@earlylennon.com
PATRICK CROCKER
IBFA ACQUISITION COMPANY, LLC
900 COMERICA BUILDING
KALAMAZOO MI 49007-4752

bjohnson@ideaone.com
Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

carl.billek@corp.idt.net
Carl Wolf Billek
IDT America Corp
520 Broad St 4th Fl
Newark NJ 07102-3111

laurie.willman@metro1.com
LAURIE WILLMAN
INFONE LLC
11200 MURRAY SCHOLLS PLACE
BEAVERTON OR 97007

kdawson@icsolutions.com
KEN DAWSON
INMATE CALLING SOLUTIONS, LLC
5883 RUE FERRARI
SAN JOSE CA 95138

carol.wirsbinski@integratelecom.com
CAROL WIRSBINSKI
INTEGRA TELECOM OF NORTH DAKOTA, INC.
INTEGRA TELECOM INC
1200 MINNESOTA CENTER 7760 FRANCE AVEN
BLOOMINGTON MN 55435

marsha.pokorny@ildmail.com
MARSHA POKORNY
INTELLICALL OPERATOR SERVICES, INC.
1270 STONE STREET
OVIEDO FL 32765

kander@ictc.com
Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

miket@itltd.net
MIKE TYLER
INTERNATIONAL TELCOM, LTD
417 2ND AVENUE W
SEATTLE WA 98119

jon_brinton@inter-tel.com
JON BRINTON
INTER-TEL NETSOLUTIONS, INC.
BUILDING A SUITE 100
4310 E COTTON CENTER BOULEVARD
PHOENIX AZ 85040-8852

clockett@intrado.com
COLLEEN LOCKETT
INTRADO COMMUNICATIONS INC.
1601 DRY CREEK DRIVE
LONGMONT CO 80503

traci.tidmore@itcdeltacom.com
TRACI TIDMORE
ITC^DELTACOM COMMUNICATIONS, INC.
7037 OLD MADISON PIKE SUITE 400
HUNTSVILLE AL 35806

jamesval@jamesvalley.com

James Valley Coop Telephone Co
P O Box 260
Groton SD 57445

sales@kmavradio.com

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

greg.rogers@level3.com
GREG ROGERS
LEVEL 3 COMMUNICATIONS, LLC
1025 ELDORADO BOULEVARD
BROOMFIELD CO 80021

linda.hunt@lightyear.net
LINDA HUNT
LIGHTYEAR NETWORK SOLUTIONS, LLC
1901 EASTPOINT PARKWAY
LOUISVILLE KY 40223-4145

jlowe@ldcb.com
JAN LOWE
LONG DISTANCE CONSOLIDATED BILLING CO.
7111 DIXIE HWY SUITE 211
CLARKSTON MI 48346

loretel@loretel.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

connie.kelsey@maskina.com
CONNIE KELSEY
MASKINA COMMUNICATIONS, INC
8445 FREEPORT PARKWAY SUITE 650
IRVING TX 75063

jriley@telecompliance.net
JUDITH RILEY
MATRIX TELECOM, INC
2912 LAKESIDE DRIVE
OKLAHOMA CITY OK 73120

smendez@mcgrawcom.net
SADIA MENDEZ
MCGRAW COMMUNICATIONS, INC.
228 EAST 45TH ST 12TH FLOOR
NEW YORK NY 10017-3303

foss@btinet.net
Marilyn Foss
MCI
P O Box 2216
Bismarck ND 58502-2216

Louie.Decarlo@MCI.Com
LOUIE DECARLO
MCI COMMUNICATIONS SERVICES, INC.
201 SPEAR STREET 9TH FLOOR
SAN FRANCISCO CA 94105

Louie.Decarlo@MCI.Com
LOUIE DECARLO
MCIMETRO ACCESS TRANSMISSION SERVICES L
201 SPEAR STREET 9TH FLOOR
SAN FRANCISCO CA 94105

daro@mettel.net
DAVID ARONOW
METROPOLITAN TELECOMMUNICATIONS OF NOI
44 WALL STREET 6TH FLOOR
NEW YORK NY 10005-2401

mary_lohnes@mmi.net
MARY LOHNES
MIDCONTINENT COMMUNICATIONS
5001 W 41ST STREET
SIOUX FALLS SD 57106

gerrya@midrivers.com
Gerry Anderson
Mid-Rivers Telephone Coop Inc
PO Box 280
Circle MT 59215-0280

carols@midstatetel.com
Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

carols@midstatetel.com
Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

mary.buley@onvoy.com
MARY BULEY
MINNESOTA INDEPENDENT EQUAL ACCESS CORP(
300 SOUTH HIGHWAY 169 SUITE 700
MINNEAPOLIS MN 55426

mark@access-intl.com
MARK SORIA
MIRACLE COMMUNICATIONS INC.
725 LAKEFIEL ROAD STE G
WESTLAKE VILLAGE CA 91361

2kathyg@nemontel.net
Kathy Greenwood
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

lsteinhart@telecomcounsel.com
LANCE STEINHART
MOBILE ESPN, LLC
1720 WINDWARD CONCOURSE SUITE 250
ALPHARETTA GA 30005-2291

sbunn@mlgc.com
Shelie Bunn
Moore & Liberty Telephone Co

Enderlin ND 58027

support@nationalda.com
THOMAS SPEED JR
NATIONAL DIRECTORY ASSISTANCE LLC
12700 SHELBYVILLE ROAD
THE DANVILLE
LOUISVILLE KY 40243

prregulatory@comcast.net
PAMELA RIECK
NATIONWIDE LONG DISTANCE SERVICE, INC.
2000 TOWN CENTER SUITE 1900
SOUTHFIELD MI 48075

brian.russell@navtel.com
BRIAN RUSSELL
NAVIGATOR TELECOMMUNICATIONS, LLC.
PO BOX 13860
8525 RIVERWOOD PARK DRIVE
NORTH LITTLE ROCK AR 13860

dhill@ndarec.com
Dennis Hill
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

pschaner@ndarec.com
Patti Schaner
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

2kathyg@nemontel.net
Kathy Greenwood
Nemont Telephone Cooperative Inc
P O Box 600
Scobey MT 59263-0600

jsilveira@netlojix.com
JANET MEDEIROS-SILVEIRA
NETLOJIX TELECOM, INC.
104 W ANAPAMU ST STE C
SANTA BARBARA CA 93101

stephanie.jackson@ncic.com
STEPHANIE JACKSON
NETWORK COMMUNICATIONS INTERNATIONAL COI
1809 JUDSON ROAD
LONGVIEW TX 75605-4710

sfreeman@centrisinfo.com
SUSAN FREEMAN
NETWORK OPERATOR SERVICES, INC.
PO BOX 3529
LONGVIEW TX 75606

JarettJ@Jaroth-pts.com
JARETT JERN
NETWORK PTS, INC.
14472 WICKS BLVD
SAN LEANDRO CA 94577-6712

info@networkservicebilling.com
PETER LAGERGREN
NETWORK SERVICE BILLING, INC.
7251 W LAKE MEAD BLVD SUITE 300
LAS VEGAS NV 89128

chayes@ftcpa.net
SARAH WALTERS
NETWORKIP, LLC
1807 JUDSON RD
LONGVIEW TX 75605

bslaughter@newaccess.cc
BRANDI FRANZEN
NEW ACCESS COMMUNICATIONS LLC
801 NICOLLET MALL SUITE 350
MINNEAPOLIS MN 55402

pbewick@newedgenetworks.com
PENNY BEWICK
NEW EDGE NETWORK, INC.
3000 COLUMBIA HOUSE BLVD SUITE 106
VANCOUVER WA 98661-2969

diane.c.browning@sprint.com
DIANE BROWNING
NEXTEL BOOST WEST, LLC
6450 SPRINT PARKWAY
MAILSTOP KSOPHN0212-2A511
OVERLAND PARK KS 66251

diane.c.browning@sprint.com
DIANE BROWNING
NEXTEL WEST CORP.
6450 SPRINT PARKWAY KSOPHN0212-2A511
OVERLAND PARK KS 66251-6100

kspell@tcsteam.com
KEILLAH SPELL
NOBELTEL, LLC
1720 WINDWARD CONCOURSE SUITE 250
ALPHARETTA GA 30005

rer@norlight.com
Robert E Rogers
NorLight Inc
275 N Corporate Dr
Brookfield WI 53045

laurie.willman@nbne.info
Laurie Willman
North By NortheastCom LLC

stevedl@srttel.com
Steven Lysne
North Dakota Network Co
P O Box 2027
Minot ND 58702-2027

julieel@srttel.com
STEVEN LYSNE
NORTH DAKOTA NETWORK COMPANY
3615 N BDWY
PO BOX 2027
MINOT ND 58702-2027

pat@ndta.net
Patricia Gisinger
North Dakota Telephone Assoc
PO Box 2614
Bismarck ND 58502-2614

kathyy@ndtel.com
Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

matto@northstartelecom.us
MATT O'FLAHERTY
NORTHSTAR TELECOM, INC.
1101 HILLS ROAD
FREMONT NE 68025

dwights@nccray.com
Dwight Schmitt
Northwest Communications Coop
PO Box 38
Ray ND 58849-0038

todd.lantor@nextelpartners.com
TODD LANTOR
NPCR, INC.
2002 EDMUND HALLEY DRIVE SUITE C-6115
RESTON VA 20191

corporate@olscomm.com
GERI EUBANKS
OLS, INC.
217 ROSWELL STREET SUITE 100
ALPHARETTA GA 30004-7962

mary.buley@onvoy.com
MARY BULEY
ONVOY, INC.
300 SOUTH HIGHWAY 169 SUITE 700
MINNEAPOLIS MN 55426

kathy@wcstelecom.com
KATHY RENIER
OPCOM, INC.
512 NORTH 29TH
BILLINGS MT 59101

jill.froman@osc.com
JILL FROMAN
OPERATOR SERVICE COMPANY, LLC
5302 AVENUE Q
LUBBOCK TX 79412

johnk@datavo.com
JOHN KLASS
PACIFIC CENTREX SERVICES
530 W 6TH ST
#300
LOS ANGELES CA 90014

judy.messeng@paetec.com
JUDITH MESSENGER
PAETEC COMMUNICATIONS, INC.
ONE PAETEC PLAZA
600 WILLOWBROOK OFFICE PARK
FAIRPORT NY 14450

mybyrnes@tminc.com
MONIQUE BYRNES
PHONE1, INC.
TECHNOLOGIES MANAGEMENT INC
210 N PARK AVENUE
WINTER PARK FL 32789

slewis@pngmail.com
STACY LEWIS
PNG TELECOMMUNICATIONS, INC.
100 COMMERCIAL DRIVE
FAIRFIELD OH 45014

ddunning@polarcomm.com
David Dunning
Polar Commun Mut Aid Corp
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telcom Inc
PO Box 270
Park River ND 58270-0270

sflanders@polartel.com
SHARI FLANDERS
POLAR TELCOM INC.
PO BOX 270
PARK RIVER ND 58270

ddunning@polarcomm.com
David Dunning
Polar Telecommunications Inc
PO Box T
Park River ND 58270

asoffer@sofferlaw.com
ADAM SOFFER
POPP.COM, INC.
8500 NORMANDALE LAKE BOULEVARD SUITE 9
MINNEAPOLIS MN 55437

ccummins@powercom.net
CHRIS CUMMINS
POWERCOM CORPORATION
1807 NORTH CENTER STREET
BEAVER DAM WI 53916

klawrence@primustel.com
KATHLEEN LAWRENCE
PRIMUS TELECOMMUNICATIONS, INC.
7901 JONES BRANCH DRIVE # 900
MCLEAN VA 22102-3316

donn@srt.com
Don Negaard
Pringle and Herigstad P C
PO Box 1000
Minot ND 58702-1000

tresch1@attbi.com
THOMAS RESCH
PROTEL ADVANTAGE, INC.
1308 MEDORA ROAD
MENDOTA HEIGHTS MN 55118

tommie.joe@teampcs.com
TOMMIE JOE
PUBLIC COMMUNICATIONS SERVICES, INC.
11859 WILSHIRE BLVD SUITE 600
LOS ANGELES CA 90025

sschwan@qwest.com
Suzy Schwandt
Qwest Corporation

kblicke@qwest.com
Kent Blickensderfer
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

smacint@qwest.com
Scott Macintosh
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

richard.buckley@qwest.com
Richard J Buckley
Qwest Corporation
1801 California St Rm 4710
Denver CO 80202

jason.topp@qwest.com
Jason Topp
Qwest Services Corporation
200 S 5th St Rm 2200
Minneapolis MN 55402

areyes@telfile.com
Ayanery Reyes
QX Telecom LLC
230 5th Ave Ste 800
New York NY 10001

pam@tnics.com
Pamela Harrington
RC Communications Inc
PO Box 197
New Effington SD 57255-0197

jriley@telecompliance.net
JUDITH RILEY
RED RIVER NETWORKS, LLC
2912 LAKESIDE DRIVE
OKLAHOMA CITY OK 73120

jeffolson@rrt.net
Jeff Olson
Red River Rural Tele Assoc
PO Box 136
Abercrombie ND 58001-0136

cstein@dominionbusinessgroup.com
CHRIS STEIN
REDUCED RATE LONG DISTANCE, LLC
1800 PEMBROOKE DR SUITE 300
ORLANDO FL 32810

cstein@dominionbusinessgroup.com
CHRIS STEIN
RELIANT COMMUNICATIONS INC
801 INTERNATIONAL PKWY 5TH FLOOR
LAKE MARY FL 32746

royce@restel.net
Royce Aslakson
Reservation Telephone Cooperative

Parshall ND 58770

marciab@RTC.coop
Marcia Burckhard
Reservation Telephone Cooperative

Parshall ND 58770

shaneh@restel.net
Shane Hart
Reservation Telephone Cooperative

Parshall ND 58770

bmiller@lawdept.com
BONNIE MILLER
RIDLEY TELEPHONE COMPANY, LLC
470 NORRISTOWN ROAD SUITE 201
BLUE BELL PA 19422

pam@tnics.com
Pamela Harrington
Roberts County Telephone Coop Assoc

New Effington SD 57255

2kathyg@nemontel.net
KATHY GREENWOOD
SAGEBRUSH CELLULAR, INC.
61 HWY 13 S
PO BOX 600
SCOBEY MT 59263

jv1827@sbc.com
JANET VADER
SBC LONG DISTANCE, LLC
5850 W LAS POSITAS BLVD
ROOM NE119
PLEASANTON CA 94588

silvcomm@yahoo.com
KEN ADAMS
SILV COMMUNICATION INC.
3440 WILSHIRE BOULEVARD SUITE 236
LOS ANGELES CA 90010

ap1498@att.com
ARTHUR PAQUETTE
SNET AMERICA, INC.
310 ORANGE ST 3RD FL
NEW HAVEN CT 06510

ldougherty@snipmail.net
LAUREN DOUGHERTY
SNIP LINK LLC
100-A TWINBRIDGE DRIVE
PENNSAUKEN NJ 08110

stevedl@srttel.com
STEVEN LYSNE
SOURIS RIVER TELECOMMUNICATIONS COMPANY
3615 N BDWY
PO BOX 2027
MINOT ND 58702-2027

diane.c.browning@mail.sprint.com
Diane C Browning
SPRINT COMMUNICATIONS COMPANY L.P.
6450 SPRINT PARKWAY KSOPHN0212-2A511
OVERLAND PARK KS 66251-6100

diane.c.browning@sprint.com
DIANE BROWNING
SPRINT COMMUNICATIONS COMPANY L.P.
6450 SPRINT PARKWAY KSOPHN0212-2A511
OVERLAND PARK KS 66251-6100

diane.c.browning@sprint.com
DIANE BROWNING
SPRINT SPECTRUM L.P.
6450 SPRINT PARKWAY KSOPHN0212-2A511
OVERLAND PARK KS 66251-6100

jasonrg@srttel.com
Jason Gemar
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

julieel@srttel.com
Julie Lizotte
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

stevedl@srttel.com
Steve Lysne
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

christm@srttel.com
Chris Morsefield
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

janehp@srttel.com
Jane Petersen
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

johnar@srttel.com
John Reiser
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

kimrw@srttel.com
Kim Weydahl
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

Robert.Felgar@startec.com
ROBERT FELGAR
STARTEC GLOBAL OPERATING COMPANY
7361 CALHOUN PLACE SUITE 650
ROCKVILLE MD 20855

mdickerson@state.nd.us
Marcy Dickerson
State Tax Department
State Capitol
Bismarck ND 58505

francie@talk.com
FRANCIE MCCOMB
TALK AMERICA INC.
6805 ROUTE 202
NEW HOPE PA 18938

Tele-beep@butlerpropertiesinc.com
AL BOSCH
TELE-BEEP PAGING CO.
PO BOX 7072
BISMARCK ND 58507-7072

regulatory@pioneertelephone.com
KEVIN PHOTIADES
TELECOM MANAGEMENT, INC.
583 WARREN AVE
PORTLAND ME 04103

cfeeley@telecomsys.com
CAROL FEELEY
TELECOMMUNICATION SYSTEMS CORPORATION O!
11460 CRONRIDGE DRIVE SUITE 106
OWINGS MILLS MD 21117

Louie.Decarlo@MCI.Com
LOUIE DECARLO
TELECONNECT LONG DISTANCE SERVICES & S
201 SPEAR STREET 9TH FLOOR
SAN FRANCISCO CA 94105

bobbi@visiology.com
BOBBI FERGUSON
TELMEX USA, L.L.C.
VISIOLOGY INC
16061 CARMEL BAY DRIVE
NORTHPORT AL 35476

lwh@thlglaw.com
Loubna W Haddad
The Helein Law Group LLP
8180 Greensboro Dr Ste 700
McLean VA 22102

gary.barlow@tonservices.com
GARY BARLOW
TON SERVICES INC.
4185 HARRISON BLVD SUITE 301
OGDEN UT 84403

swalker@trinsic.com
SUZETTE WALKER
TOUCH 1 COMMUNICATIONS, INC
100 BROOKWOOD ROAD
ATMORE AL 36502

nderiggi@touchtone.net
NEIL DERIGGI
TOUCHTONE COMMUNICATIONS, INC
16 SO JEFFERSON ROAD
WHIPPANY NJ 07981

connie.kelsey@maskina.com
CONNIE KELSEY
TRANSCOM COMMUNICATIONS, INC.
8445 FREEPORT PARKWAY SUITE 650
IRVING TX 75063

bsullins@trinsic.com
BRYAN SULLINS
TRINSIC COMMUNICATIONS, INC.
601 S HARBOUR ISLAND BLVD SUITE 220
TAMPA FL 33602

Louie.Decarlo@MCI.Com
LOUIE DECARLO
TTI NATIONAL, INC.
201 SPEAR STREET 9TH FLOOR
SAN FRANCISCO CA 94105

kcarlson@utma.com
Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

lahall@usgs.gov
Lenora Hall
U S Geological Survey

kjvannin@usgs.gov
K Vannin
U S Geological Survey

kimm.partridge@ucn.net
KIMM PARTRIDGE
UCN, INC.
14870 SOUTH PONY EXPRESS ROAD
BLUFFDALE UT 84065

kcarlson@utma.com
Kenneth Carlson
United Telephone Mut Aid Corp
P O Box 729
Langdon ND 58249-0729

egriffin@uslec.com
EDWARD GRIFFIN
US LEC COMMUNICATIONS INC.
6801 MORRISON BLVD
CHARLOTTE NC 28211

kw@airmail.net
KEN WATSON
US TELEPAGE, INC.
PO BOX 20-0008
ARLINGTON TX 76006

Celeste.Eckroat@USAD.com
CELESTE ECKROAT
USA DIGITAL COMMUNICATIONS, INC.
1603 SE 19TH ST STE 112
EDMOND OK 73013-6625

mspead@universalservice.org
Michael Spead
USAC
2120 L St NW Ste 600
Washington DC 20037

jwalter@702com.net
JIM WALTER
VAL-ED JOINT VENTURE LLP
702 MAIN AVENUE
MOORHEAD MN 56560

VACRegulatory@vaci.com
CHERYL COOK
VALUE-ADDED COMMUNICATIONS, INC.
3801 E PLANO PARKWAY SUITE 100
PLANO TX 75074-1808

bgipson@vartec.net
BECKY GIPSON
VARTEC SOLUTIONS, INC.
2440 MARSH LANE
CARROLLTON TX 75006

bgipson@vartec.net
BECKY GIPSON
VARTEC TELECOM, INC.
2440 MARSH LANE
CARROLLTON TX 75006

rhoudek@venturecomm.net
Randy Houdek
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

Dan.Mell@voicecom.com
DAN MELL
VOICECOM TELECOMMUNICATIONS, LLC
5900 WINDWARD PARKWAY SUITE 500
ALPHARETTA GA 30005

michael.carey@dig.com
MICHAEL CAREY
WDIG MOBILE, LLC
500 SOUTH BUENA VISTA STREET
BURBANK CA 91521

brianwcpa@yahoo.com
BRIAN WERTHEIM
WDT WORLD DISCOUNT TELECOMMUNICATIONS C(
6510 LBJ FREEWAY SUITE 200
DALLAS TX 75240

westriver@sdplains.com
West River Coop Telephone Co
801 Coleman Ave PO Box 39
Bison SD 57620-0039

bonniek@westriv.com
Bonnie Krause
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

mickg@westriv.com
Mick Grosz
West River Telecommunications Cooperat
PO Box 467
Hazen ND 58545-0467

paulihland@wtc-mail.net
Paul Ihland
Wolverton Telephone Company
P O Box 270
Park River ND 58270-0270

Tina@x2comm.com
TINA TECCE
X2COMM, INC.
270 SOUTH MAIN STREET
FLEMINGTON NJ 08822

jennifer.martin@xo.com
JENNIFER MARTIN
XO COMMUNICATIONS SERVICES, INC.
11111 SUNSET HILLS ROAD
RESTON VA 20190

Brovet@yak.ca
BENJAMIN ROVET
YAK COMMUNICATIONS (AMERICA) INC.
300 CONSILIUM PLACE SUITE 500
SCARBOROUGH M1H 3G ON

sthomas@tminc.com
SHARON THOMAS
YMAX COMMUNICATIONS CORP.
TECHNOLOGIES MANAGEMENT INC
210 N PARK AVENUE
WINTER PARK FL 32789

jpapenhausen@zonetelecom.com
JILL PAPENHAUSEN
ZONE TELECOM, INC.
3 EXECUTIVE CAMPUS SUITE 520
CHERRY HILL NJ 08002

Diana Stevens

One Verizon Place
Alpharetta GA 30004-8511

Arch Wireless Inc
6910 Richmond Hwy #80
Alexandria VA 22306-1801

JOHN BROTEN
BELL ATLANTIC COMMUNICATIONS, INC.
1320 NORTH COURT HOUSE ROAD
ARLINGTON VA 22201

Scott Geston
Cable One of Fargo
P O Box 10757
Fargo ND 58106-0757

ROBERT YOUNG
CORPORATE CALLING SERVICES, INC.
3960 HOWARD HUGHES PARKWAY
5TH FLOOR #5001F
LAS VEGAS NV 89109-5972

Lawrence Freedman
Fleischman & Walsh
1919 Pennsylvania Ave NW Ste 600
Washington DC 20006-3420

Global Tel*Link Corporation
2609 Cameron St
Mobile AL 36607-3104

Houlton Enterprises Inc
2201 W Bdwy Ste 1
Council Bluffs IA 51501

Nanette Edwards
ITC DeltaCom Communications Inc
7037 Old Madison Pike NW #400
Huntsville AL 35806-2107

Thomas K Crowe
Law Offices of Thomas K Crowe PC
1250 24th St NW Ste 300
Washington DC 20037

JESS DIPASQUALE
ALLIANCE GROUP SERVICES, INC.
1221 POST ROAD E
WESTPORT CT 06880

Kimberly Nielsen
AT&T Wireless
7277 164th Ave NE RTC-1
Redmond WA 98052

CRAIG KONRAD
BUSINESS DISCOUNT PLAN, INC.
ONE WORLD TRADE CENTER SUITE 800
LONG BEACH CA 90831

Beth Choroser
Comcast Business Communications Inc
1500 Market St
Philadelphia PA 19102

William Jackson
Dakota Justice
38 8th Ave W
Dickinson ND 58601

AL GERLACH
GERLACH COMMUNICATIONS HOLDING GROUP,
PO BOX 7520
FARGO ND 58106

CHRISS THOMAS
GRANITE TELECOMMUNICATIONS, LLC
3100 CUMBERLAND BLVD #900
ATLANTA GA 30339

Ken Hanks
International Telcom Ltd
417 2nd Ave W
Seattle WA 98119

Myer Shark
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

Local Telcom Holdings LLC
485 Madison Ave 15th Fl
New York NY 10022-5803

THOMAS GLYNN
MAIN STREET TELEPHONE COMPANY
470 NORRISTOWN ROAD SUITE 201
BLUE BELL PA 19422

Jim Arbury
National Multi Housing Council
1850 M St NW Ste 540
Washington DC 20036

JOHN BROTEN
NYNEX LONG DISTANCE
1320 NORTH COURT HOUSE ROAD 9TH FLOOR
ARLINGTON VA 22201

ED HEBERT
PREMIERCOM, INC.
500 E HIGGINS ROAD SUITE 200
ELK GROVE VILLAGE IL 60007

Dean Polkow
RCC Network Inc
PO Box 2000
Alexandria MN 56308-2000

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

CURTIS HOPFINGER
T-NETIX TELECOMMUNICATIONS SERVICES, IN
14651 DALLAS PKWY STE 600
DALLAS TX 75254

David Armey
Verizon Communications
750 SH121 Bypass Ste 100
Louisville TX 75067

Carolyn Fodor
Winstar Communications
520 Broad St
Newark NJ 07102

WTC Competitive Services Inc
P O Box 270
Park River ND 58270-0270

Mike Strand
MITS
PO Box 5237
Helena MT 59604-5237

Dave Crothers
NDATC
Box 1144
Mandan ND 58554-1144

BRAD VANLEUR
ORBITCOM, INC. FKA VP TELECOM
1701 N LOUISE AVE
SIOUX FALLS SD 57107

Kristin L Smith
Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

VCI Company
3875 Steilacoom Blvd #A
Lakewood WA 98498

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

WALTER MCGEE
WORKING ASSETS FUNDING SERVICE, INC.
101 MARKET STREET SUITE 700
SAN FRANCISCO CA 94105

APPROVED
DATE: 6-7-06

MOTION

June 7, 2006

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission adopt the Amended Findings of Fact, Conclusions of Law and Order in Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation, Case No. PU-05-451.

WWB/sdh

134 PU-05-451 Pages: 1

Motion for Amended Findings of Fact,
Conclusions of Law and Order
by Public Service Commission
06/07/2006 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

June 7, 2006

Appearances

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

Don Negaard and Scott M. Knudsvig, Pringle & Herigstad, P .C ., P .O. Box 1000, Minot, North Dakota 58702, and 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 and 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.

Al Wahl, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

Preliminary Statement

On May 12, 2005 Midcontinent Communications ("Midcontinent") sent a letter to North Dakota Telephone Company ("NDTC") proposing to enter into a resale agreement for telecommunications services in the Devils Lake, North Dakota exchange. Attached to the letter was the proposed Resale Agreement for resale at wholesale rates any telecommunications services tariffed with the Commission that it provides at retail to subscribers who are not telecommunications carriers.

By letter dated June 10, 2005, NDTC asked whether the request by Midcontinent was for 251(b) resale of NDTC telecommunications services or for 251(c) resale of

NDTC telecommunications services at discounted rates. NDTC also advised Midcontinent of its rural exemption from 251(c) requirements of the Telecommunications Act (Act).

On July 15, 2005, Midcontinent filed a Notice of Bona Fide Request for Services under 47 U.S.C. § 251(f)(1)(A) requesting that the Commission conduct an inquiry for the purpose of determining whether Midcontinent's request for wholesale resold services from NDTC under 47 U.S.C. § 251(c) is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of the Act. Under 47 U.S.C. § 251(f) the Commission must conduct an inquiry within 120 days after the Commission received notice of the bona fide request.

On July 28, 2005, the Commission issued a Notice of Hearing scheduling a hearing for October 13, 2005, and identifying the following issues:

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 September 20, 2005, the parties filed a stipulation that a hearing and determination by the Commission concerning the rural exemption may be held at a time beyond the 120 days directed by 251(f)(1)(B). The hearing was rescheduled to January 23, 2006. The hearing was held as scheduled.

On April 26, 2006, the Commission issued its Findings of Fact, Conclusions of Law and Order in this case. On May 10, 2006, NDTC filed a Petition for Reconsideration. On May 24, 2006, the Commission received Midcontinent Communications Inc.'s Opposition to the Petition for Reconsideration. On June 1, 2006, NDTC filed an e-mail clarification regarding its position regarding termination of the exemption solely to Midcontinent. On June 2, 2006, Midcontinent filed a Motion for Leave to File Supplemental Memorandum in Opposition for Petition for Reconsideration together with the Supplemental Memorandum. On June 6, 2006, NDTC filed its Reply to Midcontinent's Motion for Leave to File Supplemental Memorandum.

On June 7, 2006, the Commission issued its Order on Reconsideration.

The Commission, having issued its Order on Reconsideration which it incorporates herein by reference, and having heard the evidence, and having reviewed the positions of the parties on reconsideration, and having reviewed the briefs and other materials filed by the parties, hereby adopts the following:

Findings of Fact

1. NDTC is a wholly owned subsidiary of TPC, Inc. and is a consortium formed by United Telephone Mutual Aid Corporation, Dakota Central Rural Telephone Cooperative, and Polar Communications. NDTC is the incumbent local exchange carrier authorized by the Commission to provide telecommunications services in the Devils Lake exchange. NDTC is a rural telephone company as defined under Section 3(b)(37).

2. Midcontinent is a South Dakota general partnership registered with the Commission to provide local exchange telecommunications services. Midcontinent is a competitive local exchange carrier.

Bona Fide Request

3. Under Section 252(a)(1) of the Act, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier upon receiving a request for interconnection, services, or network elements under section 251.

4. Under Section 251(f)(1)(A), a rural telephone company is exempt from the requirements of 251(c) until (1) the rural company has received a bona fide request for interconnection, services, or network elements, and (2) the state commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service requirements of Section 254.

5. Under Section 251(c) an incumbent local exchange carrier is obligated to provide (1) good faith negotiation, (2) facilities and equipment interconnection, (3) unbundled network elements, (4) retail services at wholesale rates, (5) notice of network changes, and (6) collocation of equipment.

6. The proposed Resale Agreement included with Midcontinent's May 12, 2005 letter clearly states that "NDTC shall offer to Midcontinent for resale at wholesale rates any Telecommunications Services tariffed with the Commission that it provides at retail to subscribers who are not telecommunications carriers...."

7. We find Midcontinent has made a bona fide request for a service which a local exchange carrier must provide under Section 251(c)(4) of the Act, specifically, a request for retail services at wholesale rates. The validity of the bona fide request was not disputed at the hearing.

Rural Exemption

8. Under Section 251(f)(1)(A) NDTC is exempt from the requirement to provide the service requested until NDTC has received a bona fide request from Midcontinent and the Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254...." To initiate a Commission proceeding to terminate the rural exemption, Midcontinent is required to submit to the Commission a Section 251(f)(1)(B) notice of its bona fide request.

9. On June 15, 2005, Midcontinent filed a Notice of Bona Fide Request for Services requesting that the Commission conduct a 251(f)(1)(A) proceeding to determine whether to terminate NDTC's rural exemption.

10. The Commission's Notice of Hearing specified the issues to be considered at the hearing. The statement of issues specifically referenced the "request of Midcontinent." Midcontinent's request was for wholesale resold services for the Devils Lake exchange. Because the Commission's Notice of Hearing limited the issues to the "request of Midcontinent", due process requires that the Commission limit its consideration to the request for wholesale resold services for the Devils Lake exchange.

11. Initially, NDTC challenged that its rural exemption should be terminated. NDTC no longer challenges that its rural exemption should be terminated for resale at wholesale rates in the Devils Lake exchange.

Implementation Schedule

12. Section 251(f)(1)(B) provides that, upon termination of the rural exemption, the state commission "shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission [FCC] regulations."

13. Midcontinent contends that the Commission has the authority to establish whatever implementation schedule is supported by the record in this proceeding. Midcontinent asks that the Commission require NDTC to provide wholesale resale to Midcontinent within 90 days of the Commission's order, with an interim wholesale discount subject to true-up once a permanent rate is determined.

14. NDTC alleges that the implementation schedule must be established according to the timeline in 252(b)(1). Section 252(b)(1) provides that a negotiated agreement be acted on by the Commission within 90 days after submission. An arbitrated agreement must be acted on by the Commission within 30 days after submission, however, a party may not request arbitration of open issues in a negotiation until the period from the 135th to the 160th day after the incumbent local exchange carrier received the request for interconnection, services, or network elements. A second timeline offered by NDTC is that negotiations for wholesale resale begin after NDTC receives a valid request from Midcontinent after the Commission issues its decision in this proceeding. The

agreement would be implemented by the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange.

15. Midcontinent states there is no basis for a conclusion that the Section 252 negotiation and arbitration period is mandated by Section 251(f)(1), and that Section 251(f)(1) does not mention Section 252 or include any other reference to the negotiation and arbitration provisions of the Act. Section 251(f)(1) only provides that the implementation schedule must be consistent with FCC regulations. Both parties agree there are no FCC regulations on the subject.

16. NDTC states, in a memorandum filed with the Commission on April 12, 2006, that the Commission has only the authority granted to it by the North Dakota Legislature under N.D.C.C. §§ 49-21-01.7(9) and 49-21-01.7(15), and that nowhere did the North Dakota Legislature grant to the Commission the authority to mandate terms and conditions absent an arbitration proceeding. NDTC contends that Section 252 of the Act provides the specific time frames and procedures for such action.

17. The language in this Section 251(f)(1)(B) concerning implementation must have some purpose. That same section provides that a state commission is required to determine if an exemption is to be terminated within 120 days after it receives notice of the request for interconnection. We believe that the purpose for requiring the state commission to establish an implementation schedule is to allow the state commission to establish a reasonable time period for parties to complete their negotiations for interconnection. If Congress wanted to require the parties to go through the entire Section 252 process as suggested by NDTC, Congress would have said so rather than requiring the state commission to establish an implementation schedule. Furthermore, the Commission's authority regarding interconnection is not limited to the provisions of N.D.C.C. §§ 49-21-01.7(8), 49-21-01.7(9) and 49-21-01.7(15). The Legislature has given the Commission 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. In addition to the broad authority granted the Commission as noted above, the Legislature also provided in N.D.C.C. §49-21-01.7(11) authority to terminate the exemption of a rural company, which arises from Section 251(f)(1) of the Act. We find that the authority to order an implementation and compliance schedule is inseparable from the termination procedure and is, in fact, wholly contained within Section 251(f)(1) which the Legislature has granted the Commission authority to implement.

18. Midcontinent and NDTC both presented testimony concerning the time necessary for implementation of a resale agreement. Midcontinent's witness provided testimony as to actual experience in implementing resale and stated that resale can be completed within 90 days. NDTC's witness stated that he had participated in negotiation of interconnection agreements and that imposing a 90 day implementation deadline is unrealistic and unduly burdensome and that Section 252 timelines should be

followed. We find that a reasonable implementation schedule requires that NDTC provide wholesale resale within 90 days from the date of this order. The Commission recommends that, during those 90 days, NDTC prepare any necessary cost study that will aid the parties in negotiating a wholesale rate to be implemented in the wholesale resale agreement. We will schedule a Further Hearing to determine an interim wholesale discount rate in the event the parties are unable to negotiate a rate and to determine the need for an associated true-up provision. We will also schedule a Second Further Hearing to consider a final discount rate for wholesale resale services.

Facilities-based Interconnection

19. In its post-hearing reply brief, Midcontinent requests that the Commission require the parties to begin the Section 252 negotiation process for facilities-based interconnection. We find that Midcontinent has not made a bona fide request for facilities-based interconnection. To order the parties to immediately begin the Section 252 negotiation process for facilities-based interconnection would violate federal law and would deprive NDTC of its due process rights under the law.

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

Conclusions of Law

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

2. The request of Midcontinent to NDTC for provision of retail services at wholesale rates in the Devils Lake exchange is not unduly economically burdensome.

3. The request of Midcontinent to NDTC for provision of retail services at wholesale rates in the Devils Lake exchange is technically feasible.

4. The request of Midcontinent to NDTC for provision of retail services at wholesale rates in the Devils Lake exchange is consistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

5. The rural exemption under Section 251(f)(1) for the provision of retail services at wholesale rates in NDTC's Devils Lake exchange should be terminated.

6. The Commission has the authority to establish an implementation schedule for compliance with Midcontinent's request for retail services at wholesale rates. There are no FCC regulations on the subject of an appropriate implementation schedule.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

The Commission orders:

1. The rural exemption under Section 251(f)(1) for retail services at wholesale rates in NDTC's Devils Lake exchange is terminated.

2. NDTC shall begin providing to Midcontinent retail services at wholesale prices for resale in the Devils Lake exchange under an interconnection agreement no later than July 26, 2006.

3. A Further Hearing shall be held to determine an interim wholesale discount rate in the event the parties are unable to negotiate a rate and to determine the need for an associated true-up provision.

4. A Second Further Hearing shall be held at an undetermined date in the future to consider a final discount rate for wholesale resale services.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

APPROVED
DATE: 6-7-06

MOTION

June 7, 2006

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission adopt the Order on Reconsideration Granting in Part and Denying in Part North Dakota Telephone Company's request for reconsideration of the Commission's 4-26-06 Order in Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation, Case No. PU-05-451.

PJF/sdh

132 PU-05-451 Pages: 1
Motion for Order on Reconsideration
by Public Service Commission
06/07/2006 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

ORDER ON RECONSIDERATION

June 7, 2006

Preliminary Statement

On April 26, 2006, the Public Service Commission ("Commission") issued its Findings of Fact, Conclusions of Law and Order in this case ("Order"). On May 10, 2006, North Dakota Telephone Company ("NDTC") filed a Petition for Reconsideration. On May 24, 2006, the Commission received Midcontinent Communications Inc.'s Opposition to the Petition for Reconsideration. On June 1, 2006, NDTC filed an e-mail clarification regarding its position regarding termination of the exemption solely to Midcontinent. On June 2, 2006, Midcontinent filed a Motion for Leave to File Supplemental Memorandum in Opposition for Petition for Reconsideration together with the Supplemental Memorandum. On June 6, 2006, NDTC filed its Reply to Midcontinent's Motion for Leave to File Supplemental Memorandum.

Positions of the Parties

NDTC's Petition requests the Commission to reconsider its Order issued on April 26, 2006 and to issue an Amended Findings of Fact, Conclusions of Law and Order.

NDTC cites numerous challenges to the Commission's Order. The main thrust of NDTC's petition relates to the lack of adequate notice of some of the issues that were considered by the Commission in its decision and the imposition of a 90 day implementation schedule.

NDTC requests the Commission amend its Order to the extent that it addresses matters that are beyond the record developed in the proceeding and beyond those matters for which prior notice was given. Specifically, NDTC requests:

1. That the Findings of Fact, Conclusions of Law and Order be amended to limit the scope solely to Midcontinent Communications ("Midcontinent") and solely to the relief requested and sought by Midcontinent; i.e., lifting the Act's existing and ongoing exemption of NDTC solely with respect to

the provision of NDTC of wholesale/resale of tariffed telecommunications within the NDTC Devils Lake exchange to Midcontinent;
2. Eliminate the 30 (sic) day implementation requirement in paragraph 2 of the ordering clauses;
3. Remove allegedly erroneous interpretations of law in paragraphs 12, 13, 14, 15, 16 and 22 of the Findings of Fact, paragraph 5 in the Conclusions of Law, and the Order;
4. Amend the language in paragraph 10 of the Findings of Fact concerning NDTC's challenge of the rural exemption; and
5. Amend paragraph 23 of the Findings of Fact regarding parties' testimony regarding experience with resale obligations and negotiations.

Midcontinent argued in its initial and supplemental responses that there is no basis for reconsideration of the Commission's Order, and that NDTC's petition should be denied. Midcontinent states that the Commission was fully justified in terminating the entire exemption. Midcontinent states:

1. That the Commission had no obligation to provide notice as to its potential interpretation of the governing law and has no discretion to adopt an order that is inconsistent with the law;
2. That NDTC cannot claim to have been denied due process because it failed to read the statute properly;
3. That NDTC had actual notice that the entire exemption was at issue and that Midcontinent was seeking to have the entire exemption terminated;
4. That NDTC was not prejudiced by any alleged failure by the Commission to provide adequate notice;
5. That the adoption of a 90 day implementation period was justified;
6. That the language in paragraph 10 of the Findings of Fact correctly determined that NDTC did not oppose termination of the rural exemption;
7. That the Commission's Finding of Fact in paragraph 23 is correct;
8. That termination of the exemption applies to all competitors.

Discussion

Notice Requirements

The Commission's Order addressed the issues set forth in the Notice of Hearing as the Commission interpreted the applicable law that applied to those issues. The Commission believes its interpretation of the law is correct, but also believes that NDTC has raised legitimate questions regarding the sufficiency of the identification of some of the issues in the Commission's Notice of Hearing. NDTC argues that the Commission's notice violates the due process requirements of the 5th and 14th Amendments to the United States Constitution and Article I of the North Dakota Constitution.

Adequate notice is a fundamental due process element.[1] N.D.C.C. § 28-32-21(3)(c) provides:

> A hearing under this subsection may not be held unless the parties have been properly served with a copy of the notice of hearing as well as a written specification of issues for hearing or other document indicating the issues to be considered and determined at the hearing. In lieu of, or in addition to, a specification of issues or other document, an explanation about the nature of the hearing and the issues to be considered and determined at the hearing may be contained in the notice.

The North Dakota Supreme Court has ruled that due process requires that a participant in an administrative hearing be given notice of the general nature of the questions to be heard and an opportunity to prepare for and to be heard on those questions. *Saakian v. North Dakota Workers Compensation Bureau,* 1998 ND 227, 11, 587 N.W.2d 166; *Hentz Truck Line v. Elkin,* 294 N.W.2d 774, 780 (N.D. 1980). In the *Saakian* decision, the Court stated that "[b]asic notions of fundamental fairness dictate a person challenging an agency action must be adequately informed in advance of the questions to be addressed at the hearing so the person can be prepared to present evidence and arguments on those questions.

Midcontinent argues in its Supplemental Memorandum that NDTC had actual notice that Midcontinent was seeking to have the entire exemption terminated through Midcontinent's initial brief. Midcontinent's brief cannot be relied upon to provide notice of the issues to be considered by the Commission at a hearing. Furthermore, Midcontinent's initial brief was filed after the hearing in this proceeding and therefore provided no notice of any kind concerning Midcontinent's position. The issues in the Notice of Hearing were prepared based upon Midcontinent's specific request in its Bona Fide Request for Services filed July 15, 2005. Midcontinent's request was limited to resale at wholesale rates in NDTC's Devils Lake exchange. Due process requires that a party be adequately informed of the issues to be considered at the hearing in order to prepare for the hearing.

Midcontinent also argues in its Supplemental Memorandum that NDTC has failed to make a showing that it was prejudiced in any way by the Commission's alleged failure to provide notice. The Commission believes that a NDTC was prejudiced in this case by not being adequately informed of the issues prior to hearing in order to sufficiently prepare to address the issues at the hearing.

The Commission agrees with NDTC that the hearing notice did not specify that termination of the rural exemption would not be limited to the Devils Lake exchange and would not be limited to termination for wholesale resale services.

---

[1] 2 Charles H. Koch, Jr., Administrative Law and Practice § 5.32 (2nd ed. 1997).

Limit Termination of the Exemption to Midcontinent

The Commission disagrees with NDTC's argument that termination of the exemption be limited solely to Midcontinent. When a rural exemption is terminated under Section 251(f)(1), the termination of the exemption applies to all telecommunications carriers. The only exception to that is the limitation under Section 251(f)(1)(C) where a cable operator providing video programming seeks to provide telecommunications service in an area where the telecommunications company provides video service. In that situation, the rural exemption does not apply to the request of the cable operator that seeks to provide telecommunications service, but the limitation under Section 251(f)(1)(C) only applies to the cable operator and not to other competitors. That is not the situation in this case because NDTC is not providing video service. Therefore, the termination of the rural exemption relief cannot be limited to Midcontinent but rather applies to all competitors.

Implementation Schedule

NDTC argues that the North Dakota Legislature directs the Commission to follow the federal Act in establishing an implementation schedule upon termination of the rural exemption and in doing so the Commission must provide for implementation in accordance with Section 252. NDTC also stated that the Commission's order should require the parties to negotiate all terms and conditions of an interconnection agreement.

Midcontinent argues that the plain language of Section 251(f)(1) gives the Commission the full discretion to establish an implementation schedule and does not require that the timelines in Section 252 be used in the implementation schedule. NDTC further states that there is no basis to adopt NDTC's request that all terms of a resale agreement be negotiated because the Commission order already requires negotiation of a complete interconnection agreement.

NDTC's position concerning the implementation schedule makes little sense in light of the fact that the North Dakota Legislature gave the Commission authority under N.D.C.C. §49-21-01.7(11) to terminate a rural telephone company's rural exemption under Section 251(f). The authority to terminate the rural exemption and the directive to establish an implementation schedule are both contained in Section 251(f)(1)(B). Nowhere in that subsection is there a requirement that implementation must be in accordance with Section 252. In fact, the only limitation imposed on the Commission is that an implementation schedule that is established must be consistent in time and manner with FCC regulations. All parties agree that the FCC has no regulations regarding implementation schedules. The Commission believes that if Congress intended that implementation had to be in accordance with Section 252, there would have been no reason to give state commissions the authority to establish an implementation schedule because it would be established under law.

NDTC argues that The Commission's reliance on N.D.C.C. §49-21-09 for authority to impose terms and conditions of interconnection is in error. NDTC states that the only authority that the Commission has to implement provisions of the federal Act must be found in N.D.C.C. §49-21-01.7(9) which provides authority to approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the Act.

The Commission disagrees with NDTC's position regarding implementation. Section 49-21-01.7 sets forth the Commission's powers in general regarding telecommunications companies, but is not the only authority given to the Commission to establish terms and conditions for interconnection within Chapter 49-21. While Section 49-21-01.7(9) does give the Commission authority to approve or reject agreements for the interconnection between telecommunications companies, Section 49-21-09 also provides the Commission with authority to prescribe reasonable compensation, terms and conditions for interconnection. Nowhere in either the federal Act or in state law is the Commission limited in its discretion to establish an implementation schedule, nor is there anything that compels the Commission to use the Section 252 timeline.

N.D.C.C. §1-02-07 requires that whenever a general provision in a statute is in conflict with a special provision in another statute, the two must be construed, if possible, to give effect to both provisions. The Commission believes that if the Legislature wanted only the provisions of Section 49-21-01.7(9) to apply to interconnections, it would likely have repealed Section 49-21-09.

NDTC argues that a different standard is imposed by Section 49-21-09 than the standard under Section 49-21-01.7(9) in that Section 49-21-09 requires the Commission make a finding of public convenience and necessity, that no irreparable harm will result to the owner of the facilities, that no substantial detriment will result, and that the parties have failed to agree on terms and conditions. NDTC argues that no evidence was introduced to support the needed findings under Section 49-21-09 and that the Commission provided no notice that it was proceeding under Section 49-21-09.

The standards imposed by Section 49-21-09 may not be the same as the standards under Section 49-21-01.7(9), but both provide authority to the Commission to require interconnection and give the Commission authority to establish terms and conditions. The only requirements the Commission has under Section 251(f)(1)(B) are to determine whether to terminate the rural exemption and to establish an implementation schedule. Section 49-21-01.7(11) authorizes the Commission to terminate the rural exemption which includes establishing an implementation schedule. The standards for termination of the rural exemption are not similar to either the standards under Sections 49-21-01.7 or 49-21-09. The law does not state that the Commission, after termination of the rural exemption, must establish the implementation schedule in accordance with Section 252.

NDTC argues that it was denied due process by the Commission because the Commission did not give notice that it would rely on N.D.C.C. §49-21-09 for authority to establish the implementation schedule. The Commission's Notice of Hearing identified that one of the issues to be considered was the implementation schedule for compliance with the request should the exemption be terminated. In fulfilling its responsibilities under the law, the Commission is authorized to use its authority under the law to implement the schedule for compliance. The Commission is not required to identify in its Notice of Hearing any specific section of law that it could rely on for its authority.

Language in Paragraph 10

NDTC objects to the language in paragraph 10 of the Commission's Findings of fact which essentially provides that NDTC no longer challenges that its rural exemption should be terminated. The Commission understands NDTC's objection to be that its statement was limited to Midcontinent's wholesale resale request in the Devils Lake exchange. The language in the last sentence of paragraph 10 will be revised to state that "NDTC no longer challenges that its rural exemption should be terminated for resale at wholesale rates in the Devils Lake exchange.

Language in Paragraph 23

NDTC also objects to the language at paragraph 23 concerning testimony regarding actual experience in implementing resale. NDTC points to prefiled written testimony of its witness Duncan Meredith in support of its argument.

Midcontinent argues that paragraph 23 is correct. Midcontinent states that its witness, Mary Lohnes gave testimony on the issue of the implementation period and that it was reasonable to implement resale in 90 days. Midcontinent states that NDTC did not provide any testimony on whether the parties could implement resale within 90 days and did not provide any evidence based on the experience of any witness actually implementing resale. Midcontinent argues that none of the excerpts of Duncan Meredith's testimony relied upon by NDTC indicates any real-world experience in implementing resale, or that resale cannot be implemented within 90 days, or that there is any specific minimum period within which resale can be implemented. Midcontinent states that the most Mr. Meredith says is that he participated in negotiations for resale agreements and that he believes the negotiations should follow the Section 252 timeline.

The Commission agrees that both NDTC and Midcontinent provided testimony concerning the time for implementation. The following language will be substituted for the first sentence in paragraph 23, but that the remaining language in paragraph 23 will remain unchanged:

Midcontinent and NDTC both presented testimony concerning the time necessary for implementation of a resale agreement. Midcontinent's witness provided testimony as to actual experience in implementing resale and stated that resale can be completed within 90 days. NDTC's witness stated that he had participated in negotiation of interconnection agreements and that imposing a 90 day implementation deadline is unrealistic and unduly burdensome and that Section 252 timelines should be followed.

In its Supplemental Memorandum, Midcontinent suggests that if the Commission concludes that there is reason to reconsider the order, that the Commission adopt an expedited schedule through an order to show cause to give NDTC the opportunity to provide any further evidence it deemed appropriate to address the impact of facilities-based service. We reject Midcontinent's suggestion to proceed in this manner because Midcontinent is receiving through this Order on Reconsideration and the Amended Findings of Fact, Conclusions of Law and Order that will be issued by the Commission, the specific relief it requested in its Bona Fide Request.

The Commission, having considered NDTC's Petition and Midcontinent's response and supplemental response, issues the following:

Order

1. The Commission grants that part of NDTC's Petition for Reconsideration to limit termination of NDTC's rural exemption to wholesale resale services in the Devils Lake exchange.

2. The Commission grants that part of NDTC's Petition for Reconsideration relating to language in paragraphs 10 and 23.

3. The Commission denies that part of NDTC's Petition for Reconsideration that termination of the rural exemption be limited solely to Midcontinent.

4. The Commission denies that part of NDTC's Petition for Reconsideration to eliminate the 90 day implementation requirement set by the Commission.

5. The Commission will issue Amended Findings of Fact, Conclusions of Law and Order incorporating the changes addressed herein.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

APPROVED
DATE: 6-7-06

MOTION

June 7, 2006

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission grant the Motion for Leave to File Supplemental Memorandum in Opposition to Petition for Reconsideration filed by Midcontinent Communications, in Case No. PU-05-451; Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation.

WWB

130 PU-05-451 Pages: 1

Motion granting Motion for Leave to File Supplemental Memo in Opposition by Public Service Commission

06/07/2006 CC: Comm Legal Illona, Pat, Annette ALJ

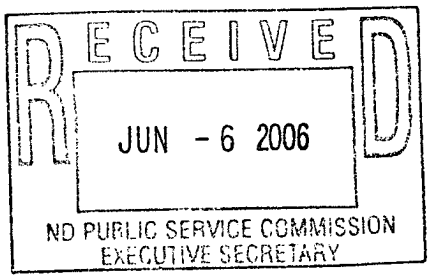
DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

June 6, 2006



Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding are an original and seven copies of the following:

1. Reply of North Dakota Telephone Company to Motion for Leave to File Supplemental Memorandum.

2. Responsive Memorandum of North Dakota Telephone Company.

This document was also transmitted via electronic means to your office on this date.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission

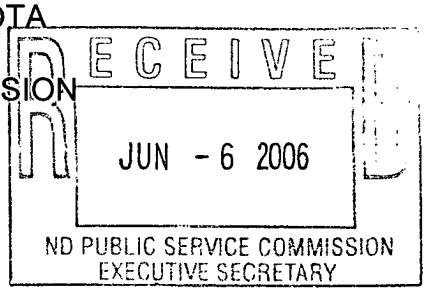
129 PU-05-451 Pages: 1

Cover letter re filings

by North Dakota Telephone Company by Don Negaard, 06/06/2006 CC: Comm Legal Illona, Pat, Annette ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



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

REPLY OF NORTH DAKOTA TELEPHONE COMPANY
TO MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM

This Commission's rule, N.D. Admin. Code § 69-02-06-02(4), governs the time frame for filing a response to a Request for Reconsideration. This rule was clearly understood by Midcontinent Communications (herein Midco) because Midco asked the Public Service Commission (herein Commission) for an interpretation of this rule before filing its response to the Petition for Reconsideration of North Dakota Telephone Company (herein NDTC) (see attached email). Despite this, Midco now asks the Commission to ignore its own rules and to allow Midco to file a late response. NDTC resists this request.

In addition, Midco ignores that it failed to timely file its own Request for Reconsideration and now suggests that the Commission should take a different tact in this matter different than that set forth by the Commission in its Order of April 26, 2006.

NDTC resists these efforts and, to demonstrate the impropriety of Midco's request, attached hereto is a legal memorandum showing that, even if the Commission

128 PU-05-451 Pages: 4

Reply of NDTC to Motion for Leave to File Supplemental Memorandum
by North Dakota Telephone Company by Don Negaard,
06/06/2006 CC: Comm Legal Illona, Pat, Annette ALJ .

granted Midco's request for late filing, the action urged by Midco would be ill-advised and unsupported by North Dakota law.

Dated at Minot, North Dakota, this 6th day of June, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
Scott M. Knudson, ID #05823
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Reply of North Dakota Telephone Company to Motion for Leave to File Supplemental Memorandum was served electronically and by regular mail on the 6th day of June, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
PWD@pearce-durick.com

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480
wbinek@state.nd.us

J. G. Harrington
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
jharrington@dowlohnes.com

Don Negaard, ID #03598

Don Negaard

From: Patrick W. Durick [pwd@pearce-durick.com]
Sent: Wednesday, May 17, 2006 2:54 PM
To: Binek, William W.
Cc: Don Negaard; Mary Lohnes; -Grp-PSC Commissioners; -Grp-PSC Public Utilities; Harrington, J.G.
Subject: RE: Midcontinent - NDTC Case No. PU-05-451

Bill:

The service was by mail and electronic transmission and pursuant to Rule 6 I added three days for service by mail. Pursuant to your reading of the rules we will consider May 24th as the deadline for filing and serving a response.

Pat Durick

From: Binek, William W. [mailto:wbinek@nd.gov]
Sent: Wednesday, May 17, 2006 2:46 PM
To: Patrick W. Durick
Cc: Don Negaard; Mary Lohnes; -Grp-PSC Commissioners; -Grp-PSC Public Utilities
Subject: RE: Midcontinent - NDTC Case No. PU-05-451

The rule regarding filing of a response to a petition for reconsideration is N.D. Admin. Code §69-02-06-02(4) and provides that a party may file a response within 10 days after service of the petition. The Rules of Civil Procedure are used for computation of time in administrative proceedings. N.D.R.Civ.P 6(a) provides that when the period of time prescribed is less than 11 days, intermediate Saturdays, Sundays and legal holidays must be excluded from the computation. Applying those rules, I come up with the date of May 24th as the deadline for filing of Midcontinent's response.

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Wednesday, May 17, 2006 2:04 PM
To: Binek, William W.
Cc: Don Negaard; Mary Lohnes
Subject: Midcontinent - NDTC Case No. PU-05-451

Bill:

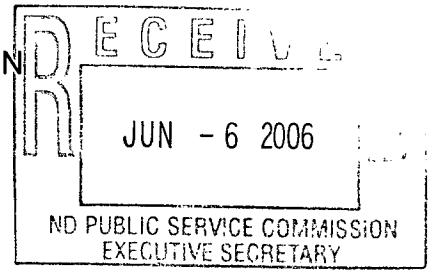
The Petition for Rehearing in this matter was served upon Midcontinent by mail and electronic transmission on May 10, 2006. As I understand the applicable rules for service under the North Dakota Rules of Civil Procedure, Midcontinent's response to the Petition pursuant to N.D. Admin. Code § 69-02-06-01(3.) must be filed with the PSC and served upon North Dakota Telephone Company on or before Friday May 26, 2006. If the Commission interprets the rules for service to require a response prior to this date I would appreciate your response.

Thank you for your consideration.

Patrick W. Durick
P.O. Box 400
314 East Thayer Ave.
Bismarck, ND 58502-0400
(701) 333-0102 – Direct
(701) 333-0126 - Fax
(701) 220-3290 - Cell

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



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

RESPONSIVE MEMORANDUM OF NORTH DAKOTA TELEPHONE COMPANY

North Dakota Telephone Company (herein NDTC) submits this Responsive Memorandum to the North Dakota Public Service Commission (herein the Commission), in conjunction with the Commission's consideration of the motion by Midcontinent Communications (herein Midco) requesting Commission permission to file a supplemental, late-filed memorandum. In that regard, NDTC requests the Commission to consider not only the Commission's own rule, N.D. Admin. Code § 69-02-06-02(4), but also the effect of the proposed action by Midco.

Due process is not only a constitutional guarantee but a fundamental concept of fairness afforded litigants or participants that they be fully advised of the actions a government tribunal intends to take. In this context, the nature of "fairness" in each case is dependent on how an outcome was arrived at and not necessarily of the magnitude of the property interest or protected status that is at stake.

NDTC submits that (1) the record in this matter already clearly demonstrates the possible harm to NDTC from the lack of adequate notice in this matter, even if a

showing of prejudice by NDTC were required; (2) the case cited by Midco is not applicable to this matter, either factually or legally; and (3) Midco's requested Commission action fails to address the need for the Commission to comply with the legislative mandates and notice requirements of the North Dakota Administrative Practices Act, specifically, N.D. Cent. Code § 28-32-21.

Simply stated, due process requires a notice, a hearing in accordance with that notice, and undertakings consistent with the notice. Mullane v. Central Hannover Bank & Trust Co., 339 U.S. 306 (1950). Due process is required for any government deprivation of property rights, which may take the form of government program payments. Goss v. Lopez, 419 U.S. 565 (1975), (welfare programs). Even though a drivers license is a privilege, it is a statutory benefit. This type of statutory benefit or status is also protected by due process requirements. Eventes v. Shevin, 407 U.S. 67 (1983).

The magnitude of the right being deprived is not of importance—it is the nature of the interest.

1. **THE RECORD.**

In this particular case, the transcript and testimony, directly and by implication, already demonstrate the potential harm to NDTC resulting from lack of proper notice. The record already also shows the possible nature of evidence NDTC could have presented had it been notified its rural exemption vis-à-vis a facilities-based competition was being studied.

This was elicited by Midco itself at the hearing from the testimony of David Dircks:

Q. (Mr. Harrington continuing) Mr. Dircks, does North Dakota Telephone Company receive universal service funding from the FCC or the FCC programs?

A. Yes, it does.

(Emphasis added.) (Dircks testimony 117:22-118:1.)

Q. So roughly speaking, and I understand this number is not exactly right, you're getting in federal universal service support in any given year somewhere between 95 and $105 per line? Is that a fair number?

A. Just calculating in my mind, yes.

(Dircks testimony 119:7-12.)

Q. So if you're getting somewhere between 95 and $110 per line from the federal universal service program and 160, you're getting close to two-thirds as much per line from universal service as you do from your own customers; is that right?

A. Sounds right.

Q. Okay. Now, if Midcontinent offers resale service in Devils Lake, to your knowledge, will Midcontinent be eligible for any universal service money of its own?

A. They would not be unless they started offering facility-based service.

Q. I'd like to turn to access revenues. Now, your company receives a significant portion of its revenue from access charges; is that correct?

A. Yes.

Q. And those come from long distance carriers who are paying either to originate or terminate calls in North Dakota Telephone's territory?

A. That's the majority of it, yes.

Q. Roughly what percentage of your revenues come from access?

A. Without looking, I would say probably 60 percent.

Q. That's what I had. That would have been about 10 million out of your 16 million dollars in revenues last year?

A. I don't have a financial report with me, but it sounds close.

(Emphasis added.) (Dircks testimony 120:14-121:17.)

Q. And if Midcontinent gets to resell your services, Midcontinent will—will Midcontinent be able to have access to any of those access revenues of yours, or will those still be North Dakota Telephone's revenues?

A. They would still be ours.

(Dircks testimony 122:16-21.)

Midco's own witnesses, Fischer and Gates, acknowledged that the loss of universal service funds and access revenues on NDTC's operations were not part of the study produced by Midco or the issues before the Commission, as follows:

Q. (Commissioner Clark) In setting a pricing, though, it's not an insignificant-type proceeding, is it? I haven't sat through a lot of them, but I have the most recent Qwest UNE case where you're trying to calculate TELRIC-type rates, and I know before that some of the initial interconnection disputes that this Commission heard, which was prior to my time, they weren't small proceedings, either. How much precedent do you believe he Commission has to build on to be able to do something, the two parties negotiating to get something rather quickly resolved as opposed to a more protracted-type proceeding from your experiences? Because we are dealing with a company we haven't dealt with before and certainly have a totally different cost structure than, say, Qwest.

A. (Fischer) I think because this is limited to resale, a lot of the pricing issues are much more limited. You're not dealing with unbundled element networks and all of the other issues that surround—really determining what correct rates for each one of those elements. When dealing with total service resale, I think you can adopt an existing rate, let's say, for Qwest that's currently in effect subject to true-up or you can pick something lower, and what you'll find is, at least from financial impact that we've calculated, even if you were to pick a rate that's half of that, the financial impact on the company is going to be significantly less obviously because the discount is that much less and, therefore, its revenue stream will not be as impacted as it might be with a higher discount rate.

Q. But you don't anticipate getting into individual network element pricing?

A. From my understanding, this proceeding is strictly limited to resale, and that's what Midcontinent has requested.

(Emphasis added.) (Fischer testimony 39:12-40:24.)

Now, if Midcontinent was asking for unbundled network elements, interconnection, collocation, TELRIC pricing, you know, all of those things, it might take a long time to get through all of that, and you might need another proceeding to get through some of those difficult issues. But in this case when we're talking about simply lifting the exemption for total service resale, I think you issue your order and then you set the implementation schedule based on how long you think it will take to implement total service resale, not start the clock all over again.

(Gates testimony 83:25-84:11.)

(Fischer) [I] looked on the North Dakota Tel website, which is a great website, I enjoyed it. Today there is a picture of a little boy with a big fish, and it's very local, very good, very informative. And there is a history there and it talks about the various acquisitions and mergers, but I don't have a feeling of the relative size in terms of revenues or customers.

Q. Between the two companies?

A. No, I don't.

Q. Do you think there's any relevance for the Commission looking at that?

A. Not really, because, after all, North Dakota Tel is the incumbent, they're established, they have their customer relationships, and this is total service resale. So in essence Midcontinent will be doing the retailing function for North Dakota Tel. So the harm is de minimus, as Mr. Fischer showed —

(Emphasis added.) (Fischer testimony 67:14-68:7.)

Midco and this Commission are well aware that universal service funds and access revenues are payable to the entity which owns the facilities. The financial impact of a facilities-based competitor is different than the impact of a wholesale/resale

competitor. This is the obvious reason why Midco chose to use wholesale/resale for its economic impact analysis. Now, even though Midco never properly asked the Commission for it, Midco now improperly tries to expand the scope of the proceeding.

For Midco to state that this issue was properly noticed because Midco raised the issue, for the first time, in its Post-Hearing Brief, after all the evidence was in, is sheer nonsense. As noted by its own witnesses, this case was about "resale" and nothing else. Midco improperly tries to use the Commission to expand the scope of its own limited request. The Commission acted properly when issuing its notice. It was only when Midco later improperly tried to expand its request that any error occurred.

2. **INAPPLICABILITY OF THE ST. ANTHONY'S CASE.**

The case cited by Midcontinent is St. Anthony Hospital v. United States Department of Health and Human Services, 309 F.3d 680 (10th Cir. 2002), is not applicable to this matter. The St. Anthony case involved a hospital that refused to properly admit a patient who had a life-threatening condition. Two, parallel, federal agency groups were charged with enforcement of a federal law prohibiting such practices. One group was a peer review group and the other was the United States Office of Inspector General. Before a hearing by the United States Office of Inspector General (OIG) was held, St. Anthony's protested to the OIG that they were not invited or given a notice to attend a different hearing conducted by a peer review group. The Tenth Circuit Court found that St. Anthony's was not prejudiced by the action of the OIG because getting no notice of the parallel, peer review hearing did not change the outcome in the OIG hearing.

Only after this discussion did the Tenth Circuit decide that St. Anthony's, which received a full and fair OIG hearing following proper notice, was not prejudiced because it did not get notice of a different hearing by the peer review group.

A key to the St. Anthony case is that St. Anthony's had prior notice of all the issues before the OIG hearing and failed to present any evidence at the hearing before the OIG on the issue complained of. Not only did St. Anthony's fail to do so, it also relied on the evidence it later complained of. 309 F.2d 680 at 699.

3. **ADMINISTRATIVE PRACTICES ACT AND NORTH DAKOTA LAW.**

The North Dakota Administrative Practices Act, N.D. Cent. Code § 28-32-21(3)(c), provides as follows:

> A hearing under this subsection may not be held unless the parties have been properly served with a copy of the notice of hearing as well as a written specification of issues for hearing or other document indicating the issues to be considered and determined at the hearing. In lieu of, or in addition to, a specification of issues or other document, an explanation about the nature of the hearing and the issues to be considered and determined at the hearing may be contained in the notice.

(Emphasis added.)

In Flink v. North Dakota Workers Compensation Bureau, 574 N.W.2d 784 (N.D. 1998), the decision by the North Dakota Workers Compensation Bureau was overturned when the agency decided to expand the nature of its review and study issues not detailed in its notice.

The North Dakota Supreme Court, in Flink, summed up due process requirements in North Dakota, as follows:

> The right to a fair hearing comporting with due process includes reasonable notice or opportunity to know of the claims of opposing parties and an opportunity to meet them. (Citations omitted.) In this case, there appears to be no way Flink could have known whether he had been

> released to return to work would be an issue and ultimately the basis for the ALJ's decision. Flink was essentially blindsided by the ALJ relying on Flink having been released to return to work, because by marking choice number four, instead of choice number two, the Bureau indicated being released to work was not at issue. . . . [T]he Bureau's attorney asked no questions regarding Flink being released to return to work.

(Emphasis added.) Flink, supra, at 789.

In the case at hand, like Flink, no one raised or discussed the issue of the financial impact of a facilities-based competition on NDTC, as opposed to a wholesale/resale competition because, as noted by Midco's own witness, "I think because this is limited to resale, a lot of the pricing issues are much more limited." (See Fischer, supra at p. 4.) NDTC was totally blindsided when Midco tried to raise the issue after the hearing.

See also, Morrell v. North Dakota Department of Transportation, 598 N.W.2d 111 (N.D. 1999) wherein the North Dakota Department of Transportation (DOT) action and hearing to suspend a drivers license was limited to 90 days because the DOT failed to give notice that it was going to consider prior convictions to order a longer suspension of the drivers license. In the Morrell case, Morrell was even informed prior to the start of the hearing that a longer suspension was being considered and that the notice was in error. The Court held that was insufficient because he could have made different arguments had he known. Midco's own witnesses show the arguments are different in a setting other than wholesale/resale. There was no need for NDTC to try to fully develop and explain those arguments under North Dakota law as shown by North Dakota Supreme Court precedent which requires adherence to N.D. Cent. Code § 28-32-21.

CONCLUSION

Due process is an issue of fundamental fairness. There is no magical formulation that fits every situation, but, at a minimum, due process requires the notice of a hearing contain and outline the issues to be discussed. In addition, the North Dakota statute requires proper notice before an agency can act.

NDTC is not complaining, like St. Anthony's Hospital complained, that it was not given a parallel hearing. As such, the St. Anthony case is inapplicable to this matter.

North Dakota law, as applied by North Dakota courts, requires that administrative agencies give notice of issues to be presented and considered so that participants have proper time to prepare arguments to address the issues presented. This is a fundamental requirement of agency action.

Midco did not properly present other issues prior to or at the hearing and its own witnesses testified that the only issue was resale. It is now asking the Commission to cure its own lack of foresight and this Commission should not allow Midco to use the Commission as a lightning rod to accomplish what Midco failed to ask the Commission for.

Dated at Minot, North Dakota, this 6th day of June, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
Scott M. Knudson, ID #05823
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com
Attorneys for Respondent

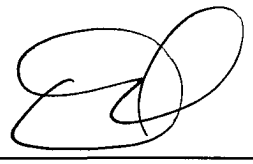
CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Responsive Memorandum of North Dakota Telephone Company was served electronically and by regular mail on the 6th day of June, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
PWD@pearce-durick.com

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480
wbinek@state.nd.us

J. G. Harrington
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
jharrington@dowlohnes.com



Don Negaard, ID #03598

Public Service Commission
Receipt of Payment

Receipt# 6588

Received: 6/7/2006 Check# 779830 for $2,096.18

Docket # PU-05-451

Subject: Utility Valuation

Midcontinent Communications
410 So. Phillips Ave.
Sioux Falls SD 57104-6824

126 **PU-05-451** Pages: 1

Receipt# 6,588 $2,096.18

by Midcontinent Communications

06/07/2006

Public Service Commission
Receipt of Payment

Receipt# 6582

Received: 6/7/2006 Check# 100370 for $2,096.18

Docket # PU-05-451

Subject: Utility Valuation

.

North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

125 PU-05-451 Pages: 1

Receipt# 6,582 $2,096.18

by North Dakota Telephone Company

06/07/2006

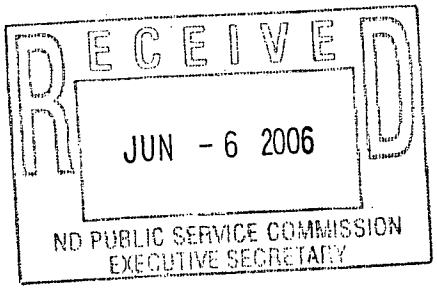
OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.nd.gov/oah

June 5, 2006



Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Dear Mr. Binek:

Thank you for your June 1, 2006, request of the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of Midcontinent Communications/ND Telephone Company, PU-05-451. I hereby designate Al Wahl to be assigned as an administrative law judge to conduct the hearing in regard to this matter. Because the administrative law judge will not be making recommended findings of fact and conclusions of law, or issuing a recommended order, the person or persons who will be making the final administrative decision in regard to this matter (*i.e.*, agency head, deputy, board, commission) must be in attendance at the hearing.

Please send all additional relevant documents (correspondence, and other pleadings and documents) to the designated administrative law judge in care of the Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882. I understand the hearing is scheduled for July 10, 2006, beginning at 9:00 a.m., in the Commission's Hearing Room, 12th Floor, State Capitol, Bismarck. Because the administrative law judge is requested to conduct the hearing only, the agency must give proper notice of the hearing.

Your request has been assigned OAH File No. 20060215. Please include this number on all future documents and correspondence filed for this matter with the Office of Administrative Hearings.

Sincerely,

Allen C. Hoberg
Director

ACH/lmw

cc: Mr. Patrick Durick
Mr. J.G. Harrington
Mr. Don Negaard
Mr. Thomas J. Moorman

124 PU-05-451 Pages: 1

Al Wahl assigned Administrative Law Judge

by Office of Administrative Hearings
06/06/2006 CC: Comm Legal Illona, Pat, Annette . .

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
JEROME C. KETTLESON
LARRY L. BOSCHEE ♦♦
LAWRENCE BENDER, PC ♦
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

RECEIVED
JUN - 2 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

June 2, 2006

VIA HAND DELIVERY

Illona Jeffcoat-Sacco
Executive Director
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:

Enclosed for filing herewith is an original and seven copies of Motion for Leave to File Supplemental Memorandum in Opposition to Petition for Reconsideration. We are also electronically filing this document with the Commission.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Patrick W. Durick
J.G. Harrington*

Counsel to Midcontinent Communications

PWD/jf
Enclosures.
c: Donald Negaard (via email)
William Binek (via email)
Al Wahl (via email)
Scott Knudsvig (via email)
Tom Moorman (via email)

*Admitted pro hac vice

123 PU-05-451 Pages: 1

Cover letter re Mtn for Leave to File Sup Memo in Opposition to Pet for Recon.
by Midcontinent Communications by Patrick Durick, Atto
06/02/2006 CC: Comm Legal Illona, Pat, Annette . .

RECEIVED
JUN - 2 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

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

MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PETITION FOR RECONSIDERATION

COMES NOW Midcontinent Communications, and moves the Commission for leave to file the attached Supplemental Memorandum of Midcontinent Communications in Opposition to Petition for Reconsideration. As a basis for this motion, Midcontinent would suggest that in presenting its claim of insufficient notice, North Dakota Telephone Company has neglected to present any argument or evidence that it was prejudiced in any manner as a result of claimed lack of notice. Proof of such prejudice is a prerequisite to a claim of insufficient notice. In addition, even if prejudice were shown North Dakota Telephone Company has not proposed any reasonable manner of proceeding to cure the alleged lack of notice. Granting the Petition for Reconsideration would result in additional unnecessary delays and such delays are not be in the best interest of the consumers of Devils Lake.

Motion for Leave to File Sup Memo in
Opposition to Pet for Reconsideration
by Midcontinent Communications by Patrick Durick, Atto
06/02/2006 CC: Comm Legal Illona, Pat, Annette . .

Wherefore, Midcontinent requests that it be granted leave to file the attached Supplemental Memorandum of Midcontinent Communications in Opposition to Petition for Reconsideration.

Dated: June 2, 2006

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By: _____
Patrick W. Durick
J.G. Harrington*

Its Attorneys

*Admitted pro hac vice

Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

Dow Lohnes P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
vs.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

SUPPLEMENTAL MEMORANDUM OF MIDCONTINENT COMMUNICATIONS IN OPPOSITION TO PETITION FOR RECONSIDERATION

Midcontinent Communications, by its attorneys, hereby submits this supplemental memorandum in opposition to the petition for reconsideration filed by North Dakota Telephone Company ("NDTC") in the above-referenced proceeding.[1] This memorandum focuses on issues relating to NDTC's claim that the Commission failed to provide sufficient notice for the hearing in this proceeding. In particular, Midcontinent wishes to emphasize that NDTC has failed to make a showing that it was prejudiced in any way by the Commission's alleged failure to provide notice and to propose a way forward if the Commission, despite the evidence to the contrary, concludes that there is any reason to address NDTC's claims.

Initially, and for the reasons described in Midcontinent's opposition to the petition, NDTC has not established and cannot establish that it was not provided with sufficient notice or a sufficient opportunity to respond to the possibility that it would be required to comply with all

[1] By a separate motion submitted on this date, Midcontinent has requested leave to file this Supplemental Memorandum. NDTC seeks reconsideration of the Commission's *Finding of Facts, Conclusions of Law, and Order* (the *"Order"*), adopted April 26, 2006.

of the interconnection requirements of Section 251(c) of the federal Communications Act.[2] In particular, the Commission's *Notice of Hearing* and *Notice of Rescheduled Hearing* both stated plainly that NDTC's rural exemption was at issue in this proceeding, and that was more than sufficient for NDTC to be on notice that the entire exemption was at risk.[3] Moreover, NDTC had actual notice that Midcontinent was seeking to have the entire exemption overturned through Midcontinent's initial brief, and NDTC took the opportunity to respond to Midcontinent's arguments in its reply brief.[4] Thus, NDTC had more than ample notice.

However, even if the Commission were to conclude that NDTC did not have sufficient notice, that is only half of the showing that NDTC must make to demonstrate that reconsideration is warranted. The case law is clear that a party must show not just that it did not receive notice, but also that it was hurt by the lack of notice. As the U.S. Court of Appeals for the Tenth Circuit explained in 2002, there is no due process violation unless a party can show that it "has sustained prejudice as a result of the allegedly insufficient notice."[5]

NDTC has not demonstrated that it sustained any prejudice as a result of the claimed inadequate notice. In fact, NDTC has not even *claimed* that it sustained any prejudice. Rather, its entire argument in the brief supporting its request for reconsideration is that it did not receive sufficient notice.[6] There is nothing in the brief to indicate that NDTC would have provided any additional evidence, made any different arguments or done anything else different if the notice it says it needed had been provided. In other words, NDTC is arguing that a broader notice should have been provided simply for the sake of providing more notice, not because it would have

---

[2] 47 U.S.C. § 251(c); *see* Midcontinent Opposition at 11-14.
[3] Opposition at 11-13.
[4] *Id.* at 13-14.
[5] *St. Anthony Hospital v. U.S. Dept. of Health and Human Svcs.*, 309 F.3d 680, 708 (10th Cir. 2002) (quoting *Savinia Home Indus., Inc. v. Secretary of Labor,* 594 F.2d 1358, 1365 (10th Cir. 1979), *accord Southwest Sunsites, Inc. v. FTC,* 785 F.2d 1431 (9th Cir. 1985).
[6] *See* NDTC Brief in Support of Petition for Reconsideration at 7-10.

made any difference in any aspect of the proceeding. As *St. Anthony Hospital* demonstrates, that theory is insufficient to support a due process claim.

Moreover, it is doubtful that NDTC could provide any evidence that it was prejudiced by a lack of notice.[7] The hearing established a series of key facts that show that NDTC cannot expect meaningful harm to arise from the Commission's determination that Section 251(f)(1) requires the entire exemption to be lifted when the statutory criteria are met.

First, and most significantly, NDTC told the Commission, in its own direct testimony, that it will be entering the video market in Devils Lake in early 2007, just months from now, which will eliminate the rural exemption as to Midcontinent, the most significant potential facilities-based competitor in that market.[8] This alone makes it impossible for NDTC to argue that it will be harmed in any meaningful way by losing the exemption. This conclusion is reinforced by other testimony at the hearing, including NDTC's admission that it has not been hurt by competition from wireless providers[9] and its admission that losing customers to even a facilities-based competitor will have no effect on the amount of money it receives from the federal universal service fund.[10] In other words, it is impossible to conceive of additional evidence from NDTC that would justify changing the Commission's conclusions in this proceeding. Therefore, NDTC could not have been prejudiced by any lack of notice.

For the reasons described above, Midcontinent submits that there is no basis to reconsider the *Order* on due process grounds. However, if the Commission were to conclude otherwise, it also would be appropriate to recognize that Midcontinent would be prejudiced by any change to

---

[7] It is, in any event, too late for NDTC to now claim that it was prejudiced by the lack of notice, since it failed to do so in its petition for reconsideration.

[8] *See* Exhibit R1, Reply Testimony of David Dircks, at 9.

[9] *Id.* at 2 (competition from wireless providers); Tr. at 104 (Dircks) (Impact of competition is minimal).

[10] Tr. at 118 (Dircks) ($1.8 million in annual revenues from universal service), 219 (Meredith) (no effect on universal service revenues if NDTC loses a customer); *see also* 47 C.F.R. § 54.307 (FCC rule providing that incumbent carriers maintain funding if they lose customers).

the *Order* and to take specific steps to ameliorate the potential harm to Midcontinent. The greatest risk is that modifying the *Order* would allow NDTC to further delay Midcontinent's entry into the Devil's Lake market as a facilities-based provider, particularly if Midcontinent were required to initiate a separate proceeding under Section 251(f)(1).

To address that concern, the Commission could adopt an expedited schedule to give NDTC the opportunity to provide any further evidence it deemed appropriate to address the impact of facilities-based service. This could be accomplished through an order to show cause why the rural exemption should not be lifted as to facilities-based services. The order could require NDTC to inform the Commission if it objects to such action within a suitable period, such as seven days. If NDTC does not object, then the exemption could be lifted immediately. If NDTC did object, then a hearing could be held, again within a reasonable period, such as a month from the date of the order to show cause, at which both NDTC and Midcontinent could provide testimony. A one day hearing would be feasible because there would be very few issues to be addressed, and the Commission then could use the combined record of the two hearings as the basis for a new order on facilities-based competition.

This approach would balance any perceived concerns about NDTC's notice rights against the significant benefits of introducing facilities-based telephone competition to consumers in Devils Lake as soon as possible. Even under this schedule, it is more likely than not that NDTC will be able to introduce video service in Devils Lake months before Midcontinent can begin to provide facilities-based telephone service. That would not be the best possible outcome of this proceeding, either for Midcontinent or for Devils Lake consumers. Nevertheless, it would be preferable to requiring a brand new proceeding, which easily could delay facilities-based competition in Devils Lake until late 2007.

The process described in the two preceding paragraphs is entirely unnecessary, however, if the Commission affirms the *Order*. For the reasons described above and in Midcontinent's Opposition, that is the course the Commission should adopt.

Dated: June 2, 2006

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By: _____
Patrick W. Durick
J.G. Harrington*

Its Attorneys

*Admitted pro hac vice

Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

Dow Lohnes P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

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

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Jeanne Feist hereby certifies that on June 2, 2006, she served a copy of the foregoing:

MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM IN OPPOSITION OF MIDCONTINENT COMMUNICATIONS TO PETITION FOR RECONSIDERATION,

by e-mail in PDF format as follows:

William W. Binek
Public Service Commission
wbinek@state.nd.us

Scott Knudsvig
Counsel for NDTC
sknudsvig@srt.com

Tom Moorman
Counsel for NDTC
tmoorman@woodsaitken.com

Donald Negaard
Counsel for NDTC
donn@srt.com

Hon. Al Wahl
awahl@state.nd.us

Jeanne Feist
Jeanne Feist

Subscribed and sworn to before me June 2, 2006.

Notary Public
Burleigh County, North Dakota

SUZANNE M CAHILL
Notary Public
State of North Dakota
My Commission Expires Jan 29, 2011

Scott, Sandi L.

From: Binek, William W.
Sent: Monday, June 05, 2006 7:59 AM
To: Scott, Sandi L.
Subject: FW: Memorandum-Petition for Reconsideration-Midcontinent Communications vs North Dakota Telephone Company, PU-05-451

From: Don Negaard [mailto:donn@srt.com]
Sent: Thursday, June 01, 2006 9:57 AM
To: Binek, William W.
Cc: 'Tom Moorman'
Subject: RE: Memorandum-Petition for Reconsideration-Midcontinent Communications vs North Dakota Telephone Company, PU-05-451

Mr. Binek,

Just one item for your attention. In reviewing the staff memo of yesterday, I don't believe the top paragraph on page 3 which says " NDTC argues the law does not permit the Commission to terminate the exemption to only a single competitor." is a correct statement of NDTC's position.

I believe we asserted this issue is also subject to the same due process concerns and that the law does not allow it to be expanded beyond the competitor's request. We also stand by the brief we had filed.

Thank you.

From: Binek, William W. [mailto:wbinek@nd.gov]
Sent: Wednesday, May 31, 2006 9:10 AM
To: -Grp-PSC Commissioners
Cc: -Grp-PSC Public Utilities; -Grp-PSC Legal; Don Negaard; Patrick W. Durick
Subject: Memorandum-Petition for Reconsideration-Midcontinent Communications vs North Dakota Telephone Company, PU-05-451

<<Memorandum-Petition for Reconsideration.Doc>>
Here is the staff memorandum for the 6-01-06 work session.

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

June 1, 2006

Mr. Patrick W. Durick
Pearce & Durick
P. O. Box 400
Bismarck, ND 58502-0400

Mr. Don Negaard
Pringle & Herigstad, P.C.
P. O. Box 1000
Minot, ND 58702-1000

Re: Request for Court Reporter
Case No. PU-05-451
Midcontinent Communications
North Dakota Telephone Company
Rural Exemption
Investigation

Dear Mr. Durick and Mr. Negaard:

The hearing in the above case has been scheduled for July 10, 2006, beginning at 9 a.m., in the Commission Hearing Room. The Commission will tape record the hearing. If parties would like a court reporter present at the hearing they may do so, and may make their own arrangements. However, if parties would like the Commission to arrange for a court reporter please notify the Commission in writing within ten days of receipt of this letter and our office will make the necessary arrangements.

Parties will pay all costs associated with the court-reporting service.

If you have any questions, please contact us.

Sincerely,

William W. Binek
Hearing Administrator

120 PU-05-451 Pages: 1

Letter to parties regarding need for court reporter
by Public Service Commission
06/01/2006 CC: Comm Legal Illona, Pat, Annette . .

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

June 1, 2006

Mr. Allen C. Hoberg
Office of Administrative Hearings
1707 North 9th Street, Lower Level
Bismarck, ND 58501

RE: Case No. PU-05-451
Midcontinent Communications/ND Telephone Company
Rural Exemption
Investigation

Dear Mr. Hoberg:

On April 26, 2006 the Commission issued its Findings of Fact, Conclusions of Law, and Order in this proceeding. The Commission ordered NDTC to begin providing retail services at wholesale prices for resale under an interconnection agreement no later than 90 days from the date of the order. The Commission also ordered that a further hearing be held to determine an interim wholesale discount rate in the event the parties are unable to negotiate a rate and to determine the need for an associated true-up provision.

Enclosed is a request for an administrative law judge in the above case. The Commission has scheduled a hearing for July 10, 2006, beginning at 9 a.m. (CDT) in the Commission's Hearing Room, 12th Floor, State Capitol, Bismarck. The administrative law judge will serve as a procedural law judge, a court reporter may be present, and the hearing will be tape recorded. A copy of the case is enclosed.

Please provide the Commission with a copy of any filings issued by your office in this matter. If you have any questions, please contact me. Thank you.

Sincerely,

William W. Binek
Hearing Administrator

/sls
Enclosure

c: Patrick Durick
J.G. Harrington
Don Negaard/Scott M Knudsvig
Thomas J. Moorman

119 PU-05-451 Pages: 1

Letter to Allen Hoberg re request for Administrative Law Judge
by Public Service Commission
06/01/2006 CC: Comm Legal Illona, Pat, Annette . .

REQUEST FOR ADMINISTRATIVE LAW JUDGE--APPEAL, APPLICATION, OR PETITION

NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS

SFN 17819 (Rev. 03-2001)

Name of Agency, Board, or Commission
Public Service Commission

The above named agency, board, or commission requests designation of an administrative law judge from the Office of Administrative Hearings for the hearing in Case No. PU-05-451, Midcontinent Communications/North Dakota Telephone Company, Rural Exemption Investigation. Hearing is set for July 10, 2006, at 9 a.m. in the Commission Hearing Room, 12th Floor, State Capitol.

(e.g., application of [name], appeal of [name], petition of [name]). Authority for the administrative action is found in Title 49 (North Dakota Century Code and/or North Dakota Administrative Code).

Please attach related documents and correspondence.

The administrative action is more fully described as follows:
On 4/26/06 the Commission issued its Findings of Fact, etc. in this proceeding. The Commission ordered that a further hearing be held to determine an interim wholesale discount rate if the parties are can't negotiate a rate/determine the need for associated true-up provision.

It requests designation of an administrative law judge (please check one):

- ☐ **To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.**
- ☑ **To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).**
- ☐ **To conduct the hearing, issue findings of fact, conclusions of law, and a final order.**

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Please list parties, including the agency if it is a Party, and Representation [attorney (or other)] if known, or Agency Contact: (Attach separate list if necessary.)

AGENCY Public Service Commission	Address 600 E Blvd. Ave., Dept. 408, Bismarck, ND	Telephone Number 328-2400
Representation William W. Binek, Chief Counsel	Address Same as above	Telephone Number 328-4088
PARTY See attached	Address	Telephone Number
Representation	Address	Telephone Number
PARTY	Address	Telephone Number
Representation	Address	Telephone Number

Additional Comments

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person William W. Binek, Hearing Administrator	Date 6-1-06
Signature of Requesting Person X	Telephone Number 328-4088

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

List of Parties

Company	Counsel
Midcontinent Communications Attn: Mary Lohnes 410 S Phillips Avenue Sioux Falls, SD 57104-6824	Patrick Durick Pearce & Durick P. O. Box 400 Bismarck, ND 58502 (701) 223-2890 J G. Harrington Dow, Lohnes & Albertson, PLLC 1200 New Hampshire Ave. NW, Ste. 800 Washington, DC 20036
North Dakota Telephone Company Attn: David Dircks P. O. Box 180 Devils Lake, ND 58301-0180	Don Negaard Scott M. Knudsvig Pringle & Herigstad, P. C. P. O. Box 1000 Minot, ND 58702-1000 (701) 852-0381 Thomas J. Moorman Woods & Aitken LLP 2154 Wisconsin Ave. NW, Suite 200 Washington, DC 20007 (202) 944-9501

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of June, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Further Hearing

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7004 2510 0004 8815 3640

Dave Dircks Manager
North Dakota Telephone Company
P O Box 180
Devils Lake ND 58301-0180
Cert. No. 7004 2510 0004 8815 3657

Thomas J Moorman
Kraskin Moorman & Cosson LLC
2120 L St NW Ste 520
Washington D C 20037
Cert. No. 7004 2510 0004 8815 3664

J G Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington D C 20036
Cert. No. 7005 1820 0002 3243 3116

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 1820 0002 3243 3123

Scott M Knudsvig
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 1820 0002 3243 3130

Sharon Helbling further deposes and says that on the **1st day of June, 2006,** she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular

mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **1st day of June, 2006**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of June, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of:

Notice of Further Hearing

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **1st day of June, 2006**.

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

Sandra L. Scott
Notary Public

SEAL

wbrudvik@ohnstadlaw.com
William Brudvik

mariep@telcogroupinc.com
Marie Pierre-Paul

cheryl.robins@thomson.com
Cheryl Robins

dennis.kelley@reconex.com
Dennis Kelley
1-800-Reconex Inc
2500 Industrial Ave
Hubbard OR 97032

ffarm@wtc-mail.net
Ann Faught
Absaraka Co-op Tele Co

Absaraka ND 58002

jlchapman@acomminc.com
Jerry Chapman
Acomm Inc
510 1st Ave N Ste 203
Minneapolis MN 55403-0343

judy.messenger@paetec.com
Judy Messenger
American Long Lines Inc
1 PaeTec Plaza
600 Willowbrook Office Pk
Fairport NY 14450

jcremer@bantzlaw.com
James Cremer
Bantz Gosh & Cremer LLC
305 6th Ave SE
Aberdeen SD 57402-0970

rharper@bepc.com
Ron Harper
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

colson@bepc.com
Clare Olson
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

dbulawa@bektel.com
Derrick Bulawa
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

dan.meldazis@broadwing.com
Dan Meldazis
Broadwing Communications LLC
200 N LaSalle 10th Fl
Chicago IL 60601

diane.peters@globalcrossing.com
Diane Peters
Budget Call Long Distance Inc
1080 Pittsford Victor Rd
Pittsford NY 14534

aeconomou@mettel.net
Andoni Economou
Business Productivity Solutions Inc
44 Wall St 6th FL
New York NY 10005

jean.houck@btitelecom.net
Jean Houck
Business Telecom Inc
7037 Old Madison Pike Ste 400
Huntsville AL 35806

carp1091@qwest.net
Robert Colton
Carpenters Union
217 S Mandan St
Bismarck ND 58504-5516

astevens@czn.com
Scott Bohler
Citizens Telecomm Co of Minnesota
3 High Ridge Park
Stamford CT 06905

michael_nelson@cable.comcast.com
Michael Nelson
Comcast Business Communications Inc
183 Inverness Dr W
Englewood CO 80112

pamela.hintz@ctcnet.com

Computer Telephone Corp
220 Bear Hill Rd
Waltham MA 02451-1101

mannawiz@pacbell.net
Larry Manna
Compuwiz
1012 Industrial Blvd
South Lake Tahoe CA 96150

bryan@consolidatedtelcom.com
Bryan W Personne
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

ken@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

paul@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

keithl@daktel.com
Keith Larson
Dakota Central Tele Coop
PO Box 299
Carrington ND 58421-0299

mjrasher@msn.com
Mary Jane Rasher
DCI Group

tschilling@drtel.com
Troy Schilling
Dickey Rural Communications Inc
PO Box 69
Ellendale ND 58436-0069

tschilling@drtel.com
Troy Schilling
Dickey Rural Services Inc
P O Box 69
Ellendale ND 58436

tschilling@drtel.com
Troy Schilling
Dickey Rural Telephone Cooperative
PO Box 69
Ellendale ND 58436-0069

lhankins@covad.com
Lynn Hankins
DIECA Communications Inc
3420 Central Expy
Santa Clara CA 95051-0703

bgipson@vartec.net
Becky Gipson
Excel Telecommunications Inc
2440 Marsh Lane
Carrollton TX 75006

astevens@czn.com

Frontier Communications of America Inc
4 Triad Ctr Ste 200
Salt Lake City UT 84180

glenn.richards@shawpittman.com
Glenn Richards
Glenn Richards
ShawPittman
2300 N St NW

petra.malik@globalcrossing.com
Petra Malik
Global Crossing North American Network
1080 Pittsford Victor Rd
Pittsford NY 14534

petra.malik@globalcrossing.com
Petra Malik
Global Crossing Telecommunications Inc
1080 Pittsford Victor Rd
Pittsford NY 14534

dsaggau@GREnergy.com
Davic Saggau
Great River Energy
P O Box 800
Elk River MN 55330-0800

cooperstown@mlgc.com
Ray Brown
Griggs County Telephone Co
P O Box 506
Cooperstown ND 58425-0506

rlaqua@rrv.net
Ronald Laqua
Halstad Telephone Company
PO Box 55
Halstad MN 56548-0055

cstein@dominionbusinessgroup.com
Chris Stein
Horizon Telecom Inc
3993 Howard Hughes Pkwy Ste 250
Las Vegas NV 89109

rlaqua@rrv.net

HTC Services Inc
P O Box 55
Halstad MN 56548

bjohnson@ideaone.com
Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

carl.billek@corp.idt.net
Carl Wolf Billek
IDT America Corp
520 Broad St
Newark NJ 07102-3111

jamie@ignus.com
Jamie Kubik
Ignus Inc
855 45th St SW Ste 11
Fargo ND 58103-1036

service@inmatecallingsolutions.com

Inmate Calling Solutions LLC
5883 Rue Ferrari
San Jose CA 95138

gene.curtis@integratelecom.com
Gene Curtis
Integra Telecom of North Dakota Inc
745 45th St SW Ste C
Fargo ND 59103

marsha.pokorny@ildmail.com
Marsha Pokorny
Intellicall Operator Services

kander@ictc.com
Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

dave_read@inter-tel.com
Dave Read
Inter-Tel NetSolutions Inc
885 Trademark Dr
Reno NV 89511

nlange@iwla.org
Nancy Lange
Izaac Walton League of America
1619 Dayton Ave Ste 202
St Paul MN 55104

jamesval@jamesvalley.com

James Valley Coop Telephone Co
P O Box 260
Groton SD 57445

sales@kmavradio.com

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

francie@talk.com
Francie McComb
LDMI Telecommunications Inc
6805 Route 202
New Hoee PA 18938

loretel@loretel.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

regulatory@matrixbt.com
Greg Taylor
Matrix Telecom Inc
300 N Meridian Ste 200-North
Oklahoma City OK 73107

foss@btinet.net
Marilyn Foss
MCI
P O Box 2216
Bismarck ND 58502-2216

gerrya@midrivers.com
Gerry Anderson
Mid-Rivers Telephone Coop Inc
PO Box 280
Circle MT 59215-0280

carols@midstatetel.com
Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

carols@midstatetel.com
Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

2kathyg@nemontel.net
Kathy Greenwood
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

karen.collins@mdu.com; tamie.aberle@mdu.com
Karen Collins
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

sbunn@mlgc.com
Shelie Bunn
Moore & Liberty Telephone Co

Enderlin ND 58027

ndpc@btinet.net

N D Petroleum Council
PO Box 1395
Bismarck ND 58502-1395

jpaczkowski@state.nd.us
John Paczkowski
N D Water Commission
900 E Boulevard
Bismarck ND 58505

dhill@ndarec.com
Dennis Hill
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

pschaner@ndarec.com
Patti Schaner
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

2kathyg@nemontel.net
Kathy Greenwood
Nemont Telephone Cooperative Inc

Scobey MT 59263

jsilveira@netlojix.com
Janet Medeiros-Silveira
NetLoqix Telecom Inc
104 W Anapamu St Ste C
Santa Barbara CA 93101

bslaughter@newaccess.cc
Brandi Franzen
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

prieck@newaccess.cc
Pam Rieck
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

rer@norlight.com
Robert E Rogers
NorLight Inc
275 N Corporate Dr
Brookfield WI 53045

laurie.willman@nbne.info
Laurie Willman
North By NortheastCom LLC

kathyy@ndtel.com
Kathy Young
North Dakota Long Distance
P O Box 180
Devils Lake ND 58301-0180

stevedl@srttel.com
Steven Lysne
North Dakota Network Co
P O Box 2027
Minot ND 58702-2027

pat@ndta.net
Patricia Gisinger
North Dakota Telephone Assoc
PO Box 2614
Bismarck ND 58502-2614

kathyy@ndtel.com
Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

dwights@nccray.com
Dwight Schmitt
Northwest Communications Coop
PO Box 38
Ray ND 58849-0038

njureidini@noslv.com
Naz Jureidini
NOS Communications
4380 Boulder Hwy
Las Vegas NV 89121

mary.buley@onvoy.com
Mary Buley
Onvoy Inc
300 South Highway 169, Ste 700
Minneapolis MN 55426

jill.froman@excellsvcs.com
Jill Froman
Operator Service Company LLC
5302 Avenue Q
Lubbock TX 79412

ddunning@polarcomm.com
David Dunning
Polar Commun Mut Aid Corp
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telcom Inc
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telecommunications Inc
PO Box T
Park River ND 58270

donn@srt.com
Don Negaard
Pringle and Herigstad P C
PO Box 1000
Minot ND 58702-1000

jbrown@vcomsolutions.com
Jenna Brown
QuantumShift Communications Inc
12657 Alcosta Blvd Ste 418
San Ramon CA 945830

sschwan@qwest.com
Suzy Schwandt
Qwest Corporation

kblicke@qwest.com
Kent Blickensderfer
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

smacint@qwest.com
Scott Macintosh
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

richard.buckley@qwest.com
Richard J Buckley
Qwest Corporation
1801 California St Rm 4710
Denver CO 80202

jason.topp@qwest.com
Jason Topp
Qwest Services Corporation
200 S 5th St Rm 2200
Minneapolis MN 55402

areyes@telfile.com
Ayanery Reyes
QX Telecom LLC
230 5th Ave Ste 800
New York NY 10001

pam@tnics.com
Pamela Harrington
RC Communications Inc
PO Box 197
New Effington SD 57255-0197

jeffolson@rrt.net
Jeff Olson
Red River Rural Tele Assoc
PO Box 136
Abercrombie ND 58001-0136

royce@restel.net
Royce Aslakson
Reservation Telephone Cooperative

Parshall ND 58770

marciab@RTC.coop
Marcia Burckhard
Reservation Telephone Cooperative

Parshall ND 58770

shaneh@restel.net
Shane Hart
Reservation Telephone Cooperative

Parshall ND 58770

pam@tnics.com
Pamela Harrington
Roberts County Telephone Coop Assoc

New Effington SD 57255

aimeed@nemontel.net

Sagebrush Cellular Inc

kb9534@sbcld.com
Karen Brinkman
SBC Long Distance LLC
5850 W Las Positas Blvd
Pleasanton CA 94558

diane.c.browning@mail.sprint.com
Diane C Browning
SPRINT COMMUNICATIONS COMPANY L.P.
6450 SPRINT PARKWAY KSOPHN0212-2A511
OVERLAND PARK KS 66251-6100

dloer@minnkota.com
David Loer
Square Butte Elec Coop
PO Box 13200
Grand Forks ND 58208-3200

jasonrg@srttel.com
Jason Gemar
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

julieel@srttel.com
Julie Lizotte
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

stevedl@srttel.com
Steve Lysne
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

christm@srttel.com
Chris Morsefield
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

janehp@srttel.com
Jane Petersen
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

johnar@srttel.com
John Reiser
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

kimrw@srttel.com
Kim Weydahl
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

mdickerson@state.nd.us
Marcy Dickerson
State Tax Department
State Capitol
Bismarck ND 58505

francie@talk.com
Francie McComb
Talk America Inc
6805 Route 202
New Hope PA 18938

lwh@thlglaw.com
Loubna W Haddad
The Helein Law Group LLP
8180 Greensboro Dr Ste 700
McLean VA 22102

noel_poe@nps.gov
Hala Bates
Theodore Roosevelt National Park

gary.barlow@flyingj.com
D Brett Sanford
Ton Services Inc
4185 Harrison Blvd Ste 301
Ogden UT 84403

compliance@epowerc.com
Lourdes Vinas
TransWorld Network Corp
7702 Woodland Ctr Blvd Ste 50
Tampa FL 33614-2411

cdr-agency-relations@mci.com
Dan Hernandez
TTI National Inc
P O Box 3187
Cedar Rapids IA 52406-3187

kcarlson@utma.com
Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

lahall@usgs.gov
Lenora Hall
U S Geological Survey

kjvannin@usgs.gov
K Vannin
U S Geological Survey

kimm.partridge@ucn.net
Kimm Partridge
UCN Inc
14870 S Pony Express Rd
Bluffdale UT 84065

kcarlson@utma.com
Kenneth Carlson
United Telephone Mut Aid Corp
P O Box 729
Langdon ND 58249-0729

mspead@universalservice.org
Michael Spead
USAC
2120 L St NW Ste 600
Washington DC 20037

kander@ictc.com
Keith Anderson
Valley Communications Inc
P O Box 8
Nome ND 58062

bgipson@vartec.net
Becky Gipson
VarTec Solutions Inc
2440 Marsh Lane
Carrollton TX 75006

bgipson@vartec.net
Becky Gipson
VarTec Telecom Inc
2440 Marsh Lane
Carrollton TX 75006

rhoudek@venturecomm.net
Randy Houdek
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

anthony.gillman@verizon.com
Anthony Gillman
Verizon Select Services Inc
P O Box 110
Tampa FL 33601-0110

anthony.gillman@verizon.com
Anthony Gillman
Verizon Select Services Inc
P O Box 110
Mailcode: FLTC0007
Tampa FL 33601-0110

westriver@sdplains.com

West River Coop Telephone Co
801 Coleman Ave PO Box 39
Bison SD 57620-0039

bonniek@westriv.com
Bonnie Krause
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

mickg@westriv.com
Mick Grosz
West River Telecommunications Cooperati
PO Box 467
Hazen ND 58545-0467

kathy.hough@wiltel.com
Kathy Hough
WilTel Communications LLC
1 Technology Ctr
Tulsa OK 74103

windfall_resources@sbcglobal.net
Robert K Lock
Windfall Resources International LLC
7144 BN Harlem Ave Ste 323
Chicago IL 60631

paulihland@wtc-mail.net
Paul Ihland
Wolverton Telephone Company
P O Box 270
Park River ND 58270-0270

mark.nisbet@xcelenergy.com
Mark Nisbet
Xcel Energy
PO Box 2747
Fargo ND 58108-2747

rex.knowles@xo.com
Rex Knowles
XO Communications Services Inc
111 E Bdwy Ste 1000
Salt Lake City UT 84111

Diana Stevens

One Verizon Place
Alpharetta GA 30004-8511

1 Plus Savings Inc
36072 Jefferson Ave
Harrison Township MI 48045

Jennifer Sikes
1-800 Reconex
2500 Industrial Ave
Hubbard OR 97032

Patrick Summers
360NETWORKS (USA) INC.
867 COAL CREEK CIRCLE SUITE 160
LOUISVILLE CO 80027

3U Telecom Inc
1802 N Carson St Ste 212-2683
Carson City NV 89701

800 Response Information Services LLC
200 Church St
Burlington VT 05402

Acceris Management & Acquisition LLC
60 S 6th St Ste 2535
Minneapolis MN 55402-4406

Access Point Inc
1100 Crescent Green Ste 10 9
Cary NC 27511

Accessline Communications Corporation
11201 SE 8th St Ste 200
Bellevue WA 98004

ACCXX Communications LLC
4035 Tampa Rd Ste 6000
Oldsmar FL 34677

ACN Communications Services Inc
32991 Hamilton Ct
Farmington Hills MI 48334

Acomm Inc
5701 Shingle Crk Pkwy Ste 550
Brooklyn Center MN 55430-2467

Affinity Network Incorporated
4380 Boulder Hwy
Las Vegas NV 89121

Airespring Inc
6060 Sepulveda Blvd Ste 220
Van Nuys CA 91411-2512

Airnex Communications Inc
3000 Executive Pkwy Ste 230
San Ramon CA 94583

Alliance Group Services Inc
1221 Post Rd E
Westport CT 06880-5430

All-Star Acquisition Corporation
7361 Calhoun Pl Ste 650
Derwood MD 20855-2775

Alltel Communications Inc
1 Allied Dr
Little Rock AR 72202

Alternate Communications Technology Inc
1398 N Shadeland Ave Ste 2233
Indianapolis IN 46219

Americatel Corporation
4045 NW 97th Ave
Miami FL 33178

Kelly Franks
Amerivision Communications Inc
201 NW 63rd St Ste 200
Oklahoma City OK 73116

Arch Communications Enterprises LLC
6910 Richmond Hwy #80
Alexandria VA 22306-1801

Arch Paging Inc
1800 W Park Dr
Westborough MA 01581

Arch Wireless Inc
6910 Richmond Hwy #80
Alexandria VA 22306-1801

ASC Telecom Inc
6391 Sprint Pkwy
Overland Park KS 66251-6100

Associated Network Partners Inc
3130 Pleasant Run
Springfield IL 61707-6347

Association Administrators Inc
180 E Main St
Smithtown NY 11787

Kimberly Nielsen
AT&T Wireless
7277 164th Ave NE RTC-1
Redmond WA 98052

ATX Telecommunications Services Ltd
50 Monument Rd
Bala Cynwyd PA 19004

BAK Communications LLC
1108 E 17th St
Santa Ana CA 92701

Basin Telecommunications Inc
1717 E Interstate Ave
Bismarck ND 58503-0564

BCN Telecom Inc
550 Route 202-206 2nd Fl
Bedminster NJ 07921

Bell Atlantic Communications Inc
1320 N Courthouse Rd 9th Fl
Arlington VA 22201

JOHN BROTEN
BELL ATLANTIC COMMUNICATIONS, INC.
1320 NORTH COURT HOUSE ROAD
ARLINGTON VA 22201

Robin H Taylor
BellSouth Long Distance Inc
400 Perimeter Ctr Terr Ste 350
Atlanta GA 30346

Better World Telecom Inc
11921 Freedom Dr Ste 550
Reston VA 20194

Angel Sotomayer
Bismarck MSA LImited Partnership
180 Washington Valley Rd
Bedminster NJ 07921-2120

Blackstone Communications Company
11600 NW 34th St
Miami FL 33178

Broadwing Communications LLC
1122 Capital of Texas Highway S
Austin TX 78746

Budget Phone, Inc.
6901 W 70th St
Shreveport IL 71129

BullsEye Telecom, Inc.
25900 Greenfield Rd Ste 330
Oak Park MI 48237

Craig Konrad
Business Discount Plan Inc
1 World Trade Ctr Ste 800
Long Beach CA 90831

Business Network Long Distance Inc
1400 16th St Ste 400
Denver CO 80202

Buzz Telecom Corporation
8380 Louisiana St
Merrillville IN 46410

Scott Geston
Cable One of Fargo
P O Box 10757
Fargo ND 58106-0757

Century Telecommunications Inc
P O Box 4065
Monroe LA 71211-5065

Cincinnati Bell Any Distance Inc
201 E 4th St
Cincinnati OH 46202

Clear World Communications Corporatio
3601 S Harbor Blvd
Santa Ana CA 92704

Robert Fallan
Coast International Inc
14303 W 95th St
Lenexa KS 66215-5210

Cognigen Networks Inc
6405 218th St SW Ste 305
Mountlake Terrace WA 98043-2180

Coleman Enterprises Inc
6053 Hudson Rd #110
Woodbury MN 55125

Beth Choroser
Comcast Business Communications Inc
1500 Market St
Philadelphia PA 19102

CommPartners LLC
3291 N Buffalo Dr Ste 8
Las Vegas NV 89129

Courtney Maroon
Communications Billing Inc
P O Box 40149
Bay Village OH 44140-0149

C Hurley Cox
Communications Network Billing Inc
6701 Democracy Blvd Ste 300
Bethesda MD 20817

CommuniGroup of K C Inc
6950 W 56th St
Mission KS 66202

Computer Integrated Communications Inc
8502 Bells Mill Rd
Potomac MD 20854-4071

Computer Network Technology Corp
6000 Nathan Ln N
Minneapolis MN 55442

Comtech 21 LLC
1 Barnes Park S
Wallingford CT 06492

Consolidated Billing Provider LLC
7 Shingle Oak Dr
Voorhees NJ 08043

Scott Kitchen
Consolidated Comm Operator Services Inc
350 S Loop 336 W
Conroe TX 77304

Consolidated Comm Telecom Services Inc
121 S 17th St
Mattoon IL 61938

Consolidated Communications Corp
P O Box 1408
Dickinson ND 58602-1408

Consolidated Communications Networks
507 S Main
Dickinson ND 58601

Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

Contact Communications
937 W Main St
Riverton WY 82501

Convergia Inc
237 Hymus Blvd
Point-Claire Quebec CA H9R 5C7

Will Kaul
Cooperative Power Association
P O Box 800
Elk River MN 55330-0800

Corporate Calling Services Inc
3960 Howard Hughes Pk
5th Fl #5001F
Las Vegas NV 89109-5972

Corporate Communications Inc
2150 32nd Ave S
Grand Forks ND 58201

Anthony Barrett
Covista Inc
4803 Hwy 58 N
Chatanooga TN 37416

Custom Teleconnect Inc
3111 S Valley View Ste E-120
Las Vegas NV 89102

Cybertel Communications Corp
9444 Waples ST Ste 290
San Diego CA 92121-2985

D D D Calling Inc
2400 Augusta Ste 255
Houston TX 77057

Keith Larson
Dakota Central Telecom I
PO Box 299
Carrington ND 58421-0299

William Jackson
Dakota Justice
38 8th Ave W
Dickinson ND 58601

Daktel Communications LLC
P O Box 299
Carrington ND 58421-0299

Dave Dircks
DCN LLC
P O Box 180
Devils Lake ND 58301-0180

DelTel Inc
27071 Aliso Creek Rd Ste 150
Aliso Viejo CA 92656-5323

Dialaround Enterprises Inc
30-50 Whitestone Expwy 1st Fl Ste 102
Flushing NY 11354

Dial-Thru Inc
17383 Sunset Blvd Ste 350
Pacific Palisades CA 90272-4195

Digital Telecommunications Inc
111 Riverfront Ste 305
Winona MN 55987

DSLnet Communications LLC
545 Long Wharf Dr
New Haven CT 06511

Eagle Telecom Inc
614 S 8th St Ste 335
Philadelphia PA 19147

Easton Telecom Services Inc
3046 Brecksville Rd #A
Richfield OH 44286-9399

Easton Telecom Services LLC
Summit II Unit A
3406 Brecksville Rd
Richfield OH 44286

Encompass Communications LLC
119 W Tyler Ste 260
Longview TX 75601

Enhanced Communications Group LLC
312 E Delaware Ave
Bartlesville OK 74003-3630

Enhanced Communications Network Inc
1031 S Glendora Ave
West Covina CA 91790

Entrix Telecom Inc
520 Broad St
Newark NJ 07102

Epixtar Communications Corp
11900 Biscayne Blvd Ste 262
Miami FL 33181

erbia Network Inc
7901 Ariel Way
McLean VA 22102

Ernest Communications Inc
5275 Triangle Pkwy Ste 150
Norcross GA 30092

Exergy Group LLC
1550 W 84th St Ste 50
Hialeah FL 33014

Chere Heintzmann
Extend America Inc
1101 E Front Ave
Bismarck ND 58504-5654

Farstad Oil Inc
P O Box 1842
Minot ND 58701

Lawrence Freedman
Fleischman & Walsh
1919 Pennsylvania Ave NW Ste 600
Washington DC 20006-3420

France Telecom Corporate Solutions LL(
2355 Dulles Corner Blvd Bldg 3
Herndon VA 20171

FreedonStarr Communications Inc
7985 Santa Monica Blvd #7
West Hollywood CA 90046

Funding Our Future LLC
1900 Wellesley Ave
St Paul MN 55105

Gates Communications Inc
1100 Olive Way #951
Seattle WA 98101

Gerlach Enterprises Inc
3002 Fiechtner Dr S Ste 1
Fargo ND 58103-2387

Global Communications Consulting Corp
2 Greenwood Sq Ste 110
3331 St Rd
Bensalem PA 19020-2052

Global Tel*Link Corporation
2609 Cameron St
Mobile AL 36607-3104

Globalcom Inc
333 West Wacker Ste 1500
Chicago IL 60606

GLOBCOM INCORPORATED
2100 Sanders Rd Ste 150
Northbrook IL 60062

Go Solo Technologies Inc
5053 Ocean Blvd #54
Sarasota FL 34242

Gold Line Telemanagement Inc
180 W Beaver Creek Rd
Richmond Hill Ontari CA L4B 1B4

Granite Telecommunications LLC
100 Newport Ave Ext
Quincy MA 02171

Group Long Distance Inc
1 Cavalier Ct
Ringoes NJ 08551-0534

GTC Telecom
3151 Airway Ave Ste p_3
Costa Mesa CA 92626

Houlton Enterprises Inc
2201 W Bdwy Ste 1
Council Bluffs IA 51501

IBFA Acquisition Company LLC
1850 Howard St Unit C
Elk Grove Village IL 60007

Julia Waysdorf
ICG Telecom Group Inc
161 Inverness Dr W
Englewood CO 80112

Infone LLC
11200 Murray Scholls Place
Beaverton OR 97007-9702

Intercontinental Communicatiosn Group
420 Lexington Ave Ste 518
New York NY 10170

Ken Hanks
International Telcom Ltd
417 2nd Ave W
Seattle WA 98119

International Telemanagement Group Inc
206 E Market St
Lima OH 45801

David A. Huberman
Intrado Communications Inc
1601 Dry Creek Dr
Longmont CO 80503-6493

Ionex Communications North Inc
2300 Main St Fl 6
Kansas City MO 64108-2415

IPVoice Communications Inc
14860 Montfort Dr Ste 210
Dallas TX 75254

Nanette Edwards
ITC DeltaCom Communications Inc
7037 Old Madison Pike NW #400
Huntsville AL 35806-2107

KDDI America Inc
375 Park Ave 7th Fl
New York NY 10152

KMC Data LLC
1545 Route 206
Bedminster NJ 07921

Myer Shark
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

Thomas K Crowe
Law Offices of Thomas K Crowe PC
1250 24th St NW Ste 300
Washington DC 20037

LCI Telemanagement Corp
4650 Lakehurst Ct
Dublin OH 43017

LCR Telecommunications LLC
100 West Big Beaver Rd Ste 200
Troy MI 48084

LDC Telecommunications Inc
10012 N Dale Mabry Hwy
Tampa FL 33618

Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021

Lightyear Network Solutions LLC
201 E Main St Ste 1000
Lexington KY 40507

Local Telcom Holdings LLC
485 Madison Ave 15th Fl
New York NY 10022-5803

Jan Lowe
Long Dist Consolidated Billing Co
7411 Dixie Hwy Ste 211
Clarkston MI 48346

Long Distance Billing Services Inc
436 Lynchburg Ave
Brookneal VA 24528

Main Street Telephone Company
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Maxcess Inc
P O Box 951419
Lake Mary FL 32795-1419

McGraw Communications Inc
228 E 45th St 12th Fl
New York NY 10017

MCI Worldcom Network Services Inc
22001 Loudoun Cty Pkwy
Ashburn VA 20147-6105

MCImetro Access Transmission Services
22001 Loudoun County Pkwy
Ashburn VA 20147-6105

McKenzie Consolidated Telecom LLC
P O Box 1408
Dickinson ND 58602-1408

McLeodUSA
1 Martha's Way
Hiawatha IA 52233-2402

Mercury Long Distance INc
2288 Gunbarrel Rd Stte 111-269
Chattanooga TN 37421

Metropolitan Telecomm of ND Inc
44 Wall St 6th Fl
New York NY 10005

MGEN Services Corp
2510 N Red Hill Ave
Santa Ana CA 92705

Micro-Comm Inc
2612 Cameron
Mobile AL 36670-0461

Midcontinent Communications
410 South Phillips Ave
Sioux Falls SD 57104

Mid-Rivers Long Distance Inc
106 2nd Ave S
Circle MT 59215

Minnesota Independent Equal Access Co:
300 S Hwy 169 Ste 700
Minneapolis MN 55426

Miracle Communications Inc
725 Lakefield Rd Ste G
Westlake Village CA 91361-5915

Mike Strand
MITS
PO Box 5237
Helena MT 59604-5237

Bruce Imsdahl
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

National Access Long Distance Inc
2055 Gateway Place Ste 400
San Jose CA 95110

National Directory Assistance LLC
12700 Shelbyville Rd Danville Bldg
Louisville KY 40243

Jim Arbury
National Multi Housing Council
1850 M St NW Ste 540
Washington DC 20036

National Professional Teleservices LLC
14001 63rd Way N
Clearwater FL 33760

National Telecom Inc
2235 E Flamingo Rd Ste 405
Las Vegas NV 89119

Harlan Fuglesten
ND Association of RECs
PO Box 727
Mandan ND 58554-0727

Lisa K Fair-McEvers
ND Labor Dept
600 E Blvd Ave

Dave Crothers
NDATC
Box 1144
Mandan ND 58554-1144

NECC Telecom Inc
605 N Shore Dr Unit 101-103
Jeffersonville IN 47130

Nemont Communications Inc
P O Box 600
Scobey MT 59263

Net One International Inc
4037 Metric Dr
Winter Park FL 32792-6808

Netlojix Telecom Inc
104 W Anapamu St Ste C
Santa Barbara CA 93101

Network Billing Systems LLC
155 Willowbrook Blvd
Wayne NJ 07470

Network Communications International Co
606 E Magrill St
Longview TX 75601

Network Enhanced Technologies Inc
700 S Flower St Ste 420
Los Angeles CA 90017-4106

Network Operator Services Inc
119 West Tyler Ste 260
Longview TX 75601

Network PTS Inc
14472 Wicks Blvd
San Leandro CA 94577

Network Service Billing Inc
7251 W Lake Mead Blvd Ste 300
Las Vegas NV 89128

Network US Inc
1842 Centre Point Dr Ste 128
Naperville IL 60563-4851

NetworkIP LLC
119 West Tyler St Ste 168
Longview TX 75601

New Century Telecom Inc
8180 Greensboro Dr #700
McLean VA 22102

New Edge Network Inc
3000 Columbia House Blvd Ste 106
Vancouver WA 98661

Bob Edgerly
Nextel West Corp
2001 Edmund Halley Dr
Reston VA 20191

NobelTel LLC
5759 Fleet St
Carlsbad CA 92008

Norlight Inc
13935 Bishops Dr
Brookfield WI 53005-6605

Cheryl Jung
Norstan Network Services Inc
5101 Shady Oak Rd
Minnetonka MN 55343

Angel Sotomayor
North Dakota 5-Kidder Ltd Ptnshp
180 Washington Valley Rd
Bedminster NJ 07921-2120

Carmine Russo
North Dakota Big Sky Telecom
374 Ansin Blvd
Hallandale FL 33009

Dave Dircks
North Dakota Long Distance Inc
P O Box 180
Devils Lake ND 58301-0180

North Dakota Long Distance LLC
104 Eastwood Dr
Grafton ND 58237

Nosva Limited Partnership
4380 Boulder Hwy
Las Vegas NV 89121-3002

NPCR Inc
4500 Carillon Pt
Kirkland WA 98033

OCMC Inc
801 Congressional Blvd
Carmel IN 46032

OLS Inc
1030 Cambridge Sq Ste E
Alpharetta GA 30201

One Call Communications Inc
801 Congressional Blvd
Carmel IN 46032

Opcom Inc
512 N 29th St
Billings MT 59101-1128

Brad Van Leur
OrbitCom Inc
1701 N Louise Ave
Sioux Falls SD 57107

OU Connection Inc
13 E 4th Ave
Ada MN 56510

Ozark Telecom Inc
1115 Mill St
Camden SC 29020

Pacific Centrex Services Inc
6855 Tujunga Ave
North Hollywood CA 91605

PAETEC Communications Inc
1 PaeTec Plaza
600 Willowbrook Office Pk
Fairport NY 14450

Phone1 Inc
100 N Biscayne Blvd 25th FL
Miami FL 33132

PNG Telecommunications Inc
100 Commercial Dr
Fairfield OH 45014

POPP Telcom Inc
620 Mendelssohn Ave N
Golden Valley MN 55427

Powercom Corporation
1807 N Center St
Beaver Dam WI 53916-1031

Preimiercom Inc
500 E Higgins Rd Ste 200
Elk Grove Village IL 60007

Premiere Network Services Inc
1510 N Hampton Rd Ste 120
DeSoto TX 75115

Kathleen Kerr-Lawrence
Primus Telecommunications Inc
7901 Jones Branch Dr #900
McLean VA 22102-3338

Professional Comm Management Serv Inc
RR 3 Box 69G
Bruceton Mills WV 26525-9611

Scott Lee
Protel Advantage Inc
1308 Medora Rd
St. Paul MN 55118-1734

PT-1 Long Distance Inc
30-50 Whitestone Expressway
Flushing NY 11354

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90026

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90025

Quasar Communications Corporation
15610 Boulder Oaks Dr
Houston TX 77084

Quick Tel Inc
3822 Ironwood Pl
Landover MD 20785

Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Kristin L Smith
Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Qwest Interprise America Inc
1801 California St Ste 5100
Denver CO 80202

Qwest LD Corp
1801 California St Ste 5100
Denver CO 80202

QX Telecom LLC
230 5th Ave
New York NY 10001

R2C Communications Inc
9532 Mission Rd #25
Overland Park KS 66206

Radiant Telecom Inc
1020 NW 163 Dr
Miami FL 33169

RCC Network Inc
3905 Dakota St SW
Alexandria MN 56308-2000

Dean Polkow
RCC Network Inc
PO Box 2000
Alexandria MN 56308-2000

RCC Paging Inc
P O Box 2000
Alexandria MN 56308

Reduced Rate Long Distance LLC
1800 Pembrooke Dr Ste 300
Orlando FL 32810

Reliance Telephone Systems Inc
118 Gateway Dr
East Grand Forks ND 56721

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary FL 32746

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary` FL 32746

Ridley Telephone Company LLC
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

Smartnet Inc
649 4th Ave SW
Dickinson ND 58601

Smartstop Inc
333 SW Taylor St
Portland OR 97204-2446

Arthur H Paquette
SNET America Inc
310 Orange St
North Haven CT 06510-1719

Snip Link LLC
100-A Twinbridge Dr
Pennsauken NJ 08110

Souris River Telecommunications Company
P O Box 2027
Minot ND 58702-2027

Andrew Jones
Sprint Communications Company
6391 Print Pkwy
Overland Park KS 66251-6100

Sprint Spectrum LP
6160 Sprint Pkwy 4th Fl
KSOPHIO414
Overland Park KS 66251

Startec Global Licensing Company
1151 Seven Locks Rd
Potomac MD 20854-2968

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

TCPB Marketing Company Ltd
P O Box 40149
Bay Village OH 44140-0149

William Staycoff
Telcom Billing Services Inc
9243 E River Rd NW
Coon Rapids MN 55433-5722

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

Donald Roudebush
Telecare Incorporated
444 Lafayette Rd
Noblesville IN 46060

TeleCents Communications Inc
8615 Richardson Rd Ste 200
Walled Lake MI 48390

Telecom Management Inc
563 Warren Ave
Portland ME 04103

Teleconnect Long Dist Sevices & Syster
500 2nd Ave SE
Cedar Rapids IA 52401

Telefyne Incorporated
4286 Woodbine Rd Ste B
Pace FL 32571

Telenational Communications Inc
7310 Woolworth Ave
Omaha NE 68124

Telera Communications Inc
910 E Hamilton Ave Ste 200
Campbell CA 95008

Telliss LLC
10142 Brooks School Rd Ste 198
Fishers IN 46038

Telrite Corporation
14500 Lochridge Blvd Ste D
Covington GA 30014-4941

TelVue Corporation
16000 Horizon Way
Mt Laurel NJ 08054

The Farm Bureau Connection
600 Maryland Ave SW Ste 800
Washington DC 20024-2520

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

Total Call International Inc
707 Wilshire Blvd 9th Fl
Los Angeles CA 90017-3501

Touch I Communications Inc
100 Brookwood Rd
Atmore AL 36504-5751

Touchtone Communications Inc
16 S Jefferson Rd
Whippany NJ 07981

Trans National Comm Internat'l Inc
2 Charlesgate West
Boston MA 02215

Transcom Communications Inc
1925 W John Carpenter Frwy Ste 500
Irving TX 75063

Tri-M Communications Inc
125 E DeLaGuerra Ste 203
Santa Barbara CA 93101

Trinsic Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

U S South Communications Inc
250 Williams St Ste M-100
Atlanta GA 30303-1032

Uni-Tel Communications Group Inc
47 E Chicago Ave Ste 328
Naperville IL 60540

US LEC Communications Inc
6801 Morrison Blvd Morrocroft III
Charlotte NC 28211

USA Digital Communications Inc
1603 SE 19th St Ste 120
Edmond OK 73013-6621

Val-Ed Joint Venture LLP/702
702 Main Ave
Moorhead MN 56560

Rick Cantu
Value-Added Communications Inc
3801 E Plano Pkwy Ste 100
Plano TX 75074-1808

VCI Company
3875 Steilacoom Blvd #A
Lakewood WA 98498

David Armey
Verizon Communications
750 SH121 Bypass Ste 100
Louisville TX 75067

Virgin Mobile USA LLC
10 Independence Blvd
Warren NJ 07059-6747

W2Com International LLC
3500 Park Ctr Dr
Dayton OH 45414

WDT World Discount Tele Co
13644 Neuton Rd
Dallas TX 75244

WebNet Communications Inc
20904 Winola Ter
Ashburn VA 20147-6482

Brian Morris
Western Area Power Administration
PO Box 1173
Bismarck ND 58502-1173

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

Wholesale Carrier Services Inc
7200 W Camino Real Ste 303
Boca Raton FL 33433

Carolyn Fodor
Winstar Communications
520 Broad St
Newark NJ 07102

Wireless Alliance LLC
P O Box 2000
Alexandria MN 56308-2000

Working Assets Funding Services
101 Market St #700
San Francisco CA 94105-1533

WTC Competitive Services Inc
P O Box 270
Park River ND 58270-0270

X2Comm Inc
270 S Main St
Flemington NJ 08822

XO Communications Services Inc
11111 Sunset Hills Rd
Reston VA 20190

Yak Communications (America) Inc
300 Consilium Pl Ste 500
Toronto Ontario CA M1H 3G2

Jill Papenhausen
Zone Telecom Inc
3 Executive Campus Ste 520
Cherry Hill NJ 08002

Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Thursday, June 01, 2006 9:14 AM
To: ndna
Subject: Attached Notice of Further Hearing, Case No. PU-05-451

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the attached Notice of Further Hearing published as a legal publication in the next issue of the ten North Dakota daily newspapers, and run it as a "News Item Only" article as well.

You can send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, please let me know.

Thank you.

Sharon Helbling
Public Utilities Division

107.doc
(48 KB)

116 PU-05-451 Pages: 1

Notice sent to NDNA requesting publication

by Public Service Commission
06/01/2006 CC: Comm Legal Illona, Pat, Annette . .

RECEIVED
MAY 31 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

MEMORANDUM

TO: Commissioners Clark, Wefald and Cramer

FROM: Bill Binek and Pat Fahn

DATE: May 31, 2006

RE: Memorandum -- Midcontinent Communications v. North Dakota Telephone Company, Rural Exemption, Case No. PU-05-451

On April 26, 2006, the Commission issued its Findings of Fact, Conclusions of Law and Order in this case. On May 10, 2006, North Dakota Telephone Company (NDTC) filed a Petition for Reconsideration. On May 24, 2006, the Commission received Midcontinent Communications Inc.'s Opposition to the Petition for Reconsideration.

NDTC cites numerous challenges to the Commission's order, some of which are relatively minor, but some that require careful consideration. The main thrust of NDTC's petition relates to the lack of adequate notice of the issues that would be considered by the Commission in its decision and the imposition of a 90 day implementation schedule

Midcontinent) argues that there is no basis for reconsideration of the Commission's order, and that the Commission should deny the NDTC's petition

Staff believes that NDTC raises legitimate concerns regarding some of the notice issues, but that the Commission had the authority to and was justified in its determination of the implementation schedule.

Notice Requirements

NDTC requests in paragraph 4 of its petition that the Commission amend its order to the extent that it addresses issues that are beyond the record developed in the proceeding and beyond those matters for which prior notice was given.

Midcontinent argues that the Commission was fully justified in terminating the entire exemption. Midcontinent states that the Commission had no obligation to provide notice as to its potential interpretation of the governing law and has no discretion to adopt an order that is inconsistent with the law. Midcontinent argues that NDTC cannot claim to have been denied due process because it failed to read the statute properly.

The Commission's April 26th order addressed the issues set forth in the Notice of Hearing as the Commission interpreted the applicable law that applied to those issues. Staff believes that the Commission's interpretation of the law is correct, but also beleives that NDTC has raised legitimate questions regarding the sufficiency of the

identification of some of the issues in the Commission's Notice of Hearing. NDTC argues that the Commission's notice violates the due process requirements of the 5th and 14th Amendments to the United States Constitution and Article I of the North Dakota Constitution.

Adequate notice is a fundamental due process element.[1] N.D.C.C. § 28-32-21(3)(c) provides:

> A hearing under this subsection may not be held unless the parties have been properly served with a copy of the notice of hearing as well as a written specification of issues for hearing or other document indicating the issues to be considered and determined at the hearing. In lieu of, or in addition to, a specification of issues or other document, an explanation about the nature of the hearing and the issues to be considered and determined at the hearing may be contained in the notice.

The North Dakota Supreme Court has ruled that due process requires that a participant in an administrative hearing be given notice of the general nature of the questions to be heard and an opportunity to prepare for and to be heard on those questions. *Saakian v. North Dakota Workers Compensation Bureau,* 1998 ND 227, ¶ 11, 587 N.W.2d 166; *Hentz Truck Line v. Elkin,* 294 N.W.2d 774, 780 (N.D. 1980). In the *Saakian* decision, the Court stated that "[b]asic notions of fundamental fairness dictate a person challenging an agency action must be adequately informed in advance of the questions to be addressed at the hearing so the person can be prepared to present evidence and arguments on those questions. Staff believes that an appellate court would require similar notice in this case.

Staff suggests that this is not the case that the Commission should rely on to get an appellate court's ruling on the Commission's interpretation of Section 251(f)(1)(B) of the Act regarding unlimited termination of the rural exemption. Because the hearing notice did not specify that termination of the rural exemption would not be limited to the Devils Lake exchange and would not be limited to termination for wholesale resale, an appellate court would likely find the Notice of Hearing deficient and determine that NDTC was denied due process. Staff suggests that the Commission needs to step back in this case and only address the issues sufficiently noticed, because the record in this case will likely not support the Commission's position on appeal. In all likelihood, an appellate court will not even get to substantive issues because it will first determine whether the notice of hearing was inadequate. If the appellate court determines that the notice was inadequate, it will likely reverse the Commission's decision without addressing the other issues.

Staff recommends that the Commission reconsider and amend the findings, conclusions and order to provide that termination of the rural exemption in this case is for resale of telecommunications services at wholesale rates, and that it applies only to the Devils Lake exchange.

---

[1] 2 Charles H. Koch, Jr., Administrative Law and Practice § 5.32 (2nd ed. 1997).

NDTC also requests that the Commission limit the relief it grants in its order solely to Midcontinent. NDTC argues that the law does not permit the Commission to terminate the exemption to only a single competitor.

Staff recommends that the Commission deny NDTC's request that any relief applies solely to Midcontinent. When a rural exemption is terminated under Section 251(f)(1), the termination of the exemption applies to all telecommunications carriers. The only exception to that is the limitation under Section 251(f)(1)(C) where a cable operator providing video programming seeks to provide telecommunications service in an area where the telecommunications company provides video service. In that situation, the rural exemption does not apply to the request of the cable operator that seeks to provide telecommunications service, but the limitation under Section 251(f)(1)(C) only applies to the cable operator and not to other competitors. That is not the situation in this case because NDTC is not providing video service, so the termination of the rural exemption relief cannot be limited to Midcontinent but rather applies to all competitors.

Implementation Schedule

NDTC argues that the North Dakota Legislature directs the Commission to follow the federal Act in establishing an implementation schedule upon termination of the rural exemption and in doing so the Commission must provide for implementation in accordance with Section 252. NDTC also stated that the Commission's order should require the parties to negotiate all terms and conditions of an interconnection agreement

Midcontinent argues that the plain language of Section 251(f)(1) gives the Commission the full discretion to establish an implementation schedule and does not require that the timelines in Section 252 be used in the implementation schedule. NDTC further states that there is no basis to adopt NDTC's request that all terms of a resale agreement be negotiated because the Commission order already requires negotiation of a complete interconnection agreement.

NDTC's position concerning the implementation schedule makes no sense in light of the fact that the North Dakota Legislature gave the Commission authority under N.D.C.C. §49-21-01.7(11) to terminate a rural telephone company's rural exemption under Section 251(f). The authority to terminate the rural exemption and the directive to establish an implementation schedule are both contained in Section 251(f)(1)(B). Nowhere in that subsection is there a requirement that implementation must be in accordance with Section 252. In fact, the only limitation imposed on the Commission is that an implementation schedule that is established must be consistent in time and manner with FCC regulations. All parties agree that the FCC has no regulations regarding implementation schedules. If Congress intended that implementation had to be in accordance with Section 252, there would have been no reason to give state

commissions the authority to establish an implementation schedule because it would be established under law.

NDTC argues that The Commission's reliance on N.D.C.C. §49-21-09 for authority to impose terms and conditions of interconnection is in error. NDTC states that the only authority that the Commission has to implement provisions of the federal Act must be found in N.D.C.C. §49-21-01.7(9) which provides authority to approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the Act.

Section 49-21-01.7 sets forth the Commission's powers in general regarding telecommunications companies, but is not the only authority given to the Commission to establish terms and conditions for interconnection within Chapter 49-21. While Section 49-21-01.7(9) does give the Commission authority to approve or reject agreements for the interconnection between telecommunications companies, Section 49-21-09 also provides the Commission with authority to prescribe reasonable compensation, terms and conditions for interconnection. Nowhere in either the federal Act or in state law is the Commission limited in its discretion to establish an implementation schedule nor is there anything that compels the Commission to use the Section 252 timeline.

N.D.C.C. §1-02-07 requires that whenever a general provision in a statute is in conflict with a special provision in another statute, the two must be construed, if possible to give effect to both provisions. If the Legislature wanted only the provisions of Section 49-21-01.7(9) to apply to interconnections, it would likely have repealed Section 49-21-09.

NDTC argues that a different standard is imposed by Section 49-21-09 than the standard under Section 49-21-01.7(9) in that Section 49-21-09 requires the Commission make a finding of public convenience and necessity, that no irreparable harm will result to the owner of the facilities, that no substantial detriment will result, and that the parties have failed to agree on terms and conditions. NDTC argues that no evidence was introduced to support the needed findings under Section 49-21-09 and that the Commission provided no notice that it was proceeding under Section 49-21-09.

The standards imposed by Section 49-21-09 may not be the same as the standards under Section 49-21-01.7(9), but both provide authority to the Commission to require interconnection and give the Commission authority to establish terms and conditions. The only requirements the Commission has under Section 251(f)(1)(B) are to determine whether to terminate the rural exemption and to establish an implementation schedule. Section 49-21-01.7(11) authorizes the Commission to terminate the rural exemption which includes establishing an implementation schedule. The standards for termination of the rural exemption are not similar to either the standards under Sections 49-21-01.7 or 49-21-09. The law does not state that the Commission, after termination of the rural exemption, must establish the implementation schedule in accordance with Section 252.

NDTC argues that it was denied due process by the Commission because the Commission did not give notice that it would rely on N.D.C.C. §49-21-09 for authority to establish the implementation schedule. The Commission's Notice of Hearing identified that one of the issues to be considered was the implementation schedule for compliance with the request should the exemption be terminated. In fulfilling its responsibilities under the law, the Commission is authorized to use its authority under the law to implement the schedule for compliance. The Commission is not required to identify in its Notice of Hearing any specific section of law that it could rely on for its authority.

Other objections

Language in Paragraph 10

NDTC objects to the language in paragraph 10 of the Commission's Findings of fact which essentially provides that NDTC no longer challenges that its rural exemption should be terminated. Staff understands NDTC's objection to be that its statement was limited to Midcontinent's wholesale resale request in the Devils Lake exchange. Staff suggests that the language in the last sentence of paragraph 10 be revised to state that "NDTC no longer challenges that its rural exemption should be terminated for resale at wholesale rates in the Devils Lake exchange.

Language in Paragraph 23

NDTC also objects to the language at paragraph 23 concerning testimony regarding actual experience in implementing resale. NDTC points to prefiled written testimony of its witness Duncan Meredith in support of its argument.

Midcontinent argues that paragraph 23 is correct. Midcontinent states that its witness, Mary Lohnes gave testimony on the issue of the implementation period and that it was reasonable to implement resale in 90 days. Midcontinent states that NDTC did not provide any testimony on whether the parties could implement resale within 90 days and did not provide and evidence based on the experience of any witness actually implementing resale. Midcontinent argues that none of the excerpts of Duncan Meredith's testimony relied upon by NDTC indicates any real-world experience in implementing resale, or that resale cannot be implemented within 90 days, or that there is any specific minimum period within which resale can be implemented. Midcontinent states that the most Mr. Meredith says is that he participated in negotiations for resale agreements and that he believes the negotiations should follow the Section 252 timeline.

Staff recommends that the following language be substituted for the first sentence in paragraph 23, but that the remaining language in paragraph 23 remain unchanged:

Midcontinent and NDTC both presented testimony concerning the time necessary for implementation of a resale agreement. Mdicontinent's witness provided testimony as to actual experience in implementing resale and stated that resale can be completed within 90 days. NDTC's witness stated that he had participated in negotiation of interconnection agreements and that imposing a 90 day implementation deadline is unrealistic and unduly burdensome and that Section 252 timelines should be followed.

APPROVED
DATE: 5-24-06

MOTION

May 24, 2006

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

I move the Commission bill Midcontinent Communications and North Dakota Telephone Company for costs incurred to date in Case No. PU-05-451, Midcontinent Communications/North Dakota Telephone Company, Rural Exemption, Investigation.

114 PU-05-451 Pages: 3
Utility Valuation Motion/Letter/Billing Statement
by Public Service Commission
05/24/2006 CC: Comm Legal Illona, Pat, Annette . .

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

May 24, 2006

Patrick W Durick
Pearce & Durick
PO Box 400
Bismarck ND 58502-0400

Dave Dircks Manager
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

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

Enclosed is a copy of the statement approved at the May 24, 2006 Public Service Commission meeting for the expenses incurred to date in Case No. PU-05-451.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved.

Please make your check payable to the *Public Service Commission*.

Sincerely,

Gloria Geiger
Admin Staff Officer
701-328-2401

Enc.

c: Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Don Negaard
Scott M Knudsvig
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

Thomas J Moorman
Woods & Aitken LLP
2154 Wisconsin Ave NW Ste 200
Washington DC 20007

Billing Statement

May 24, 2006

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

Bill To:

Midcontinent Communications $2,096.18
North Dakota Telephone Company.....2,096.18

Expenses Incurred to Date:

Office of Administrative Hearings (August 2005)	$ 66.68
Office of Administrative Hearings (September 2005)	485.79
Office of Administrative Hearings (October 2005)	238.13
Office of Administrative Hearings (November 2005)	676.30
Office of Administrative Hearings (December 2005)	1,114.48
Office of Administrative Hearings (January 2006)	1,466.87
Office of Administrative Hearings (February 2006)	19.06
Office of Administrative Hearings (March 2006)	47.63
Advertising Costs	77.42
Total	**$4,192.36**

Send Payment and a Copy of this Statement To:

Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

Federal Tax ID 45-0309764

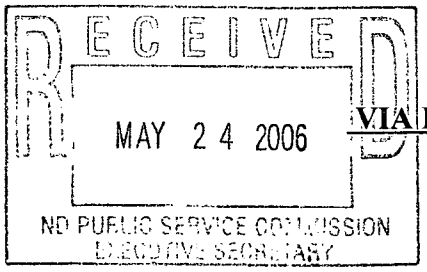
PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
JEROME C. KETTLESON
LARRY L. BOSCHEE ••
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

May 24, 2006



VIA HAND DELIVERY

Illona Jeffcoat-Sacco
Executive Director
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:

Enclosed for filing herewith is an original and seven copies of Opposition of Midcontinent Communications to Petition for Reconsideration. We are also electronically filing this document with the Commission.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Patrick W. Durick
J.G. Harrington*

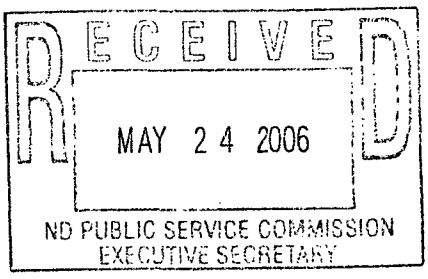
Counsel to Midcontinent Communications

c: Donald Negaard (via email)
William Binek (via email)
Al Wahl (via email)
Scott Knudsvig (via email)
Tom Moorman (via email)

*Admitted pro hac vice

113 PU-05-451 Pages: 27
Opposition to Petition for Reconsideration
by Midcontinent Communications by Patrick Durick, Atto
05/24/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

OPPOSITION OF MIDCONTINENT COMMUNICATIONS TO PETITION FOR RECONSIDERATION

Patrick W. Durick
Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

J.G. Harrington*
Dow Lohnes P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

*Admitted pro hac vice

May 24, 2006

TABLE OF CONTENTS

		Page
I.	Introduction	1
II.	The Commission Correctly Determined That NDTC Did Not Oppose Lifting The Rural Exemption	2
III.	The Commission's Finding Of Fact In Paragraph 23 Of The Order Is Correct	3
IV.	There Is No Basis For Changing The Time Frame Or The Other Parameters Of Negotiation In Paragraphs 2 And 3 Of The Ordering Clauses	5
V.	The Commission's Decision To Lift The Rural Exemption In Devil's Lake In Its Entirety Was Correct	8
	A. The Statute Does Not Permit The Commission To Lift The Rural Exemption As To Only A Single Competitor	8
	B. The Commission Was Fully Justified In Lifting The Exemption As To All Of Section 251(C)	10
	C. NDTC's Due Process Rights Were Fully Protected	11
VI.	The Commission's Legal Interpretations Were Correct And Should Not Be Amended	14
	A. Section 251(F)(1) Requires Lifting The Entire Rural Exemption When Appropriate Findings Are Made	15
	B. The Commission Has Full Authority To Implement Section 251(F)(1)	18
IV.	Conclusion	22

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

OPPOSITION OF MIDCONTINENT COMMUNICATIONS TO PETITION FOR RECONSIDERATION

Midcontinent Communications, by its attorneys, hereby submits its opposition to the petition for reconsideration filed by North Dakota Telephone Company ("NDTC") in the above-referenced proceeding. As shown below, there is no basis for reconsideration of the Commission's *Order*[1] and, consequently, the Commission should deny the petition.

I. Introduction

The NDTC petition seeks to have the Commission overturn a decision in a proceeding that was extensively briefed and in which NDTC took every opportunity to press its case. That, of course, is NDTC's right under the Commission's rules, but the petition and the supporting brief do not provide any reason to reverse an order that was correct in every material respect.

Many of NDTC's complaints are trivial. When they are not, they are unsupported by even the cases that NDTC cites in its brief. Neither the factual record before the

[1] Midcontinent Communications/North Dakota Telephone Rural Exemption Investigation, Case No. PU-05-451, *Findings of Fact, Conclusions of Law, and Order* (Apr. 26, 2006) (the *"Order"*).

Commission nor the law is consistent with the relief that NDTC seeks. Indeed, the essence of the petition is the same as what NDTC sought in its earlier pleadings: It simply does not want competition to come to Devil's Lake until a time of its own choosing. However, the law and good public policy demand the result the Commission reached in the *Order*.

II. The Commission Correctly Determined that NDTC Did Not Oppose Lifting the Rural Exemption.

NDTC's first request is that the Commission reconsider paragraph 10 of the *Order* to eliminate the statement that "NDTC's post-hearing brief states that it no longer challenges that its rural exemption should be terminated."[2] NDTC now would prefer language indicating that it would not challenge Midcontinent's showing that the criteria for terminating the rural exemption were met.[3]

It is unclear why NDTC believes there is any real difference between these two approaches. More important, however, NDTC did, in fact, agree in its reply brief that it would not challenge the lifting of the rural exemption and even quoted Midcontinent's initial brief on this point:

> NDTC has agreed that the current request by Midco for resale at a wholesale discount in the NDTC Devils Lake exchange is not unduly economically burdensome, technically infeasible, or contrary to the universal standards contained in the Act. (*See* NDTC Brief at 6-7; *see also* HT 158-159, 166:7-18.) As such, the Commission need not consider Midco's purported analysis of the Section 251(f)(1)(A) factors (*see* Midco Brief at 3-8), nor the purported consumer benefits that Midco cites. (*See id.* at 9-11.) As Midco states: "Once the three criteria in Section 251(f)(1) are met, the Commission does not need to go any further to determine whether the rural exemption should be lifted, *and the statute*

[2] NDTC Petition at 2, *citing Order*, ¶ 10.
[3] NDTC Petition at 2.

does not permit any further inquiry." (Midco Brief at 9 (emphasis added).)[4]

This is a clear statement that NDTC would not challenge the lifting of the rural exemption. Otherwise, NDTC would not have claimed that "the Commission need not consider" Midcontinent's analysis, and certainly would not have quoted Midcontinent's statement that "the Commission need not go any further to determine whether the rural exemption should be lifted."

In this context, it is evident that the Commission correctly described NDTC's position. The Commission is not required to use NDTC's exact words. Instead, it is the Commission's job to appropriately analyze the parties' positions, rather than merely parroting the language the parties use. Thus, there is no basis for altering this finding of fact.

III. The Commission's Finding of Fact in Paragraph 23 of the Order Is Correct.

NDTC next argues that the Commission erred by finding that "The only party to testify as to actual experience in implementing resale was Midcontinent, and the only testimony was that arrangements for resale can be completed in 90 days."[5] Once again, the Commission was correct and reconsideration should be denied.

First, the Commission correctly concluded that Midcontinent gave testimony on the issue of the implementation period and that it was reasonable to implement resale in 90 days. This testimony was provided by Mary Lohnes.[6] NDTC did not choose to cross-examine Ms. Lohnes on this issue.[7]

---

[4] NDTC Reply Brief at 2.
[5] Petition at 2, *citing Order,* ¶ 23.
[6] Exhibit P1, Prefiled Direct Testimony of May Lohnes ("Lohnes Direct") at 6; Exhibit P2, Prefiled Rebuttal Testimony of Mary Lohnes ("Lohnes Rebuttal") at 1.
[7] Tr. at 23-27 (Negaard cross-examination of Mary Lohnes).

Second, the Commission correctly concluded that NDTC did not provide any testimony on whether the parties could implement resale within 90 days, and certainly did not provide any evidence based on the experience of any witness in actually implementing resale. While NDTC's reconsideration brief offers the Commission no less than five "actual excerpts" from the testimony of Mr. Meredith, not one of those excerpts indicates that he has any real-world experience in implementing resale, that resale cannot be implemented within 90 days, or that there even is specific minimum period within which resale can be implemented.[8] The most he says is that he has participated in *negotiations* for resale agreements; that he believes that these negotiations should be allowed to follow the Section 252 time line; and that taking less time for those negotiation is "unrealistic and unduly burdensome."[9] In other words, the sum of Mr. Meredith's testimony, even in the excerpts provided by NDTC, is that he prefers that resale arrangements be negotiated over a long period.[10]

There is nothing in this testimony that indicates that it is infeasible to make the arrangements necessary to implement resale within 90 days. Indeed, there is nothing in this testimony to indicate that Mr. Meredith even knows what steps are necessary to implement resale (let alone has any experience in the operational aspects of resale). In contrast, Midcontinent provided testimony on the specific requirements for implementation from a witness who had actual experience.[11] In this context, there is no doubt that the Commission's finding was correct.

---

[8] NDTC Reconsideration Brief at 4-5.
[9] *Id.*
[10] Moreover, on cross examination, Mr. Meredith acknowledged that there were no FCC rules that required use of the Section 252 time frames, and that it was feasible to use a true-up to address the possibility that an interim discount rate would be too high or too low. Tr. at 184 (Meredith) (No FCC rules), 193 (Meredith) (True-up permitted).
[11] *See, e.g.*, Lohnes Rebuttal at 1.

Moreover, while NDTC's effort to string together unrelated elements of Mr. Meredith's testimony to create the impression that he discussed this issue is impressive, it comes too late. NDTC has waived its right to make this argument because it missed the opportunity to do so when it was first raised by Midcontinent. Midcontinent noted in its reply brief that no NDTC witness had challenged the implementation period, and NDTC did not challenge this statement in any of its post-briefing filings.[12] If NDTC believed that Midcontinent was incorrect, it had ample opportunity to inform the Commission on several different occasions. It chose not do so, even as it continued to argue several other issues in this proceeding, and therefore has waived its rights.

IV. There Is No Basis for Changing the Time Frame or the Other Parameters of Negotiation in Paragraphs 2 and 3 of the Ordering Clauses.

In its petition, NDTC argues that ordering clauses 2 and 3 should be amended to adopt a nine month period for negotiation and arbitration and to require that "all terms and conditions of an interconnection agreement be negotiated by the parties."[13] For all of the reasons described at the hearing and in the *Order,* the first part of this request should be denied. The second part of the request, however, is entirely unnecessary because that is what the *Order* already requires.

First, the Commission's adoption of a 90-day implementation period was entirely justified. Midcontinent witnesses provided ample evidence to support that conclusion, starting with the testimony of Ms. Lohnes described above, in which she indicated that Midcontinent's actual experience was that resale could be implemented in 90 days.[14]

---

[12] Midcontinent Reply Brief at 8.
[13] NDTC Petition at 2-3 (emphasis omitted).
[14] *See, e.g.*, Lohnes Direct at 6. It is important in this context to remember that resale does not require the physical interconnection of the NDTC and Midcontinent networks, which greatly simplifies the implementation process.

This testimony was buttressed by the testimony of Midcontinent's other witnesses, which showed that discount rate issues could be addressed through the use of interim rates and a true-up, an approach that ensures service can begin promptly while protecting NDTC against the possibility that the discount rate would be set too low.[15]

In response to this testimony, and as shown above, NDTC witnesses provided no evidence that a 90-day period was infeasible. The most they claimed was that a cost study to determine the resale discount was "not an add water and mix proposition."[16] At the same time, though, NDTC's witness agreed that it was permissible for states to adopt interim rates and true-ups, a point that is omitted from NDTC's brief.[17] In fact, and contrary to NDTC's brief, its witness did not say that a cost study "would likely take NDTC three months."[18] Rather, he said that a cost study could "take *up to* two to three months depending on the availability of the data," data that he acknowledged is entirely in the hands of NDTC.[19] In other words, even if the Commission credits NDTC's testimony in its entirety – which it should not – the longest it would take to do an avoided cost study is three months, and the Commission has the ability to address that issue by adopting interim rates and a true-up, just as it did in the *Order*.

Moreover, there is no credible evidence that the entire nine-month Section 252 period is necessary or appropriate to implement simple resale in Devil's Lake. As discussed in more detail below, there is no statutory basis for adopting the nine-month period. At the same time, the experience in other states does not provide any support for

[15] Tr. at 70 (Gates).
[16] Tr. at 224 (Meredith).
[17] Tr. at 193 (Meredith).
[18] NDTC Reconsideration Brief at 7.
[19] Tr. at 220, 222 (emphasis supplied)

such a requirement.[20] For that matter, other than its unsupported claim that the nine-month period was best, NDTC provided no evidence that there was any need for nine months to negotiate a resale agreement, and no NDTC witness offered any objection to the agreement that Midcontinent proposed nearly a year ago.[21]

There also is no basis to adopt NDTC's request that all terms of a resale agreement be negotiated because the Commission already has required negotiation of a complete interconnection agreement. The *Order* is quite direct on this point: It says "NDTC shall begin providing" service to Midcontinent "under an interconnection agreement no later than 90 days from the date of this order."[22] The term "interconnection agreement" covers what NDTC says it wants, that is, "all terms and conditions" of the resale service.[23] The Commission's specific references to rates in Ordering Clauses 3 and 4 do not change the meaning of this language, and NDTC provides no reason to believe that they do.

NDTC's claim that the ordering clauses should be modified to require negotiation of a complete agreement also is curious in light of its later claim that the Commission did not provide adequate notice that negotiation of an interconnection agreement would be required.[24] If the Commission did not require negotiation of a complete agreement, then no notice issue could be raised. This contradiction further demonstrates that NDTC's claim that Order Clause 2 must be amended is without substance.

---

[20] *See* Midcontinent Initial Brief at 13-15. As noted in Midcontinent's initial brief, New York adopted a time frame for provision of unbundled loops of approximately three months. *Id.* at 13-14.
[21] *See* Tr. at 153 (Dircks), 192 (Meredith). In fact, nearly four weeks after the *Order* was released, NDTC has not provided any objections to the agreement that Midcontinent proposed.
[22] *Order,* Ordering Clause 2.
[23] NDTC Reconsideration Brief at 7.
[24] *Id.* at 10.

V. The Commission's Decision to Lift the Rural Exemption in Devil's Lake in Its Entirety Was Correct.

NDTC's petition next asserts that the Commission should amend its order to eliminate portions of the decision that purportedly go beyond what was contemplated by the Commission's notice.[25] In fact, the Commission's decision was fully justified by the law and by the record in this proceeding, and there is no basis for limiting it any further than the Commission already has limited it.[26] Specifically, the Commission correctly interpreted the requirements of Section 251(f)(1); properly determined that the exemption should be lifted as to all Section 251(c) requirements; and has met all due process requirements.

A. The Statute Does Not Permit the Commission to Lift the Rural Exemption as to Only a Single Competitor.

In this portion of the petition, the first thing NDTC asks is for the Commission to limit the scope of the order only to Midcontinent.[27] However, the statute does not permit the Commission to limit the order in that way.

NDTC makes no argument concerning the question of whether the Commission could have limited its Section 251(f)(1) relief to cover only Midcontinent. This omission, by itself, makes NDTC's due process claims incorrect, because it cannot credibly claim that it lacked notice of the potential scope of the Commission's actions unless it also can claim that it did not know that the statute required this relief.

---

[25] NDTC Petition at 3-4.

[26] Midcontinent notes that the petition asks the Commission to modify the second ordering clause "to eliminate the requirement that a discount rate be agreed upon within 30 days under an 'interconnection agreement.'" *Id.* at 4. It is unclear what NDTC means by this request, as the *Order* does not impose any 30-day period.

[27] *Id.* at 3. NDTC also asks that the *Order* be modified to limit its scope to Devils Lake. *Id.* However, the *Order* already is limited to Devil's Lake, so no modification is necessary. *Order,* Ordering Clause 1. NDTC's brief appears to recognize this limitation in a later discussion. NDTC Reconsideration Brief at 11 (heading describing extent of Commission action as relating to "The Devils Lake Exchange").

Even assuming that NDTC had made such an argument, however, the statute makes it clear that the Commission does not have the discretion to limit the relief to Midcontinent. Section 251(f)(1)(A) provides that Section 251(c) "shall not apply to a rural telephone company" until it has received a bona fide request and the relevant state commission has determined that the specific statutory criteria have been met.[28] There is nothing in Section 251(f)(1) (A) that indicates that the relief is limited to the specific carrier that makes the request. This omission stands in contrast to the language of Section 251(f)(1)(C), which lifts the exemption when a rural ILEC begins to provide video service, but specifically limits that relief to "a cable operator providing cable service" in the area where the ILEC offers video.[29] This distinction makes it evident that Congress intended to limit the reach of Section 251(f)(1)(C), but had no such intent as to Section 251(f)(1)(A).

The broader reading of Section 251(f)(1)(A) also is reasonable in light of the nature of the evidence that the Commission considers in the context of rural exemption proceedings. It is entirely reasonable to conclude that evidence in support of lifting the exemption for one competitor will support lifting the exemption for all competitors. On the other hand, requiring each competitor to come to the Commission separately to make its case, as NDTC suggests, would waste the resources of the Commission, the competitors and even the rural ILEC, for no good purpose.

In addition, Section 251(f)(1)(A), like the rest of the provisions added by the 1996 Act, must be read in light of the Congressional intent to create a "pro-competitive"

[28] 47 U.S.C. § 251(f)(1)(A).
[29] 47 U.S.C. § 251(f)(1)(C).

regulatory regime.[30] Requiring additional individual proceedings to lift the rural exemption carrier-by-carrier would discourage, not encourage competition, and that would be contrary to the expressed desires of Congress. Thus, the statute itself, common sense and Congressional intent all support the conclusion that the Commission was required to lift the exemption as to all competitors, not just Midcontinent.

B. The Commission Was Fully Justified in Lifting the Exemption as to All of Section 251(c).

NDTC's claim that the Commission should not have lifted the exemption as to all of Section 251(c) suffers from many of the same infirmities as its claim that the exemption should have been lifted as to only Midcontinent. Contrary to what NDTC says in its brief, the question of whether the exemption should be lifted in its entirety was properly raised in the proceeding and the parties had the opportunity to brief the issue.

First, and as described in more detail below, the Commission's conclusion that Section 251(f)(1)(A) requires lifting the exemption as to all of Section 251(c) was correct.[31] The Commission had no obligation to provide notice as to its potential interpretation of the governing law and, more significantly, no discretion to adopt an order that was inconsistent with the law. NDTC points to no contrary interpretation by the FCC, any regulatory agency or any court.[32] NDTC cannot claim to have been denied due process because it failed to read the statute properly.

Second, NDTC had ample opportunity to argue that the rural exemption should be lifted only as to wholesale resale. Midcontinent briefed the issue of whether the exemption should be lifted as to all of NDTC's Section 251(c) obligations, and discussed

[30] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 96, preamble.
[31] *See infra* Part VI(A).
[32] As described below, the Alaska case cited by NDTC is inapposite and, in any event, consistent with the Commission's actions.

related issues throughout its initial brief.[33] Midcontinent even requested that the Commission consent to amending Midcontinent's petition to the extent necessary to address facilities-based interconnection issues.[34] NDTC clearly was aware of this issue because it devoted one section of its reply brief to responding to Midcontinent's request.[35] While NDTC did not choose to respond to Midcontinent's showing that full relief was justified by the record, that was NDTC's own choice, and it was not deprived of an opportunity to do so.

Moreover, NDTC itself put the issue of lifting the entire exemption into the proceeding when it admitted that it intended to provide video service in Devils Lake.[36] This admission meant that the only question concerning lifting the entire exemption was the timing. NDTC should not be permitted to claim that its due process was violated because of an issue raised by its own testimony.

C. NDTC's Due Process Rights Were Fully Protected.

As shown above, most of the specific portions of the *Order* that NDTC claims violate its due process rights are interpretations of statutory provisions, and NDTC cannot fairly claim that it did not have notice of what statutes were at issue. In any event, NDTC was provided all of the notice it was entitled to receive from the Commission, had actual notice of the possibility that the full exemption would be lifted and has no basis at all for its further complaint that it did not realize that the Commission would consider all of the terms and conditions for resale in this proceeding.

---

[33] *See, e.g.,* Midcontinent Initial Brief at 5-6 (existing facilities-based competition), 7 (no loss of universal service funding from facilities-based competition), 8 (no effect on universal service generally from facilities-based competition), 19-22 (implementation period).

[34] *Id.* at 22, n. 81.

[35] NDTC Reply Brief at 11-3. This discussion included an analysis of NDTC's interpretation of Section 251(f)(1)(A), which demonstrates that NDTC believed that interpretation to be an open issue in the proceeding.

[36] *See* Exhibit R1, Reply Testimony of David Dircks, at 9.

At the outset, the Commission provided NDTC with full notice of all of the issues that mattered in this proceeding. Both the *Notice of Hearing* and the *Notice of Rescheduled Hearing* informed the parties that Midcontinent made a request under Section 251(c), that NDTC claimed an exemption under Section 251(f)(1) and that the proceeding would consider whether the exemption should be terminated.[37] While the notices made reference to the specific services Midcontinent had requested, that information was necessary only to describe the factual issues required to be considered under Section 251(f)(1)(A). The notice does not limit the range of the possible relief to be granted or propose a specific interpretation of Section 251(f)(1)(A) that NDTC can claim to have relied upon in devising its positions in the proceeding. It merely states that NDTC's rural exemption is at issue.

This type of notice plainly suffices to meet due process requirements under both state and federal law. The case law establishes that notice need not include every possible issue that could arise in a proceeding. Rather, notice is sufficient if it describes the general bounds of the proceeding so that the parties are aware of the types of issues that could arise, and there is no violation if a party had an opportunity to demonstrate that the relief that was granted was inappropriate.[38] As the Alaska Supreme Court has held:

> [S]ince the basic element to be satisfied is the opportunity to prepare one's case, the actual content of the notice is not dispositive. The question is

---

[37] *Notice of Hearing* (Jul. 28, 2005) at 1; *Notice of Rescheduled Hearing* (Dec. 14, 2005).

[38] *See, e.g., St. Anthony Hospital v. U.S. Dept. of Health and Human Svcs.*, 309 F.3d 680, 708 (10th Cir. 2002) (denying relief because "'as long as a party to an administrative proceeding is reasonably apprised of the issues in controversy and is not misled, the notice is sufficient'" and noting that due process violations require a showing that a party "has sustained prejudice as a result of the allegedly insufficient notice.") (quoting *Savinia Home Indus., Inc. v. Secretary of Labor,* 594 F.2d 1358, 1365 (10th Cir. 1979)); *Southwest Sunsites, Inc. v FTC,* 785 F.2d 1431 (9th Cir. 1985) ("The purpose of the notice requirement . . . is satisfied, and there is no due process violation, if the party proceeded against 'understood the issue' and 'was afforded full opportunity' to justify his conduct.") (quoting *Golden Grain Macaroni Co. v. FTC,* 472 F.2d 882, 885 (9th Cir. 1972), *cert. denied* 412 U.S. 918 (1973).

> whether the complaining party had sufficient noticed and information to understand the nature of the proceeding.[39]

Here, the issues were broadly and clearly stated: Whether the rural exemption should be lifted and what the implementation schedule should be if the exemption was lifted. Nothing in the order went beyond those issues, and thus NDTC cannot claim to be prejudiced.

The one case cited by NDTC does not contradict these conclusions and does not support NDTC's thesis. In *Pub. Serv. Comm'n v. Northern Pac. Ry.,* the court did not hold that the Commission attempted to "expand the scope of a proceeding," as NDTC claims.[40] Instead, the issue in that case was the failure of the Commission to provide any notice at all.[41] Here, the Commission did provide notice to NDTC, and ample opportunity to be heard, through both testimony and briefs. NDTC took full advantage of that opportunity by taking discovery; offering witnesses and exhibits; and filing a prehearing brief, post-hearing briefs and multiple post-briefing submissions. Consequently, the *Northern Pacific* case has no bearing on this proceeding.

Further, NDTC did not just have notice of the proceeding, but had actual notice of the possibility that the full exemption would be lifted. As described above, Midcontinent specifically requested that the exemption be lifted in full, and NDTC responded to that argument in its reply brief. Thus, there is no basis for NDTC to claim that it was

---

[39] *North State Tel. Co. v. Alaska Pub. Util. Comm'n.*, 522 P.2d 711, 714 (Alaska 1974) (denying appeal where carrier claimed evidence adduced at hearing and nature of decision exceeded scope of notice).
[40] NDTC Reconsideration Brief at 10.
[41] *Pub. Svc. Comm'n v. Northern Pac. Ry. Co.*, 75 N.W.2d 129, 135 (N.D. 1956) (holding that the Commission was not permitted to issue an order requiring railroad service to because the order "was issued without the service of any notice upon the Railway Company and without specifying any complaint").

prejudiced.[42] As the Ninth and Tenth Circuits both explained, in the absence of any prejudice, there is no basis for a due process claim.

Finally, NDTC's claim that it did not have notice that the terms and conditions of resale would be part of this proceeding is absurd.[43] The term "schedule for compliance," which appears in both the statute and the Commission's notices, is quite broad, and easily encompasses all aspects of compliance with Section 251(c). The terms and conditions of resale plainly fall within the scope of Section 251(c).[44] In any event, NDTC cannot credibly claim to be surprised at having to negotiate an interconnection agreement, because one of NDTC's own witnesses, in prefiled testimony that NDTC quoted in its reconsideration brief, supported adoption of an order requiring negotiation:

> Specifically, after terminating the rural exemption as to Midcontinent in Devils Lake, NDTC would not be opposed to having the Commission order the parties to conduct *negotiations on the proper business terms and conditions for a resale agreement* with a wholesale discount specific to the Devils Lake exchange.[45]

Since NDTC was willing to sponsor this testimony, there can be little doubt that NDTC had sufficient notice that it would be required to negotiate an interconnection agreement.

VI. The Commission's Legal Interpretations Were Correct and Should Not Be Amended.

NDTC's fifth claimed error is that the Commission, in multiple paragraphs of the *Order,* misinterpreted both Section 251(f)(1) and its own authority under North Dakota law. These claims are incorrect.

---

[42] In fact, NDTC provides no evidence that it was prejudiced in any way, and does not suggest any evidence that it did not offer because of its misunderstanding of the Commission's notice.
[43] NDTC Reconsideration Brief at 10.
[44] For that matter, a schedule for compliance could have included the Commission specifically dictating the terms on which resale would be provided, rather than merely requiring the parties to enter into negotiations.
[45] NDTC Reconsideration Brief at 4, quoting Meredith Direct at 8 (emphasis added by NDTC in Reconsideration Brief).

A. Section 251(f)(1) Requires Lifting the Entire Rural Exemption When Appropriate Findings Are Made.

NDTC relies on a series of statutory construction principles to conclude that the Commission misinterpreted Section 251(f)(1)(A) as requiring the entire rural exemption to be lifted whenever the specified criteria are met by a requesting carrier.[46] NDTC's real argument, however, is that the Commission failed to consider all of the language of this section. In reality, NDTC commits the same error it has committed before in this proceeding by attempting to import language from one part of Section 251(f)(1)(A) to another.

Section 251(f)(1)(A) says that "Subsection (c) of this section shall not apply to a rural carrier until" a request for interconnection is received and the Commission concludes that the statutory criteria for lifting the exemption have been met.[47] There are no qualifiers or other language in this portion of the statute. There is nothing in this simple language to indicate that the Commission has the power to lift only part of the exemption or to indicate that the only parts of the exemption to be lifted are those that are the subject of the competitive carrier's request. The plain meaning of the text is obvious: The exemption – the whole exemption – is lifted when the criteria are met. This is exactly what the Commission concluded.

NDTC argues that the Commission's interpretation is wrong because it does not consider the language in clauses (i) and (ii) of Section 251(f)(1)(A) that refers to the "bona fide request" of the competitive carrier.[48] NDTC's theory is that the Commission, by not limiting the relief to the specific interconnection request, did not give meaning to

[46] NDTC Reconsideration Brief at 11-13.
[47] 47 U.S.C. § 251(f)(1)(A).
[48] NDTC Reconsideration Brief at 12-3.

that language. The problem with NDTC's theory is that the word "request" does not appear in the first part of Section 251(f)(1)(A), but only in clauses (i) and (ii). This omission limits the impact of "request" to the clauses where it appears. Thus, the Commission is permitted to consider the specific request only in determining whether a bona fide request has been made (and therefore whether clause (i) is satisfied) and whether the three criteria have been met as to that request (and therefore whether clause (ii) is satisfied). That is how those terms are given meaning, and that is what the Commission did when it specified consideration of the three criteria in the hearing notice. This approach is entirely consistent with the statute.

NDTC's approach, on the other hand, would require the Commission to import the term "request" into the first part of Section 251(f)(1)(A), where it does not appear. Much like NDTC's attempt to import Section 252 into Section 251(f)(1), there is no support for this approach in the statute itself or in the principles of statutory construction. In fact, NDTC's approach does not just require the Commission to import the competitive carrier's request into the first part of Section 251(f)(1)(A), but also requires importing the request into Section 251(f)(1)(B). This provision refers repeatedly to termination of the exemption without once indicating that the termination is limited to the specific request of the competing carrier.[49] In other words, throughout both Section 251(f)(1)(A) and Section 251(f)(1)(B), Congress was careful to distinguish between the specific request of

[49] 47 U.S.C. § 251(f)(2)(B) (The "State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph A . . . . shall terminate the exemption" if the criteria are met and "[u]pon termination of the exemption . . . shall establish an implementation schedule[.]") The language in Section 251(f)(1)(B) that directs the Commission to adopt an implementation schedule for the specific request after terminating the exemption also is consistent with this analysis because, once the exemption is lifted, the requesting carrier will need specific relief that other carriers, which will be able to invoke the Section 252 process, will not require.

an individual carrier and the general termination of the exemption. This demonstrates that NDTC's analysis is incorrect.

In this regard, NDTC's citation to *ASC of Alaska* is inapposite. That case considered only the geographic scope of a request to terminate a rural exemption, not the services covered.[50] The *Order,* which limits the geographic scope of the relief to Devils Lake, is entirely consistent with that decision.

NDTC's next theory is that the Commission misapprehended the relationship between Sections 251(f)(1) and 251(f)(2). These claims are both incorrect and irrelevant.

Initially, NDTC repeatedly misstates the Commission's analysis. For instance, the Commission did not rely on the FCC's 1996 analysis of the burden of proof.[51] Rather, the *Order* states explicitly that the rural exemption should be lifted "if Midcontinent is able to prove that NDTC should not be exempt."[52] Similarly, there is nothing in the *Order* that suggests that "Congress sought to make Section 251(f)(2) automatic."[53] In fact, the Commission explicitly stated that companies seeking relief under Section 251(f)(2) "must prove . . . that a suspension or modification" is warranted.[54] Further, contrary to NDTC's claim, the Commission explicitly recognized that Section 251(f)(2) applies to a broader group of carriers than Section 251(f)(1).[55] Because of these errors, these claims are entitled to no consideration.

---

[50] *ASC of Alaska v. Regulatory Comm'n of Alaska,* 81 P.3d 292, 300-1 (S. Ct. Alaska 2003).
[51] NDTC Reconsideration Brief at 15, n.4.
[52] *Order,* ¶ 14.
[53] NDTC Reconsideration Brief at 17.
[54] *Order,* ¶ 12.
[55] *Id.,* ¶ 11. NDTC's claim that the FCC did not interpret Sections 251(f)(1) and 251(f)(2) together is wrong as a matter of fact. Even a cursory review of the 1996 *Local Competition Order* shows that the FCC intentionally considered them together and in the context of each other. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499, 16111-9 (1996).

NDTC's nitpicking appears intended to obscure the most important point in the Commission's analysis, which is that Section 251(f)(2) allows rural carriers to ameliorate any potential harms that might arise from lifting the rural exemption. As the Commission properly recognizes, Section 251(f)(2) gives rural carriers a second bite at the apple if they can show that application of a specific requirement of Section 251(c) is overly burdensome. This provides an important safety valve for rural carriers that lose their exemptions.[56]

Even if NDTC were correct, however, and the Commission had misunderstood the relationship between Sections 251(f)(1) and 251(f)(2), that would be irrelevant. As shown above, the Commission's interpretation of the plain meaning of Section 251(f)(1)(A) is correct. The interplay of Sections 251(f)(1) and 251(f)(2) merely provides additional support for the plain language interpretation of Section 251(f)(1)(A). If that interplay did not exist, the plain meaning of the relevant language still would remain, and that plain meaning would require the Commission to lift the exemption as to all of the Section 251(c) requirements.

B. The Commission Has Full Authority to Implement Section 251(f)(1).

NDTC repeats a series of arguments it made in earlier filings concerning the Commission's authority to implement Section 251(f)(1). The short answer to these arguments is that there is nothing more in federal or North Dakota law that supports NDTC's theories than there was the first time they were raised.[57]

First, the plain language of Section 251(f)(1) gives the Commission the full discretion to set an implementation schedule based on the evidence before it in this

[56] While Section 251(f)(2) applies to certain non-rural carriers, that does not affect this analysis.
[57] For this reason, Midcontinent respectfully requests that the Commission incorporate by reference the arguments concerning this issue made in Midcontinent's initial and reply briefs.

proceeding. While NDTC insists again that Section 252 provides "the only time frames applicable," there is still no reference to Section 252, or its time frames, anywhere in Section 251(f)(1).[58] NDTC provides no basis under principles of statutory interpretation for importing the requirements of Section 252 into a section that does not mention it.[59] Indeed, the opposite is true – there is no justification for concatenating unrelated statutory language.

NDTC's remaining arguments concerning Section 251(f)(1) merely reiterate its own preference for more time than the Commission has determined is appropriate to implement the resale obligation.[60] Such a preference is understandable, but is not supported by the statute, for all the reasons described in Midcontinent's briefs.[61] NDTC has provided no new reasons for the Commission to adopt its analysis and, as the Commission previously concluded, the old reasons do not suffice.

NDTC next claims that the Commission should have interpreted Section 251(f)(1) in light of North Dakota state law, particularly Section 41-21-01.7(9) of the North Dakota Century Code. There is no support for this novel theory, either as a matter of statutory interpretation or under the North Dakota statutes that NDTC claims apply.

---

[58] NDTC Reconsideration Brief at 20.

[59] NDTC's best explanation is that "[t]he Commission cannot refuse to follow [Section 252(b)] . . . by suggesting that Section 251(f)(1) provides it unfettered discretion." This argument, however, is a non sequitor. *Id.* The Commission did not refuse to follow Section 252(b); it held, correctly, that Section 252(b) did not apply because there was no language in Section 251(f)(1) or elsewhere in the statute to suggest that the Section 252(b) time frames applied to determining the compliance schedule under Section 251(f)(1). *Order,* ¶ 22. Indeed, since Section 252(b) by its terms applies only to negotiations and arbitrations initiated via Section 251(c), there is no basis at all for importing those time frames into another provision.

[60] *See* NDTC Reconsideration Brief at 20.

[61] Midcontinent Initial Brief at 11-15; Midcontinent Reply Brief at 4-6.

NDTC's fundamental error is to assume that North Dakota law can bind the Commission to interpret federal law in a particular way.[62] This turns the Supremacy Clause of the U.S. Constitution on its head.[63] Where, as here, there is a national law that governs all actions in a particular area, that law must be interpreted on its own terms, and it is state law that, if necessary, must give way.[64] Thus, the Commission's obligation is to determine the meaning of the federal law, as it did in this case, and then assess the impact on state law considerations.[65]

In any event, the reference to Section 41-21-01.7(9), which addresses interconnection negotiations and arbitrations, is inapposite because there is a separate provision addressing rural exemption proceedings. This provision, Section 41-21-01.7(11), specifically empowers the Commission to "[d]etermine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act."[66] The Commission has interpreted this provision, correctly, to allow it to fully implement Section 251(f)(1).[67] Significantly, there is nothing in either Section 41-21-01.7(9) or Section 41-21-01.7(11) that requires or suggests that the two provisions must be, should be or even can be read together. Rather, they are separate provisions that, like other portions of Section 41-21-01.7, give the Commission independent powers.

---

[62] NDTC Reconsideration Brief at 20.

[63] U.S. Const., Art VI, cl. 2.

[64] *See, e.g., Boomer v. AT&T*, 309 F.3d 404, 420 (7th Cir. 2002) ("[A]llowing state law to determine the validity of the various terms and conditions agreed upon by long-distance providers and their customers will create a labyrinth of rates, terms and conditions and this violates Congress's intent in passing the Communications Act."). As shown below, in this case the state and federal law are in accord and therefore the Commission need not consider the Supremacy Clause issues.

[65] Ironically, NDTC states that "The Commission has been directed to implement the requirements of the Act by the North Dakota Legislature[,]" and then insists that the Commission should adopt the Section 252 time frames on the basis of North Dakota law rather than federal law. NDTC Reconsideration Brief at 20. NDTC does not explain this contradiction.

[66] ND Cent. Code § 41-21-01.07(11).

[67] Any other interpretation would require the Commission to terminate rural carriers' exemptions without the possibility of any transition or compliance period, which would have meant that NDTC would have been required to provide resale as of the date of the *Order*.

At the same time, the Commission's reliance on Section 41-21-09 as an additional source of authority also is reasonable. NDTC's argument, in essence, is that the Commission cannot rely on this provision because it was implicitly repealed by Section 41-21-01.7(9).[68] As a matter of statutory construction, such an implicit repeal is disfavored, and is available, in the words of the case cited by NDTC, only when there is "an irreconcilable conflict."[69] The problem with NDTC's argument is that there is no such conflict. As NDTC itself has argued, Section 41-21-01.7(9) was enacted to give the Commission additional powers to implement the provisions of the Telecommunications Act of 1996.[70] In other words, this section adds to the Commission's powers, and does not remove any power the Commission already had. Consequently, there is no reason to believe that the Legislature intended for the new provision to have any effect at all on the old provisions.

It is telling that NDTC provides no evidence that the two provisions are in conflict with each other, but merely cites a statutory provision requiring harmonization of conflicting statutes.[71] However, harmonization, and the requirement that an earlier statute must give way to a later statute, another principle cited by NDTC, are relevant only when statutory provisions appear to be incompatible.[72] In this case, the opposite is true. Section 41-21-09 gives the Commission general powers and Section 41-21-01.7(9), along with other elements of Section 41-21-01.7, ensures that the Commission has certain specific powers that it may not have needed before the 1996 Act. Indeed, a broad reading

[68] NDTC Reconsideration Brief at 20-21.
[69] *Kershaw v. Burleigh County,* 77 N.D. 932, 936 (1951).
[70] NDTC Reconsideration Brief at 21 (Section 41-21-01.7(9) was passed "in response to a need to give the Commission authority to implement Section 251 and 252 agreements under the Act.").
[71] *Id.*
[72] *Id.* at 21-2.

of Section 41-21-09, rather than conflicting with Section 41-21-01.7(9), complements the specific powers granted by the newer provision. In the absence of any actual conflict, it is evident that the Commission's analysis is correct.

In any event, the Commission's citation of Section 41-21-09 simply provides further support for the conclusion that it has the authority to implement Section 251(f)(1) under multiple provisions of North Dakota law.[73] This power is amply established by other provisions as well, particularly Section 41-21-01.7(11). Even if Section 41-21-09 were insufficient in and of itself, the Commission still would be empowered to adopt the relief granted in this proceeding.

IV. Conclusion.

NDTC has raised no issues that require reconsideration. Its claims are inconsistent with the facts in evidence and with the governing law. Consequently, NDTC's petition for reconsideration should be denied forthwith and the *Order* should remain in full effect.

[73] For this reason, NDTC's claim that the Commission did not provide appropriate notice that it was proceeding under Section 41-21-09 is irrelevant. *Id.* at 21. Moreover, and as discussed above, the Commission is not obligated to provide notice of the specific statutes under which it is proceeding, merely notice of the general issues before it in a proceeding. *See supra* Part V.

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By: _____
Patrick W. Durick
J.G. Harrington*

Its Attorneys

*Admitted pro hac vice

Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

Dow Lohnes P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

May 24, 2006

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	**Case No. PU-05-451**
Complainant,	)	**AFFIDAVIT OF SERVICE BY MAIL**
vs.	)	
North Dakota Telephone Company,	)	
Respondent.	)	

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Jeanne Feist, hereby certifies that on May 24, 2006, she served a copy of the foregoing:

OPPOSITION OF MIDCONTINENT COMMUNICATIONS TO PETITION FOR RECONSIDERATION,

by e-mail in PDF format as follows:

William W. Binek
Public Service Commission
wbinek@state.nd.us

Scott Knudsvig
Counsel for NDTC
sknudsvig@srt.com

Tom Moorman
Counsel for NDTC
tmoorman@woodsaitken.com

Donald Negaard
Counsel for NDTC
donn@srt.com

Hon. Al Wahl
awahl@state.nd.us

Jeanne A Feist
Jeanne Feist

Subscribed and sworn to before me May 24, 2006.

Suzanne M Cahill
Notary Public
Burleigh County, North Dakota

SUZANNE M CAHILL
Notary Public
State of North Dakota
My Commission Expires Jan 29, 2011

Scott, Sandi L.

From: Binek, William W.
Sent: Wednesday, May 17, 2006 3:32 PM
To: Scott, Sandi L.
Subject: FW: Midcontinent - NDTC Case No. PU-05-451

Sandi: Please docket this.

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Wednesday, May 17, 2006 2:54 PM
To: Binek, William W.
Cc: Don Negaard; Mary Lohnes; -Grp-PSC Commissioners; -Grp-PSC Public Utilities; Harrington, J.G.
Subject: RE: Midcontinent - NDTC Case No. PU-05-451

Bill:

The service was by mail and electronic transmission and pursuant to Rule 6 I added three days for service by mail. Pursuant to your reading of the rules we will consider May 24th as the deadline for filing and serving a response.

Pat Durick

From: Binek, William W. [mailto:wbinek@nd.gov]
Sent: Wednesday, May 17, 2006 2:46 PM
To: Patrick W. Durick
Cc: Don Negaard; Mary Lohnes; -Grp-PSC Commissioners; -Grp-PSC Public Utilities
Subject: RE: Midcontinent - NDTC Case No. PU-05-451

The rule regarding filing of a response to a petition for reconsideration is N.D. Admin. Code §69-02-06-02(4) and provides that a party may file a response within 10 days after service of the petition. The Rules of Civil Procedure are used for computation of time in administrative proceedings. N.D.R.Civ.P 6(a) provides that when the period of time prescribed is less than 11 days, intermediate Saturdays, Sundays and legal holidays must be excluded from the computation. Applying those rules, I come up with the date of May 24th as the deadline for filing of Midcontinent's response.

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Wednesday, May 17, 2006 2:04 PM
To: Binek, William W.
Cc: Don Negaard; Mary Lohnes
Subject: Midcontinent - NDTC Case No. PU-05-451

Bill:

The Petition for Rehearing in this matter was served upon Midcontinent by mail and electronic transmission on May 10, 2006. As I understand the applicable rules for service under the North Dakota Rules of Civil Procedure, Midcontinent's response to the Petition pursuant to N.D. Admin. Code § 69-02-06-01(3.) must be filed with the PSC and served upon North Dakota Telephone Company on or before Friday May 26, 2006. If the Commission interprets the rules for service to require a response prior to this date I would appreciate your response.

Thank you for your consideration.

112 PU-05-451 Pages: 1
Service notification
by Midcontinent Communications by
05/17/2006 CC: Comm Legal Illona, Pat, Annette . .

Patrick W. Durick
P.O. Box 400
314 East Thayer Ave.
Bismarck, ND 58502-0400
(701) 333-0102 – Direct
(701) 333-0126 - Fax
(701) 220-3290 - Cell
pwd@pearce-durick

This email message and any attachments are for the sole use of the intended recipient(s) and contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.

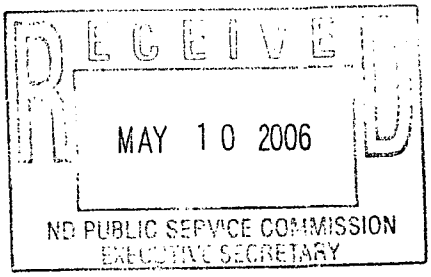
DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

May 10, 2006



Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding are an original and seven copies of the following:

1. Petition for Reconsideration of North Dakota Telephone Company.

2. Brief in Support of Petition for Reconsideration of North Dakota Telephone Company.

This document was also transmitted via electronic means to your office on this date.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission

111 **PU-05-451** Pages: 1

Cover letter re Petition for Reconsideration and Brief in Support
by North Dakota Telephone Company by Don Negaard,
05/10/2006 CC: Comm Legal Illona, Pat, Annette . .

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.	)	

MAY 10 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

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 26th Action"). The April 26th 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 26th Action and to issue an amended Findings of Fact, Conclusions of Law, and Order to address the following issues:

110 PU-05-451 Pages: 6
Petition for Reconsideration of NDTC
by North Dakota Telephone Company by Don Negaard,
05/10/2006 CC: Comm Legal Illona, Pat, Annette . .

1. The Findings of Fact included within the April 26th 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 26th 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 26th 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 26th 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 26th 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 26th 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 26th 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 26th 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 26th 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 26th 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 26th Action, and subsequently amend the April 26th Action to reflect properly the correct law and facts in this matter.

Respectfully submitted this 10th day of May, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
Scott M. Knudson, ID #05823
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

WOODS & AITKEN LLP

Thomas J. Moorman
2154 Wisconsin Avenue, NW, Suite 200
Washington, D.C. 20007
Telephone: (202) 944-9500
Fax: (202) 944-9501
tmoorman@woodsaitken.com
Attorneys for Respondent

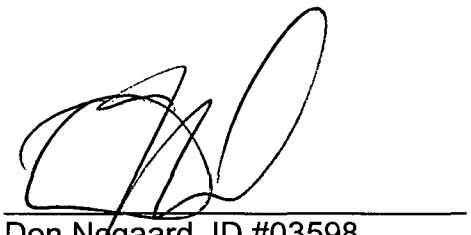
CERTIFICATE OF SERVICE

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:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
PWD@pearce-durick.com

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480
wbinek@state.nd.us

J. G. Harrington
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
jharrington@dowlohnes.com

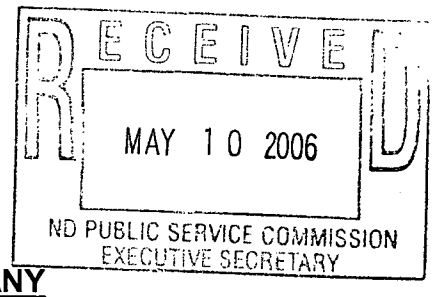


Don Negaard, ID #03598

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.	)	



BRIEF IN SUPPORT OF PETITION FOR RECONSIDERATION OF NORTH DAKOTA TELEPHONE COMPANY

This is a case of first impression with respect to the North Dakota Public Service Commission ("Commission") actions and authority to address Section 251(f)(1) of the Communications Act of 1934, as amended (the "Act"). North Dakota Telephone Company ("NDTC"), as well as the Commission, has an interest in ensuring that the Commission's actions in attempting to implement the explicit provisions of Section 251(f)(1) are accomplished in a manner consistent with the Act's specific directives, applicable and specific state law, and fundamental due process rights.

As the record in this proceeding demonstrates, the specific scope and focus of the proceeding was solely the establishment of a rational implementation schedule to address the only request that was made by Midcontinent Communications ("Midcontinent") – to remove NDTC's exemption under Section 251(f)(1) of 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.

109 PU-05-451 Pages: 22

Brief in Support of Petition for Reconsideration of NDTC
by North Dakota Telephone Company by Don Negaard,
05/10/2006 CC: Comm Legal Illona, Pat, Annette . .

The Commission's action in this proceeding, however, has now attempted to expand the scope of the proceeding beyond the record that was developed. The interest in assuring that the Commission's decisions are correct and in accordance with the law is compelling. Significant due process issues are raised by the Commission's April 26, 2006, decision in this matter (the "*April 26th Action*"), and that decision should, accordingly, be reconsidered and amended.

The *April 26th Action* also misstates the record and positions taken by NDTC and compounds that set of errors by failing to reconcile the decision with the clear and unambiguous requirements of the law. With respect to the law, specifically, the *April 26th Action* is fundamentally at odds with the explicit directives issued by Congress and confirmed by the North Dakota Legislature. In failing to address these unambiguous and explicit statutory directives, the Commission engages in what it admits to be a new (albeit improper) interpretation of the Act (*see April 26th Action* at 5 (¶ 15)) as well as North Dakota law.

The Commission's action, therefore, must be corrected and a rational interpretation of the law must be addressed. At the same time, a rational process for negotiating all the terms of an interconnection agreement must be provided. Absent such action, the Commission's *April 26th Action* stands counter to what the United States Congress and the North Dakota Legislature expected the Commission to do – undertake rational decision-making pursuant to the specific directives contained in the sections of the law governing this proceeding.

ERROR 1: THE FINDINGS OF FACT 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 state accurately its position taken in this proceeding. NDTC's position could not have been clearer.

> 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. Accordingly, the Commission's stated finding of fact – that NDTC "no longer challenges that its rural exemption should be terminated" (*April 26th Action* at ¶ 10) – has no basis in the record and is, in fact, contrary to NDTC's stated position.

The Findings of Fact do not quote the position of NDTC but rather mischaracterizes NDTC's position by failing to acknowledge the specificity of that position. NDTC requests that the *April 26th Action* be amended so that it reflects accurately NDTC's *actual* position in this proceeding. This is not merely a reasonable request but necessary because the *April 26th Action's* improper statement of NDTC's position likewise leads to other errors in the *April 26th Action*, as shown below.[1]

ERROR 2: THE COMMISSION'S PARAGRAPH 23 OF THE FINDINGS OF FACT ERRONEOUSLY STATES THAT ONLY ONE PARTY TESTIFIED ABOUT ACTUAL EXPERIENCE WITH RESALE, A PROPOSITION SIMPLY NOT SUPPORTED BY THE RECORD.

As noted in the Petition for Reconsideration, the *April 26th Action*, at paragraph 23 of the Findings of Fact, states erroneously that "the only party to testify as to actual experience in implementing resale was Midcontinent, and the only testimony was that

[1] To the extent that the *April 26th Action* uses language that is, in any way, contrary to the stated position of NDTC or does not state accurately the scope of the Midcontinent's request, the *April 26th Action* should be amended to do so.

arrangements for resale can be completed within 90 days." *Id.* (¶ 23). This purported summarization of the evidence in this proceeding misstates the record.

Below are the actual excerpts of testimony, from Witness Meredith, cited in the Petition for Reconsideration.

> I have participated in and have assisted a number of telephone companies in negotiation of interconnection agreements, including situations similar to the one involved in this matter.

(Meredith Testimony, p. 2.)

> Assuming, for sake of completeness, that the NDPSC should determine that the NDTC wholesale resale exemption for its Devils Lake exchange be lifted, then *the Commission should order the parties to begin negotiating the entirety of the terms and conditions for a resale interconnection agreement*, including, but not limited to, the applicable wholesale resale discount percentage for the Devils Lake exchange. Once this agreement is finalized and/or arbitrated in a manner consistent with the time periods stated in Section 252 (with the time periods beginning to run as of the date of the Commission's decision), then the parties would implement the agreement after it is approved by the Commission.

(*Id.*, p. 7.) (Emphasis added.)

> Specifically, after terminating the rural exemption as to Midcontinent in Devils Lake, NDTC would not be opposed to having the Commission order the parties to conduct *negotiations on the proper business terms and conditions for a resale agreement* with a wholesale discount specific to the Devils Lake exchange. Based on my familiarity with Section 252, that would allow the parties to negotiate such business terms and conditions for at least 135 days before a party could seek arbitration before the Commission (and, at the outside, up to 160 days from the effective date of the Commission's decision in this proceeding).

(*Id.*, p. 8.) (Emphasis added.)

> *Imposing an arbitrary 90-day implementation deadline on the resolution of terms and conditions* and, more importantly, the development and review of an avoided cost study before the rural exemption issue is decided is *unrealistic and unduly burdensome.*

(*Id.*, p. 12.) (Emphasis added.)

> Accordingly, I think it is clear by the time frames included within the Act that *interconnection arrangements under the Act are not established out of thin air*. Rather, the practical affect of the Act's structure is *to allow the parties sufficient time to negotiate all of the terms and conditions that each party feels necessary to ensure that its business interests are properly addressed* in both the agreement and the agreement's implementation.

(*Id.*, p. 13.) (Emphasis added.)

The integrity of the Commission's decision-making process requires that the *April 26th Action* be amended to address accurately the record before the Commission. The public interest cannot be served when, as here, a party's position that contradicts *directly* a purported finding of fact is not properly acknowledged or addressed. Accordingly, reconsideration is warranted to correct misstatements regarding the record.

In addition, however, the *April 26th Action* compounds its error by failing to provide *any* explanation as to why the evidence that NDTC provided regarding its witness's actual experience with implementing resale arrangements did not lead to an implementation schedule consistent with that experience. Likewise, there is no explanation as to why such experience should not be relied upon, particularly in light of the pronouncements of the North Dakota Legislature as to what the Commission is required to do (which, as explained below, are the time frames found in Section 252(b) of the Act. *See* Error 5, *infra.)*. The *April 26th Action's* error in failing to address the record before the Commission is compounded by the fact that the *April 26th Action* fails to acknowledge that all of the terms of an interconnection agreement must be negotiated, not just a discount rate. The Order in the *April 26th Action* fails to state how these terms and conditions will be negotiated or finalized, which is the very scope of the

implementation process to which NDTC's witnesses testified and which remains unchallenged. *See also* Error 3, *infra*.

ERROR 3: THE APRIL 26TH ACTION FAILS TO ADDRESS THE RECORD BEFORE THE COMMISSION AS TO HOW THE PARTIES SHOULD IMPLEMENT THE REQUIREMENT TO NEGOTIATE AN INTERCONNECTION AGREEMENT FOR THE PROVISION BY NDTC TO MIDCONTINENT OF WHOLESALE RESALE WITHIN THE NDTC DEVILS LAKE EXCHANGE AND FAILS TO ADDRESS HOW THE TERMS OF AN INTERCONNECTION AGREEMENT WILL BE NEGOTIATED.

As the above excerpts from NDTC Witness Meredith demonstrate, the record before the Commission reflects the obvious – interconnection terms and conditions are not created out of thin air, but rather must be negotiated. *See* Meredith Testimony at p. 13. These negotiations must occur within the time frames that Congress (and likewise the North Dakota Legislature) deemed appropriate, and are those found within Section 252(b) of the Act. *See, e.g.,* 47 U.S.C. § 252(b)(1) ("During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.").

The *April 26th Action*, however, fails to address this aspect of the record. In fact, it appears that, contrary to the explicit record in this proceeding, the *April 26th Action* supports the improper proposition that the *only* element of an interconnection agreement that must be negotiated between NDTC and Midcontinent is the wholesale discount rate. *See April 26th Action* at 8 (Ordering Clause Nos. 2 and 3). Likewise, the *April 26th Action* fails to address how the discount rate could be established (or the costs involved to NDTC in doing so would be worthwhile to incur should a negotiated

discount not be reached) when the record reflects the fact that such study would likely take NDTC three months. (*See* Transcript, at pp. 208-209, 219-223.)

Accordingly, NDTC requests that the Commission amend the *April 26th Action* on reconsideration and adopt an implementation schedule that includes the arbitration time periods established by Section 252 of the Act. Likewise, and at a minimum, the Commission should 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, among other facts, that the discount rate is only one of *many* terms and conditions that must be negotiated for implementation of wholesale/resale). Such action is required by the record in this proceeding and the failure to address that obligation would likewise fail to acknowledge the practical realities confronting parties in negotiating an interconnection agreement.

ERROR 4: THE COMMISSION'S ORDER VIOLATES THE DUE PROCESS RIGHTS OF NDTC BY EXPANDING THE SCOPE OF THE PROCEEDING BEYOND THE SPECIFIC REQUEST MADE BY MIDCONTINENT.

The scope of proceeding was the request made by Midcontinent in July 2005. The Midcontinent request was to the remove the existing exemption that NDTC has with respect to the provision of resale at a wholesale discount *solely* within the NDTC Devils Lake Exchange. The Commission's December 2005 amended notice (which is conspicuously not mentioned in the *April 26th Action*) noted the same, as follows: "On May 12, 2005 Midcontinent Communications (Midcontinent) made a bona fide request under Section 251(c) for wholesale resold services *for the Devils Lake, North Dakota exchange* from North Dakota Telephone Company (NDTC)." *Notice of Rescheduled*

Hearing, Case PU-05-451, dated December 14, 2005 (the "*December 14th Notice*") (emphasis added).

With respect to this "request" from Midcontinent, the Commission then stated the issues that would be addressed in its public hearing:

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.

Id. (emphasis added). Consistent with these directives, all testimony filed in the proceeding was for wholesale/resale within the NDTC Devils Lake exchange, and the Midcontinent witnesses confirmed this scope of the proceeding. *See, e.g., April 26th Action* at 5 (¶ 15), 7 (Conclusions of Law Nos. 1-4), 8 (Ordering Clause No. 2).[2]

In the *April 26th Action*, the Commission expanded the relief it granted beyond that which was identified in the Notice to include the removal of NDTC's existing exemption for all Section 251(c) services and arrangements in Devils Lake. *See id.* at 4 (¶ 14), 6 (¶ 16), 7 (Conclusions of Law No. 5); 8 (Ordering Clause No. 1). In doing so, the *April 26th Action* violated the due process rights of NDTC.

---

[2] With respect to the purported conclusions of law, NDTC notes that the Commission's discussion of what Midcontinent requested is "for the provision of retail service at wholesale rates. . .." *April 26th Action* at 7. The Commission's conclusions, however, omit the fact that the request was also limited by Midcontinent to wholesale/resale *solely within the NDTC Devils Lake exchange. See, e.g., December 14th Notice.*

The 5th Amendment to the United States Constitution provides, as follows: "*No person shall be . . . deprived of life, liberty, or property, without due process of law.*" (Emphasis added.) The 14th Amendment to the United States Constitution, section 1 also guarantees this "due process" concept, as follows: "*No state shall . . . abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law*, nor deny to any person within its jurisdiction the equal protection of the laws...." (Emphasis added.)

The North Dakota Constitution has its own due process requirement in Article I, section 9, as follows: *"[E]very man* for any injury done him in his lands, goods, person or reputation *shall have remedy by due process of law*, and right and justice administered without sale, denial or delay." (Emphasis added.) These due process requirements are also reflected in section 28-32-31 of the North Dakota Century Code, which requires governmental agencies to give adequate notice of the issue being heard at a public hearing.

At no time did this Commission give notice that the *entirety* of NDTC's rural exemption in its Devils Lake exchange was under review. The scope of the proceeding and the notice that was provided is that contained in the *December 14th Notice,* which addressed only the request of Midcontinent for wholesale/resale within the NDTC Devils Lake exchange. Likewise, at no time did the Commission issue any notice that it would establish the terms and conditions of an interconnection agreement between NDTC and Midcontinent, assuming that the Section 251(f)(1) exemption with respect to the specific Midcontinent request for wholesale/resale within the NDTC Devils Lake exchange was removed.

Rather, the *December 14th Notice* speaks for itself. Nowhere in that document did the Commission provide notice that the terms and conditions of the agreement for wholesale/resale services would be decided by the Commission. While the Order in one respect improperly goes too far, it does not go far enough in another respect. No other condition or terms of an interconnection agreement are even discussed in the *April 26th Action*, and the Commission neither noticed nor addressed how those terms and conditions will be arrived at between Midcontinent and NDTC. *See also* Error 2 and Error 3, *supra*.

The scope of the *April 26th Action*, therefore, goes beyond what the Commission stated the hearing was to address. This uncontroverted fact violates the due process rights of NDTC to respond in a governmental proceeding and to the issues that are to be addressed. See *State ex rel. Public Service Commission v. Northern Pac. Ry. Co.*, 75 N.W.2d 129 (N.D. 1956) (It is error for the Public Service Commission to try to expand the scope of a proceeding if it was not properly noticed as an issue.). Thus, the *April 26th Action* must be reconsidered and the scope of the action the Commission takes must be limited *solely* to the scope of the issue for which it gave notice – the request made by Midcontinent to remove the NDTC Section 251(f)(1) exemption "for wholesale resold services *for the Devils Lake, North Dakota exchange* from NDTC." *December 14th Notice.*

ERROR 5: THE COMMISSION ENGAGES IN 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 THE RELATED ORDERING CLAUSES.

The *April 26th Action* compounds its other errors by misinterpreting significantly not only the explicit provisions of the Act, but also by relying on an unsupported

interpretation of a Federal Communications Commission ("FCC") decision addressing Sections 251(f)(1) and Section 251(f)(2). At the same time, the *April 26th Action* violates time honored principles of statutory construction by suggesting a general North Dakota statutory provision regarding the Commission's authority over state law interconnection trumps the more specific directives of the North Dakota Legislature with respect to the Act. As a result, the legal errors reflected in the *April 26th Action,* both individually and collectively, render the *April 26th Action* unlawful. Accordingly, on reconsideration, the NDTC requests that the Commission rectify these errors in a manner consistent with the specific, unambiguous directives that the Act requires.

A. By Purportedly Lifting The Entirety Of NDTC's Exemption From All Of The Subsections Of Section 251(c) In The Devils Lake Exchange, The Commission Ignores The Explicit And Specific Directives Of The Act.

The Commission's Order states erroneously: "A bona fide request for *any* interconnection, service, or network element triggers a determination concerning termination of the rural exemption with regard to the entire list of obligations under Section 251(c)." *April 26th Action* at 5 (¶ 16) (emphasis in original). This statement cannot be reconciled with what Congress directed the Commission to do.

It is a time honored rule of statutory construction that, in interpreting a statute, the plain English meaning of the language used by the legislature must be used. *See, e.g., KCMC, Inc. v. Federal Communications Commission,* 600 F.2d 546, 549 (1979), *citing T.V.A. v. Hill,* 437 U.S. 153, 98 S. Ct. 2279, 57 L. Ed. 2d 117 (1978), *Caminetti v. United States,* 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917), and *Diamond Roofing Co. v. Occupational Safety & Health Review Commission,* 528 F.2d 645, 649 (5th Cir. 1976) ("[W]here the language selected by the drafters is clear and unequivocal, the courts are

bound to give effect to the plain meaning of the chosen words and no duty of interpretation arises."); see also *United Parcel Service, Inc. v. United States Postal Service,* 455 F. Supp. 857, 865, 866 (1978); (While the "plain meaning" of the statute creates a presumption of the statutory meaning, "if the plain and ordinary meaning of the language is itself reasonable in light of the broad purposes of the statute and in light of the structure and context of the legislation as a whole, we must uphold that meaning." (internal citations omitted)).

In the instant situation, there can be no question based on Congress's language what Congress intended the Commission to do. In fact, Congress could not have been clearer with respect to the scope of the action it expected the Commission to take when addressing the exemption issue raised in this proceeding – the focus is on the "request" that was made and solely that request.

Section 251(f)(1)(A) makes clear that the scope of the inquiry is on the specific request.

> Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received *a bona fide request* for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that *such request* is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

47 U.S.C. § 251(f)(1)(A) (emphasis added). Section 251(f)(1)(B) states the same. "Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance *with the request* that is consistent in time and manner with [FCC] regulations." 47 U.S.C. § 251(f)(1)(B) (emphasis added).

By failing to rely upon these directives, the Commission writes out of the statute the term "request" and thus commits an error of law. See *Reiter v. Sonotone Corp.*, 442

U.S. 330, 339 (1979), citing *U.S. v. Menasche*, 348 U.S. 528, 538-539 (1955) ("In construing a statute, we are obliged to give effect, if possible, to every word Congress used."). The "request" was made *solely* by Midcontinent and *solely* with respect to the provision by NDTC of wholesale/resale to Midcontinent within the NDTC Devils Lake exchange.

The suggestion arising from the *April 26th Action* that the Commission can disregard the "request," and thereby grant relief beyond what both Midcontinent testified to and the specific request that Midcontinent made, is without basis.[3] Accordingly, the conclusion in the *April 26th Action* that the entirety of NDTC's exemption in Devils Lake should be removed is erroneous as a matter of law and should be reversed. *See April 26th Action* at (Conclusion of Law No. 5); 8 (Ordering Clause No. 1). On reconsideration, the Commission should ensure that any relief complies *solely* to Midcontinent and *solely* to the request it made for wholesale resale within the NDTC Devils Lake Exchange.

B. The Commission Misconstrues Section 251(f)(1) And Section 251(f)(2) Of The Act To Bolster Its Erroneous Interpretation Of The Scope Of Section 251(f)(1).

The *April 26th Action* compounds its erroneous reading of the plain language of Section 251(f)(1) law through its reading of the FCC's *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, 11 FCC 15499 (1996) ("*First Report and*

---

[3] In an analogous situation, the Supreme Court of Alaska confirmed that Section 251(f)(1) requires a review of solely the request that has been made. *See ASC of Alaska, Inc. v. Regulatory Commission of Alaska,* 81 P.3d 292, 300-301 (S. Ct. Alaska, 2003).

Order"). The Commission indicates that, at paragraph 1262 of the *First Report and Order*,

> the FCC stated that "Congress generally intended the requirements of section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies." The FCC went on to state that to justify suspension or modification of the Section 251 requirements, "an LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry." Paragraph 1263 provides that once a bona fide request is made, smaller companies must prove to the Commission, under Section 251(f)(2) that a suspension or modification of Sections 251(b) or (c) should be granted.

April 26th Action at 4 (¶ 12).

From these quotes, the *April 26th Action* concludes erroneously that: (1) the "FCC has interpreted Sections 251(f)(1) and 251(f)(2) together" (*id.* at 4 (¶ 13); and (2) "A determination that the Commission could terminate a portion of the rural exemption under Section 251(f)(1), for example to terminate the rural exemption for only retail services at wholesale prices for only the Devils Lake exchange, would render meaningless the provisions of Section 251(f)(2) for suspension or modification of the requirement or requirements of Section 251(c)." *Id.* (¶ 14). This analysis is wrong.

With respect to paragraph 1263 of the FCC's *First Report and Order*, the *April 26th Action* fails to quote the operative language. ". . . we find that rural LECs must prove to the state commission that they should continue to be exempt pursuant to section 251(f)(1) from requirements of section 251(c), once a bona-fide request and been made, *and that smaller companies must prove to the state commission, pursuant to section 251(f)(2), that a suspension or modification of requirements of sections 251(b) or (c) should be granted."* Thus, the FCC was not interpreting the two provisions

of the Act – Section 251(f)(1) and Section 251(f)(2) – together. As the emphasized language makes clear, the FCC was merely stating who bears the burden of proof, not that the Section 251(f)(2) is triggered by a removal of an element of the exemption under Section 251(f)(1).[4]

Also without basis is the Commission's statement that, "A determination that the Commission could terminate a portion of the rural exemption under Section 251(f)(1), for example to terminate the rural exemption for only retail services at wholesale prices for only the Devils Lake exchange, would render meaningless the provisions of Section 251(f)(2) for suspension or modification of the requirement or requirements of Section 251(c)." *April 26th Action* at 4 (¶ 14). In fact, for several reasons, the Commission's statement cannot be reconciled with the very provisions themselves.

First, the eligibility requirements to trigger a Section 251(f)(1) proceeding versus a Section 251(f)(2) proceeding are not the same. Section 251(f)(1) applies to "rural telephone companies" ("RTCs"). *Compare* 47 U.S.C. § 251(f)(1)(a) and 47 U.S.C. § 153(37). Section 251(f)(2) applies to "local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide." 47 U.S.C. § 251(f)(2). Not all "2%" telephone companies are "RTCs."[5] Thus, the very structure of

---

[4] It is unclear from the entirety of the discussion contained within the *April 26th Action* whether the Commission's ruling relied upon the statements contained in paragraph 1262 of the *First Report and Order* regarding the burden of proof. The FCC's statements regarding the Section 251(f)(1) burden of proof (and the *April 26th Action's* repetition thereof) have been rejected. The 8th Circuit made clear that the FCC's interpretation of whom bears the burden of proof was erroneous. *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744 (8th Cir., 2000); *ASC of Alaska, supra*. (See also prior Briefs and Memorandums of NDTC in this matter.) In any event, the fact that the FCC's discussion regarding burden of proof with respect to Section 251(f)(1) was isolated by the 8th Circuit significantly undermines the Commission's suggestion that the Section 251(f)(1) and Section 251(f)(2) are to be read together. *See April 26th Action* at 4 (¶12).

[5] The FCC has recognized this fact, as follows:

> We use the term "rural LEC" to refer to a LEC that qualifies as a "rural telephone

the Act confirms that non-rural companies can apply for suspension or modification of duties, but only RTCs receive the automatic exemption, and that the type of company to which relief under Section 251(f)(2) applies is different as recognized by the FCC. *See* n. 5, *supra*.

Second, the type of relief is different. Section 251(f)(1) is the removal of a specific subsection 251(c) requirement, based on a request. Section 251(f)(2) allows a modification of that requirement or a suspension of *both Section 251(b) and Section 251(c) requirements. Compare* 47 U.S.C. § 251(f)(1) and 47 U.S.C. § 251(f)(2). Moreover, only Section 251(f)(1) requires the existence of Section 251(c) request. No such requirement exists in Section 251(f)(2). *See, e.g., id.*

Third, Section 251(f)(1) is a mandatory proceeding. *See* 47 U.S.C. § 251(f)(1)(B) ("The party making a bona fide request of a rural telephone company for interconnection, services, or network elements *shall* submit a notice of its request to the State commission.") (emphasis added). Section 251(f)(2) is permissive. *See* 47 U.S.C. § 251(f)(2) (An eligible telephone company *"may* petition a State commission for a suspension or modification of the application of a requirement or requirements of

---

company" under the 1996 Act. Under the 1996 Act, a LEC can qualify as a "rural telephone company" based on its small size *or* its location in a rural geographic area. In addition, we use the term "mid-sized LEC" to refer to an independent LEC with fewer than 2 percent of the nation's subscriber lines *that does not fall within the Act's definition of "rural telephone company."* Section 3(37) of the Act defines the term "rural telephone company." 47 U.S.C. § 153(37). Section 251(f)(2) allows independent LECs with fewer than 2 percent of the nation's subscriber lines to petition a state commission for suspension or modification of the requirements of section 251(b) and (c). See 47 U.S.C. § 251(b), (c), (f)(2).

In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Policy and Rules Concerning the Interstate, Interexchange Marketplace; LEACO Rural Telephone Cooperative, Inc., Petition for Waiver: Second Order on Reconsideration and Memorandum Opinion and Order, CC Docket Nos. 96-149, 96-61, 96-149, FCC 99-103 (rel. Jun. 30, 1999) at ¶12, n. 40 (emphasis added).

subsection (b) or (c) to telephone exchange service facilities specified in such petition." (emphasis added)). Thus, if Congress had intended that Section 251(f)(2) was to be triggered by a removal of the exemption of one of the subsections of 251(c) of the Act, then it would have made the relief available by Section 251(f)(2) mandatory, rather than elective.

Fourth, the standards under Section 251(f)(2) are different than those in Section 251(f)(1). Section 251(f)(1)(B) requires the following examination:

> Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

47 U.S.C. § 251(f)(1)(B). Section 251(f)(2) requires a far different showing.

> The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification--
>
> (A) is necessary--
>
> (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
>
> (ii) to avoid imposing a requirement that is unduly economically burdensome; or
>
> (iii) to avoid imposing a requirement that is technically infeasible; and
>
> (B) is consistent with the public interest, convenience, and necessity.

47 U.S.C. § 251(f)(2). Thus, if Congress sought to make Section 251(f)(2) automatic as the *April 26th Action* implies, one issue that is left unexplained by the *April 26th Action* is why the standards are different.

Finally, the *April 26th Action's* own statements make clear that its conclusion that a removal of the exemption under Section 251(f)(1) automatically triggers the need for a Section 251(f)(2) proceeding has no basis. If the *April 26th Action* was correct in its analysis that Section 251(f)(1) and Section 251(f)(2) are conjoined, then it follows that the Commission would then have the authority to address a Section 251(f)(2) request. However, the *April 26th Action* states that the Commission does not have that authority, as follows:

> We note however that a petition under Section 251(f)(2) must be made to the FCC because N.D.C.C. § 49-23-01.7(11) limits the Commission's authority to the determination of the rural telephone company's exemption under Section 251(f) of the Act and not to a determination of suspensions and modifications of rural carriers under Section 251(f)(2).

April 26th Action at 4 (¶14).

None of the distinguishing factors between Section 251(f)(1) and Section 251(f)(2) or the FCC's later pronouncements acknowledging the distinction (*see* n. 4, *supra*) have been addressed in the *April 26th Action*. Nor, for that matter, could they be addressed without demonstrating that the position taken in the *April 26th Action is* without basis. While it is true that the FCC addressed (and not interpreted) aspects of Section 251(f)(1) and Section 251(f)(2) together within its *First Report and Order*, the *April 26th Action's* reliance the FCC's discussion does not change the fact that the two provisions are, as demonstrated herein, entirely different. Thus, the *April 26th Action* in suggesting that the "FCC has interpreted Sections 251(f)(1) and Section 251(f)2) together" (*id.* (¶ 13) is in error, as is the *April 26th Action's* suggestion that a partial exemption removal "would render meaningless the provisions of Section 251(f)(2) for suspension or modification of the requirement or requirements of Section 251(c)." *Id.*

(¶ 14). If Congress intended the *April 26th Action's* result, then it would not have created the different sections.

C. The Commission Engages In An Unlawful Expansion Of Its Authority Under Governing Law By Interpreting A General Interconnection Statute In A Manner That Nullifies The More Specific Authority Granted To Implement The Act, And Otherwise Fails To Address The Record Before It.

The North Dakota Legislature directed the Commission to follow the Act. Through the Act, Congress specifically identified the time frames for negotiating the Act's interconnection requirements. *See* 47 U.S.C. § 252(b)(1) ("During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.")

Notwithstanding the North Dakota Legislature's directives and Congress's pronouncements, however, the *April 26th Action* states that, under Section 251(f)(1)(B), the Commission has "the authority to order an implementation and compliance schedule [that] is inseparable from the termination procedure and is, in fact, wholly contained within Section 251(f)(1) which the Legislature has granted the Commission authority to implement." *April 26th Action* at 6 (¶ 22). The *April 26th Action* also notes (*id.* (¶ 22)) that

> the purpose for requiring the state commission to establish an implementation schedule is to allow the state commission to establish a reasonable time period for parties to complete their negotiations for interconnection. If Congress wanted to require the parties to go through the entire Section 252 process as suggested by NDTC, Congress would have said so rather than requiring the state commission to establish an implementation schedule.

The Commission's statements miss the mark.

The fact that Congress did not cross reference the time frames established in 47 U.S.C. § 252(b)(1) is not the issue. The Commission has been directed to implement the requirements of the Act by the North Dakota Legislature. The Commission, therefore, is not working from a "blank slate" as the *April 26th Action* purports. Rather, Commission actions must follow the Act. The only time frames applicable to the instant situation (and which are confirmed by reliable record evidence) are those found in Section 252. If the Legislature desired to allow the Commission the convenience of end-running its directives, then the Commission would have been provided the discretion to do so by the North Dakota Legislature.

The lack of citation within the *April 26th Action* to this new found authority speaks volumes and, on reconsideration, should be rejected. The Commission cannot refuse to follow one section of the Act (Section 252(b)) where Congress outlined what it thought was a reasonable period of time for parties to sit down and discuss interconnection by suggesting that Section 251(f)(1)(B) provides it unfettered discretion. If so, then the directive from the North Dakota Legislature to follow the Act in this instance would be a nullity.

Equally in error is the fact that the *April 26th Action* relies upon section 49-21-09 of the North Dakota Century Code as broad authority for its powers to impose terms and conditions of interconnection on NDTC. This interpretation is also without basis in light of three insurmountable hurdles and barriers.

First, the *April 26th Action's* reliance on a general interconnection statute cannot trump the more specific requirements of the statute. *See, e.g., Mail Order Association*

of America v. United States Postal Service, 986 F.2d 509, 515 (D.C. Cir. 1993) (Courts "are to attempt to reconcile two statutes on the same subject, so that one does not repeal the other by implication.")

Second, a different standard is imposed by section 49-21-09 than the standard under section 49-21-01.7(9). Under the former, the Commission must make a finding (1) of public convenience and necessity, (2) that no irreparable harm will result to the owner of the facilities, (3) that no substantial detriment will result and, lastly, (4) that the parties have failed to agree on terms and conditions. Just as the Commission made no findings required by section 49-21-09 of the North Dakota Century Code, it also provided no notice that it was proceeding under that section and no evidence was introduced to support the needed findings under section 49-21-09.

Finally, the Commission's interpretation ignores the clear mandate of the Legislature in section 1-02-07 of the North Dakota Century Code.

> Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

Section 49-21-01.7(9) of the North Dakota Century Code was a special provision passed by the North Dakota Legislature after passage of the 1996 Federal Telecommunications Act. It was in response to a need to give the Commission authority to implement 251 and 252 agreements under the Act. Section 49-21-09 was a general provision first passed in 1919 and which was last amended in 1993 to give the Commission general powers over telecommunications providers. See *Kershaw v.*

Burleigh County, 47 N.W.2d 132 (N.D. 1951). (A statute passed earlier must give way to a statute passed later.)

CONCLUSION

The Commission's Order of April 26, 2006, must be amended to reflect properly the proceedings that did occur and to limit it to the matters properly before the Commission. The errors of fact and of law require reconsideration of the *April 26th Action* with dispatch. Accordingly, for the reasons stated in the accompanying Petition for Reconsideration and those stated herein, NDTC requests that the *April 26th Action* be reconsidered and amended to correct each error noted herein.

Respectfully submitted this 10th day of May, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
Scott M. Knudson, ID #05823
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

WOODS & AITKEN LLP

Thomas J. Moorman
2154 Wisconsin Avenue, NW, Suite 200
Washington, D.C. 20007
Telephone: (202) 944-9500
Fax: (202) 944-9501
tmoorman@woodsaitken.com
Attorneys for Respondent

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dave Rucks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Maria Keefe ☒ Agent ☐ Addressee

B. Received by (Printed Name) Maria Keefe | C. Date of Delivery 6-2-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3657

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Scott McKnudsen
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson | C. Date of Delivery 6/2/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3130

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154(

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Negaard
Pringle & Herigstad
PO Box 1000
Minot ND 58702-1000

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson | C. Date of Delivery 6/2/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3123

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dave Durchs
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Maria Keefe ☐ Agent ☐ Addressee

B. Received by (Printed Name) Maria Keefe | C. Date of Delivery 6-12-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3239

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Reggard
Pringle + Herigstad
PO Box 1000
Minot ND 58702-1000

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson | C. Date of Delivery 6/9/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
JUN 09 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3260

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Scott M Knudsvig
Pringle + Herigstad
PO Box 1000
Minot ND 58702-1000

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson | C. Date of Delivery 6/9/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
JUN 09 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3277

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PA-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Belinda Dicks
C. Date of Delivery 6-5-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3222

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PA-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

J E Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW
Ste 800
Washington DC 20036

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X A. Cole ☒ Agent ☐ Addressee

B. Received by (Printed Name) A Cole
C. Date of Delivery 6/5/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3116

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PA-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery 6/2

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3640

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PA-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

D. L Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave Ste 800
Washington DC 20036

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X C. A. Cobb ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. A. Cobb | C. Date of Delivery 6-12-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3253

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PA-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas J Morman
Kraskin Morman & Cosson LLC
2120 L St NW Ste 520
Washington DC 20037

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 6/13/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
2154 Wisconsin Ave
WDC 20007 Nw.

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7005 1820 0002 3243 3246

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PA-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Thomas J Morman
Kraskin Morman & Cosson LLC
2120 L St NW Ste 520
Washington DC 20037

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 6/13/6

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3664

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

APPROVED
DATE: 4-26-06
KMF

MOTION

April 26, 2006

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission Issue a Notice of Further Hearing in Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation, Case No. PU-05-451.

PJF/sdh

108 PU-05-451 Pages: 1

Motion/Notice of Further Hearing

by Public Service Commission

04/26/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

NOTICE OF FURTHER HEARING

April 26, 2006

Preliminary Statement

On April 26, 2006 the Commission issued its Findings of Fact, Conclusions of Law, and Order in this proceeding. The Commission ordered NDTC to begin providing retail services at wholesale prices for resale under an interconnection agreement no later than 90 days from the date of the order. The Commission also ordered that a further hearing be held to determine an interim wholesale discount rate in the event the parties are unable to negotiate a rate and to determine the need for an associated true-up provision.

A public hearing is scheduled for **July 10, 2006 at 9 a.m. in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota**. The issues to be considered include:

1. The interim wholesale discount rate to be applied effective with the effective date of the wholesale resale agreement and effective until the effective date of a final rate established for the service.
2. The need and design of a true-up provision should the final wholesale discount rate be different from the interim wholesale discount rate.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701 328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Illona A. Jeffcoat-Sacco, Executive Secretary, at least 24 hours prior to the event.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	Tony Clark	Kevin Cramer
Commissioner	President	Commissioner

107 PU-05-451 Pages: 1

Notice of Further Hearing

by Public Service Commission

04/26/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **27th day of April, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7004 2510 0004 8815 3121

Dave Dircks Manager
North Dakota Telephone Company
P O Box 180
Devils Lake ND 58301-0180
Cert. No. 7004 2510 0004 8815 3138

Thomas J Moorman
Kraskin Moorman& Cosson LLC
2120 L St NW Ste 520
Washington D C 20037
Cert. No. 7004 25160 00041 8815 3145

J G Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington D C 20036
Cert. No. 7004 2510 0004 8815 3152

Don Negaard
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7004 2510 0004 8815 3169

Scott M Knudsvig
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7004 2510 0004 8815 3176

Sharon Helbling further deposes and says that on the **27th day of April, 2006,** she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular

mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **27th day of April, 2006**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **27th day of April, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of:

Order

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Sharon Helbling

Subscribed and sworn to before me
this **27th day of April, 2006**.

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

Sandra L Scott
Notary Public

SEAL

wbrudvik@ohnstadlaw.com
William Brudvik

mariep@telcogroupinc.com
Marie Pierre-Paul

cheryl.robins@thomson.com
Cheryl Robins

dennis.kelley@reconex.com
Dennis Kelley
1-800-Reconex Inc
2500 Industrial Ave
Hubbard OR 97032

ffarm@wtc-mail.net
Ann Faught
Absaraka Co-op Tele Co
Absaraka ND 58002

jlchapman@acomminc.com
Jerry Chapman
Acomm Inc
510 1st Ave N Ste 203
Minneapolis MN 55403-0343

judy.messenger@paetec.com
Judy Messenger
American Long Lines Inc
1 PaeTec Plaza
600 Willowbrook Office Pk
Fairport NY 14450

jcremer@bantzlaw.com
James Cremer
Bantz Gosh & Cremer LLC
305 6th Ave SE
Aberdeen SD 57402-0970

rharper@bepc.com
Ron Harper
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

dbulawa@bektel.com
Derrick Bulawa
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

dan.meldazis@broadwing.com
Dan Meldazis
Broadwing Communications LLC
200 N LaSalle 10th Fl
Chicago IL 60601

diane.peters@globalcrossing.com
Diane Peters
Budget Call Long Distance Inc
1080 Pittsford Victor Rd
Pittsford NY 14534

aeconomou@mettel.net
Andoni Economou
Business Productivity Solutions Inc
44 Wall St 6th FL
New York NY 10005

jean.houck@btitelecom.net
Jean Houck
Business Telecom Inc
7037 Old Madison Pike Ste 400
Huntsville AL 35806

astevens@czn.com
Scott Bohler
Citizens Telecomm Co of Minnesota
3 High Ridge Park
Stamford CT 06905

michael_nelson@cable.comcast.com
Michael Nelson
Comcast Business Communications Inc
183 Inverness Dr W
Englewood CO 80112

pamela.hintz@ctcnet.com
Computer Telephone Corp
220 Bear Hill Rd
Waltham MA 02451-1101

mannawiz@pacbell.net
Larry Manna
Compuwiz
1012 Industrial Blvd
South Lake Tahoe CA 96150

bryan@consolidatedtelcom.com
Bryan W Personne
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

ken@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

paul@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

keithl@daktel.com
Keith Larson
Dakota Central Tele Coop
PO Box 299
Carrington ND 58421-0299

mjrasher@msn.com
Mary Jane Rasher
DCI Group

tschilling@drtel.com
Troy Schilling
Dickey Rural Communications Inc
PO Box 69
Ellendale ND 58436-0069

tschilling@drtel.com
Troy Schilling
Dickey Rural Services Inc
P O Box 69
Ellendale ND 58436

tschilling@drtel.com
Troy Schilling
Dickey Rural Telephone Cooperative
PO Box 69
Ellendale ND 58436-0069

lhankins@covad.com
Lynn Hankins
DIECA Communications Inc
3420 Central Expy
Santa Clara CA 95051-0703

bgipson@vartec.net
Becky Gipson
Excel Telecommunications Inc
2440 Marsh Lane
Carrollton TX 75006

astevens@czn.com
Frontier Communications of America Inc
4 Triad Ctr Ste 200
Salt Lake City UT 84180

glenn.richards@shawpittman.com
Glenn Richards
Glenn Richards
ShawPittman
2300 N St NW

petra.malik@globalcrossing.com
Petra Malik
Global Crossing North American Networ
1080 Pittsford Victor Rd
Pittsford NY 14534

petra.malik@globalcrossing.com
Petra Malik
Global Crossing Telecommunications Inc
1080 Pittsford Victor Rd
Pittsford NY 14534

cooperstown@mlgc.com
Ray Brown
Griggs County Telephone Co
P O Box 506
Cooperstown ND 58425-0506

rlaqua@rrv.net
Ronald Laqua
Halstad Telephone Company
PO Box 55
Halstad MN 56548-0055

cstein@dominionbusinessgroup.com
Chris Stein
Horizon Telecom Inc
3993 Howard Hughes Pkwy Ste 250
Las Vegas NV 89109

rlaqua@rrv.net

HTC Services Inc
P O Box 55
Halstad MN 56548

bjohnson@ideaone.com
Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

carl.billek@corp.idt.net
Carl Wolf Billek
IDT America Corp
520 Broad St
Newark NJ 07102-3111

jamie@ignus.com
Jamie Kubik
Ignus Inc
855 45th St SW Ste 11
Fargo ND 58103-1036

gene.curtis@integratelecom.com
Gene Curtis
Integra Telecom of North Dakota Inc
745 45th St SW Ste C
Fargo ND 59103

marsha.pokorny@ildmail.com
Marsha Pokorny
Intellicall Operator Services

kander@ictc.com
Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

dave_read@inter-tel.com
Dave Read
Inter-Tel NetSolutions Inc
885 Trademark Dr
Reno NV 89511

jamesval@jamesvalley.com

James Valley Coop Telephone Co
P O Box 260
Groton SD 57445

sales@kmavradio.com

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

francie@talk.com
Francie McComb
LDMI Telecommunications Inc
6805 Route 202
New Hoee PA 18938

loretel@loretel.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

gtaylor@matrixvalue.com
Greg Taylor
Matrix Telecom Inc
300 N Meridian Ste 200-North
Oklahoma City OK 73107

foss@btinet.net
Marilyn Foss
MCI
P O Box 2216
Bismarck ND 58502-2216

gerrya@midrivers.com
Gerry Anderson
Mid-Rivers Telephone Coop Inc
PO Box 280
Circle MT 59215-0280

carols@midstatetel.com
Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

carols@midstatetel.com
Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

2kathyg@nemontel.net
Kathy Greenwood
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

karen.collins@mdu.com; tamie.aberle@mdu.com
Karen Collins
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

sbunn@mlgc.com
Shelie Bunn
Moore & Liberty Telephone Co
Enderlin ND 58027

dhill@ndarec.com
Dennis Hill
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

pschaner@ndarec.com
Patti Schaner
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

2kathyg@nemontel.net
Kathy Greenwood
Nemont Telephone Cooperative Inc
Scobey MT 59263

jsilveira@netlojix.com
Janet Medeiros-Silveira
NetLoqix Telecom Inc
104 W Anapamu St Ste C
Santa Barbara CA 93101

bslaughter@newaccess.cc
Brandi Franzen
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

prieck@newaccess.cc
Pam Rieck
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

rer@norlight.com
Robert E Rogers
NorLight Inc
275 N Corporate Dr
Brookfield WI 53045

laurie.willman@nbne.info
Laurie Willman
North By NortheastCom LLC

kathyy@ndtel.com
Kathy Young
North Dakota Long Distance
P O Box 180
Devils Lake ND 58301-0180

stevedl@srttel.com
Steven Lysne
North Dakota Network Co
P O Box 2027
Minot ND 58702-2027

pat@ndta.net
Patricia Gisinger
North Dakota Telephone Assoc
PO Box 2614
Bismarck ND 58502-2614

kathyy@ndtel.com
Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

dwights@nccray.com
Dwight Schmitt
Northwest Communications Coop
PO Box 38
Ray ND 58849-0038

njureidini@noslv.com
Naz Jureidini
NOS Communications
4380 Boulder Hwy
Las Vegas NV 89121

mary.buley@onvoy.com
Mary Buley
Onvoy Inc
300 South Highway 169, Ste 700
Minneapolis MN 55426

jill.froman@excellsvcs.com
Jill Froman
Operator Service Company LLC
5302 Avenue Q
Lubbock TX 79412

ddunning@polarcomm.com
David Dunning
Polar Commun Mut Aid Corp
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telcom Inc
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telecommunications Inc
PO Box T
Park River ND 58270

donn@srt.com
Don Negaard
Pringle and Herigstad P C
PO Box 1000
Minot ND 58702-1000

jbrown@vcomsolutions.com
Jenna Brown
QuantumShift Communications Inc
12657 Alcosta Blvd Ste 418
San Ramon CA 945830

sschwan@qwest.com
Suzy Schwandt
Qwest Corporation

kblicke@qwest.com
Kent Blickensderfer
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

smacint@qwest.com
Scott Macintosh
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

richard.buckley@qwest.com
Richard J Buckley
Qwest Corporation
1801 California St Rm 4710
Denver CO 80202

jason.topp@qwest.com
Jason Topp
Qwest Corporation
1801 California St Ste 900
Denver CO 80202

areyes@telfile.com
Ayanery Reyes
QX Telecom LLC
230 5th Ave Ste 800
New York NY 10001

pam@tnics.com
Pamela Harrington
RC Communications Inc
PO Box 197
New Effington SD 57255-0197

jeffolson@rrt.net
Jeff Olson
Red River Rural Tele Assoc
PO Box 136
Abercrombie ND 58001-0136

royce@restel.net
Royce Aslakson
Reservation Telephone Cooperative
Parshall ND 58770

marciab@RTC.coop
Marcia Burckhard
Reservation Telephone Cooperative
Parshall ND 58770

shaneh@restel.net
Shane Hart
Reservation Telephone Cooperative
Parshall ND 58770

pam@tnics.com
Pamela Harrington
Roberts County Telephone Coop Assoc
New Effington SD 57255

aimeed@nemontel.net

Sagebrush Cellular Inc

kb9534@sbcld.com
Karen Brinkman
SBC Long Distance LLC
5850 W Las Positas Blvd
Pleasanton CA 94558

diane.c.browning@mail.sprint.com
Diane C Browning
Sprint
6450 Sprint Pkwy
MAILSTOP: KSOPHN0212-2A511
Overland Park KS 66251

jasonrg@srttel.com
Jason Gemar
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

julieel@srttel.com
Julie Lizotte
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

stevedl@srttel.com
Steve Lysne
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

christm@srttel.com
Chris Morsefield
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

janehp@srttel.com
Jane Petersen
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

johnar@srttel.com
John Reiser
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

kimrw@srttel.com
Kim Weydahl
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

mdickerson@state.nd.us
Marcy Dickerson
State Tax Department
State Capitol
Bismarck ND 58505

francie@talk.com
Francie McComb
Talk America Inc
6805 Route 202
New Hope PA 18938

lwh@thlglaw.com
Loubna W Haddad
The Helein Law Group LLP
8180 Greensboro Dr Ste 700
McLean VA 22102

gary.barlow@flyingj.com
D Brett Sanford
Ton Services Inc
4185 Harrison Blvd Ste 301
Ogden UT 84403

compliance@epowerc.com
Lourdes Vinas
TransWorld Network Corp
7702 Woodland Ctr Blvd Ste 50
Tampa FL 33614-2411

cdr-agency-relations@mci.com
Dan Hernandez
TTI National Inc
P O Box 3187
Cedar Rapids IA 52406-3187

kcarlson@utma.com
Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

lahall@usgs.gov
Lenora Hall
U S Geological Survey

kjvannin@usgs.gov
K Vannin
U S Geological Survey

kimm.partridge@ucn.net
Kimm Partridge
UCN Inc
14870 S Pony Express Rd
Bluffdale UT 84065

kcarlson@utma.com
Kenneth Carlson
United Telephone Mut Aid Corp
P O Box 729
Langdon ND 58249-0729

mspead@universalservice.org
Michael Spead
USAC
2120 L St NW Ste 600
Washington DC 20037

kander@ictc.com
Keith Anderson
Valley Communications Inc
P O Box 8
Nome ND 58062

bgipson@vartec.net
Becky Gipson
VarTec Solutions Inc
2440 Marsh Lane
Carrollton TX 75006

bgipson@vartec.net
Becky Gipson
VarTec Telecom Inc
2440 Marsh Lane
Carrollton TX 75006

rhoudek@venturecomm.net
Randy Houdek
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

anthony.gillman@verizon.com
Anthony Gillman
Verizon Select Services Inc
P O Box 110
Mailcode: FLTC0007
Tampa FL 33601-0110

anthony.gillman@verizon.com
Anthony Gillman
Verizon Select Services Inc
P O Box 110
Tampa FL 33601-0110

westriver@sdplains.com
West River Coop Telephone Co
801 Coleman Ave PO Box 39
Bison SD 57620-0039

bonniek@westriv.com
Bonnie Krause
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

mickg@westriv.com
Mick Grosz
West River Telecommunications Cooperat
PO Box 467
Hazen ND 58545-0467

kathy.hough@wiltel.com
Kathy Hough
WilTel Communications LLC
1 Technology Ctr
Tulsa OK 74103

windfall_resources@sbcglobal.net
Robert K Lock
Windfall Resources International LLC
7144 BN Harlem Ave Ste 323
Chicago IL 60631

paulihland@wtc-mail.net
Paul Ihland
Wolverton Telephone Company
P O Box 270
Park River ND 58270-0270

rex.knowles@xo.com
Rex Knowles
XO Communications Services Inc
111 E Bdwy Ste 1000
Salt Lake City UT 84111

Diana Stevens
One Verizon Place
Alpharetta GA 30004-8511

1 Plus Savings Inc
36072 Jefferson Ave
Harrison Township MI 48045

Jennifer Sikes
1-800 Reconex
2500 Industrial Ave
Hubbard OR 97032

Patrick Summers
360networks (USA) Inc.
867 Coal Creek Cir Ste 160
Louisville CO 80027-4670

3U Telecom Inc
1802 N Carson St Ste 212-2683
Carson City NV 89701

800 Response Information Services LLC
200 Church St
Burlington VT 05402

Acceris Communications Corp
9775 Business Park Ave
San Diego CA 92131

Access Point Inc
1100 Crescent Green Ste 10 9
Cary NC 27511

Accessline Communications Corporation
11201 SE 8th St Ste 200
Bellevue WA 98004

ACCXX Communications LLC
4035 Tampa Rd Ste 6000
Oldsmar FL 34677

ACN Communications Services Inc
32991 Hamilton Ct
Farmington Hills MI 48334

Acomm Inc
5701 Shingle Crk Pkwy Ste 550
Brooklyn Center MN 55430-2467

Affinity Network Incorporated
4380 Boulder Hwy
Las Vegas NV 89121

Airespring Inc
6060 Sepulveda Blvd Ste 220
Van Nuys CA 91411-2512

Airnex Communications Inc
3000 Executive Pkwy Ste 230
San Ramon CA 94583

Alliance Group Services Inc
1221 Post Rd E
Westport CT 06880-5430

All-Star Acquisition Corporation
7361 Calhoun Pl Ste 650
Derwood MD 20855-2775

Alltel Communications Inc
1 Allied Dr
Little Rock AR 72202

Alternate Communications Technology Inc
1398 N Shadeland Ave Ste 2233
Indianapolis IN 46219

American Global Voice Mart Inc
8180 Greensboro Dr Ste 775
McLean VA 22102

Americatel Corporation
4045 NW 97th Ave
Miami FL 33178

Kelly Franks
Amerivision Communications Inc
201 NW 63rd St Ste 200
Oklahoma City OK 73116

Arch Communications Enterprises LLC
6910 Richmond Hwy #80
Alexandria VA 22306-1801

Arch Paging Inc
1800 W Park Dr
Westborough MA 01581

Arch Wireless Inc
6910 Richmond Hwy #80
Alexandria VA 22306-1801

ASC Telecom Inc
6391 Sprint Pkwy
Overland Park KS 66251-6100

Associated Network Partners Inc
3130 Pleasant Run
Springfield IL 61707-6347

Association Administrators Inc
180 E Main St
Smithtown NY 11787

Kimberly Nielsen
AT&T Wireless
7277 164th Ave NE RTC-1
Redmond WA 98052

ATX Telecommunications Services Ltd
50 Monument Rd
Bala Cynwyd PA 19004

BAK Communications LLC
1108 E 17th St
Santa Ana CA 92701

Basin Telecommunications Inc
1717 E Interstate Ave
Bismarck ND 58503-0564

BCN Telecom Inc
550 Route 202-206 2nd Fl
Bedminster NJ 07921

Bell Atlantic Communications Inc
1320 N Courthouse Rd 9th Fl
Arlington VA 22201

John Broten
Bell Atlantic Communications Inc
1320 N Court House Rd 9th Fl
Arlington VA 22201

Robin H Taylor
BellSouth Long Distance Inc
400 Perimeter Ctr Terr Ste 350
Atlanta GA 30346

Better World Telecom Inc
11921 Freedom Dr Ste 550
Reston VA 20194

Angel Sotomayer
Bismarck MSA LImited Partnership
180 Washington Valley Rd
Bedminster NJ 07921-2120

Blackstone Communications Company
11600 NW 34th St
Miami FL 33178

Broadwing Communications LLC
1122 Capital of Texas Highway S
Austin TX 78746

Budget Phone, Inc.
6901 W 70th St
Shreveport IL 71129

BullsEye Telecom, Inc.
25900 Greenfield Rd Ste 330
Oak Park MI 48237

Craig Konrad
Business Discount Plan Inc
1 World Trade Ctr Ste 800
Long Beach CA 90831

Business Network Long Distance Inc
1400 16th St Ste 400
Denver CO 80202

Buzz Telecom Corporation
8380 Louisiana St
Merrillville IN 46410

Scott Geston
Cable One of Fargo
P O Box 10757
Fargo ND 58106-0757

Century Telecommunications Inc
P O Box 4065
Monroe LA 71211-5065

Cincinnati Bell Any Distance Inc
201 E 4th St
Cincinnati OH 46202

Clear World Communications Corporation
3601 S Harbor Blvd
Santa Ana CA 92704

Robert Fallan
Coast International Inc
14303 W 95th St
Lenexa KS 66215-5210

Cognigen Networks Inc
6405 218th St SW Ste 305
Mountlake Terrace WA 98043-2180

Coleman Enterprises Inc
6053 Hudson Rd #110
Woodbury MN 55125

Beth Choroser
Comcast Business Communications Inc
1500 Market St
Philadelphia PA 19102

CommPartners LLC
3291 N Buffalo Dr Ste 8
Las Vegas NV 89129

Courtney Maroon
Communications Billing Inc
P O Box 40149
Bay Village OH 44140-0149

C Hurley Cox
Communications Network Billing Inc
6701 Democracy Blvd Ste 300
Bethesda MD 20817

CommuniGroup of K C Inc
6950 W 56th St
Mission KS 66202

Computer Integrated Communications In
8502 Bells Mill Rd
Potomac MD 20854-4071

Computer Network Technology Corp
6000 Nathan Ln N
Minneapolis MN 55442

Comtech 21 LLC
1 Barnes Park S
Wallingford CT 06492

Consolidated Billing Provider LLC
7 Shingle Oak Dr
Voorhees NJ 08043

Scott Kitchen
Consolidated Comm Operator Services I
350 S Loop 336 W
Conroe TX 77304

Consolidated Comm Telecom Services Inc
121 S 17th St
Mattoon IL 61938

Consolidated Communications Corp
P O Box 1408
Dickinson ND 58602-1408

Consolidated Communications Networks Inc
507 S Main
Dickinson ND 58601

Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

Contact Communications
937 W Main St
Riverton WY 82501

Convergia Inc
237 Hymus Blvd
Point-Claire Quebec CA H9R 5C7

Corporate Calling Services Inc
3960 Howard Hughes Pk
5th Fl #5001F
Las Vegas NV 89109-5972

Corporate Communications Inc
2150 32nd Ave S
Grand Forks ND 58201

Anthony Barrett
Covista Inc
4803 Hwy 58 N
Chatanooga TN 37416

Custom Teleconnect Inc
3111 S Valley View Ste E-120
Las Vegas NV 89102

Cybertel Communications Corp
9444 Waples ST Ste 290
San Diego CA 92121-2985

D D D Calling Inc
2400 Augusta Ste 255
Houston TX 77057

Keith Larson
Dakota Central Telecom I
PO Box 299
Carrington ND 58421-0299

William Jackson
Dakota Justice
38 8th Ave W
Dickinson ND 58601

Daktel Communications LLC
P O Box 299
Carrington ND 58421-0299

Dave Dircks
DCN LLC
P O Box 180
Devils Lake ND 58301-0180

DelTel Inc
27071 Aliso Creek Rd Ste 150
Aliso Viejo CA 92656-5323

Dialaround Enterprises Inc
30-50 Whitestone Expwy 1st Fl Ste 102
Flushing NY 11354

Dial-Thru Inc
17383 Sunset Blvd Ste 350
Pacific Palisades CA 90272-4195

Digital Telecommunications Inc
111 Riverfront Ste 305
Winona MN 55987

DSLnet Communications LLC
545 Long Wharf Dr
New Haven CT 06511

Eagle Telecom Inc
614 S 8th St Ste 335
Philadelphia PA 19147

Easton Telecom Services Inc
3046 Brecksville Rd #A
Richfield OH 44286-9399

Easton Telecom Services LLC
Summit II Unit A
3406 Brecksville Rd
Richfield OH 44286

ECI Communications Inc
P O Box 27408
Fresno CA 97329-7408

Encompass Communications LLC
119 W Tyler Ste 260
Longview TX 75601

Enhanced Communications Group LLC
312 E Delaware Ave
Bartlesville OK 74003-3630

Enhanced Communications Network Inc
1031 S Glendora Ave
West Covina CA 91790

Entrix Telecom Inc
520 Broad St
Newark NJ 07102

Epixtar Communications Corp
11900 Biscayne Blvd Ste 262
Miami FL 33181

erbia Network Inc
7901 Ariel Way
McLean VA 22102

Ernest Communications Inc
5275 Triangle Pkwy Ste 150
Norcross GA 30092

Exergy Group LLC
1550 W 84th St Ste 50
Hialeah FL 33014

Chere Heintzmann
Extend America Inc
1101 E Front Ave
Bismarck ND 58504-5654

Farstad Oil Inc
P O Box 1842
Minot ND 58701

Lawrence Freedman
Fleischman & Walsh
1919 Pennsylvania Ave NW Ste 600
Washington DC 20006-3420

France Telecom Corporate Solutions LLC
2300 Corporate Park Dr Mailstop SPO606
Herndon VA 20171

FreedonStarr Communications Inc
7985 Santa Monica Blvd #7
West Hollywood CA 90046

Funding Our Future LLC
1900 Wellesley Ave
St Paul MN 55105

Gates Communications Inc
1100 Olive Way #951
Seattle WA 98101

Gerlach Enterprises Inc
3002 Fiechtner Dr S Ste 1
Fargo ND 58103-2387

Global Communications Consulting Corp
2 Greenwood Sq Ste 110
3331 St Rd
Bensalem PA 19020-2052

Global Tel*Link Corporation
2609 Cameron St
Mobile AL 36607-3104

Globalcom Inc
333 West Wacker Ste 1500
Chicago IL 60606

GLOBCOM INCORPORATED
2100 Sanders Rd Ste 150
Northbrook IL 60062

Go Solo Technologies Inc
5053 Ocean Blvd #54
Sarasota FL 34242

Gold Line Telemanagement Inc
180 W Beaver Creek Rd
Richmond Hill Ontari CA L4B 1B4

Granite Telecommunications LLC
100 Newport Ave Ext
Quincy MA 02171

Group Long Distance Inc
1 Cavalier Ct
Ringoes NJ 08551-0534

GTC Telecom
3151 Airway Ave Ste p_3
Costa Mesa CA 92626

Houlton Enterprises Inc
2201 W Bdwy Ste 1
Council Bluffs IA 51501

IBFA Acquisition Company LLC
1850 Howard St Unit C
Elk Grove Village IL 60007

Julia Waysdorf
ICG Telecom Group Inc
161 Inverness Dr W
Englewood CO 80112

Infone LLC
601 S Figueroa St 40th Fl
Los Angeles CA 90017-5758

Inmate Calling Solutions LLC
5883 Rue Ferrari
San Jose CA 95138

Intelecall Communications Inc
11900 Biscayne Blvd Ste 201
Miami FL 33181

Intercontinental Communicatiosn Group Inc
420 Lexington Ave Ste 518
New York NY 10170

Ken Hanks
International Telcom Ltd
417 2nd Ave W
Seattle WA 98119

International Telemanagement Group Inc
206 E Market St
Lima OH 45801

David A. Huberman
Intrado Communications Inc
1601 Dry Creek Dr
Longmont CO 80503-6493

Ionex Communications North Inc
2300 Main St Fl 6
Kansas City MO 64108-2415

IPVoice Communications Inc
14860 Montfort Dr Ste 210
Dallas TX 75254

Nanette Edwards
ITC DeltaCom Communications Inc
7037 Old Madison Pike NW #400
Huntsville AL 35806-2107

KDDI America Inc
375 Park Ave 7th Fl
New York NY 10152

KMC Data LLC
1545 Route 206
Bedminster NJ 07921

KMC Telecom V Inc
1545 Rt 206
Bedminster NJ 07921

Myer Shark
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

Thomas K Crowe
Law Offices of Thomas K Crowe PC
1250 24th St NW Ste 300
Washington DC 20037

LCI Telemanagement Corp
4650 Lakehurst Ct
Dublin OH 43017

LCR Telecommunications LLC
100 West Big Beaver Rd Ste 200
Troy MI 48084

LDC Telecommunications Inc
10012 N Dale Mabry Hwy
Tampa FL 33618

Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021

Lightyear Network Solutions LLC
201 E Main St Ste 1000
Lexington KY 40507

Local Telcom Holdings LLC
485 Madison Ave 15th Fl
New York NY 10022-5803

Jan Lowe
Long Dist Consolidated Billing Co
7411 Dixie Hwy Ste 211
Clarkston MI 48346

Long Distance Billing Services Inc
436 Lynchburg Ave
Brookneal VA 24528

Main Street Telephone Company
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Maxcess Inc
P O Box 951419
Lake Mary FL 32795-1419

McGraw Communications Inc
228 E 45th St 12th Fl
New York NY 10017

MCI Worldcom Network Services Inc
22001 Loudoun Cty Pkwy
Ashburn VA 20147-6105

MCImetro Access Transmission Services
22001 Loudoun County Pkwy
Ashburn VA 20147-6105

McKenzie Consolidated Telecom LLC
P O Box 1408
Dickinson ND 58602-1408

McLeodUSA
P O Box 3177
Cedar Rapids IA 52406-3177

Mercury Long Distance INc
2288 Gunbarrel Rd Stte 111-269
Chattanooga TN 37421

Metropolitan Telecomm of ND Inc
44 Wall St 6th Fl
New York NY 10005

MGEN Services Corp
2510 N Red Hill Ave
Santa Ana CA 92705

Micro-Comm Inc
2612 Cameron
Mobile AL 36670-0461

Midcontinent Communications
410 South Phillips Ave
Sioux Falls SD 57104

Mid-Rivers Long Distance Inc
106 2nd Ave S
Circle MT 59215

Minnesota Independent Equal Access Co:
300 S Hwy 169 Ste 700
Minneapolis MN 55426

Miracle Communications Inc
725 Lakefield Rd Ste G
Westlake Village CA 91361-5915

Mike Strand
MITS
PO Box 5237
Helena MT 59604-5237

National Access Long Distance Inc
2055 Gateway Place Ste 400
San Jose CA 95110

National Directory Assistance LLC
12700 Shelbyville Rd Danville Bldg
Louisville KY 40243

Jim Arbury
National Multi Housing Council
1850 M St NW Ste 540
Washington DC 20036

National Professional Teleservices LL(
14001 63rd Way N
Clearwater FL 33760

National Telecom Inc
2235 E Flamingo Rd Ste 405
Las Vegas NV 89119

Dave Crothers
NDATC
Box 1144
Mandan ND 58554-1144

NECC Telecom Inc
605 N Shore Dr Unit 101-103
Jeffersonville IN 47130

Nemont Communications Inc
P O Box 600
Scobey MT 59263

Net One International Inc
4037 Metric Dr
Winter Park FL 32792-6808

Netlojix Telecom Inc
104 W Anapamu St Ste C
Santa Barbara CA 93101

Network Billing Systems LLC
155 Willowbrook Blvd
Wayne NJ 07470

Network Communications International Corp
606 E Magrill St
Longview TX 75601

Network Enhanced Technologies Inc
700 S Flower St Ste 420
Los Angeles CA 90017-4106

Network Operator Services Inc
119 West Tyler Ste 260
Longview TX 75601

Network PTS Inc
14472 Wicks Blvd
San Leandro CA 94577

Network Service Billing Inc
7251 W Lake Mead Blvd Ste 300
Las Vegas NV 89128

Network US Inc
1842 Centre Point Dr Ste 128
Naperville IL 60563-4851

NetworkIP LLC
119 West Tyler St Ste 168
Longview TX 75601

New Century Telecom Inc
8180 Greensboro Dr #700
McLean VA 22102

New Edge Network Inc
3000 Columbia House Blvd Ste 106
Vancouver WA 98661

Bob Edgerly
Nextel West Corp
2001 Edmund Halley Dr
Reston VA 20191

NobelTel LLC
5759 Fleet St
Carlsbad CA 92008

Norlight Inc
13935 Bishops Dr
Brookfield WI 53005-6605

Cheryl Jung
Norstan Network Services Inc
5101 Shady Oak Rd
Minnetonka MN 55343

Angel Sotomayor
North Dakota 5-Kidder Ltd Ptnshp
180 Washington Valley Rd
Bedminster NJ 07921-2120

Carmine Russo
North Dakota Big Sky Telecom
374 Ansin Blvd
Hallandale FL 33009

Dave Dircks
North Dakota Long Distance Inc
P O Box 180
Devils Lake ND 58301-0180

North Dakota Long Distance LLC
104 Eastwood Dr
Grafton ND 58237

Nosva Limited Partnership
4380 Boulder Hwy
Las Vegas NV 89121-3002

NPCR Inc
4500 Carillon Pt
Kirkland WA 98033

OCMC Inc
801 Congressional Blvd
Carmel IN 46032

OLS Inc
1030 Cambridge Sq Ste E
Alpharetta GA 30201

One Call Communications Inc
801 Congressional Blvd
Carmel IN 46032

Opcom Inc
512 N 29th St
Billings MT 59101-1128

Brad Van Leur
OrbitCom Inc
1701 N Louise Ave
Sioux Falls SD 57107

OU Connection Inc
13 E 4th Ave
Ada MN 56510

Ozark Telecom Inc
1115 Mill St
Camden SC 29020

Pacific Centrex Services Inc
6855 Tujunga Ave
North Hollywood CA 91605

PAETEC Communications Inc
1 PaeTec Plaza
600 Willowbrook Office Pk
Fairport NY 14450

Phone1 Inc
100 N Biscayne Blvd 25th FL
Miami FL 33132

PNG Telecommunications Inc
100 Commercial Dr
Fairfield OH 45014

POPP Telcom Inc
620 Mendelssohn Ave N
Golden Valley MN 55427

Powercom Corporation
1807 N Center St
Beaver Dam WI 53916-1031

Preimiercom Inc
500 E Higgins Rd Ste 200
Elk Grove Village IL 60007

Premiere Network Services Inc
1510 N Hampton Rd Ste 120
DeSoto TX 75115

Kathleen Kerr-Lawrence
Primus Telecommunications Inc
7901 Jones Branch Dr #900
McLean VA 22102-3338

Professional Comm Management Serv Inc
RR 3 Box 69G
Bruceton Mills WV 26525-9611

Scott Lee
Protel Advantage Inc
1308 Medora Rd
St. Paul MN 55118-1734

PT-1 Long Distance Inc
30-50 Whitestone Expressway
Flushing NY 11354

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90026

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90025

Quasar Communications Corporation
15610 Boulder Oaks Dr
Houston TX 77084

Quick Tel Inc
3822 Ironwood Pl
Landover MD 20785

Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Kristin L Smith
Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Qwest Interprise America Inc
1801 California St Ste 5100
Denver CO 80202

Qwest LD Corp
1801 California St Ste 5100
Denver CO 80202

Jason Topp
Qwest Services Corporation
200 S 5th St 395
Minneapolis MN 55402

QX Telecom LLC
230 5th Ave
New York NY 10001

R2C Communications Inc
9532 Mission Rd #25
Overland Park KS 66206

Radiant Telecom Inc
1020 NW 163 Dr
Miami FL 33169

RCC Network Inc
3905 Dakota St SW
Alexandria MN 56308-2000

Dean Polkow
RCC Network Inc
PO Box 2000
Alexandria MN 56308-2000

RCC Paging Inc
P O Box 2000
Alexandria MN 56308

Reduced Rate Long Distance LLC
1800 Pembrooke Dr Ste 300
Orlando FL 32810

Reliance Telephone Systems Inc
118 Gateway Dr
East Grand Forks ND 56721

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary FL 32746

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary` FL 32746

Ridley Telephone Company LLC
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

Smartnet Inc
649 4th Ave SW
Dickinson ND 58601

Smartstop Inc
333 SW Taylor St
Portland OR 97204-2446

Arthur H Paquette
SNET America Inc
310 Orange St
North Haven CT 06510-1719

Snip Link LLC
100-A Twinbridge Dr
Pennsauken NJ 08110

Souris River Telecommunications Company
P O Box 2027
Minot ND 58702-2027

Andrew Jones
Sprint Communications Company
6391 Print Pkwy
Overland Park KS 66251-6100

Sprint Spectrum LP
6160 Sprint Pkwy 4th Fl
KSOPHIO414
Overland Park KS 66251

Startec Global Licensing Company
1151 Seven Locks Rd
Potomac MD 20854-2968

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

TalkNow Inc
9775 Business Park Ave
San Diego CA 92313

TCPB Marketing Company Ltd
P O Box 40149
Bay Village OH 44140-0149

William Staycoff
Telcom Billing Services Inc
9243 E River Rd NW
Coon Rapids MN 55433-5722

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

Donald Roudebush
Telecare Incorporated
444 Lafayette Rd
Noblesville IN 46060

TeleCents Communications Inc
8615 Richardson Rd Ste 200
Walled Lake MI 48390

Telecom Management Inc
563 Warren Ave
Portland ME 04103

Sue Weiske
Telecom Resources Inc
2020 Baltimore
Kansas City MO 64108-1914

Teleconnect Long Dist Sevices & Syste
Co
500 2nd Ave SE
Cedar Rapids IA 52401

Telefyne Incorporated
4286 Woodbine Rd Ste B
Pace FL 32571

Telenational Communications Inc
7310 Woolworth Ave
Omaha NE 68124

Telera Communications Inc
910 E Hamilton Ave Ste 200
Campbell CA 95008

Telliss LLC
10142 Brooks School Rd Ste 198
Fishers IN 46038

Telrite Corporation
14500 Lochridge Blvd Ste D
Covington GA 30014-4941

TelVue Corporation
16000 Horizon Way
Mt Laurel NJ 08054

The Farm Bureau Connection
600 Maryland Ave SW Ste 800
Washington DC 20024-2520

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

Total Call International Inc
707 Wilshire Blvd 9th Fl
Los Angeles CA 90017-3501

Touch I Communications Inc
100 Brookwood Rd
Atmore AL 36504-5751

Touchtone Communications Inc
16 S Jefferson Rd
Whippany NJ 07981

Trans National Comm Internat'l Inc
2 Charlesgate West
Boston MA 02215

Transcom Communications Inc
1925 W John Carpenter Frwy Ste 500
Irving TX 75063

Tri-M Communications Inc
125 E DeLaGuerra Ste 203
Santa Barbara CA 93101

Trinsic Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

U S South Communications Inc
250 Williams St Ste M-100
Atlanta GA 30303-1032

Uni-Tel Communications Group Inc
47 E Chicago Ave Ste 328
Naperville IL 60540

US LEC Communications Inc
6801 Morrison Blvd Morrocroft III
Charlotte NC 28211

USA Digital Communications Inc
1603 SE 19th St Ste 120
Edmond OK 73013-6621

Rick Cantu
Value-Added Communications Inc
3801 E Plano Pkwy Ste 100
Plano TX 75074-1808

David Armey
Verizon Communications
750 SH121 Bypass Ste 100
Louisville TX 75067

W2Com International LLC
3500 Park Ctr Dr
Dayton OH 45414

WebNet Communications Inc
20904 Winola Ter
Ashburn VA 20147-6482

Wholesale Carrier Services Inc
7200 W Camino Real Ste 303
Boca Raton FL 33433

Wireless Alliance LLC
P O Box 2000
Alexandria MN 56308-2000

WTC Competitive Services Inc
P O Box 270
Park River ND 58270-0270

XO Communications Services Inc
11111 Sunset Hills Rd
Reston VA 20190

Jill Papenhausen
Zone Telecom Inc
3 Executive Campus Ste 520
Cherry Hill NJ 08002

Val-Ed Joint Venture LLP/702
702 Main Ave
Moorhead MN 56560

VCI Company
3875 Steilacoom Blvd #A
Lakewood WA 98498

Virgin Mobile USA LLC
10 Independence Blvd
Warren NJ 07059-6747

WDT World Discount Tele Co
13644 Neuton Rd
Dallas TX 75244

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

Carolyn Fodor
Winstar Communications
520 Broad St
Newark NJ 07102

Working Assets Funding Services
101 Market St #700
San Francisco CA 94105-1533

X2Comm Inc
270 S Main St
Flemington NJ 08822

Yak Communications (America) Inc
300 Consilium Pl Ste 500
Toronto Ontario CA M1H 3G2

APPROVED
DATE: 4-26-06
KMF

MOTION

April 26, 2006

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission adopt the Findings of Fact, Conclusions of Law and Order in Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation, Case No. PU-05-451.

PJF/sdh

Motion/Findings of Fact Conclusions of Law and Order
by Public Service Commission
04/26/2006 CC: Comm Legal Illona, Pat, Annette . .

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

April 26, 2006

Appearances

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

Don Negaard and Scott M. Knudsvig, Pringle & Herigstad, P .C ., P .O. Box 1000, Minot, North Dakota 58702, and 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 and 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.

Al Wahl, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

Preliminary Statement

On May 12, 2005 Midcontinent Communications (Midcontinent) sent a letter to North Dakota Telephone Company (NDTC) proposing to enter into a resale agreement for telecommunications services in the Devils Lake, North Dakota exchange. Attached to the letter was the proposed Resale Agreement for resale at wholesale rates any telecommunications services tariffed with the Commission that it provides at retail to subscribers who are not telecommunications carriers.

By letter dated June 10, 2005, NDTC asked whether the request by Midcontinent was for 251(b) resale of NDTC telecommunications services or for 251(c) resale of

NDTC telecommunications services at discounted rates. NDTC also advised Midcontinent of its rural exemption from 251(c) requirements of the Telecommunications Act (Act).

On July 15, 2005, Midcontinent filed a Notice of Bona Fide Request for Services under 47 U.S.C. § 251(f)(1)(A) requesting that the Commission conduct an inquiry for the purpose of determining whether Midcontinent's request for wholesale resold services from NDTC under 47 U.S.C. § 251(c) is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of the Act. Under 47 U.S.C. § 251(f) the Commission must conduct an inquiry within 120 days after the Commission received notice of the bona fide request.

On July 28, 2005, the Commission issued a Notice of Hearing scheduling a hearing for October 13, 2005, and identifying the following issues:

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 September 20, 2005, the parties filed a stipulation that a hearing and determination by the Commission concerning the rural exemption may be held at a time beyond the 120 days directed by 251(f)(1)(B). The hearing was rescheduled to January 23, 2006. The hearing was held as scheduled.

The Commission, having heard the evidence and reviewed the briefs, hereby adopts the following:

Findings of Fact

1. NDTC is a wholly owned subsidiary of TPC, Inc. and is a consortium formed by United Telephone Mutual Aid Corporation, Dakota Central Rural Telephone Cooperative, and Polar Communications. NDTC is the incumbent local exchange carrier authorized by the Commission to provide telecommunications services in the Devils Lake exchange. NDTC is a rural telephone company as defined under Section 3(b)(37).

2. Midcontinent is a South Dakota general partnership registered with the Commission to provide local exchange telecommunications services. Midcontinent is a competitive local exchange carrier.

Bona Fide Request

3. Under Section 252(a)(1) of the Act, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier upon receiving a request for interconnection, services, or network elements under section 251.

4. Under Section 251(f)(1)(A), a rural telephone company is exempt from the requirements of 251(c) until (1) the rural company has received a bona fide request for interconnection, services, or network elements, and (2) the state commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service requirements of Section 254.

5. Under Section 251(c) an incumbent local exchange carrier is obligated to provide (1) good faith negotiation, (2) facilities and equipment interconnection, (3) unbundled network elements, (4) retail services at wholesale rates, (5) notice of network changes, and (6) collocation of equipment.

6. The proposed Resale Agreement included with Midcontinent's May 12, 2005 letter clearly states that "NDTC shall offer to Midcontinent for resale at wholesale rates any Telecommunications Services tariffed with the Commission that it provides at retail to subscribers who are not telecommunications carriers...."

7. We find Midcontinent has made a bona fide request for a service which a local exchange carrier must provide under Section 251(c)(4) of the Act, specifically, a request for retail services at wholesale rates. The validity of the bona fide request was not disputed at the hearing.

Rural Exemption

8. Under Section 251(f)(1)(A) NDTC is exempt from the requirement to provide the service requested until NDTC has received a bona fide request from Midcontinent and the Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254...." To initiate a Commission proceeding to terminate the rural exemption, Midcontinent is required to submit to the Commission a Section 251(f)(1)(B) notice of its bona fide request.

9. On June 15, 2005, Midcontinent filed a Notice of Bona Fide Request for Services requesting that the Commission conduct a 251(f)(1)(A) proceeding to determine whether to terminate NDTC's rural exemption.

10. Initially, NDTC challenged that its rural exemption should be terminated. NDTC's post-hearing brief states that it no longer challenges that its rural exemption should be terminated.

11. Section 251(f)(2) provides that a local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition the Commission for a suspension or modification of the application of a requirement or requirements of Section 251(c) to telephone exchange service facilities specified in such petition.

12. The FCC's *Local Competition Order*[1] discusses the intent of Sections 251(f)(1) and 251(f)(2) of the Act. At Paragraph 1249 the FCC pointed out that Section 251(f)(1) grants a rural company an exemption from Section 251(c) until the rural company has received a bona fide request for "interconnection, services, or network elements, and the state commission determines that the exemption should be terminated." At Paragraph 1262 the FCC stated that "Congress generally intended the requirements of section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies." The FCC went on to state that to justify suspension or modification of the Section 251 requirements, "an LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry." Paragraph 1263 provides that once a bona fide request is made, smaller companies must prove to the Commission, under Section 251(f)(2) that a suspension or modification of Sections 251(b) or (c) should be granted.

13. The FCC has interpreted Sections 251(f)(1) and 251(f)(2) together and it appears to say that a bona fide request for any interconnection, service, or network element filed with the Commission triggers a Commission determination concerning termination of the rural exemption with regard to the entire list of obligations under Section 251(c) for the rural carrier in its entire service area. However, a small company may file a Section 251(f)(2) petition for a suspension or modification of the application of a requirement or requirements of Section 251(c) to specific telephone exchange service facilities.

14. It appears to the Commission that if Midcontinent is able to prove that NDTC should not be exempt from a requirement of Section 251(c), then NDTC's rural exemption must be lifted. A determination that the Commission could terminate a portion of the rural exemption under Section 251(f)(1), for example to terminate the rural exemption for only retail services at wholesale prices for only the Devils Lake exchange, would render meaningless the provisions of Section 251(f)(2) for suspension or modification of the requirement or requirements of Section 251(c). We note however that a petition under Section 251(f)(2) must be made to the FCC because N.D.C.C. §49-23-01.7(11) limits the Commission's authority to the determination of the rural telephone company's exemption under Section 251(f) of the Act and not to a determination of suspensions and modifications of rural carriers under Section 251(f)(2).

---

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (*Local Competition Order*).

15 It appears that neither party to this proceeding considered such an interpretation since the evidence presented is specific to the provision of retail services at wholesale rates. While NDTC no longer challenges terminating the rural exemption to provide retail services at wholesale rates in the Devils Lake exchange, it may challenge a Commission requirement to provide any other Section 251(c) obligations in Devils Lake and a requirement to provide any Section 251(c) obligations in its other local exchanges.

16. While it is appropriate under the law to terminate NDTC's rural exemption, we limit our decision in this case only to termination of the rural exemption to NDTC's Devils Lake exchange which is the specific area identified in Midcontinent's request. We recognize that the Commission's Notice of Hearing specifically referenced the "request of Midcontinent" in identifying the issues to be considered at the hearing. While we believe it is appropriate in this case to limit the termination of the exemption to the specific area identified in the request, we also believe as we discussed previously that the law requires that the rural exemption for the Devils Lake exchange be terminated in its entirety. Midcontinent made a bona fide request for resale services at wholesale rates. A bona fide request for **any** interconnection, service, or network element triggers a determination concerning termination of the rural exemption with regard to the entire list of obligations under Section 251(c). We believe that, at a minimum, NDTC must enter into an interconnection agreement to provide Midcontinent with retail services, at wholesale prices, for resale in the Devils lake exchange. Although this order terminates NDTC's rural exemption in its entirety for the Devils Lake exchange, NDTC may petition the FCC under Section 251(f)(2) for suspension or modification of the application of requirements of Section 251(c) to telephone exchange service facilities specified in such petition.

Implementation Schedule

17. Section 251(f)(1)(B) provides that, upon termination of the rural exemption, the state commission "shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission [FCC] regulations."

18. Midcontinent contends that the Commission has the authority to establish whatever implementation schedule is supported by the record in this proceeding. Midcontinent asks that the Commission require NDTC to provide wholesale resale to Midcontinent within 90 days of the Commission's order, with an interim wholesale discount subject to true-up once a permanent rate is determined.

19. NDTC alleges that the implementation schedule must be established according to the timeline in 252(b)(1). Section 252(b)(1) provides that a negotiated agreement be acted on by the Commission within 90 days after submission. An arbitrated agreement must be acted on by the Commission within 30 days after submission, however, a party may not request arbitration of open issues in a negotiation until the period from the 135th to the 160th day after the incumbent local exchange carrier received the request for interconnection, services, or network elements. A second timeline offered by NDTC is

that negotiations for wholesale resale begin after NDTC receives a valid request from Midcontinent after the Commission issues its decision in this proceeding. The agreement would be implemented by the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange.

20. Midcontinent states there is no basis for a conclusion that the Section 252 negotiation and arbitration period is mandated by Section 251(f)(1), and that Section 251(f)(1) does not mention Section 252 or include any other reference to the negotiation and arbitration provisions of the Act. Section 251(f)(1) only provides that the implementation schedule must be consistent with FCC regulations. Both parties agree there are no FCC regulations on the subject.

21. NDTC states, in a memorandum filed with the Commission on April 12, 2006, that the Commission has only the authority granted to it by the North Dakota Legislature under N.D.C.C. §§ 49-21-01.7(9) and 49-21-01.7(15), and that nowhere did the North Dakota Legislature grant to the Commission the authority to mandate terms and conditions absent an arbitration proceeding. NDTC contends that Section 252 of the Act provides the specific time frames and procedures for such action.

22. The language in this Section 251(f)(1)(B) concerning implementation must have some purpose. That same section provides that a state commission is required to determine if an exemption is to be terminated within 120 days after it receives notice of the request for interconnection. We believe that the purpose for requiring the state commission to establish an implementation schedule is to allow the state commission to establish a reasonable time period for parties to complete their negotiations for interconnection. If Congress wanted to require the parties to go through the entire Section 252 process as suggested by NDTC, Congress would have said so rather than requiring the state commission to establish an implementation schedule. Furthermore, the Commission's authority regarding interconnection is not limited to the provisions of N.D.C.C. §§ 49-21-01.7(8), 49-21-01.7(9) and 49-21-01.7(15). The Legislature has given the Commission 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. In addition to the broad authority granted the Commission as noted above, the Legislature also provided in N.D.C.C. §49-21-01.7(11) authority to terminate the exemption of a rural company, which arises from Section 251(f)(1) of the Act. We find that the authority to order an implementation and compliance schedule is inseparable from the termination procedure and is, in fact, wholly contained within Section 251(f)(1) which the Legislature has granted the Commission authority to implement.

23. The only party to testify as to actual experience in implementing resale was Midcontinent, and the only testimony was that arrangements for resale can be completed in 90 days. We find that a reasonable implementation schedule requires that NDTC provide wholesale resale within 90 days from the date of this order. The

Commission recommends that, during those 90 days, NDTC prepare any necessary cost study that will aid the parties in negotiating a wholesale rate to be implemented in the wholesale resale agreement. We will schedule a Further Hearing to determine an interim wholesale discount rate in the event the parties are unable to negotiate a rate and to determine the need for an associated true-up provision. We will also schedule a Second Further Hearing to consider a final discount rate for wholesale resale services.

Facilities-based Interconnection

24. In its post-hearing reply brief, Midcontinent requests that the Commission require the parties to begin the Section 252 negotiation process for facilities-based interconnection. We find that Midcontinent has not made a bona fide request for facilities-based interconnection. To order the parties to immediately begin the Section 252 negotiation process for facilities-based interconnection would violate federal law and would deprive NDTC of its due process rights under the law.

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

Conclusions of Law

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

2. The request of Midcontinent to NDTC for provision of retail services at wholesale rates is not unduly economically burdensome.

3. The request of Midcontinent to NDTC for provision of retail services at wholesale rates is technically feasible.

4. The request of Midcontinent to NDTC for provision of retail services at wholesale rates is consistent with 47 U.S.C. § 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

5. The rural exemption under Section 251(f)(1) for NDTC's Devils Lake exchange should be terminated.

6. The Commission has the authority to establish an implementation schedule for compliance with Midcontinent's request for retail services at wholesale rates. There are no FCC regulations on the subject of an appropriate implementation schedule.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

The Commission orders:

1. The rural exemption under Section 251(f)(1) for NDTC's Devils Lake exchange is terminated.

2. NDTC shall begin providing to Midcontinent retail services at wholesale prices for resale in the Devils Lake exchange under an interconnection agreement no later than 90 days from the date of this order.

3. A Further Hearing shall be held to determine an interim wholesale discount rate in the event the parties are unable to negotiate a rate and to determine the need for an associated true-up provision.

4. A Second Further Hearing shall be held at an undetermined date in the future to consider a final discount rate for wholesale resale services.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	**Tony Clark**	**Kevin Cramer**
Commissioner	**President**	**Commissioner**

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.

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

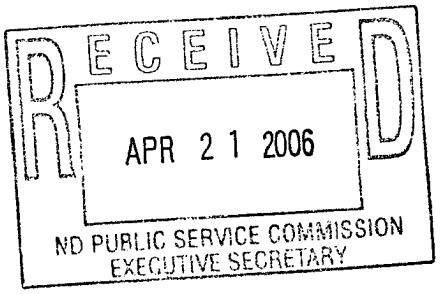
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

April 21, 2006

VIA Electronic Filing and Regular Mail



President Tony Clark
Honorable Susan E. Wefald
Honorable Kevin Cramer
North Dakota Public Service Commission
State Capital Building, 12th Floor
600 East Boulevard, Department 408
Bismarck, ND 58505-0480

Re: Case No. PU-05-451
Midcontinent Communications v. North Dakota Telephone Company

We regret the need to send yet another communication in this matter in response to Staff memoranda. While reserving its rights with respect to all legal and factual issues that may need to be addressed arising from Commission action in this proceeding, and based on Staff's most recent submissions, North Dakota Telephone Company (NDTC) requests that, when the Commission decides this case, it make clear the scope of that decision.

As the record confirms, the scope of the issues that the Commission must resolve in this proceeding is very limited. The scope of the issues that must be addressed relate *solely* to the request made by Midcontinent Communications ("Midcontinent") to remove NDTC's existing Section 251(f)(1) exemption with respect to the provision of resale at a wholesale discount rate within the NDTC Devils Lake exchange. One interpretation of Staff's proposed Order could be that the scope of NDTC's exemption being lifted would go far beyond any request of Midcontinent, the issues the Commission identified in its Notice of Hearing and the entirety of the record, including the proffer of NDTC that it would not assert its rural exemption in the Devils Lake exchange as to Midcontinent for wholesale/resale.

Although Midcontinent's recent letter to the Commission is not the impetus for this letter, contrary to the assertion of Midcontinent in the letter, NDTC's recent submissions have not been to delay Commission action but to ensure that the law is properly applied to the facts in this proceeding.

102 PU-05-451 Pages: 2
Response to Commission Staff Memoranda
by North Dakota Telephone Company by Don Negaard,
04/21/2006 CC: Comm Legal Illona, Pat, Annette . .

NDTC respectfully submits that the public interest will be served by the Commission ensuring that the scope of its decision is clear and limited to the scope of the Midcontinent request. Such action will advance constitutionally guaranteed rights of due process under the U.S. Constitution, the North Dakota Constitution, the North Dakota Administrative Practices Act, and the mandates of the North Dakota Supreme Court. Likewise, a clear articulation by the Commission of the scope of its decision will enable parties to evaluate it fully and to assess the scope of any further legal recourse should that step be required.

Don Negaard

jt

cc: Pat Durick
J. G. Harrington
William W. Binek
Thomas J. Moorman
David Dircks

Scott, Sandi L.

From: Binek, William W.
Sent: Thursday, April 20, 2006 2:50 PM
To: Scott, Sandi L.
Subject: FW: Change in date for work session. Midcontinent Communications/North Dakota Telephone Company, Case No. PU-05-451

Sandi: If you haven't already done so, this e-mail should be docketed. Thanks.

From: Binek, William W.
Sent: Thursday, April 20, 2006 10:31 AM
To: Patrick W. Durick; Don Negaard
Cc: -Grp-PSC Commissioners; -Grp-PSC Public Utilities; -Grp-PSC Legal
Subject: Change in date for work session. Midcontinent Communications/North Dakota Telephone Company, Case No. PU-05-451

The Commission has changed the date and time for the work session in this proceeding from April 25, 2006 at 9:00 am to April 21, 2006 at 9:30 am.

101 PU-05-451 Pages: 1

April 25, 2006 Work Session rescheduled to April 21, 2006
by Public Service Commission
04/20/2006 CC: Comm Legal Illona, Pat, Annette

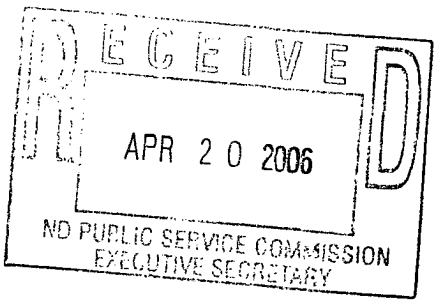
PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ••
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

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.

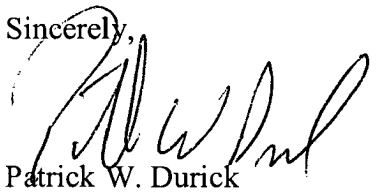
• ALSO LICENSED IN MONTANA • ALSO LICENSED

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

Scott, Sandi L.

From: Binek, William W.
Sent: Wednesday, April 12, 2006 9:57 AM
To: -Grp-PSC Commissioners; -Grp-PSC Public Utilities
Cc: -Grp-PSC Legal
Subject: FW: Midcontinent - NDTC - PU-05-451

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Wednesday, April 12, 2006 9:34 AM
To: Binek, William W.
Cc: Wahl, Al; donn@srt.com; ZZLohnes, Mary; Harrington, J.G.; ZZVogel, Nancy
Subject: Midcontinent - NDTC - PU-05-451

Mr. Binek:

Midcontinent would suggest a date at the convenience of the Commission during the first week of June for the hearing.

Patrick W. Durick
P.O. Box 400
314 East Thayer Ave.
Bismarck, ND 58502-0400
(701) 333-0102 - Direct
(701) 333-0126 - Fax
(701) 220-3290 - Cell
pwd@pearce-durick

This email message and any attachments are for the sole use of the intended recipient(s) and contain confidential and/or privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.

99 **PU-05-451** Pages: 1

Midcontinent's response to request for suggested hearing dates
by Midcontinent Communications by Patrick Durick, Atto
04/12/2006 CC: Comm Legal Illona, Pat, Annette . .

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
APR 12 2006

April 12, 2006

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding are an original and seven copies of a Memorandum of North Dakota Telephone Company dated April 12, 2006. This document was also transmitted via electronic means to your office on this date.

Don Negaard

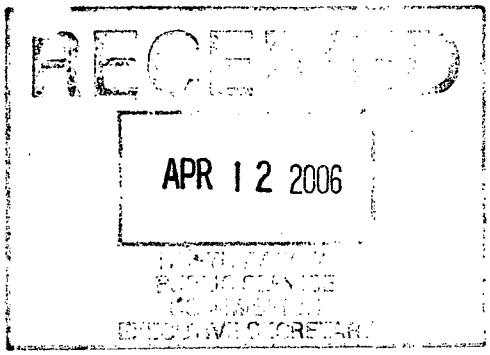
jt

Enclosures

cc/enc: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission

98 **PU-05-451** Pages: 1

Cover letter re Memorandum of North Dakota Telephone Company
by North Dakota Telephone Company by Don Negaard.
04/12/2006 CC: Comm Legal Illona, Pat, Annette . .



STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	MEMORANDUM OF NORTH DAKOTA TELEPHONE COMPANY
North Dakota Telephone Company,	)	
Respondent.	)	

North Dakota Telephone Company (NDTC) makes this filing in an effort to assist the Commission in taking action in this proceeding that is consistent with governing law and the record before it. NDTC fully appreciates the courtesy of being provided a copy of Staff's e-mail dated April 11, 2006, (the 'Staff e-mail' [copy attached]) that contains Staff's request to the parties for suggested hearing dates to establish an interim wholesale discount rate in the above-captioned matter.[1] NDTC respectfully submits, however, that the Commission should either reject outright or significantly modify its Staff's suggestion that "The hearing needs to be held in time for a Commission decision prior to the expiration of the 90 day period at which time NDTC will begin providing retail services at wholesale prices for resale." Specifically, Staff's request for hearing dates is premature under the explicit terms of the Communications Act of 1934, as amended

[1] As it noted in its March 14, 2006, submission in this proceeding, NDTC recognizes that this filing is likewise out of the course of typical Commission process. However, the Staff email appears directly to impact the upcoming Commission decisional meeting scheduled for today, April 12, 2006 where the matters raised in this proceeding will be addressed. NDTC notes that Staff's email was received by counsel yesterday morning. While NDTC has made good faith efforts to address Staff's email request, the shortness of time does not enable a complete and thorough review and response to the Staff e-mail, particularly since it appears premised on actions that Staff believes the Commission will be taking in this proceeding. Nonetheless, NDTC respectfully submits that this Memorandum will assist the Commission as it addresses both the subject matter of the underlying case as well as Staff's request for hearing dates.

97 PU-05-451 Pages: 12

Memorandum of North Dakota Telephone Company
by North Dakota Telephone Company by Don Negaard,
04/12/2006 CC: Comm Legal Illona, Pat, Annette . .

(the "Act"), as confirmed by statements of the Federal Communications Commission ("FCC").

While NDTC fully retains all legal rights with respect to Commission action in this proceeding, NDTC initially notes that the Staff e-mail implies that an Order will be issued ordering interconnection within 90 days without the benefit of arbitration or mediation. As NDTC noted earlier, the Commission has only that authority granted it by the North Dakota legislature.[2] Those powers are set forth in North Dakota Century Code section 49-21-01.7(9) and section 49-21-01.7(15). Nowhere did the North Dakota Legislature grant to the Commission the authority to mandate terms and conditions absent an arbitration proceeding,[3] and the Act provides the specific time frames and procedures for such action. *See* 47 U.S.C. § 252(b). (A copy of Section 252 is attached.) These directives are not less applicable to the ability of the Commission to order an interim wholesale discount rate.[4] In fact, the Act and supporting FCC statements make clear that an interim wholesale rate can only be established through the Act's arbitration process. [5]

The pricing standard applicable to Section 251(c)(4) is contained in Section 252(d)(3). Section 252(d)(3) states, as follows:

---

2 *See, e.g.,* Prehearing Brief of NDTC dated January 20, 2006, ("NDTC Prehearing Brief") at pp. 1-2; NDTC's Post-Hearing Reply Brief of February 28, 2006, ("NDTC Post-Hearing Reply Brief") at p. 3, n.3.

3 NDTC has previously explained why a short time frame such as this is inconsistent with federal law. *See* NDTC Prehearing Brief at pp. 8-12; NDTC's Post-Hearing Brief of February 17, 2006, at pp. 8-14; NDTC's Post-Hearing Reply Brief at pp. 2-4, 6, 8-11.

4 NDTC has already demonstrated that any reliance upon an "interim" wholesale discount rate actually confirms the use of the time frames contained in Section 252(b) of the Act for purposes of the implementation schedule required to be established in this proceeding. *See* NDTC Post-Hearing Reply Brief at 11.

5 Section 252(d) sets forth the pricing standards Congress chose to authorize in the Act.

> WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES.—For the purposes of section **251(c)(4)**, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(Emphasis added.)

Section 252(d)(3), however, cannot be read in isolation. Specifically, as one of the pricing standards, Section 252(d)(3) is subject to Section 252(c)(2). Section 252(c)(2) states:

> (c) **Standards for Arbitration. -- In resolving by arbitration under subsection (b)** any open issues and imposing conditions upon the parties to the agreement, a State commission shall . . . (2) establish any rates for interconnection, services, or network elements according to **subsection (d).** . . .

47 U.S.C. § 251(c)(2) (emphasis added). The reference to "subsection (b)" within Section 252(c)(2) is to Section 252(b) which is entitled: "**(b) Agreements Arrived at Through Compulsory Arbitration.**" 47 U.S.C. § 252(b) (emphasis added). "Compulsory Arbitration" under the Act occurs *only* after a petition for arbitration is filed, and such filing can occur only during the time period between 135 to 160 days after the date on which an interconnection request is received. *See* 47 U.S.C. §252(b)(1). The FCC confirmed this conclusion.

> A default rate is to be used **only** in three instances: **(1) in a state arbitration proceeding if an avoided cost study that satisfies the criteria we set forth above does not exist**; (2) where a state has not completed its review of such an avoided cost study; (3) where a rate established by a state before the release date of this Order is based on a study that does not comply with the criteria described in the previous section.

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange

Carriers and Commercial Mobile Radio Service Providers, First Report and Order, CC Docket Nos. 96-98 and 95-198, 11 FCC Rcd 15499 (1996) ("*First Report and Order*") at 15960-15961 (para. 925) (emphasis added).[6]

Thus, NDTC respectfully submits that, contrary to the inferences arising from Staff's email, the Commission has no authority to establish an "interim wholesale rate discount rate" within some "90 day period." The North Dakota law mandates that this Commission must follow the Act and FCC mandates in its implementation of its duties under North Dakota Century Code section 49-21-01.7(9). (It should be noted the legislature gave the Commission authority to arbitrate or mediate. Nowhere in Chapter 49-21 of the North Dakota Century Code did the North Dakota Legislature grant to the Commission the authority to mandate an interim wholesale discount rate following an arbitrary 90-day negotiation period, as presumably Staff believes will be ordered by the Commission.)

CONCLUSION

This Commission has the authority to mediate or arbitrate pursuant to the directives contained in the Act. It has no power to order, absent an arbitration proceeding conducted in a manner consistent with the provisions of the Act, an "interim wholesale discount rate" to which Staff refers. Congress and the FCC have mandated that an interim wholesale discount rate can only be imposed in this case after an arbitration, and the timing of the process that the North Dakota Legislature directed that the Commission must follow cannot be reconciled with

---

[6] As the record before the Commission makes clear, no avoided cost study applicable to NDTC's Devils Lake exchange has been conducted. *See, e.g.,* Transcript at pp.197-224, and Exhibit R6 at pp. 11-12. The other times that the interim rates could apply are not applicable to the instant case as no cost study is before the Commission and any decision that will be reached by the Commission in this proceeding clearly is after the FCC's 1996 action in the *First Report and Order.*

Staffs purported reliance on either a hearing being held prior to 90 days or the implementation of an interconnection agreement within 90 days of Commission action in this proceeding. Accordingly, NDTC respectfully requests that the Commission follow the time periods contained in Section 252(b) for any implementation schedule arising from this proceeding. To do otherwise would be contrary to directives of the North Dakota legislature and rational public policy.

Dated this 12th day of April, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
Scott M. Knudson, ID #05823
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

WOODS & AITKEN LLP

Thomas J. Moorman
2154 Wisconsin Avenue, NW, Suite 200
Washington, D.C. 20007
Telephone: (202) 944-9500
Fax: (202) 944-9501
tmoorman@woodsaitken.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Memorandum of North Dakota Telephone Company was served electronically and by regular mail on the 12th day of April, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
PWD@pearce-durick.com

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480
wbinek@state.nd.us

J. G. Harrington
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
jharrington@dowlohnes.com

Don Negaard, ID #03598

Don Negaard

From: Fahn, Patrick J. [pfahn@state.nd.us]
Sent: Tuesday, April 11, 2006 9:20 AM
To: Wahl, Al; Patrick Durick; Don Negaard
Cc: -Grp-PSC Commissioners; -Grp-PSC Public Utilities; -Grp-PSC Legal
Subject: Hearing date for PU-05-451_Midcontinent/NDTC

Greetings everyone,

Please provide as soon as possible suggested hearing dates for a Further Hearing to determine an interim wholesale discount rate in the event that parties are unable to negotiate a rate for a wholesale discount on retail services for resale. The hearing will also include the issue concerning the need for a true-up provision in the event an interim rate is determined.

The hearing needs to be held in time for a Commission decision prior to the expiration of the 90 day period at which time NDTC will begin providing retail services at wholesale prices for resale.

Please include Judge Wahl in your responses.

Patrick J. Fahn

Chief Engineer, Public Utilities Division

600 East Boulevard

Bismarck ND 58505-0480

701-328-4077

701-328-2410 (fax)

pfahn@state.nd.us

Cornell Law School

LII / Legal Information Institute

U.S. Code collection

Prev | Next

TITLE 47 > CHAPTER 5 > SUBCHAPTER II > Part II > § 252

§ 252. Procedures for negotiation, arbitration, and approval of agreements

Release date: 2006-01-11

Search this title:

Notes
Updates
Parallel authorities (CFR)
Your comments

(a) Agreements arrived at through negotiation

(1) Voluntary negotiations

Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation

Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration

(1) Arbitration

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) Duty of petitioner

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning—

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) Opportunity to respond

A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) Action by State commission

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) Refusal to negotiate

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) Standards for arbitration

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) Pricing standards

(1) Interconnection and network element charges

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic

(A) In general

For the purposes of compliance by an incumbent local exchange carrier with section 251 (b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction

This paragraph shall not be construed—

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services

For the purposes of section 251 (c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject—

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that—

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

(3) Preservation of authority

Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) Schedule for decision

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section, or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b) of this section, the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

(5) Commission to act if State will not act

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

(6) Review of State commission actions

In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.

(f) Statements of generally available terms

(1) In general

A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 of this title and the regulations thereunder and the standards applicable under this section.

(2) State commission review

A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 of this title and the regulations thereunder. Except as provided in section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate

telecommunications service quality standards or requirements.

(3) Schedule for review

The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission—

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) Authority to continue review

Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) Duty to negotiate not affected

The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251 of this title.

(g) Consolidation of State proceedings

Where not inconsistent with the requirements of this chapter, a State commission may, to the extent practical, consolidate proceedings under sections 214 (e), 251 (f), 253 of this title, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this chapter.

(h) Filing required

A State commission shall make a copy of each agreement approved under subsection (e) of this section and each statement approved under subsection (f) of this section available for public inspection and copying within 10 days after the agreement or statement is approved. The State commission may charge a reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

(i) Availability to other telecommunications carriers

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

(j) "Incumbent local exchange carrier" defined

For purposes of this section, the term "incumbent local exchange carrier" has the meaning provided in section 251 (h) of this title.

Prev | Next

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

Scott, Sandi L.

From: Fahn, Patrick J.
Sent: Tuesday, April 11, 2006 9:20 AM
To: Wahl, Al; Patrick Durick; Don Negaard
Cc: -Grp-PSC Commissioners; -Grp-PSC Public Utilities; -Grp-PSC Legal
Subject: Hearing date for PU-05-451_Midcontinent/NDTC

Greetings everyone,

Please provide as soon as possible suggested hearing dates for a Further Hearing to determine an interim wholesale discount rate in the event that parties are unable to negotiate a rate for a wholesale discount on retail services for resale. The hearing will also include the issue concerning the need for a true-up provision in the event an interim rate is determined.

The hearing needs to be held in time for a Commission decision prior to the expiration of the 90 day period at which time NDTC will begin providing retail services at wholesale prices for resale.

Please include Judge Wahl in your responses.

Patrick J. Fahn
Chief Engineer, Public Utilities Division
600 East Boulevard
Bismarck ND 58505-0480
701-328-4077
701-328-2410 (fax)

pfahn@state.nd.us

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ••
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

March 20, 2006

RECEIVED
MAR 22 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Illona A. Jeffcoat-Saco, Executive Secretary
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

RE: ***Midcontinent Communications v. North Dakota Telephone Company***
Case No. PU-05-451

Dear Ms Jeffcoat-Saco::

Midcontinent has been served with a Memorandum of North Dakota Telephone Company dated March 14, 2006. In view of the fact that the case has been briefed and the Commission has met in a working session and resolved the issues in the case Midcontinent will not respond to the Memorandum unless requested to do so by the Commission.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

cc: William Binek
J.G. Harrington
Mary Lohnes
Don Negaard

95 PU-05-451 Pages: 1

Letter re response to NDTC's Memorandum

by Midcontinent Communications by Patrick Durick, Atto
03/22/2006 CC: Comm Legal Illona, Pat, Annette . .

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
MAR 16 2006
ND PUBLIC SERVICE COMMISSION

March 14, 2006

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding are an original and seven copies of a Memorandum of North Dakota Telephone Company. This document was also transmitted via electronic means to your office on this date.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission

94 PU-05-451 Pages: 1
Cover letter re Memorandum of NDTC
by North Dakota Telephone Company by Don Negaard,
03/15/2006 CC: Comm Legal Illona, Pat, Annette . .

RECEIVED
MAR 15 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	MEMORANDUM OF NORTH DAKOTA TELEPHONE COMPANY
North Dakota Telephone Company,	)	
Respondent.	)	

North Dakota Telephone Company (NDTC) makes this filing in an effort to assist the Commission in taking action that is inconsistent with governing law and the record before it in this proceeding. While NDTC fully appreciates the courtesy of being provided a copy of staff's memorandum dated March 13, 2005, (the "Staff Memorandum") that contains staff's recommendations in the above-captioned matter, NDTC respectfully submits that the Commission should either reject outright or significantly modify the staff's recommendations during its planned working session to be held on March 14, 2005.

NDTC recognizes that this filing is out of the course of typical Commission process. NDTC believes, however, that staff may have failed to appreciate fully the governing law and prior Commission actions that directly impact the Commission's decision in this case. Accordingly, absent acceptance of this filing and consideration of it by the Commission, NDTC believes that the Commission would be acting in a manner inconsistent with governing law and the record in this proceeding.

93 PU-05-451 Pages: 25
Memorandum of North Dakota Telephone Company
by North Dakota Telephone Company by Don Negaard,
03/15/2006 CC: Comm Legal Illona, Pat, Annette . .

The shortness of time precludes an exhaustive review and response to Staff Memorandum. While NDTC fully retains all legal rights with respect to Commission action in this proceeding, NDTC initially notes that Staff Memorandum does not present all available options to the Commission with respect to the resolution of the issues in this proceeding. Accordingly, NDTC respectfully suggests that the Commission ensure that the methods by which it may be able to resolve the issue in this proceeding are fully developed and before it for consideration.

At the same time, it appears that at least certain of the staff recommendations would subject the Commission to unnecessary legal exposure. With respect to this aspect of its concerns, NDTC notes as follows:

1. The Staff Memorandum relies, at page 2, on a 1996 FCC order concerning Section 251(f)(2) (suspension or modification of obligations).

Staff's position does not address the applicable law provided by NDTC on this issue in its Prehearing Brief (see Iowa Utilities Board v. Federal Communications Commission, 219 F.3d 744 (8th Cir., 2000) (copy attached), which invalidated FCC rules placing the burden of proof on rural carriers. Moreover, it appears that Staff may not have recognized that the FCC ruling, at least with respect to Section 251(f)(1) relief, upon which the staff relies *was overturned* by the 8th Circuit Federal Court of Appeals in 2000. (See headnote 14 at 762.)

2. The Staff Memorandum suggests NDTC should have applied for Section 251(f)(2) relief. This Commission has previously found that it has no jurisdiction over Section 251(f)(2) requests for suspension or modification of obligations (see attached PSC order regarding Red River Telephone's request for suspension of LNP

obligations). Moreover, Staff's position fails to address the specific and distinct relief afforded certain entities found in Section 251(f)(1) versus that provided for in Section 251(f)(2) .

3. It also appears from the Staff Memorandum that staff believes NDTC should have introduced evidence on all of its exchanges beyond that related to Midcontinent's specific request for wholesale resale within the NDTC Devils Lake exchange. This issue was not noticed in this matter by the Commission, and is independent grounds for reversal. See State ex rel. Public Service Commission v. Northern Pac. Ry. Co. (75 N.W.2d 129 (N.D. 1956) and N.D. Cent. Code § 28-31-21.

In any event, it appears that staff's reasoning is again based on a 1996 FCC order that was later overturned by a Federal Circuit Court in 2000.

CONCLUSION

NDTC respectfully requests that the Commission conduct its own independent review of the legal and factual issues in this proceeding or direct its staff to revise the Staff Memorandum to address the full record before the Commission and applicable law.

Dated this 14th day of March, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
Scott M. Knudson, ID #05823
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

WOODS & AITKEN LLP

Thomas J. Moorman
2154 Wisconsin Avenue, NW, Suite 200
Washington, D.C. 20007
Telephone: (202) 944-9500
Fax: (202) 944-9501
tmoorman@woodsaitken.com
Attorneys for Respondent

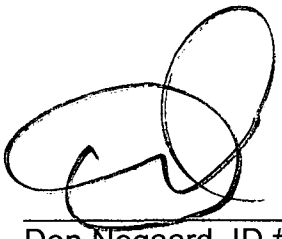
CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Memorandum of North Dakota Telephone Company was served electronically and by regular mail on the 14th day of March, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
PWD@pearce-durick.com

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480
wbinek@state.nd.us

J. G. Harrington
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
jharrington@dowlohnes.com



Don Negaard, ID #03598

Westlaw Download Summary Report for KNUDSVIG,SCOTT 4800015

Date/Time of Request:	Monday, March 13, 2006 13:23:00 Central
Client Identifier:	NONE
Database:	CTA
Citation Text:	219 F.3d 744
Lines:	1309
Documents:	1
Images:	0

The material accompanying this summary is subject to copyright. Usage is governed by contract with Thomson, West and their affiliates.

United States Court of Appeals, Eighth Circuit.
IOWA UTILITIES BOARD, et al., Petitioners,
v.
FEDERAL COMMUNICATIONS COMMISSION and United States of America, Respondents.
No. 96-3321.

Submitted: Sept. 17, 1999.
Filed: July 18, 2000.

State utility commissions and incumbent telephone local exchange carriers (ILECs) petitioned for judicial review of local competition rules issued by Federal Communications Commission (FCC) pursuant to Telecommunications Act of 1996. The Court of Appeals, 120 F.3d 753 and 124 F.3d 934, vacated rules in part. On grant of certiorari, the Supreme Court, 525 U.S. 366, 119 S.Ct. 721, affirmed in part, reversed in part, and remanded. On remand, the Court of Appeals, Hansen, Circuit Judge, held that: (1) rules calculating price which ILEC could CLEC for providing interconnection or unbundled access to its network elements were invalid; (2) rules requiring ILEC to offer interconnection and unbundled network elements that were superior in quality to that which ILEC provided to itself were invalid; (3) rule requiring ILEC to combine unbundled network elements requested by CLEC were invalid; (4) rules concerning termination of rural telephone company exemption from Act were invalid; and (5) rule subjecting pre-Act interconnection agreement to review by state utility commissions was invalid.

Ordered accordingly.

West Headnotes

[1] **Statutes ⇐219(2)**
361k219(2) Most Cited Cases

[1] **Statutes ⇐219(4)**
361k219(4) Most Cited Cases
In reviewing agency's interpretation of statute, court must defer to agency only if its interpretation is consistent with plain meaning of statute or is reasonable construction of ambiguous statute. 5 U.S.C.A. § 706.

[2] **Statutes ⇐219(1)**
361k219(1) Most Cited Cases
In determining reasonableness of agency's statutory interpretation, issue is not whether agency made best choice, or even choice that court would have made, but rather whether agency made reasonable selection from among available alternatives.

[3] **Telecommunications ⇐866**
372k866 Most Cited Cases
(Formerly 372k267)
Federal Communications Commission (FCC) rule, calculating price which incumbent local exchange carrier (ILEC) could charge competing local exchange carrier (CLEC) for providing interconnection or unbundled access to its network elements based on use of most efficient telecommunications technology currently available and lowest cost network configuration, given existing location of ILEC's wire centers, was invalid as inconsistent with statutory mandate, which required that price be based on what it would actually cost ILEC to provide interconnection and access. Communications Act of 1934, § 252(d)(1)(A)(i), as amended, 47 U.S.C.A. § 252(d)(1)(A)(i); 47 C.F.R. § 51.505(b)(1).

[4] **Telecommunications ⇐866**
372k866 Most Cited Cases
(Formerly 372k267)
Federal Communications Commission (FCC) rule, calculating price which incumbent local exchange carrier (ILEC) could charge competing local exchange carrier (CLEC) for providing interconnection or unbundled access to its network elements, reasonably accommodated statutory mandate that ILEC be allowed to recover its costs of such provision by using forward-looking rather than historical cost methodology. Communications Act of 1934, § 252(d)(1)(A)(i), as amended, 47 U.S.C.A. § 252(d)(1)(A)(i); 47 C.F.R. § 51.505(b)(1).

[5] **Telecommunications ⇐866**
372k866 Most Cited Cases
(Formerly 372k267)
Federal Communications Commission (FCC) rule, calculating price which incumbent local exchange carrier (ILEC) could charge competing local exchange carrier

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

(CLEC) for providing unbundled access to its network elements, reasonably accommodated statutory mandate that ILEC be allowed to recover its costs of such provision when it excluded ILEC's universal service subsidy costs. Communications Act of 1934, § 252(d)(1)(A)(i), as amended, 47 U.S.C.A. § 252(d)(1)(A)(i); 47 C.F.R. § 51.505(b)(1).

[6] Eminent Domain ⚖2.11

148k2.11 Most Cited Cases

(Formerly 148k2(1.1))

Fifth Amendment "takings" clause protects public utilities from rates which are so unjust as to be confiscatory. U.S.C.A. Const.Amend. 5.

[7] Eminent Domain ⚖277

148k277 Most Cited Cases

Claim that methodology employed by Federal Communications Commission (FCC), in setting rule for calculating price which incumbent local exchange carrier (ILEC) could charge competing local exchange carrier (CLEC) for providing interconnection or unbundled access to its network elements, would give rise to unconstitutionally confiscatory rates was not ripe for adjudication; until actual rates were established, court cannot conclude whether impact of FCC's methodology would constitute a taking. U.S.C.A. Const.Amend. 5.

[8] Telecommunications ⚖866

372k866 Most Cited Cases

(Formerly 372k267)

Statutory mandate that incumbent local exchange carrier (ILEC) provide network services to competing local exchange carrier (CLEC) at wholesale price authorized reduction of retail price only by amount of retailing costs ILEC would actually avoid by provision of service to CLEC, and thus Federal Communications Commission (FCC) rule requiring exclusion of all retailing costs was invalid. Communications Act of 1934, § 252(d)(1)(A)(i), as amended, 47 U.S.C.A. § 252(d)(1)(A)(i); 47 C.F.R. §§ 51.607, 51.609(b).

[9] Telecommunications ⚖866

372k866 Most Cited Cases

(Formerly 372k267)

Federal Communications Commission's (FCC) disavowal of its promulgation of alternative proxy prices, on judicial challenge to its rules for calculating prices which incumbent local exchange carrier (ILEC) could charge competing local exchange carrier (CLEC) for providing interconnection or unbundled access to its network elements, on ground proxy prices intruded on states' statutory right to set actual rates, was judicially estopped from thereafter requiring use of proxy prices. Communications Act of 1934, § 252(c), as amended, 47 U.S.C.A. § 252(c); 47 C.F.R. §§ 51.505(c), 51.513, 51.611, 51.707.

[10] Telecommunications ⚖860

372k860 Most Cited Cases

(Formerly 372k267)

Federal Communications Commission (FCC) rules, requiring incumbent local exchange carrier (ILEC) to provide competing local exchange carrier (CLEC), upon request, interconnection and unbundled network elements that were superior in quality to that which ILEC provided to itself were invalid as contrary to statutory requirement that ILEC provide interconnection was "at least equal in quality" to that provided by ILEC to itself. Communications Act of 1934, § 251(c)(2)(C), as amended, 47 U.S.C.A. § 251(c)(2)(C); 47 C.F.R. §§ 51.305(a)(4), 51.311(c).

[11] Telecommunications ⚖860

372k860 Most Cited Cases

(Formerly 372k267)

Federal Communications Commission (FCC) rules, requiring incumbent local exchange carrier (ILEC) to combine unbundled network elements requested by competing local exchange carrier (CLEC) in any technically feasible manner was invalid as contrary to statutory requirement that ILEC provide unbundled access. Communications Act of 1934, § 251(c)(3), as amended, 47 U.S.C.A. § 251(c)(3); 47 C.F.R. § 51.315(c-f).

[12] Telecommunications ⚖867

372k867 Most Cited Cases

(Formerly 372k267)

Federal Communications Commission (FCC) rule, allowing state public utilities commission to terminate rural telephone company's exemption from network sharing requirements of Telecommunications Act of 1996 if request for interconnection, services, or network elements was not

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

unduly economically burdensome, was invalid for failing to require consideration of additional statutory requirements for exemption termination, i.e., that request be technically feasible and consistent with Act. Communications Act of 1934, § 251(f)(1)(A), as amended, 47 U.S.C.A. § 251(f)(1)(A); 47 C.F.R. § 51.405.

[13] Telecommunications ⇐867
372k867 Most Cited Cases
(Formerly 372k267)
Telecommunications Act section, authorizing termination of rural telephone company's exemption from Act's network sharing requirements if request for interconnection, services, or network elements was not "unduly economically burdensome," allowed public utility commissions to consider all economic burdens imposed by request, and thus Federal Communications Commission (FCC) rule, which allowed consideration only of burdens beyond those typically associated with efficient competitive entry, was invalid. Communications Act of 1934, § 251(f), as amended, 47 U.S.C.A. § 251(f); 47 C.F.R. § 51.405.

[14] Telecommunications ⇐867
372k867 Most Cited Cases
(Formerly 372k267)
Telecommunications Act section, authorizing termination of rural telephone company's exemption from Act's network sharing requirements if competing carrier's request for sharing met certain requirements, placed burden of proving appropriateness of termination on requesting carrier, and thus Federal Communications Commission (FCC) rule, which required rural company to prove its continued entitlement to exemption, was invalid. Communications Act of 1934, § 251(f), as amended, 47 U.S.C.A. § 251(f); 47 C.F.R. § 51.405.

[15] Telecommunications ⇐856
372k856 Most Cited Cases
(Formerly 372k267)
Federal Communications Commission (FCC) rule, requiring all interconnection agreements between incumbent local exchange carriers (ILECs) and competing local exchange carriers (CLECs), even if predating Telecommunications Act of 1996, to be submitted to state public utility commissions for approval was invalid as contrary to terms of Act, which required state commission approval only for agreements entered into pursuant to terms of Act. Communications Act of 1934, § 252(a)(1), as amended, 47 U.S.C.A. § 252(a)(1); 47 C.F.R. § 51.303(a).

***747** William P. Barr, Washington, D.C., argued (Ward W. Wueste, Jr., M. Edward Whelan, Thomas B. Weaver, Jordan B. Cherrick, Mark L. Evans, Michael K. Kellogg, Geoffrey M. Klineberg, Howard A. Shelanski, Laurence H. Tribe, Jonathan S. Massey, James R. Young, Edward D. Young, III, Michael E. Glover, Walter H. Alford, William B. Barfield, M. Robert Sutherland, Paul T. Cappuccio, Steven G. Bradbury, Patrick F. Philbin, Lance Liebman, Richard W. Odgers, Marlin D. Ard, John W. Bogy, Margaret E. Garber, James D. Ellis, Liam S. Coonan, Robert M. Lynch, Martin E. Grambow, Durward D. Dupre, Michael J. Zpevak, Stepehn B. Higgins, James W. Erwin, William T. Lake, John H. Harwood, II, Jonathan J. Frankel, Samir C. Jain, Mark D. Roelig, Dan Poole, Robert B. McKenna, on the brief), for appellants, Regional Bell and GTE.

Maureen Mahoney, Washington, D.C., argued (Gary M. Epstein, James H. Barker, David Cosson, L. Marie, Guillory, Margot Smiley Humphrey, Mary McDermott, Keith Townsend, and Lisa M. Zaina, on the brief), for appellants, ASTU et al.

Christopher Wright, Washington, D.C., argued (Joel I. Klein, Catherine G. O'Sullivan, Nancy Garrison, William E. Kennard, John E. Ingle, Laurence N. Bourne, David G. Ellen, James M. Carr, Susan L. Fox, K. Michele Walters, and Nancy L. Kiefer, on the brief), for appellee.

Donald B. Verrilli, Jr., Washington, D.C., argued (Bruce J. Ennis, Jr., Anthony C. Epstein, Mark D. Schneider, Mark C. Rosenblum, Roy E. Hoffinger, Robert H. Bork, David W. Carpenter, Peter D. Keisler, Richard J. Metzger, Emily M. Williams, and Thomas F. O'Neill, III., on the brief), for intervenors.

BEFORE: WOLLMAN, Chief Judge, BOWMAN and HANSEN, Circuit Judges.

HANSEN, Circuit Judge.

These cases are before us on remand from the Supreme

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Court. *See AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999). Local telephone service providers (known as "incumbent local exchange carriers" or "ILECs") and their industry associations petition for review of the First Report and Order [FN1] issued by the Federal Communications Commission (FCC) which contains the FCC's findings and rules [FN2] pertaining to the local competition provisions of the ***748** Telecommunications Act of 1996 [FN3] (the Act). The Act requires an ILEC to (1) permit requesting new entrants (competitors) in the ILEC's local market to interconnect with the ILEC's existing local network and, thereby, use that network to compete in providing local telephone service (interconnection); (2) provide its competitors with access to elements of the ILEC's own network on an unbundled basis (unbundled access); and (3) sell to its competitors, at wholesale rates, any telecommunications service that the ILEC provides to its customers at retail rates in order to allow the competing carriers to resell those services (resale). *See* 47 U.S.C. § 251(c)(2)- (4) (1994 ed., Supp. III). [FN4] Through this Act, Congress sought "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub.L. No. 104-104, purpose statement, 110 Stat. 56, 56 (1996). Challenges to the First Report and Order were consolidated in this court.

FN1. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCCRcd 15499 (1996) (First Report and Order).

FN2. The FCC's rules are codified in scattered sections of Title 47, Code of Federal Regulations. All references in this opinion to the Code of Federal Regulations are to the 1997 version.

FN3. Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of Title 47, United States Code).

FN4. All references in this opinion to sections and subsections of the Telecommunications Act of 1996 in the United States Code are to the 1997 supplement unless otherwise indicated.

I. Background

We present a brief summary of the background of this case based upon the belief that all parties are familiar with the opinion of the Supreme Court as well as our prior opinion. In our prior opinion, *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753 (8th Cir.1997), we concluded, in relevant part, that (1) the FCC exceeded its jurisdiction in promulgating various pricing rules; (2) the FCC exceeded its jurisdiction in promulgating 47 C.F.R. § 51.405, regarding rural exemptions; (3) the FCC exceeded its jurisdiction in promulgating 47 C.F.R. § 51.303, regarding preexisting agreements; and (4) various unbundling rules, including the superior quality rules and the combination of network elements rule, were contrary to the Act.

The Supreme Court affirmed in part, reversed in part, and remanded. *See AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999). The Supreme Court reversed that part of our opinion pertaining to jurisdiction and held that the FCC had jurisdiction to (1) design a pricing methodology; (2) promulgate rules pertaining to rural exemptions; and (3) promulgate rules regarding preexisting agreements. The Supreme Court also reversed our decision to vacate 47 C.F.R. § 51.315(b). The Supreme Court did not address the part of our opinion vacating the superior quality rules, 47 C.F.R. §§ 51.305(a)(4) and 51.311(c), and the additional combination of network elements rule, 47 C.F.R. § 51.315(c)-(f).

On remand we must now review on the merits the FCC's forward-looking pricing methodology, proxy prices, and wholesale pricing provisions. The petitioners also request that the court vacate 47 C.F.R. § 51.317, regarding the identification of additional unbundled network elements, and that the court reaffirm its previous decision vacating the superior-quality rules and the additional combination of network elements rule. We also must review on the merits 47 C.F.R. § 51.405, regarding rural exemptions, and 47 C.F.R. § 51.303, pertaining to preexisting agreements.

II. Analysis

[1][2] The United States Courts of Appeals have exclusive

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

jurisdiction to review final orders of the FCC pursuant to 28 U.S.C. § 2342(1) and 47 U.S.C. § 402(a) (1994). In reviewing an agency's interpretation of a statute, we must defer to the agency only if its interpretation is consistent with the plain meaning of the statute or is a reasonable construction of an ambiguous statute. *See* ***749***Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). We will overturn an agency interpretation that conflicts with the plain meaning of the statute, *see id.*, is an unreasonable construction of an ambiguous statute, *see id.* at 844-45, 104 S.Ct. 2778, or is arbitrary and capricious. *See* 5 U.S.C. § 706 (1994); *Chevron*, 467 U.S. at 844, 104 S.Ct. 2778. In making our decision regarding reasonableness, the issue "is not whether the Commission made the best choice, or even the choice that this Court would have made, but rather 'whether the FCC made a reasonable selection from among the available alternatives.' " *Southwestern Bell Tel. Co. v. F.C.C.*, 153 F.3d 523, 559-60 (8th Cir.1998) (quoting *MCI Telecomms. Corp. v. FCC*, 675 F.2d 408, 413 (D.C.Cir.1982).

A. Pricing Methodology

Congress established pricing standards for the rates that may be charged by ILECs to their new local service competitors for interconnection and for the furnishing of network elements on an unbundled basis. The statute, in relevant part, states:

> (d) Pricing standards
>
> (1) Interconnection and network element charges Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
>
> (A) shall be--
>
> (i) based on the cost (determined without reference to a rate-of-return or other ratebased proceeding) of providing the interconnection or network element (whichever is applicable), and
>
> (ii) nondiscriminatory, and
>
> (B) may include a reasonable profit.

47 U.S.C. § 252(d)(1).

The FCC promulgated various pricing rules to implement the Act. The FCC's pricing provisions that pertain to the pricing of interconnection and network elements utilize a forward-looking economic cost methodology that is based on the total element long-run incremental cost (TELRIC) of the element. These costs are to be based on an ILEC's existing wire center locations using the most efficient technology available in the industry regardless of the technology actually used by the ILEC and furnished to the competitor. *See* First Report and Order ¶ 685. State commissions are to employ TELRIC to determine the price an ILEC may charge its competitors for the right to interconnect with the ILEC and/or to use the ILEC's network elements to compete with the ILEC in providing telephone services.

The petitioners contend the TELRIC method violates the plain language and purpose of the Act and represents arbitrary and capricious decision-making. The petitioners challenge TELRIC on four grounds.

1. Hypothetical Network Standard

[3] In its First Report and Order, the FCC explained that forward-looking methodologies, like TELRIC, consider the costs that a carrier would incur in the future for providing the interconnection or unbundled access to its network elements. *See* First Report and Order ¶ 683. These costs either can be based on the most efficient network configuration and technology currently available, or on the ILEC's existing network infrastructures. *See id.* The FCC chose an approach which it says combined the two possibilities. *See id.* ¶ 685. Pursuant to § 252(d)(1), the FCC promulgated 47 C.F.R. § 51.505 entitled "Forward-looking economic cost." It states in part that "[t]he total element long-run incremental cost of an element should be measured based on the use of the most efficient ***750*** telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." 47 C.F.R. § 51.505(b)(1). The only nonhypothetical factor in the calculation is the use of the actual location of the ILEC's existing wire centers.

The petitioners assert that the hypothetical network standard upon which TELRIC's costs are based is contrary to the

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Act's plain language. Section 252(d)(1)(A)(i) requires the just and reasonable rates for network elements to be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing *the* interconnection or network element." *Id.* (emphasis added). The petitioners contend the language points inescapably to the actual costs the ILEC incurs for furnishing its existing network to the competitor either through interconnection or on an unbundled network element basis. However, the petitioners explain that the costs under the FCC's pricing methodology are those costs that would be incurred by a hypothetical carrier deploying a hypothetical network that is optimally efficient in technology and configuration. The petitioners argue that the FCC's hypothetical network standard does not reflect what they are statutorily required to furnish to their competitors and is, therefore, flatly contrary to the statute.

The respondents counter the petitioners' assertion that TELRIC costs are based on a hypothetical network. The respondents contend TELRIC does reflect the ILECs' costs but on a predictive forward-looking basis that assumes a reasonable level of efficiency. According to the respondents, setting rates based on the use of the most efficient technology available and on the lowest cost network configuration using existing wire center locations is consistent with the statute, promotes competition, and is a reasonable application of forward-looking costs.

The intervenors in support of the FCC (the intervenors) explain that costs should be based on what any firm, including the specific ILEC whose rates are to be set, would incur in providing the network elements today. They suggest these costs should be the replacement cost of the network using the technology available today and that no firm in a competitive market would charge rates based on the cost of reproducing obsolete technology. The intervenors contend that calculating the cost of old technology with current prices defeats the purpose of using a forward-looking methodology.

We agree with the petitioners that basing the allowable charges for the use of an ILEC's existing facilities and equipment (either through interconnection or the leasing of unbundled network elements) on what the costs would be if the ILEC provided the most efficient technology and in the most efficient configuration available today utilizing its existing wire center locations violates the plain meaning of the Act. It is clear from the language of the statute that Congress intended the rates to be "based on the cost ... of *providing the interconnection or network element,*" *id.* (emphasis added), not on the cost some imaginary carrier would incur by providing the newest, most efficient, and least cost substitute for the actual item or element which will be furnished by the existing ILEC pursuant to Congress's mandate for sharing. Congress was dealing with reality, not fantasizing about what might be. The reality is that Congress knew it was requiring the existing ILECs to share their existing facilities and equipment with new competitors as one of its chosen methods to bring competition to local telephone service, and it expressly said that the ILECs' costs of providing *those* facilities and *that* equipment were to be recoverable by just and reasonable rates. Congress did not expect a new competitor to pay rates for a "reconstructed local network," First Report and Order ¶ 685, but for the existing local network it would be using in an attempt to compete.

***751** It is the cost to the ILEC of providing its existing facilities and equipment either through interconnection or by providing the specifically requested existing network elements that the competitor will in fact be obtaining for use that must be the basis for the charges. The new entrant competitor, in effect, piggybacks on the ILEC's existing facilities and equipment. It is the cost to the ILEC of providing that ride on those facilities that the statute permits the ILEC to recoup. This does not defeat the purpose of using a forward-looking methodology as the intervenors assert. Costs can be forward-looking in that they can be calculated to reflect what it will cost the ILEC in the future to furnish to the competitor those portions or capacities of the ILEC's facilities and equipment that the competitor will use including any system or component upgrading that the ILEC chooses to put in place for its own more efficient use. In our view it is the cost to the ILEC of carrying the extra burden of the competitor's traffic that Congress entitled the ILEC to recover, and to that extent, the FCC's use of an incremental cost approach does no violence to the statute. At bottom, however, Congress has made it clear that it is the

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

cost of providing the actual facilities and equipment that will be used by the competitor (and not some state of the art presently available technology ideally configured but neither deployed by the ILEC nor to be used by the competitor) which must be ascertained and determined.

Consequently, we vacate and remand to the FCC rule 51.505(b)(1).

2. Use of a Forward-looking Methodology

[4] The petitioners contend that the FCC's use of its forward-looking TELRIC methodology, which denies the ILECs recovery of their historical costs, is contrary to the express terms of the Act and is unreasonable. The petitioners state that the term "cost" plainly refers to historical cost and that the juxtaposition of "cost" in § 252(d)(1)(A)(i) with "profit" in § 252(d)(1)(B) confirms this. They refer to the discussion of profit in paragraph 699 of the First Report and Order as support for their proposition that if profit must be read in an accounting sense, then so too must cost. In addition, they assert the FCC failed to provide an adequate explanation for its rejection of historical costs and that an agency is not allowed to change ratemaking methodologies without cogently explaining why the change is being made.

The respondents argue the term "cost" is an elastic term that can be construed to mean either historical or forward-looking costs and that the FCC's interpretation of cost as forward-looking is reasonable. They clarify the discussion in the First Report and Order regarding profit. They explain that the FCC found that a normal profit, which TELRIC is designed to yield, represents a "reasonable profit" within the meaning of the statute and that the FCC has not construed profit to mean accounting profit. The respondents also argue the FCC explained in detail its decision to use forward-looking costs and that the decision was reasonable based on the new competitive objectives of the 1996 Act. The intervenors agree with the respondents that the term "cost" imposes no clear limits on the FCC's authority to establish a ratemaking methodology, and according to their argument, it is in these circumstances that an agency is entitled to deference.

We respectfully disagree with the petitioners' contention that cost, as it is used in the statute, means historical cost. The statute simply states that rates "shall be based on the cost ... of providing the interconnection or network element." 47 U.S.C. § 252(d)(1)(A). We conclude the term "cost," as it is used in the statute, is ambiguous, and Congress has not spoken directly on the meaning of the word in this context. We agree with the assessment that "the word 'cost' is a chameleon, capable of taking on different meanings, and shades of meaning, depending on the subject ***752** matter and the circumstances of each particular usage." *Strickland v. Commissioner, Maine Dept. of Human Servs.*, 48 F.3d 12, 19 (1st Cir.1995), *cert. denied,* 516 U.S. 850, 116 S.Ct. 145, 133 L.Ed.2d 91 (1995).

The FCC has the authority to make rules to fill any gap in the Act left by Congress, provided the agency's construction of the statute is reasonable. *See* *Chevron*, 467 U.S. at 843, 104 S.Ct. 2778. Likewise, "Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency." *AT & T Corp.*, 525 U.S. at 397, 119 S.Ct. 721 (citation to *Chevron* omitted). Forward-looking costs have been recognized as promoting a competitive environment which is one of the stated purposes of the Act. The Seventh Circuit, for example, explained, "[I]t is current and anticipated cost, rather than historical cost that is relevant to business decisions to enter markets ... historical costs associated with the plant already in place are essentially irrelevant to this decision since those costs are 'sunk' and unavoidable and are unaffected by the new production decision." *MCI Communications v. American Tel. & Tel. Co.*, 708 F.2d 1081, 1116-17 (7th Cir.1983), *cert. denied,* 464 U.S. 891, 104 S.Ct. 234 (1983). Here, the FCC's use of a forward-looking cost methodology was reasonable. The FCC sought comment on the use of forward-looking costs and concluded that forward-looking costs would best ensure efficient investment decisions and competitive entry. *See* First Report and Order ¶ 1705. It is apparent that the FCC explained in detail its reason for selecting a forward-looking cost methodology to implement the new competitive goals of the Act, and any past rejection of forward-looking methodologies was made in a monopoly, rather than a competitive, environment. *See* First Report and Order ¶¶ 618-711.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Additionally, we are unpersuaded by the petitioners' discussion of the juxtaposition of the word "profit" with "cost" in the statute. The FCC did not interpret profit as accounting [FN5] profit as the petitioners contend. The First Report and Order discusses only two types of profit: economic [FN6] and normal [FN7]. *See* First Report and Order ¶ 699. The FCC interpreted the word "profit" in the statute to mean "normal profit." The FCC found that TELRIC provides for a "normal" profit and that level of profit is reasonable within the meaning of the statute. Section 252(d)(1)(B) states only that the rates paid for either interconnection or furnishing unbundled access "may include a reasonable profit." The use of the word "may" indicates that the inclusion of a reasonable profit is not mandatory but permitted. Additionally, nothing in the phrase "may include a reasonable profit" suggests "cost" must mean historical costs. A "profit" can be made whether a historical cost or forward-looking cost methodology is used. We reiterate that a forward-looking cost calculation methodology that is based on the incremental costs that an ILEC actually incurs or will incur in providing the interconnection to its network or the unbundled access to its specific ***753** network elements requested by a competitor will produce rates that comply with the statutory requirement of § 252(d)(1) that an ILEC recover its "cost" of providing the shared items.

> FN5. Accounting profit equals the difference between total revenue and explicit costs. Explicit costs are those costs incurred when a monetary payment is made. Accounting profit is typically higher than economic profit because accounting profit only subtracts explicit costs rather than the total opportunity costs. *See* ROGER A. ARNOLD, ECONOMICS 484-85 (2d ed.1992).
>
> FN6. Economic profit equals the difference between total revenue and total opportunity cost, including both explicit and implicit costs. Implicit costs represent the value of resources used for which no monetary payment is made. *See id.* Economic profit is also referred to as supranormal profit. *See* First Report and Order ¶ 699.
>
> FN7. Normal profit is achieved when a company earns revenue that is equal to its total opportunity costs. This is the level of profit needed for a company to cover all of its opportunity costs. Normal profit is the same as zero economic profit. *See* ARNOLD, *supra* note 5, at 485.

3. Effect of Universal Service Subsidies

[5] The petitioners submit that the failure to include the costs imposed by the government mandated subsidies in network element prices would frustrate the Act's objectives by forcing the ILECs to bear a disproportionate share of the universal service burdens. They explain that when an incumbent carrier provides to a competitor the network elements needed to serve a business customer, the costs to the incumbent not only include the costs of operating the particular network elements furnished but also the loss of that customer's contribution to support lower rates for others. The loss of that contribution, the petitioners argue, must be included in the determination of the rates charged the competitor for unbundled access to the ILEC's network elements.

The respondents and intervenors assert that allowing the ILECs to include the costs of universal service subsidies in its rates would violate the Act. They argue § 252(d)(1) requires rates to reflect the costs of providing the network elements, not the costs of universal service subsidies. Including those costs, according to the respondents, would violate that section of the Act. The respondents cite two decisions in which we concluded that the costs of universal services subsidies should not be included in the costs of providing the network elements. *See* *Competitive Telecomms. Ass'n v. F.C.C.*, 117 F.3d 1068, 1074-75 (8th Cir.1997); *Southwestern Bell Tel. Co.*, 153 F.3d at 540.

In accordance with our previous opinions, we maintain our view that the costs of universal service subsidies should not be included in the costs of providing the network elements. Section 252(d)(1)(A)(1) requires rates to be cost-based. Universal service charges are not based on the actual costs of providing interconnection or the requested network element. *See* *Competitive Telecomms.*, 117 F.3d at 1073. "[P]ayment of cost-based rates represents full compensation to the incumbent LEC for use of the network elements that carriers purchase." *Southwestern Bell*, 153 F.3d at 540

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

(quoting *In re Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCCRcd 15982 (1997) ¶ 337). Including the costs of universal service subsidies would allow for double recovery. *See id.*

4. Takings Argument

The petitioners contend the use of the TELRIC method to set rates raises a serious Fifth Amendment takings issue that the statute should be construed to avoid. The petitioners challenge the pricing rules as mandating invalid confiscatory rates. The petitioners insist the statute must be read so that an ILEC receives just and reasonable compensation in the constitutional sense for the services it provides to its competitors.

The respondents argue that the claim that the use of TELRIC will constitute a taking is not ripe for judicial consideration because, at this point, it is unknown whether the rates established under TELRIC will constitute just and reasonable compensation. In addition, the intervenors point out that TELRIC compensates the ILECs for the present market value of the property taken which is all that is constitutionally required for just and reasonable compensation.

Because we have vacated 47 C.F.R. § 51.505(b)(1), we have some doubt that we need to address the argument that TELRIC also violates the Constitution. Our remand to the FCC of the TELRIC rule should result in a new rule for determining the compensation that the ILECs will receive for the new competitor's use of the ILEC's property--a rule that should ***754** accurately determine the actual costs to the ILEC of furnishing its network (either by interconnection or on an unbundled element basis) to its competitors together with a permitted reasonable profit. Whether the new rule will result in rates that do not provide just and reasonable compensation cannot be foretold. However, in the event our view of TELRIC's statutory invalidity turns out to be incorrect, and to avoid as best we can another remand, we proceed further with the petitioners' constitutional assertions.

In our earlier opinion we determined that the ILECs' claims that the FCC's unbundling rules constituted an unconstitutional taking were not ripe for adjudication. *See Iowa Utils. Bd.*, 120 F.3d at 818. We did so principally on the basis that the rates for the unbundled access were to be set by the state commissions, that the actual rates were largely yet unknown, and that the Act provided for a mechanism (arbitration before the state commissions and review in federal district court) to determine what the just and reasonable rates would be in individual cases. That ripeness conclusion was not attacked in the Supreme Court. While we recognize that the argument made here (that TELRIC itself, because it is based on a hypothetical network using the most efficient technology available which bears little or no resemblance to the ILEC's property which will be actually made available to competitors, must result in rates that are neither just nor reasonable, and confiscatory in the constitutional sense) is not the same one we addressed in our earlier opinion, we conclude for many of the same reasons we expressed before, *see id.*, that the present takings claim is not ripe for review. [FN8]

> FN8. We note, with no small amount of interest, that the Supreme Court has granted certiorari to review the Fifth Circuit's decision in *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir.1999), where the Fifth Circuit noted that the use of a forward-looking cost model to determine universal service subsidies did not result in an unconstitutional taking. *GTE Service Corp. v. FCC*, 530 U.S. 1213, 120 S.Ct. 2214, 147 L.Ed.2d 247 (2000).

[6][7] The Constitution protects public utilities from rates which are "so unjust as to be confiscatory." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307, 109 S.Ct. 609, 102 L.Ed.2d 646 (1989). However, a takings claim cannot be based on the ratemaking methodology, but rather it must be based on the rate itself. "It is not theory but the impact of the rate order which counts." *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602, 64 S.Ct. 281, 88 L.Ed. 333 (1944). Until the actual rates are established, we cannot conclude whether the impact of TELRIC driven rates will constitute a taking. "It is not enough that a party merely speculates that a government action will cause harm."

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Alenco Communications, Inc. v. F.C.C., 201 F.3d 608, 624 (5th Cir.2000). We do not need to disregard *Chevron* deference and interpret the statute in accordance with the petitioners' views in order to avoid an unconstitutional taking in this instance. The possibility that a regulatory program may result in a taking does not justify the use of a narrowing construction. *See United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 128-29, 106 S.Ct. 455, 88 L.Ed.2d 419 (1985). In such circumstances, the adoption of a narrowing construction might frustrate a potentially permissible application of a statute. *See id.* at 128, 106 S.Ct. 455. Because the consequences of the FCC's choice to use TELRIC methodology cannot be known until the resulting rates have been determined and applied, the constitutional claim is not ripe. *See Duquesne*, 488 U.S. at 317, 109 S.Ct. 609 (Scalia, White, and O'Connor, JJ., concurring) (noting that the Constitution looks to the consequences produced rather than the technique employed).

B. Wholesale Rates

[8] Section 252(d)(3) of the Act provides that state commissions "shall determine ***755** wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." Pursuant to this section, the FCC promulgated 47 C.F.R. § 51.607 which excludes "avoided retail costs" from wholesale rates. "Avoided retail costs" are defined by the FCC as "those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier." 47 C.F.R. § 51.609(b).

The petitioners challenge the FCC's interpretation of the term "avoided retail costs." The petitioners contend § 252(d)(3) plainly requires wholesale rates to reflect the ILECs' retail rates less those costs that an ILEC actually avoids when it loses its retail customers to a reselling competitor. However, under the FCC's definition of "avoided retail costs," the petitioners argue the FCC requires them to exclude all retailing costs rather than only those costs that an ILEC actually avoids. The petitioners state that many costs associated with retailing are fixed and will not begin to decline initially nor will the costs decline proportionately to the number of customers lost to the reseller. The petitioners explain the phrase "will be avoided" in § 252(d)(3) means "actually avoided" because otherwise the wholesale discount given the reseller would be inflated.

The respondents counter that the phrase "will be avoided" is ambiguous and that the FCC reasonably interpreted the language of the statute. The intervenors explain that the ILECs avoid incurring any retailing costs when engaging in wholesale transactions, and even if certain retailing costs are fixed, the ILECs would still incur only those costs that arose in connection with the ILECs' retailing activities. The respondents state that making competitors pay for a portion of the ILECs' retailing costs, even though the new entrant is not the cause of those retail costs, would result in the new entrants subsidizing the ILECs' retail offerings while still having to pay the new entrants' own retailing costs.

We agree with the petitioners that the phrase "will be avoided" refers to those costs that the ILEC will actually avoid incurring in the future, because of its wholesale efforts, not costs that "can be avoided." The verb "will" is defined, in part, as "a word of certainty." BLACK'S LAW DICTIONARY 1598 (6th ed.1990). Whereas, the verb "can" is "[o]ften used interchangeably with 'may,' " *id.* at 206, and may is a word "of speculation and uncertainty." *Id.* at 1598. The language of the statute is clear. Wholesale rates shall exclude "costs that will be avoided by the local exchange carrier." 47 U.S.C. § 252(d)(3). The plain meaning of the statute is that costs that are actually avoided, not those that could be or might be avoided, should be excluded from the wholesale rates.

If the Congress had meant the standard to be one of reasonable avoidability, it could have easily said so. We note that Congress's starting point in § 252(d)(3) is the retail rates the ILEC charges its subscribers for the same service the new competitor (who wants to enter the market by reselling) has requested be furnished to it. From those retail rates, the ILEC's costs that "will be avoided" by furnishing those services to the competitor are to be excluded. The statute recognizes that the ILEC will itself remain a retailer of telephone service with its own continuing costs of providing that retail telephone service. The FCC's rule treats

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

the ILEC as if it were strictly a wholesaler whose sole business is to supply local telephone service in bulk to new purveyors of retail telephone service. Under the statute as it is written, it is only those continuing costs of providing retail telephone service which will be avoided by selling to the competitor the services it requests which are to be excluded. ***756** The FCC's rule is contrary to the statute.

Consequently, we vacate and remand rule 51.609.

C. Proxy Prices

[9] The FCC established proxy prices to be used for interconnection and network element charges, wholesale rates, and the rates for termination and transport. The state commissions are to use these proxy prices if they do not use the provided ratemaking method to establish rates. The proxy prices consist of upper limits higher than which the rates set by the state commissions shall not go.

The petitioners argue the proxy prices should be vacated for three reasons. First, the petitioners state that the respondents expressly disavowed the proxy prices before the Supreme Court in order to support the FCC's position that it was not trying to set specific prices, but rather it was merely designing a pricing methodology. Therefore, the FCC, according to the petitioners, is judicially estopped from trying to revive the proxy prices now. Second, the petitioners contend the proxy prices should be vacated because they are based on the unlawful TELRIC method and employ the impermissible definition of "avoided retail costs." Third, the petitioners argue the proxy prices were developed using unreliable cost models and, as a result, are arbitrary and capricious.

The respondents counter that the petitioners' challenge to the proxy prices is not subject to review because the proxy prices are not binding on the states. The respondents contend that states may elect to use the proxy prices, but the states are not required to use them. The respondents insist that this court has jurisdiction to review only final orders of the FCC, and the proxy prices are not final orders because they do not impose an obligation on the states. The intervenors add that substantial deference should be accorded to the FCC because the issue concerns interim relief, citing *Competitive Telecommunications Association v. F.C.C.*, 117 F.3d 1068, 1073-75 (8th Cir.1997).

We agree with the petitioners that the respondents are estopped from trying to now revive the proxy prices. "The doctrine of judicial estoppel prohibits a party from taking inconsistent positions in the same or related litigation." *Hossaini v. Western Missouri Med. Ctr.*, 140 F.3d 1140, 1142 (8th Cir.1998). Judicial estoppel is invoked "to protect the integrity of the judicial process." *Id.* at 1143. The FCC represented to the Supreme Court that it was not establishing rates and depriving the state commissions of their role in implementing the Act. *See* Reply Br. for Federal Pet'rs at 7, *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999) 1998 WL 396961 (Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141). The FCC emphasized that it was merely providing a methodology for state commissions to use in completing the "critical and complex task of determining the economic costs of an efficient telephone network." *Id.* The FCC dismissed the proxy prices as "designed for a past period in which no cost studies could have been made available to the state commissions. They have no relevance to this case." *Id.* at 7 n. 5.

We are not persuaded by the FCC's explanation to this court of its position before the Supreme Court. The respondents explain that the proxy prices were not relevant to the ILECs' claim before the Supreme Court that the pricing rules intruded on the states' role in establishing rates because the proxy prices were optional. The First Report and Order very clearly commands the use of the proxy prices by directing that "a state commission *shall* use [default proxies] ... in the period before it applies the pricing methodology." First Report and Order ¶ 619 (emphasis added). Additionally, rule 51.503(b) states that the ILECs' rates for its elements "*shall* be established" using either TELRIC or the proxy prices. *See* ***757** 47 C.F.R. § 51.503(b) (emphasis added). The word "shall" is language of a mandatory nature. *Clark v. Brewer*, 776 F.2d 226, 230 (8th Cir.1985). It is clear from the language of the First Report and Order, as well as the rules, that the state commissions are to use the proxy prices until the state commissions have established their own rates using the TELRIC method. The use of the proxy prices until such time is not optional.

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

The Supreme Court held that the FCC "has jurisdiction to design a pricing methodology." *AT & T Corp.*, 525 U.S. at 385, 119 S.Ct. 721. However, the FCC does not have jurisdiction to set the actual prices for the state commissions to use. Setting specific prices goes beyond the FCC's authority to design a pricing methodology and intrudes on the states' right to set the actual rates pursuant to § 252(c)(2). Following the Supreme Court's opinion, we now agree with the FCC that its role is to resolve "general methodological issues," and it is the state commission's role to exercise its discretion in establishing rates. Br. for Federal Pet'rs at 26-27, *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

The proxy prices are also infirm because they rely on the hypothetical most efficient carrier rationale which we have found to be violative of the Act, *ante* at 5-8, and because they rely on the erroneous definition of "avoided retail costs."

We conclude the proxy prices cannot stand and, for the foregoing reasons, vacate rules 51.513, 51.611, and 51.707.

D. Unbundling Rules

The FCC issued numerous rules to implement the ILECs' duties to provide unbundled access to their network elements under subsection 251(c)(3). Many of these rules were previously challenged. In light of the Supreme Court's opinion, we revisit three of the unbundling rules.

1. Identification of Additional Unbundled Network Elements

The Supreme Court vacated 47 C.F.R. § 51.319 which required the ILECs to provide requesting carriers with unbundled access to a minimum of seven network elements so long as access was "necessary" and failure to provide the access would "impair" the competitors' ability to provide services. The Supreme Court vacated 47 C.F.R. § 51.319 because the FCC's interpretation of the "necessary" and "impair" standard was too broad and unreasonable. *See AT & T Corp.*, 525 U.S. at 388-92, 119 S.Ct. 721.

The ILECs request that we now vacate rule 51.317 because it utilizes the same "necessary" and "impair" standard of rule 51.319. The Supreme Court did not specifically address the validity of rule 51.317. This court previously upheld the "necessary" and "impair" standard, but we vacated the portion of rule 51.317 that created the presumption that a network element must be unbundled if it is technically feasible to do so.

The respondents concede that rule 51.317 must be remanded to the FCC as a result of the Supreme Court's opinion. *See* Resp'ts' Br. at 87 n. 42. Therefore, we vacate rule 51.317 without any further discussion.

2. Superior Quality Rules

[10] In our previous opinion, we vacated 47 C.F.R. §§ 51.305(a)(4) and 51.311(c), collectively known as the superior quality rules. These rules require an ILEC to provide, upon request, interconnection and unbundled network elements that are superior in quality to that which the ILEC provides to itself. The Supreme Court did not address these rules.

The petitioners ask us to reaffirm our previous decision vacating the superior quality rules. They contend the Supreme Court's decision did not affect our conclusion that the superior quality rules violated ***758** the Act because the FCC did not seek a review of our prior decision vacating these rules.

The respondents argue that the Supreme Court affirmed the FCC's general authority to adopt rules implementing the Act and that under this general authority the superior quality rules are valid. The intervenors agree and explain that because nothing in the Act forecloses the superior quality rules, the rules should be reinstated.

We again conclude the superior quality rules violate the plain language of the Act. We further conclude that nothing in 47 U.S.C. §§ 154(i), 201(b), or 303(r) gives the FCC the power to issue regulations contrary to the plain language of the Act. As we were correctly reminded at oral argument that this court is not a "super FCC," neither is the FCC an alter ego Congress free to change the words of a statute from "at least equal in quality" to "superior in quality" when it exercises its rule-making power. Subsection 251(c)(2)(C) requires the ILECs to provide interconnection "that is at least equal in quality to that provided by the local exchange

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

carrier to itself...." Nothing in the statute requires the ILECs to provide superior quality interconnection to its competitors. The phrase "at least equal in quality" establishes a minimum level for the quality of interconnection; it does not require anything more. We maintain our view that the superior quality rules cannot stand in light of the plain language of the Act for all the reasons we previously expressed. *See Iowa Utils. Bd.*, 120 F.3d at 812-13. We also note that it is self-evident that the Act prevents an ILEC from discriminating between itself and a requesting competitor with respect to the quality of the interconnection provided.

3. Additional Combinations Rule

[11] In our previous opinion, we also vacated 47 C.F.R. § 51.315(c)-(f), the additional combinations rule. This rule requires an ILEC to perform the functions necessary to combine unbundled network elements in any technically feasible manner. Although the Supreme Court reversed our decision to vacate 47 C.F.R. § 51.315(b), prohibiting the ILECs from separating requested network elements that are already combined, the Supreme Court did not address subsections (c)-(f).

The petitioners request that we reaffirm our prior decision vacating the additional combinations rule. The petitioners state that the Supreme Court's decision to reinstate 51.315(b) does not call into question this court's decision to vacate 51.315(c)-(f). The petitioners explain 51.315(b) is different because it prohibited ILECs from separating previously combined network elements over the objection of the requesting carrier. The additional combinations rule contained in subsections (c)-(f), on the other hand, requires the ILECs to combine their own network elements in new ways or with elements provided by the requesting carriers. They argue the additional combinations rule violates the Act.

In addition to the respondents' argument regarding the general rulemaking authority of the FCC, they assert this court's decision to vacate rules 51.315(c)-(f) was predicated on language rejected by the Supreme Court when it reinstated rule 51.315(b). In reinstating subsection (b), the Supreme Court emphasized the ambiguous nature of § 251(c)(3) regarding the separation of leased network elements. *See AT & T Corp.*, 525 U.S. at 395, 119 S.Ct. 721. Because of this ambiguity, the Supreme Court concluded, subsection (b) is rationally based on the nondiscrimination language in § 251(c)(3). *See id.* The respondents rely on the same nondiscrimination language to support subsections (c)-(f) because without these subsections, they argue, new entrants would incur higher costs for unbundled network elements than the ILECs incur. The intervenors agree that the policy concerns of ensuring against an anticompetitive practice not only support 47 C.F.R. § 51.315(b) but also subsections (c)-(f).

***759** We are not persuaded by the respondents' contention that the Supreme Court's reinstatement of rule 51.315(b) affects our decision to vacate subsections (c)-(f). Nor do we agree with the Ninth Circuit that the Supreme Court's opinion undermined our rationale for invalidating the additional combinations rule. *See U.S. West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1121 (9th Cir.1999), *cert. denied*, 530 U.S. 1284, 120 S.Ct. 2741, 147 L.Ed.2d 1005 (2000). The Ninth Circuit misinterpreted our decision to vacate subsections (c)-(f). We did not, as the Ninth Circuit suggests, employ the same rationale for invalidating subsections (c)-(f) as we did in invalidating subsection (b). *See MCI Telecomms. v. U.S. West*, 204 F.3d 1262, 1268 (9th Cir.2000) ("The Eighth Circuit invalidated Rules 315(c)-(f) using the same rationale it employed to invalidate Rule 315(b). That is, the Eighth Circuit concluded that requiring combination was inconsistent with the meaning of the Act because the Act calls for 'unbundled' access.") Rather, the issue we addressed in subsections (c)-(f) was *who* shall be required to do the combining, not whether the Act prohibited the combination of network elements. *See Iowa Utils. Bd.*, 120 F.3d at 813.

Rule 51.315(b) prohibits the ILECs from separating previously combined network elements before leasing the elements to competitors. The Supreme Court held that 51.315(b) is rational because "[section] 251(c)(3) of the Act is ambiguous on whether leased network elements may or must be separated." *AT & T Corp.*, 525 U.S. at 395, 119 S.Ct. 721. Therefore, under the second prong of *Chevron*, the Supreme Court concluded 51.315(b) was a reasonable

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

interpretation of an ambiguous statute.

Unlike 51.315(b), subsections (c)-(f) pertain to the combination of network elements. Section 251(c)(3) specifically addresses the combination of network elements. It states, in part, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service." Here, Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall "combine such elements." It is not the duty of the ILECs to "perform the functions necessary to combine unbundled network elements in any manner" as required by the FCC's rule. *See* 47 C.F.R. § 51.315(c). We reiterate what we said in our prior opinion: "[T]he Act does not require the incumbent LECs to do *all* the work." *Iowa Utils. Bd.*, 120 F.3d at 813. Under the first prong of *Chevron*, subsections (c)-(f) violate the plain language of the statute. We are convinced that rules 51.315(c)-(f) must remain vacated.

E. Rural Exemptions

Congress enacted § 251(f) to relieve the small and rural ILECs from some of the obligations imposed by other subsections of § 251. The FCC promulgated 47 C.F.R. § 51.405 to establish standards that the state commissions must follow in determining whether the small and rural ILECs are entitled to the exemption, suspensions, or modifications set forth in § 251(f).

The petitioners contend rule 51.405 cannot be reconciled with the language of the statute. They challenge the rule on three grounds. First, they argue the rule eliminates two of the three prerequisites that must be satisfied before a state commission may terminate an exemption. Second, they disagree with the limitation the rule places on the statutory phrase "unduly economically burdensome." Third, they suggest that the rule impermissibly shifts the burden of proof in exemption proceedings.

1. Prerequisites for Terminating an Exemption

[12] Section 251(f)(1)(A) explains that a state commission may terminate an exemption ***760** for a rural telephone company if a request for interconnection, services, or network elements "is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof)." The FCC promulgated 47 C.F.R. § 51.405 pursuant to § 251(f). The rule requires the ILECs to offer evidence that the application of the requirements under § 251(c) "would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry" in order to justify exemption. 47 C.F.R. § 51.405(c).

The petitioners contend the rule is invalid because it alters the statutorily-mandated criteria that must be met in order for a state commission to terminate a rural ILEC's exemption. The petitioners point out that rule 51.405 refers only to the "unduly economically burdensome" prerequisite for termination rather than the above-mentioned three criteria.

The respondents argue that the rule does not eliminate any statutory criteria regarding rural exemptions. The respondents explain it was not the FCC's intent, nor was it within the FCC's power, to eliminate any statutory requirements. The respondents suggest that state commissions will look to the statute itself, in addition to the FCC's rule, when implementing § 251(f). They further claim that the FCC has stated in a later order that rule 51.405(c) "does not in any way affect a state's responsibility to consider all three of the factors set forth in section 251(f)(1)(A)," citing to an order entered when the Rural Telephone Coalition sought a stay of rule 51.405(c). *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCCRcd 20166 (1996) ¶ 15.

We agree with the petitioners that the rule impermissibly disregards two of the three statutory requirements that must be met before a state commission can terminate an exemption. A state commission looking at rule 51.405(c) would conclude that if a rural ILEC had failed to show an undue economic burden, the exemption must be terminated, regardless of the existence of the ILEC's companion defenses of technical infeasibility and/or inconsistency with § 254 of the Act. A rule that permits such a result represents an arbitrary and unreasonable interpretation of the

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

governing statute.

2. Undue Economic Burden

[13] Rule 51.405 also refers to the statutory requirement that a request for interconnection, unbundled elements, or retail services for resale must not cause an undue economic burden in order to justify termination of an exemption under § 251(f)(1) or to justify the denial of a petition for suspension or modification under § 251(f)(2). The rule interprets the statutory phrase "unduly economically burdensome" as "undue economic burden beyond the economic burden that is typically associated with efficient competitive entry." 47 C.F.R. § 51.405(c), (d).

The petitioners argue that the rule's interpretation of the statutory language is unreasonable because it does not allow state commissions to consider the total actual economic burden that competitive entry could impose on a small or rural ILEC. The petitioners explain that the phrase "unduly economically burdensome" indicates Congress intended state commissions to consider any type of economic burden that might be imposed by such a request, including those burdens associated with efficient entry.

The respondents assert that the FCC interpreted "unduly economically burdensome" to refer to something more than the economic burden that commonly or ordinarily occurs upon efficient competitive entry because otherwise exemption, suspension, or modification would be virtually automatic. The respondents submit that Congress did not intend to preclude competitive entry into small or rural markets; ***761** rather Congress intended to protect the small or rural ILECs from only those § 251(b) or § 251(c) requirements that might be unfair or inappropriate.

We agree with the petitioners that the FCC has unreasonably interpreted the phrase "unduly economically burdensome." We owe no deference to an agency's interpretation that would "frustrate the congressional policy underlying a statute." *Bureau of ATF v. Fed. Labor Relations Auth.*, 464 U.S. 89, 97, 104 S.Ct. 439, 78 L.Ed.2d 195 (1983) (quoting *NLRB v. Brown*, 380 U.S. 278, 291-92, 85 S.Ct. 980, 13 L.Ed.2d 839 (1965)). In the Act, Congress sought both to promote competition and to protect rural telephone companies as evidenced by the congressional debates. *See* 142 CONG.REC. S687- 01 (Feb. 1, 1996) (statements by Sen. Hollings and Sen. Burns); 142 CONG.REC. H1145-06 (Feb. 1, 1996) (statement by Rep. Orton). It is clear that Congress intended that all Americans, including those in sparsely settled areas served by small telephone companies, should share the benefit of the lower cost of competitive telephone service and the benefits of new telephone technologies, which the Act was designed to provide. It is also clear that Congress exempted the rural ILECs from the interconnection, unbundled access to network elements, and resale obligations imposed by § 251(c), unless and until a state commission found that a request by a new entrant that the ILEC furnish it any of § 251(c)'s methods to compete in the rural ILEC's market is (1) not unduly economically burdensome, (2) technically feasible, and (3) consistent with § 254. *See* 47 U.S.C. § 251(f)(1). Likewise, Congress provided for the granting of a petition for suspension or modification of the application of the requirements of § 251(b) or (c) if a state commission determined that such suspension or modification is necessary to avoid (1) a significant adverse economic impact, (2) imposing a requirement that is unduly economically burdensome, and (3) imposing a requirement that is technically infeasible; and is consistent with the public interest, convenience, and necessity. *See* 47 U.S.C. § 251(f)(2).

There can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors in § 251(b) or § 251(c). Because the small and rural ILECs, while they may be entrenched in their markets, have less of a financial capacity than larger and more urban ILECs to meet such a request, the Congress declared that their statutorily-granted exemption from doing so should continue unless the state commission found all three prerequisites for terminating the exemption, or determined that all prerequisites for suspension or modification were met in order to grant an ILEC affirmative relief. It is the full economic burden on the ILEC of meeting the request that must be assessed by the state commission. The FCC's elimination from that assessment of the "economic burden that is typically associated with efficient competitive entry" substantially alters the requirement Congress established. By limiting the phrase "unduly

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

economically burdensome" to exclude economic burdens ordinarily associated with competitive entry, the FCC has impermissibly weakened the broad protection Congress granted to small and rural telephone companies. We have found no indication that Congress intended such a cramped reading of the phrase. If Congress had wanted the state commissions to consider only that economic burden which is in excess of the burden ordinarily imposed on a small or rural ILEC by a competitor's requested efficient entry, it could easily have said so. Instead, its chosen language looks to the whole of the economic burden the request imposes, not just a discrete part.

Nor do we think the consideration of the whole economic burden occasioned by the request will result in state commissions "automatically" continuing the exemption, or "automatically" granting a petition for suspension or modification. In making their determination of "unduly economically *762 burdensome," the state commissions will undoubtedly take into their judgment the fact that the ILEC will be paid for the cost of meeting the request and may also receive a reasonable profit pursuant to § 252(d). Subsections (c) and (d) of rule 51.405 are an unreasonable interpretation of the statute's requirement that a § 251(b) or § 251(c) request made by a competitor must not be "unduly economically burdensome" to the small or rural ILEC.

3. Burden of Proof

[14] Rule 51.405 also requires the rural ILEC to offer evidence to the state commission to prove that it is entitled to a continuing exemption. The rule states, "Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled, pursuant to section 251(f)(1) of the Act, to continued exemption from the requirements of section 251(c) of the Act." 47 C.F.R. § 51.405(a).

The petitioners contend the FCC has improperly placed the burden of justifying a continued exemption on the ILECs. The petitioners discuss the language in 47 U.S.C. § 251(f)(1)(A), which states "[s]ubsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements...." This language, they explain, indicates that the ILECs are automatically exempt from subsection (c) until a request has been made, and once a request is made, the burden is on the party making the request to prove that the request is not unduly economically burdensome, is technically feasible, and is consistent with § 254. They also assert the burden of proof lies with the proponent of the order according to the Administrative Procedure Act. *See* 5 U.S.C. § 556(d) (1994).

The respondents argue it was reasonable to place the burden on the rural ILECs because the default rule is for the state commission to deny the exemption unless the state commission affirmatively finds a reason to continue the exemption. The respondents rely on the Senate conference report on the Act which explains that a state commission must rule on the continuation of an exemption within 120 days, "and, if no exemption is granted," then the state commission must establish a schedule for compliance. S.Conf.Rep. No. 104- 230, at 122 (1996). The respondents emphasize the word "granted" implies that a state commission will only grant an exemption if there is a specific reason to do so.

We agree with the petitioners that the rule impermissibly places the burden of proof on the ILECs. The statute states that the requirements of § 251(c) "shall not apply to a rural telephone company *until* " a request has been made. 47 U.S.C. § 251(f)(1)(A) (emphasis added). The use of the word "until" suggests that the rural telephone companies have a continuing exemption that is only terminated once a bona fide request is made, provided the request is not unduly economically burdensome, is technically feasible, and is consistent with § 254. Although the conference report refers to state commissions granting an exemption, the language of a conference report does not trump the language of a statute. *See Sierra Club v. Clark*, 755 F.2d 608, 615 (8th Cir.1985). The language of the statute uses the word "terminate" not "grant." *See* 47 U.S.C. § 251(f)(1)(B). The plain meaning of the statute requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption.

For the foregoing reasons, we vacate rule 51.405(a), (c), and

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

(d).

F. Preexisting Agreements

[15] Congress enacted § 252 of the Act to establish procedures for state commissions ***763** to approve agreements between ILECs and competing telecommunication carriers arrived at through negotiation or arbitration. Section 252(a) requires agreements entered into pursuant to § 251(c)(1)'s duty to negotiate to be submitted to the state commissions for approval. Section 252(a)(1) states:

> Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

The FCC promulgated 47 C.F.R. § 51.303 which requires all interconnection [FN9] agreements, even those that predate the 1996 Act, to be submitted to the state commissions for approval. The rule states, "All interconnection agreements between an incumbent LEC and a telecommunications carrier, including those negotiated before February 8, 1996, shall be submitted by the parties to the appropriate state commission for approval...." 47 C.F.R. § 51.303(a).

> FN9. We note that the term "interconnection" has been defined by the FCC as "the physical linking of two networks for the mutual exchange of traffic." First Report and Order ¶ 26.

The petitioners argue that the rule violates the explicit language of the Act because, while the Act references agreements entered into pursuant to § 251, the rule applies to *all* agreements, even those entered into years before the Act was passed. The petitioners explain that agreements negotiated and entered into pre-1996 could not have been entered into "pursuant to section 251" because § 251 did not exist at that time, and therefore, only agreements that were either negotiated before the Act and formally entered into after the Act, or agreements that were both negotiated and formally entered into after the Act, must be submitted for approval.

The respondents contend that the agreement referred to in the third sentence of § 252(a)(1) is not limited to the agreement mentioned in the first and second sentences. The first and second sentences, they argue, refer to agreements reached pursuant to § 251, while the agreement mentioned in the third sentence refers to all, including pre-Act, agreements. The respondents explain that the term "negotiated" in the phrase set off by commas in the third sentence means a completed negotiation or, in other words, a negotiation that has resulted in a completed interconnection agreement.

We agree with the petitioners that the rule is contrary to the language of the Act. The respondents attempt to isolate the third sentence of § 252(a)(1) from the prior two sentences. The FCC concluded "that the final sentence of section 252(a)(1), which requires that *any* interconnection agreement must be submitted to the state commissions, can and should be read to be independent of the prior sentences in section 252(a)(1)." First Report and Order ¶ 166. This is not a proper construction because "we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *United States Nat'l Bank of Oregon v. Independent Ins. Agents*, 508 U.S. 439, 455, 113 S.Ct. 2173, 124 L.Ed.2d 402 (1993).

The subsection in question begins by making reference to a competitor's "request ... pursuant to section 251." Upon ***764** receiving such a request, the competitor and the ILEC "may negotiate and enter into a binding agreement" without regard for the interconnection and unbundled network element access standards of § 251(b) and (c). The second sentence requires that the agreement so negotiated and entered into contain a detailed schedule of itemized charges for the items covered by the "agreement." The third sentence begins with the words, "[t]he agreement" (which can only mean the same agreement authorized by the first sentence and referred to in the second sentence) and requires

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

that it be submitted to the state commission for approval pursuant to subsection (e).

The phrase in the third sentence set off by commas, which reads, "including any interconnection agreement negotiated before February 8, 1996," serves as the co-subject of the verb form "shall be submitted" and explains and defines what else besides the "agreement" mentioned in the first two sentences of the section must be submitted to the state commission. The "what else" that must be submitted to the state commission for approval is any interconnection agreement "negotiated" before February 8, 1996.

Congress was aware that many states were already exploring and experimenting with ways to open up local telephone markets to competition, and that telephone carriers were involved with each other in negotiations for those purposes prior to and at the time of the Act's passage. *See, e.g.,* s.Rep. No. 104-23, at 5 (1995). By using the phrase "including any interconnection agreement negotiated before February 8, 1996," Congress brought within the sphere of required state commission approval all interconnection agreements entered into after February 8, 1996, including specifically those whose terms were arrived at by negotiation prior to that date but which had not yet been formally entered into by the parties. Because that unique group of interconnection agreements (those that were negotiated before but not yet entered into by February 8, 1996) could not have been agreements prompted or originated by either a request made under the Act or by the duty to negotiate contained in the Act (as the Act was not yet in existence at the time they were being negotiated), they could not be an "agreement" covered by the first two sentences and the first two words of the third sentence of § 252(a)(1). Nevertheless, because their subject matter, interconnection, was one which the Act was intended to compel, and because they would be entered into after the effective date of the Act, it was logical for Congress to want them subject to the Act's provisions. The use of the statutory language "including any interconnection agreement negotiated before February 8, 1996" also eliminated any argument that the agreeing carriers could have made in order to avoid state commission approval that their agreement had been negotiated before the Act's date and, therefore, was not subject to it.

We also think it of some significance that Congress intentionally used both the terms "negotiate" and "enter into" in the first sentence of § 252(a)(1) but only used the verb "negotiated" in the third sentence. Had Congress wanted to include all interconnection agreements that had been both negotiated and entered into before the Act's effective date within the scope of the third sentence, all it had to do was use the same words it had used in the first sentence. *See Kifer v. Liberty Mut. Ins. Co.*, 777 F.2d 1325, 1333 n. 9 (8th Cir.1985) (" 'When the same word or phrase is used in the same section of an act more than once, and the meaning is clear as used in one place, it will be construed to have the same meaning in the next place.' ") (quoting *United States v. Nunez*, 573 F.2d 769, 771 (2d Cir.), *cert. denied*, 436 U.S. 930, 98 S.Ct. 2828, 56 L.Ed.2d 774 (1978)). It did not, and its choice not to do so reinforces our conclusion that Congress did not intend to do so. *See, e.g.,* ***765***Johnson v. United States, 529 U.S. 694, ----, 120 S.Ct. 1795, 1803, 146 L.Ed.2d 727 (2000) (When Congress means the same consequences, it is "natural for Congress to write in like terms.").

Across the country there were thousands of interconnection agreements existing between and among ILECs before the Act was passed. In Wisconsin alone the state commission estimated that there were over 3,000 pre-Act agreements which, under the FCC's construction of § 252, would now have to be submitted for approval. *See* Addendum to Br. of Pet'rs United States Telephone Ass'n et al. at 9. Many of those agreements were between neighboring noncompeting ILECs for the exchange of features and functions. There is no indication that Congress intended the state commissions to go back through years of agreements and approve or disapprove them. We conclude that Congress knew it was already giving the state commissions a huge amount of new work to do in arbitrating and approving the new agreements that would quickly be coming into being by virtue of the substantive provisions of the Act, and that it did not intend to add an even heavier burden by forcing the state commissions to replow old ground. The FCC's construction of the statute is unreasonable.

We further find it difficult to square the FCC's interpretation

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

with the recognized presumption against retroactive legislation. By construing the word "negotiated" in the third sentence to mean "negotiated and entered into," the FCC's rule reaches back and requires something that the parties to the preexisting agreement had no reason to expect--required state commission approval under new and different standards which affect the rights the parties had at the time they entered into their agreement. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994). Here again Congress's choice not to use the words "entered into" in the third sentence tells us that Congress did not intend the retroactive effect the FCC has given to the Act. Absent clear Congressional intent for retroactive effect, there should be none. *See id.* By making the Act applicable to interconnection agreements that were only negotiated before the Act's effective date (but not yet entered into), Congress gave the parties the option of either proceeding to enter into the negotiated agreement with the knowledge it would have to be submitted to the state commission for approval, or not. In so doing, an unwanted retroactive effect can be avoided, the parties can proceed knowing what the law will be, and the effect of the Act is entirely prospective.

We hold that § 252(a)(1) applies to any agreement which was either (1) both negotiated and entered into pursuant to § 251 after the Act went into effect or (2) is an interconnection agreement that was negotiated before, but not yet entered into when, the Act went into effect.

Consequently, we vacate rule 51.303.

III. Conclusion

We grant the pending petitions for review in part. For the reasons stated, we vacate, in total, 47 C.F.R. §§ 51.505(b)(1), 51.609, 51.513, 51.611, 51.707, 51.317, 51.405(a), (c), and (d), and 51.303. We remain firm in our previous decision to vacate 47 C.F.R. §§ 51.305(a)(4) and 51.311(c) (the superior quality rules) and 47 C.F.R. § 51.315(c)-(f) (the additional combinations rule). In all other respects, we deny the petitions for review.

219 F.3d 744, 21 Communications Reg. (P&F) 180

END OF DOCUMENT

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Red River Telecom, Inc., et al.
Number Portability
Compliance

Case No. PU-04-138

ORDER DISMISSING PETITION

Preliminary Statement

On March 4, 2004, Red River Rural Telephone Association and Red River Telecom, Inc. (Red River) filed a request for suspension or modification of Section 251(b)(2) of the Telecommunication Act (Act). Section 251(b)(2) requires all local exchange carriers to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC.

Section 251(f)(2) provides in pertinent part that "[a] local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nation-wide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange services specified in such petition."

The Legislature has limited the Commission's authority under N.D.C.C. § 49-21-01.7(11) to "[d]etermine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act." The authority under the Act to grant a rural telephone company's rural exemption is found in Section 251(f)(1). The Legislature has been meticulous in limiting Commission authority over telecommunications companies. The Legislature has not given the Commission authority to grant a "suspension or modification" for a rural carrier under section 251(f)(2) of the Act. The Commission has only such powers in the regulation of public utilities as have been conferred upon it by the Legislature. *Williams Electric Coop. v. Montana-Dakota Utilities Co.*, 79 N.W. 508, 516 (N.D. 1956).

The Commission finds that its authority under N.D.C.C. § 49-21-01.7(11) is limited to granting requests for "exemptions" for rural carriers and does not extend to "suspensions and modifications."

Order

The Commission orders the Petition of Red River Rural Telephone Association Inc. and Red River Telecom, Inc. dismissed for lack of Commission jurisdiction.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	Tony Clark	Kevin Cramer
Commissioner	President	Commissioner

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.nd.gov/oah

March 13, 2006

Mr. William W. Binek
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

RECEIVED
MAR 14 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Re: Midcontinent Communications
North Dakota Telephone Company
Rural Exemption
Investigation
Case No. PU-05-451
OAH File No. 20050316

Dear Mr. Binek:

I noticed today that I overlooked the cassettes for two of the prehearing conferences for the captioned matter when the file was closed and returned to you; one had November 15, 2005, and the other had December 9, 2005. (I also noticed that the cassette for the prehearing conference on December 9, 2005, is labeled "Third Prehearing Conference." Thinking that the November 15, 2005, prehearing conference might be the first prehearing conference, I searched for another cassette, or other cassettes, for a "Second Prehearing Conference," but did not find any. As I recall, one of the prehearing conferences was held at the PSC Hearing Room, and perhaps the cassette or cassettes for that prehearing conference were left with you. In any case, it does not appear that I have any other cassette or cassettes for any other prehearing conference for this matter.)

I doubt that these recordings are of any importance now; but, of course, they should be maintained as part of the PSC hearing file for the matter in accordance with the agency's policies.

I apologize for any inconvenience my oversight has caused. Of course, please do not hesitate to call me if you have any questions, or otherwise if I can be of any assistance to you.

Sincerely,

Al. Wahl
Administrative Law Judge

AW/eap

Encl.

92 **PU-05-451** Pages: 1

Prehearing Conference tapes returned to Commission
by Office of Administrative Hearings by Al Wahl, ALJ
03/14/2006 CC: Comm Legal Illona, Pat, Annette . .

HARD COPY OF Prehearing Conference tapes returned to Commission

DOCKET SEQUENCE NO. 92

EXHIBIT

CASE NO. PU-05-451

ON FILE IN

STATE ARCHIVES

CONTROL NUMBER: 80051

MEMORANDUM

TO: Commissioners Clark, Wefald and Cramer

FROM: Bill Binek and Pat Fahn

DATE: March 14, 2006

RE: Revised Memorandum -- Midcontinent Communications v. North Dakota Telephone Company, Rural Exemption, Case No. PU-05-451

Background

The Commission held a hearing in this case on January 23, 2006. Midcontinent Communications (Midcontinent) and North Dakota Telephone Company (NDTC) have filed their respective post-hearing briefs, reply briefs and proposed findings.

The parties filed a stipulation that a hearing and determination by the Commission concerning the rural exemption may be held at a time beyond the 120 days directed by 251(f)(1)(B).

Bona Fide Request

On May 12, 2005 Midcontinent filed a 252(a)(1) bona fide request for 251(c) wholesale resale services in the Devils Lake exchange.

On June 15, 2005 Midcontinent provided 251(f)(1)(A) notification to the Commission of its bona fide request.

Under Section 252(a)(1) of the Act, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier upon receiving a request for interconnection, services, or network elements pursuant to section 251.

Under Section 251(f)(1)(A), a rural telephone company is exempt from the requirements of 251(c) until (1) the rural company has received a bona fide request for interconnection, services, or network elements, and (2) the state commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service requirements of Section 254.

Under Section 251(c) an incumbent local exchange carrier is obligated to provide (1) good faith negotiation, (2) facilities and equipment interconnection, (3) unbundled network elements, (4) retail services at wholesale rates, (5) notice of network changes, and (6) collocation of equipment.

The validity of the bona fide request was not disputed at the hearing but NDTC, in its brief, suggests that Midcontinent be required to file a "valid" request for wholesale retail services after the Commission makes its final decision in this proceeding. To require Midcontinent to submit another bona fide request for the same purpose is an unnecessary duplication of effort and such requirement would make meaningless the language in Section 251(f)(1)(B) that provides that "[u]pon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission [FCC] regulations."

OPTIONS:

1) Find that Midcontinent's request is a valid, bona fide request for an interconnection agreement for wholesale resale services.
2) Find that Midcontinent has not filed a bona fide request and agree with NDTC that Midcontinent must file such a request.

Rural Exemption

In the June 15 notice Midcontinent requested that the Commission conduct a 251(f)(1)(A) proceeding to determine "whether Midcontinent's request for wholesale resold services from NDTC under 47 U.S.C. § 251(c) is not unduly economically burdensome, is technically feasible, and is consistent with section 254...." In other words, terminate NDTC's rural exemption.

NDTC no longer challenges that its rural exemption for wholesale resale should be terminated.

The FCC's *Local Competition Order*[1] discusses the intent of Sections 251(f)(1) and 251(f)(2) of the Act. Under Section 251(f)(1), staff interprets that a bona fide request for **ANY** interconnection, service, **OR** network element filed with the Commission triggers a Commission determination concerning termination of the rural exemption with regard to the **ENTIRE** list of obligations under Section 251(c). Section 251(f)(2) provides that a small company may petition the Commission for a suspension or modification of the application of a requirement or requirements of Section 251(c). If NDTC wishes to maintain its rural exemption for 251(c) obligations other than wholesale resale services, it must petition the Commission pursuant to Section 251(f)(2) and prove that a suspension or modification of the requirements of Section 251(c) should be granted. The FCC in paragraph 1263 of the *Local Competition Order* found that "it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements." In paragraph 1262 the FCC states that "in order to justify continued exemption once a bona fide request has been made, or to justify suspension, or modification of the Section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry."

---

[1] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (*Local Competition Order*).

Section 251(f)(2)(B) further provides that the Commission must act upon a petition for suspension or modification within 180 days and that, pending such action, the Commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier.

Following distribution of the March 13 staff Memorandum, staff received a call from NDTC's counsel advising that in an order in Case NO. PU-04-138 issued April 14, 2004, in Red River Telecom, Inc.'s Petition for suspension or modification of the requirements to provide number portability, the Commission determined that the Legislature limited the Commission's authority the Commission has under N.D.C.C. § 49-21-01.7(11) to the determination of whether to "terminate a rural telephone company's exemption under section 251(f) of the federal act." In that order, the Commission correctly stated that "[t]he Legislature has not given the Commission authority to grant a 'suspension or modification' for a rural carrier under section 251(f)(2) of the Act." Again the Commission is faced with the dilemma of trying to interpret and enforce provisions of the federal Act but is restricted from doing so because of limitations imposed by the Legislature.

NDTC argues that the Alaska Supreme Court has ruled that the scope of relief that can be granted is to the request that has been made. See *ACS of Alaska, Inc. v. Regulatory Commission of Alaska*, 81 P.3d 292, 301 (S.Ct. Alaska, 2003). In that case, the CLEC's request was for interconnection at one location and resale throughout the remainder of the ILEC's study area. The Alaska Commission terminated the rural exemption for the entire study area. The Alaska Supreme Court said that the Alaska Commission cited no authority to support its reading of Section 251(f), and that nothing in Section 251(f)'s language precludes localized termination or requires area-wide termination when the request was limited to one exchange within the study area.

ACS of Alaska provides no real precedent for the Commission in this proceeding because there is no indication that the court considered the suspension and modification provisions of Section 251(f)(2).

Midcontinent raised the matter of NDTC's provisioning of video programming. Section 251(f)(1)(C which provides that the rural exemption does not apply to a cable operator providing video programming seeking to provide any telecommunications service in the area in which the rural telephone company provides video programming. NDTC is not providing video programming at this time but has plans to do so by February 2007.

OPTIONS:

1) Find that NDTC did not file a 251(f)(2) ***petition*** for suspension or modification of the requirements of 251(c) and that the full rural exemption will be terminated. Under the petition, the rural company must prove that the exemption should not be terminated for the entire company (but only Devils Lake) or for all services required (but only wholesale resale).

2) Acknowledge that NDTC could have filed 251(f)(2) ***proof***, but did not, and therefore the Commission has no evidence to support suspension or modification of part of the request to terminate company-wide, full 251(c)-services rural exemption.
3) Find that NDTC may file a 251(f)(2) ***petition*** for suspension or modification of the request to terminate the rural exemption, and the Commission could suspend enforcement of requirements to which the petition applies. The Commission would have 180 days to make a final decision on the petition.

Implementation Schedule

Section 251(f)(1)(B) provides that within 120 days after the state commission receives notice of the request, it shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with the Section 254. Upon termination of the exemption, Section 251(f)(1)(B) provides that the state commission "shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission [FCC] regulations.

Midcontinent contends that the Commission has the authority to establish whatever implementation schedule is supported by the record in this proceeding. Midcontinent asks that the Commission require NDTC to provide wholesale resale to Midcontinent within 90 days of the Commission's order, with an interim wholesale discount subject to true-up once a permanent rate is determined.

NDTC alleges that the implementation schedule must be established according to the timeline in 252(b)(1). Section 252(b)(1) provides that a negotiated agreement be acted on by the Commission within 90 days after submission. An arbitrated agreement must be acted on by the Commission within 30 days after submission, however, a party must may not request arbitration of open issues in a negotiation until the period from the 135th to the 160th day after the incumbent local exchange carrier received the request for interconnection, services, or network elements. A second timeline offered by NDTC is that negotiations for wholesale resale begin after NDTC receives a valid request from Midcontinent after the Commission issues its decision in this proceeding. The agreement would be implemented by the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange.

Midcontinent states there is no basis for a conclusion that the Section 252 negotiation and arbitration period is mandated by Section 251(f)(1), and that Section 251(f)(1) does not mention Section 252 or include any other reference to the negotiation and arbitration provisions of the Act. Section 251(f)(1) only provides that that the implementation schedule must be consistent with FCC regulations. Both parties agree there are no FCC regulations on the subject.

The language in this Section 251(f)(1)(B) concerning implementation has to have some purpose. That same section provides that a state commission is required to determine if an exemption is to be terminated within 120 days after it receives notice of

the request for interconnection. Staff believes that the purpose for requiring the state commission to establish an implementation schedule is to allow the state commission to establish a reasonable time period for to parties to complete their negotiations for interconnection. If Congress wanted to require the parties to go through the entire Section 252 process as suggested by NDTC, Congress would have stated that rather than requiring the state commission to establish an implementation schedule.

At the hearing, NDTC referenced Commission orders from South Carolina, Texas and New York in support of their position. The South Carolina Commission, without any discussion, simply found that the schedules set forth in Section 252 should apply. The Texas decision is likewise of little assistance. In that case the bona fide request to interconnect met the requirements to commence the docket for termination of the rural exemption, but did not meet the requirements of the Texas Commission's rules for negotiation and arbitration of interconnection agreements. Therefore the Texas Commission ordered the company requesting interconnection to file a request for interconnection that met the requirements of the Texas Commission's rules and stated that the timelines set forth in the federal Act and Texas Commission rules. The New York case offers some assistance. The New York case involved the termination of the rural exemption and facilities-based interconnection. In that case there had been substantial progress in negotiating an interconnection agreement but the companies could not agree on compensation matters, and the party seeking interconnection asked the New York Commission to help mediate the compensation issues. At that point the ILEC claimed the rural exemption. In its order issued December 23, 1998, the New York Commission found that the ILEC was not entitled to the rural exemption and ordered the parties to execute an interconnection agreement within less than 4 weeks from the date of the order. The New York Commission also ordered the ILEC to use its best efforts to provide loops within approximately 3 months from the date of the order and adopted interim rates for reciprocal compensation and unbundled loops.

Both parties argue the need for a level playing field. Staff believes that the issue of a level playing field is not a factor to be considered by the Commission in determining the rural exemption termination or the implementation schedule.

NDTC states that the Commission did not provide any notice that the scope of the proceeding was beyond Midcontinent's request for wholesale resale. In reviewing the Notice of Hearing, staff notes that the Commission's notice to determine whether Midcontinent's request is unduly economically burdensome, technically feasible, and consistent with Section 254 does not limit the scope of the rural exemption termination.

OPTIONS:

1) Go with Midcontinent's proposal (90 days for NDTC to provide wholesale resale services).
2) Go with a Section 252 timeline (up to 270 days to resolve an arbitrated agreement, plus a undetermined time period for filing the arbitrated agreement, plus 30 days for final Commission action).

3) Go with NDTC's compromise proposal (NDTC provides wholesale resale services by the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange.)
4) One compromise between the positions of the parties would be to require NDTC to provide wholesale resale within 90 to 330 days. Halfway between is 210 days, however, staff believes thinks this is too long. Midcontinent's reply brief makes a compelling argument that "all of the evidence shows that there is no reason to think that wholesale resale could not be implemented in a 90-day period." "[T]he only party that testified as to actual experience in implementing resale was Midcontinent, and the only testimony was that arrangements for resale can be completed in 90 days."

Facilities-based Interconnection

Midcontinent asks that the Commission require the parties to begin the Section 252 negotiation process for facilities-based interconnection.

Midcontinent has not made a bona fide request for facilities-based interconnection. To order the parties to immediately begin the Section 252 negotiation process for facilities-based interconnection would violate federal law and would deprive NDTC of its due process rights under the law.

OPTIONS:
1) Find that Midcontinent has not made a bona fide request for facilities-based interconnection.

Staff Recommendations

Bona Fide Request: option 1
Rural Exemption: option 3
Implementation Schedule: option 4
Facilities-based Interconnection: option 1

OFFICE OF ADMINISTRATIVE HEARINGS

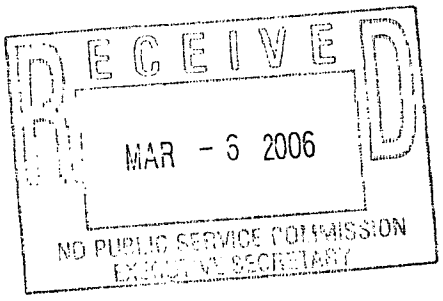
STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.nd.gov/oah

March 3, 2006

Mr. William W. Binek
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480



Re: Midcontinent Communications
North Dakota Telephone Company
Rural Exemption
Investigation
Case No. PU-05-451
OAH File No. 20050316

Dear Mr. Binek:

The hearing of the captioned matter was held January 23, 2006. The record remained open to allow for late-filed exhibits and for the filing of post-hearing briefs. I believe all exhibits have been filed and the briefing has been completed. I have therefore closed the file of the Office of Administrative Hearings for the hearing, and am returning the part of the file which, unless duplicated, may be maintained by the Public Service Commission as part of the record of the hearing.

The Office of Administrative Hearings is pleased to have assisted the parties for the hearing.

Sincerely,

Al. Wahl
Administrative Law Judge

AW/eap

Encl.

cc: Mr. Patrick W. Durick
Pearce & Durick
Ms. Donald A. Negaard
Pringle & Herigstad, P.C.

90 PU-05-451 Pages: 1

Letter closing ALJ's file

by Office of Administrative Hearings by Judge Al Wahl
03/06/2006 CC: Comm Legal Illona, Pat, Annette . .

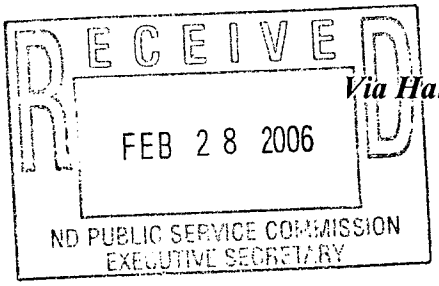
PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ••
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

February 28, 2006



Jon H. Mielke
Executive Director
North Dakota Public Service Commission
North Dakota State Capitol
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Via Hand Delivery

RE: ***Midcontinent Communications v. North Dakota Telephone Company***
Case No. PU-05-451

Dear Mr. Mielke:

Enclosed for filing is one original and seven copies of the Reply Brief of Midcontinent Communications along with an Affidavit of Service by E-Mail.

These documents are also being sent to the Commission by e-mail and served upon the respondent's counsel by e-mail today. Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/src
Enclosures
c: William Binek (PSC) (w/encs.)
J.G. Harrington (Midco) (w/encs.)
Scott Knudsvig (NDTC) (w/encs.)
Mary Lohnes (Midco) (w/encs.)
Tom Moorman (NDTC) (w/encs.)
Don Negaard (NDTC) (w/encs.)
Al Wahl (ALJ) (w/encs.)

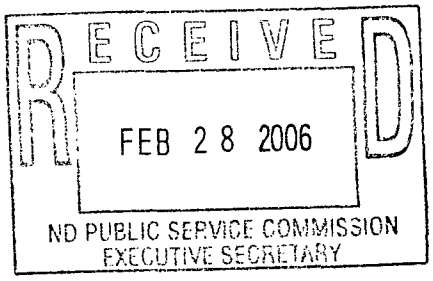
89 PU-05-451 Pages: 1
Letter re Midcontinent's Reply Brief
by Midcontinent Communications by Patrick Durick
02/28/2006 CC: Comm Legal Illona, Pat, Annette . .

• ALSO LICENSED IN MONTANA • ALSO LICENSED IN

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP,	)	**Case No. PU-05-451**
COMPLAINANT,	)	
vs.	)	
NORTH DAKOTA TELEPHONE COMPANY,	)	
RESPONDENT.	)	



REPLY BRIEF OF MIDCONTINENT COMMUNICATIONS

Patrick W. Durick
Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

J.G. Harrington*
Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

*Admitted pro hac vice

February 28, 2006

88 PU-05-451
Pages: 15
Reply Brief of Midcontinent Communications
by Midcontinent Communications by Patrick Durick
02/28/2006 CC: Comm Legal Illona, Pat, Annette

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. THERE IS NO BASIS FOR ADOPTING NDTC'S PROPOSAL TO DELAY COMPETITION FOR A YEAR 2

A. NDTC's Proposed Schedule Would Deny Consumers the Benefits of Competition in Devils Lake. 3

B. There Is No Legal Basis for NDTC's Proposed Schedule. 4

C. It Is Neither Necessary Nor Appropriate to Attempt to Create a Level Playing Field for NDTC. 6

III. THE COMMISSION SHOULD ADOPT MIDCONTINENT'S PROPOSED IMPLEMENTATION SCHEDULE 7

A. The Evidence Fully Supports a Prompt Schedule for Implementing Wholesale Resale. 8

B. The Commission Should Order NDTC and Midcontinent to Start the Section 252 Process for Facilities-Based Interconnection. 11

C. The Commission Should Establish Firm, Enforceable Deadlines for Whatever Implementation Schedule It Adopts 13

IV. CONCLUSION 15

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**

REPLY BRIEF OF MIDCONTINENT COMMUNICATIONS

Midcontinent Communications, by its attorneys, hereby submits its reply brief in the above-captioned proceeding. As shown below, the Commission should lift the rural exemption for North Dakota Telephone Company ("NDTC") in Devils Lake and adopt an implementation schedule in accordance with the proposal in Midcontinent's initial brief to ensure that consumers can benefit from fair competition in telephone and video services.

I. Introduction

Only one issue remains in this proceeding. Because NDTC has agreed that the criteria for lifting the rural exemption have been met for Devils Lake, the only question that remains is what schedule the Commission should adopt for NDTC to implement its obligations under Section 251(c) of the Communications Act.[1]

For all the reasons described in Midcontinent's initial brief and below, the evidence in this proceeding supports Midcontinent's proposed two-part implementation schedule. First, NDTC should be required to make wholesale resale available within 90 days of the

[1] 47 U.S.C. § 251(c).

Commission's order, with an interim wholesale discount subject to a true-up once a permanent rate is determined. Second, and equally important, the Commission should require the parties to begin the Section 252 negotiation process for facilities-based interconnection.

It is likely that NDTC will argue that Midcontinent's request for the Commission to set a schedule for facilities-based interconnection is extraordinary and unfounded. While Midcontinent's request is extraordinary, so is the situation. NDTC has been engaged in a long-term plan to enter the video market in Devils Lake for a year and half; would not admit the existence of the plan publicly until its testimony in this proceeding; and has been depending on the rural exemption to shield it from competition in the telephone market. Now, it has proposed a schedule for implementation of resale that would put off resale competition in Devils Lake for close to a year, even though it admits that all of the tests for lifting the rural exemption have been met. These facts compel the conclusion that NDTC will do whatever it can to delay the advent of facilities-based competition, even though it is giving up the right to stop Midcontinent from entering the market by deciding to offer video. Moreover, NDTC could succeed in its efforts – to the detriment of Devils Lake consumers – unless the Commission acts in this proceeding. Such facts demand the extraordinary action of requiring NDTC to negotiate for facilities-based interconnection immediately, rather than a year from now.

II. There Is No Basis for Adopting NDTC's Proposal to Delay Competition for a Year.

Any analysis of NDTC's proposed implementation schedule must start with a simple fact: NDTC's proposal would delay the availability of competition to Devils Lake consumers for close to a year and would prevent facilities-based competition from coming until 2008. There is no legal basis to conclude that such a schedule is required or preferred, and there is no reason to wait until then to create a "level playing field."

A. NDTC's Proposed Schedule Would Deny Consumers the Benefits of Competition in Devils Lake.

The most important flaw in NDTC's proposed schedule is that it would deprive consumers of local telephone competition for much longer than is necessary or appropriate. As described in Midcontinent's initial brief, consumers benefit greatly from competition through reduced prices, improved customer service and innovation, whether the competition comes from resale or facilities-based service.[2] This is undisputed by NDTC, and even Mr. Dircks admitted that competition is beneficial to consumers.[3] Once the Commission determines that the standards in Section 251(f)(1) are met, any delay in bringing competition to market hurts consumers.

In this context, NDTC's proposal to delay competition from Midcontinent until February 2007 is entirely unwarranted. Moreover, NDTC's schedule provides no opportunity for competition to begin sooner because February, 2007 is the start date regardless of when the parties complete negotiations or an arbitration.[4]

NDTC's schedule also would mean that Midcontinent could not begin the process of obtaining facilities-based interconnection until NDTC turned on video service. As the testimony establishes, this would mean that Midcontinent would be unable to offer facilities-based telephone service in Devils Lake until sometime in 2008.[5] Again, this would mean that consumers in Devils Lake would not be able to enjoy the additional benefits of facilities-based competition until two years from now.

---

[2] Midcontinent Initial Brief at 9-10; Tr. at 157 (Dircks) (price reductions result from competition); Tr. at 76 (Gates) (competition creates "good incentives to do even better" for customer service); Exhibit P11, Prefiled Rebuttal Testimony of Timothy J Gates ("Gates Rebuttal") at 15.

[3] *See, e.g.,* Tr. at 157 (Dircks) ("Choice is good.")

[4] Indeed, the NDTC schedule essentially presumes an arbitration, rather than a negotiated agreement between the parties. This suggests that NDTC has little intention of negotiating seriously.

[5] Tr. at 191 (Meredith).

B. There Is No Legal Basis for NDTC's Proposed Schedule.

NDTC offers very little justification for its proposed delays. As it did in its testimony and pre-hearing brief, NDTC starts by arguing that its schedule is consistent with the structure of Sections 251 and 252 of the Communications Act.[6] This theory is unsupported by the text of the statute or relevant case law.

First, the statute neither requires nor supports NDTC's schedule. NDTC's analysis focuses on the periphery, not the central language in Section 251(f)(1) concerning implementation schedules. For instance, NDTC notes that Section 251(f)(1)(A), the provision that establishes the exemption, says that Section 251(c) shall not apply "until" a company receives a bona fide request and a state commission determines that the exemption should be lifted.[7] This is true, but irrelevant to the implementation period; Section 251(f)(1)(A) describes the exemption, not the process of lifting it, which is covered by Section 251(f)(1)(B).

Section 251(f)(1)(B) contains the language that matters: "[A] State Commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission [FCC] regulations."[8] This language is not modified by any provision that refers to Section 252, Section 251(c)(1) or Section251(f)(1)(A). NDTC's analysis does not account for this simple, straightforward delegation. Indeed, because Section 251(c) does not apply "until" a state commission lifts the exemption, the conclusion that the state commission decides the implementation schedule is entirely consistent with Section 251(f)(1)(A). In other words, the decision on timing is in the hands of the Commission, to be decided based on the evidence before it.

[6] NDTC Initial Brief at 8-10.
[7] *Id.* at 9.
[8] 47 U.S.C. § 251(f)(1)(B).

Further proof that the Section 252 time frames need not be applied comes from NDTC's own brief. After saying that they are appropriate, NDTC then goes on to ask the Commission to adopt a different schedule, one that could be either longer or shorter than the nine-month period for negotiation and arbitration under Section 252, depending on when NDTC starts providing video service in Devils Lake.[9] If NDTC cannot propose a time frame that is consistent with its legal interpretation, then there plainly is no reason for the Commission to adopt that interpretation.

NDTC also strains to argue that the other state cases support its interpretation of Section 251(f)(1)(B), but this is incorrect. For instance, NDTC claims that the New York decision did not involve any Section 251(c) issues, but one of the questions before the New York Commission was the pricing of unbundled loops.[10] As NDTC notes in passing, the Texas case is inapposite because the decision was made "while relying on a Texas regulation," not on the terms of the federal statute.[11] The South Carolina decision provided no analysis beyond a bare statement that it would apply the Section 252 time frames, and certainly does not support the conclusion that the time frames are required.[12]

In the end, the New York decision still provides the most appropriate framework for the schedule in this proceeding. As in that case, the issues that need to be addressed by the parties to implement resale are relatively simple, and the most complicated one – the discount rate – can be addressed through an interim rate and true-up, which is exactly what the New York Commission

[9] NDTC Initial Brief at 1 (proposing implementation of resale in February, 2007 or when NDTC starts providing video, whichever is sooner).
[10] Exhibit R14 at 12, 13 (setting temporary price for unbundled loops).
[11] NDTC Initial Brief at 13; Exhibit R13 at 2.
[12] Exhibit R12 at 5. In addition, the South Carolina decision is inconsistent with NDTC's proposal in that the South Carolina Commission did not require the competitive LEC to submit a new bona fide request to the rural carrier. *Id.* at 5 (ordering period for negotiation to commence on issuance of order). As Midcontinent noted in its initial brief, the South Carolina decision also was complicated by the rural telephone company's decision to abandon its exemption prior to the hearing. Midcontinent Initial Brief at 14-5.

did.[13] NDTC's protests notwithstanding, the New York decision provides the best model for this case.

C. It Is Neither Necessary Nor Appropriate to Attempt to Create a Level Playing Field for NDTC.

NDTC claims to be seeking "fairness" in any Commission decision.[14] NDTC's notion of fairness, however, is a business environment in which it decides when competition will come to Devils Lake, based on its ability to offer the products it thinks are necessary for it to compete as effectively as possible. There is no basis in the record for the Commission to adopt NDTC's approach.

Initially, the record establishes that there never will be a completely level playing field in the Devils Lake market. NDTC will continue to have access to cheap capital, universal service support and the advantages of starting off with essentially all of the telephone customers in the market, not to mention its ability to bundle wireless service with its other offerings.[15] Midcontinent will have its own advantages, including being a larger company and starting off with a majority of the video customers in the market.[16] Nothing the Commission does in this proceeding will affect these advantages, or the companies' disadvantages in the market.

Adoption of NDTC's proposal will not make this playing field more level. Rather, it will give NDTC unmerited advantages in Devils Lake. Midcontinent would be handicapped because it would have to wait a year or more to enter the market, and then would have to wait another year after NDTC begins offering video until being able to offer facilities-based telephone

---

[13] Exhibit R14 at 13.
[14] NDTC Initial Brief at 15.
[15] Midcontinent Initial Brief at 15-6; Tr. at 94 (existing NDTC customer base), 104 (wireless), 107-110 (sources of financing), 118 (access to universal service support) (Dircks).
[16] NDTC's initial brief characterizes Midcontinent as "the only true monopoly holder" in Devils Lake, apparently based on the assertion of Mr. Negaard during cross-examination of Ms. Lohnes. NDTC Initial Brief at 11, citing Tr. at 25. In reality, of course, Midcontinent competes with satellite providers like DirecTV. Tr. at 197 (Meredith) (acknowledging that bundling telephone service with video "may" assist a cable company in competing with satellite providers).

service. This lag would give NDTC significant opportunities to lock in customers who might have been interested in Midcontinent's bundle if it were available, and these advantages would accrue from regulatory action, not from the merits of NDTC's offerings or NDTC's business acumen.

The greatest injury from waiting would not, however, be suffered by Midcontinent. Rather, consumers would be hurt most because they would be deprived of the benefits of competition acknowledged by both parties in the proceeding.[17] NDTC does not argue that there is any countervailing benefit to waiting other than "fairness" to NDTC.[18] In truth, there is nothing in the record that suggests that there is any benefit to waiting to introduce telephone competition in Devils Lake. All of the evidence demonstrates that the sooner competition is introduced, the more consumers will benefit, and that is the evidence the Commission should accept.[19]

III. The Commission Should Adopt Midcontinent's Proposed Implementation Schedule.

Midcontinent's initial brief proposed a two-part implementation schedule that will make resale competition available to consumers quickly and make facilities-based competition available at the time that NDTC brings its facilities-based video service to Devils Lake. The evidence continues to support this approach.

[17] Midcontinent Initial Brief at 9-11, 15; Tr. at 156-7 (Dircks).
[18] NDTC Initial Brief at 15.
[19] Tr. at 76 (Gates) (". . . the benefits are great and all of those inure to the consumer, because all those things that North Dakota Tel will do, and any other company facing competition, will ultimately benefit consumers by . . . more efficient provision of service, better customer service, more offerings, reduced prices.").

A. The Evidence Fully Supports a Prompt Schedule for Implementing Wholesale Resale.

NDTC's initial brief claims that Midcontinent's proposed time frame for resale is "unrealistic." However, all of the evidence shows that there is no reason to think that wholesale resale could not be implemented in a 90-day period.

First, the only party that testified as to actual experience in implementing resale was Midcontinent, and the only testimony was that arrangements for resale can be completed in 90 days.[20] Moreover, this experience is not just with Qwest, but with other companies as well.[21] A short time frame is feasible because resale "is a very, very simple application" and "we've been doing it for years."[22] In fact, in practical terms the back office requirements for resale are not meaningfully different from those for providing service to a large customer.

In response to this testimony, NDTC provided no evidence that resale could not be implemented in 90 days. Nearly all of NDTC's testimony is merely assertive.[23] The only substantive issue raised by NDTC is the time it will take to determine the resale discount, and that is not a roadblock to prompt implementation.

Initially, NDTC's own testimony is that a cost study for wholesale resale can be completed in two months.[24] This means that, if the Commission believed, for whatever reason, that it could not adopt a wholesale rate on an interim basis without a cost study, there would be time to put a rate into place within a 90 day window.[25] Such a study actually could have been

---

[20] Exhibit P1, Prefiled Direct Testimony of Mary Lohnes ("Lohnes Direct") at 6; Exhibit P2, Prefiled Rebuttal Testimony of Mary Lohnes ("Lohnes Rebuttal") at 1; Tr. at 78-80 (Gates).

[21] *See, e.g.,* Tr. at 78-79 (Gates) (involved in hundreds of proceedings over the last 20 years).

[22] *Id.*

[23] *See* Exhibit R6, Prefiled Reply Testimony of Douglas Duncan Meredith ("Meredith Reply") at 12 (Midcontinent's proposal "is unrealistic").

[24] Tr. at 220 (Meredith). The Commission should assume that the shorter time frame described in his testimony is feasible because the timing of completion of a cost study is entirely in the hands of NDTC.

[25] NDTC also claims that Midcontinent's analysis of the timing for establishing a resale discount is "based on the experience with Qwest." NDTC Initial Brief at 10, citing Tr. at 61-63 (Gates). That is incorrect. The testimony cited by NDTC discusses the question of what companies have had rates set by this Commission, and Mr. Gates

completed by Midcontinent for the hearing if NDTC had agreed to provide the underlying information.[26]

More important, however, NDTC never has demonstrated or even suggested that it would infeasible or impermissible for the Commission to adopt interim rates and true-ups. To the contrary, Mr. Meredith agreed that states can take such steps.[27] The record also establishes that use of the Qwest rates, even without a true-up, would have only a minimal effect on NDTC's revenues.[28] In other words, adopting the Qwest rate as an interim rate, with a true-up once a permanent rate is determined through negotiation or a Commission decision, will allow the implementation of resale without waiting for permanent rates to be established.

Moreover, there is no reason to believe that the terms of a resale agreement cannot be negotiated promptly. Again, while NDTC argues for the full Section 252 period, it does not provide any specific reason to believe that negotiation of a simple resale agreement should take very long. The only witnesses who testified as to their experience – the Midcontinent witnesses – stated that negotiations should not be a barrier to prompt implementation.[29] In this regard, the Commission should remember that NDTC has had Midcontinent's proposed agreement in hand

---

actually said he has been involved in "dozens and dozens" of cases "all over the country," not just in Qwest proceedings. Tr. at 61 ("Q. To the best of your knowledge, has the North Dakota Commission ever established a wholesale discount percentage for NDTC? A. No, not for NDTC, but certainly for Qwest. We went through those proceedings and we've certainly done it dozens and dozens of times all of the country, so it's not a new process."); *see also* Tr. at 78-9 (Gates) (involvement in "hundreds" of resale proceedings).

[26] Gates Rebuttal at 2. NDTC responds to this statement by claiming that Mr. Gates "tried to paint NDTC as having withheld necessary information" and that Mr. Fischer "refuted" that claim. NDTC Initial Brief at 12. In fact, Mr. Fischer merely testified that NDTC provided all the information it agreed to provide, not all the information necessary to compute the appropriate resale discount. Tr. at 38 (Fischer) ("Yes, we did receive the information that we had mutually agreed upon would be acceptable to the parties.").

[27] Tr. at 194 (Meredith) ("Q. Now, when a state adopts interim rates, for instance, under the FCC's rules and those rates turn out to be incorrect, can the state require a true-up? A. Yes.")

[28] Exhibit P5, Prefiled Direct Testimony of Warren R. Fischer at 13. Mr. Meredith's pre-filed testimony objected to the use of the Qwest discount rates in Mr. Fischer's study on the impact of resale, but during cross-examination he acknowledged that he did not know if those rates were appropriate or not because he had not prepared an analysis, and that the rates used by Mr. Fischer were lower than the bottom end of the FCC's permissible range for interim discounts, and therefore more favorable to NDTC. Tr. at 194 (Meredith).

[29] Lohnes Direct at 6; Lohnes Rebuttal at 1; Tr. at 73 (Gates) ("You know, a very simple agreement. It's not the 500-, 600-page interconnection agreements that we normally consider.").

since May, 2005, and chose not to raise any objections to the agreement in its testimony or at the hearing, even as it was conceding that the rural exemption should be lifted.[30] Given the limited number of issues in a resale agreement, and the lack of objections to date from NDTC, the parties should be able to complete their negotiations within a month if the parties commit themselves to doing so.

Finally, in considering the time frame for wholesale resale, the Commission should recognize that NDTC has the ability to accelerate its video deployment. In particular, much of NDTC's fiber is in place already, and it could choose to start service in some parts of Devils Lake before construction is complete in the rest of the market.[31] While NDTC's brief argues that it still needs to obtain programming and a franchise from Devils Lake, these are not significant barriers. Because NDTC's parent companies all offer video service already, NDTC has easy access to programming.[32] There also is no evidence that the franchising process will cause meaningful delays. Indeed, NDTC has provided no evidence of how long it will take it to complete these tasks.[33] In addition, NDTC could pre-sell video service to its customers, following a practice adopted by other rural telephone companies that are entering the video market, and lock in customers to long-term agreements.[34] In this context, an accelerated

---

[30] *See, e.g.,* Tr. at 153 (Dircks); Tr. at 192 (Meredith). NDTC's initial brief argues that Midcontinent has mischaracterized the situation because one of Midcontinent's witnesses used the phrase "another round of negotiations" in his prefiled rebuttal testimony. NDTC Initial Brief at 12. As the testimony makes clear, the issue being discussed is the appropriateness of requiring Midcontinent to make a second bona fide request and to wait until another set of hearings is completed before being able to provide resale. Gates Rebuttal at 9-10. In addition, there is no evidence that Midcontinent has not been willing to negotiate an agreement.

[31] *See* Vince Vittore, "NDTEL gets active on FTTP," TELEPHONY ONLINE, Oct. 1, 2005 (NDTC had completed construction of fiber to 1,000 of 3,200 customer premises by October, 2005), included in Exhibit P4.

[32] Tr. at 96-7 (Dircks).

[33] NDTC Initial Brief at 3 (stating only that programming and a franchise are required).

[34] Lohnes Direct at 4 ("Early entry into a market is crucial before the incumbent is able to lock in its monopoly customer base with long term agreements."). NDTC's initial brief inflates this statement into a claim that NDTC has been signing customers to long-term agreements, and says that Ms. Lohnes "admitted" that NDTC has not done so to date and that she did not know that NDTC operates under tariff. NDTC Initial Brief at 12. Of course, Ms. Lohnes never said that NDTC was using long term agreements already, and NDTC's tariffing of local telephone

schedule for the availability of wholesale resale is the best way to prevent NDTC from obtaining an unreasonable competitive advantage in Devils Lake.

B. The Commission Should Order NDTC and Midcontinent to Start the Section 252 Process for Facilities-Based Interconnection.

At the hearing, both parties agreed that facilities-based competition was better for consumers than resale competition, and the record shows that facilities-based competition is an appropriate goal for regulators and the marketplace.[35] For the reasons described in Midcontinent's brief and below, the Commission should take all necessary steps to ensure that facilities-based competition is in place in Devils Lake by February, 2007.[36]

There are at least three reasons to adopt a schedule for implementation of facilities-based competition. The first, which is well documented, is the benefit to consumers that will result. Second, the record establishes that adopting a schedule for facilities-based competition is the best way to ensure competitive balance because Midcontinent's facilities-based entry could be delayed until a year or more after NDTC's entry into the video business.[37] This delay would hurt both consumers and Midcontinent in its efforts to compete with NDTC.

The third reason for the Commission to adopt a schedule for the implementation of facilities-based competition is that the facts in this case justify this unusual action. The record shows that NDTC is doing whatever it can to delay the advent of competition of any sort, from misconstruing Midcontinent's initial request for resale to proposing to implement resale more than a year after NDTC admitted on the record that the rural exemption should be lifted.[38] This

---

service is irrelevant to its ability to offer long term contracts for video, high speed Internet or bundles of these non-regulated services.

[35] Gates Direct at 12-3; Midcontinent Initial Brief at 20-21.

[36] *See* Midcontinent Initial Brief at 19-22.

[37] Tr. at 191 (Meredith).

[38] Tr. at 152-3 (Dircks) (sought clarification even though the agreement was a wholesale agreement); NDTC Initial Brief at 13. As noted above, the implementation period requested in NDTC's brief potentially is longer than the negotiation and arbitration period under Section 252 of the Communications Act. *See supra* Section II(B).

suggests strongly that NDTC will do whatever it can to delay facilities-based competition as well.

What that means is that, without Commission action, NDTC will be able to hold off facilities-based competition not just until it enters the video business, but for a year after that, as it forces Midcontinent to complete the negotiation and arbitration process and only then permits interconnection and the exchange of traffic.[39] NDTC and its owners would be the only beneficiaries of this delay; Devils Lake consumers, on the other hand, would be hurt.

For these reasons, allowing NDTC to put off competition from Midcontinent until 2008 would be bad public policy, but the Commission also has the evidence in hand to conclude that the criteria for lifting the rural exemption have been met as to facilities-based service. This analysis is described in more detail in Midcontinent's brief, but the crucial point is that NDTC has acknowledged that it will give up the rural exemption as to Midcontinent as soon as it offers video service in Devil's Lake.[40] This means that NDTC itself has concluded it does not need the protection of the rural exemption. Therefore any potential cognizable harm to NDTC from ordering it to comply now with Section 252 is irrelevant.

It is important to remember that adopting Midcontinent's proposed schedule for facilities-based interconnection will have the effect of putting Midcontinent fully into the telephone market at the same time NDTC enters the video market. While, as discussed above, there never really can be a level playing field when there are multiple competitors in a market, facilities-based competition in telephone, high speed Internet and video is as close as any market is likely to come. Thus, it is appropriate for the Commission to ensure that the two main competitors can provide all of their services through their own facilities.

---

[39] Tr. at 191 (Meredith).
[40] Exhibit R1, Prefiled Direct Testimony of David Dircks ("Dircks Reply") at 9; Meredith Reply at 9.

C. The Commission Should Establish Firm, Enforceable Deadlines for Whatever Implementation Schedule It Adopts.

While the schedule adopted by the Commission is the crucial, the schedule itself does not dictate when resale and facilities-based competition will be established. That is dependent on the actions of the parties. For that reason, the Commission should establish firm deadlines and specific mechanisms for enforcing them, regardless of the schedule it adopts.

The evidence shows that firm deadlines are likely to be necessary. The record is replete with evidence that NDTC wants to slow down competition whenever possible. As described above, this evidence includes NDTC's failure to review Midcontinent's proposed resale agreement; its insistence that a permanent discount rate should be set before resale begins; its suggestion that Midcontinent should have to submit a new bona fide request to start the clock; and the proposal for an implementation period for resale that is longer than the Section 252 arbitration schedule.[41] Of course, NDTC has every incentive to delay: Delay helps it avoid losing market share to Midcontinent, makes its service bundles more attractive when it enters the video business and even makes its marketing simpler.

At the same time, NDTC has significant incentives to accelerate its deployment of video service. As described above, NDTC need not wait until 2007 to offer video because programming and a franchise should be readily available. Adding video sooner than planned would create a competitive advantage, particularly if Midcontinent were unable to offer telephone service when the video was rolled out to customers. Once the video service is available, every day that Midcontinent is unable to offer telephone service is a significant competitive advantage for NDTC.

[41] *See supra* Section II(B), Section III(A).

These factors make it critical that the Commission ensure that its schedule includes strict guidelines and mechanisms for enforcing them. For instance, and as proposed in Midcontinent's initial brief, any negotiations on the discount rate should be backstopped by an interim rate, and NDTC should have a deadline for preparing and sharing its cost study. The Commission also should consider penalties for NDTC for failure to comply with its requirements, such as eliminating any true-up that would benefit NDTC if it fails to produce a cost study on time. In the absence of both deadlines and penalties, NDTC will have little incentive to meet the requirements adopted in the Commission's order.

IV. Conclusion

For all these reasons, the Commission should adopt an order consistent with Midcontinent's proposed order in this proceeding.

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By: _____

Patrick W. Durick
J.G. Harrington*

Its Attorneys

*Admitted pro hac vice

Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

February 28, 2006

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

RECEIVED
FEB 28 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Midcontinent Communications, a South Dakota Partnership,	)	**Case No. PU-05-451**
Complainant,	)	**AFFIDAVIT OF SERVICE BY E-MAIL**
vs.	)	
North Dakota Telephone Company,	)	
Respondent.	)	

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Sharon Cavender hereby certifies that on February 28, 2006, she served a copy of the foregoing:

1) Reply Brief of Midcontinent Communications

by e-mail in PDF format as follows:

William W. Binek
Public Service Commission
wwb@state.nd.us

Scott Knudsvig
Counsel for NDTC
sknudsvig@srt.com

Tom Moorman
Counsel for NDTC
tmoorman@woodsaitken.com

Donald Negaard
Counsel for NDTC
donn@srt.com

Hon. Al Wahl
awahl@state.nd.us

Sharon Cavender
Sharon Cavender

Subscribed and sworn to before me February 28, 2006.

CARI WEIAND
Notary Public
State of North Dakota
My Commission Expires Aug. 27, 2008

Cari Weiand
Notary Public
Burleigh County, North Dakota

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

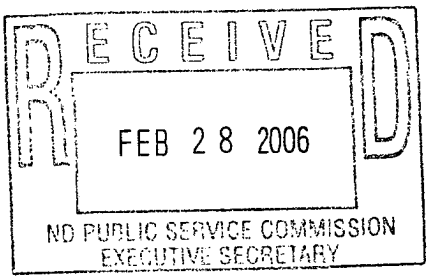
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

February 28, 2006



Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for filing in the above proceeding are an original and seven copies of the Post-Hearing Reply Brief of North Dakota Telephone Company. This document has also been transmitted via electronic means to your office.

Don Negaard

jt

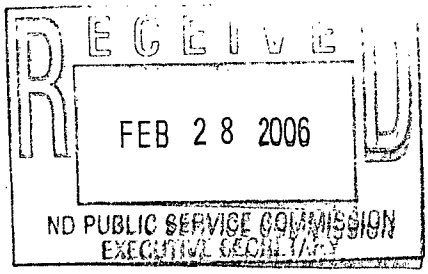
Enclosures

cc/enc: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

87 **PU-05-451** Pages: 1

Letter re NDTC Post-Hearing Reply Brief

by North Dakota Telephone Company by Don Negaard,
02/28/2006 CC: Comm Legal Illona, Pat, Annette . .



STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**POST-HEARING REPLY BRIEF OF NORTH DAKOTA TELEPHONE COMPANY**
North Dakota Telephone Company,	)	
Respondent.	)	

North Dakota Telephone Company ("NDTC"), by counsel, hereby submits this Reply Brief to the North Dakota Public Service Commission (the "Commission") in response to the February 17, 2006, post-hearing filing of Midcontinent Communications ("Midco") in the above-captioned matter.[1] NDTC respectfully submits that the Commission should resolve this proceeding in the manner proposed by NDTC as it is the *only* proposal that is consistent with the facts, law, common sense, and rational public policy. Accordingly, NDTC respectfully requests that the Commission direct: (1) the parties to enter into good faith negotiations of a Section 251/252 agreement for the provision to Midco of wholesale resale by NDTC within its Devils Lake exchange once NDTC receives a valid request for interconnection from Midco after the Commission issues its decision in this proceeding; and (2) that any such interconnection agreement

[1] For the Commission's convenience, NDTC will refer to the post-hearing brief of Midco as the "Midco Brief" and NDTC's February 17, 2006, filing in this proceeding as the "NDTC Brief."

86 PU-05-451 Pages: 15
Post-Hearing Reply Brief of NDTC
by North Dakota Telephone Company by Don Negaard,
02/28/2006 CC: Comm Legal Illona, Pat, Annette . .

be implemented by "the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange." (NDTC Brief at 1.)[2]

I. THE SOLE ISSUE REQUIRING COMMISSION ACTION IS THE ADOPTION OF AN IMPLEMENTATION SCHEDULE.

What the post-hearing filings have now demonstrated is that the Commission need not consider the three factors found in Section 251(f)(1)(A) of the Communications Act of 1934, as amended (the "Act"). (*See* 47 U.S.C. § 251(f)(1)(A).) NDTC has agreed that the current request by Midco for resale at a wholesale discount in the NDTC Devils Lake exchange is not unduly economically burdensome, technically infeasible, or contrary to the universal standards contained in the Act. (*See* NDTC Brief at 6-7; *see also* HT 158-159, 166:7-18.) As such, the Commission need not consider Midco's purported analysis of the Section 251(f)(1)(A) factors (*see* Midco Brief at 3-8), nor the purported consumer benefits that Midco cites. (*See id.* at 9-11.) As Midco states: "Once the three criteria in Section 251(f)(1) are met, the Commission does not need to go any further to determine whether the rural exemption should be lifted, *and the statute does not permit any further inquiry.*" (Midco Brief at 9 (emphasis added).)

Thus, the only remaining issue is the establishment by the Commission of an implementation schedule that advances the public interest. *See* 47 U.S.C. § 251(f)(1)(B). Consistent with the NDTC Brief (which is incorporated herein by reference), it is abundantly clear that, unlike Midco's proposed 90-day implementation

[2] The parties each submitted proposed findings of facts and conclusions of law on February 17, 2006, along with their respective briefs and Midco also filed a proposed order. To the extent that the proposed findings of fact and conclusions of law and proposed order provided by Midco differ from NDTC's submissions, the Commission should reject Midco's proposals for the reasons stated herein and in the NDTC Brief.

schedule, NDTC's proposal is grounded in fact, the law, and rational public policy.[3] Accordingly, NDTC respectfully requests that its proposed implementation schedule be adopted in total by the Commission.

II. THE COMMISSION MUST REJECT MIDCO'S IMPLEMENTATION PROPOSAL BECAUSE IT IS BASED ON FUNDAMENTALLY FLAWED STATEMENTS OF FACTS AND LAW AND WOULD RESULT IN THE ESTABLISHMENT OF IRRATIONAL PUBLIC POLICY.

NDTC respectfully submits that, consistent with the scope of the request made by Midco, the Commission has ample authority under Section 251(f)(1)(B) to establish an implementation schedule in this proceeding that is rational and advances the public interest. Midco states that the Commission needs to rely upon "the record in this proceeding" (*see* Midco Brief at 11), and that the Commission needs to establish a "level playing field." "Finally, lifting the exemption will help create a level playing field in Devils Lake so that consumers can benefit from full competition between NDTC and Midcontinent." Midco Brief at 10. Without question, NDTC has amply demonstrated that the encouragement of a "level playing field" and fair competition is a result that should guide the Commission's resolution of this proceeding. (*See* NDTC Brief at 7; *see also* Ex. R-1 at 1:23-2:2, 2:20-3:4, 10:15-17.) Thus, the Commission can have confidence that its authority to establish a rational implementation schedule that advances the public interest is fully understood and supported by both parties.

---

[3] NDTC also notes that, from public policy perspective, the North Dakota Legislature has also found the Act's time frames appropriate when it granted this Commission the authority to arbitrate agreements under Section 252 of the Act. *See* NDCC § 49-21-01.7(9). Thus, both Congress in establishing the Section 252(b) and the North Dakota Legislature in likewise adopting the Section 252(b) time frames provide the legal and associated public policy basis for Commission action adopting the same time frames as proposed by NDTC. *See also,* NDCC § 49-21-01.7(15) (The Commission should not adopt rules when carrying out the Commission's duties under the Act that impose obligations on carriers that are not imposed by the Act.).

Unlike NDTC, however, Midco's implementation proposal is built upon misstatements of fact and innuendo that lead to irrational public policy. Thus, when the erroneous nature of *any one* of Midco's positions are exposed, it is clear that there is no basis upon which the Commission can or should rationally find that Midco's 90-day implementation schedule is appropriate.

A. Midco's Claimed Reliance on the Goal of Creating a "Level Playing Field" Rings Hollow.

Midco's purported efforts to encourage a "level playing field" through its proposal are nothing of the sort. (*See* Midco Brief at 17.) The effect of the Midco proposal is the creation of an "unlevel" playing field that is clearly tilted in favor of Midco. Accordingly, for this reason alone, Midco's proposal should be rejected.

Midco's proposal is based on the false premise that NDTC will be providing video within the NDTC Devils Lake exchange in less than a year. (*See id.* at 20. (NDTC will "begin providing video over its facilities in Devils Lake in less than a year. . . .)) Midco's assertion has no basis in fact.

While NDTC used the date of February 1, 2007, as a target date, the record is clear that NDTC never stated that it *would* provide cable television service on or before that date as Midco now claims. As David Dircks from NDTC consistently has made clear, "[a]s I stated at my deposition for this proceeding, we feel *at some point* we will offer video, but that time has not come." (Ex. R-1 at 8 (emphasis added).) "Our *goal* is to offer video services sometime *after* February 1, 2007." (*Id.* at 9 (emphasis added).)

Rather than face these facts, Midco also relies on innuendo in an apparent effort to cloud the record. Midco speculates as to a number of ways that NDTC *could* gain some form of competitive advantage over Midco within the NDTC Devils Lake

exchange. (*See* Midco Brief at 16.) However, speculation is not fact; no citation is provided by Midco that ties its speculation to NDTC.

For example, Midco cites to Midco Witness Lohnes' testimony at the hearing that some unidentified "communities" and some unidentified "competitors" have entered into long-term contracts with customers. (*Compare* Midco Brief at 16 and HT 29:24-30:3.) The record is clear that Midco's speculation was never tied to NDTC.

Likewise, Midco selectively refers to the record regarding why NDTC deployed the new fiber, inferring that the reason for deployment was for video and that the plant was otherwise fully depreciated. (*See* Midco Brief at 5, n.14.) Midco further states that NDTC's plan for reinvestment was some form of "speculative venture." (*Id.* at 5.) NDTC could not have been clearer with respect to why it deployed the new fiber – the constant review of its offerings to maintain a high quality network in the communities it serves; aging plant; increased customer demand for high-speed data; the potential for increased reliability and lower maintenance costs of fiber; and the ability of fiber to handle high bandwidth services consumers want. (*See* Ex. R-1 at 6:20-7:10.) Contrary to the inferences left by Midco, NDTC should be encouraged to reinvest in North Dakota and that is what NDTC has done. The record rejects Midco's narrow scope of NDTC's plans. NDTC's plans are justified by common sense, rational public policy, and effective business practices.

The record is also clear that each of the parties has one missing element of the "triple play"; *i.e.,* the provision of telephone service, high-speed access to the internet, and cable television. (*See, e.g.,* HT 147:6-148:1.)[4] Midco lacks telephone service

[4] Midco's statements regarding the potential for NDTC to offer a "quadruple play" that includes wireless (*see* Midco Brief at 11 (n. 44), 15) should not deter the Commission's action in encouraging a

and NDTC lacks cable television. NDTC's ability to provide cable television service, however, is contingent upon the completion of its fiber facilities, a head end, a cable television franchise, and securing programming. (*See* Ex. R-1 at 7:19-8:21.) No such contingencies exist for Midco's offering of telephone service.

Midco's ability to provide telephone service could have been accomplished through simple resale pursuant to Section 251(b)(1) of the Act (*see* Ex. R-6 at 9:21-10:7), and that would have avoided this proceeding. It was Midco that chose to pursue wholesale resale and thus triggered this Section 251(f)(1) proceeding. If time was an issue, Midco could have chosen to pursue simple "retail resale" instead. Midco's decision, however, to pursue Section 251(c) wholesale resale in NDTC's Devils Lake exchange in this proceeding should not foist an unrealistic time frame for the establishment and implementation of a Devils Lake exchange–specific wholesale resale agreement upon NDTC.

Midco's proposal – 30 days for negotiation and 60 days for implementation – would not allow the parties the ability to narrow issues or to reach agreement if possible. This is further exacerbated by the fact that the parties have not even discussed the terms and conditions of the required interconnection agreement. (*Accord* NDTC Brief at 8; *see also* Ex. R-6 at 13:4-13.) The Commission is well aware of the need for proper discussions and negotiations based on its experience with resolving Section 252(b) interconnection disputes. The parties' agreement to reschedule and the Commission's rescheduling of the hearing in this matter are testament to the difficulty of ensuring that the due process rights of interested parties are advanced. NDTC is not aware of any

---

level playing field. NDTC offers these services through resale (*see* HT 104:16-17)), and there is no fact in the record that Midco could not do the same.

reason (and Midco has provided none) as to why due process considerations with respect to negotiating terms and conditions of an interconnection agreement should be any less important than those the Commission considers when engaging in its hearing process.

The net effect of Midco's proposal is that it either wants to *impose terms and conditions upon NDTC*, or have the Commission do it. Both effects are entirely inappropriate from a public policy basis, and would otherwise be counter to other State Commissions that have needed to address an implementation schedule after, like here, a specific aspect of a Section 251(f)(1) exemption has been removed.[5]

Any doubt over NDTC's good faith is resolved because NDTC runs the risk of not having the ability to provide the triple play by February 1, 2007; *e.g.,* if the fiber project is delayed or NDTC is delayed by the local franchising authority, NDTC assumes that risk. Midco, on the other hand, has the firm *outside date* of February 1, 2007, proposed by NDTC absent further Commission action. NDTC only requests that an appropriate amount of time be provided by the Commission so that its decision in this proceeding can encourage both fair competition and a level playing field. (*See, e.g.,* NDTC Brief at 7.) Contrary to this proposal, Midco is not seeking a level playing field at all. Midco claims it wants fair competition, but its actions demonstrate otherwise. Midco's position should be rejected by the Commission.

---

[5] Presumably, Midco relies upon the New York Public Service Commission case in support of its position that Midco's proposed implementation time frame is appropriate (*see* Midco Brief at 19), and vainly attempts to distinguish both the South Carolina Public Service Commission and Texas Public Utilities Commission decisions. (*See id.* at 13-15.) Midco is wrong on both accounts. The New York case dealt with considerably different facts and a different provision of the Act (*i.e.,* 47 U.S.C. §251(f)(2)) (request for suspension or modification of interconnection duties). The South Carolina and Texas cases establish an implementation schedule entirely consistent with that proposed by NDTC. (*See* NDTC Brief at 13-14.)

B. Midco's Claim that an Unrealistic 90-Day Full Implementation Time Frame will Create Purported Public Interest Benefits is Erroneous.

While it acknowledged that the benefits of competition to consumers are not relevant to the consideration of whether to lift the exemption (*see* Midco Brief at 9), Midco appears to rely upon its purported consumer benefits – "reduced prices, better customer service, innovation and a level playing field for all competitors. " (*id.*) to justify its unrealistic 90-day implementation time line. (*See id.* at 15.) Midco's generalized assertions of competitive benefits have not been demonstrated to be applicable in this proceeding.

First, and with respect to the claimed "level playing field" that Midco suggests, Midco's position has been amply demonstrated to be just the opposite. Midco's statements make clear that it wants an "unlevel" playing field. *See* Section II.A, *supra*.

Second, Midco has not demonstrated that *its* provision of wholesale resale will increase innovation. The record is clear that it will be reselling the tariffed service offerings of NDTC in the NDTC Devils Lake exchange and nothing more. (*See, e.g.* Ex. R-1 at 3:1-4; R-6 at 10:22-11:1.) Since no additional functional value to NDTC's tariffed offerings will be added by Midco, no innovation has been demonstrated. While bundling of products could be viewed by some as some form of innovation (*see* Midco Brief at 10), the benefit of both parties being able to innovate is significantly undermined when the playing field would not be level as is the result of Midco's 90-day implementation schedule.

Third, Midco has no evidence of how customer service will improve when NDTC has had few customer complaints about its tariffed services (*See* Ex. R-1 at 4:6-9; HT

155:20-156:21) and Midco is reselling NDTC's services. Midco's efforts to contradict these facts simply confuse the record.

Midco suggests that "[c]onsidering that Devils Lake customers recently experienced a price increase, and that the increase led to a significant number of complaints to the Commission . . ." (Midco Brief at 9.) This statement cannot be reconciled with the actual records contained in the Commission's files in PU-05-325. NDTC respectfully requests the Commission to take judicial notice of its own records in that case. The Commission, based on its independent review, will be able to confirm that not all 96 "contacts" were "complaints." Some portion of the consumers wanted the Extended Area Service ("EAS") plan that NDTC filed. All but two of the contacts in that case came from consumers outside Devils Lake. Of the two contacts from Devils Lake, one contact was resolved before the EAS plan was withdrawn by NDTC in September of 2005 and the other contact was in favor of the EAS plan.

As demonstrated herein, none of the purported consumer benefits that Midco cites supports its position that an unrealistic implementation time frame is in the public interest. Accordingly, NDTC respectfully requests that the Commission disregard Midco's claims in this regard.

C. Midco's Claim that Its Unrealistic 90-Day Full Implementation Schedule is Reasonable Because a Wholesale Resale Discount is Easily Developed is Entirely Without Basis.

Midco's position that its 90-day implementation time frame is reasonable is based on two additional claims that actually demonstrate why Midco's proposal is unrealistic. First, Midco continues to claim that the wholesale resale discount can be done quickly. (*See* Midco Brief at 17 (". . . Midcontinent believes that calculating a wholesale discount

should be a fairly straightforward process. . . .").) Midco Witness Gates also stated it would be a "simple matter" for the Commission to establish the wholesale resale discount rate for the NDTC Devils Lake exchange (*see* HT 62:7). Repetition by Midco of the same statement does not make it true or a fact. The only economist testified that these assertions were without merit.

> Q. Mr. Meredith, based on your recross by Mr. Harrington, is it safe to say that an avoidable cost study is not an add-water-and-mix proposition?
>
> A. Yes it is.

(HT 224:22-25; *see also* NDTC Brief at 11.)

Second, Midco claims that the Commission can take a "fix it later approach" by adopting an interim wholesale rate. (*See* Midco Brief at 18.) That idea can and should be rejected by the Commission.

Midco's suggestion that the Commission can "fix" an improper wholesale resale rate later (*see id.* at 18) contradicts Midco's suggestion to the Commission that it must rely upon the "record" in fashioning the implementation schedule in this proceeding. (*See id.* at 11.) The record confirms, however, that: (1) this proceeding is not about the establishment of a wholesale resale discount for NDTC's Devils Lake exchange as confirmed by the Commission's December 14, 2005, "Notice of Rescheduled Hearing" (the "December 14th Notice") and (2) no Devils Lake exchange-specific wholesale discount study or an NDTC-wide study has been undertaken by Midco (*see* HT 37:16-24, 46:3-8), the Commission (*see id.* 61:17-62:7), or the NDTC's witness, Mr. Meredith. (*Id.* 194:9-19.)

Consequently, there is absolutely *no record* upon which an interim rate for NDTC can rationally be established. Moreover, the Federal Communications Commission

("FCC") rule upon which Midco presumably relies only applies *after* the Commission finds a study that is produced is lacking. To that end, and taken to its logical conclusion, Midco's position actually supports the need for Section 252(b) time frames suggested by NDTC to be applied.

Midco's suggestion regarding an interim wholesale discount rate presumably relies upon Section 51.611 of the FCC's rules. *(See* Midco Brief at 18*; see also* 47 C.F.R. § 51.611.) That rule states a state commission can establish an interim wholesale rate only "[i]f a state commission cannot, *based on the information available to it,* establish a wholesale rate using the methodology prescribed in §51.609. . . ." 47 C.F.R. § 51.611(a) (emphasis added). A study could take up to two to three months to conduct (*see* HT 219:23-222:11), but would *only* be necessary if the parties cannot reach an agreement. Any agreement or disagreement, however, would not be known until the "gives and takes" of a negotiation between the parties have begun and are taking place. Even if the study was required, the only time "a state commission" would have "information available to it" (47 C.F.R. § 51.611(a)) would be during arbitration, an event that comes *before* the application of an interim rate. Carried to its logical conclusion, therefore, Midco's reliance on an interim rate confirms the need for the arbitration process of Section 252(b) of the Act.

D. Midco's Statements that Nothing in the Law Precludes the Commission from Expanding Relief to Midco Beyond the Request for Wholesale Resale in the Devils Lake Exchange is Clearly Erroneous.

Midco suggests that "Section 251(f)(1) does not specify that the implementation schedule must relate only to the services covered by the initial bona fide request, so the

Commission has broad discretion to make the remedy fit the evidence it has heard." (Midco Brief at 21). This leap is clearly erroneous and should be rejected outright.

First, Midco wants the Commission to ignore the language in Section 251(f)(1)(b) that precludes the Commission from expanding the scope of this proceeding through its implementation authority. The very language of Section 251(f)(1)(B) states: "Upon termination of the exemption, a State commission shall establish *an implementation schedule for compliance with the request* that is consistent in time and manner with [FCC] regulations." 47 U.S.C. §§ 251(f)(1)(B) (emphasis added). "The request" at issue in this proceeding is that made by Midco, nothing more. Midco's request, in turn, is *solely* for the removal of NDTC's existing exemption from the offering of resale at a wholesale discount within the NDTC Devils Lake exchange. (*See, e.g.,* Docket Entries 1, 3, and 47; Ex. P-5 at 2:41-3:57; Ex. P-11 at 3:51-59.)[6]

Second, Midco knows full well that the Commission did not provide any notice that the scope of the proceeding was beyond Midco's request for wholesale resale within the NDTC Devils Lake exchange. *See generally* December 14th Notice. Thus, consideration of Midco's request at this stage raises significant due process issues which again Midco apparently wants the Commission to ignore.

Finally, and should it be necessary, the Commission can note, as stated in NDTC's Prehearing Brief, that a court has already spoken on this issue, and those directives are absolutely clear – the scope of relief is to the request that is made; i.e.

---

[6] Although the expanded negotiation suggested by Midco is wholly improper, the fact that Midco apparently relies upon Section 252 in arguing for it can be viewed as recognizing that the Section 252 time fames are appropriate for Section 251(b) and (c) duties that have not been negotiated. Logically, therefore, that same construct would apply to the instant request for wholesale resale within the NDTC Devils Lake exchange since the record is clear that there have been no negotiations on that request between the parties. *Accord* NDTC Brief at 8-10.

wholesale resale within the NDTC Devils Lake exchange. *See ASC of Alaska, Inc. v. Regulatory Commission of Alaska*, 81 P.3d 292, 301 (S.Ct. Alaska, 2003); *see also* Prehearing Brief at 7-8.

Accordingly, the law is clear and specifically prescribes what the Commission can do in establishing an implementation schedule under Section 251(f)(1)(B). Midco's contentions to the contrary should be rejected outright.

III. CONCLUSION.

When NDTC's proposal is viewed properly and in its entirety, the NDTC proposal is appropriate and should be adopted. Midco's proposal is without factual, legal, common sense, or rational public policy bases. Consequently, the Commission should reject outright Midco's "you can fix it later" approach to establishing the terms and conditions for the provision by NDTC of wholesale resale within its Devils Lake exchange to Midco. In doing so, NDTC respectfully submits that the Commission should resolve the sole remaining issue in this proceeding – the appropriate implementation schedule for the provision of wholesale resale by NDTC within its Devils Lake exchange to Midco – in a manner fully consistent with that which has been proposed by NDTC. Simply put, NDTC would ask that the Commission direct: (1) the parties to enter into good faith negotiations of a Section 251/252 agreement for the provision to Midco of wholesale resale by NDTC within its Devils Lake exchange once NDTC receives a valid request for interconnection from Midco after the Commission issues its decision in this proceeding; and (2) that any such interconnection agreement be implemented by "the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange." (NDTC Brief at 1.)

As amply demonstrated herein and in the NDTC Brief, NDTC's implementation schedule is grounded in the facts in this proceeding, common sense, the law, and rational public policy. Accordingly, NDTC respectfully submits that the Commission should adopt it in its entirety.

Dated this 28th day of February, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
Scott M. Knudsvig, ID #05823
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

WOODS & AITKEN LLP

Thomas J. Moorman
2154 Wisconsin Avenue, NW, Suite 200
Washington, D.C. 20007
Telephone: (202) 944-9500
Fax: (202) 944-9501
tmoorman@woodsaitken.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Post-Hearing Reply Brief of North Dakota Telephone Company was served electronically and by regular mail on the 28th day of February, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
PWD@pearce-durick.com

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480
wbinek@state.nd.us

J. G. Harrington
DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
jharrington@dowlohnes.com

Honorable Al Wahl
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, ND 58501
awahl@state.nd.us

Don Negaard, ID #03598

Scott, Sandi L.

From: Binek, William W.
Sent: Wednesday, February 22, 2006 9:54 AM
To: Fahn, Patrick J.
Cc: -Grp-PSC Legal
Subject: FW: Briefs- Micontinent v. NDTC

From: Don Negaard [mailto:donn@srt.com]
Sent: Monday, February 06, 2006 10:33 AM
To: Wahl, Al
Cc: Binek, William W.; Tom Moorman; Pat Durick; Dave Dircks; Scott Knudsvig
Subject: Briefs- Micontinent v. NDTC

The parties have agreed to submit the initial post hearing briefs, with proposed findings of fact, conclusions and order simultaneously on or before 4:30 pm CST on the 17th of February, by electronic means and service in the mail that day to the Commission.

Reply briefs would be served in the same fashion on or before the 28th of February.

I would hope this is agreeable to the Commission and would assume that Mr. Binek can contact us if it is not.

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

February 17, 2006

RECEIVED
FEB 21 2006
ND PUBLIC SERVICE COMMISSION

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for filing in the above proceeding are the following:

1. Post-Hearing Brief of North Dakota Telephone Company.

2. Proposed Findings of Fact, Conclusions of Law and Order.

These documents have also been transmitted via electronic means to your office.

Scott M. Knudsvig

jt

Enclosures

cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

84 PU-05-451 Pages: 1

Cover letter re Proposed Findings and
Post-Hearing Brief
by North Dakota Telephone Company by Scott M. Knuds
02/21/2006 CC: Comm Legal Illona, Pat, Annette . .

RECEIVED
FEB 21 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**POST-HEARING BRIEF OF NORTH DAKOTA TELEPHONE COMPANY**
North Dakota Telephone Company,	)	
Respondent.	)	

North Dakota Telephone Company ("NDTC"), by counsel, hereby files this Post-Hearing Brief in this matter following the hearing which was held before the North Dakota Public Service Commission (the "Commission") on January 23, 2006. For the reasons stated herein, NDTC respectfully requests that the Commission direct NDTC and Midcontinent Communications ("Midcontinent") to begin negotiations on the complete terms and conditions of an interconnection agreement that will, when implemented, afford Midcontinent the ability to provide wholesale resale within NDTC's Devils Lake exchange (the "Agreement"). In a manner consistent with the record developed in this proceeding, applicable law, and the public interest advanced through the encouragement of both fair competition and a level playing field, NDTC respectfully submits that the Commission direct the parties to implement the Agreement by the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange.

83 **PU-05-451** Pages: 18
Post-Hearing Brief of NDTC
by North Dakota Telephone Company
02/21/2006 CC: Comm Legal Illona, Pat, Annette . .

I. BACKGROUND AND APPLICABLE FACTS

A. The Parties

1. NDTC

NDTC is a facilities-based incumbent rural telecommunications carrier with its main offices located in Devils Lake, North Dakota. NDTC operates nearly 18,000 access lines across 26 exchanges located in rural areas of North Dakota; approximately 5,500 of those lines are in the Devils Lake exchange. (HT at 94:7-18; Ex. R-1 at 1.)[1] NDTC meets the requirements of a "Rural Telephone Company" under 47 U.S.C. § 153 because, for example, it serves less then 50,000 access lines. *See* 47 U.S.C. §§ 153(37)(B) and (C). Accordingly, NDTC qualifies for the rural exemption contained at 47 U.S.C. § 251(f)(1)(A), a conclusion that Midcontinent concedes. (Ex. P-11 at 4:88-90.)

The day-to-day operations and personnel at NDTC are managed by David Dircks. (HT 91:13-15.) In addition to telecommunications services, NDTC presently offers DSL internet services over its existing copper plant. (HT 132:6-8.) NDTC resells Verizon Wireless service through an affiliation with United Telephone. (HT 104:14-17.) NDTC currently competes with a wireless provider, CellularOne (now Alltel), for telecommunications service in its markets. (HT 104:1-6.) NDTC has been investigating constructing fiber to the home for the replacement of its present copper plant since 2004. (Ex. R-1 at 9.) NDTC began actual physical construction of the project in August 2005. *Id.* NDTC is investigating offering video at some point in the future, and if all continues on the

[1] The hearing transcript is cited as HT with corresponding page and line numbers. Exhibits are referenced by Ex. and number.

fiber deployment as planned, NDTC would be in a position to offer video services sometime after February 1, 2007. *Id.* at 8. At the same time, however, the record is clear that the fiber deployment is not the only issue concerning NDTC's capability of offering video programming. Both a cable franchise and programming, among other items, would need to be obtained, which have not yet occurred. *Id.*

2. Midcontinent

Midcontinent provides cable television, broadband internet, and telephone services to customers in four states. (Ex. P-11 at 3-4.) Midcontinent is a partnership; one of its partners is Comcast, a large cable television provider in the United States. (Ex. P-1 at 3.) Midcontinent's headquarters are located in Minneapolis, Minnesota, and its main operations center is located in Sioux Falls, South Dakota. (Ex. P-1 at 3.) Midcontinent serves over 200 communities in North and South Dakota, as well as northern Nebraska and western Minnesota. *Id.* Midcontinent currently provides service in 23 North Dakota communities. (Ex. P-1 at 3.) Midcontinent described itself in a recent press release as follows:

> "Midcontinent Communications, a subsidiary of Midcontinent Media, Inc. and Comcast, is the Upper Midwest's leading provider of cable television, local and long distance telephone service, high-speed Internet access, and cable advertising services to communities in North and South Dakota, Northern Nebraska, and Western Minnesota. Midcontinent's service area includes over 200 communities serving over 200,000 customers."

(Ex. R-6 at 14.)

Midcontinent also possesses the necessary regulatory authority from the Commission to offer local exchange services as a competitive local exchange

carrier. (Ex. P-1 at 3.) To date, however, Midcontinent's offering of telecommunications services along with the establishment of the necessary terms and conditions for interconnection have, with few exceptions, been with respect to Qwest Corporation ("Qwest"). (Ex. P-1 at 3, Ex. P-11 at 17, HT 27:19-28:6, 31:18-20.)

B. The Request for Interconnection

As the Commission is aware, Midcontinent sent a letter on May 12, 2005, to NDTC which proposed that the parties establish terms and conditions with respect to Midcontinent's ability to resell services within NDTC's Devils Lake exchange. (Ex. R-2.) To ensure that it properly understood the request, NDTC responded to Midcontinent's May 2005 letter on June 10, 2005. (Ex. R-3.) In NDTC's response, it rightfully asked whether the Midcontinent request was, in fact, intended to trigger the "rural exemption" under Section 251(f)(1) of the Act since, as a Rural Telephone Company under federal law, NDTC is exempt from providing wholesale resale services. *Id.*

C. The Instant Controversy

On July 15, 2005, Midcontinent filed this complaint with the Commission asking to have lifted any exemption that NDTC possesses with regard to Section 251(c)(4) of the Act. [2] Midcontinent's complaint was made solely with respect to

---

[2] Section 251(c)(4) states as follows:

> (c) Additional Obligations of Incumbent Local Exchange Carriers.--In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:
>
> (4) Resale.--The duty--

its request for the resale at a discount of NDTC's tariffed telecommunications services within NDTC's Devil Lake exchange, and the subsequent record in this proceeding confirms this fact. (Docket #1, Ex. P-5 at 2, Ex. P-6 at 3, Ex. P-11 at 3, Ex. P-1 at 4.) By interim orders and decisions of the Commission, this matter was set for hearing on January 23, 2006. (Docket #3, 19, 21, 47.) At the same time, the parties agreed the 120-day time frame required by Section 251(f)(1) for resolving this matter would not be applied. *See* 47 U.S.C. § 251(f)(1)(B). (Docket #19.)

II. APPLICABLE LAW AND ANALYTICAL FRAMEWORK

NDTC has previously provided the analytical framework and applicable law in its Prehearing Brief in this matter. *See* Prehearing Brief of North Dakota Telephone Company, Case PU-05-451, filed January 20, 2006 (the "Prehearing Brief"). Rather than repeat verbatim the Prehearing Brief here, NDTC incorporates its Prehearing Brief herein by reference.

In general, the 1996 revisions to the Communications Act of 1934, as amended, (the "Act") make clear, Congress has established a general framework

---

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.
>
> 47 U.S.C. §251(c)(4). These obligations, however, are not applicable to a Rural Telephone Company until and unless action by a State commission is taken pursuant to the requirements of Section 251(f)(1). *See generally* 47 U.S.C. §251(f)(1).

that, on the one hand, provides the interconnection obligations required for the establishment of competition within the exchange service areas of telephone companies while, on the other hand, encourages and establishes foundational requirements for universal service policies in the United States.

Against this general framework, in turn, is the distinct treatment as found in Section 251(f)(1) of the Act afforded Rural Telephone Companies (like NDTC) with respect to interconnection obligations. (*See* Prehearing Brief at 4.) Accordingly, it's the interplay between Section 251(f)(1) and the facts in this proceeding that NDTC respectfully submits that the Commission must address.

III. REMAINING CONTROVERSY

While the Act provides a specific framework for addressing interconnection requests for wholesale resale such as that made of NDTC by Midcontinent (*see id.* at 5, 6-8) and which the Commission fully recognizes and understands (*see id.* at 6), NDTC now agrees that it will no longer challenge whether the Midcontinent request is unduly economically 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. (HT at 158-159, 166:7-18.)

At the same time, however, NDTC's agreement does not end the inquiry nor would it have negated the need for a hearing. The Act requires that the Commission establish an implementation schedule. This was and is a contested issue. The Act provides: "Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the

request that is consistent in time and manner with [FCC] regulations." 47 U.S.C. § 251(f)(1)(B).

Thus, the remaining and all-important issue that must be resolved in this proceeding is the appropriate schedule for implementing Midcontinent's request for wholesale resale within NDTC's Devils Lake exchange. For the reasons stated below, NDTC respectfully submits that the time frames included within the Act for the negotiation and arbitration of interconnection agreements as established by Congress are appropriate and rational, and should be adopted by the Commission in this proceeding.

Moreover, since the Commission's determination regarding an implementation schedule is not constrained by the requirements of Section 251(f)(1)(A) regarding the merits of Midcontinent's request, NDTC respectfully submits that the Commission has the authority to ensure that the overall public interest is achieved through the implementation schedule it establishes. Accordingly, NDTC also respectfully requests that the Commission require that any interconnection agreement between the parties (whether it be arbitrated or not) be implemented by the earlier of February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange. This date will ensure a "level playing field" in the Devils Lake exchange and fair competition between the parties. As part of this requirement, and at the time the Commission issues a decision in this proceeding and Midcontinent issues a bona fide request to NDTC, NDTC will agree to negotiate in good faith pursuant to the time frames established in Section 252 of the Act *all of the necessary* terms and

conditions of an interconnection agreement for the provision within the Devils Lake exchange required for wholesale resale.

IV. THE ACT, RATIONAL PUBLIC POLICY AND THE FACTS FULLY SUPPORT THE CONCLUSION THAT ANY IMPLEMENTATION SCHEDULE APPLIED TO THE MIDCONTINENT REQUEST BE THOSE TIME PERIODS FOUND IN SECTION 252 OF THE ACT.

While no specific regulations from the FCC are on point, the Commission's analysis is not subject to a blank canvas to shorten the Act's Section 252 time frames as Midcontinent suggests. (*See, e.g.,* Ex. P-1 at 6.) Rather, consistent with its considerable experience in approving and/or arbitrating interconnection agreements ("ICAs") under the Act, the Commission is fully aware that Congress provided a framework for the negotiation and, where required, arbitration, of outstanding issues with respect to ICAs. *See* 47 U.S.C. §§ 251 and 252.

As the Commission is aware, interconnection arrangements between two carriers do not occur automatically. (*See* Ex. R-6 at 6 (Interconnection arrangements under the Act are "not established out of thin air.") For purposes of this proceeding, interconnection occurs within the framework of Section 251 of the Act and, but for the need to first address the rural exemption issue (47 U.S.C. § 251(f)(1)), is initiated by a request of one telecommunications carrier to another. As such, the Act includes the time frames for negotiation of an ICA. Section 252(b)(1) of the Act specifically states:

> (1) Arbitration
>
> During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

47 U.S.C. § 252(b)(1). Congress's mandate of a minimum of 135 days for parties to negotiate an interconnection agreement before a party could invoke arbitration from a Commission under Section 252(b) of the Act is unequivocal, and the rationale for it is clear.

To be sure, it is only logical under the structure of the Act that if the duty to offer resale at wholesale discounts was imposed on a Rural Telephone Company (like NDTC) (and thus the existing exemption removed), the duty to negotiate terms and conditions for the offering of that resale at wholesale discounts would *only then* apply. Section 251(f) confirms this fact.

> (A) Exemption
>
> Subsection (c) of this section shall not apply to a rural telephone company ***until***
>
> (i) such company has received a bona fide request for interconnection, services, or network elements, and
>
> (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

47 U.S.C. § 251(f)(1)(A) (emphasis added.) Absent such conclusion, Congress's use of the term "until" would be superfluous, a conclusion contrary to law.[3]

The facts and the Act's structure also support the conclusion that the parties should be allowed to develop their own detailed agreement and to narrow the scope of any disagreement before invoking the resources of the Commission to try to attempt to write an agreement for them. The record is clear that

---

[3] See *Reiter v. Sonotone Corp.*, 442 US 330 (1979), citing *US v. Menasche*, 348 US 528, 538-539 (1955) ("In construing a statute, we are obliged to give effect, if possible, to every word Congress used.").

Midcontinent has not engaged in any substantive discussion with NDTC of the business terms and conditions required within an ICA. (HT 27:3-9.) It would be foolhardy to suggest that the parties could implement some form of arrangement for the offering of wholesale resale without first ensuring the business terms and conditions establishing the parties' respective rights and responsibilities are not first discussed, arbitrated if necessary, and approved by the Commission.

The framework that confirms this result was provided by Congress and it saw fit to ensure that the parties had at least 135 days to have those discussions, and the Commission a full 9 months to resolve any disputed issues. *See* 47 U.S.C. §§ 252(b)(1) and 252(b)(4)(C). Thus, there is no sustainable basis to conclude that this same Section 252(b) framework should not be applied by the Commission in this proceeding.

At the same time, it is also clear that Midcontinent's suggested 90-day implementation time frame is unrealistic and without a legal basis. (Ex. P-1 at 6, Ex. P-11 at 24, HT 69:10-20, 72:2-25.) Based on the record established at the hearing, it appears that Midcontinent's suggested time frame was based on a variety of mistaken premises or statements.

First, Midcontinent suggested that the establishment of a wholesale resale discount is an easy process based on the experience with Qwest. (HT 61:14-63:14.) As the Commission is well aware, NDTC is not Qwest and no resale discount has ever been established by the Commission for a Rural Telephone Company like NDTC. *Id.*

Second, Midcontinent suggested that the establishment of a wholesale resale discount study would be an easy process. *Id.* While that testimony was provided by a non-economist (HT 56:5-14.), the only economist testifying clearly demonstrated that the matter involved a number calculations and determinations as to the inputs required for such a study. (HT 220:14 to HT 223:12.)

Q. Mr. Meredith, based on recross by Mr. Harrington, is it safe to say that an avoidable cost study is not an add-water-and-mix proposition?

A. Yes it is.

(HT at 224:22-25.)

Third, Midcontinent's position apparently was based on its effort to portray NDTC as a monopolist trying to keep out competition. As was confirmed by Midcontinent Witness Lohnes, however, the fact is that Midcontinent is the only true monopoly holder in cable television provisioning in Devils Lake, North Dakota. (HT 25:19-21.) Likewise, Mr. Dircks testified that NDTC is not afraid of competition provided it is fair. (*See* Ex. R-1 at 1-2.) Moreover, confusion may exist in the record because Midcontinent suggested that NDTC could delay the discussion of interconnection agreement terms and conditions for the Devils Lake exchange by over a year after NDTC began providing video programming within Devils Lake since the exemption regarding wholesale resale with respect to Midcontinent would, at that time, no longer exist. (HT 15:9-16:14, 189:24-191:9.) While NDTC agrees that § 251(f)(1)(C) speaks for itself, NDTC's position on the timing and implementation of an ICA is clear. *See* Section III, *supra*. Thus,

NDTC's efforts to assert its legal rights are appropriate and Midcontinent's attempts to discredit NDTC should be rejected outright.

Fourth, Midcontinent Witness Gates' effort to confuse the record that a normal implementation schedule with normal negotiation processes would require the parties to "engage in another round of negotiations" (Ex. P-11) was shown to be inaccurate by the only Midcontinent employee involved in the process prior to the hearing (*see* Ex. P-1 at 1*)*, as Mary Lohnes was copied on the May 2005 letter sent to NDTC. (*See* Ex. R-2.) In fact, Midcontinent Witness Lohnes confirmed that the parties have not negotiated at all. (HT 27:3-9.)

Fifth, Midcontinent Witness Gates further tried to paint NDTC as having withheld necessary information. (Ex. R-11:34-36.) He was refuted by his own colleague, Midcontinent Witness Fischer, who testified that Midcontinent had received all the information that it had agreed it needed. (HT 37:25-38:14.)

Finally, Midcontinent apparently based it claim on the need for some type of expedited implementation schedule based on the suggestion that NDTC might try to "lock in" its customers to long-term contracts. (*See* Ex. R-1 at 4.) Yet, when confronted with that assertion, Midcontinent Witness Lohnes admitted she knew of no such instance of NDTC doing so (HT 32:19-23) and was not aware that NDTC operated under filed tariffs (HT 25:11-14).

In addition to the law and record, rational public policy also supports the conclusion that the Commission should utilize the Section 252 time frames as the starting basis for the implementation schedule of the Midcontinent request. The record is clear that the Commission is being asked to do what is fair, and to

ensure that there is a level playing field for the provision of voice, high speed Internet, and video programming within the Devils Lake exchange. (Ex. P-1 at 6.) Midcontinent apparently does not disagree with the need for fair competition. Even though its concerns regarding early entry are without foundation, Midcontinent apparently also wants to compete by adding the service that NDTC currently provides. (*See generally* Ex. P-1 at 4-5.)

Consequently, utilization of the nine-month framework would permit both Midcontinent and NDTC to stand on even footing with the implementation of any ICA for wholesale resale at the time NDTC is first able to provide video programming and by no later than February 1, 2007. Should Midcontinent be truly interested in engaging in fair competition, and thus creating a level playing field, rather than casting aspersions as to the creation of an unlevel playing field by NDTC, there should be no disagreement with respect to the implementation schedule proposed by NDTC.

Independent of the need to ensure a level playing field, however, the Commission can take comfort in knowing that the very same type of implementation schedule was used by sister jurisdictions in situations similar to that here. For example, in a case in South Carolina, the Rural Telephone Company involved in that case agreed its rural exemption was lost to a competitor. The South Carolina Public Service Commission adopted the Section 252 time frames. (*See* Ex. R-12 at 5.) Likewise, in Texas, the Texas Public Utilities Commission, while relying on a Texas regulation, also ruled that Section 252 time frames under the Act were appropriate when terminating a rural

exemption. (*See* Ex. R-13 at 4, applying Texas time frames which are identical to Section 252 of the Act.)

Lastly, in New York (Ex. R-14), *unlike this proceeding*, the parties had made substantial progress in negotiating an interconnection agreement. (Ex. R-14 at 2.) They were in a deadlock over compensation rates for traffic they exchanged. (*Id.*) After a failed attempt at mediation before the New York Public Service Commission ("NYPSC") (*id.* at 3) and extensive analysis by the NYPSC staff, the NYPSC concluded the mediation with an order finalizing the missing elements of the interconnection agreement that had already been negotiated. Unlike the New York case, the parties here have spent no time negotiating an interconnection agreement (HT 27:3-9) nor has this Commission mediated the terms of an interconnection agreement. Moreover, the NYPSC made clear that it was acting under Section 251(f)(2) of the Act regarding a request to suspend or modify a reciprocal compensation obligation under Section 251(b)(5) of the Act (*see id.* at 9-10 and n.1) and *not Section 251(f)(1) that is at issue in this proceeding.*

As was so succinctly stated in the South Carolina case:

> "Finally, 47 USC § 251(f)(1)(B) requires the State Commission upon termination of the exemption to establish an implementation schedule for compliance with the request. In accordance with this requirement, the Commission finds that the appropriate schedules as set forth in Section 252 of the Telecommunications Act of 1996 shall apply."

(Ex. R-12 at 5, emphasis added.)

CONCLUSION

In light of the record developed in this hearing and this submission, the sole remaining issue is what the appropriate implementation schedule should be for an interconnection agreement between NDTC and Midcontinent. To that end, the record is clear that the parties have not begun negotiation. The law is also clear since Congress set the minimum standards for an implementation schedule of an interconnection agreement under the Act in Section 252. Likewise, when Congress established that a State Commission had authority to create an implementation schedule in Section 251(f)(1)(B), it provided the State Commissions the necessary flexibility at the local level to establish rational implementation procedures.

The law not only mandates certain minimum periods but also allows this Commission to establish schedules for implementation. Under this framework, the Commission is provided the right to ensure that such schedule guarantees fairness. After all, fairness is apparently Midcontinent's stated desire. Thus, the starting point for any implementation schedule is that found in Section 252(b)(1) and the nine-month period found in Section 252(b)(4)(C).[4]

Using these guidelines, NDTC respectfully submits that the Commission direct the parties to implement any interconnection agreement by the earlier of

---

[4] Section 252(b)(4)(C) of the Act states that:

> (C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

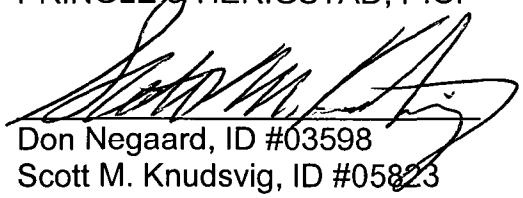
47 U.S.C. §252(b)(4)(C).

February 1, 2007, or the date by which NDTC first provides video programming within its Devils Lake exchange. In doing so, this Commission need not expand its decision beyond the agreement made in this proceeding by NDTC regarding undue economic burden, technical infeasibility, or impacts upon universal service associated with the specific request made by Midcontinent for wholesale resale in NDTC's Devils Lake exchange. *See* 47 U.S.C. § 251(f)(1)(A).

NDTC respectfully submits that the result it seeks in this proceeding is fully consistent with the law, record, and rational public policy and should be adopted herein. Accordingly, NDTC respectfully requests that the Commission resolve the matters raised in this proceeding in the manner recommended herein.

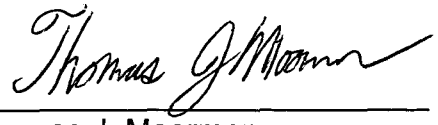
Dated this 17th day of February, 2006.

PRINGLE & HERIGSTAD, P.C.



Don Negaard, ID #03598
Scott M. Knudsvig, ID #05823
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

WOODS & AITKEN LLP



Thomas J. Moorman
2154 Wisconsin Avenue, NW,
Suite 200
Washington, D.C. 20007
Telephone: (202) 944-9500
Fax: (202) 944-9501
tmoorman@woodsaitken.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Post-Hearing Brief of North Dakota Telephone Company was served electronically and by regular mail on the 17th day of February, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Scott M. Knudsvig, ID #05823

RECEIVED
FEB 21 2006
ND PUBLIC SERVICE COMMISSION

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.

Don Negaard and Scott M. Knudsvig, Pringle & Herigstad, P.C., P.O. Box 1000, Minot, North Dakota 58702, appearing on behalf of North Dakota Telephone Company, Devils Lake, North Dakota.

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.

Al Wahl, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882, appearing as Hearing Examiner.

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.

82 PU-05-451 Pages: 6
Proposed Findings of Fact, Conclusions of Law and Order
by North Dakota Telephone Company
02/21/2006 CC: Comm Legal Illona, Pat, Annette . .

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 NTDC 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 NTDC 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

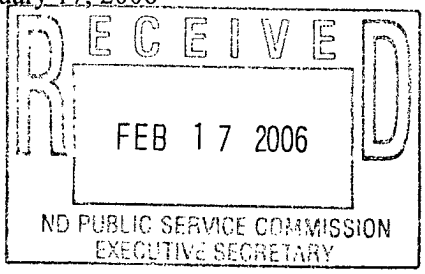
PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ••
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

February 17, 2006



Via Hand Delivery

Jon H. Mielke
Executive Director
North Dakota Public Service Commission
North Dakota State Capitol
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

RE: ***Midcontinent Communications v. North Dakota Telephone Company***
Case No. PU-05-451

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1) Initial Brief of Midcontinent Communications;
2) Proposed Findings of Fact, Conclusions of Law;
3) Proposed Order; and
4) Affidavit of Service by Mail

These documents are also being sent to the Commission by e-mail and served upon the respondent's counsel by e-mail today. Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

Patrick W. Durick

PATRICK W. DURICK

PWD/src
Enclosures
c: William Binek (PSC) (w/encs.)
J.G. Harrington (Midco) (w/encs.)
Scott Knudsvig (NDTC) (w/encs.)
Mary Lohnes (Midco) (w/encs.)
Tom Moorman (NDTC) (w/encs.)
Don Negaard (NDTC) (w/encs.)
Al Wahl (ALJ) (w/encs.)

81 PU-05-451 Pages: 2

Cover Letter re filings and Affidavit of Service

by Midcontinent Communications by Patrick Durick, Atto
02/17/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

RECEIVED
FEB 17 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Midcontinent Communications, a South Dakota Partnership,	)	**Case No. PU-05-451**
Complainant,	)	**AFFIDAVIT OF SERVICE BY MAIL**
vs.	)	
North Dakota Telephone Company,	)	
Respondent.	)	

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Sharon Cavender hereby certifies that on February 17, 2006, she served a copy of the foregoing:

1) Initial Brief of Midcontinent Communications;
2) Proposed Findings of Fact, Conclusions of Law; and
3) Proposed Order

by e-mail in PDF format as follows:

William W. Binek
Public Service Commission
wbinek@state.nd.us

Scott Knudsvig
Counsel for NDTC
sknudsvig@srt.com

Tom Moorman
Counsel for NDTC
tmoorman@woodsaitken.com

Donald Negaard
Counsel for NDTC
donn@srt.com

Hon. Al Wahl
awahl@state.nd.us

Sharon Cavender

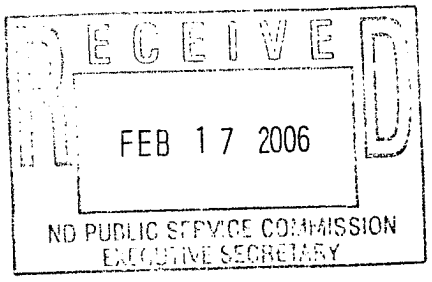
Subscribed and sworn to before me February 17, 2006.

Notary Public
Burleigh County, North Dakota

SUZANNE M CAHILL
Notary Public
State of North Dakota
My Commission Expires Jan 29, 2010

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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



INITIAL BRIEF OF MIDCONTINENT COMMUNICATIONS

Patrick W. Durick
Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

J.G. Harrington*
Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

*Admitted pro hac vice

February 17, 2006

80 PU-05-451 Pages: 25
Initial Brief of Midcontinent Communications
by Midcontinent Communications
02/17/2006 CC: Comm Legal Illona, Pat, Annette . .

TABLE OF CONTENTS

Page

I. Introduction 1

II. The Record Establishes that the Commission Must Lift NDTC's Rural Exemption 3

A. Permitting Competition in the Devils Lake Exchange Will Not Be Unduly Economically Burdensome 4

B. Midcontinent's Request Is Technically Feasible 6

C. Lifting the Rural Exemption in Devils Lake Will Have No Negative Effect on Universal Service 7

D. Lifting the Exemption Will Be Beneficial to Consumers 9

III. The Commission Should Adopt an Aggressive Implementation Schedule 11

A. There Is No Legal Barrier to Adopting an Aggressive Implementation Schedule 11

B. The Commission Should Require NDTC to Provide Wholesale Resale to Midcontinent Within Three Months of the Issuance of the Order in this Proceeding 15

1. Prompt Implementation Maximizes Consumer Benefits 15

2. The Record Establishes that Prompt Implementation of Resale Is Feasible 17

C. The Commission Should Order NDTC to Begin Negotiation of a Full Interconnection Agreement for Facilities-Based Competition on the Section 252 Schedule 19

IV. Conclusion 23

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**

INITIAL BRIEF OF MIDCONTINENT COMMUNICATIONS

Midcontinent Communications, by its attorneys, hereby submits its initial brief in the above-referenced proceeding. As shown below, the Commission should grant Midcontinent's petition, remove the rural exemption as applied to the operations of North Dakota Telephone Company ("NDTC") in Devils Lake, and set a strict implementation schedule. These steps are necessary to ensure that consumers in Devils Lake receive the benefits of telephone competition as soon as possible.

I. Introduction.

In this proceeding, Midcontinent is asking the Commission to exercise one of its most important powers under the federal Communications Act of 1934.[1] Section 251(f)(1) of the Communications Act grants an exemption for rural carriers from the standard obligations of incumbent local telephone companies that facilitate local telephone competition. This same provision, however, also entrusts state commissions

[1] 47 U.S.C. § 151 *et seq.*

with the power to determine whether specific statutory tests have been met that require the exemption to be lifted.

The state commission's task begins when a competitor decides to enter a market and ask the commission to end the exemption. In this case, Midcontinent sought to enter the Devils Lake market via wholesale resale, but the rural exemption allows NDTC to deny such a request.

As the testimony established, Midcontinent is both the largest cable operator and the leading provider of competitive local telephone service in the Dakotas.[2] Although its goal is to provide full facilities-based services, Midcontinent often enters markets via resale to gauge consumer interest and to facilitate prompt entry.[3] That is its intent in Devils Lake.

NDTC is the incumbent local telephone company in Devils Lake. It is owned by three other incumbent local telephone companies – Polar Telephone, Dakota Central Telephone and United Telephone. Although NDTC's current plant in Devils Lake is perfectly functional, about a year ago it decided to replace that plant entirely with an $11 million fiber-optic upgrade.[4] NDTC will use the new facilities to provide not just the telephone and high speed Internet services it offers today, but also to provide a new video service to compete with Midcontinent.[5] In this proceeding, NDTC did not acknowledge that it intended to provide video service until it filed its testimony, but in fact it planned to offer video from the time the company decided to upgrade its plant.[6] While the video

[2] Exhibit P1, Prefiled Direct Testimony of Mary Lohnes ("Lohnes Direct") at 2.
[3] *Id.* at 4-5.
[4] Tr. at 132, 133 (Dircks).
[5] Exhibit R1, Prefiled Reply Testimony of David Dircks ("Dircks Reply") at 9.
[6] *Id.*, Tr. at 142 (Dircks).

component has been part of the upgrade from the start, NDTC has not decided how to allocate the costs of the fiber, nearly a year after the decision to upgrade was made.[7]

NDTC's approach to its video upgrade is consistent with its approach to competition. NDTC is willing to compete, but only on its own schedule, at a time that is convenient for NDTC. That is not what the law requires or permits, and it is the path that is least beneficial to consumers. The Commission, therefore, should reject NDTC's claims and adopt an order that brings local telephone competition to Devils Lake as soon as possible.

II. The Record Establishes that the Commission Must Lift NDTC's Rural Exemption.

Under Section 251(f)(1) of the Communications Act, the Commission must consider three issues to determine whether NDTC's rural exemption shall be lifted. As described in the Commission's initial hearing order, those criteria are as follows:

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).[8]

As shown below, each of these standards has been met in this proceeding; in fact, NDTC acknowledges that each of them has been met. Moreover, although it is not necessary for Midcontinent to make any other showing, the evidence also shows that competition will be beneficial to consumers in Devils Lake, which is one of the most important reasons to encourage local telephone competition. Thus, the Commission is

[7] Tr. at 144 (Dircks).
[8] Notice of Hearing, Case No. PU-05-541, dated July 28, 2005 at 1; *see also* Notice of Rescheduled Hearing, Case No. PU-05-541, dated Dec. 14, 2005, at 1.

required by the terms of Section 251(f)(1) to lift the rural exemption as to NDTC's service in Devils Lake.

A. Permitting Competition in the Devils Lake Exchange Will Not Be Unduly Economically Burdensome.

The first issue to be considered under Section 251(f)(1) is the extent to which lifting the rural exemption will be unduly economically burdensome on the affected incumbent carrier. The evidence is very clear that NDTC will not suffer undue economic harm.

First, Midcontinent's witnesses demonstrated that the economic impact of wholesale resale will be minimal. Assuming a discount rate as high as 16.15 percent, the total impact on NDTC's total revenue is quite small, and the effect on NDTC's net revenue is negligible. As Mr. Fischer explained in his direct testimony, even assuming a 16.15 percent discount rate and the loss of 30 percent of NDTC's retail customers in Devils Lake, NDTC's total revenues in Devils Lake would be reduced by only 1.74 percent and its company-wide revenues would be reduced by only 0.517 percent.[9] These percentages drop significantly if the resale discount is lowered to 10 percent.[10] Further, even if Midcontinent achieved 30 percent market share, NDTC's profits in Devils Lake would drop by only $7,031 a year, or just over one quarter of one percent of NDTC's overall operating income.[11] This is a negligible change for a company that has operating revenues in excess of $16 million a year.[12]

---

[9] Exhibit P5, Prefiled Direct Testimony of Warren R. Fischer ("Fischer Direct") at 13.
[10] As a percentage of NDTC's total revenue, for instance, the revenue loss would drop to 0.320 percent. *Id.* at 14.
[11] *Id.* at 18.
[12] Tr. at 121 (Dircks). The statement of income in NDTC's 2004 Annual Report reports that NDTC earned $16,977,056 in total operating revenue in 2004. NDTC 2004 Annual Report to the North Dakota Public Service Commission, Statement of Operating Revenues and Expenses.

In fact, NDTC is a very profitable company. As the testimony and the Commission's records establish, NDTC's annual profits over the last five years have ranged from $3.4 to $4.3 million.[13] NDTC is profitable enough that it is willing to spend $11 million on a speculative venture to build fiber plant that it does not need to provide its current services.[14]

In this context, it is no surprise that NDTC agreed, repeatedly and on the record, that it would not be unduly economically burdensome to have the rural exemption lifted.[15] For instance, in response to a direct question from Mr. Binek, Mr. Dircks said "I can't argue that it's economically burdensome."[16] There simply is no evidence to contradict this conclusion.

Further, the evidence also establishes that the existing, facilities-based competition from wireless providers also is not economically burdensome. Mr. Dircks cited wireless providers as providing competition in his prefiled testimony.[17] However, at the hearing, he acknowledged that the impact of that competition was minimal, and

[13] Tr. at 103 (Dircks); NDTC 2004 Annual Report to the North Dakota Public Service Commission, Statement of Operating Revenues and Expenses; NDTC 2003 Annual Report to the North Dakota Public Service Commission, Statement of Operating Revenues and Expenses; NDTC 2002 Annual Report to the North Dakota Public Service Commission, Statement of Operating Revenues and Expenses; NDTC 2001 Annual Report to the North Dakota Public Service Commission, Statement of Operating Revenues and Expenses; NDTC 2001 Annual Report to the North Dakota Public Service Commission, Statement of Operating Revenues and Expenses.

[14] Tr. at 132, 142 (Dircks). In fact, it appears that one of the primary reasons for the fiber upgrade was that the current, fully functional plant is fully depreciated and, therefore, no longer provides a basis to support NDTC's regulated telephone rates. Tr. at 131, 132 (Dircks) (". . .we started looking at replacing our facilities in Devils Lake because they were old and depreciated out . . ." and "Q. But today everything works fine? A. Today it does.").

[15] *See, e.g.,* Tr. at 167 (Dircks) (response to question from Commissioner Cramer).

[16] Tr. at 158 (Dircks).

[17] Dircks Reply at 2.

that NDTC had lost only a handful of customers to wireless carriers.[18] Thus, even facilities-based competition does not impose an undue economic burden on NDTC.[19]

B. Midcontinent's Request Is Technically Feasible.

The second standard in the statute is technical feasibility. Again, Midcontinent and NDTC agree that there are no technical barriers to lifting the rural exemption in Devils Lake.

Ms. Lohnes, in her direct testimony, established that implementing resale is a simple process that can be accomplished promptly. In particular, through its experience with other carriers, Midcontinent has "developed processes that can help smooth the way and shorten the time to market."[20] Further, "once an agreement is reached there is very little work that needs to be done technically, and the time necessary largely is related to back office processes."[21] These conclusions were confirmed by Mr. Gates, and were not challenged on cross-examination.[22]

NDTC's witnesses agreed with Midcontinent. Asked directly whether there were any technical feasibility issues, Mr. Dircks said there were not.[23] Mr. Meredith, NDTC's other witness, who acts as a consultant to many rural telephone companies, also did not raise any objections on the basis of technical feasibility, and noted that he had been

---

[18] Tr. at 104 (Dircks) ("Q. Do you know of any customers that you've lost to wireless service? A. Yeah, I know of some, yes . . . They would be just in a few. Ten or less that I personally know of.")

[19] Midcontinent notes that the standard under the statute is not whether competition will be unduly economically burdensome, but whether compliance with Section 251(c) will be unduly economically burdensome. This distinction is significant, in that it does not permit a state commission to maintain the rural exemption merely because a competitor may succeed. Proof that competition will not be unduly burdensome, however, is more than sufficient to meet the Section 251(f)(1) standard.

[20] Lohnes Direct at 6.

[21] Exhibit P2, Prefiled Rebuttal Testimony of Mary Lohnes ("Lohnes Rebuttal") at 2.

[22] Exhibit P11, Prefiled Direct Testimony of Timothy J Gates ("Gates Direct") at 16-7; Exhibit P12, Prefiled Rebuttal Testimony of Timothy J Gates ("Gates Rebuttal") at 8.

[23] Tr. at 159 (Dircks) ("Q. Okay. Is the request of Midcontinent technically feasible? A. I believe it is, yes."); *see also* Tr. at 166 (Dircks) (responding to question from Commissioner Cramer).

involved in "scores" of other cases involving resale of rural carrier services.[24] In light of this evidence, the Commission must conclude that there are no technical barriers that would prevent NDTC from meeting Midcontinent's request.

C. Lifting the Rural Exemption in Devils Lake Will Have No Negative Effect on Universal Service.

The third standard in Section 251(f)(1) requires the Commission to analyze the extent to which lifting the rural exemption will have a negative effect on universal service. The answer to this question also is clear from the record: There will be no harmful effects on service to NDTC's customers.

On cross-examination, NDTC's witnesses both agreed that competition will not affect NDTC's access to universal service funds, which constitute about ten percent of NDTC's annual revenues.[25] Mr. Dircks, in response to questions from the staff, acknowledged that there would be no immediate effect on NDTC's universal service funding.[26] Mr. Meredith agreed, stating that "nothing" would happen to an incumbent LEC's universal service payments if it lost a customer to a competitive LEC.[27]

These statements are consistent with the FCC's rules, which specifically provide that universal service support for high-cost incumbent carriers is based on their costs, not on the number of customers they have.[28] Thus, even when Midcontinent enters the Devils Lake market as a facilities-based carrier, NDTC will retain its universal service funding.

---

[24] Tr. at 199 (Meredith).
[25] Tr. at 118 (Dircks) (Federal universal service accounts for $1.7 million of NDTC's annual revenues).
[26] Tr. at 159, 169 (Dircks). Mr. Dircks indicated that NDTC could lose access to universal service funding if Midcontinent provided facilities-based service, but this statement was corrected later by Mr. Meredith. Tr. at 219 (Meredith).
[27] Tr. at 198 (Meredith); *see also* Tr. at 218-9 (Meredith).
[28] *See, e.g.,* 47 C.F.R. § 54.301. Compensation for eligible competitive carriers is calculated based on the amount of support received by the incumbent carrier divided by the number of lines the incumbent serves. 47 C.F.R. § 54.307.

In addition, resale will not affect the primary source of NDTC's income, which is access charges. As Mr. Dircks acknowledged, NDTC receives about 60 percent of its revenues from access charges and would continue to receive those revenues if Midcontinent obtains service via resale.[29] Thus, between access charges and universal service funding, close to three quarters of NDTC's revenues would be entirely unaffected by Midcontinent's entry via resale. This demonstrates that universal service will be unaffected by lifting the rural exemption.

It also is apparent that even facilities-based entry is unlikely to affect universal service. As noted above, NDTC has decided to invest $11 million to provide video service, and it is aware that the rural exemption will be lifted automatically once it starts offering video to its customers.[30] Indeed, the ability to offer video was one of the driving factors in the decision to install fiber.[31] Moreover, NDTC has been taking a variety of steps, including rebalancing its rates, to prepare for competition once the upgrade is completed.[32] NDTC would not be undertaking these steps – and particularly would not be planning to enter a new business that will open up its telephone business to competition – if it believed that doing so would jeopardize its overall business or its ability to serve customers in Devils Lake. Thus, it is apparent that NDTC has concluded that lifting the rural exemption in its entirety will not be detrimental to NDTC or to universal service.

[29] Tr. at 121, 122 (Dircks) (Access revenues "would still be ours").
[30] Dircks Reply at 10-1.
[31] Tr. at 139 (Dircks).
[32] Tr. at 165-6 (Dircks).

D. Lifting the Exemption Will Be Beneficial to Consumers.

Once the three criteria in Section 251(f)(1) are met, the Commission does not need to go any further to determine whether the rural exemption should be lifted, and the statute does not permit any further inquiry. However, it also is important to recognize that lifting the rural exemption, and opening the Devils Lake market to competition, will create significant consumer benefits that were acknowledged by all parties to this proceeding. These benefits include reduced prices, better customer service, innovation and a level playing field for all competitors.

First, it is well established that competition helps lower prices. For instance, as Mr. Dircks noted "It's pretty common knowledge that it reduced the cost of long distance once the competition was introduced."[33] As Ms. Lohnes explained, this is true "even in a resale environment."[34] The reason for this, as Mr. Gates described, is that, to maintain margins and market share, companies "try to reduce their costs" and "are diligent in managing their operations and expenses so as to provide the most efficient cost structure to maximize profits.[35] Considering that Devils Lake customers recently experienced a price increase, and that the increase led to a significant number of complaints to the Commission, it is likely that they would find price competition to be beneficial.[36]

Competition also drives companies to improve customer service. As Mr. Gates explained, for this reason "[c]ompetition is beneficial even to customers who are happy

---

[33] Tr. at 157 (Dircks).
[34] Lohnes Direct at 5.
[35] Tr. at 75 (Gates); Gates Rebuttal at 4; *see also* Gates Direct at 20. As Mr. Gates notes, even in efficient operations "[t]here is always room to improve on operations and efficiencies." Gates Rebuttal at 4.
[36] Tr. at 156 (Dircks). According to the Commission's web site, 96 complaints were filed against NDTC from September 2004 to August 2005, and all but five of those complaints related to its proposed rate changes. *See* NDPSC Contact Record Report, 9/1/2004 to 8/31/2005 *at* http://pc6.psc.state.nd.us/media/reports/non-pu-contact-report-by-company.pdf.

with their current providers."[37] Indeed, competition will give NDTC "good incentives to do even better" than it does today "because they want their customers to stay with them[.]"[38] In this case, because Midcontinent is committed to "superior customer service," NDTC will have strong reasons to meet or beat the standard set by Midcontinent.[39]

Third, competition creates incentives to innovate. While these incentives may be strongest when facilities-based competition is present, they also exist in a resale environment. For instance, the availability of wholesale resale enables a competitor to create bundles or packages that would not be possible without the resold service.[40] This can lead to the incumbent creating its own packages that combine different services or different types of offerings for the same services.[41] Consumers benefit directly from these additional choices.[42]

Finally, lifting the exemption will help create a level playing field in Devils Lake so that consumers can benefit from full competition between NDTC and Midcontinent. The testimony establishes that waiting until NDTC turns up its video services to let the rural exemption expire automatically easily could delay competition until February 2008.[43] Permitting NDTC to offer the full "triple play" for a year or more before Midcontinent could enter the market would create a significant competitive disadvantage for Midcontinent and would prevent consumers in Devils Lake from having the benefits

[37] Gates Rebuttal at 3.
[38] Tr. at 76.
[39] Lohnes Direct at 5.
[40] Gates Rebuttal at 15.
[41] For instance, NDTC might respond to a Midcontinent package of telephone, high speed Internet and video with a package of telephone, high speed Internet and wireless service.
[42] Gates Direct at 19-20; Tr. at 157 (Dircks) ("Q. Do you think choice is better for consumers? A. Choice is good.").
[43] Tr. at 191 (Meredith).

of competition until two years from now.[44] Lifting the exemption now will minimize or eliminate the time when NDTC has a competitive advantage over Midcontinent in Devils Lake.

III. The Commission Should Adopt an Aggressive Implementation Schedule.

As shown above, the record establishes that all of the requirements of Section 251(f)(1) have been met, and that the rural exemption therefore must be lifted. Once it determines that the exemption should be ended, the Commission's next task under the statute is to set an implementation schedule. Given the benefits of competition, Midcontinent submits that the schedule should be as aggressive as possible and should require the availability of wholesale resale within three months and full interconnection between NDTC and Midcontinent within a year. There are no legal barriers to adoption of such a schedule, and the record fully supports prompt implementation.

A. There Is No Legal Barrier to Adopting an Aggressive Implementation Schedule.

NDTC devoted much of its testimony and its prehearing brief to an argument that the Communications Act mandates adoption of the standard arbitration schedule in Section 252 of the Act.[45] This simply is incorrect. Rather, the Commission has the authority to set whatever implementation schedule is supported by the record in this proceeding.

First, the specific language of Section 251(f)(1) does not provide for any limitation on the implementation schedule. It says, in full: "[A] State Commission shall establish an implementation schedule for compliance with the request that is consistent in

[44] Considering its resale of wireless service, NDTC actually could offer a "quadruple play" during that time. Tr. at 104 (Dircks).

[45] *See, e.g.,* Exhibit R6, Prefiled Reply Testimony of Douglas Duncan Meredith at 7, 8-9; NDTC Prehearing Brief at 9-11.

time and manner with Commission [FCC] regulations."[46] As Mr. Meredith conceded, the FCC has not adopted any rules that implement this provision.[47] In fact, the only valid FCC rule concerning the rural exemption merely indicates that state commissions should decide rural exemption proceedings on a case-by-case basis.[48]

There also is no basis for the conclusion that the Section 252 negotiation and arbitration period is mandated by Section 251(f)(1). Section 251(f)(1) does not mention Section 252 at all, or include any other reference to the negotiation and arbitration provisions of the Communications Act.

Even though not a single word of the FCC's rules or the statute supports its position, NDTC submits that some notion of consistency between Section 251(f)(1) and Section 252 requires that any implementation schedule must follow the Section 252 timetable.[49] The text of the statute belies this claim, however: There would be no reason to give state commission the discretion to set the implementation timetable if Section 252 applied automatically. The actual language, in fact, is much more consistent with the conclusion that the state commission has the power to weigh the evidence to determine how quickly implementation should proceed.

The acrobatics necessary to adopt NDTC's proposed interpretation were evident during the hearing. Mr. Meredith claimed, for instance, that the statute requires separate requests to trigger a Section 251(f)(1) proceeding and the Section 252 process, even as he conceded that there was no substantive difference between those requests and that there is

[46] 47 U.S.C. § 251(f)(1).
[47] Tr. at 184 (Meredith).
[48] 47 C.F.R. § 51.401.
[49] *See, e.g.*, NDTC Prehearing Brief at 9.

nothing in the FCC's rules that prevents a Section 251(f)(1) request from triggering the Section 252 process:

Q. Do you know of any cases at the FCC that say that [there are differences]?

A. That say what?

Q. That there's a difference between the request under 251(f)(1) and the request under 252(a).

A. Are you speaking of the document, itself, that is sent? The document, itself, can be identical.

Q. Is there anything in the FCC's rules that says a 251(f)(1) request cannot also at the same time trigger 252?

A. No, it can't, as long as it's filed with the state commission. That's the only difference between those two.[50]

Moreover, even if Mr. Meredith were right, and a Section 251(f)(1) request could not trigger the Section 252 process, that is not sufficient to prove that the Communications Act requires use of the Section 252 process following elimination of a rural exemption because Section 251(f)(1) does not mention a second request. Once again, nothing in the statute supports NDTC's view.[51]

The state rural exemption cases cited by NDTC also do not support its claims. In particular, although Mr. Meredith claimed during the hearing that he was "not aware of any states or any case that involves a different implementation schedule," the New York case that he is "intimately familiar with" adopted a schedule that is essentially the same as requested by Midcontinent in this proceeding.[52] In that case, the competitive carrier was seeking interconnection, reciprocal compensation and unbundled loops. The New

[50] Tr. at 181-2 (Meredith).

[51] Further, the time frames in Section 251(f)(1) and Section 252 suggest that Congress did contemplate that one request could trigger both provisions. Under normal circumstances, a Section 251(f)(1) proceeding is to be completed within 120 days after a request is submitted, while Section 252 does not require an arbitration petition to be filed until 160 days after the request and does not require a decision until nine months after a request. 47 U.S.C. §§ 251(f)(1), 252(b)(1), (4). Thus, it is possible under the statute to complete a rural exemption proceeding and still have time to meet the arbitration timetable.

[52] Tr. at 206, 208 (Meredith); Exhibit R14 at 11-2.

York Commission adopted interim rates for reciprocal compensation and unbundled loops (subject to later adjustment), required the incumbent carrier to use its best efforts to provide the loops by a date approximately three months after the order was issued and required the parties to sign an interconnection agreement less than four weeks after the issuance of the order.[53] From this result, it is apparent that the New York Commission did not believe that the Communications Act required it to follow the Section 252 process when a rural exemption was lifted.

The Texas and South Carolina cases do not support NDTC's theory either. The Texas decision was based entirely on the Texas Commission's rules, which required certain information in a competitive carrier's bona fide request, and not on the requirements of federal law.[54] In fact, the Texas Commission reached no conclusion at all concerning the requirements of the Communications Act.[55] Since this Commission has no corresponding state rule concerning the specific elements of a bona fide request, the Texas case is inapplicable.

Like the Texas Commission, the South Carolina Commission did not base its conclusions about the timing of implementation on an analysis of federal law. It merely adopted the time frame in Section 252.[56] Even then, the South Carolina Commission did not require the competitive carrier to submit a new request to the incumbent, as NDTC proposes, but merely started the clock on the release date of the order.[57] In fact, because

[53] Exhibit R14 at 11-3. The period for implementation of unbundled loops could have been extended to six months, but only with New York Commission approval. *Id.* at 12.
[54] Exhibit R13 at 2 ("This letter was sufficient to commence this docket for termination of South Plains' rural exemption, but it does not meet all of the requirements of P.U.C. SUBST. R. 26.272(f)(3)(A)-(D). Therefore, no deadlines have been triggered in this docket[.]").
[55] *Id.* at 4 (conclusions of law).
[56] Exhibit R12 at 5. The entire discussion of the implementation time frame is two sentences long, one of which is a description of Section 251(f)(1). *Id.*
[57] Tr. at 177-8 (Meredith) (second request is required after exemption is lifted); Exhibit R12 at 5.

the incumbent telephone company in the South Carolina case gave up its rural exemption before the proceeding went to hearing, it is unclear whether the South Carolina Commission had the authority to set a timeline for implementation, or if the parties were required to default back to the standard schedule under Section 252.[58]

In sum, the very cases cited by NDTC do not support its position. In fact, they provide better support for the conclusion that the Commission should set the implementation schedule based on the evidence it has received in this proceeding.

B. The Commission Should Require NDTC to Provide Wholesale Resale to Midcontinent Within Three Months of the Issuance of the Order in this Proceeding.

The evidence in this proceeding establishes that it is both desirable and feasible to adopt the implementation schedule recommended by Midcontinent's witnesses. Prompt implementation not only is possible, but beneficial to consumers in Devils Lake.

1. Prompt Implementation Maximizes Consumer Benefits.

The Commission should recognize that making competition available as soon as possible maximizes benefits to Devils Lake consumers. As described above, competition lowers prices, spurs innovation and improves customer service. Every additional day in the implementation schedule reduces these benefits.

NDTC says it does not oppose competition, but believes the Commission should wait until there is a level playing field.[59] The perfect level playing field, however, is an illusory goal. Rather, each competitor will have advantages and disadvantages whenever it enters the market. NDTC, for instance, offers wireless service, is the incumbent telephone company with a large base of customers and has access to universal service

[58] *Id.* at 3.
[59] Dircks Reply at 3-4.

funding and low-cost financing.[60] Midcontinent, on the other hand, is the incumbent cable operator, with its own base of customers, and has somewhat larger corporate resources available to it. Neither company is in a position to address all of the advantages the other company has, and likely never will be, so there is no benefit in trying to balance the scales before competition begins.

Moreover, waiting creates potential advantages for NDTC in the marketplace that are not warranted by the evidence. For instance, NDTC could accelerate its deployment of fiber, or choose to start providing video in some parts of Devils Lake before the entire project is complete. NDTC also could follow the lead of some other rural carriers, and start signing up customers for video service before it becomes available, locking them into long-term contracts.[61] Unless the Commission adopts a swift implementation schedule, these tactics could greatly disadvantage Midcontinent in the Devils Lake market.

In addition, there is no reason to believe that a "level playing field," however defined, benefits consumers. NDTC provided no evidence that this is the case, and the broader marketplace suggests otherwise. All companies have advantages and disadvantages. The differences between companies and their products allow consumers to have more choices, which is a benefit of competition, rather than a danger to be avoided.

[60] Tr. at 94 (customer base), 104 (wireless service), 107-110 (sources of low-cost financing), 118 (access to universal service support) (Dircks).
[61] Lohnes Direct at 5; Tr. at 29-30 (Lohnes)

2. The Record Establishes that Prompt Implementation of Resale Is Feasible.

Midcontinent's testimony provided an appropriate roadmap for the implementation of resale in Devil's Lake.[62] Under this schedule, the parties would be required to enter into a resale agreement within 30 days, using the agreement that Midcontinent already has provided to NDTC as the template. NDTC would be required to make resale available within 60 days after the agreement is signed, or no more than 90 days after the Commission adopts its order. If the parties cannot agree on a resale discount, they should be required to use an interim rate, such as the current Qwest rate, subject to a true-up following a Commission proceeding to determine the correct rate. To facilitate this process, NDTC should be required to undertake a cost study during the negotiation period.

As Midcontinent's witnesses testified, this schedule is entirely feasible and consistent with Midcontinent's experience in other markets.[63] Resale is simple to implement, and requires no physical connections between the parties. The only significant issues are establishment of a wholesale discount and coordination of back office activities between the carriers.[64] NDTC's witnesses did not identify any other issues; in fact, their chief claim was that it would take several months to calculate the appropriate discount.[65]

While Midcontinent believes that calculating a wholesale discount should be a fairly straightforward process, the time it takes to make a discount determination should

[62] Gates Direct at 23; Gates Rebuttal at 10-11; Tr. at 70 (Gates) (discussing use of interim rates).
[63] Lohnes Direct at 6; Lohnes Rebuttal at 1; Tr. at 78-80 (Gates).
[64] Lohnes Rebuttal at 1; Tr. at 71, 72-3 (Gates).
[65] Tr. at 220 (Meredith).

not affect the implementation schedule. As described in detail during the hearing, the Commission has at least two options to address that concern.

First, the Commission could order an interim rate, based on the testimony in the hearing, subject to a true-up. The record shows that, for instance, the Qwest discount would be an appropriate interim rate because adopting it would not have a significant effect on NDTC's revenues.[66] NDTC did not produce any substantial objection to this rate and, in fact, when asked at the hearing, Mr. Meredith indicated that he had not conducted any analysis of the appropriate discount rate for NDTC.[67] Even if the Qwest discount rate proved to be too high or too low, the parties would be protected from any error by adoption of a true-up, which would require a party that benefited from the inaccuracy to make the other party whole.[68]

Alternatively, the Commission could set up a process to determine the appropriate wholesale rate quickly if the parties cannot agree. As Mr. Gates described, the Commission could schedule a one-day hearing towards the end of the implementation period, at which NDTC could present its cost study and Midcontinent could present a response.[69] The Commission could then issue a prompt decision that would set the discount rate. Because this hearing would be limited to a single issue, it would not require the elaborate discovery, testimony and briefing necessary for a full-blown arbitration, and thus could be completed quickly and efficiently.[70]

---

[66] Fischer Direct at 14. In the alternative, the Commission could adopt a ten percent discount rate, which also was analyzed by Mr. Fischer in his testimony.
[67] Tr. at 194 (Meredith).
[68] Tr. at 70 (Gates). NDTC did not object to a true-up. Tr. at 193 (Meredith).
[69] The Commission also would have to require NDTC to make its underlying records and analysis available to Midcontinent during the negotiation process.
[70] Tr. at 80-1 (Gates).

As noted above, the New York decision provides a perfect framework for the kind of implementation schedule that should be adopted in this proceeding. Like this proceeding, the New York proceeding involved a limited set of issues (in fact, more issues than are present in this case.) The New York Commission required prompt action by both parties, with appropriate follow-up to ensure that its order was followed, and thus implemented interconnection within about a three month period.

NDTC provides no reason for adopting any longer period than proposed by Midcontinent. As described above, there is no legal authority mandating use of the Section 252 calendar. NDTC's only real explanation for its proposed schedule is that it would delay Midcontinent's entry into the Devils Lake market. As Mr. Meredith conceded during cross-examination, NDTC's proposal could prevent Midcontinent from providing service in Devils Lake until a year or more after the Commission's decision.[71] That not only would mean that consumers would not have access to competitive local telephone service for a year, but that NDTC would gain a competitive advantage that is not warranted by the evidence in this proceeding. Indeed, there is no affirmative reason to permit a delay – NDTC's level playing field claims are incorrect, there is no need to wait for a cost study, and implementing resale is not technically or administratively difficult. The only correct result is to implement wholesale resale in Devils Lake as soon as possible, on the schedule that Midcontinent has proposed.

C. The Commission Should Order NDTC to Begin Negotiation of a Full Interconnection Agreement for Facilities-Based Competition on the Section 252 Schedule.

The evidence at the hearing and NDTC's behavior to date demonstrate that the Commission should take one additional step in this proceeding: The Commission should

[71] Tr. at 189 (Meredith).

order NDTC to begin negotiation of a full interconnection agreement with Midcontinent. This step is necessary to ensure that full and fair competition will be in place in Devils Lake as soon as possible.

Commission action plainly is necessary to ensure competitive balance in the Devils Lake market. The record shows that NDTC has had longstanding plans – begun as long ago as fall 2004 – to enter the video market, and it has made a substantial financial commitment to doing so.[72] The result of that commitment is that NDTC will begin providing video over its own facilities in Devils Lake in less than a year.[73]

At the same time, the record establishes that negotiation, arbitration and implementation of a full interconnection agreement could take a year or more.[74] If Midcontinent is required to wait to start that process until NDTC relinquishes its rural exemption by beginning to provide video service, it might not be able to provide full facilities-based competition until February, 2008 or later, two years from now.[75] In the meantime, NDTC will have a significant competitive advantage in the Devils Lake market.

Even if NDTC were not likely to gain a significant competitive advantage, public policy considerations fully support the conclusion that requiring NDTC to negotiate an interconnection agreement is appropriate because it will benefit consumers. While resale creates some benefits, the greatest consumer benefits arise from facilities-based competition. The FCC reached this conclusion several years ago after evaluating the

[72] Tr. at 134, 142 (Dircks).
[73] Dircks Reply at 9.
[74] Tr. at 191 (Meredith).
[75] *Id.*

initial implementation of the Telecommunications Act of 1996, and the witnesses in this proceeding have agreed.[76]

Moreover, NDTC would not be unfairly harmed by requiring it to negotiate a full interconnection agreement. As a matter of law, NDTC will not be entitled to claim the rural exemption in response to any request from Midcontinent once it begins offering video service, so by the time any interconnection agreement is implemented, NDTC will not be exempt any more.[77] Moreover, as described above, NDTC will retain its universal service funding even if Midcontinent's facilities-based service takes substantial market share from NDTC, because incumbent carrier universal service funding is not dependent on the number of customers served.[78]

Even though Midcontinent's initial request related only to resale, the Commission has the authority to take this step. Section 251(f)(1) does not specify that the implementation schedule must relate only to the services covered by the initial bona fide request, so the Commission has broad discretion to make the remedy fit the evidence it has heard. In this case, the evidence is more than sufficient for the Commission to conclude that the Section 251(f)(1) criteria will be met for facilities-based service as of the date that NDTC starts providing video service and to set a deadline for implementation that is consistent with that conclusion.

---

[76] *See, e.g.,* Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking,* 18 FCC Rcd 16978, 16984 (2003); *see also* Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Order on Remand,* 20 FCC Rcd 2533, 2534 (2005) (affirming previous FCC conclusion that it should encourage facilities-based competition); Gates Direct at 12-13.

[77] If the Commission were concerned about the possibility that Midcontinent could begin providing facilities-based service before NDTC begins providing video service, it could set the date for implementation of any interconnection agreement to be no sooner than the date when NDTC starts offering video to its customers.

[78] *See supra* Section II(C)

In particular, the evidence showing that NDTC decided to go forward with its video project, at a cost of $11 million for an upgrade that otherwise was unnecessary, and despite the loss of the rural exemption that would result as a matter of law, demonstrates that lifting the exemption as to facilities-based services would not impose undue economic harm and that NDTC believes that interconnection is technically feasible.[79] The additional evidence on universal service support received by NDTC also demonstrates that universal service will not be harmed by facilities-based entry, meeting the final standard of Section 251(f)(1).[80] Consequently, the Commission has more than sufficient grounds for setting a schedule for the implementation of facilities-based competition in Devils Lake.[81]

Finally, the Commission should make sure that NDTC does not take actions that will damage the development of facilities-based competition. As Ms. Lohnes has indicated, rural carriers in other areas have engaged in tactics designed to shut Midcontinent out of the market, including signing customers to long-term video contracts well before service begins.[82] To prevent such occurrences, the Commission should require NDTC to notify it and Midcontinent at least sixty days before NDTC begins marketing its video service to consumers in Devils Lake. Such notice will permit the Commission to adjust its schedules or adopt whatever additional relief is necessary to prevent NDTC from gaining an undue competitive advantage.

---

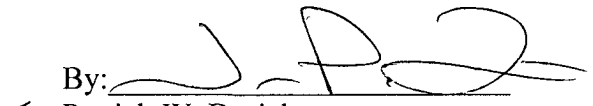
[79] Tr. at 142 (Dircks).
[80] Tr. at 198-9 (Meredith).
[81] To the extent necessary under the Commission's rules, Midcontinent requests that the Commission grant it leave to amend its petition to conform to this requested relief.
[82] Tr. at 29-30 (Lohnes).

IV. Conclusion.

For all these reasons, Midcontinent Communications respectfully requests that the Commission grant its petition and adopt the relief requested herein.

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By: 
For Patrick W. Durick
J.G. Harrington*

Its Attorneys

*Admitted pro hac vice

Pearce & Durick
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036

February 17, 2006

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

RECEIVED
FEB 17 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

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

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.

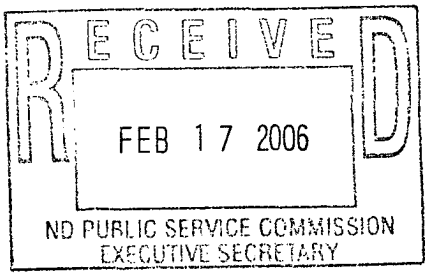
8. The FCC has adopted no rules governing how state commissions may set implementation schedules under Section 251(f)(1).

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.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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



PROPOSED ORDER

MARCH , 2005

On July 12, 2005, Midcontinent Communications, a South Dakota Partnership ("Midcontinent"), filed a bona fide request to lift the rural exemption under Section 251(f)(1) of the Federal Communications Act of 1934 (the "Communications Act") for the operations of North Dakota Telephone Company ("NDTC") in Devils Lake, North Dakota.

Prehearing conferences were held in this proceeding on September 16, November 15 and December 9, 2005. A prehearing order was issued on December 13, 2005. On July 28, 2005, the NDPSC issued a Notice of Hearing in this proceeding, and on December 14, 2005, the NDPSC issued a Notice of Rescheduled Hearing. The Notices identified the following 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.

Midcontinent filed prefiled direct testimony on December 21, 2005; NDTC filed prefiled reply testimony on January 9, 2006; and Midcontinent filed prefiled rebuttal testimony on January 16, 2006. A hearing was held on January 23, 2006. The parties filed post-hearing briefs.

The NDPSC, having heard the evidence and reviewed the briefs, hereby adopts the following Findings of Fact and Conclusions of Law:

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.

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).

In light of the findings of fact and conclusions of law, and being fully advised in the premises, the NDPSC hereby enters the following:

ORDER

The NDPSC Orders:

1. NDTC and Midcontinent shall enter into a wholesale resale agreement substantially in the form of the agreement offered by Midcontinent to NDTC in its initial request for service within thirty (30) days of the issuance of this order. The agreement shall provide an interim discount rate of 16.15 percent unless the parties agree to some other permanent rate.

2. NDTC shall conduct any necessary cost study to determine the appropriate level of the wholesale discount in accordance with the rules of the Federal Communications Commission. That study and all supporting information shall be provided to the Commission and Midcontinent within sixty (60) days of the issuance of this order. NDTC shall not be required to comply with this requirement if the parties agree on a permanent discount rate prior to the expiration of the sixty (60) day period.

3. Midcontinent and NDTC shall inform the NDPSC promptly of any agreement on a permanent discount rate. If Midcontinent and NDTC do not provide such notification within ninety (90) days of the issuance of this order, the NDPSC will schedule a hearing to commence not more than one hundred twenty (120) days after the issuance of this order. Each party will be required to submit prefiled direct testimony not less than twenty (20) days before the hearing and shall be permitted to submit prefiled rebuttal testimony not less than seven (7) days before the hearing. The NDPSC will determine the permanent discount rate based on the prefiled testimony, the evidence presented at the hearing, NDTC's cost study and the supporting information provided by NDTC. Any discount rate adopted by the NDPSC will apply retroactively to the date NDTC first provides wholesale services to Midcontinent.

4. NDTC shall make its retail telecommunications services available to Midcontinent at wholesale rates for resale, in accordance with the requirements of Section 251(c)(4) of the Communications Act, no later than ninety (90) days after the issuance of this order.

5. Upon issuance of this order, NDTC and Midcontinent shall commence negotiation of a full interconnection agreement for the Devils Lake market. The negotiation and any necessary arbitration shall be conducted in accordance with the requirements of Sections 251(c)(1) and 252 of the Communications Act, including the time periods described in Section 252.

6. NDTC will provide at least sixty (60) days notice to the NDPSC and Midcontinent prior to marketing or offering any video service in Devils Lake.

PUBLIC SERVICE COMMISSION

SUSAN E. WEFALD	TONY CLARK	KEVIN CRAMER
COMMISSIONER	PRESIDENT	COMMISSIONER

77 **PU-05-451** Pages: 0

Transcript of Hearing (CondenseIT Version)

by Emineth & Associates Court Reporters

01/31/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

TRANSCRIPT OF

HEARING

Taken At
State Capitol
600 East Boulevard
Bismarck, North Dakota
January 23, 2006

BEFORE JUDGE AL WAHL
-- HEARING OFFICER --

A P P E A R A N C E S

COMMISSIONERS PRESENT:

COMMISSIONER TONY CLARK
COMMISSIONER SUSAN E. WEFALD
COMMISSIONER KEVIN CRAMER

MR. WILLIAM W. BINEK
Commission Counsel
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

MR. PATRICK FAHN
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

FOR THE PUBLIC SERVICE COMMISSION.

MR. PATRICK W. DURICK of
Pearce & Durick
Attorneys at Law
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

MR. J.G. HARRINGTON of
Dow, Lohnes & Albertson
Attorneys at Law
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-2222

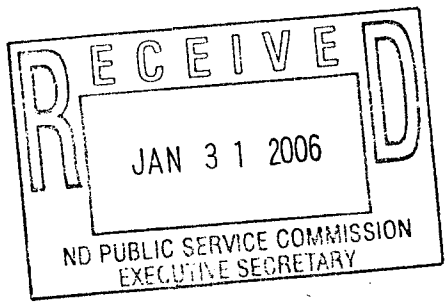
FOR THE PETITIONER.

A P P E A R A N C E S (cont'd)

MR. DON NEGAARD
MR. SCOTT M. KNUDSVIG of
Pringle & Herigstad, P.C.
Attorneys at Law
2525 Elk Drive
P.O. Box 1000
Minot, North Dakota 58702-1000

MR. THOMAS J. MOORMAN of
Woods & Aitken, L.L.P.
Attorneys at Law
2154 Wisconsin Avenue, N.W.
Washington, D.C. 20007

FOR THE RESPONDENT.



C O N T E N T S

	Page No.
OPENING STATEMENT BY MR. HARRINGTON	12
OPENING STATEMENT BY MR. NEGAARD	16
PETITIONER'S WITNESSES:	
MARY LOHNES	
Direct Examination by Mr. Durick	21
Cross-examination by Mr. Negaard	23
Examination by Commissioner Clark	27
Redirect Examination by Mr. Durick	28
Examination by Mr. Binek	29
Further Examination by Commissioner Clark	29
Examination by Commissioner Wefald	31
Recross-examination by Mr. Negaard	32
WARREN R. FISCHER	
Direct Examination by Mr. Durick	34
Cross-examination by Mr. Negaard	37
Examination by Commissioner Clark	38
Examination by Commissioner Wefald	41
Redirect Examination by Mr. Durick	43
Recross-examination by Mr. Negaard	45
Examination by Mr. Binek	46
TIMOTHY J. GATES	
Direct Examination by Mr. Durick	47
Cross-examination by Mr. Moorman	55
Examination by Commissioner Clark	62
Examination by Commissioner Wefald	63
Further Examination by Commissioner Clark	68
Further Examination by Commissioner Wefald	71
Redirect Examination by Mr. Durick	74
Examination by Mr. Binek	77
Further Examination by Commissioner Clark	82
Further Examination by Commissioner Wefald	85
Further Examination by Mr. Binek	87

C O N T E N T S (continued)

RESPONENT'S WITNESSES: Page No.

DAVID DIRCKS

Direct Examination by Mr. Negaard 91
Cross-examination by Mr. Harrington 94
Exmination by Mr. Binek 158
Examination by Commissioner Clark 162
Examination by Commissioner Cramer 163
Redirect Examination by Mr. Negaard 167
Recross-examination by Mr. Harrington 168
Further Exmination by Mr. Binek 169

DOUGLAS DUNCAN MEREDITH

Direct Examination by Mr. Moorman 171
Cross-examination by Mr. Harrington 177
Examination by Mr. Binek 204
Examination by Commissioner Clark 209
Examination by Commissioner Wefald 212
Redirect Examination by Mr. Moorman 216
Recross-examination by Mr. Harrington 219
Redirect Examination by Mr. Moorman 224

EXHIBITS:

No.	Description	Off'd	Rec'd
P1	Direct Testimony of Mary Lohnes		
P2	Rebuttal Testimony of Mary Lohnes		
P3	May 12, 2005, letter to Dave Dircks from Pat Durick and Resale Agreement	22	22
P4	Exhibits for rebuttal testimony of Mary Lohnes	22	22
P5	Direct Testimony of Warren R. Fischer		

C O N T E N T S (continued)

EXHIBITS:

No.	Description	Off'd	Rec'd
P6	Rebuttal Testimony of Warren R. Fischer		
P7	CV of Warren R. Fischer	35	36
P8	Exhibits for Direct Testimony of Warren R. Fischer	35	36
P9	Exhibits for Direct Testimony of Warren R. Fischer	35	36
P10	Exhibits for Direct Testimony of Warren R. Fischer	35	36
P11	Direct Testimony of Timothy J. Gates	48	
P12	Rebuttal Testimony of Timothy J. Gates	48	
P13	Qualifications of Timothy J. Gates	48	55
P14	Web pages for Dakota Central Telecommunications, United Telephone Mutual Aid Corporation and Polar Communications	97	99
P15	NDTC - FCC High Cost Funding 2003 to 2005, High Cost Disbursement Data		117
P16	NDTC Web page	128	128
R1	Reply Testimony of David Dircks	92	92
R2	May 12, 2005, letter to David Dircks from Patrick W. Durick	92	92
R3	June 10, 2005, letter to Patrick W. Durick from Dave Dircks	92	92

C O N T E N T S (continued)

EXHIBITS:

No.	Description	Off'd	Rec'd
R4	Ad for job opening for account executive for NDTC	93	93
R5	Articles from Outlook, NDTC	93	93
R6	Reply Testimony of Douglas Duncan Meredith	173	173
R7	U.S. Code collection, Title 47 Section 251, Interconnection	176	176
R8	U.S. Code collection, Title 47 Section 252, Procedure for negotiation, arbitration, and approval of agreements	175	176
R9	NDCC, Title 49, Public Utilities	175	176
R10	Pages from FCC Section 51	175	176
R11	12/12/2005 Article Midcontinent Communications to Develop Family Friendly Choice	175	176

(The proceedings herein were had and made of record, commencing at 10:05 a.m., Monday, January 23, 2006, as follows:)

JUDGE WAHL: Good morning. I'm Al Wahl, the administrative law judge designated by the Office of Administrative Hearings pursuant to the request of the North Dakota Public Service Commission to act as the procedural hearing officer for the matter of a hearing as an inquiry pursuant to 47 USC Section 251(f)(1)(a) to determine whether to terminate the exemption of North Dakota Telephone Company from providing its services for resale.

Before proceeding with the hearing, I will ask the commissioners for their comments and any directions for the hearing. Commission president Tony Clark.

COMMISSIONER CLARK: Thank you, Mr. Hearing Officer. Just welcome to everyone. This is the first one of these 251(f) hearings that the Commission has heard, so we understand that there's always some precedent that's being set when we do hear one of these cases, so just look forward to each side's presentation.

JUDGE WAHL: Commissioner Wefald.

Page 9

COMMISSIONER WEFALD: Yes. Good morning. I have participated in a rural exemption hearing in the past in regard to Western Wireless coming before the Commission and asking about the rural exemption, so some of the issues are familiar to me, although there's always new issues in a case. And I've read all the information that's been presented on the record, and it is helpful to get those back-and-forth comments from the different parties before we start the hearing because then the Commission has a pretty good idea of what the issues are that it needs to determine during this hearing. So thank you for your advance testimony that you've already provided to the Commission. It's been very helpful and I'm looking forward to getting a full record today.

JUDGE WAHL: Commissioner Cramer.

COMMISSIONER CRAMER: Thank you. And good morning to everyone, welcome, look forward to a very informative hearing this morning and thank you all for being here. It's great to see so many people. I know we know it's very important and interesting and, as Commissioner Clark said, precedent setting, but looking forward to a good day.

Page 10

JUDGE WAHL: Thank you, Commissioners. The record will show that it is a little after 10:00 a.m., January 23, 2006, the time and the date noticed for a hearing as an inquiry to determine whether to terminate North Dakota Telephone Company's exemption from providing its services for resale.

On May 12, 2005, Midcontinent Communications, sometimes referred to as Midcontinent, made a bona fide request under 47 USC Section 251(c) for a wholesale resold services for the Devils Lake, North Dakota, exchange from North Dakota Telephone Company, sometimes referred to as NDTC. By notice of bona fide request for services dated July 15, 2005, Midcontinent notified the Commission of its bona fide request.

NDTC claims that under 47 USC Section 251(f) it is exempt from the requirement that incumbent local exchange carriers must offer for resale the telecommunications services that it provides to retail subscribers.

Midcontinent requests that the Commission conduct an inquiry to determine whether to terminate NDTC's exemption from providing services for resale.

Page 11

The Public Service Commission has duly issued its notice -- issued and published its Notice of Hearing and its Notice of Rescheduled Hearing.

The issues to be considered and determined upon this hearing are, first, whether the request of Midcontinent is unduly economically burdensome; second, whether the request of Midcontinent is technically feasible; third, whether the request of Midcontinent is consistent with 47 USC Section 254 other than subsections (b)(7) and (c)(1)(D) thereof; and, fourth, the implementation schedule for compliance with the request should the exemption be terminated.

Mr. Durick, will you and co-counsel please state your appearance for the record.

MR. DURICK: Yes. I'm Pat Durick of Pearce & Durick for Midcontinent Communications.

MR. HARRINGTON: J.G. Harrington of Dow, Lohnes & Albertson for Midcontinent Communications.

JUDGE WAHL: Mr. Negaard.

MR. NEGAARD: Yes, Your Honor. My name is Don Negaard with the Pringle & Herigstad law firm in Minot, North Dakota, appearing for North Dakota Telephone Company.

Page 12

MR. MOORMAN: Thomas J. Moorman appearing on behalf of North Dakota Telephone Company, Woods & Aitken, L.L.P., Washington, D.C.

JUDGE WAHL: Mr. Binek, please.

MR. BINEK: My name is William Binek. I'm counsel for the Public Service Commission. With me is Patrick Fahn, a public utility analyst in the Public Utilities Division of the Commission. The Commission staff is appearing today as Commission advisers. Staff is not taking an advocacy position in this proceeding.

JUDGE WAHL: All right. Mr. Durick, when you're ready.

MR. DURICK: Thank you, Your Honor. Commissioner Clark, Commissioners Wefald and Cramer. To begin with, Mr. J.G. Harrington would like to just make a short opening statement what we intend to do and then we'll proceed with witnesses, Mary Lohnes, Warren Fischer and Timothy Gates.

MR. HARRINGTON: Commissioners, Judge Wahl, with Pat Durick, I represent Midcontinent Communications in this proceeding. We are just about at the ten-year anniversary of the passage of the Telecommunications Act of 1996. It was enacted into law on February 2nd, 1996.

Page 13

In that statute Congress decided that local telephone competition was in the public interest. This was not a recommendation or a presumption. It was a determination that consumers would benefit and it was implemented by specific statutory provisions.

Midcontinent is one of the companies that has taken advantage of that determination to bring competition in local telephone service to consumers in North and South Dakota, including in markets where many people thought competition would never happen. To facilitate the development of competition, the Act created a series of obligations for incumbent telephone companies. It also created a narrow exemption from those obligations for rural telephone companies, which apply to only some of the carrier's obligations. Rural telephone companies still have to provide interconnection under Section 251(a) of the Communications Act and dialing parity, number portability and reciprocal compensation under Section 251(b). The exemption covers only the obligations specific to incumbents under Section 251(c).

The exemption is not immutable, though.

Page 14

Section 251(f) provides two ways to end that. First, a competitor can show by a preponderance of the evidence that lifting the exemption will not create an undue burden on the incumbent and that it's not technically infeasible or, second, the incumbent can end the exemption by its own actions when it enters the cable television business. Once either of these tests is met, the exemption must be lifted. The statute does not require or permit any other requirements.

In this case the evidence will show that lifting the rural exemption will not pose any undue burden on North Dakota Telephone. Midcontinent's expert witnesses have demonstrated that wholesale resale will pose little or no financial burden on North Dakota Telephone and there is no technical reason why North Dakota Telephone cannot provide wholesale resale.

Further, Midcontinent's experience with other telephone companies in the Dakotas shows that resale can be implemented promptly with little difficulty. In the absence of a financial impact, there also will not be any impact on universal service.

In practical terms, North Dakota Telephone

Page 15

does not challenge these showings, does not provide its own financial analysis to contradict Midcontinent's evidence. It is not argued that Midcontinent's request cannot be implemented. Thus, if you accord any weight at all to Midcontinent's testimony, the first test under Section 251(f) has been met and the rural exemption must be lifted.

North Dakota Telephone's response is to admit that the exemption should be lifted, but for a different reason and on a much different schedule. North Dakota Telephone now says that it's planning to offer video service in early 2007, which would lift the exemption automatically. Rather than acting now, North Dakota Telephone says the Commission should simply wait.

There are two things wrong with North Dakota Telephone's theory. First, if the first test under Section 251 is met, there's no reason to wait. The statute is clear on this point. All Midcontinent needs to do is show by a preponderance of the evidence that the requirements within the exemption have been met and the exemption must be lifted.

Second, if the Commission were to adopt

Page 16

North Dakota Telephone's theory, North Dakota Telephone would be afforded a significant competitive advantage. Once the exemption was lifted by operation of law, it likely would be a year or more before Midcontinent could offer resold service in Devils Lake while North Dakota Telephone would be able to offer its customers a complete bundle of services as soon as it finished its video network. This competitive balance would be bad not just for Midcontinent, but also for consumers in Devils Lake. There is no reason to make them wait until 2008 for the competition that Congress said they could have in 1996. For these reasons we ask you to grant our petition.

JUDGE WAHL: Mr. Negaard, will you make an opening statement at this time?

MR. NEGAARD: Yes, Your Honor, I will. Good morning, Judge Wahl.

JUDGE WAHL: Good morning.

MR. NEGAARD: Good morning, Commission President Clark. Good morning, Commissioner Wefald. Good morning, Commissioner Cramer. As I indicated, Don Negaard with the Pringle & Herigstad law firm this morning. One gentleman that got overlooked is Scott Knudsvig. He's one of my

Page 17

partners in the Pringle & Herigstad law firm. He's with me this morning.

For the record, I want it noted that Mr. Moorman originally appeared and was admitted for the purpose of this proceeding with the Kraskin, Moorman & Cosson Law firm and that firm was dissolved by mutual assent on January 1st of this year. And so for the record, Mr. Moorman is now with the Washington, D.C., firm Woods & Aitken located in Washington.

Appearing with me today is David Dircks. Mr. Dircks is the general manager of North Dakota Telephone Company. He will testify on behalf of that company today. In the audience today are a number of the members of the board of directors of North Dakota Telephone Company. Another witness who appears today on behalf of North Dakota Telephone is Douglas Meredith. Mr. Meredith is the director of economics and policy at John Staurulakis, Incorporated, a long-time telephone communications consulting firm, and he will be testifying today on their behalf.

This case involves a rural exemption granted to North Dakota Telephone Company and other rural companies by Congress in the

Page 18

Telecommunications Act of 1996. This is the first time this Commission has been asked to remove a rural exemption in this context for a North Dakota company. It's a new process in the state and it's obviously the first time that North Dakota Telephone has had to face this issue. We have confidence that this Commission will take its role seriously, will study the issues and render a careful decision as it has been in the past.

Your role is to hear the evidence in this case as it relates to the Devils Lake exchange of North Dakota Telephone Company, make a decision in this matter based on the evidence, and only the evidence presented here, on the issues previously designated by this Commission for this hearing.

Midcontinent has the burden of proof in this matter. They have to prove to you that the rural exemption of North Dakota Telephone Company for providing wholesale resale of its telecommunications services should be lifted. This is solely your function. It's not my function. And your function is to determine if that burden has been met. At the end of the day there will be no facilities-based evidence on the impact of North Dakota Telephone Company in Devils Lake, and the

Page 19

evidence will only be on that particular exchange.

If you determine that Midcontinent has not met its burden of proof, then Midcontinent can compete in other ways that are available to it. If you determine that Midcontinent has met its burden of proof, then you need to establish an implementation schedule for the Devils Lake exchange that will allow the parties the opportunity to negotiate in good faith for a business arrangement, an interconnection agreement, if you will, that will contain the terms and conditions of this unique arrangement in North Dakota. That schedule would need to determine a rational schedule based on the authority that this Commission has under state and federal law.

The testimony has been prefiled. I think taking Judge Wahl's lead that we try to expedite the hearing today, and thank you for being here to hear this case and to hear the evidence and make your decision. Thank you.

JUDGE WAHL: Mr. Binek, will you make an opening statement?

MR. BINEK: No.

JUDGE WAHL: Mr. Durick, you may proceed when you're ready.

Page 20

MR. DURICK: Thank you, Your Honor. We call Mary Lohnes as the first witness for Midcontinent.

JUDGE WAHL: Miss Lohnes, you can go ahead and have a seat in the witness --

MR. DURICK: Do you want her to be sworn here?

JUDGE WAHL: I'll do that. Let her be seated. It's easier, quicker.

Miss Lohnes, your testimony is required to be under oath, as I'm sure you're well aware, and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, of course, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.

(Witness sworn.)

JUDGE WAHL: Mr. Durick.

MR. DURICK: Thank you, Your Honor.

MARY LOHNES,

being first duly sworn, was examined and testified as follows:

Page 21

DIRECT EXAMINATION

BY MR. DURICK:

Q. Mary, there has been testimony prefiled in this particular matter. Do you have a copy of your testimony before you?

A. The direct testimony?

Q. Yes, the direct testimony.

A. Yes, I do.

Q. We're going to mark the direct testimony of Miss Lohnes as Exhibit P1, and that's Docket No. 50 for the Commission. Miss Lohnes, do you also have your rebuttal testimony before you?

A. Yes, I do.

Q. Okay. And we're going to mark that for the Commission as P2, and that's Docket No. 61, just to keep the record straight. Miss Lohnes, I'm going to show you the two exhibits that we have that are attached to your rebuttal testimony, the first one being the letter from myself dated May 12th, 2005, with an attachment. Can you identify that as Exhibit A to your rebuttal testimony?

A. Yes, it is.

Q. Okay. And I've marked that as P3. And I'm marking as P4 the Exhibit B to your rebuttal testimony, and I'm just wondering if you could

Page 22

identify that for the Commission and for Judge Wahl.

A. Yes. These are various articles which we found.

Q. Okay. Now, I would like to ask you, you have reviewed your direct and your rebuttal testimony, have you?

A. Yes, I have.

Q. And under oath today, is that still your testimony before this Commission?

A. Yes, it is.

MR. DURICK: Okay. At this point we'd move for the introduction into evidence of Exhibits P3 and P4, the two exhibits to Miss Lohnes's direct and rebuttal testimony, and we would --

JUDGE WAHL: Mr. Negaard.

MR. NEGAARD: And I have the assurance of counsel those are the same exhibits that were included in the prefiled testimony?

MR. DURICK: Yes.

JUDGE WAHL: I have no objection, Your Honor.

JUDGE WAHL: Mr. Binek.

MR. BINEK: No objection.

JUDGE WAHL: Exhibits P3 and P4 are

Page 23

received. I'm assuming that counsel is stipulating to the admission of the direct and rebuttal testimony.

MR. DURICK: That's the assumption I'm making, Your Honor.

JUDGE WAHL: Yes.

MR. NEGAARD: Yes, Your Honor.

JUDGE WAHL: Mr. Binek. We're going to offer the exhibits to the testimony and address those, and the prefiled testimony will be received pursuant to counsel's stipulation. Go ahead, Mr. Durick.

MR. DURICK: Thank you. At that point we would pass the witness, Your Honor.

JUDGE WAHL: Mr. Negaard.

CROSS-EXAMINATION

BY MR. NEGAARD:

Q. Good morning, Miss Lohnes.

A. Good morning.

Q. In your testimony you mention the possibility of a company cherry-picking customers. Are you referencing video programming, cable television or telecommunications when you talk about that? I believe it's on page 4, line 6 of your testimony.

Page 24

COMMISSIONER WEFALD: Excuse me, Judge Wahl. Could I have just a moment to get my paperwork -- could he repeat again exactly which exhibits are -- what documents are the exhibits we're going to be referring to with this witness? And I have everything here, I just need to pull it together so that I have it.

MR. DURICK: Exhibit P3 would be Exhibit A to the rebuttal testimony of Miss Lohnes.

COMMISSIONER WEFALD: And that's document number?

MR. DURICK: That is document number 61.

COMMISSIONER WEFALD: 61. Okay. Thank you.

MR. DURICK: And P4 is Exhibit A to the rebuttal testimony, which is docket 61.

COMMISSIONER WEFALD: All right. And that's also in docket 61? That includes this?

MR. DURICK: Yes.

COMMISSIONER WEFALD: And then there was another item.

COMMISSIONER CRAMER: 50. That's the direct testimony.

MR. DURICK: 50 is the direct testimony, and that's Exhibit No. 1.

Page 25

COMMISSIONER WEFALD: All right. Thank you.
Q. (MR. NEGAARD CONTINUING) And I apologize, Miss Lohnes. I said page 4. Page 5, lines 6 and 7.
A. I found it. Thank you.
Q. When you talked about cherry picking, the question was, are you referencing video or telecommunications?
A. Telecommunications.
Q. Okay. Are you aware that North Dakota Telephone Company is under tariff, files their rates under tariff?
A. I am not aware.
Q. Okay. And does Midcontinent have a monopoly on cable television services in Devils Lake today?
A. I don't know that.
Q. Do you know of any other cable television provider in Devils Lake?
A. I do not.
Q. Do you know of any other companies other than North Dakota Telephone providing telecommunications services in Devils Lake?
A. I am not aware of any others.

Page 26

Q. Have you heard of Western Wireless, which has now taken on a new name in the state, that they're operating in the state, wireless carrier?
A. Yes.
Q. Okay. And you've heard of Verizon Wireless?
A. Yes.
Q. And you're aware that they're operating in the state?
A. Yes.
Q. So if they're operating in the state in the Devils Lake area, there are other competitors for telecommunications business in the area, aren't there?
A. I'm not aware that they're in Devils Lake.
Q. Okay. Is Midcontinent a member of the cooperative purchasing organization that you mention in your testimony? I refer to your rebuttal testimony, page 4, lines 20-21.
A. Yes, we are a member of that.
Q. You are a member of that cooperative --
A. Yes.
Q. -- purchasing association?
A. Yes.
Q. Are you familiar with the pricing that's

Page 27

offered through that association?
A. I am not.
Q. Without discussing the content of any discussions, how many days -- how much time have the parties, Midcontinent and North Dakota Telephone, spent negotiating the terms and conditions of an interconnection agreement?
A. Discussing an interconnection agreement, none.
MR. NEGAARD: I don't have anything further. Thank you.
JUDGE WAHL: Mr. Binek?
MR. BINEK: I have no questions of this witness.
JUDGE WAHL: Questions from the Commission. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:
Q. I do have one. In your initial testimony you talk about the amount of time that it's taken in the past to handle commercial agreements for resale, and I think you stated less than three months is typical. Have you gone through interconnection agreements in other -- interconnection arbitration proceedings, 251-, 252-

Page 28

type proceedings, in other states that you've been active in?
A. Not for arbitration.
Q. Have you had other 251(f) exemptions litigated in proceedings like this in other states?
A. No, we have not.
COMMISSIONER CLARK: That's all the questions I have.
JUDGE WAHL: Commissioner Wefald.
COMMISSIONER WEFALD: I have no questions at this time.
JUDGE WAHL: Commissioner Cramer.
COMMISSIONER CRAMER: I have none. Thank you.
JUDGE WAHL: All right. Followup, Mr. Durick.
MR. DURICK: Thank you, Judge Wahl.

REDIRECT EXAMINATION

BY MR. DURICK:
Q. Miss Lohnes, does Midcontinent consider satellite television offerings to be competition to the cable television offerings?
A. Yes, we do.
Q. And are there satellites that offer services in Devils Lake, as near as you know?

Page 29

A. Not that I'm aware of, but there could be.
Q. DirecTV is a nationwide service, is it?
MR. NEGAARD: Your Honor, it's been asked and answered, I believe.
JUDGE WAHL: Sustained.
Q. (MR. DURICK CONTINUING) What are the satellite companies that offer services in the United States?
A. In the United States, DirecTV. I'm not familiar with them.
MR. DURICK: Okay. I have no further questions of the witness.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: No, Your Honor. I have nothing further. Thank you.
JUDGE WAHL: Mr. Binek.

EXAMINATION

BY MR. BINEK:
Q. A question. In your direct testimony at the bottom of line -- page 4, lines 24 and 25, you talk about long-term agreements. What is your familiarity with these long-term agreements? What do you mean?
A. We have experienced in some communities where our competitors will go out to their customer

Page 30

base and visit with their customers and have them sign long-term agreements with their company -- exclusive agreements for telephone, cable.
Q. What is the length -- normally what is the length of these long-term agreements that you're familiar with?
A. We've seen them anywhere from one to four years.
Q. Okay. Thank you. Did I understand you correctly that you haven't -- I think the question was regarding -- and it was Commissioner Clark asking -- about proceedings in other states. Did you say that there have been no -- had there been exemption requests in other states or not?
A. Not that Midcontinent has been in.
Q. So this is the first time that Midcontinent has asked that the exemption be lifted?
A. Correct.
Q. Getting back to these long-term contracts, does Midcontinent enter into any long-term contracts?
A. For the residential services, telephone services, we do not.
Q. What about cable television?

Page 31

A. We do not for cable, either.
MR. BINEK: Thank you.
JUDGE WAHL: Any further questions from the commissioners? Followup? I'm sorry. Commissioner Clark.

FURTHER EXAMINATION

BY COMMISSIONER CLARK:
Q. I do have just one. Of the communities that Midcontinent serves telecommunications services to, how many of them are not -- ballpark now -- how many of them are not Qwest exchanges?
A. I work with telephone services.
Q. Mm-hmm.
A. In North Dakota I don't think we have any that we're in with telephone right now.
Q. Okay. Other states?
A. In South Dakota we are in two communities.
Q. Are those both -- would they both be classified as rural carriers?
A. Yes.
COMMISSIONER CLARK: Thank you.
JUDGE WAHL: Commissioner Wefald.

EXAMINATION

BY COMMISSIONER WEFALD:
Q. Yes. This goes back to the question Mr.

Page 32

Negaard had for you on the bottom of page 4 of your rebuttal testimony, and I need to have you repeat the answer because I'm not sure if I caught your answer when you responded to his question. Do you belong to this National Cable Television Cooperative --
A. Yes, we do.
Q. -- Midcontinent?
A. Yes.
COMMISSIONER WEFALD: Okay. Thank you.
JUDGE WAHL: Any further questions from the Commission? Followup, Mr. Durick?
MR. DURICK: I have nothing.
JUDGE WAHL: Mr. Negaard, anything further for this witness?
MR. NEGAARD: Just one question.

RECROSS-EXAMINATION

BY MR. NEGAARD:
Q. Are you aware of or have any evidence that North Dakota Telephone has been trying to sign their customers up to long-term commitments for telecommunications services?
A. I'm not aware of it.
MR. NEGAARD: Okay. Thank you.
JUDGE WAHL: Mr. Binek, anything further?

Page 33

MR. BINEK: No.
JUDGE WAHL: Anything further from the Commission?
COMMISSIONER CLARK: No.
JUDGE WAHL: Mr. Durick, anything further for this witness?
MR. DURICK: Nothing further, Your Honor.
JUDGE WAHL: All right. Thank you very much, Miss Lohnes.
MR. DURICK: Midcontinent will call Warren Fischer as our next witness. Mr. Fischer, would you come up and be seated and be sworn?
JUDGE WAHL: Mr. Fischer, as you heard me advise the previous witness and as I'm sure you're well aware, your testimony is required to be under oath. In North Dakota I'm advised to -- I'm required to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please?
(Witness sworn.)

Page 34

JUDGE WAHL: Mr. Durick.
MR. DURICK: Thank you.
WARREN R. FISCHER,
being first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. DURICK:
Q. I'm going to mark as Exhibit P5 the direct testimony of Mr. Fischer, which is Docket No. 52, and I'm going to mark as Exhibit P6 the reply -- excuse me -- the rebuttal testimony of Mr. Fischer, which is 62 on the docket.
Mr. Fischer, I'm showing you what has been marked as Exhibit No. P7, and that has been identified as Exhibit WRF-1 to your direct testimony, and I'm going to mark as Exhibit P8 what is marked as Exhibit WRF-2 to your direct testimony, and P6 is going to be WRF-3 to your -- not P6. I'm sorry.
JUDGE WAHL: No, no. P9.
Q. (MR. DURICK CONTINUING) P9. And I'm going to mark as Exhibit P10 Exhibit WRF-4 to your direct testimony. I would ask if you would look at those exhibits and tell me whether I have correctly identified them.

Page 35

A. They are correctly identified.
Q. And you have, I take it, reviewed your direct testimony and rebuttal testimony which has been filed in this particular action.
A. I have reviewed it.
Q. And I'd like to ask you if that direct and rebuttal testimony is your testimony under oath here this morning. If those questions were asked, would your responses be the same?
A. They would be the same.
MR. DURICK: We'll pass this witness, Your Honor.
JUDGE WAHL: Are you going to offer your exhibits, Mr. Durick?
MR. DURICK: Yes, and I'd offer the exhibits.
JUDGE WAHL: P7 through 10, inclusive?
MR. DURICK: Yes.
JUDGE WAHL: All right. Mr. Negaard, do you have those exhibits or do you need to look at them?
MR. NEGAARD: If I have counsel's assurance that those are the same exhibits that were filed with prefiled testimony, we would have no objection.

Page 36

MR. DURICK: Within the realm of human error, I would represent that they are the same. They're certainly meant to be the same.
MR. NEGAARD: I have no objection, Your Honor.
JUDGE WAHL: Exhibits P7 through P10, inclusive, are each received. Anything -- no, I'm sorry. You did pass the witness, Mr. Durick. Mr. Negaard, cross-exam.
COMMISSIONER WEFALD: I have a question, please.
JUDGE WAHL: Commissioner Wefald.
COMMISSIONER WEFALD: Yes. I have the testimony. If you could go more slowly through the specific exhibits, though, that you're asking the Commission to refer to, that would be helpful, because we have a whole --
MR. DURICK: Certainly.
COMMISSIONER WEFALD: We have quite a pile of exhibits here and I need to know which ones I'm supposed to be referring to.
MR. DURICK: WRF-1 would be Exhibit P7. WRF-2 would be Exhibit P8. WRF-3 would be Exhibit 9. And WRF-4 would be Exhibit 10.
COMMISSIONER WEFALD: Thank you. And

Page 37

those WRF-1, 2 and 3 and 4, are they attached to the December 21, 2005, direct testimony?
MR. DURICK: Direct testimony, yes, Commissioner Wefald.
COMMISSIONER WEFALD: Thank you.
JUDGE WAHL: Anything further, Commissioner Wefald?
COMMISSIONER WEFALD: No. That helps me. Thank you.
JUDGE WAHL: Mr. Negaard, when you're ready.

CROSS-EXAMINATION

BY MR. NEGAARD:
Q. Good morning, Mr. Fischer.
A. Good morning.
Q. It's my understanding that you're not testifying today that you have computed a discount rate specific to this particular exchange or application; is that correct?
A. I'm sorry. Your question was whether or not I computed a discount rate that's specific to Devils Lake?
Q. Yes.
A. No, I have not.
Q. And you propounded some discovery in this

Page 38

matter and you received the information you had requested; is that correct?
A. Eventually we did, but not all the information we initially requested.
Q. Okay. But you did get the information that you had requested prior to filing testimony in this case; is that correct?
A. Yes, we did receive the information that we had mutually agreed upon would be acceptable to both parties.
Q. And as far as you know, at this point there's no outstanding issues with respect to anything you've asked for that you didn't receive?
A. Yes, there's no further issues.
MR. NEGAARD: Thank you. I have nothing further.
JUDGE WAHL: Mr. Binek.
MR. BINEK: No questions at this time.
JUDGE WAHL: Questions from the Commission, please. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:
Q. I do have one. If the Commission were to terminate the 251(f) exemption in this proceeding, then in any subsequent interconnection discussions

Page 39

between the two companies, is that the point at which you would anticipate discussions about pricing of those elements that are to be resold? Is that where that would happen?
A. I think it should occur no later than that discussion and that there should be no delay in implementing a certain pricing in terms of the conclusion of some sort of negotiation period. I think the Commission can set an interim rate subject to true-up after that period of time has elapsed.
Q. In setting a pricing, though, it's not an insignificant-type proceeding, is it? I haven't sat through a lot of them, but I have the most recent Qwest UNE case where you're trying to calculate TELRIC-type rates, and I know before that some of the initial interconnection disputes that this Commission heard, which was prior to my time, they weren't small proceedings, either. How much precedent do you believe the Commission has to build on to be able to do something, the two parties negotiating to get something rather quickly resolved as opposed to a more protracted-type proceeding from your experiences? Because we are dealing with a company we haven't dealt with before

Page 40

and certainly have a totally different cost structure than, say, Qwest.
A. I think because this is limited to resale, a lot of the pricing issues are much more limited. You're not dealing with unbundled element networks and all of the other issues that surround -- really determining what correct rates for each one of those elements. When dealing with total service resale, I think you can adopt an existing rate, let's say, for Qwest that's currently in effect subject to true-up or you can pick something lower, and what you'll find is, at least from financial impact that we've calculated, even if you were to pick a rate that's half of that, the financial impact on the company is going to be significantly less obviously because the discount is that much less and, therefore, its revenue stream will not be as impacted as it might be with a higher discount rate.
Q. But you don't anticipate getting into individual network element pricing?
A. From my understanding, this proceeding is strictly limited to resale, and that's what Midcontinent has requested.
COMMISSIONER CLARK: Thank you. That's

Page 41

all I have.
JUDGE WAHL: Commissioner Wefald.
EXAMINATION
BY COMMISSIONER WEFALD:
Q. I have a question on page 17, table 5.
A. Excuse me. Of my direct testimony?
Q. Yes. I've gone through your tables up to this point in the testimony and I understand them and what the figures represent, and then I come to table 5 and there is a new number. It talks about the potential of what it cost. And I understand the figures that you're using in the first column, 2004 revenue per line, and I understand the figures in 2004 revenue per line subject to resale, and I understand the figures in the line potential revenue loss via resale, but what I don't understand is why the first number, 45.72, under potential avoided cost in that column is different than the potential revenue loss via resale in the previous column, and then you have a number net loss via resale in the last column, which I believe is the potential avoided cost subtracted from the potential revenue loss. It's the only number that is different in those two -- in those last three columns, so if you can explain to me why it is

Page 42

different.
A. Sure. If you give me just a moment here.
Q. Okay.
A. If I can turn you back to the detail within Exhibit WRF-2 or P8, that might help explain where that number comes from.
Q. Okay.
A. Specifically it would be page 3 of 8.
Q. Page 3. It will take me a minute now to find this. Page 3 of 8. I have that.
A. At the very top, the very first line of that particular spreadsheet, it deals with local network access revenue, which is primarily the local exchange revenue as well as other features that are associated with the provision of local service. In the column to the far right that's labeled "note," what I've assumed in this analysis is that with an avoided cost discount percentage, the actual cost savings may not be applicable to services that are considered features, call waiting, caller ID, three-way calling. So we have factored back into the analysis that there would be some true revenue loss from providing those services under total service resale as opposed to local exchange or some of the other services where

Page 43

the avoided costs should mitigate any revenue loss.
Q. All right. So the difference between 49.86 and 45.72 is the fact that there is no cost savings on features?
A. Because -- and that's primarily due to the fact that the costs for providing features is typically very small and that the companies typically have a very large markup on them because they're not considered regulated services.
COMMISSIONER WEFALD: Thank you. All right. That explains that. I have no other questions at this time.
JUDGE WAHL: Commissioner Cramer.
COMMISSIONER CRAMER: None. Thank you.
JUDGE WAHL: Follow up, Mr. Durick.
MR. DURICK: Thank you, Your Honor. I have a few questions.
REDIRECT EXAMINATION
BY MR. DURICK:
Q. Mr. Fischer, in your analysis you made some assumptions that I understand were made when you didn't have exact figures from North Dakota Telephone Company; is that correct?
A. That is correct.
Q. Okay. And were those assumptions based on

Page 44

reasonable estimates from the industry?
A. Yes, they were.
Q. Let me ask you, if you had the exact figures from North Dakota Telephone Company, would that change your opinion that the --
MR. NEGAARD: Your Honor, this is outside the scope of any cross-examination of this witness.
JUDGE WAHL: The objection is overruled. Let me just quickly state for counsel that this is not a trial. I understand the Rules of Evidence apply, no question about that, but that being said, as an administrative hearing, our purpose here is to gather the information, to collect as much information as will conceivably benefit the Commission and its staff. So, accordingly, you will find me rather, shall we say, flexible about the Rules of Evidence. The objection is overruled and, Mr. Durick, you may proceed.
MR. DURICK: Okay.
Q. (MR. DURICK CONTINUING) Let me start over. If you had the exact figures for North Dakota Telephone Company for some of the assumptions that you made in your analysis, in your opinion, would that change your ultimate conclusion that the effect of a resale agreement here would be

Page 45

de minimis as far as its financial impact on North Dakota Telephone Company?
A. No, it would not, and for the simple reason that the absolute dollars that are at risk here are very small to begin with. The Devils Lake exchange is only a small portion of the total company's operations, and the assumptions that we've modeled here, the various penetration rates or assumed discount rates, all point back to the same thing, that the total dollars that are at risk here are very small. So whether you -- the ultimate discount rate that is appropriate for North Dakota Telecom is significantly higher or lower than what we've assumed in our analysis, the absolute financial impact is going to be de minimis.
MR. DURICK: I have no further questions of the witness.
JUDGE WAHL: Mr. Negaard.
RECROSS-EXAMINATION
BY MR. NEGAARD:
Q. Following up on that, you did not try to calculate any companywide discount for North Dakota Telephone that would be appropriate for resale wholesale services, did you?

Page 46

A. I'm sorry. Could you clarify your question, please?
Q. And I'm sorry if I didn't state it well. You did not calculate any companywide discount rate that would be appropriate for North Dakota Telephone for resale wholesale services, did you?
A. We did not calculate a rate specific to North Dakota Telephone.
MR. NEGAARD: I don't have anything further.
JUDGE WAHL: Mr. Binek.
EXAMINATION
BY MR. BINEK:
Q. One clarifying question getting back to Mr. Negaard's question. The calculations that you made were specific to the Devils Lake exchange; is that correct?
A. Yes, the financial calculations we made were specific to the Devils Lake exchange.
MR. BINEK: That's all I have.
JUDGE WAHL: Any further questions from the Commission? If not, Mr. Durick, any followup?
MR. DURICK: No followup, Your Honor.
JUDGE WAHL: All right. Thank you very much, Mr. Fischer.

Page 47

MR. DURICK: Midcontinent would call Mr. Timothy Gates.
JUDGE WAHL: Mr. Gates, as I'm sure you're well aware, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please?
(Witness sworn.)
JUDGE WAHL: Mr. Durick.
MR. DURICK: Thank you, Your Honor.
TIMOTHY GATES,
being first duly sworn, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. DURICK:
Q. For the record, I'm going to mark as Exhibit P11 the direct testimony of Mr. Gates, which occurs at Docket No. 51, and the rebuttal testimony of Mr. Gates as P12, and that appears as

Page 48

Docket No. 60. And, Mr. Gates, I am going to mark as Exhibit No. 13 what has been identified as Exhibit TJG-1 to your direct testimony. I'd ask you just to identify that as the exhibit to your direct testimony.
A. Yes, this is a copy of the exhibit to my testimony.
Q. Very good. And, Mr. Gates, I take it you have reviewed your direct and rebuttal prefiled testimony in this matter.
A. I have.
Q. And if you were asked those questions in your direct and rebuttal testimony today under oath, your answers would be the same?
A. Yes, they would.
MR. DURICK: Thank you. We pass the witness, Your Honor.
JUDGE WAHL: Are you going to offer your exhibits, Mr. Durick?
MR. DURICK: Yes, I'm going to offer the exhibits, Your Honor.
MR. NEGAARD: I'm sorry. And what was the exhibit number for the direct testimony?
JUDGE WAHL: Direct was P11.
MR. DURICK: That's 51 of the docket, and

Page 49

the rebuttal is P12 and it's 60 in the docket.
MR. NEGAARD: Okay. Your Honor, we do have an objection based upon the lines of Mr. Gates' testimony. The basis for that, Your Honor, is the same objection that Midcontinent made to Mr. Meredith's reply testimony. Mr. Gates' testimony beginning at page 4 begins a discussion prefaced with, "I'm not a lawyer, but this is what the law says." Mr. Meredith responded to this discussion in his reply testimony and Midcontinent asked to have Mr. Meredith's testimony stricken from the record.
Your Honor, before we get to Mr. Meredith's testimony, it's important that this issue be resolved because if Mr. Meredith can't testify what the law says, Mr. Gates, likewise, should not be able to testify what the law is. And we would ask that those portions of Mr. Gates' testimony be stricken from the record because he's not an attorney. And might I point the Court to Rule 702, North Dakota Rules of Evidence, testimony by experts. The witness has said that he's not an expert, he's not an attorney, yet goes on to testify what he believes Congress meant or said when it passed certain portions of the '96

Page 50

Telecommunications Act. We'd ask it be stricken on those grounds, Your Honor. And if the Court rules that way, we can get line and page number as a cite for those particular quotes from this witness.
MR. DURICK: Your Honor, Mr. Harrington will address that issue.
JUDGE WAHL: Mr. Harrington.
MR. HARRINGTON: First, I don't think that it's appropriate to rule on the motion until we're given the exact line and page numbers because it's particularly significant to know what they are first. I don't think it's appropriate to make a motion without identifying particular portions that should be stricken. That's what we did in our motion. We identified specific page and line numbers.
That said, if I understand the line and page numbers that are being proposed to be stricken at this point, there's a significant distinction between Mr. Gates' testimony and the testimony of Mr. Meredith. Mr. Gates is quoting language from the statute and language from orders of the FCC. For instance, on page 6 from lines 117 to 135, that consists almost entirely of quotations from the FCC and those are purely descriptive of what was done,

Page 51

and that's typical of what's in Mr. Gates' testimony.
Mr. Meredith, by contrast, does not merely quote statutory provisions, but proposes a specific interpretation without quoting anything else. He specifically describes what he believes is the correct interaction between Section 251(f), a provision concerning scheduling, and Section 252 of the Communications Act, which concerns arbitrations and negotiations. That's a much different situation from what you find in Mr. Gates' testimony. That distinction is quite significant. Mr. Gates is merely reporting facts that are easily verifiable. Mr. Meredith is proposing interpretations which are outside the scope of his expertise as he describes it himself.
One other thing I think I should say, to the extent that our motion to strike is denied, we have an expectation that we'll be able to cross-examine Mr. Meredith directly on what he has said, and we've not expected there should be any objections permitted on the grounds that he's not a lawyer.
JUDGE WAHL: Your response -- do I take it, Mr. Harrington, you're addressing, also, NDTC's

Page 52

response to Midcontinent's motion?
MR. HARRINGTON: Yes. My understanding is that you had hoped to deal with both at the same time.
MR. NEGAARD: Your Honor, if they insist on line and page number, page 7, line 139 through 150, the witness talks about what Congress meant when it passed the 1996 Telecommunications Act. This particular witness was not a member of Congress at the time, he's not an attorney. For him to testify that this is what Congress meant when it passed a particular act is equally as offensive as the testimony being complained of by Midcontinent. And, again, page 8, line 170, he talks about the facts and the law on the issues.
COMMISSIONER WEFALD: Is this on the January 16th or on the --
JUDGE WAHL: December 21st, 2005.
COMMISSIONER WEFALD: 21. Thank you. It would help to distinguish between the two as you're going through.
MR. NEGAARD: I apologize. It's Mr. Gates' direct testimony filed December 21st, 2005, line -- as I indicated, page 8, line 170 and again page 10 on line 215, Mr. Gates says "Congress

Page 53

wanted and expected." Again, this witness -- the same offensive type of testimony that's being complained of by Midcontinent. This particular witness wasn't a member of Congress. He talks about the Act's goal on line 218 and 219. So there are four lines on page 10 of that direct testimony.

On page 12, line 255, this witness, "Yes. The Act and the FCC's local competition order contemplates" and then goes on and talks about that through line 257. So in response to the objection that we weren't articulate enough in page number and line number, that's our response, Your Honor.

MR. HARRINGTON: Your Honor --

JUDGE WAHL: All right. Counsel, the objection is overruled. That is, North Dakota Telephone Company's objection to the testimony of Timothy J. Gates is overruled. The motion by Midcontinent Communications to strike certain testimony of a witness who will be later called to testify on behalf of NDTC is denied.

The reasons, just briefly for the record, for my rulings is that I read both the motion and the testimony objected to, that is, the motion of Midcontinent and the testimony of Mr. Meredith

Page 54

objected to. I had from NDTC its response to that motion and the reference to the testimony of Mr. Gates which it now objects to. I've read that. I've read the Alaska case. I read parts of the code. It seems to me that the law and technology are intertwined and interconnected in these cases. I think it's hard to consider the law without the technology and without its -- I agree, I think it was NDTC pointed out -- its practical application.

So I think the testimony of the expert witnesses in terms of the law -- not for its interpretation, but for its application -- is relevant and permissible. Second, the Public Service Commission is an agency of experts in itself with expert staff. I think it's unlikely that erroneous expert testimony as to the application of the law will mislead the Commission or its staff. Finally, for the third reason for the denial of the objection -- or the overruling of the objection and the denial of the motion is, as I have said, this is an administrative hearing, and although the Rules of Evidence are certainly applicable, they should be applied flexibly with the idea of bringing in as much evidence as can be reasonably gathered and as reasonably relevant for

Page 55

the consideration of the agency and for the record for the courts on appeal.

Counsel -- Mr. Negaard, anything further for the record with regard to your objection?

MR. NEGAARD: Nothing, Your Honor.

JUDGE WAHL: Mr. Harrington, anything further for the record with regard to your motion?

MR. HARRINGTON: Not at this time, Your Honor.

JUDGE WAHL: All right. Okay. Mr. Negaard, you have not otherwise responded to Exhibits -- I'm sorry -- to Exhibit P13?

MR. NEGAARD: Your Honor, I argued the motion. I appreciate your time. Mr. Moorman is going to handle the cross-examination and the exhibits on this witness.

JUDGE WAHL: But I don't take it you were objecting to P13.

MR. NEGAARD: No, Your Honor, we're not.

JUDGE WAHL: All right. So Exhibit P13 is received. Mr. Moorman, when you're ready.

MR. MOORMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MOORMAN:

Q. Mr. Gates, my name is Tom Moorman. I'll

Page 56

be cross-examining you this morning.

A. Good morning.

Q. Good morning. How are you?

A. Good. Thank you.

Q. Mr. Gates, I just want to make sure I understand your background. Do you have a degree in economics?

A. I have a master's degree from Willamette University and it had economics courses, but it is not a master's of economics.

Q. So your response is you do not -- do you have a degree in economics?

A. I guess the answer technically would be no.

Q. To the best of your knowledge, has Midcontinent ever requested Section 251(b)(1) retail resale of NDTC?

MR. DURICK: I guess I would object, Your Honor, at this point. It's beyond the scope of the direct and I don't know that this witness would have any knowledge of that, so on foundation and outside the scope of the direct.

JUDGE WAHL: Goes to the weight of his testimony, doesn't it, Mr. Durick? Mr. Moorman?

MR. MOORMAN: Well, it goes to his

Page 57

testimony. He also talks about the various levels of interconnection obligations in his testimony. I can find that cite.

JUDGE WAHL: The objection is overruled. You may proceed.

Q. (MR. MOORMAN CONTINUING) To the best of your knowledge.

A. I don't know. I would defer that to Miss Lohnes.

Q. Were you ever a United States Representative at the time or during the passage of the 1996 revisions to the Communications Act of 1934, as amended?

A. No.

Q. Were you ever a U.S. Senator during that same time period when Congress was reviewing the 1996 and ultimately passing the 1996 revisions to the Communications Act of 1934, as amended?

A. No, I was not.

Q. To the best of your knowledge, do resellers typically brand the service they resell of another ILEC, for example, in their own name?

A. Are we talking just generally --

Q. Yes.

A. -- resellers? It could be long distance

Page 58

or any sort of resale even commodities?

Q. Let's get specific. Local resale. Does a resale -- reseller typically brand that service in their own name?

A. Sure.

Q. And assuming for sake of argument that Midcontinent resells NDTC's service, to the best of your knowledge, will Midcontinent be branding that local service in its own name?

A. I don't know what the intentions of the company are with respect to that service, but -- I guess I would have to defer that.

Q. To the best of your knowledge, would it also be true that Midcontinent would be telling customers that the local dial tone service would be provided by North Dakota Telephone Company?

A. I don't know what the company is going to say to its customers. I think that's probably something that they will decide and determine if and when they get approval from this Commission to provide service in Devils Lake, but I don't have any information about their business plans.

Q. Turning to your rebuttal testimony, if you would, for just one moment. On page 3 -- and I apologize if my line numbers are different from

Page 59

yours, it could be a function of PDF or when I printed it out.

A. Well, the good news is I've numbered all the lines sequentially, so hopefully that avoids that problem.

Q. Very good. But at lines 66 to 68, you state, and I quote, Indeed, Mr. Dircks stated at page one of his testimony that, quote, NDTC understands fully that advancing competition has been stated to be a public interest objective. Is that what you stated on those lines in your testimony?

A. Yes, it is.

Q. Mr. Gates, were you referring to Mr. Dircks' testimony at page 1, lines 21 to 22, when you were quoting?

A. I don't have his testimony with me, but if you could show me, I would be happy to look at it.

MR. MOORMAN: May I approach the witness, Your Honor?

JUDGE WAHL: You may.

Q. (MR. MOORMAN CONTINUING) Let me reask you the question, if I could. Were you referring when you stated -- on lines 66 through 68 you had a quote from Mr. Dircks' testimony that stated, "NDTC

Page 60

understands fully that advancing competition has been stated to be a public interest objective." Is that the same line that you find in the document before you, which is Mr. Dircks' prefiled testimony, on page 1, lines 21 to 22?

A. Yes, it is.

Q. And, Mr. Gates, doesn't Mr. Dircks go on to state, and I'm looking at lines 23 through -- 23, page 1, to top of page 2, line 2, that in addition to the line that you quoted, Mr. Dircks states, NDTC does not quarrel with the objective provided the competition is fair and that other public interest objectives are not made second class citizens to such competition"? Is that what he states?

A. That's what it states, but I believe the company's actions belie the statement, but that's a correct quote.

Q. On your rebuttal testimony -- I just want to make sure that I understand your testimony today -- on lines 85 to 90, which was on my page 4, your statements on page 86 through 90 are all caveated by the statement, "While I have no specific insight into NDTC's operations"; is that correct?

A. Yes. You said page, but you meant line;

Page 61

correct?
Q. Page 4. I'm sorry. If I wasn't specific, page 4 --
A. Yes.
Q. -- lines 85 through 90.
A. And the qualification that I made? I'm sorry.
Q. Your observations on 86 -- lines 86 through 90 are all subject to the general observation you made or statement, "While I have no specific insight into NDTC's operations"; is that a correct reading of your testimony?
A. Yes, it is.
Q. Mr. Gates, you were here this morning when Mr. Fischer was on the stand; correct?
A. Yes, I was.
Q. To the best of your knowledge, has the North Dakota Commission ever established a wholesale resale discount percentage for NDTC?
A. Not for NDTC, but certainly for Qwest. We went through those proceedings and we've certainly done it dozens and dozens of times all over the country, so it's not a new process.
Q. So for North Dakota you were familiar that they've established it for Qwest?

Page 62

A. Yes.
Q. Has -- to the best of your knowledge then, has the North Dakota Commission ever established a wholesale resale discount rate for the North Dakota Telephone Company's Devils Lake exchange?
A. No, I don't believe it has. It would be a simple matter, but they haven't done it yet.
MR. MOORMAN: I have nothing further at this time.
JUDGE WAHL: Mr. Binek.
MR. BINEK: I don't believe I have any questions. We have no questions.
JUDGE WAHL: Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have one. If in setting wholesale retail rates, how would you approach doing that differently for a company like NDTC, which is now North Dakota's only fully tariffed and rate-of-return regulated company versus, say, a Qwest, who is price capped by statute or, you know, carriers that are -- I guess most carriers probably around the country are price capped today. Approaching that, how would you do it differently?
A. I don't think, Mr. Chairman, that the fact

Page 63

that they're regulated one way or another would make any difference in the rules. The FCC rules, 51.607, specifically identifies the USOA accounts that are to be considered in making that calculation, and the formula Mr. Fischer has already put in place. It would just be a simple matter of changing out some of the inputs if we find that the actual NDTC inputs are different.
Q. So those are tracked in the same accounts, whether it's a price-capped company --
A. Yes.
Q. -- or a rate-of-return company, either federally or state?
A. Yes.
COMMISSIONER CLARK: Thank you. That's all I have.
JUDGE WAHL: Commissioner Wefald.

EXAMINATION

BY COMMISSIONER WEFALD:

Q. On the bottom of page 19 is where Midcontinent addresses the public interest issue that the Commission needs to consider in this case, and this is page 19 on the December 21, 2005, testimony. First, can you tell me, is this the only place where you address the public interest

Page 64

issue in your testimony, or will I find other public interest testimony in other parts of your testimony, as well? This is the only place I spotted it, but I'm just wondering if I missed something.
A. I think it's sprinkled throughout, Commissioner, and it's in my rebuttable and I believe it may be referenced generally in the testimonies of the other witnesses because I think it's a commonly held belief that competition is good for society and good for consumers. But if I could, initially you mentioned that the Commission must consider the public interest issues. I think the Commission should, but according to the standard that we have in the statute and in your notice of hearing, public interest really is not addressed other than perhaps to reference universal service, which I think is hugely a public interest issue. But I agree with you personally and professionally that public interest is key to your decisionmaking process, and I do believe that the public interest will benefit from this competition even though it's only total service resale. But this is the focus in my testimony where I address it directly, but I think there are other references

Page 65

to that, the benefits and the efficiencies and those other kind of intangible benefits to the public interest.

Q. The main one that you identify in that section that I just referred to at the bottom of page 19 and the top of page 20 is, "The most obvious benefit of competition -- even from resale -- is the availability of alternative offerings for consumers."

A. Yes.

Q. Did you provide any other additional information, did you say, in your rebuttal about that issue?

A. Yes. If you look at page 3 of my rebuttal, there on lines, say, 55 through 59, I talk about the fact that North Dakota Tel would prefer a delay until it's ready to compete, but, of course, that isn't the standard that this Commission is reviewing. And I believe that it would be a mistake to deny customers the benefits of competition simply because the incumbent wants to prepare even more for the advent of competition. For instance, Your Honor, the RBOCs, the Regional Bell Operating Companies, didn't have ten years to prepare for competition and they seem

Page 66

to have done quite well in the industry. And I just think it's time for consumers everywhere, including Devils Lake, to have an alternative choice, even if it's just total service resale, so the service quality is the same and a lot of the features will be the same necessarily since they will be reselling the North Dakota Tel service. At least consumers have the opportunity to exercise a choice, and I think that will be beneficial for lots of reasons that I discuss in my testimony, and I talk further about the benefits of competition on this page.

Q. In terms of the -- indirectly in your testimony and in some others there has been kind of the size of the companies. Describe the size of Midcontinent in comparison to the size of North Dakota Telephone Company.

A. I could try to do that. I think I tried in my direct right in the beginning.

Q. All right. Why don't you point me to where that is.

A. Let me show you where that is. On page 3 of my direct --

Q. Mm-hmm.

A. -- which I guess is document 51, I note

Page 67

that Midcontinent is a diversified company and it serves more than 200 communities in North and South Dakota. I looked at a service territory map of the two states --

Q. Yes.

A. -- and there were little dots wherever they served, and I was quite impressed that it seemed to cover both states pretty completely. So Midcontinent is investing in North Dakota -- not only reselling, but investing and they have employees and they have a commitment to the state, which is good. And I said the company is over 60 years old.

I looked on the North Dakota Tel website, which is a great website, I enjoyed it. Today there is a picture of a little boy with a big fish, and it's very local, very good, very informative. And there is a history there and it talks about the various acquisitions and mergers, but I don't have a feeling of the relative size in terms of revenues or customers.

Q. Between the two companies?

A. No, I don't.

Q. Do you think there's any relevance for the Commission looking at that?

Page 68

A. Not really, because, after all, North Dakota Tel is the incumbent, they're established, they have their customer relationships, and this is total service resale. So in essence Midcontinent will be doing the retailing function for North Dakota Tel. So the harm is de minimis, as Mr. Fischer showed --

Q. Yes.

A. -- in materials of revenues and customer impact. The benefits are significant, but the impact on North Dakota Tel is de minimis. So the fact that Midcontinent might be bigger -- and I'm not saying it is, I just don't know -- would have no impact on your decision, I don't believe, to either grant or deny the request for termination of the exemption.

COMMISSIONER WEFALD: Thank you.

JUDGE WAHL: Commissioner Cramer.

COMMISSIONER CRAMER: I don't have any.

JUDGE WAHL: Commissioner Clark.

COMMISSIONER CLARK: I do have one.

FURTHER EXAMINATION

BY COMMISSIONER CLARK:

Q. If the termination was -- or if the exemption was terminated and Midcontinent and North

Page 69

Dakota Tel can't come to terms through their own informal discussions about total -- the total wholesale retail rate, what happens then? Is it a 252 proceeding? Is that what it goes to? Or kind of run through, as you understand it, the steps that happen if the termination is granted.

A. Okay. And, again, as we all know, I'm not a lawyer.

Q. Right. We established that.

COMMISSIONER WEFALD: We established that.

THE WITNESS: We established that, haven't we? What I understand is, based on 251(f), if this exemption is lifted, then this Commission has the responsibility to establish a schedule, and I in my testimony suggest that you establish a schedule, whether it's 90 days as we suggest or some other amount of time, require the parties to come in and report to the Commission or its staff on a monthly basis as to the progress. The Rule 51.6-07 identifies all of the accounts that are to be considered in calculating a resale -- or wholesale resale discount, so there's not much of a dispute there. The only dispute would be whether the inputs are accurate.

Page 70

I've been involved in many of those cases. They were usually bigger, though, and included more issues than just the wholesale resale discount. So I think this could be done very efficiently. We have the template already done. Mr. Fischer has that done. Midcontinent could turn that over to North Dakota Tel, they could populate it with their own very specific company-specific information, which could be held in confidence, and we will come up with a number. And we also have a relevant FCC range between 17 and 25 percent. So if this Commission wanted to, it could order the Qwest rate of 16.1 percent on an interim basis or pick a number between 17 and 25 percent based on the FCC's orders, have those discounts in place while we calculate the actual North Dakota Telephone rate subject to refund and true-up. But I don't see this as a complex matter or even a difficult matter. I think we have the template. North Dakota Tel has it, they can review it. It's a spreadsheet. They can see all the assumptions. Just a matter of populating it and hitting enter and they come up with a number.

COMMISSIONER CLARK: That's all I have. Thanks.

Page 71

JUDGE WAHL: Commissioner Wefald.

FURTHER EXAMINATION

BY COMMISSIONER WEFALD:

Q. Is it my understanding that your interpretation of the implementation schedule is based on the fact that when you filed with the Commission this summer and asked for us to determine the rural exemption, that you see the clock starting to tick at that point as far as the interconnection agreement requirement?

A. This is so -- well, yes and no. This is so different from what we usually do in an interconnection case, because in those cases we come in and we're talking about TELRIC rates for UNEs and we identify all those unbundled network elements. We're arguing about the interconnection methods and where the point of interconnection is going to be and who is responsible for the trunks on this side of the POI and who's paying for the trunks on this side of the POI. None of that matters in this case. The only thing we're talking about is total service resale. The interconnection would be very simple -- I don't think that would be a disputed issue -- and the rate is the only thing we really need to come up with. And as far as the

Page 72

timetable?

Q. Yes. Because your timetable you asked for --

A. 90 days.

Q. "The Commission should require North Dakota Telephone Company to develop such an agreement with Midcontinent within 30 days" -- I'm on page 24 of your December 21 testimony -- "and to provide resale within 60 days later, that is within a total of 90 days after the Commission's order in this proceeding." Then we got the information back from North Dakota Telephone Company about their proposed schedule. So I'm just wondering, is yours -- your schedule within 90 days, does it have to do with the interconnection agreement proceeding and are you saying that yours would have started at the -- when you filed the request for the Commission about determining the exemption? Are you determining setting the clock from that date for both of your things? There was referral to that in the North Dakota Telephone Company --

A. Yes.

Q. -- testimony and so I just need to clarify, where did you get your dates? How are you setting up the schedule?

Page 73

A. Thank you. I think that is a point of confusion in the record, and we have completely different perspectives here. I wasn't referring to the interconnection, the 251(c) time frames.
Q. Oh, you weren't?
A. No, Your Honor, I was not. I was referring simply to the actual time required to get resale started between the two companies who agree to set up a resale agreement.
Q. You don't see that you need an interconnection agreement?
A. Only limited to the resale discount and some of the billing issues. You know, a very simple agreement. It's not the 500-, 600-page interconnection agreements that we normally consider. And as for the time frames --
Q. The time frames, yes, that are set up.
A. Mr. Meredith talks about that in his testimony and the lawyers, I'm sure, will talk about those time frames, but that's for an arbitration where the parties haven't reached agreement and go to arbitration, and that time frame, I think, is significantly different than a 251(f) proceeding. Here we're simply asking for you to consider termination of the rural exemption,

Page 74

and in that part of the statute, 251(f), it says once you've made a decision on these issues, after you've made the decision, then you set the schedule. You set the schedule for implementing resale. So once we're done with this hearing and you issue an order, in that order hopefully will be a period of time over which we will implement total service resale in Devils Lake. And when I say "we," excuse me, I mean Midcontinent. So that arbitration time frame does not apply, in my opinion.
COMMISSIONER WEFALD: All right. Thank you.
JUDGE WAHL: Anything further from the Commission?
JUDGE WAHL: Mr. Durick, followup?
MR. HARRINGTON: May we have one moment?
JUDGE WAHL: I'm sorry.
MR. DURICK: I have one question, Your Honor.

REDIRECT EXAMINATION

BY MR. DURICK:
Q. Mr. Gates, I'm referring you to page 4 of your rebuttal testimony, and I'm referring you to there in the context of the question asked by

Page 75

Commissioner Wefald on the public interest aspects of this particular proceeding. And I note there -- I don't think that's been mentioned before, but there you talk about the incentives inherent in competition. Is that something that's also addressed in the public interest?
A. Oh, absolutely. Once you have a competitor in your midst, your whole perspective on your business, of course, changes. And I talk in my testimony about the efficiencies that I believe any company facing competition would try to achieve because you want to drive your costs down and your revenues up. And from North Dakota Tel's perspective, they want to maintain their customer base, they want to keep their rates as high as they can as long as they're just and reasonable as you determine. But if you bring a competitor in, they will probably look forward to someday having a price reduction with respect to that competitor's presence in the market, so they're going to try to reduce their costs so they can maintain their margins for their shareholders or the cooperatives or the holding company, whoever that might be.
So the incentives are excellent. Not only do they reduce their costs, but they try to provide

Page 76

better customer service. And I'm not suggesting that North Dakota Tel isn't providing great service. I'm sure it probably is. But they will have good incentives to do even better because they want their customers to stay with them even in the face of perhaps a rate increase or maybe they'll have new services to offer in the future, such as video in February of 2007, in which case they hope their existing customers will take that service.
So with a competitor in their midst, yeah, the benefits are great and all of those inure to the consumer, because all those things that North Dakota Tel will do, and any other company facing competition, will ultimately benefit consumers by, you know, more efficient provision of service, better customer service, more offerings, reduced prices. All of those things will benefit consumers.
MR. DURICK: Thank you, Your Honor. I have nothing further.
JUDGE WAHL: Mr. Moorman?
MR. MOORMAN: No questions.
JUDGE WAHL: Mr. Binek, anything further?
MR. BINEK: Yes, I do have some questions.

Page 77

EXAMINATION
BY MR. BINEK:
Q. Mr. Gates, you made a comment basically to the effect that North Dakota Telephone Company would like a delay in order to prepare for competition. I think that's basically what you had said.
A. Yes. I wasn't speaking for them. That's kind of my impression of the testimony as I've read it.
Q. If the rural exemption is not lifted and assuming that North Dakota Tel does enter the cable market in February 2007, that would automatically terminate the exemption, of course. How long would you estimate that it would take Midcontinent to enter the telecommunications market under those circumstances?
A. Once the exemption is lifted?
Q. Yes.
A. The timing would be the same. There's a certain amount of time in which the companies need to talk, exchange information, set up billing and other operational situations, but easily within 90 days, assuming the companies cooperate and they both want to achieve this goal, because, again,

Page 78

we're talking about total service resale, not talking about going in there and buying UNEs or unbundled loops or anything like that. It's really just a billing issue.
Q. That leads to my next question. What happens if the companies cannot agree? How is this going to be resolved?
A. That really does require, I believe, a legal interpretation I'm not qualified to provide. I could guess.
Q. You are dealing with an interconnection agreement, aren't you?
A. In essence, yes, a limited one for purposes of just resale. But I don't believe -- I suppose you could end up in a 251(c) type interconnection hearing, but I don't think -- I just would hope that wouldn't happen over just total service resale.
Q. How have other states -- to your knowledge, how have other states handled the implementation issue?
A. The implementation issues have been very simple for total service resale, and I have been involved in many, many proceedings over the last 20 years or so that dealt with resale. Whether we're

Page 79

talking about long distance or local, a very, very simple application, we've been doing it for years, and Midcontinent has experience specifically with this type of application and are very confident they can get it done -- you know, they don't even need 90 days, but certainly within 90 days it could be done.
The problem is if the parties -- if North Dakota Tel doesn't want to do it, then I guess the companies such as Midcontinent have to exercise their legal rights to come to this Commission to kind of force the parties to cooperate, and that could be done through a 251(c) proceeding, which could take an awful long time and a lot of resources.
Q. So you don't really -- if I'm hearing you right, you don't really disagree with what North Dakota Telephone Company has stated in their filings that this matter could go into an arbitration proceeding?
A. I really do disagree with what they are saying. This proceeding can end quickly and we can have total service resale in Devils Lake very, very quickly, certainly within 90 days.
Q. I agree that it could end quickly, but if

Page 80

the parties cannot agree, don't you basically end up in an arbitration situation?
A. I guess if North Dakota Tel chooses to ignore this Commission's order and not implement total service resale, then I would think this Commission could act to enforce its order. I don't think we have to go to arbitration simply because North Dakota Tel ignores this Commission's order. I think this Commission has the authority to enforce it.
Q. Well, let's just say, for example, that North Dakota Tel does not agree with the discount that you propose -- that neither party can agree on a discount rate, how would this Commission be able to arbitrarily set a discount rate when they don't have any evidence presented?
A. Well, I don't think it would be arbitrary in any case. We've already got the model, and the companies can talk about the model if they disagree, but this is something we've been doing since 1996, doing these wholesale discount models, and based on this FCC rule it's very straightforward. So if Midcontinent and North Dakota Tel could not agree on some inputs or they couldn't agree on the final number -- I suggested

Page 81

that the parties report to the Commission monthly on the progress. If we stop making progress, then this Commission could have a one-day hearing for the limited purpose of addressing that model and the inputs and then reach a decision and say, you know, it's not 16.1, it's really 12.2 or some finding, but this Commission can ultimately make that decision. We're talking about accounting numbers and spreadsheets, and we would finish that hearing much quicker than we will finish this hearing.

Q. Are there other states that have terminated a rural exemption and had to determine and implement an implementation schedule?

A. I don't remember an implementation schedule. I know there are some states that have terminated the exemption. I think, for instance, Alaska has in the past, but I don't recall the implementation. But I guess it would be -- excuse me.

Q. I'm sorry. This whole case, does it really boil down to which company gets to be able to offer this -- I forget the term -- three play or something like that?

A. Triple play.

Page 82

Q. -- triple play service in Devils Lake? Is that what it really boils down to, is who can get there first?

A. I'm not certain if that's what this whole case revolves around. It sounds that way when you read Mr. Dircks' testimony. It sounds like he would prefer to wait until they are offering video, and from his perspective he wants to operate, you know, on a level playing field. I hate to use that phrase, we've overused it so much. But I believe that's their position, and I can understand that. But that's not the standard. That's not the standard this Commission has to review in deciding whether to terminate that exemption, but I think that's why we're seeing the push-back, why we don't have an agreement.

MR. BINEK: I have no further questions.

JUDGE WAHL: Any further questions from the Commission? Commissioner Clark.

FURTHER EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have some just following up on Mr. Binek's question. If the purpose of this proceeding is really just a jockeying for timing on entry into each other's markets, doesn't North

Page 83

Dakota Tel under the Act have some ability within its own control to delay that time frame? I mean, just looking at the Act, once the termination would be granted -- the rural termination, then I assume you would have to make a -- Midcontinent would have to make a request to start negotiations and then it's not until at least what, 135 days after that that Midcontinent could even petition the Commission and that would be if North Dakota Tel just on its own decided not to enter into discussions, and then they've got a certain amount of time to respond after that, and then even then the Commission has what, nine months to decide the case.

A. I don't see that schedule. I don't think that schedule applies in this case. We have a termination of the exemption, which you decide, but then the next issue is the implementation timetable. It doesn't say now you start all over again at day one and do negotiations for 135 days and then you have hearings and a final order. It doesn't say that. It says you decide whether or not that is terminated and then you set the implementation schedule for the service.

Now, if Midcontinent was asking for

Page 84

unbundled network elements, interconnection, collocation, TELRIC pricing, you know, all of those things, it might take a long time to get through all of that, and you might need another proceeding to get through some of those difficult issues. But in this case when we're talking about simply lifting the exemption for total service resale, I think you issue your order and then you set the implementation schedule based on how long you think it will take to implement total service resale, not start the clock all over again.

Q. But isn't resale included under 251 interconnection just the same as other -- isn't it just as eligible for 252 arbitration as any other --

A. It is one of those --

Q. -- service under the Act?

A. It is one of those services, yes, so I suppose the answer would be yes, but I don't think we have to go that route.

COMMISSIONER CLARK: That's all the questions I have. Thank you.

JUDGE WAHL: Commissioner Wefald.

Page 85

FURTHER EXAMINATION
BY COMMISSIONER WEFALD:
Q. Let's just set up another scenario here. Okay. My understanding is that it's required to give -- that your company is able automatically to compete when North Dakota Telephone Company starts to offer cable services. Is that correct?
A. Yes, that's my understanding.
Q. They're able to provide telephone service at that time?
A. Yes.
Q. At that -- let's say both companies decided to wait till then. All right. At that moment when North Dakota Telephone Company offers -- makes a cable offering in its community, then would you need to go through the process of establishing a discount rate for -- is it wholesale retail? What is it called?
A. Wholesale discount.
Q. Wholesale discount?
A. Wholesale retail discount.
Q. Wholesale retail discount --
A. Yes.
Q. -- at that time, or are you not required to do that at that time?

Page 86

A. You could at that time if there's a dispute. The companies could agree. Wouldn't that be nice? The companies could agree and avoid all of the arbitration and the litigation.
Q. My question is, does that have to be done regardless of whether we start now to determine what that wholesale -- tell me the correct wording of that again.
A. Wholesale discount.
Q. -- the wholesale discount? Is it a matter of -- at some point that has to happen, whether it happens, let's say, if the -- if the rural exemption is terminated, we would need to address that issue then, or it has to be addressed at the time you would be able to go in without getting the rural exemption. It has to be addressed regardless?
A. Yes, you're absolutely correct, either now or we can wait and do it later, but it has to be addressed, and our position is consumers shouldn't have to wait.
Q. And you would like to have it done because if you have to wait until you're able to go in when they offer competition to have that done, then it could stretch out several more months -- it could

Page 87

stretch out several more months at that point to determine what the wholesale discount is?
A. It could.
Q. And it could have to come to the Commission at that point for a decision?
A. It's possible. If they can't agree, it's very possible.
COMMISSIONER WEFALD: Okay. Thank you.
JUDGE WAHL: Any other questions by the Commission?
COMMISSIONER CRAMER: I have nothing. Thanks.
JUDGE WAHL: Followup, Mr. Durick?
MR. DURICK: Nothing further, Your Honor.
JUDGE WAHL: Mr. Moorman, any followup?
MR. MOORMAN: Nothing further.
JUDGE WAHL: Mr. Binek?
MR. BINEK: Yes. I do have one -- hopefully just one more question.
JUDGE WAHL: I've never, ever heard that to be true when said by a lawyer.
FURTHER EXAMINATION
BY MR. BINEK:
Q. I realize that you're not a lawyer --
COMMISSIONER CRAMER: Or a congressman.

Page 88

Q. (MR. BINEK CONTINUING) -- but when we're talking about the termination of the exemption under 251(f)(1)(b), where the statute talks about -- it says, Upon termination of the exemption, a state commission shall establish an implement schedule for compliance with the request that is consistent in time and manner with commission regulation. What is consistent in time and manner with commission regulations? Commission in this instance referring to the FCC.
A. I don't know.
Q. Would you agree that that's a requirement of the law, that any implement schedule that this Commission would issue has to comply -- has to be consistent in time and manner with FCC regulations under the law?
A. I'm sure that's what it says, so I would agree.
MR. BINEK: Thank you. I have nothing further.
JUDGE WAHL: Anything further from the Commission? Mr. Durick?
MR. DURICK: Nothing further, Your Honor.
JUDGE WAHL: Mr. Moorman?
MR. MOORMAN: Nothing further.

Page 89

JUDGE WAHL: All right. Thank you very much, Mr. Gates.
THE WITNESS: Thank you, Your Honor.
JUDGE WAHL: Commissioner Clark, we're very close to the noon hour. Rather than have -- continue with another witness, would the Commission recess or would the Commission keep going?
COMMISSIONER CLARK: Well, I guess it would depend on where we head next. If it's another long cross-examination, then I would say probably break now. If now is convenient, great. If not, let's press on a little more.
JUDGE WAHL: Mr. Durick.
MR. DURICK: It's convenient because we don't have anything else. We just want to make sure that our offer of Exhibits 1 through 13, I believe, are accepted.
JUDGE WAHL: They were.
MR. DURICK: That's the last witness we have, Your Honor.
JUDGE WAHL: Then I suggest, Commissioner, we recess for lunch. When will the Commission reconvene?
COMMISSIONER CLARK: One o'clock.
JUDGE WAHL: One o'clock. All right.

Page 90

We'll be in recess until one o'clock.
(Noon recess taken at 11:49 a.m. to 1:05 p.m.)
JUDGE WAHL: Let's go back to work. We'll be in session. Mr. Durick, you've rested, I believe.
MR. DURICK: Yes, Your Honor.
JUDGE WAHL: Mr. Negaard, when you're ready.
MR. NEGAARD: Your Honor, we would call Mr. David Dircks to the stand, please.
JUDGE WAHL: All right. Mr. Dircks, if you would just have a seat, be as comfortable as you can. Mr. Dircks, as you have heard me advise previous witnesses, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.
(Witness sworn.)

Page 91

JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Thank you, Your Honor.

DAVID DIRCKS,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEGAARD:

Q. For the record, your name is David Dircks?
A. Yes.
Q. And your address, Mr. Dircks?
A. 2229 12th Avenue, Devils Lake, North Dakota.
Q. Devils Lake. And your occupation?
A. I'm the general manager of North Dakota Telephone Company.
Q. Okay. Previously, Mr. Dircks, on January 9th, we filed in this case, and it's in front of you marked as R1, your prefiled testimony. Is there anything in your testimony that, to your knowledge, is incorrect or any corrections you wish to make at this time?
A. No, sir.
Q. And it's true to the best of your knowledge and belief?
A. Yes.

Page 92

MR. NEGAARD: We would offer Exhibit 1.
JUDGE WAHL: R1 is received pursuant to stipulation of counsel.
Q. (MR. NEGAARD CONTINUING) Then moving on, before you, marked as R2, is a letter dated May 12th, 2005, on behalf of Midcontinent Communications to you as the manager; is that correct?
A. Yes, it is.
Q. It was part of your testimony?
A. Yes.
MR. NEGAARD: We would offer R2.
JUDGE WAHL: Mr. Durick.
MR. DURICK: No objection, Your Honor.
JUDGE WAHL: Exhibit R2 is received.
MR. NEGAARD: And R3, a letter dated June 10th from yourself to Mr. Durick, which was previously included in your testimony, we would offer R3.
MR. DURICK: No objection.
JUDGE WAHL: R3 -- Exhibit R3 is received.
Q. (MR. NEGAARD CONTINUING) R4 before you, Mr. Dircks, is actually a three-page document consisting of a copy of a help wanted ad and two

Page 93

pages of job description that was previously prefiled; is that correct -- R4?
A. Yes.
MR. NEGAARD: We would offer R4.
JUDGE WAHL: Mr. Durick -- or I'm sorry.
MR. DURICK: Mr. Harrington will handle this witness.
MR. HARRINGTON: No objection, Your Honor.
JUDGE WAHL: Excuse me. Exhibit R4 is received.
Q. (MR. NEGAARD CONTINUING) Then R5, Mr. Dircks, in front of you, is that a copy of your newsletter to customers --
A. Yes, it is.
Q. -- from last summer?
MR. NEGAARD: And for the record -- excuse me. I would offer R5.
JUDGE WAHL: Mr. Harrington.
MR. HARRINGTON: No objection.
JUDGE WAHL: Exhibit R5 is received.
MR. NEGAARD: And for the record it should be noted that Mr. Dircks' testimony was previously filed as Docket No. 56.
I have nothing further, Your Honor.
JUDGE WAHL: Mr. Harrington.

Page 94

MR. HARRINGTON: Thank you, Your Honor.
CROSS-EXAMINATION
BY MR. HARRINGTON:
Q. Mr. Dircks, I'm J.G. Harrington. How are you this afternoon?
A. Good.
Q. I would like to start by talking a little bit about North Dakota Telephone. North Dakota Telephone serves Devils Lake, and where else does it serve?
A. We have, I believe, 25 other exchanges. We serve basically in the upper -- north central part of North Dakota.
Q. And what proportion of your lines are in Devils Lake?
A. We have a total of 18,000 access lines, and I believe there's approximately 5,500 in Devils Lake, including the rural.
Q. So a little bit under a third?
A. Yes.
Q. Now, NDTC was formed as the result of an acquisition; is that right?
A. Yes, it was. It was formerly some GTE property --
Q. Right.

Page 95

A. -- that was purchased by three cooperatives that surround that territory.
Q. And then it grew again in 1996; is that correct?
A. Yes, it did. We acquired some more access lines from Qwest.
Q. So the owners of your company thought that it was a good idea to expand the number of lines they served; they were doing well with what they had?
A. Yeah, it was a good business decision I thought, yeah.
Q. Let's talk a little bit about the owners. Your owners are Polar Communications, Dakota Central Telecom and United; is that right?
A. Yes.
Q. How many lines do those companies serve, more or less? I know you won't have an exact number.
A. I don't really have any idea.
Q. Are they individually larger than North Dakota Telephone?
A. They're smaller, but together they're probably larger than North Dakota Telephone Company.

Page 96

Q. Do you have any idea of their combined revenues?
A. No, I don't.
Q. Do any of those companies offer video today?
A. I believe two of the owner companies do -- I know for sure. I'm not sure of the third.
MR. HARRINGTON: Mr. Durick is going to pass out what I think will be marked as P --
JUDGE WAHL: P14, I'm guessing.
MR. HARRINGTON: P14, that is correct. Yes. I'm sorry. I was trying to find my count and I lost track.
Q. (MR. HARRINGTON CONTINUING) This exhibit is web pages from each of the owners of North Dakota Telecom. Mr. Dircks, would you review the document that's been marked P14, please? Just let me know when you're done.
A. I'm done.
Q. Does this document refresh your recollection as to which of the companies that own NDTC offer video?
A. North Dakota Central, yes.
Q. And Polar?
A. Polar, yes.

Page 97

Q. And United?
A. United was one I was not sure of.
Q. But this document -- in reviewing this document, do you believe now that United does offer video?
A. I did not see that on there.
Q. I refer you to the page --
A. Okay. Excuse me. Pardon me. I do see it, yes.
MR. HARRINGTON: We'd like to offer this document into evidence as an exhibit.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Your Honor, if I could. Mr. Dircks, do you have any personal knowledge of this information in these documents?
THE WITNESS: No.
MR. NEGAARD: Your Honor, I don't know what foundation there is for introducing this document.
JUDGE WAHL: Well, Mr. Harrington, he's made a point, I think. Do you have any response?
MR. HARRINGTON: Yes. I think that first it confirms things he said as to two of the companies already and this is publicly available information. I think that it's appropriate

Page 98

foundation certainly for at least two of the companies and he's conceded that he believes based on -- on the basis of reading this, his recollection is the third company also offers video.
MR. NEGAARD: This is the type of information, Your Honor, that should have been filed with rebuttal testimony, and we're seeing it for the first time here. This witness has no personal knowledge of it and there's no foundation for it.
JUDGE WAHL: Well, except it's two things. For the record, the objection is overruled. My reasons for the ruling are as follows: First, it's almost self-evident -- almost, and I -- you know, without getting in the technicalities. Secondly, I'll receive -- the Commission will receive the exhibit for the limited purpose of considering the testimony of Mr. Dircks. That is not for the information contained in the exhibit except as acknowledged by Mr. Dircks. Is that clear, Mr. Harrington?
MR. HARRINGTON: Yes.
JUDGE WAHL: Mr. Negaard, anything further for the record?

Page 99

MR. NEGAARD: No, Your Honor.
JUDGE WAHL: All right. With that caveat, the objection is overruled. Exhibit P14 is received.
MR. HARRINGTON: Thank you, Your Honor.
Q. (MR. HARRINGTON CONTINUING) How long have you been at North Dakota Telephone, Mr. Dircks?
A. I've been there since 1993 when the company started.
Q. And before that where did you work?
A. I worked a number of years for Contel of Minnesota and Contel of North Dakota before GTE purchased the property.
Q. And how long have you been the general manager?
A. Since 1993.
Q. Since the start?
A. Since the start, yes.
Q. I'd like to talk a little bit about the financial situation of your company. Now, my understanding from your deposition is that the financials of North Dakota Telephone are consolidated with a company called TPC, which is a holding company.
A. Yes.

Page 100

Q. That's correct? TPC's only asset is North Dakota Telephone Company's stock; is that right?
A. I believe so, yes.
Q. So the financials of TPC are essentially the financials of North Dakota Telephone?
A. To the best of my knowledge, they are, yes.
Q. Okay. That's fine. Now, in your deposition you agreed that the equity in North Dakota Telephone -- and I'm going to refer to North Dakota Telephone and TPC as sort of the same thing here given what you've said -- has grown in the last four years from about 21.6 million to about 29.2 million.
A. That sounds right.
Q. Would you like to look at your deposition to confirm that? We have a copy.
A. I've got a copy up here.
Q. That would be page 21, lines -- I'm sorry, page 22, lines 7 through 11.
A. 7 through 11. Did you say page 22?
Q. Page 22 from the copy I have. We do appear to have some pagination changes from place to place in documents.
A. My page 22, those lines are talking about

Page 101

cell service.
Q. I apologize. We'll take a moment to find out why the pages don't match up. Why don't you skip ahead about four pages, the page on which the phrase "no verbal response" appears and it's right after that. Have you found that?
MR. NEGAARD: I'm sorry. Do we have a page number?
MR. DURICK: I found it on page 22 on yours, but it's not 22 on his.
MR. HARRINGTON: The copy he has apparently has different pagination.
JUDGE WAHL: Mr. Harrington, why don't you just take your copy up to the witness and show it to him, please.
THE WITNESS: I've got the section you're referring to.
MR. HARRINGTON: I'm going to have other questions relating to the deposition so I'll provide him with a copy.
JUDGE WAHL: Sure. Just take it and show it to the witness.
THE WITNESS: 22?
MR. HARRINGTON: Yes.
Q. (MR. HARRINGTON CONTINUING) We're on page

Page 102

22, lines -- starting at line 7.
A. Line 7?
Q. Right. The question I asked you, going back to this, was, is it consistent with your recollection that the equity has grown to 29.2 million approximately from 21.6 million approximately between 2000 and 2004?
A. Yes.
Q. Okay. Are you familiar with your company's annual reports to the Commission in a general way?
A. I don't understand specifically, but I know what you're referring to, yes.
Q. And over the years those reports have shown the profits that North Dakota Telephone has made; is that correct?
A. That's correct.
MR. HARRINGTON: I have here copies of the annual reports for the last five years, and I'm going to ask -- I'm sorry -- the last four years, and I'm going to ask for the purposes of this proceeding that the Commission take official notice of them. I do not intend to enter them as exhibits.
JUDGE WAHL: Official notice will be

Page 103

taken.
Q. (MR. HARRINGTON CONTINUING) Is it -- subject to check, is it fair to say that over the last five years those reports have shown profits in the range of 3.4 to 4.3 million dollars on an annual basis? Is that approximately the right range?
A. Net profit or --
Q. Net profit, the bottom line.
A. I would have to look at them. If that's what it says in there, that's what it says.
Q. So North Dakota Telephone is a profitable company?
A. Yes, we are.
Q. I'd like to talk a little bit about competition today for North Dakota Telephone. Do you have any competition from other providers of landline telephone service today?
A. Landline?
Q. Yeah. I'll ask about wireless next.
A. No.
Q. Has any other party asked North Dakota Telephone for interconnection or for resale on the landline side?
A. No, they haven't.

Page 104

Q. Let's talk a little bit about the wireless side. Who are your wireless competitors?
A. Well, whichever ones are there. I'm not sure. Verizon is one of them. Cellular One would be another. Those are the only two that I'm familiar with.
Q. Do you know of any customers that you've lost to wireless service?
A. Yeah. I know of some, yes.
Q. Number in the tens, the hundreds?
A. They would be just in a few. Ten or less that I personally know about. I wouldn't know about the rest of them.
Q. Does North Dakota Telephone sell wireless service?
A. We resell Verizon service through one of our owner companies, United Telephone.
Q. About how many customers do you have in Devils Lake for that?
A. I do not know.
Q. To your knowledge, does Midcontinent offer wireless service?
A. Midcontinent?
Q. Yes.
A. I don't know if they do.

Page 105

Q. Okay. One of the things you talk about in your testimony at some length is the notion of a level playing field. I guess I'd like to start with an understanding of what you mean by that. You use the phrase at one point "fair competition." What's your definition of "fair competition"?
A. I think I probably discussed that in my testimony, but also it was in some of your testimony about a level playing field. That's really all I'm asking for.
Q. I'd like you to summarize what you think it means.
A. Give me a minute to think about that.
Q. Sure.
A. I guess just the basic summary of that would be that -- using the example we have here today is that, you know, we currently compete with Midco for high-speed Internet services, and to me a level playing field would be that we would be able to offer video, too, at the same time that Midco would like to offer telephone service.
Q. Now, is it reasonable to say, in your view, that every competitor has advantages and disadvantages?

Page 106

A. I wouldn't say it would be reasonable, but I guess that's why we're here discussing it.
Q. You don't think it's true that every competitor in a marketplace has some advantages and some disadvantages compared to its competitors?
A. Would you say that again?
Q. Okay. In a competitive market, is it your view that each party in that market, each competitor, has some advantages and some disadvantages as compared to the other parties in the market?
A. If I understand the question right, yes.
Q. So in a fair market you don't expect every competitor to be exactly positioned the same way, do you?
A. I'm not sure I understand the question. In a fair market they can't be exactly, I'm sure, but fair is fair.
Q. So do you think it's a fair market, for instance, if you have some company like Mercedes that offers expensive, very well-made automobiles that have very good safety records whereas Chevrolet might offer models that are less expensive, not as luxurious, perhaps don't have as good safety records? Is that a fair market?

Page 107

A. I don't know the answer to that.
Q. Is there something unfair about that market, in your view?
A. I don't know anything about the automobile industry.
Q. Okay. In your testimony on page 9, you say that you expect to be in the video market sometime after February 2007. In your view of what's a fair market, would it be fair for Midcontinent to have to wait until after you've entered the video business to be able to start to provide telephone service?
A. Would it be fair for Midcontinent to wait till after we're in the video business?
Q. Mm-hmm.
A. No.
Q. Thank you. I'd like to turn to some of the sort of specific issues about what constitutes a level playing field. The first thing I would like to talk about is access to capital. Who do you get your capital from? Who do you borrow money from when you need to borrow money?
A. We borrow our money from CoBank.
Q. And what's CoBank?
A. It's a -- mostly an agricultural lending

Page 108

firm, I think. They're headquartered in Denver, Colorado.
Q. Is it a cooperative?
A. Yes.
Q. Is North Dakota Telephone a member of that cooperative?
A. Yes.
Q. Now, as a cooperative, doesn't CoBank return dividends back down to its members?
A. They do.
Q. And doesn't that have the effect of lowering your cost of capital?
A. If they pay a dividend, it would, yes.
Q. Have they paid dividends recently?
A. I did not verify that before I came down here, but they have paid dividends.
Q. They have paid dividends in the past?
A. Yes, they have.
Q. And if the business is run reasonably well, you would have an expectation they would continue to pay dividends?
A. Yes.
Q. That's, after all, one of the advantages of a cooperative to its member; right?
A. Yes.

Page 109

Q. Is North Dakota Telephone eligible for financing from the Rural Utilities Service?
A. We're eligible, yes. We would be eligible.
Q. Can you describe that program for me?
A. No, I can't. We looked at three different agencies when we were going to borrow some money for this fiber project. They were one of them, and we chose not to use them.
Q. Because CoBank was more advantageous?
A. We've dealt with them since the conception of the company and we felt it was more advantageous, yes.
Q. But you're familiar with the Rural Utilities Service obviously?
A. Yes.
Q. That's a government program?
A. Yes.
Q. And it provides financing to rural telephone companies among others?
A. Mm-hmm. Yes.
Q. Is that financing guaranteed by the government?
A. I believe it is.
Q. Do you happen to know if cable companies

Page 110

have access to Rural Utilities Service capital?
A. No, I don't.
Q. And during your deposition one of the other entities that was mentioned was the Rural Telephone Finance Cooperative. Did you investigate using that, as well, for your funding?
A. Yes, we did.
Q. And it's a coop like CoBank?
A. I'm not familiar with RTFC.
Q. But you did look at them?
A. Yes.
Q. And they were available to you?
A. They were.
Q. And so the reason you chose CoBank was the relationship or because it was financially more advantageous than the other choices, or something else?
A. Both.
Q. Both. So it was both financially advantageous and a relationship you already had?
A. Yes.
Q. I'd like to turn then to another issue about level playing field, which is universal service and the moneys you get from universal service funding. And we're going to mark Exhibit

Page 111

P15. This exhibit consists of two parts, the first part for which -- is actually the second two pages, but which I'm going to ask the Commission to take official notice, is a report generated by the universal service website that the FCC runs that shows the amounts of money that North Dakota Telephone has received over the last several years. The first page of the exhibit is an Excel spreadsheet that takes those numbers and adds them up.
JUDGE WAHL: I haven't heard it offered.
MR. HARRINGTON: I've asked for the Commission to take official notice of the second and third pages as a report from the FCC website. That report was generated by putting in the identification number for North Dakota Telephone Company into a database which then produces the amounts of money they've received.
MR. NEGAARD: Your Honor, I'm beginning to wonder who the witness is here. Again, Your Honor, this hearing was premised on filing testimony, direct testimony, reply testimony, rebuttal testimony. In the interest of fairness, Your Honor, this obviously has been planned. This was not thought up during the lunch hour. We were

Page 112

given absolutely no notice that there was going to be any of these exhibits used. Your order specifically said, Your Honor, that all exhibits had to be filed by last Monday, and today we're being inundated by more exhibits. We've been given no notice of these exhibits. There's no foundation for these exhibits. And now Mr. Harrington is testifying in an attempt to establish some kind of foundation. Your Honor, I insist that you follow the order that you issued that said there would be no late-filed exhibits.
MR. HARRINGTON: Let me --
JUDGE WAHL: Was that my order? Did I --
MR. NEGAARD: Yes, Your Honor, it was.
JUDGE WAHL: Did the prehearing order specifically say that all exhibits had to be filed? That's not my recollection, Mr. Negaard. Now, I may be wrong.
Well, Mr. Harrington, I refer you to the second page of my order, which I think was substantially taken from the proposed -- or the agreement of the parties, but that order says that all testimony and exhibits served and filed for the hearing pursuant to this order shall be served and filed electronically.

Page 113

MR. NEGAARD: Your Honor, if I might add, also at the bottom of page 1, ordered that no other or further filing of testimony or exhibits prior to the hearing shall be permitted except as the Commission may allow. Your Honor, I don't think that this is following the spirit and intent of your order that we be given notice of these exhibits prior to the hearing so we could have an orderly hearing.

JUDGE WAHL: Well, for the record and to clarify, Mr. Negaard, this is my order, but it was also, as my recollection serves me, substantially the agreement of the parties. That is, I may have changed the wording, but I thought this was essentially the stipulation of the parties. In any event, Mr. Harrington, it does say no other or further filing of testimony or exhibits.

MR. HARRINGTON: Prior to the hearing.

JUDGE WAHL: Prior to the hearing, that's true. All right. Go ahead.

MR. HARRINGTON: Your Honor, that is exactly what I was going to say, prior to the hearing. There's nothing in there that prohibits the admission of exhibits at the hearing. And in this particular case what we're asking the

Page 114

Commission to do is take official notice of FCC materials that we could have put into the record in a brief, they're official records of the FCC, and then a demonstrative cover page that adds the numbers up. If Mr. Negaard wants to object to them being admitted to this hearing, there's no reason we could not continue to put them in the brief because they're official records that they could acquire themselves just as easily as we did.

MR. NEGAARD: Your Honor, there's no foundation for this document other than the testimony.

MR. HARRINGTON: I'm going to be cross-examining Mr. Dircks on this. If you would like me to wait to ask for admission until after -- I did not actually ask for admission yet. I merely said -- noted that I wanted official notice taken.

MR. NEGAARD: The only foundation for this, Your Honor, is total hearsay. The only foundation for this is the testimony of one of the attorneys for Midcontinent. Your Honor, if we would have been given some notice on this -- I don't think it follows the spirit and the intent of your prehearing order, Your Honor.

MR. HARRINGTON: Perhaps I could ask Mr.

Page 115

Dircks some questions without at the moment reference to the exhibit and we'll see where we go from there.

JUDGE WAHL: Just a moment, please. Mr. Negaard, let me say that it was not and is not my recollection that no other exhibits could be offered at the hearing for cross-examination. That's not -- that's not my recollection of the purpose of this order and I don't -- as I re-read the prehearing order now, I don't read that to exclude the filing of -- or the offering of additional evidence -- of additional exhibits for cross-examination or for, what it really amounts to, rebuttal in the circumstances, I think. So that part of the objection is overruled.

Mr. Harrington, I have a little trouble with foundation. What I essentially have is your say-so that this information is what it is. How is the Commission to take official notice of this information? It does so on your say-so that this is a compilation or this is taken from the website.

MR. HARRINGTON: Your Honor, this is reproducible. All someone has to do is go to the universal service website and put in the

Page 116

appropriate code for North Dakota Telephone Company and this information appears. It is part of the official records of the FCC. I planned to ask Mr. Dircks some questions about the extent to which -- and I still will regardless of the admission -- about the extent to which North Dakota Telephone receives universal service funding, and I think that will establish that North Dakota Telephone receives a substantial amount of universal service funding and that these numbers are consistent with that.

JUDGE WAHL: All right. Mr. Harrington, I accept your representation that this information is reproducible and that it is what you represent it is, namely, the official records of the FCC. And on that basis Exhibit P15 is received. Mr. Negaard, anything further for the record?

MR. NEGAARD: Yes, Your Honor. Even government documents require self -- they require authentication in order to be introduced under the North Dakota rules.

JUDGE WAHL: Show me. I don't know that that's -- that's about 803, about 8, maybe?

MR. NEGAARD: 901. I'm sorry, Your Honor. 902, domestic documents produced under

Page 117

seal, document bearing a seal. In this case if it's a U.S. Government document, if it bears the official seal of the United States Government, it's admissible.

JUDGE WAHL: Yeah, but it's not a document, Mr. Negaard. It's information. It's public information that is readily available. It is available simply by using this URL, I take it.

MR. NEGAARD: Your Honor, recognizing that you are probably not going to rule in my favor since I can see that's where you're leaning, let me just say that I believe it lacks foundation and it lacks authentication and my objection can be noted. Thank you.

JUDGE WAHL: Mr. Negaard, you may be right, as a matter of fact, but that being said, I think that -- I think -- I'm going to allow the Commission to take official notice. I'm going to accept P15. I'm going to receive P15 as the exhibit. You may proceed, Mr. Harrington.

MR. HARRINGTON: Thank you, Your Honor.

Q. (MR. HARRINGTON CONTINUING) Mr. Dircks, does North Dakota Telephone Company receive universal service funding from the FCC or the FCC programs?

Page 118

A. Yes, it does.

Q. Is it correct to say that you receive interstate common line support?

A. Yes.

Q. Is it also correct to say you receive support on the local switching support program?

A. Yes.

Q. It appears you don't receive funding for high cost loops; is that correct?

A. Not on a constant basis, no, according to this report.

Q. And do you have an idea yourself of roughly how much money you get from the universal service program -- high cost program on an annual basis?

A. I believe in 2005 we received approximately 1.7 million dollars from these programs.

Q. Is that reasonably consistent with what you've received in other years, within a fair approximation?

A. I only looked at the last two years, but I could say that would be reasonable.

Q. You've never gotten, say, 10 million dollars?

Page 119

A. No.

Q. No such luck.

A. No.

Q. Now, you testified earlier that the company as a whole has about 18,000 lines.

A. Yes.

Q. So roughly speaking, and I understand this number is not exactly right, you're getting in federal universal service support in any given year somewhere between 95 and $105 per line? Is that a fair number?

A. Just calculating in my mind, yes.

Q. I was going to say a hundred, but I realized the numbers didn't match quite. How much do you charge for residential service in Devils Lake right now on a monthly basis?

A. I believe it's $13.12 -- will be.

Q. Will be. That reflects a rate increase that was recently approved?

A. No.

Q. It does not reflect the 27?

A. No. We rebalanced our rates, so all the rates in all of our towns will be the same. That's what it will be, is 13.12.

Q. Devils Lake prior to the rebalancing, what

Page 120

was the rate?

A. It was close to that.

Q. More or less?

A. I don't remember. I think it was a 27-cent difference, if I recall it right, less -- or more.

Q. Previously it was 27 cents less, so a slight rate increase. So 13.12 a month over a year is somewhere in the $160 annual revenue per residential line per year, is that right, give or take?

A. I don't have a calculator. It sounds good.

Q. So if you're getting somewhere between 95 and $110 per line from the federal universal service program and 160, you're getting close to two-thirds as much per line from universal service as you do from your own customers; is that right?

A. Sounds right.

Q. Okay. Now, if Midcontinent offers resale service in Devils Lake, to your knowledge, will Midcontinent be eligible for any universal service money of its own?

A. They would not be unless they started offering facility-based service.

Page 121

Q. I'd like to turn to access revenues. Now, your company receives a significant portion of its revenue from access charges; is that correct?
A. Yes.
Q. And those come from long distance carriers who are paying either to originate or terminate calls in North Dakota Telephone's territory?
A. That's the majority of it, yes.
Q. Roughly what percentage of your revenues come from access?
A. Without looking, I would say probably 60 percent.
Q. That's what I had. That would have been about 10 million out of your 16 million dollars in revenues last year?
A. I don't have a financial report with me, but it sounds close.
Q. What's your permanent access rate for intrastate traffic?
A. I'm not sure.
Q. Do you have a ballpark? I won't hold you to an exact tenth-of-a-cent amount.
A. Intrastate?
Q. Intrastate.
A. I believe it's nine cents. I don't know.

Page 122

That's just a guess.
Q. Interstate, is that higher or lower?
A. It would be lower.
Q. And you charge subscriber line charge on top of your residential service rate; right?
A. Yes.
Q. And what's that?
A. That's different for business and residence. I think residential now is six-something.
Q. Business is more?
A. Yes.
Q. About?
A. Some of these numbers escape me up here, but I think it's in the $9 range.
Q. And if Midcontinent gets to resell your services, Midcontinent will -- will Midcontinent be able to have access to any of those access revenues of yours, or will those still be North Dakota Telephone's revenues?
A. They would still be ours.
Q. Now, for the level playing field discussion I'm interested in what you think ought to be considered by the Commission in that analysis. Is it your view that the only services

Page 123

that are relevant in this proceeding are North Dakota Telephone's regulated services?
A. Yes.
Q. So you wouldn't include any other service that North Dakota Telephone offers or might offer in the future as relevant to this conversation?
A. My understanding is it's just our tariffed services.
Q. So for the purposes of your level playing field questions then, you think Midcontinent's video services are relevant?
A. I'm not sure I understand.
Q. Well, in your testimony you argued that we have a level playing field only to the extent that you're able to offer the same services Midcontinent offers. My question is, for the purposes of that particular argument, are you saying that Midcontinent's video services are relevant to the question of whether there's a level playing field?
A. I don't know how to answer that.
Q. So are you saying something different in your testimony then?
A. Point out my testimony to me, would you? I'm confused.
Q. Oh, let's find it. Let's look -- let's

Page 124

look at page 3 of your testimony, starting at line 20. Now, at that point you argue -- and continue on to page 4. At that point you say that you do not believe it would be fair for Midcontinent to be able to offer triple play a year before you're offering the same thing yourself.
A. Yes.
Q. So for the purposes of this discussion you think it's then relevant to consider video services that are not regulated by the Commission?
A. I'm just at a loss for words.
Q. That's fine.
A. I don't know if I'm not understanding your question or what.
Q. Well, let me try again one more time.
A. Okay.
Q. You've just told me that you don't think it's appropriate for the Commission to consider any services that are not regulated services. That was your cross-examination testimony.
A. Yes.
Q. However, in your direct testimony -- your reply testimony, you said that you thought that the Commission ought to consider the ability of your company to be in the video marketplace as a factor

Page 125

in determining when the rural exemption should be lifted.
A. Yes.
Q. So for the purposes of your reply testimony, you indicated that the Commission should consider when the availability of video service and a competition in video service; is that correct?
A. Yes.
Q. So would you care to revisit the answer to the question about whether the Commission should consider nonregulated services?
A. No. I'm not familiar with the law, I guess, and I'm confused on my understanding of this, but -- and I guess based on advice from our legal counsel, I'm just trying to exercise my rights of what's involved in this case by law.
Q. I see. Let's move on to one other service. On page 5 of your testimony, and this is at lines 4, 5 and 6, you indicate you do not offer long distance service at North Dakota Telephone Company; is that correct?
A. We offer it through a company that we're part-owners in, North Dakota Long Distance.
Q. Who else owns the company?
A. There's ten companies in the state

Page 126

involved in that. We're one of them.
Q. How are the revenues from that company allocated to its owners?
A. I believe it's by -- I have to verify this for sure, but based on percentage of ownership.
Q. And percentage of ownership was determined in what way; do you know?
A. Whatever -- however the board set it up. Every company invested the same amount of money, so the ownership was an equal percentage.
Q. Do each of the companies have roughly the same number of lines?
A. No. There's some that have more than others.
Q. To your knowledge, does your company fall in the low end, the middle, the high end of that group?
A. As far as ownership or --
Q. In terms of number of lines.
A. Oh, number of lines?
Q. Yeah.
A. Probably in the higher end.
MR. HARRINGTON: We're marking Exhibit P16, if I'm still counting correctly. I'm not asking to admit it yet. This exhibit is a page

Page 127

from the North Dakota Telephone website.
MR. BINEK: What exhibit is this?
MR. HARRINGTON: This is P16 if I've counted correctly. Judge Wahl seems to believe I have.
Q. (MR. HARRINGTON CONTINUING) Now, I've just represented this is a page from the North Dakota Telephone website, but I'm going to ask you, Mr. Dircks, is this a copy of the page from the North Dakota Telephone website?
A. It looks like it.
Q. I'd like you to direct your attention to what would be, if we were on the Internet, the bottom left of the page, which is probably going to show up on the second -- the bottom of the second page and going on to the top of the third page on the left-hand side on that handout. Have you found that, Mr. Dircks?
A. Yeah.
Q. This is a description of what are called the 1st Rate plans; is that correct?
A. Yes.
Q. What is included in the 1st Rate plans?
A. Would you like me to read this?
Q. You can read it or you can tell me from

Page 128

your own knowledge as the general manager. Either way.
A. Okay. Just have different rates for different amounts of long distance minutes at a certain price.
Q. So these are plans that include both local and long distance service, or are they just long distance?
A. Long distance. The first one includes voice mail, I guess.
Q. Is there anything on that page that says that it's offered -- that these plans are offered by any company other than North Dakota Telephone?
A. I don't believe it does.
MR. HARRINGTON: I'd like to offer this for admission.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Your Honor, I'm not going to belabor the point. If I could just have a standing objection based on your earlier order, Your Honor, that's all I want.
JUDGE WAHL: You may, but with the understanding, Mr. Negaard, you should not hesitate to make your record. Exhibit P16 is received. The objection is overruled. Exhibit P16 is received.

Page 129

Q. (MR. HARRINGTON CONTINUING) I'd like to move on to one of the other claims you make concerning the notion of a level playing field, and on page 10 of your testimony, and this is at lines 8 through 12, you discuss the requirement that NDTC provide notice of price changes.
A. I haven't found it, but I know what you're talking about.
Q. I'll give you a moment to take a look at it.
A. Page what?
Q. Page 10, lines -- the question is line 6, the response goes through line 12.
A. Okay.
Q. You're referring to the statutory requirements that your company provide -- I think it's 20 days notice on price increases; is that correct? You just understand that you're required by law to provide those notices?
A. To the Commission?
Q. To the Commission.
A. On our regulated services?
Q. Right.
A. I don't know that it's 20 days.
Q. Okay. That's fine. Now, that doesn't

Page 130

apply to your Internet service, does it?
A. No.
Q. You don't believe -- do you believe it will apply to your video service?
A. No.
Q. Does it apply to your wireless resale service?
A. No.
JUDGE WAHL: Mr. Harrington, the question and the answer was really not clear for the record. You don't believe that it will apply to your video service and the answer was no?
MR. HARRINGTON: No. That's right.
Q. (MR. HARRINGTON CONTINUING) You don't believe that the requirement you provide notice will apply to your video services?
A. It's not regulated.
Q. And the same thing is true of your wireless services that you offered by resale and your Internet service?
A. Yes.
Q. So you can change the prices on any of those services without notice to anyone except, of course, your customer?
A. That's the way we understand the tariff,

Page 131

yes.
Q. And can you bundle those unregulated services with your regulated services?
A. We could.
Q. And one more question in this area. Are you aware that Midcontinent also is subject to the requirement to provide notice of its price changes?
A. To?
Q. Notice of its price changes for regulated services.
A. No.
Q. I'd like to turn to North Dakota Telephone Company's plans to enter the video market. When did you start considering entering the video market?
A. I think my testimony states that we started looking at replacing our facilities in Devils Lake because they were old and depreciated out, and I think in 2004 we started looking at a way to either do that by copper or video since we were going to do it anyway.
Q. That was about when in 2004? The first part of the year, spring, summer, fall?
A. I would say fall, probably. I just don't recall.

Page 132

Q. Back to your copper plant. It's depreciated. It's still functional, though; right? Telephone service still works in Devils Lake?
A. Yes.
Q. And you're providing DSL over that plant now, aren't you?
A. Mm-hmm. Yes, we are.
Q. So you don't actually need to upgrade to continue to provide reliable phone service or high-speed Internet to your customers?
A. Well, we wouldn't have had to, but, as I said, the plant is aging, probably would cause some future problems, and we just made a decision that fiber would be the way to go because it has more capacity and it's less maintenance for the future.
Q. But today everything works fine?
A. Today it does.
Q. Now, your testimony says on page 9, and this is line 4, that you finalized your video upgrade -- I'm sorry -- your fiber upgrade plans in early 2005.
A. Which page again? Excuse me.
Q. Page 9, line 4.
A. Yes.

Page 133

Q. Can you be a little more precise?
A. Line 4?
Q. Yes.
A. I think we studied the difference between fiber and copper and then plans were finalized in early 2005. It was probably the February or March time frame that the board approved to go ahead with the fiber project.
Q. Okay. Now, during your deposition you mentioned a study that was done on the question of whether NDTC should provide video programming. And before I go any further, let me say, so Mr. Negaard is aware of this, I do not intend to ask any questions at all about the particular data in the study. I know that was objected to during the deposition and we're not going to go there. But I want to talk to you a little bit about that study.
A. Where is --
Q. You talk about it starting -- actually it's discussed starting on page 11, going to page 12 of your deposition.
A. 11 and 12.
Q. Mr. Negaard indicates during the deposition that such a study was prepared and indicates it's not going to be made available, and

Page 134

we're not asking for it now, but I have a couple questions about it.
A. Okay. I haven't found it yet.
Q. Okay. It's -- the discussion starts on page 11, line 21 of your deposition and continues on to page 12, line 13 is the part that's actually relevant. There's further discussion of why it won't be made available, but that's not what I'm asking about.
A. Other than we felt it was highly proprietary, is that what you mean?
Q. We're not going to ask you about the numbers in the study.
A. Okay.
Q. But I'd like to know when it was started. When did you commission the study?
A. Well, I think I previously stated that it was done sometime in the fall, so I suppose in the -- I don't know exactly sure when.
Q. Okay.
A. Sometime earlier that year.
Q. And when was that study completed? Was it completed prior to the decision in February or March of 2005 to do the upgrade?
A. Well, we did the study in order to take it

Page 135

to the board to get it approved, so, yes, I guess.
Q. And did that study conclude that it was desirable for NDTC to enter the video market?
A. No.
Q. It concluded it was not desirable?
A. It didn't conclude that. It just concluded that we decided to go with the fiber rather than the copper cable.
Q. Now, the study is described in the deposition as concerning whether or not you should be involved in the video market in competition with Midcontinent. You're saying that the description in the deposition is incorrect?
A. We're talking again about that same page?
Q. Yes. Let me read to you. I think it would be helpful.
A. Why don't you point it out to me.
Q. This is page 11, line 21, question by Mr. Durick, "The fifth item is a copy of any studies done by North Dakota Telephone Company or consultants on the subject of NDTC providing video programming in competition with Midcontinent." Then I'm going to skip to line 6 on page 12 because the rest of it's not that relevant. Mr. Negaard: "There is -- there is such a study." So my

Page 136

question is, are you telling me that that study that's referred to there concluded it was not desirable to enter video or that it was desirable to enter video?
A. Well, I'm confused. There must be two different studies. I think the study we're talking about there is what the effect on the company would be if they lost 10 percent of their access lines to a facilities-based service. The video -- the study here was just to --
Q. Mr. Dircks, I believe that that's not -- that there were in fact two studies and you're correct in that regard. But I would refer you to just before that, it's page 10 on the copy I have, but in fact I think it's probably going to be -- it may be page 10 on the copy you have, as well. And Mr. Negaard says there's a study on facilities-based competition, not on wholesale resale and we believe it's highly proprietary, confidential. So during your deposition there were two different studies discussed, is that right, and one was on -- one of those studies, as you've just said, was on the effect of facilities-based competition?
A. Right.

Page 137

Q. The second study was on competition in video programming provided by your company with Midcontinent; is that correct?
A. Yes, I guess it is.
Q. That second study you just told me was completed before the decision to do the fiber upgrade. That's correct?
A. Say it again.
Q. You just told me about five minutes ago that the study on video programming, the second study, was completed prior to the decision to do the upgrade with fiber. Is that correct?
A. I guess the study was done to determine which way we were going to go as far as rebuilding our facilities in Devils Lake.
Q. And you concluded that you were going to do fiber?
A. We talked about it, yes.
Q. You're doing it now; right?
A. No.
Q. You're building fiber now?
A. Oh, we're building fiber now, yes.
Q. Okay. So in conjunction with the conclusion you were going to go to fiber, you had the study that was done on the question of video

Page 138

competition in Devils Lake? Yes?
MR. NEGAARD: Your Honor, if I could, the language in the deposition is my language. I think part of the confusion here is I'm not intimately familiar with this study, Your Honor. It was at a deposition. I made an objection about that study. I'm not sure that there were two studies. I believe that the study is the same study and that was referenced in the deposition, and I think that the witness is referring to two studies, one on the effect of a facilities-based competitor, the other one being the study whether or not they should replace their copper lines with fiber. And I think that's where some of the confusion is. I think at the deposition I referenced and objected twice. I think it's the same study that was referenced.
MR. HARRINGTON: Mr. Negaard, that's interesting. Not entirely clear to me how that confusion is possible in light of what the deposition says, but I'm going to move on.
JUDGE WAHL: Well, it's not at all clear to me, either, and I'm sure to nobody else, Mr. Harrington, so let's --
MR. HARRINGTON: I'm going to move on, Your Honor.

Page 139

JUDGE WAHL: Well, either that or let's get to the issue that you're -- the question that you're seeking, the witness either knows the answer or he doesn't and let's forget about which study it is.
MR. HARRINGTON: I'm not going to ask about the study anymore.
JUDGE WAHL: All right. Fair enough.
Q. (MR. HARRINGTON CONTINUING) I'm going to move on and just ask a question as it relates to the timing of all of that, which is, was the ability to offer video over the fiber upgrade part of the decision process in February or March of last year?
A. It carried some weight, yes.
Q. So the board concluded that it was desirable to be able to offer video in March or February of 2005?
A. We were building our infrastructure so that we could offer video sometime in the future. We made that decision, yes.
Q. Let's talk about the upgrade, itself, now. What's the capacity of your upgraded plant going to be compared to current capacity besides much more?

Page 140

A. I'm not a technical expert. I don't know if I could answer that. I think everyone knows the band width has much more -- or copper has much more band width and capacity than copper does.
Q. You meant fiber has more capacity?
A. Or fiber, yes. Excuse me.
Q. How many video channels do you think you will be able to offer over that, ballpark?
A. I don't know.
Q. More than 50?
A. I have no idea.
Q. Do you have a sense of what percentage of your capacity will be required for telephone service?
A. No, I don't.
Q. How about for high-speed Internet?
A. Again, I'm relying on technical experts that work for our company --
Q. Okay.
A. -- to say that -- make recommendations as that's the right decision.
Q. What technical steps do you know of that you'll have to take to offer video once you've built the fiber upgrade?
A. Basically I just know that we have to

Page 141

first obtain a franchise from the city and then enter into some agreements with the content providers.
Q. Mm-hmm.
A. And there's probably numerous other things that I'm not aware of.
Q. The fiber, itself, won't have to be changed in any way once you decide to offer video, will it?
A. The fiber won't, no.
Q. When you were making your purchase decisions to decide what to buy to upgrade the plant to fiber, you included the -- did you include the possibility of providing video as one of your factors in those decisions?
A. I think you just asked me that. Would you say that again?
Q. When you were deciding what to buy, specifically when you went out to make contracts with suppliers, was the ability to offer video part of what you asked about when you were talking to those suppliers?
A. For just the fiber?
Q. For the upgrade.
A. To actually put in fiber and cut it over,

Page 142

there wouldn't need to be any other equipment involved other than what the customer currently has on the side of their house, and, yes, we did go out and talk to providers about some of the equipment necessary to provide video.
Q. So, for instance, when you talked to Allied Telesyn who, I believe, is your supplier, you talked to them about whether they would be able to -- whether the facilities you bought from them to put in your network would be able to provide video?
A. Yes.
Q. I would like to talk a little bit about the cost of the fiber upgrade. You estimated during your deposition the cost would be about 11.5 million dollars. Is that still correct?
A. Actually, it came in a little lower than that.
Q. That's good.
A. It's close, yes.
Q. And that's to upgrade all of the Devils Lake area and some outlying areas; is that right?
A. Yes.
Q. But the Devils Lake exchange essentially?
A. Yes.

Page 143

Q. How are you paying for it again?
A. Part of it we're financing internally and the rest we're borrowing from CoBank.
Q. I'm going to ask some questions about how you're allocating the cost of this fiber upgrade on your books. What percentage of the upgrade are you going to allocate -- have you allocated to telephone service?
A. You know, I'm not a real expert on finances, but if it's just for regulated telephone service, it would be a hundred percent allocated.
Q. But the question is, what percentage of your fiber upgrade are you allocating to telephone service?
A. I don't know.
Q. As the general manager, are you involved in decisions about cost allocation and spending money?
A. Yes.
Q. Are you responsible for making sure the company is appropriately profitable and understands what its costs and services it offers are?
A. Should be, yes.
Q. And you don't know what percentage of the cost is being allocated to telephone service?

Page 144

A. Not for sure, no.
Q. Was that allocation done prior to the time that you started the upgrade?
A. No, I don't believe so.
Q. Is the same thing true that you do not know what percentage of those costs have been allocated to high-speed Internet?
A. I just don't know. I can find out. I'm just not sure.
Q. That's all right. I'd like to talk a little bit about the part of your testimony where you discuss public statements on your entry into video. And for this purpose I would like to refer you to -- let me get the exhibit number correctly -- P4. Do you have a copy of Plaintiff's 4 up there -- Petitioner's 4? While we're at it, we should get 3 and 5, as well, because we'll be referring to them a little later.
JUDGE WAHL: That's Fischer's direct.
MR. HARRINGTON: I'm sorry. Maybe I have the numbers wrong. I'm sorry. It's only P3 and P4.
Q. (MR. HARRINGTON CONTINUING) Now, during your testimony you indicated that there had been no public statements from your company indicating you

Page 145

were offering video prior to your testimony. Is that correct? Is that correct?
A. Yes.
Q. I'd like you to turn to the first page of Exhibit P4.
A. Mm-hmm.
Q. And there's an article with the headline, "Company keeps equalization plan, cans long-distance offer." I'd like you to read the sentence that starts at the very bottom of that article and it continues on to the next page. Would you read it out loud, please?
A. "Dircks said equalizing"? --
Q. Yes.
A. -- "rates will even enable the company to bundle services and compete with cable providers".
Q. What did you mean when you said that?
A. I meant that our rates were all different at one time and that's why we went through the rate equalization.
Q. Right. What about the part where you say you'll enable the company to bundle services and compete with cable providers? What does that refer to?
A. I guess in that statement I was referring

Page 146

to local service and high-speed Internet, bundling those together.
Q. I see. Do you think it's effective -- in light of your other testimony, do you think it's effective for you to compete with cable operators just with telephone and high-speed Internet?
A. I guess I don't have any experience on that.
Q. Okay. I'd like you to turn now to what is the fourth page of Exhibit P4, which is the web page, press release from Allied Telesyn.
A. Mm-hmm.
Q. And I would like you to read the first sentence up to where it says "Devils Lake exchange," please, out loud.
A. First sentence starting with Allied Telesyn?
Q. Yes.
A. "Allied Telesyn, a global provider of secure Ethernet/IP access solutions and an industry leader in the deployment of IP Triple Play networks over copper and fiber infrastructure, today announced that its IP Triple Play solution has been chosen by North Dakota Telephone Company for a multi" -- is that far enough?

Page 147

Q. I was going to have you read up to Devils Lake.
A. Okay. -- "for a multi-million dollar fiber-to-the-premise overbuild of its Devils Lake exchange."
Q. In that sentence, the term "Triple Play," what does that refer to?
A. Triple Play in the industry standard, I believe, is voice, video, and data.
Q. Is that what you said in your testimony? Is that what you said in your testimony, Mr. Dircks?
A. Which page are you looking at?
Q. Let's look at page 4, lines 2 to 3.
A. I did say Triple Play, yes.
Q. And what did you describe the Triple Play as in your testimony?
A. I don't see where I did describe it.
Q. Why don't you read line 3 through the word "video."
A. "Triple play of voice, information, and video."
Q. So that was the understanding of Triple Play that you had when you wrote your testimony? Yes?

Page 148

A. Yes.
Q. All right. I'd like you to turn now in that exhibit to the second to the last page.
A. P4?
Q. Of P4, yes. And I'd like you to read the second sentence of -- let me ask first, this is a letter that you sent to customers where you're starting to do your fiber rebuild to tell them that you plan to put fiber on their premises; is that correct?
A. Looks like it, yes.
Q. And you didn't actually sign it, but your name is at the bottom?
A. Yes.
Q. I'd like you to read the second sentence of the second first full paragraph, please, begins "By converting."
A. The second sentence of the --
Q. The paragraph begins, "NDTC's fiber to the premise."
A. Mm-hmm.
Q. I would like you to read the second sentence of that paragraph, please.
A. "By converting to this type of network, NDTC will be able to deliver telephone, Internet

Page 149

and new products in the future all on one fiber optic line."
Q. Right. What new products?
A. Video would be one of them.
Q. All right. I'd like you to turn to the last page of that exhibit, which is the ad for the account executive job, and I'd like you to read the second sentence of that ad, please.
A. Starting with "a substantial degree"?
Q. A substantial degree.
A. "A substantial degree of knowledge and experience in all aspects of telephony with emphasis in voice, data, IP" --
Q. Continue.
A. -- "computer based networking, video, surveillance and security cameras, et cetera, is desired."
Q. So video was part of the job description in the ad for that job?
A. It's something we had in there as desired.
Q. Okay.
A. I don't think it's any secret that we're not going to be offering video. Hopefully when you hire someone, it will be for quite a number of

Page 150

years.
Q. When was that ad placed?
A. July 5th, 2005, it says.
Q. That's the closing date; right? That's the date by which you had to have the resumes in?
A. Yes.
Q. In your testimony you attach to that a job description that is dated -- was approved in May of 2005. So would the ad have been run roughly contemporaneously with the approval of the job description?
A. I'm going to have to look at the description because --
Q. Because if you look at the top of the job description, it has a prepared date and an approved date and they're both May '05.
A. Do I have this in here?
Q. It's in your testimony, Mr. Dircks. Are those dates accurate?
A. Apparently it looks like we revised it and then it was approved that day, yeah, 5-5.
Q. Okay. I'd also like to ask you about other ways you might have of getting into video service. Has North Dakota Telephone considered reselling DirecTV?

Page 151

A. We've looked at it, yes.
Q. But decided not to?
A. Haven't pursued it, no.
Q. How about EchoStar DISH Network?
A. No.
Q. Do you need anybody's permission to do that outside of DirecTV or EchoStar?
A. No.
Q. You don't need a franchise?
A. I don't believe you do with those.
Q. So if you wanted to make video available to your customers today via those mechanisms, you could?
A. We could, yes.
Q. I'd like to move on to Midcontinent's request to you for resale in May of last year, and that is the other exhibit that you were given, which is P3.
A. Mm-hmm.
Q. You indicate in your testimony that you received that letter. That's correct?
A. Yes.
Q. The enclosure in that letter was a draft resale agreement, wasn't it?
A. Yes.

Page 152

Q. Are you aware that the agreement was an agreement for wholesale resale?
A. That's the agreement that's attached here?
Q. Yes.
A. I think I probably did, yes.
Q. Okay. Did you ever read the agreement?
A. I looked through it.
Q. Not closely?
A. No.
JUDGE WAHL: The answer is no?
THE WITNESS: No.
Q. (MR. HARRINGTON CONTINUING) Did anyone else at North Dakota Telephone look at it closely, to your knowledge?
A. I don't believe so.
Q. Did North Dakota Telephone ever send a substantive response to that agreement to Midcontinent saying we don't like this part, we do like this part, or something like that?
A. We sent a letter of clarification.
Q. Now, that letter said you weren't sure if Midcontinent wanted wholesale or retail resale; right?
A. Based on the fact that we have the rural

Page 153

exemption.
Q. And yet the agreement is a wholesale agreement, isn't it?
A. Yes.
Q. Okay. Has NDTC at any point identified any parts of this agreement that it finds objectionable?
A. Never got that far with it.
Q. Now, your other witness in his reply testimony, Mr. Meredith, said Midcontinent has never requested retail resale. That's on page 10 of his testimony. How is that consistent with your testimony?
A. I'm going to have to look at his testimony because I don't know.
Q. Do you have a copy?
A. I don't think so.
Q. I would give you mine except that it has markings that I prefer not to show you.
JUDGE WAHL: I have a copy, Mr. Harrington.
MR. HARRINGTON: Thank you.
MR. DURICK: I've got one here, too, Judge.
JUDGE WAHL: Whichever.

Page 154

MR. HARRINGTON: This is on page 10, lines 3 through 4.
MR. NEGAARD: Whose testimony are we reviewing?
MR. HARRINGTON: Mr. Meredith's.
MR. NEGAARD: Your Honor --
MR. HARRINGTON: Are you asking whether it's appropriate for me to cross on testimony that's not been admitted? We'll stipulate we are not going to object to that testimony.
MR. NEGAARD: If you want to ask Mr. Meredith about his testimony, I believe, Your Honor, that that would be more appropriate to ask Mr. Meredith.
JUDGE WAHL: I don't think that's the question, Mr. Negaard.
MR. HARRINGTON: I'm asking --
JUDGE WAHL: I understand. Proceed.
Q. (MR. HARRINGTON CONTINUING) So, Mr. Dircks, on page 10 of his testimony, Mr. Meredith said Midcontinent has never requested retail resale, on lines 3 and 4. How is that consistent with your testimony where it appears that you thought that Midcontinent was asking for retail resale?

Page 155

A. Well, apparently wholesale. If I understand, retail is the one that's not in the discount.
Q. That's correct.
A. That's what I mean.
Q. I want to turn to the impact of offering resale on NDTC for a moment. During your deposition you indicated that there were no technical issues that would prevent NDTC from offering wholesale resale; is that correct?
A. That's correct.
Q. So once the rural exemption is lifted, all that's needed prior to implementation is an agreement between NDTC and Midcontinent?
A. Yes, to the best of my knowledge.
Q. I'd also like to move on -- I'd now like to move on to the benefits of competition. This is the last thing I'll be asking you about unless something surprises me.
In your testimony you indicate that NDTC provides excellent customer service and that there have been very few complaints against your company. That's on page 1 -- I'm sorry -- page 4, I believe.
A. Okay.

Page 156

Q. Do you know how many complaints were filed against your company at the North Dakota Commission from September 2004 through August 2005?
A. I did check, and I think within the last five years we had 15.
Q. Would you be surprised to know that the correct number is 94 for that one year?
A. I would be surprised. I'm talking about service-related issues.
Q. Oh, okay. So what would the other complaints be about? Would they have been about your rate increase?
A. They could have been.
Q. So if you think -- if customers were concerned enough to complain about rate increases, do you think they might find competition beneficial?
A. I'm not saying that competition isn't good. I've had nothing against that. I'm not afraid of it. We haven't raised our rates since 1984.
Q. Mr. Dircks, do you think your customers would find competition beneficial?
A. I think they would, yes.
Q. Do you think competition helps make you

Page 157

more responsive to customer needs?
A. I'll just answer that by saying, again, I'm not against competition. I think we're very responsive to our customers' needs now.
Q. I understand, Mr. Dircks. I would like you, though, to answer the question.
A. Say it again.
Q. Do you think competition makes you more responsive to customer needs?
A. I think it could, yes.
Q. Do you think choice is better for customers?
A. Choice is good.
Q. To your knowledge, how did choice affect long distance customers in the prices they pay?
A. It's pretty common knowledge that it reduced the cost of long distance once the competition was introduced.
MR. HARRINGTON: Thank you. Your Honor, I have nothing further.
JUDGE WAHL: Mr. Binek.
MR. BINEK: An awful lot has been covered here.
COMMISSIONER WEFALD: May we take a five-minute break?

Page 158

JUDGE WAHL: We may. We'll be in recess for --
THE WITNESS: Why don't you let me finish first.
JUDGE WAHL: -- at least five minutes. We won't start without you, Commissioner Wefald.
COMMISSIONER WEFALD: All right. Thank you.
(Recess taken at 2:37 p.m. to 2:48 p.m.)
JUDGE WAHL: You're on, Mr. Binek.
MR. BINEK: Thank you. Hopefully I just have a few questions.

EXAMINATION

BY MR. BINEK:
Q. I'm going to address the issues that were set forth in the Commission's hearing notice. First of all, the first issue is whether the request of Midcontinent is unduly economically burdensome. And I just would like clarification as to what your position is on that issue. Do you believe that it's economically burdensome for the request to be granted?
A. I can't argue that it's economically burdensome.
Q. So it is not economically burdensome?

Page 159

A. Not now, but --
Q. Okay. Is the request of Midcontinent technically feasible?
A. I believe it is, yes.
Q. And the third one is whether the request of Midcontinent is consistent with 47 USC Section 254, which is the universal service part of it. Do you believe that if the request is granted, that there will be any major effect on universal service?
A. Should not be any short-term effect, no.
Q. Now, getting to -- the fourth issue is the implementation schedule. Are you familiar with what other states have done regarding implementation schedules when a rural exemption has been lifted?
A. No, I'm not.
Q. Based on my reading of the testimony in this case and the testimony that's been given here, it appeared that -- to me that the concerns or objections are essentially limited to establishing a level playing field for competitors both for telecommunications and for video. Is that your position?
A. Yeah. We'd like to have a level playing

Page 160

field, yes.
Q. If the Commission were to deny Midcontinent's request for lifting the rural exemption, that would mean basically that resale of telecommunications at a wholesale discount would not be available to Midcontinent until you began offering video; is that correct?
A. That's how I understand it, yes.
Q. At the point that you begin offering video, of course, your exemption no longer exists. How long would you say it would take for Midcontinent to begin providing telecommunications service -- resale service at a wholesale discount from your company?
A. Now, you're saying if the rural exemption --
Q. Assume that you have started providing video service so your rural exemption no longer exists.
A. Mm-hmm.
Q. At that point you would not be able to deny Midcontinent the right to obtain resale --
A. At a wholesale --
Q. -- services at a wholesale level.
A. Right.

Page 161

Q. How long would it take to implement that process of having them be able to receive those services from you and begin offering telecommunications service in the Devils Lake exchange?
A. I'm assuming that would be dependent on when an agreement was reached on an interconnection agreement.
Q. Do you have any idea how long that would take?
A. No, not really, I don't.
Q. Midcontinent has suggested a 90-day time period. Do you think that's realistic?
A. I don't see how it could be. There's a lot of issues to resolve there. I'm not an expert on what those would be, but just getting everybody together for this hearing took quite some time.
Q. So if the rural exemption were not lifted and you began offering video service, at that point doesn't North Dakota Telephone Company have the advantage?
A. They would have, but I'm saying that to have a level playing field, that we should be able to offer that both at the same time.
Q. How is that going to happen? I guess

Page 162

that's what I'm trying to figure out. How can you get both companies providing the same thing at the same time?
A. Just off the surface, we'd have to work together to make sure that an interconnection agreement was in place so we could both offer that service at the same time.
MR. BINEK: I have no further questions.
JUDGE WAHL: Questions by the Commissioners. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:
Q. Just one. On the universal service side, I think you responded to Mr. Binek regarding universal service support and the impact of losing voice customers to Midcontinent potentially would have. As you understand it, is universal service support calculated for North Dakota Tel as such that if you lost a line to a customer to a Midcontinent or any competitor, that when you recalculate that line next year for purposes of high cost support, that you just reweight the average cost per line, right, so that in effect is North Dakota Tel made whole on the case when you lose a customer and the support goes away? Do you

Page 163

understand what I'm asking? So that all you do is you recalculate the average cost per line?
A. I believe that's the way it works, yeah. The only way we would really be affected is if we lost it to a facility-based, then we would lose the whole thing, of course.
Q. A facilities-based ETC?
A. Yeah.
COMMISSIONER CLARK: Okay. Thank you.
JUDGE WAHL: Commissioner Wefald, any questions?
COMMISSIONER WEFALD: I have no questions at this time.
JUDGE WAHL: Commissioner Cramer.

EXAMINATION

BY COMMISSIONER CRAMER:
Q. I have a couple, and forgive me if they have been answered and I know that some have, so I'm been trying to keep track of that.
Getting back to what, I think, Mr. Binek was asking, and I'm not sure I got it real clear, what would prevent North Dakota Telephone Company from offering triple play bundle or triple play services as soon as you're able?
A. That's what we plan on doing as soon as

Page 164

we're able.
Q. But is that in a level playing field then with the competition, because they're going to have to, as I understand it, go through what you and -- you have testified would be a long process to be able to offer resale telecommunications service. So if a level playing field is the basis of your position, that doesn't seem level to me.
A. Well, however it's worked out. I guess what I mean by a level playing field is that we both would be able to offer that service at the same time.
Q. Okay.
A. And I'm not sure how all that would work out.
Q. So you're saying, as I understand it and if I understand your testimony, if all goes according to plan and the buildout works, basically a year from now or a year from February, you'll be able to offer video service?
A. If things go as planned, yes.
Q. If everything goes as planned. Well, then would you be -- is there a possibility, I guess, or would you be willing to work with Midcontinent that would guarantee that on February 1st everybody

Page 165

would be able to offer everything? In other words, as soon as you're ready to go, they would be ready to go and that we wouldn't have another situation where suddenly we would be talking about 90 days and then 90 days turns into all the nightmares we have been hearing about today? In other words, we have a year to be prepared for this, depending on, of course, the Commission's decision.

A. Yes.

Q. Evidently you don't agree, but -- maybe this is a better way to put it. Do you agree with Mr. Gates' presumption that calculating a resale rate agreement should not be complicated? You know, he testified that it shouldn't be that complicated. I hear you saying it could be very complicated. Which is --

A. Again, this is all new to me and I've never done it before, but I guess I believe it could be complicated or it could be worked out.

Q. Has North Dakota Telephone been preparing for competition? Would it be safe to say you have been preparing for competition?

A. Yes.

Q. Certainly the recent decision by this Commission on your rebalancing rates was -- largely

Page 166

your arguments were you want to be prepared for competition?

A. Well, we have competition today and we know that Midco is going to be offering telephone service, both facility-based and otherwise, and we have to prepare for the future.

Q. Just one other thing then. Mr. Binek went down the issues that we have to consider in this matter and, if I heard you right, it almost sounds like they're settled -- I mean, unless I heard something -- unless there's something that I'm not seeing, but you said that the request by Midcontinent is not unduly burdensome -- economically burdensome, that the request is technically feasible and that the request is consistent with 47 USC 254, basically the universal service.

A. Yes, sir.

Q. Then the only outstanding issue would be the implementation schedule for compliance, which we can start working on it right now, or am I missing something? I mean, technically there's no reason we couldn't do what Midcontinent is asking right now other than, as I understand you to say, other than it just doesn't create a level playing

Page 167

field?

A. You know, it's technically feasible to do it, but --

Q. And it's not economically burdensome to North Dakota Telephone?

A. At this point in time, no, it isn't.

COMMISSIONER CRAMER: That's all I have.

JUDGE WAHL: Mr. Negaard, followup.

MR. NEGAARD: Okay. Just a couple questions.

REDIRECT EXAMINATION

BY MR. NEGAARD:

Q. The discussion about the person you hired, did you hire someone to fill that position?

A. Yeah. It was October, I think, they were hired.

Q. Okay.

A. Or November. I'm not sure.

Q. Is that person out selling video today?

A. No.

Q. The discussion about the USF funds, some of those dollars could go away, as I understand it, if there were a facilities-based competitor?

A. That's correct.

Q. And the money that's received from that

Page 168

USF funding, is that for money that your company has invested in serving as an essential telecommunications carrier?

A. The way I understand it, yes.

Q. Is that from the investment that you've made in the system that you have and the business operations that you conduct as an ETC?

A. Yes.

MR. NEGAARD: That's all I have. Thank you.

JUDGE WAHL: Mr. Harrington, anything further?

MR. HARRINGTON: Just a couple.

CROSS-EXAMINATION

BY MR. HARRINGTON:

Q. Mr. Dircks, you just testified that some of the universal service support could go away. Can you identify what support you're referring to?

A. I was referring to a facility-based.

Q. I'm sorry. I may not have been clear. During cross-examination you identified two sources of support from the FCC, one was interstate common line support and the other was local switching support. Is one of those vulnerable particularly, or both of them, or is there some other place you

Page 169

would lose universal service funding?
A. Not that I know of. On a facility-based loss of a customer, I think we lose all that, if I'm not mistaken.
MR. HARRINGTON: Thank you. No further questions.
JUDGE WAHL: Anything further, Mr. Binek?
FURTHER EXAMINATION
BY MR. BINEK:
Q. Just a clarification following up here. We're not talking about facility-based competition here, are we?
A. No.
Q. So you wouldn't lose any universal service funds --
A. No.
Q. -- from competition from Midcontinent at this time; is that right?
A. That's correct, I believe, yes.
MR. BINEK: Thank you.
JUDGE WAHL: Anything further, Mr. Binek?
MR. BINEK: No.
JUDGE WAHL: Any further questions from the Commissioners? If not, Mr. Negaard, anything further for this witness?

Page 170

MR. NEGAARD: Not at this time, no.
JUDGE WAHL: Thank you, Mr. Dircks.
THE WITNESS: You're welcome.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Your Honor, Mr. Moorman will take the next witness.
JUDGE WAHL: All right. Mr. Meredith, I believe.
MR. MEREDITH: Yes, sir.
JUDGE WAHL: As you heard me advise previous witnesses, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.
(Witness sworn.)
JUDGE WAHL: Mr. Moorman.
MR. MOORMAN: Thank you, Your Honor.
DOUGLAS DUNCAN MEREDITH,
being first duly sworn, was examined and testified

Page 171

as follows:
DIRECT EXAMINATION
BY MR. MOORMAN:
Q. Would you please state your name, title and business address for the record?
A. Yes. My full name is Douglas Duncan Meredith. My title is director of economics and policy for a consulting firm named John Staurulakis, Incorporated -- that's S-t-a-u-r-u-l-a-k-i-s -- headquartered in Greenbelt, Maryland.
Q. And on whose behalf are you testifying today?
A. North Dakota Telephone Company.
Q. Are you the same Mr. Meredith that had caused to be filed prefiled testimony on January 9th, 2006, in this proceeding consisting of 17 pages of testimony and 16 pages of attachments?
A. Yes.
MR. MOORMAN: Your Honor, I would like to have designated as Exhibit, I believe, R6 his prefiled testimony for identification purposes.
JUDGE WAHL: It is, pursuant to stipulation of counsel.
Q. (MR. MOORMAN CONTINUING) Do you have any

Page 172

corrections to that prefiled testimony?
A. Yes, I have one correction on page 8, line 23. The sentence that begins in that line says, "These procedures are followed by state commissions and the FCC," and I need to strike the words "and the FCC." So it reads, "These procedures are followed by state commissions in resolving."
Q. With that correction, if I ask you the same questions today, would your answers be the same?
A. Yes.
Q. Do you accept this testimony as your testimony in this proceeding?
COMMISSIONER WEFALD: I'm sorry. I can't find the place. Is this the January 9th reply testimony?
MR. MOORMAN: Yes.
COMMISSIONER WEFALD: Was it on page 23?
COMMISSIONER CLARK: Page 8.
THE WITNESS: Page 8.
COMMISSIONER WEFALD: Page 8, line 23. Thank you.
MR. MOORMAN: The last three words on that line.

Page 173

COMMISSIONER WEFALD: Okay. Thank you.
MR. BINEK: What should those words be that were deleted?
MR. MOORMAN: Strike it.
MR. NEGAARD: Strike the words "and the FCC."
Q. (MR. MOORMAN CONTINUING) Mr. Meredith, again, with that correction, if I asked you the same questions today, would your answers be the same?
A. Yes.
Q. And do you accept this testimony as your testimony in this proceeding?
A. Yes.
MR. MOORMAN: Your Honor, pursuant to stipulation, I would like to move the prefiled testimony, R6, which was previously, I believe, docket entry 55, into evidence.
JUDGE WAHL: It is received pursuant to the stipulation of counsel.
Q. (MR. MOORMAN CONTINUING) Mr. Meredith, you also had several attachments which have been preliminarily marked as exhibits to your testimony. I believe R7 consists of six pages from Cornell Law School, U.S. Code collection; is that

Page 174

correct?
A. Yes.
Q. R8, I believe, is a five-page -- five pages, U.S. Code collection, Section 252 procedures?
A. Yes.
Q. R9, I believe, consists of two pages dealing with the North Dakota Century Code, Title 49, public utilities?
A. Yes.
Q. I believe R10 is two pages consisting of excerpts from the Code of Federal Regulations, Federal Communications Commission, in the bottom right-hand corner a notation Section 51.611 and continuing for two pages?
A. Yes.
Q. And, finally, if I haven't mistaken the number of exhibits, we have also an exhibit consisting of one page, 12/12/2005 Midcontinent Communications to Develop Family Friendly Choice?
A. Yes, I had filed that, but I do not have that marked as a marked exhibit in front of me.
Q. Mr. Meredith, I just handed to you something preliminarily marked as R11. Is that the document that I previously referred to?

Page 175

A. Yes.
Q. And that is entitled?
A. Midcontinent Communications to Develop Family Friendly Choice.
Q. And that was one of the exhibit attachments that were originally included in your prefiled testimony?
A. Yes.
MR. MOORMAN: Your Honor, I would like to move Exhibits, I believe, R7 through R11 into evidence.
JUDGE WAHL: Mr. Durick or Mr. Harrington.
MR. HARRINGTON: With the understanding that these are identical to the ones filed with the testimony, we have no objection.
JUDGE WAHL: Exhibits R7 through R12, inclusive, are each received.
MR. HARRINGTON: 12 or 11, Your Honor?
JUDGE WAHL: 12. I'm sorry.
COMMISSIONER CRAMER: 11.
JUDGE WAHL: 11.
MR. MOORMAN: Let's just make sure because I may have misstated.
JUDGE WAHL: I thought R12 was the Midco

Page 176

announcement.
MR. MOORMAN: I believe that's R11.
THE WITNESS: No, that's marked as R11.
JUDGE WAHL: Then I'm mistaken. All right.
MR. MOORMAN: Just with confirmation of counsel, that should consist of the 16 pages of attachments that were included with Mr. Meredith's original testimony prefiled on January 9th, and that's the intent here. If there is some variation, we can clean that up, counsel.
MR. HARRINGTON: Okay.
JUDGE WAHL: Well, but, counsel, for the record, what we have is Exhibits R7 through R11, inclusive.
MR. MOORMAN: Right. And we already admitted R6, I believe.
JUDGE WAHL: Yes. Well, it comes in pursuant to stipulation. So Exhibits R7 through R11, inclusive, are each received.
MR. MOORMAN: Just one moment. Just double-checking.
JUDGE WAHL: Indeed.
MR. MOORMAN: Your Honor, the witness is available for cross-examination.

Page 177

JUDGE WAHL: All right. Mr. Harrington.
MR. HARRINGTON: Thank you, Your Honor.
CROSS-EXAMINATION
BY MR. HARRINGTON:
Q. Good afternoon, Mr. Meredith.
A. Good afternoon.
Q. I'm J.G. Harrington. I'll be doing the cross-examination for Midcontinent.
A. Nice to meet you.
Q. I want to start with what I think is turning out to be the central issue in this proceeding, which are timing issues, and although I understand that this is probably an assumption you prefer not to make, I'd like you to assume for the moment that the Commission rules against your client and concludes that the rural exemption should be lifted.
A. Okay.
Q. In your testimony you argue that the Commission should adopt an order that starts the clock for interconnection negotiations only after the order is issued; is that correct?
A. Yes.
Q. Is it your view that once that order is issued, that Midcontinent will need to send a new

Page 178

bona fide request for interconnection negotiations?
A. Yes.
Q. So the clock will only start once Midcontinent sends a request to your client, in your view?
A. Yes. A valid request needs to be received before the clock starts.
Q. Now, therefore, your view that a bona fide request under Section 252 of the Communications Act is different from a bona fide request under Section 251(f); is that right?
A. A bona fide request for Section 251(f) deals with the rural exemption and the lifting of the rural exemption. They are different.
Q. I'd like you to turn then to what has been marked as Exhibit R7 for the moment, and page 4 of 6 in that exhibit.
A. Yes.
Q. Could you read the first sentence of what is (f)(1)(B) on that page?
A. Yes. "(f)(1)(B) states, "State termination of exemption and implementation schedule. The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice

Page 179

of its request to the State commission."
Q. All right. Now, would you turn to Exhibit R8, which is Section 252 of the Communications Act.
A. Yes.
Q. And I would like you to read the first sentence of Section (a)(1).
A. 252(a)(1) entitled "Agreements arrived through negotiation, (1) Voluntary negotiations. Upon receiving a request for interconnection, services, or network elements pursuant to 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title."
Q. Is it your view that the request described here would also be a request that triggers the period for arbitration under Section 252?
A. The difference is --
Q. This request, the request in 251 -- 252(a)(1), would that also trigger the 270-day period for interconnection arbitrations?
A. A 252 request under 252(a)(1), yes,

Page 180

triggers this -- the process.
Q. All right. Does 252(a)(1) say Section 251(c) or 251(f) or 251(b), or does it just say Section 251?
A. I'm sorry. 251(a)(1)?
Q. The first sentence of 252(a)(1). When it refers to Section 251, does it say 251(a) or (b) or (c) or (f) or any subsection, or does it just refer to that section?
A. The first clause refers to 251 of this title.
Q. Okay. That's the question I asked you. Thank you.
A. There is a difference between those two.
Q. Between 252?
A. Yeah, an (f)(1) needs to be filed with the state commission --
Q. Right.
A. -- to invoke the rural exemption.
Q. Let's talk about that. The request has to be filed with the Commission after it's made; right? That's what 251(f)(1) says, isn't it?
A. Yes. They shall submit a notice of its request to the state commission, and that particular process doesn't get started until that

Page 181

submission occurs.
Q. So there's nothing in the text of 251(f) or 252(a)(1) that says that those two requests can't be the same, is there?
A. No. They can be the same --
Q. Ah, okay.
A. -- to the extent that --
Q. Thank you. Thank you.
A. -- to the extent that the state commission --
MR. MOORMAN: Excuse me, Your Honor. Counsel is asking a question. Your Honor said this morning you were trying to get the most developed record possible.
JUDGE WAHL: The objection is sustained. The witness may be allowed to --
THE WITNESS: To the extent that the interconnection agreement is filed with the state commission, then that triggers a 251(f)(1) issue, and if it is not filed with the state commission, it stays over there in 252. So to my way of thinking in this regard, trying to answer your question fully, they have some different characteristics.
Q. (MR. HARRINGTON CONTINUING) Do you know

Page 182

of any cases at the FCC that say that?
A. That say what?
Q. That there's a difference between the request under 251(f)(1) and the request under 252(a).
A. Are you speaking of the document, itself, that is sent? The document, itself, can be identical.
Q. Is there anything in the FCC's rules that says a 251(f)(1) request cannot also at the same time trigger 252?
A. No, it can't, as long as it's filed with the state commission. That's the only difference between those two.
Q. But you've now testified that, in your view, Midcontinent will need to send a new bona fide request after this Commission acts --
A. Yes.
Q. -- to start the nine-month clock. How is it consistent for you to say that they can be the same request, but that Midcontinent will need to send another one?
A. The request sent to North Dakota Tel by Midcontinent, my understanding is that apparently it was trying to be a 252(a)(1) request and North

Page 183

Dakota Telephone Company sought clarification as to whether it really meant it to be a 251(a) request or something else because of the issue of whether it was a retail service or a wholesale service. And my understanding is the response to that letter that North Dakota Tel sent was a request by this Commission to review an (f)(1) exemption.
Q. That, however, was not the question. The question was, how is it consistent -- how are the two positions you have taken here about what the meaning of the law is consistent? That is, you have said at one point that they are the same request and that a 251(f)(1) request triggers a 270-day period and at another point in your cross-examination you have said that there needs to be a second request following the lifting of the exemption, and my question is, how are those positions consistent as a matter of law?
A. The first request was not technically a valid request because there was a rural exemption that was already in place, and this is consistent with what other state commissions have done. For example, in South Carolina the same issue came up with Horry Telephone Company, and the state commission there said the responsibility -- the

Page 184

duty to negotiate, the duty to have an interconnection agreement for 251(c) duties is not valid until the rural exemption is removed. They removed the rural exemption and the clock started at the time of that order.
Q. Is there an FCC rule that addresses this topic?
A. No, I do not believe so.
Q. In fact, are there any FCC rules, to your knowledge, that address how the rural exemption must be applied that have not been overturned by a court?
A. No. I believe that's the purview of the state commissions, themselves.
Q. Let's go back to your time frame. I'm going to work on the assumption that, although I believe you are wrong, that you are correct. If you're correct and Midcontinent needs to make a request, that starts the clock for negotiation arbitration; correct?
A. If the rural exemption is removed --
Q. After the rural exemption is lifted in your scenario.
A. Yes.
Q. How long does that give this Commission to

Page 185

issue an arbitration order?
A. Under 252 --
Q. Yes.
A. -- rules?
Q. Yes.
A. It's a total of up to nine months through the various processes that are established in 252.
Q. Do states always make the 270-day, nine-month limit, or do they miss it sometimes?
A. They -- no, I believe they -- they make it. Sometimes they miss it and the FCC takes the responsibility, so, I'm sorry, sometimes they do miss the 270-day time period.
Q. All right. Once the arbitration order is issued, what's the next step?
A. Once an arbitration order is issued?
Q. Mm-hmm.
A. The state commission reviews that and it gets processed and becomes effective.
Q. Do the parties have to turn the arbitration order into an agreement?
A. Yes, they do.
Q. Do they have to submit the agreement to the Commission?
A. Yes, they do.

Page 186

Q. How long does the Commission have after the order is submitted to approve -- the agreement is submitted -- I'm sorry -- to approve the order -- approve the agreement? I will get it right.
A. I'm looking for it. It's in (e)(4) of 252, state commission -- I believe it's 90 days, if I'm looking at that particular paragraph correctly.
Q. So 90 days.
A. If the state commission does not act to approve or reject the agreement within 90 days after submission by the parties --
Q. It goes into effect?
A. -- then it goes into effect.
Q. All right.
A. I think that's the right -- it's 252(e)(4).
Q. Okay. Now, once the agreement is approved, the next step is for the parties to implement the terms; is that right?
A. Yes.
Q. Okay. Do you think that parties typically implement the terms of an agreement within a month after it's been approved?
A. It depends on the circumstances. I can't say typically in that scenario. It's all

Page 187

fact-based.
Q. Is it common for it to be less than a month, in your view?
A. In my experience, it can be done rather quickly. In other instances, it is not done quickly. So it depends really on the facts and the circumstances of the carriers.
Q. So is it common?
A. I don't know.
Q. All right. I'd like to put this time line together to see if you agree with me. Based on your testimony, what you've said is if a commission issues an order February 1st -- I realize that's unlikely, but we'll just use a time line. I realize we'll probably still be briefing on February 1st. If the Commission issues an order on February 1st, Midcontinent needs to make a request, let's just say for argument's sake that it takes until February 4th.
A. Oh, I would expect it to be February 1st, the effective date.
Q. Let's say February 1st. Midcontinent makes the request February 1st. The Commission then -- the process could then take, if the proceeding goes to arbitration, nine months or a

Page 188

bit more; is that right?
A. That's possible.
Q. On top of that nine months there's a period of time for the parties to put the agreement into written terms?
A. That's what I understood your "plus more" was.
Q. Right. And then after that, as you said, the Commission has up to 90 days to act on the agreement?
A. Yes.
Q. And as you said, after that there's an implementation period where you're unsure of how long it would take, but it would take some period of time?
A. That's all what I described -- what I understood you to say what "plus more" was.
Q. Right. All right. So in your analysis if all the time periods go to the end of the time periods -- and I understand you probably think they don't have to, but if all the time periods go to the end of the time periods, the soonest Midcontinent could be providing resale in your analysis would be about -- a time period which Midcontinent could be providing resale under your

Page 189

analysis is a year from the date the Commission issues an order; is that correct?
A. Given the numbers that you've just provided, yes.
Q. You provided the nine months; right?
A. The nine months is the maximum time limit --
Q. Right.
A. -- for this Commission to make a determination and arbitration.
Q. You provided the 90-day period under the statute; correct?
A. That is the maximum time provided under the Act for the Commission to act on an approved agreement.
Q. That's correct. But it could be a year or more; is that right?
A. If you maximize the time lines as we've just described, it can be a year.
Q. So that's yes?
A. Yes.
Q. When did your client say that it expects to be in the video business?
A. My understanding is the date in this hearing is February 1st, 2007.

Page 190

Q. Okay. Now let's say the Commission rules in favor of your client and denies the exemption -- or continues the exemption -- I'm sorry -- denies the request of Midcontinent. As you just stated, your understanding is your client is going to be providing video in February of 2007.
A. Yes.
Q. Using the same time lines, does that mean that Midcontinent might be unable to offer resale in Devils Lake until sometime after February 1st, 2008?
A. No.
Q. Now, you've just testified that the Commission has nine months from the time the request is made and that the Commission has at least -- has up to another 90 days after that --
A. Mm-hmm.
Q. -- which by my calculation is 12 months.
A. Yes.
Q. And that's the maximum period. And you just agreed that would apply if the exemption were lifted, and you're saying it would not apply if the exemption were lifted by the action of NDTC in February of next year?
A. Yes, because you specified the question as

Page 191

resale, and Midcontinent has the ability to offer retail resale right now out of North Dakota Telephone Company's tariff.
Q. All right. Then let's ask about wholesale resale. The same question. Wouldn't Midcontinent potentially not be able to offer wholesale resale in Devils Lake until February 2008 if your client prevails in this proceeding?
A. Yes.
Q. Are you aware that Midcontinent provided a draft agreement for wholesale resale to NDTC in May?
A. I reviewed it, yes, last fall.
Q. Has your client objected to that agreement in any way?
A. North Dakota Telephone Company at the time that it was given to North Dakota Telephone Company was unclear given its cover letter whether it applied to resale -- retail resale or wholesale resale.
Q. You've read the agreement, though?
A. Yes.
Q. Does the agreement call for wholesale resale?
A. The agreement has a wholesale discount. I

Page 192

also understand that a lot of times in this industry cover letters don't correspond exactly to what the attachments are, and so that's -- therefore, it was very prudent for the company -- for North Dakota Telephone Company to ask for clarification.
Q. You had no question what the agreement said when you read it?
A. When I read the cover letter, I had lots of questions as to what Midcontinent wanted to do.
Q. When you read the agreement, did you have any doubt what the agreement said?
A. No, because I read it in the context of reading it after a bona fide request for rural exemption was filed by Midcontinent.
Q. Is there anything ambiguous in the agreement, itself?
A. I didn't find anything terribly ambiguous, no.
Q. Let's talk about the discount analysis.
A. Mm-hmm.
Q. In your testimony you criticize the discussion of the FCC's interim rate -- discount rate range that's in Mr. Fischer's testimony.
A. Yes.

Page 193

Q. Is the range reported in the testimony the same as the range in the FCC's rules?
A. Yes, I believe it is, 17 percent -- at least 17 percent and no more than 25 percent.
Q. Was the rate used in the Midcontinent analysis higher or lower than the bottom end of that range?
A. My understanding is that Midcontinent used Qwest's rate, which was 16 percent and something, so it was lower.
Q. It was lower. Now, when a state adopts interim rates, for instance, under the FCC's rules and those rates turn out to be incorrect, can the state require a true-up?
A. Yes.
Q. States in fact do require true-ups, don't they?
A. I don't know of a case where the interim rates have been used for many, many years, so I'm not sure what states are using them right now.
Q. Let's talk for a moment about the specific rate. As you noted, Mr. Fischer used the Qwest rate as part of his analysis. Do you disagree with that choice?
A. For Qwest, no. It was a voluntarily

Page 194

negotiated rate that Qwest struck with its competitor.
Q. Do you disagree with that rate for North Dakota Telephone?
A. Oh, yes.
Q. Is it too high?
A. I'm not sure.
Q. Is it too low?
A. I would presume it to be too high based upon my experience in calculating wholesale discounts for scores of rural telephone companies around the country.
Q. Have you performed an analysis for North Dakota Telephone?
A. No, I have not. They don't have a duty to offer wholesale discount.
Q. That was not my question. You have not performed an analysis?
A. I answered no.
Q. So you don't actually know if that number is too high or too low then?
A. That's exactly what I said.
Q. Let's talk a little bit about how the resale pricing standard works. You're familiar with the avoided cost standard under the FCC's

Page 195

rules?
A. Yes, I am.
Q. I'm going to describe that, and I'm going to ask you if the description is fair, and if it's not fair, I would like you to explain why it's incorrect.
A. Okay.
Q. The standard under the FCC's rules sets the discount by subtracting costs that the incumbent carrier will not incur on resold services from the incumbent carrier's retail rates.
A. Fair.
Q. Now, under those rules, is the incumbent's profit an avoided cost?
A. I'm sorry.
Q. The profit that's included in the incumbent's rates, is that an avoided cost?
A. No.
Q. So the incumbent continues to make the same profit on wholesale resale that it would make on retail services?
A. Yes. I understand how you're using the word "profit" and, yes, I agree with that layman term.
Q. I don't think economists think that's a

Page 196

layman's term, but we'll go from there.
Let me ask you a little bit about level playing field, which is discussed in your testimony on page 14. Now, we've heard testimony that North Dakota Telephone offers local service, long distance, Internet, and wireless; isn't that right?
A. Yes.
Q. Can those services be bundled?
A. I believe they can, yes.
Q. Are you aware of any barrier that would prevent NDTC from reselling DirecTV or DISH Network?
A. I don't know of any. I'm not -- I don't know of any.
Q. Are you aware of other rural incumbent local telephone companies that do just that?
A. Yes.
Q. Could those services be added to a bundle, as well?
A. I presume, yes.
Q. Would offering telephone help Midcontinent compete against DirecTV and EchoStar?
A. Repeat the question. I'm sorry.
Q. Would offering telephone service allow -- help Midcontinent to compete against EchoStar and

Page 197

DirecTV?
A. I'm not exactly sure. I'm not familiar with Midcontinent's operations, what they think are strategic plays against their competitors. I don't know that.
Q. You agree that bundling generally is a strategy that's useful in competing against other providers?
A. Yes, bundling can provide an advantage.
Q. So would it be reasonable, in your view, to believe that adding telephone would help a cable operator compete against a satellite provider?
A. Well, it depends on what the satellite provider is offering. I don't know what the satellite provider is offering. Is he just offering in your hypothetical only satellite and isn't bundling himself?
Q. Well, let's make it a hypothetical. Presume in fact that it is DirecTV and DirecTV is not offering telephone. Would it assist Midcontinent -- or a cable provider -- I'm sorry -- in competing against DirecTV to be able to offer a bundle that included telephone service when DirecTV could not offer the same bundle?
A. It may.

Page 198

Q. On page 14 of your testimony you also discuss the notion that the universal service burden on NDTC might increase. Did you provide any data on this issue in your testimony?
A. No.
Q. Did you perform any study or analysis on this issue in your testimony?
A. No.
Q. Or in preparation for your testimony. I'm sorry. Did you perform any study or analysis in preparation for your testimony?
A. Not for North Dakota Telephone Company specifically.
Q. Are you familiar with the FCC's rules on universal service for high-cost areas?
A. Yes.
Q. If an incumbent LEC loses a customer to a reseller, what happens to the incumbent LEC's universal service payments?
A. Nothing.
Q. Who is entitled to those payments if a carrier provides service via resale, the reseller or the underlying facilities-based incumbent?
A. The incumbent, like I said, receives the payments under current rules, under today's

Page 199

regulatory regime.
Q. I'd like to turn back for a moment to something you said earlier. You said you've done scores of avoided cost studies for rural incumbent carriers.
A. Yeah. I believe it's over -- it's over 40.
Q. That's scores.
A. Yes.
Q. Were those in the context of rural exemptions that had been lifted or in other contexts?
A. Both.
Q. So in some cases for lifted exemptions and some cases for not?
A. Yes.
Q. Were those studies done in the context of voluntary negotiations for rural carriers that had not had their exemptions lifted?
A. Yes. In some cases, yes.
Q. And you have not, as you said earlier, performed such a study for NDTC?
A. Not yet.
Q. I'd like to turn to some of your discussion of facilities-based services in your

Page 200

testimony and I just have a couple questions about that.
A. Okay.
Q. In your testimony you describe concerns about the development of facilities-based competition. As a practical matter, is facilities-based competition possible for Midcontinent without what we think of as the full interconnection agreement that includes physical interconnection between the parties and reciprocal compensation and the like?
A. I'm sorry. Is it possible or impossible? I'm sorry.
Q. Possible.
A. Is it possible to have full facilities-based competition --
Q. Without an interconnection agreement.
A. Not generally, no.
Q. Now, would the rural exemption prevent facilities-based competition for Midcontinent after NDTC starts offering video service?
A. No. In fact, this is an important point, that Midcontinent can provide facilities-based competition today without touching any of the rural exemption parts of 251(c).

Page 201

Q. Under 251(a), which I presume is what you're referring to for interconnection --
A. Yes.
Q. -- do you have a right to direct physical interconnection?
A. You have a right to interconnect directly or indirectly with another carrier.
Q. But not a right to direct physical interconnection?
A. No. You have a right to interconnection. So if you want special flavors or special arrangements, then we're talking a different thing, but competition can't exist without 251(c) being touched.
Q. Is it your view that 251(a) is subject to the arbitration provisions of Section 252?
A. The provisions in 251(b) are subject to Section 252 regulations or rules, which include retail resale, number portability, reciprocal compensation, the duty to -- reciprocal compensation is the duty to provide compensation for traffic that is exchanged between two parties.
Q. But I did ask about 251(a). What is your view on 251(a)? Is it subject to Section 252 arbitration, in your opinion?

Page 202

A. In 252 -- I'm not sure I have an opinion on that. I haven't looked at that particular question. But in 252, the voluntary negotiations deals with all of 251, pursuant to Section 251 of the title, so it's possible. I haven't thought about that particular scenario.
Q. I'd like to cover one other topic which relates to arbitration. You've done arbitrations?
A. Yes.
Q. They're long, difficult, expensive processes, aren't they?
A. Generally. Although I have experience with a very successful arbitration where everything settled before the arbitration actually started.
Q. That doesn't really count, though, does it?
A. Well, it was a wonderful time because I didn't have to -- that was in Puerto Rico and I did not have to hear the parties talk about those issues.
Q. But you didn't get to go to Puerto Rico.
A. Oh, I was in -- no, it settled literally five minutes before the hearing started. But generally they are -- they can be. They don't have to be, but they can be.

Page 203

Q. Right. So if a party that's a CLEC is going to arbitration, if Midcontinent is going to have to go to an arbitration, doesn't it have an incentive, since it's already going to have all the cost and difficulty and time and expense of doing it, to ask for everything it could possibly want, to ask for physical interconnection and collocation and UNEs and wholesale resale and all the terms on reciprocal compensation all at once rather than simply asking for one thing?
A. It's possible, but it's not likely given the testimony of Midcontinent. I understand the testimony to reflect that it wants to establish wholesale resale as a starting point and then move quickly to facility-based competition, which wouldn't need collocation generally, can be without it, doesn't need UNEs, or unbundled network elements, because it will provide them themselves.
Q. Are you aware that Midcontinent uses UNEs in some cases?
A. No.
Q. Are you aware of Midcontinent's practices for physical interconnection whether or not it uses collocation?
A. No.

Page 204

Q. So you don't actually have a basis for concluding they wouldn't want to do those things?
A. My understanding for cable play is a pure facilities-based bypass, which is -- which avoids those things as best as possible. And certainly some carriers need to use them, but generally that's the case where a cable -- my understanding of the cable play is that they try not to use those.
Q. Do you think Midcontinent's incentives might be affected if it had to wait a full year before it could actually seek interconnection?
A. Incentives, I'm not sure --
Q. Incentives about what to include in an interconnection request and arbitration might be affected if it had to wait a whole year.
A. It may, yes.
MR. HARRINGTON: I have nothing further.
JUDGE WAHL: Mr. Binek.

EXAMINATION

BY MR. BINEK:
Q. There's been a lot of testimony here about level playing field, and I guess listening to this hypothetical situation involving the possibility of the Commission denying the request to lift the

Page 205

exemption, it's possible then that Midcontinent would not be in a position to offer telecommunications service until a year after North Dakota Tel has been offering video services; is that a fair summary of your testimony?
A. That's the absolute maximum worst-case scenario.
Q. But it's possible?
A. Possible.
Q. What is your knowledge of other states -- what other states have done in implementing a schedule for -- I forget the exact terminology -- implementation schedule if the exemption is terminated?
A. I'm familiar with three cases that are on this point. The first one happened in New York State with Warwick and Citizens Telecommunications, and an implementation schedule for negotiation was started after a rural exemption was removed. I also know that in 1999 South Carolina, the case that I referred to before, when the state commission had to deal with a rural exemption, it removed a rural exemption -- or I should say Horry Telephone Company voluntarily removed itself from the rural exemption, and then the South Carolina

Page 206

Commission ordered that negotiations begin the date of the order of that removal, and its theory was that there was no valid request for a 251(c) interconnection until after the rural exemption was removed, which was the date of the order. And then also in Texas, just last -- just in 2004, there was a case in South Plains, I believe, is the name of the company, dealt with an issue of removal of a rural exemption and the Commission in its first order said, okay, we're going to remove the rural exemption and, therefore, go implement, and then, of course, the parties did not come to an understanding of how to implement the matter. The CLEC wanted 30 to 60 days for interconnection and for implementation and the ILEC said, no, we start with the 252 clock. The state commission in Texas agreed with the ILEC and started a 252 clock after the rural exemption was removed. Those are the three cases that I'm personally familiar with. I'm intimately familiar with New York and South Carolina because I worked on that matter and then I followed closely the Texas matter.
Q. Can you provide copies of those decisions?
A. Yes, I have copies of the South Carolina and the Texas. I'll have to find a copy of the New

Page 207

York, but I would be happy to provide you copies of those.
MR. BINEK: I'd request that those be provided as late-filed exhibits in the case.
JUDGE WAHL: The motion is granted. Mr. Negaard, you will note that, of course, or Mr. Moorman, as the case may be.
MR. MOORMAN: Just as a clarification, late-filed Exhibit R12?
JUDGE WAHL: Well, why don't we do -- Mr. Binek, what's the Commission's custom? Do you number those as exhibits?
MR. BINEK: Sure. I don't think it would be a problem labeling it as R12.
JUDGE WAHL: All right. Do you want to identify them as a group as R12?
MR. BINEK: Sure.
MR. HARRINGTON: It would probably be easier to identify them separately for reference purposes.
JUDGE WAHL: Yeah, that's a good point, Mr. Harrington. I agree. So let's identify them as -- Mr. Meredith, R12 is going to be what?
THE WITNESS: I would suggest that we use R12 as the South Carolina decision and R13 as the

Page 208

Texas decision and R14 as the New York decision, if it is available. I do not have a copy of that and I cannot promise that I can get that to you.
JUDGE WAHL: That's understood. Mr. Binek, anything further?
MR. BINEK: Yes.
Q. (MR. BINEK CONTINUING) Are you aware of any states that have determined a different implementation schedule?
A. I am not aware of any states or any case that involves a different implementation schedule. I have heard discussion where a rural exemption suspends the 252 clock during the time of a rural exemption review, and if it's found that the rural exemption should be lifted, then the 252 clock resumes. Do you understand? There's a difference between that scenario and the scenario where the clock starts after the rural exemption issue matter. But I do not know of any cases -- state cases where that has happened. I've heard that be argued, but I have not seen an order on that matter.
Q. How long would it take to do a cost study of North Dakota Telephone Company?
A. To determine -- an avoidable cost study?

Page 209

Q. Right.
A. I do not know, but I can imagine, based upon my experience, that it's probably in the two-month -- two- to three-month time.
MR. BINEK: I have no further questions.
JUDGE WAHL: Questions from the Commission. Commissioner Clark.
EXAMINATION
BY COMMISSIONER CLARK:
Q. I do have one. Granting that the Telecom Act is not exactly a model of clarity, how have other commissions that you've been aware of dealt with this issue of -- maybe you can provide sort of a little bit more meat to the bones along the lines of some of Mr. Binek's questions. The Act does say to implement a schedule once we make an order coming out of 250 exemption proceeding. It would seem to indicate that a schedule is more than just saying, okay, the decision has been made, the clock starts. How did they -- using your interpretation of how the commission should deal with this if we do lift the exemption, how do you both do something more than just start the clock, but also fulfill your mandate to establish an implementation schedule?

Page 210

A. The implementation schedule in 250 -- in that provision of the Act says that it needs to be consistent with the time and manner of FCC regulation, and so my experience with these other commissions -- these other state commissions is that they've looked at that and said we're going to follow the Act's time line in 252 as consistent with the FCC's -- FCC's regulation or with the time and manner to allow the opportunity for carriers to negotiate and then allow for eventual arbitration, if it's necessary, to resolve any matters.
Q. And you've testified that the FCC hasn't specifically put a lot on the record as far as what that should be, so is the idea that, lacking any clear direction from the FCC then, states have fallen back on the timetable established in the Act, itself?
A. That's what I generally perceive them to be doing. The FCC has regulation on what happens if a state commission doesn't act. That's clear.
Q. Right.
A. That's a different matter. They kind of leave it to the states. They don't --
Q. Has the FCC dealt with any of these issues in those states where the states have deferred

Page 211

action? I think probably the most notable would be Virginia where they've said that they simply are not going to -- I think by virtue of a constitutional provision in Virginia they're not going to subject themselves to being in federal court. Have they handled the Virginia-type case like they have with some of the ETC cases?
A. The Virginia case is a good example. The FCC took the Virginia case after the Virginia body -- regulatory body said we're not touching it and essentially said -- the FCC essentially said we'll deal with this -- and I just reviewed this this morning -- we'll deal with this under the (e)(5) provision, which is if the state defaults, then the Commission picks up the ball and follows its rules. That particular procedure was very lengthy, it's a very big case. If you've looked at it at all, it's many, many pages, thanks to -- I think you were part of that, weren't you, or you were counsel for someone.
MR. HARRINGTON: I was counsel for the party that didn't make it longer.
THE WITNESS: Okay. And it took like a year and a half -- I think a year and a half to do all those issues.

Page 212

Q. (COMMISSIONER CLARK CONTINUING) Was that a rural exemption termination?
A. No. No. This was with a -- this was the arbitration.
Q. That was the arbitration -- big arbitration. To your knowledge, the FCC has not dealt with any rural exemption cases?
A. No, not in that -- not in this context of removing a rural exemption.
Q. Would they have been the body to hear the case first?
A. I don't recall of any case where the FCC has done that.
COMMISSIONER CLARK: Thank you. That's all I have.
JUDGE WAHL: Commissioner Wefald.
EXAMINATION
BY COMMISSIONER WEFALD:
Q. Okay. My question relates to the scope of the rural exemption that's being requested here. Is it your understanding that the scope for this hearing is that the company wants to provide wholesale resale only, and that if the Commission grants the rural exemption, it's only for the purpose of wholesale resale, or -- I'm going to go

Page 213

on a little -- or do we grant a rural exemption and then it allows the company to not only -- once we determine if there's a rural exemption, could Midcontinent then decide they want to go for an interconnection request for unbundled elements, or is the scope narrowed by what they have requested in their letter to you that started this proceeding? Do you understand the question?

A. Yes, I do understand the question.

Q. Okay.

A. First of all, I would like to just note, and I'm sure it was just maybe how I heard it, but the rural exemption was granted by Congress and then the state commission has the opportunity to review whether that rural exemption should be removed.

Q. Okay. Removed. Should it be removed only for the purpose for the scope of wholesale resale, or --

A. Yes.

Q. What is the answer to that, in your opinion?

A. My view is -- and this is consistent with what other states have done -- is that they have limited it to the removal of the rural exemption to

Page 214

the matter that's been requested. So it would be specifically removal of a rural exemption for 251(c)(4), which is the wholesale discount provision. The other provisions remain. Although it's ambiguous because a state could -- you could go either way, but my experience is when you're dealing with that, you follow the guidance of the request, and the request is in this case for wholesale discount, and, furthermore, the request is only for the Devils Lake exchange.

Q. Yes, I understand that.

A. So I think it's limited in two respects.

Q. Okay. Then in that scenario, we talk about -- people say if they only use it for wholesale resale, there's not a lot of impact.

A. Mm-hmm.

Q. But wouldn't it be limited if the Commission chose to do that -- it would be limited to only --

A. Yes, it would be limited to wholesale discount.

Q. Yes.

A. And think of it this way, if you would, please. The facts for undue economic burden, technical infeasibility, universal service are very

Page 215

specific, and in this case before you you have facts dealing with wholesale discount.

Q. Mm-hmm.

A. The fact set can be very different if you're dealing with UNEs.

Q. Oh, I understand. I know. That's why I was wondering.

A. So each decision would be unique to the request and unique to the case that's before you.

Q. Then I'm going to do another what-if. So then what if North Dakota Telephone Company determined that they wanted to start and did start providing cable services next February, February 2007. At that point -- and let's say what if nothing had been done by this Commission before then.

A. Okay.

Q. Then they don't need to worry about 251(a) -- (1)(a), they don't have to worry about the exemption any longer; is that correct?

A. 251 --

Q. 251 and then I'm asking --

A. (c) or -- there's an (f).

Q. Right here.

COMMISSIONER CLARK: 251(f)(1).

Page 216

Q. (COMMISSIONER WEFALD CONTINUING) (f)(1). Okay.

A. That's right. When an incumbent local exchange carrier who has been granted a rural exemption by Congress provides -- starts to provide video programming after the date of the Act, then their exemption is limited and it does not apply to the incumbent cable provider in that same exchange -- in that same area where they're offering video.

Q. So at that point the company could come in and do an interconnection agreement with you -- with North Dakota Telephone Company?

A. For UNEs or --

Q. For UNEs or resale or they could provide facilities-based. I'm just trying to distinguish the difference in my own mind here. And they could have come in at this time and they could have asked for unbundled elements in this application, but they didn't, they asked for wholesale resale?

A. Correct.

COMMISSIONER WEFALD: Okay. I've got it. Thank you.

JUDGE WAHL: Commissioner Cramer?

COMMISSIONER CRAMER: I have nothing.

Page 217

JUDGE WAHL: Mr. Moorman, followup?
MR. MOORMAN: Yes. Thank you, Your Honor.
REDIRECT EXAMINATION
BY MR. MOORMAN:
Q. Very quickly. And I thought I was accused of talking fast.
A. I'm sorry.
Q. No. So I just want to make sure I heard. First, in your discussion with Midcontinent's counsel you reference February 1st, 2007. Was that the date that -- NDTC is not in the position to provide video programming in Devils Lake on its fiber installation until after February 1st, 2007?
A. Yes, that is the date. That's the date that is the earliest possible starting point. For purposes of this hearing, as I understand it, that's the date that we have as a threshold date.
Q. Until after February 1st. And, quite frankly, I am an attorney and I was trying to follow all of the cites that were going back and forth and, by golly, it was tough. I don't know if anyone else had that problem. But I turn your attention to page 4 of 5 of R8 dealing with Section 252(e)(4), I believe. And you had a discussion

Page 218

about that with Midcontinent's counsel.
A. Yes, subject -- yes, I did.
Q. The 90 days that is referred to in that section, is that 90 days by the parties of an agreement adopted by negotiation?
A. When I had this discussion, that was subject to check, but I believe that this is a 90 days.
Q. If there is a negotiated agreement and 30 days if it is subject to arbitration?
A. Yes. If we continue on with that -- that's the cite, and thank you very much for clarifying -- or helping me clarify. 90 days of a negotiated agreement, and then the next clause in that same section, "or within 30 days after submission by the parties of an agreement adopted by arbitration." So to be full, we should have probably read the whole section.
Q. The final point. There was some discussion on universal service, and is it your understanding that under current USF rules a reseller would not get any of the incumbent LEC's universal service disbursements?
A. A competitor who is a reseller, who is also -- is not eligible to become an ETC if they

Page 219

only provide resale, so they would not be getting any disbursements from the universal service program.
Q. And if it was a facility-based competitor, and that facility-based competitor was designated presumably by this Commission as an ETC and it served one of the customers of an incumbent LEC, would the incumbent LEC, if its rate of return, a small rural telephone company, under current rules would that incumbent LEC lose any USF?
A. No, but in the words of Bob Dillon, times are a-changing, and there is universal service change afoot at the FCC, so I don't know what -- under current rules that's the case, but in the future it might change.
COMMISSIONER CRAMER: Thank you for clarifying that.
MR. MOORMAN: Nothing further.
JUDGE WAHL: Mr. Harrington.
MR. HARRINGTON: Just a few questions.
RECROSS-EXAMINATION
BY MR. HARRINGTON:
Q. Mr. Meredith, when you were asking -- answering -- I'm sorry -- Mr. Binek's questions, you told him it would take two to three months to

Page 220

do an avoided cost study; is that right?
A. Yeah. My experience dealing with these other companies, it can take up to two to three months depending upon the availability of the data, depending upon the requirements -- you know, there are requirements for a study and there's some proof standards in the CFR in 51.609. That's part of my R10 exhibit.
Q. Yes.
A. And those proof standards take a little bit of time to get together so that everything is square and all the T's are crossed and all the I's are dotted.
Q. What information do you need to do one of those studies?
A. You need current information -- accounting information, and then you also need to make an analysis of some of those accounts and what costs would be avoidable, because the incumbent LEC, when they produce one of these studies, they have the -- they have the responsibility -- I claim it's the responsibility -- they have the right or responsibility to determine in those accounts whether some of those costs are not avoidable, and in order to do that, some study has to be taken

Page 221

besides just plopping numbers on a page.
Q. Section 6 of 51.609 provides significant guidance as to which accounts you're supposed to look at; correct?
A. Yes. And I'm speaking of subpart (d) of that same rule. It's 50 CFR -- that's 47 CFR 51.609(d), which describes the accounts and then it says, these costs are avoidable and may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable. So what happens is there's a presumption of avoidability, saying these accounts are all avoidable or 90 percent of them are avoidable. But the incumbent LEC can show to a state commission that, oh, no, that presumption doesn't quite work for a rural telephone company and that this particular study shows that these costs are not going to be avoidable.
An example is this, customer service operator. In some companies there's only one or two, and the presumption here is that you lose all of them or you lose a good number of them, and it may be for that particular rural LEC that you're not going to lose anybody for that particular

Page 222

service, and so, therefore, there's a proof -- there's an opportunity to prove to a state commission that those costs are not avoidable and should remain.
Q. Now, those accounts are all accounts the company keeps already, so you have a starting point from the existing accounts; correct?
A. You have the total amount, but for like customer service operations, how much customer service operations is affected can take a little bit of time, and that's why I say 90 days.
Q. I understand what you're saying. I guess the other question I would have about that is, all that information is in the hands of the incumbent carrier; right? You don't have to do discovery for the CLEC or any of those things, do you?
A. No, you don't have to do any discovery for anyone else, but you don't have all that -- all that information at the aggregated level is there for the account, but there are special tasks that need to be analyzed for a full understanding of that account, and that information is not available at the rural company level until the study is done, until you actually do the study.
Q. And you've done all those allocations,

Page 223

isn't it really pretty much a matter of arithmetic to figure out what the discount rate is? You don't have to do any elaborate cost modeling or any of those things, do you?
A. No. It's arithmetic and algebra.
Q. Can't forget the algebra. And just to confirm what you said now in response to my question, is it could take up to two to three months; that's right?
A. My experience with a cost -- with cost companies is it takes -- it takes, you know, two to three months to get that done.
Q. Now, on redirect you had a couple of questions concerning the timing of when NDTC is going to first provide video, and I just want to confirm what I understand from your testimony, which is that all the information you have on that question in fact comes from what you've been told by people at the company? You, personally, are not involved in any of that; you're not laying any fiber or the like?
A. That is correct.
Q. So this is entirely based on what the company has told you?
A. Let me just refresh my memory in my

Page 224

testimony.
Q. I think it's around page 4, but I could be wrong.
A. It's on page, I think, 8.
Q. 8. Well --
A. Lines 1 and 2, and I say, "I note that North Dakota Telephone Company is not in a position to provide video programming in Devils Lake on its fiber installation until after February 1, 2007."
Q. And that information is from the company?
A. Yes, that is a -- that particular understanding is cited as a footnote -- a footnote 2 and it refers to Mr. Dircks' testimony.
MR. HARRINGTON: Thank you very much. No further questions, Your Honor.
JUDGE WAHL: Mr. Binek, anything further?
MR. BINEK: No.
JUDGE WAHL: Any further questions from the Commissioners? Mr. Moorman.
REDIRECT EXAMINATION
BY MR. MOORMAN:
Q. Mr. Meredith, based on your recross by Mr. Harrington, is it safe to say that an avoidable cost study is not an add-water-and-mix proposition?
A. Yes, it is.

Page 225

MR. MOORMAN: Thank you.
JUDGE WAHL: All right. Quickly, anything further, Mr. Harrington.
MR. HARRINGTON: Nothing further, Your Honor.
JUDGE WAHL: Commissioners?
COMMISSIONER WEFALD: No.
COMMISSIONER CLARK: No.
JUDGE WAHL: Thank you very much, Mr. Meredith. Anything further, Mr. Negaard?
MR. NEGAARD: No, Your Honor.
JUDGE WAHL: All right. Mr. Durick, anything further?
MR. DURICK: Nothing further, Your Honor.
JUDGE WAHL: All right. Counsel, quickly, beginning with you, Mr. Durick, briefing, what's your proposal?
MR. DURICK: Our proposal would be, I think you indicated -- or someone indicated it would be simultaneous briefs. We would like to do that on the Commission -- what would you like? -- two weeks from today.
JUDGE WAHL: Are you agreeing -- are you -- do you --
MR. DURICK: We would like responsive

Page 226

briefs, Your Honor.
JUDGE WAHL: So --
MR. DURICK: We would submit ours within two weeks.
MR. HARRINGTON: Your Honor, could we have one moment? Could we go off the record for a moment, Your Honor?
JUDGE WAHL: Sure.
(Discussion had off the record.)
JUDGE WAHL: Anything else, Mr. Durick?
MR. DURICK: Nothing here, Your Honor.
JUDGE WAHL: Anything further for the record, Mr. Negaard?
MR. NEGAARD: Not at this time.
JUDGE WAHL: Mr. Binek?
MR. BINEK: In addition to briefs, we would also request --
JUDGE WAHL: Oh, I'm sorry.
MR. BINEK: -- the parties file proposed findings of fact.
JUDGE WAHL: The Commission also requests proposed findings of fact, conclusions of law. In fact, I assume you want a proposed order, too.
MR. BINEK: Right.
JUDGE WAHL: You want to -- write it up

Page 227

the way you would like to see them sign it. Good luck.
Commissioner Clark, anything further for the record?
COMMISSIONER CLARK: Just thank you for a very interesting hearing.
JUDGE WAHL: Anything else, Commissioners? Any other directions from the Commission?
COMMISSIONER WEFALD: No. I would just like to say thank you, also. The witnesses who participated today really did a very good job on both sides and a lot of helpful information was provided by the questions of the counsel, et cetera. Thank you.
COMMISSIONER CRAMER: I would say the same thanks to everyone, although there were moments where I was more confused than when we began. In the end I think we had a lot of very good, helpful information.
JUDGE WAHL: All right. The record will be closed. Thank you, counsel.
(Concluded at 4:17 p.m., the same day.)

Page 228

CERTIFICATE OF COURT REPORTER

I, Denise M. Andahl, a Registered Professional Reporter,
DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.
I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.
Bismarck, North Dakota, this 30th day of January, 2006.

Denise M. Andahl
Registered Professional Reporter

$105 [1] 119:10
$110 [1] 120:15
$13.12 [1] 119:17
$160 [1] 120:9
$5,000 [5] 20:17 33:22 47:11 90:22 170:18
$9 [1] 122:15
'05 [1] 150:16
'96 [1] 49:25
00 [1] 10:3
05 [2] 8:2 90:2
1 [37] 8:10 11:11 24:25 56:16 59:15 60:5 60:9 88:3 89:16 90:2 92:1 113:2 155:23 178:20 178:21 179:7 179:8 179:9 179:23 179:25 180:2 180:5 180:6 180:16 180:22 181:3 181:19 182:4 182:10 182:25 183:7 183:13 215:19 215:25 216:1 224:6 224:9
1.7 [1] 118:17
10 [17] 6:24 8:2 10:3 35:17 36:24 52:25 53:6 118:24 121:14 129:4 129:12 136:8 136:14 136:16 153:11 154:1 154:20
1000 [1] 3:5
10th [1] 92:17
11 [10] 90:2 100:20 100:21 133:20 133:22 134:5 135:18 175:19 175:21 175:22
11.5 [1] 142:15
117 [2] 6:19 50:23
12 [14] 4:3 5:20 6:22 10:8 53:8 129:5 129:13 133:21 133:22 134:6 135:23 175:19 175:20 190:18
12.2 [1] 81:6
12/12/2005 [2] 7:14 174:19
1200 [1] 2:20
128 [2] 6:20 6:20
12th [3] 21:20 91:11 92:6
13 [3] 48:2 89:16 134:6
13.12 [2] 119:24 120:8
135 [3] 50:23 83:7 83:20
139 [1] 52:6
14 [2] 196:4 198:1
15 [2] 10:15 156:5
150 [1] 52:7
158 [1] 5:5
16 [5] 4:4 121:14 171:18 176:7 193:9
16.1 [2] 70:13 81:6
160 [1] 120:16
162 [1] 5:5
163 [1] 5:6
167 [1] 5:6
168 [1] 5:7
169 [1] 5:7
16th [1] 52:17
17 [7] 41:5 70:11 70:14 171:17 193:3 193:4 227:23
170 [2] 52:14 52:24
171 [1] 5:9
173 [2] 7:7 7:7
175 [4] 7:11 7:12 7:13 7:15
176 [6] 7:8 7:8 7:11 7:12 7:13 7:15
177 [1] 5:10
18,000 [2] 94:16 119:5
19 [3] 63:20 63:23 65:6
1934 [2] 57:13 57:18
1984 [1] 156:21
1993 [2] 99:8 99:16
1996 [10] 12:24 12:25 16:13 18:1 52:8 57:12 57:17 57:17 80:21 95:3
1999 [1] 205:20
1st [15] 17:7 127:21 127:23 164:25 187:13 187:16 187:17 187:20 187:22 187:23 189:25 190:10 217:11 217:14 217:19
2 [8] 37:1 60:9 60:9 147:14 158:9 158:9 224:6 224:13
20 [5] 65:6 78:24 124:2 129:17 129:24
20-21 [1] 26:19
200 [1] 67:2
2000 [1] 102:7
20007 [1] 3:8
2003 [1] 6:19
20036-2222 [1] 2:21
2004 [7] 41:13 41:14 102:7 131:19 131:22 156:3 206:6
2005 [20] 5:20 6:19 6:22 6:24 10:8 10:15 21:20 37:2 52:18 52:23 63:23 92:6 118:16 132:22 133:6 134:24 139:18 150:3 150:9 156:3
2006 [5] 1:20 8:3 10:3 171:17 228:14
2007 [10] 15:13 76:8 77:13 107:8 189:25 190:6 215:14 217:11 217:14 224:9
2008 [3] 16:12 190:11 191:7
204 [1] 5:10
209 [1] 5:11
21 [10] 4:7 37:2 52:19 59:15 60:5 63:23 72:8 100:19 134:5 135:18
21.6 [2] 100:13 102:6
212 [1] 5:11
215 [1] 52:25
2154 [1] 3:8
216 [1] 5:12
218 [1] 53:5
219 [2] 5:12 53:5
21st [2] 52:18 52:23
22 [14] 5:21 5:21 5:22 5:22 59:15 60:5 100:20 100:21 100:22 100:25 101:9 101:10 101:23 102:1
2229 [1] 91:11
224 [1] 5:13
23 [9] 1:20 4:7 8:3 10:3 60:8 60:9 172:3 172:19 172:22
24 [2] 29:20 72:8
25 [5] 29:20 70:11 70:14 94:11 193:4
250 [2] 209:17 210:1
251 [60] 7:8 8:10 8:20 10:11 10:18 13:19 13:22 13:24 14:1 15:7 15:19 27:25 28:4 38:24 51:7 56:16 69:13 73:4 73:24 74:1 78:15 79:13 84:12 88:3 178:11 178:12 179:11 179:16 179:22 180:3 180:3 180:3 180:4 180:5 180:7 180:7 180:10 180:22 181:2 181:19 182:4 182:10 183:2 183:13 184:2 200:25 201:1 201:13 201:15 201:17 201:23 201:24 202:4 202:4 206:3 214:3 215:18 215:21 215:22 215:25
252 [36] 7:10 27:25 51:8 69:4 84:14 174:4 178:9 179:3 179:8 179:20 179:23 179:25 179:25 180:2 180:6 180:15 181:3 181:21 182:5 182:11 182:25 185:2 185:7 186:6 186:16 201:16 201:18 201:24 202:1 202:3 206:16 206:17 208:13 208:15 210:7 217:25
2525 [1] 3:4
254 [3] 11:10 159:7 166:16
255 [1] 53:8
257 [1] 53:11
27 [3] 4:8 119:21 120:7
27-cent [1] 120:5
270-day [4] 179:23 183:14 185:8 185:13
28 [1] 4:8
29 [2] 4:9 4:10
29.2 [2] 100:14 102:5
2nd [1] 12:25
3 [13] 37:1 42:8 42:9 42:10 58:24 65:14 66:22 124:1 144:17 147:14 147:19 154:2 154:22
3.4 [1] 103:5
30 [4] 72:7 206:14 218:9 218:15
30th [1] 228:13
31 [1] 4:10
314 [1] 2:17
32 [1] 4:11
34 [1] 4:13
35 [4] 6:5 6:7 6:8 6:10
36 [4] 6:5 6:7 6:8 6:10
37 [2] 4:13 158:9
38 [1] 4:14
4 [30] 23:24 25:4 26:19 29:20 32:1 37:1 49:7 60:21 61:2 61:3 74:23 124:3 125:19 132:20 132:24 133:2 144:15 144:16 147:14 154:2 154:22 155:23 178:16 186:5 186:16 214:3 217:24 217:25 224:2 227:23
4.3 [1] 103:5
40 [1] 199:7
400 [1] 2:17
41 [1] 4:14
43 [1] 4:15
45 [1] 4:15
45.72 [2] 41:17 43:3
46 [1] 4:16
47 [10] 4:18 7:8 7:9 8:10 10:10 10:17 11:10 159:6 166:16 221:6
48 [4] 6:11 6:13 6:14 158:9
49 [3] 7:12 90:2 174:9
49.86 [1] 43:3
4th [1] 187:19
5 [8] 25:4 41:5 41:10 125:18 125:19 144:17 211:13 217:24
5,500 [1] 94:17
5-5 [1] 150:21
50 [5] 21:11 24:22 24:24 140:10 221:6
500 [1] 73:14
51 [4] 7:13 47:24 48:25 66:25
51.6-07 [1] 69:20
51.607 [1] 63:3
51.609 [3] 220:7 221:2 221:7
51.611 [1] 174:14
52 [1] 34:9
55 [4] 4:18 6:14 65:15 173:18
56 [1] 93:23
58502-0400 [1] 2:18
58505 [2] 2:9 2:12
58702-1000 [1] 3:5
59 [1] 65:15
5th [1] 150:3
6 [8] 23:24 25:4 50:23 125:19 129:12 135:23 178:17 221:2
60 [6] 48:1 49:1 67:12 72:9 121:11 206:14
600 [3] 1:19 2:8 2:11
600-page [1] 73:14
61 [5] 21:15 24:12 24:13 24:16 24:18
62 [2] 4:19 34:12
63 [1] 4:19
66 [2] 59:6 59:24
68 [3] 4:20 59:6 59:24
7 [7] 11:11 25:5 52:6 100:20 100:21 102:1 102:2
702 [1] 49:21
71 [1] 4:21
74 [1] 4:22
77 [1] 4:22
8 [12] 42:8 42:10 52:14 52:24 116:23 129:5 172:2 172:20 172:21 172:22 224:4 224:5
800 [1] 2:21
803 [1] 116:23
82 [1] 4:23
85 [3] 4:24 60:21 61:5
86 [3] 60:22 61:8 61:8
87 [1] 4:25
9 [4] 36:24 107:6 132:19 132:24
90 [25] 60:21 60:22 61:5 61:9 69:17 72:4 72:10 72:14 77:23 79:6 79:6 79:24 165:4 165:5 186:6 186:8 186:10 188:9 190:16 218:3

218:4 218:7 218:13 221:14 222:11
90-day [2] 161:12 189:11
901 [1] 116:24
902 [1] 116:25
91 [1] 5:4
92 [6] 6:21 6:21 6:23 6:23 6:25 6:25
93 [4] 7:4 7:4 7:5 7:5
94 [2] 5:4 156:7
95 [2] 119:10 120:14
97 [1] 6:17
99 [1] 6:17
9th [4] 91:17 171:17 172:16 176:9
a-changing [1] 219:12
a.m [3] 8:2 10:3 90:2
ability [5] 83:1 124:24 139:12 141:20 191:1
able [31] 16:7 39:21 49:17 51:19 80:14 81:22 85:5 85:9 86:15 86:23 105:20 107:11 122:18 123:15 124:5 139:17 140:8 142:8 142:10 148:25 160:21 161:2 161:23 163:24 164:1 164:6 164:11 164:20 165:1 191:6 197:22
about [128] 9:4 12:23 23:24 25:7 27:20 29:21 30:12 30:25 39:2 41:10 44:11 44:16 52:7 52:15 53:5 53:10 57:1 58:22 65:12 65:16 66:11 67:18 69:2 71:14 71:16 71:22 72:12 72:18 73:18 73:20 75:4 75:10 78:1 78:2 79:1 80:19 81:8 84:6 88:2 88:3 94:8 95:13 99:19 100:13 100:13 100:25 101:4 103:15 103:20 104:1 104:12 104:13 104:18 105:1 105:10 105:14 107:2 107:4 107:18 107:20 110:23 116:4 116:6 116:23 116:23 119:5 121:14 122:13 125:10 129:8 131:22 133:14 133:17 133:19 134:2 134:9 134:12 135:14 136:7 137:9 137:18 138:6 139:4 139:7 139:22 140:16 141:21 142:4 142:8 142:13 142:15 143:4 143:17 144:11 145:21 150:22 151:4 154:12 155:18 156:8 156:11 156:11 156:15
165:4 165:6 167:13 167:21 169:11 180:20 183:10 188:24 191:4 192:20 193:21 194:23 196:2 200:1 200:5 201:23 202:6 202:19 204:14 204:22 214:14 215:18 215:19 218:1 222:13
absence [1] 14:22
absolute [3] 45:4 45:15 205:6
absolutely [3] 75:7 86:18 112:1
accept [4] 116:13 117:19 172:13 173:12
acceptable [1] 38:9
accepted [1] 89:17
access [13] 42:13 94:16 95:5 107:20 110:1 121:1 121:3 121:10 121:18 122:18 122:18 136:8 146:20
accord [1] 15:5
according [3] 64:14 118:10 164:18
accordingly [1] 44:15
account [4] 7:4 149:7 222:20 222:22
accounting [2] 81:8 220:16
accounts [12] 63:3 63:9 69:21 220:18 220:23 221:3 221:7 221:11 221:14 222:5 222:5 222:7
accurate [3] 69:25 150:19 228:10
accused [1] 217:6
achieve [2] 75:11 77:25
acknowledged [1] 98:21
acquire [1] 114:9
acquired [1] 95:5
acquisition [1] 94:22
acquisitions [1] 67:19
act [28] 8:8 12:24 13:13 13:20 18:1 50:1 51:9 52:8 52:12 53:9 57:12 57:18 80:6 83:1 83:3 84:17 178:9 179:4 186:9 188:9 189:14 189:14 209:11 209:15 210:2 210:17 210:20 216:6
Act's [2] 53:5 210:7
acting [1] 15:15
action [3] 35:4 190:23 211:1
actions [2] 14:6 60:17
active [1] 28:2
acts [1] 182:17
actual [4] 42:19 63:8 70:16 73:7
ad [7] 7:4 92:25 149:6 149:8 149:19 150:2 150:9
add [1] 113:1
add-water-and-mix [1] 224:24
added [1] 196:18
adding [1] 197:11
addition [2] 60:10 226:16
additional [3] 65:11 115:12 115:12
address [9] 23:9 50:6 63:25 64:24 86:13 91:10 158:15 171:5 184:10
addressed [5] 64:17 75:6 86:14 86:16 86:20
addresses [2] 63:21 184:6
addressing [2] 51:25 81:4
adds [2] 111:9 114:4
administering [5] 20:13 33:18 47:6 90:17 170:13
administrative [4] 8:5 8:6 44:12 54:21
admissible [1] 117:4
admission [6] 23:2 113:24 114:15 114:16 116:5 128:16
admit [2] 15:10 126:25
admitted [4] 17:4 114:6 154:9 176:17
adopt [3] 15:25 40:9 177:20
adopted [2] 218:5 218:16
adopts [1] 193:11
advance [1] 9:13
advancing [2] 59:9 60:1
advantage [4] 13:8 16:3 161:21 197:9
advantageous [4] 109:10 109:13 110:16 110:20
advantages [4] 105:24 106:4 106:9 108:23
advent [1] 65:22
advice [1] 125:14
advise [8] 20:12 33:14 33:17 47:5 90:14 90:16 170:10 170:12
advised [1] 33:16
advisers [1] 12:10
advocacy [1] 12:10
affect [1] 157:14
affected [4] 163:4 204:11 204:16 222:10
afforded [1] 16:2
afoot [1] 219:13
afraid [1] 156:20
afternoon [3] 94:5 177:5 177:6
again [23] 24:3 52:14 52:24 53:1 69:7 77:25 83:20 84:11 86:8 95:3 106:6 111:20 124:15 132:23 135:14 137:8 140:17 141:17 143:1 157:2 157:7 165:17 173:8
against [11] 155:22 156:2 156:19 157:3 177:15 196:22 196:25 197:4 197:7 197:12 197:22
agencies [1] 109:7
agency [2] 54:14 55:1
aggregated [1] 222:19
aging [1] 132:13
ago [1] 137:9
agree [21] 54:8 64:19 73:8 78:6 79:25 80:1 80:12 80:13 80:24 80:25 86:2 86:3 87:6 88:12 88:18 165:10 165:11 187:11 195:23 197:6 207:22
agreed [4] 38:9 100:9 190:21 206:17
agreeing [1] 225:23
agreement [59] 5:21 19:10 27:7 27:8 44:25 71:10 72:7 72:15 73:9 73:11 73:14 73:22 78:12 82:16 112:22 113:13 151:24 152:1 152:2 152:3 152:7 152:18 153:2 153:3 153:6 155:14 161:7 161:8 162:6 165:13 179:13 181:18 184:2 185:21 185:23 186:2 186:4 186:10 186:17 186:22 188:4 188:10 189:15 191:11 191:14 191:21 191:23 191:25 192:7 192:11 192:12 192:17 200:9 200:17 216:12 218:5 218:9 218:14 218:16
agreements [11] 7:11 27:21 27:24 29:21 29:22 30:2 30:3 30:5 73:15 141:2 179:8
agricultural [1] 107:25
ahead [5] 20:4 23:11 101:4 113:20 133:7
Aid [1] 6:16
Aitken [3] 3:7 12:3 17:9
Al [2] 1:23 8:4
Alaska [2] 54:4 81:18
Albertson [2] 2:19 11:20
algebra [2] 223:5 223:6
Allied [4] 142:7 146:11 146:16 146:19
allocate [1] 143:7
allocated [5] 126:3 143:7 143:11 143:25 144:7
allocating [2] 143:5 143:13
allocation [2] 143:17 144:2
allocations [1] 222:25
allow [6] 19:8 113:5 117:17 196:24 210:9 210:10
allowed [1] 181:16
allows [1] 213:2
almost [4] 50:24 98:15 98:16 166:9
along [1] 209:14
alternative [2] 65:8 66:3
always [3] 8:22 9:6 185:8
ambiguous [3] 192:16 192:18 214:5
amended [2] 57:13 57:18
among [1] 109:20
amount [8] 27:20 69:18 77:21 83:11 116:9 121:22 126:9 222:8
amounts [4] 111:6 111:18 115:13 128:4
analysis [18] 15:2 42:17 42:22 43:20 44:23 45:14 122:25 188:18 188:24 189:1 192:20 193:6 193:23 194:13 194:18 198:6 198:10 220:18
analyst [1] 12:7
analyzed [1] 222:21
Andahl [2] 228:3 228:17
anniversary [1] 12:23
announced [1] 146:23
announcement [1] 176:1
annual [5] 102:10 102:19 103:6 118:14 120:9
answer [16] 32:3 32:4 56:13 84:19 107:1 123:20 125:9 130:10 130:12 139:3 140:2 152:11 157:2 157:6 181:22 213:21
answered [3] 29:4

163:18 194:19
answering [1] 219:24
answers [3] 48:14 172:10 173:9
anticipate [2] 39:2 40:20
anybody's [1] 151:6
anyway [1] 131:21
apologize [4] 25:3 52:22 58:25 101:2
appeal [1] 55:2
appear [1] 100:23
appearance [1] 11:16
appeared [2] 17:4 159:20
appearing [4] 11:24 12:1 12:9 17:11
applicable [2] 42:19 54:23
application [7] 37:19 54:9 54:12 54:17 79:2 79:4 216:19
applied [3] 54:23 184:11 191:19
applies [1] 83:16
apply [11] 13:17 44:11 74:10 130:1 130:4 130:6 130:11 130:16 190:21 190:22 216:7
appreciate [1] 55:14
approach [2] 59:19 62:17
Approaching [1] 62:24
appropriate [10] 45:12 45:24 46:5 50:9 50:12 97:25 116:1 124:18 154:8 154:13
appropriately [1] 143:21
approval [3] 7:11 58:20 150:10
approve [4] 186:2 186:3 186:4 186:10
approved [9] 119:19 133:7 135:1 150:8 150:15 150:21 186:18 186:23 189:14
approximation [1] 118:21
arbitrarily [1] 80:15
arbitrary [1] 80:17
arbitration [33] 7:10 27:25 28:3 73:21 73:22 74:10 79:20 80:2 80:7 84:14 86:4 179:20 184:20 185:1 185:14 185:16 185:21 187:25 189:10 201:16 201:25 202:8 202:13 202:14 203:2 203:3 204:15 210:10 212:4 212:5 212:6 218:10 218:17
arbitrations [3] 51:9 179:24 202:8
area [5] 26:12 26:13 131:5 142:22 216:9
areas [2] 142:22 198:15
argue [3] 124:2 158:23 177:19
argued [4] 15:3 55:13 123:13 208:21
arguing [1] 71:16
argument [2] 58:6 123:17
argument's [1] 187:18
arguments [1] 166:1
arithmetic [2] 223:1 223:5
arrangement [2] 19:10 19:12
arrangements [1] 201:12
arrived [1] 179:8
article [3] 7:14 145:7 145:10
articles [2] 7:5 22:3
articulate [1] 53:12
aspects [2] 75:1 149:12
assent [1] 17:7
asset [1] 100:1
assist [1] 197:20
associated [1] 42:15
association [2] 26:23 27:1
assume [4] 83:4 160:17 177:14 226:23
assumed [3] 42:17 45:9 45:14
assuming [5] 23:1 58:6 77:12 77:24 161:6
assumption [3] 23:4 177:13 184:16
assumptions [5] 43:21 43:25 44:23 45:7 70:21
assurance [2] 22:17 35:23
attach [1] 150:7
attached [3] 21:18 37:1 152:3
attachment [1] 21:20
attachments [5] 171:18 173:22 175:6 176:8 192:3
attempt [1] 112:8
attention [2] 127:12 217:24
attorney [4] 49:20 49:23 52:10 217:20
attorneys [5] 2:16 2:20 3:4 3:7 114:21
audience [1] 17:14
August [1] 156:3
authentication [2] 116:20 117:13
authority [2] 19:14 80:9
automatically [3] 15:14 77:13 85:5
automobile [1] 107:4
automobiles [1] 106:21
availability [3] 65:8 125:6 220:4
available [12] 19:4 97:24 110:12 117:7 117:8 133:25 134:8 151:11 160:6 176:25 208:2 222:22
Avenue [6] 2:8 2:11 2:17 2:20 3:8 91:11
average [2] 162:23 163:2
avoid [1] 86:3
avoidability [1] 221:13
avoidable [10] 208:25 220:19 220:24 221:8 221:12 221:14 221:15 221:19 222:3 224:23
avoided [9] 41:18 41:22 42:18 43:1 194:25 195:14 195:17 199:4 220:1
avoids [2] 59:4 204:4
aware [23] 20:11 25:11 25:14 25:25 26:8 26:15 29:1 32:19 32:23 33:15 47:4 131:6 133:13 141:6 152:1 191:10 196:10 196:15 203:19 203:22 208:7 208:10 209:12
away [3] 162:25 167:22 168:17
awful [2] 79:14 157:22
b [11] 11:11 13:22 21:24 56:16 88:3 178:20 178:21 179:16 180:3 180:7 201:17
back-and-forth [1] 9:9
background [1] 56:6
bad [1] 16:9
balance [1] 16:9
ball [1] 211:15
ballpark [3] 31:10 121:21 140:8
band [2] 140:3 140:4
barrier [1] 196:10
base [2] 30:1 75:15
based [21] 18:13 19:14 43:25 49:3 69:13 70:14 71:6 80:22 84:9 98:2 125:14 126:5 128:20 149:15 152:25 159:18 187:11 194:9 209:2 223:23 224:22
basic [1] 105:16
basis [11] 49:4 69:20 70:13 98:3 103:6 116:16 118:10 118:15 119:16 164:7 204:1
bearing [1] 117:1
bears [1] 117:2
become [1] 218:25
becomes [1] 185:19
began [3] 160:6 161:19 227:18
begin [6] 12:16 45:5 160:9 160:12 161:3 206:1
beginning [4] 49:7 66:19 111:19 225:16
begins [4] 49:7 148:16 148:19 172:3
behalf [7] 12:2 17:13 17:17 17:22 53:21 92:6 171:12
belabor [1] 128:19
belie [1] 60:17
belief [2] 64:10 91:24
believes [3] 49:24 51:6 98:2
Bell [1] 65:24
belong [1] 32:5
beneficial [3] 66:9 156:17 156:23
benefit [6] 13:5 44:14 64:22 65:7 76:14 76:17
benefits [7] 65:1 65:2 65:20 66:11 68:10 76:11 155:17
best [11] 56:15 57:6 57:20 58:7 58:13 61:17 62:2 91:23 100:6 155:15 204:5
better [5] 76:1 76:4 76:16 157:11 165:11
between [21] 39:1 43:2 50:20 51:7 52:20 67:22 70:11 70:14 73:8 102:7 119:10 120:14 133:4 155:14 180:14 180:15 182:3 182:14 200:10 201:22 208:17
beyond [1] 56:19
big [3] 67:16 211:17 212:5
bigger [2] 68:12 70:2
billing [3] 73:13 77:22 78:4
binding [1] 179:13
Binek [71] 2:6 4:9 4:16 4:22 4:25 5:5 5:7 5:10 12:4 12:5 12:5 19:21 19:23 22:23 22:24 23:8 27:12 27:13 29:16 29:18 31:2 32:25 33:1 38:17 38:18 46:11 46:13 46:20 62:10 62:11 76:23 76:24 77:2 82:17 87:17 87:18 87:23 88:1 88:19 127:2 157:21 157:22 158:10 158:11 158:14 162:8 162:14 163:20 166:7 169:7 169:9 169:20 169:21 169:22 173:2 204:19 204:21 207:3 207:11 207:13 207:17 208:5 208:6 208:7 209:5 224:16 224:17 226:15 226:16 226:19 226:24
Binek's [3] 82:23 209:15 219:24
Bismarck [5] 1:19 2:9 2:12 2:18 228:13
bit [15] 94:8 94:19 95:13 99:19 103:15 104:1 133:17 142:13 144:11 188:1 194:23 196:2 209:14 220:11 222:11
board [5] 17:15 126:8 133:7 135:1 139:16
Bob [1] 219:11
body [3] 211:9 211:10 212:10
boil [1] 81:22
boils [1] 82:2
bona [10] 10:10 10:14 10:16 178:1 178:8 178:10 178:12 178:23 182:17 192:14
bones [1] 209:14
books [1] 143:6
borrow [4] 107:21 107:22 107:23 109:7
borrowing [1] 143:3
bottom [12] 29:20 32:1 63:20 65:5 103:9 113:2 127:14 127:15 145:10 148:13 174:13 193:6
bought [1] 142:9
Boulevard [3] 1:19 2:8 2:11
Box [2] 2:17 3:5
boy [1] 67:16
brand [2] 57:21 58:3
branding [1] 58:8
break [2] 89:11 157:25
brief [2] 114:3 114:7
briefing [2] 187:15 225:16
briefly [1] 53:22
briefs [3] 225:20 226:1 226:16
bring [2] 13:8 75:17

bringing [1] 54:24
build [1] 39:21
building [3] 137:21 137:22 139:19
buildout [1] 164:18
built [1] 140:24
bundle [8] 16:8 131:2 145:16 145:22 163:23 196:18 197:23 197:24
bundled [1] 196:8
bundling [4] 146:1 197:6 197:9 197:17
burden [9] 14:4 14:13 14:15 18:16 18:22 19:3 19:5 198:3 214:24
burdensome [8] 11:7 158:19 158:21 158:24 158:25 166:13 166:14 167:4
business [14] 14:7 19:10 26:13 58:22 75:9 95:11 107:11 107:14 108:19 122:8 122:11 168:6 171:5 189:23
buy [2] 141:12 141:18
buying [1] 78:2
bypass [1] 204:4
c [26] 2:1 3:1 4:1 5:1 6:1 7:1 10:11 11:11 13:24 20:17 33:21 47:10 73:4 78:15 79:13 90:21 170:17 179:16 180:3 180:8 184:2 200:25 201:13 206:3 214:3 215:23
cable [24] 14:7 23:22 25:16 25:19 28:22 30:3 30:25 31:1 32:5 77:12 85:7 85:15 109:25 135:8 145:16 145:23 146:5 197:11 197:21 204:3 204:7 204:8 215:13 216:8
calculate [5] 39:16 45:23 46:4 46:7 70:16
calculated [2] 40:13 162:18
calculating [4] 69:22 119:12 165:12 194:10
calculation [2] 63:5 190:18
calculations [2] 46:15 46:18
calculator [1] 120:12
caller [1] 42:21
calls [1] 121:7
cameras [1] 149:16
cannot [6] 14:17 15:4 78:6 80:1 182:10 208:3
cans [1] 145:8
capacity [6] 132:16 139:23 139:24 140:4 140:5 140:13
capital [4] 107:20 107:21 108:12 110:1
Capitol [3] 1:18 2:8 2:11
capped [2] 62:21 62:23
care [1] 125:9
careful [1] 18:9
Carolina [6] 183:23 205:20 205:25 206:21 206:24 207:25
carried [1] 139:15
carrier [9] 26:3 168:3 179:12 179:14 195:10 198:22 201:7 216:4 222:15
carrier's [2] 13:17 195:11
carriers [11] 10:19 31:19 62:22 62:22 121:5 179:15 187:7 199:5 199:18 204:6 210:9
case [42] 1:4 9:6 14:11 17:23 18:11 19:19 38:7 39:15 54:4 63:22 71:13 71:21 76:8 80:18 81:21 82:5 83:14 83:16 84:6 91:17 113:25 117:1 125:16 159:19 162:24 193:18 204:7 205:20 206:7 207:4 207:7 208:10 211:6 211:8 211:9 211:17 212:11 212:12 214:8 215:1 215:9 219:14
cases [15] 8:23 54:6 70:2 71:13 182:1 199:14 199:15 199:20 203:20 205:15 206:19 208:19 208:20 211:7 212:7
caught [1] 32:3
caused [1] 171:16
caveat [1] 99:2
caveated [1] 60:22
cell [1] 101:1
Cellular [1] 104:4
central [5] 6:15 94:12 95:15 96:23 177:11
cents [2] 120:7 121:25
Century [1] 174:8
certain [7] 39:7 49:25 53:19 77:21 82:4 83:11 128:5
certainly [11] 36:3 36:18 40:1 54:22 61:20 61:21 79:6 79:24 98:1 165:24 204:5
CERTIFICATE [1] 228:1
CERTIFY [2] 228:5 228:9
cetera [2] 149:16 227:15
CFR [3] 220:7 221:6 221:6
Chairman [1] 62:25
challenge [1] 15:1
change [5] 44:5 44:24 130:22 219:13 219:15
changed [2] 113:14 141:8
changes [5] 75:9 100:23 129:6 131:7 131:9
changing [1] 63:7
channels [1] 140:7
characteristics [1] 181:24
charge [3] 119:15 122:4 122:4
charges [1] 121:3
check [3] 103:3 156:4 218:7
cherry [1] 25:7
cherry-picking [1] 23:21
Chevrolet [1] 106:23
choice [9] 7:15 66:4 66:9 157:11 157:13 157:14 174:20 175:4 193:24
choices [1] 110:16
chooses [1] 80:3
chose [3] 109:9 110:14 214:18
chosen [1] 146:24
circumstances [4] 77:17 115:14 186:24 187:7
cite [3] 50:3 57:3 218:12
cited [1] 224:12
cites [1] 217:21
citizens [2] 60:14 205:17
city [1] 141:1
claim [1] 220:21
claims [2] 10:17 129:2
clarification [6] 152:21 158:19 169:10 183:1 192:6 207:8
clarify [4] 46:1 72:24 113:11 218:13
clarifying [3] 46:14 218:13 219:17
clarity [1] 209:11
Clark [50] 2:3 4:8 4:10 4:14 4:19 4:20 4:23 5:5 5:11 8:17 8:18 9:23 12:15 16:21 27:16 27:18 28:7 30:11 31:5 31:7 31:21 33:4 38:20 38:22 40:25 62:13 62:15 63:15 68:20 68:21 68:23 70:24 82:19 82:21 84:21 89:4 89:8 89:24 162:10 162:12 163:9 172:20 209:7 209:9 212:1 212:14 215:25 225:8 227:3 227:5
class [6] 20:17 33:21 47:10 60:14 90:21 170:17
classified [1] 31:19
clause [2] 180:10 218:14
clean [1] 176:11
clear [9] 15:20 98:22 130:10 138:18 138:21 163:21 168:20 210:15 210:20
CLEC [3] 203:1 206:14 222:16
client [7] 177:16 178:4 189:22 190:2 190:5 191:7 191:14
clock [16] 71:9 72:19 84:11 177:21 178:3 178:7 182:19 184:4 184:19 206:16 206:17 208:13 208:15 208:18 209:19 209:23
close [5] 89:5 120:2 120:16 121:17 142:20
closed [1] 227:22
closely [3] 152:9 152:14 206:22
closing [1] 150:4
co-counsel [1] 11:15
CoBank [7] 107:23 107:24 108:8 109:10 110:8 110:14 143:3
code [8] 7:8 7:9 54:5 116:1 173:25 174:4 174:8 174:12
collect [1] 44:13
collection [4] 7:8 7:9 173:25 174:4
collocation [4] 84:2 203:7 203:16 203:24
Colorado [1] 108:2
column [5] 41:12 41:18 41:20 41:21 42:16
columns [1] 41:25
combined [1] 96:1
comfortable [1] 90:13
coming [2] 9:3 209:17
commencing [1] 8:2
comment [1] 77:3
comments [2] 8:15 9:9
commercial [1] 27:21
commission [150] 1:2 2:7 2:7 2:10 2:13 8:8 8:16 8:21 9:4 9:11 9:14 10:16 10:22 11:1 12:6 12:8 12:9 12:9 15:16 15:25 16:20 18:2 18:7 18:15 19:15 21:11 21:15 22:1 22:10 27:16 32:12 33:3 36:16 38:20 38:23 39:9 39:18 39:20 44:15 46:22 54:14 54:17 58:20 61:18 62:3 63:22 64:12 64:14 65:19 67:25 69:14 69:19 70:12 71:7 72:5 72:18 74:15 79:11 80:6 80:9 80:14 81:1 81:3 81:7 82:13 82:19 83:9 83:13 87:5 87:10 88:5 88:7 88:9 88:9 88:14 88:22 89:6 89:7 89:22 98:18 102:10 102:22 111:3 111:13 113:5 114:1 115:19 117:18 122:24 124:10 124:18 124:24 125:5 125:10 129:20 129:21 134:16 156:2 160:2 165:25 174:13 177:15 177:20 179:1 180:17 180:21 180:24 181:10 181:19 181:20 182:13 182:17 183:7 183:25 184:25 185:18 185:24 186:1 186:6 186:9 187:12 187:16 187:23 188:9 189:1 189:9 189:14 190:1 190:14 190:15 204:25 205:22 206:1 206:9 206:16 209:7 209:21 210:20 211:15 212:23 213:14 214:18 215:15 219:6 221:10 221:16 222:3 225:21 226:21 227:9
Commission's [6] 72:10 80:4 80:8 158:16 165:8 207:11
Commissioner [133] 2:3 2:4 2:4 4:8 4:9 4:10 4:14 4:14 4:19 4:19 4:20 4:21 4:23 4:24 5:5 5:6 5:11 5:11 8:18 8:25 9:1 9:17 9:18 9:23 12:15 16:21 16:22 24:1 24:10 24:13 24:17 24:20 24:22 25:1 27:16 27:18 28:7 28:9 28:10 28:12 28:13 30:11 31:5 31:7 31:21 31:22 31:24 32:10 33:4 36:10 36:12 36:13 36:19 36:25

37:4 37:5 37:7
37:8 38:20 38:22
40:25 41:2 41:4
43:10 43:13 43:14
52:16 52:19 62:13
62:15 63:15 63:17
63:19 64:7 68:17
68:18 68:19 68:20
68:21 68:23 69:10
70:24 71:1 71:3
74:12 75:1 82:19
82:21 84:21 84:23
85:2 87:8 87:11
87:25 89:4 89:8
89:21 89:24 157:24
158:6 158:7 162:10
162:12 163:9 163:10
163:12 163:14 163:16
167:7 172:15 172:19
172:20 172:22 173:1
175:21 209:7 209:9
212:1 212:14 212:16
212:18 215:25 216:1
216:22 216:24 216:25
219:16 225:7 225:8
227:3 227:5 227:10
227:16

commissioners [11]
2:2 8:15 10:1
12:15 12:20 31:4
162:10 169:24 224:19
225:6 227:8

commissions [7]
172:5 172:7 183:22
184:14 209:12 210:5
210:5

commitment [1] 67:11

commitments [1]
32:21

commodities [1]
58:1

common [5] 118:3
157:16 168:22 187:2
187:8

commonly [1] 64:10

communications [19]
6:17 7:15 10:9
11:18 11:20 12:22
13:20 17:21 51:9
53:19 57:12 57:18
92:7 95:14 174:13
174:20 175:3 178:9
179:3

Communications/ [1]
1:4

communities [4]
29:24 31:8 31:17
67:2

community [1] 85:15

companies [39] 13:7
13:14 13:16 13:18
14:20 17:25 25:22
29:7 39:1 43:7
65:24 66:15 67:22
73:8 77:21 77:24
78:6 79:10 80:19
85:12 86:2 86:3
95:17 96:4 96:6
96:21 97:24 98:2
104:17 109:20 109:25
125:25 126:11 162:2
194:11 196:16 220:3
221:21 223:11

company [110] 1:5
8:12 10:13 11:25
12:2 17:13 17:14
17:16 17:24 18:4
18:12 18:18 18:25
23:21 25:12 30:2
39:25 40:15 43:23
44:4 44:22 45:2
58:11 58:16 58:17
62:18 62:20 63:10
63:12 66:17 67:1
67:12 72:6 72:12
72:21 75:11 75:23
76:13 77:4 79:18
81:22 85:5 85:6
85:14 91:15 95:7
95:25 98:4 99:9
99:20 99:23 99:24
103:13 106:20 109:12
111:17 116:1 117:23
119:5 121:2 124:25
125:21 125:22 125:24
126:2 126:9 126:15
128:13 129:16 135:20
136:7 137:2 140:18
143:21 144:25 145:8
145:15 145:22 146:24
155:23 156:2 160:14
161:20 163:22 168:1
171:14 178:24 183:1
183:24 191:16 191:17
192:4 192:5 198:12
205:24 206:8 208:24
212:22 213:2 215:11
216:11 216:13 219:9
221:17 222:6 222:23
223:19 223:24 224:7
224:10

company's [9] 10:6
45:7 53:17 60:17
62:5 100:2 102:10
131:13 191:3

company-specific [1]
70:8

companywide [2]
45:23 46:4

compared [3] 106:5
106:10 139:24

comparison [1] 66:16

compensation [6]
13:21 200:11 201:20
201:21 201:21 203:9

compete [10] 19:4
65:17 85:6 105:18
145:16 145:23 146:5
196:22 196:25 197:12

competing [2] 197:7
197:22

competition [56]
13:2 13:9 13:11
13:13 16:12 28:21
53:9 59:9 60:1
60:12 60:14 64:10
64:22 65:7 65:21
65:23 65:25 66:11
75:5 75:11 76:14
77:6 86:24 103:16
103:17 105:6 105:7
125:7 135:11 135:22
136:18 136:24 137:1
138:1 155:17 156:16
156:18 156:23 156:25
157:3 157:8 157:18
164:3 165:21 165:22
166:2 166:3 169:11
169:17 200:6 200:7
200:16 200:20 200:24
201:13 203:15

competitive [3] 16:3
16:9 106:7

competitor [15] 14:2
75:8 75:17 76:10
105:24 106:4 106:9
106:14 138:11 162:20
167:23 194:2 218:24
219:4 219:5

competitor's [1]
75:19

competitors [6] 26:12
29:25 104:2 106:5
159:22 197:4

compilation [1] 115:21

complain [1] 156:15

complained [2] 52:13
53:3

complaints [3] 155:22
156:1 156:11

complete [1] 16:7

completed [4] 134:22
134:23 137:6 137:11

completely [2] 67:8
73:2

complex [1] 70:18

compliance [3] 11:13
88:6 166:20

complicated [4] 165:13
165:15 165:16 165:19

comply [1] 88:14

computed [2] 37:17
37:21

computer [1] 149:15

conceded [1] 98:2

conceivably [1] 44:14

conception [1] 109:11

concerned [1] 156:15

concerning [4] 51:8
129:3 135:10 223:14

concerns [3] 51:9
159:20 200:4

conclude [2] 135:2
135:6

concluded [6] 135:5
135:7 136:2 137:16
139:16 227:23

concludes [1] 177:16

concluding [1] 204:2

conclusion [3] 39:8
44:24 137:24

conclusions [1] 226:22

conditions [2] 19:12
27:7

conduct [2] 10:23
168:7

confidence [2] 18:7
70:9

confident [1] 79:4

confidential [1] 136:20

confirm [3] 100:17
223:7 223:16

confirmation [1]
176:6

confirms [1] 97:23

confused [4] 123:24
125:13 136:5 227:18

confusion [4] 73:2
138:4 138:14 138:19

Congress [12] 13:1
16:12 17:25 49:24
52:7 52:10 52:11
52:25 53:4 57:16
213:13 216:5

congressman [1]
87:25

conjunction [1] 137:23

consider [12] 28:20
54:7 63:22 64:13
73:16 73:25 124:9
124:18 124:24 125:6
125:11 166:8

consideration [1]
55:1

considered [7] 11:5
42:20 43:9 63:4
69:22 122:24 150:24

considering [2] 98:19
131:14

consist [1] 176:7

consistent [19] 11:10
88:7 88:8 88:15
102:4 116:10 118:19
153:12 154:22 159:6
166:16 182:20 183:9
183:11 183:18 183:21
210:3 210:7 213:23

consisting [4] 92:25
171:17 174:11 174:19

consists [4] 50:24
111:1 173:24 174:7

consolidated [1]
99:23

constant [1] 118:10

constitutes [1] 107:18

constitutional [1]
211:4

consultants [1] 135:21

consulting [2] 17:21
171:8

consumer [1] 76:12

consumers [10] 13:4
13:9 16:10 64:11
65:9 66:2 66:8
76:14 76:18 86:20

cont'd [1] 3:1

contain [2] 19:11
228:10

contained [1] 98:20

Contel [2] 99:11
99:12

contemplates [1]
53:10

contemporaneously
[1] 150:10

content [2] 27:3
141:2

context [6] 18:3
74:25 192:13 199:10
199:17 212:8

contexts [1] 199:12

continue [7] 89:6
108:21 114:7 124:2
132:10 149:14 218:11

continued [3] 5:1
6:1 7:1

continues [4] 134:5
145:11 190:3 195:19

continuing [30] 25:3
29:6 34:21 44:20
57:6 59:22 88:1
92:4 92:23 93:11
96:14 99:6 101:25
103:2 117:22 127:6
129:1 130:14 139:9
144:23 152:13 154:19
171:25 173:7 173:21
174:15 181:25 208:7
212:1 216:1

contracts [3] 30:20
30:22 141:19

contradict [1] 15:2

contrast [1] 51:3

control [1] 83:2

convenient [2] 89:11
89:14

conversation [1]
123:6

converting [2] 148:17
148:24

coop [1] 110:8

cooperate [2] 77:24
79:12

cooperative [8] 26:17
26:21 32:6 108:3
108:6 108:8 108:24
110:5

cooperatives [2] 75:22
95:2

copies [4] 102:18
206:23 206:24 207:1

copper [8] 131:20
132:1 133:5 135:8
138:13 140:3 140:4
146:22

copy [19] 21:4
48:6 92:25 93:12
100:17 100:18 100:22
101:11 101:14 101:20
127:9 135:19 136:14
136:16 144:15 153:16
153:20 206:25 208:2

Cornell [1] 173:25

corner [1] 174:14

Corporation [1] 6:17

correct [61] 30:19
37:19 38:2 38:7
40:7 43:23 43:24
46:17 51:7 60:18
60:24 61:1 61:12
61:15 85:7 86:7

86:18 92:8 93:2
95:4 96:11 100:1
102:16 102:17 118:2
118:5 118:9 121:3
125:7 125:21 127:21
129:18 136:13 137:3
137:7 137:12 142:16
145:2 145:2 148:10
151:21 155:4 155:10
155:11 156:7 160:7
167:24 169:19 174:1
177:22 184:17 184:18
184:20 189:2 189:12
189:16 215:20 216:21
221:4 222:7 223:22

correction [3] 172:2
172:9 173:8

corrections [2] 91:20
172:1

correctly [7] 30:10
34:24 35:1 126:24
127:4 144:14 186:7

correspond [1] 192:2

Cosson [1] 17:6

cost [33] 6:18 6:19
40:1 41:11 41:18
41:22 42:18 42:19
43:3 108:12 118:9
118:14 142:14 142:15
143:5 143:17 143:25
157:17 162:22 162:23
163:2 194:25 195:14
195:17 199:4 203:5
208:23 208:25 220:1
223:3 223:10 223:10
224:24

costs [14] 43:1
43:6 75:12 75:21
75:25 143:22 144:6
195:9 220:18 220:24
221:8 221:11 221:19
222:3

counsel [22] 2:7
12:6 22:18 23:1
44:9 53:15 55:3
92:3 125:15 171:24
173:20 176:7 176:11
176:13 181:12 211:20
211:21 217:11 218:1
225:15 227:14 227:22

counsel's [2] 23:11
35:22

count [2] 96:12
202:15

counted [1] 127:4

counting [1] 126:24

country [3] 61:23
62:23 194:12

couple [6] 134:1
163:17 167:9 168:13
200:1 223:13

course [10] 20:15
65:18 75:9 77:14
130:24 160:10 163:6
165:8 206:12 207:6

courses [1] 56:9

court [5] 49:20 50:2
184:12 211:6 228:1

courts [1] 55:2

cover [6] 67:8 114:4
191:18 192:2 192:9
202:7

covered [1] 157:22

covers [1] 13:22

Cramer [23] 2:4
5:6 9:17 9:18
12:16 16:22 24:22
28:12 28:13 43:13
43:14 68:18 68:19
87:11 87:25 163:14
163:16 167:7 175:21
216:24 216:25 219:16
227:16

create [2] 14:4
166:25

created [2] 13:13
13:15

criticize [1] 192:22

cross [2] 114:13 154:8

cross-exam [1] 36:9

cross-examination [21]
4:7 4:13 4:18
5:4 5:10 23:16
37:12 44:7 55:15
55:23 89:10 94:2
115:7 115:13 124:20
168:14 168:21 176:25
177:3 177:8 183:15

cross-examine [1]
51:20

cross-examining [1]
56:1

crossed [1] 220:12

current [6] 139:24
198:25 218:21 219:9
219:14 220:16

custom [1] 207:11

customer [18] 29:25
68:3 68:9 75:14
76:1 76:16 130:24
142:2 155:21 157:1
157:9 162:19 162:25
169:3 198:17 221:20
222:9 222:9

customers [23] 16:7
23:21 30:1 32:21
58:15 58:18 65:20
67:21 76:5 76:9
93:13 104:7 104:18
120:18 132:11 148:7
151:12 156:14 156:22
157:12 157:15 162:16
219:7

customers' [1] 157:4

cut [1] 141:25

CV [1] 6:5

d [3] 11:11 221:5
221:7

D.C [4] 2:21 3:8
12:3 17:9

Dakota [169] 1:1
1:5 1:19 2:9
2:12 2:18 3:5
6:15 8:7 8:11
10:5 10:12 10:13
11:24 11:24 12:2
13:10 14:13 14:16
14:17 14:25 15:9
15:12 15:15 15:18
16:1 16:1 16:6
17:12 17:16 17:17
17:24 18:3 18:5
18:12 18:18 18:25
19:13 20:16 25:11
25:23 27:5 31:14
31:17 32:20 33:16
33:21 43:22 44:4
44:22 45:2 45:13
45:23 46:5 46:8
47:9 49:21 53:16
58:16 61:18 61:24
62:3 62:4 65:16
66:7 66:17 67:3
67:9 67:14 68:2
68:6 68:11 69:1
70:7 70:16 70:20
72:6 72:12 72:21
75:13 76:2 76:13
77:4 77:12 79:9
79:18 80:3 80:8
80:12 80:24 83:1
83:9 85:6 85:14
90:20 91:12 91:14
94:8 94:8 94:13
95:14 95:22 95:24
96:16 96:23 99:7
99:12 99:22 100:2
100:5 100:10 100:11
102:15 103:12 103:16
103:22 104:14 108:5
109:1 111:6 111:16
116:1 116:6 116:8
116:21 117:23 121:7
122:19 123:2 123:5
125:20 125:23 127:1
127:8 127:10 128:13
131:12 135:20 146:24
150:24 152:14 152:17
156:2 161:20 162:18
162:24 163:22 165:20
167:5 170:16 171:14
174:8 182:23 183:1
183:6 191:2 191:16
191:17 192:5 194:4
194:14 196:5 198:12
205:4 208:24 215:11
216:13 224:7 228:13

Dakota's [1] 62:19

Dakotas [1] 14:20

data [6] 6:19 133:14
147:9 149:13 198:4
220:4

database [1] 111:17

date [17] 10:3 72:19
150:4 150:5 150:15
150:16 187:21 189:1
189:24 206:1 206:5
216:6 217:12 217:15
217:15 217:18 217:18

dated [5] 10:15 21:19
92:5 92:16 150:8

dates [2] 72:24 150:19

Dave [2] 5:20 6:24

David [7] 5:3
6:21 6:22 17:11
90:11 91:3 91:8

days [30] 27:4 69:17
72:4 72:7 72:9
72:10 72:14 77:24
79:6 79:6 79:24
83:7 83:20 129:17
129:24 165:4 165:5
186:6 186:8 186:10
188:9 190:16 206:14
218:3 218:4 218:8
218:10 218:13 218:15
222:11

de [4] 45:1 45:16
68:6 68:11

deal [5] 52:3 205:22
209:21 211:12 211:13

dealing [10] 39:25
40:5 40:8 78:11
174:8 214:7 215:2
215:5 217:24 220:2

deals [3] 42:12 178:13
202:4

dealt [7] 39:25 78:25
109:11 206:8 209:12
210:24 212:7

December [5] 37:2
52:18 52:23 63:23
72:8

decide [7] 58:19
83:13 83:17 83:22
141:8 141:12 213:4

decided [5] 13:1
83:10 85:13 135:7
151:2

deciding [2] 82:13
141:18

decision [24] 18:9
18:12 19:20 68:14
74:2 74:3 81:5
81:8 87:5 95:11
132:14 134:23 137:6
137:11 139:13 139:21
140:21 165:8 165:24
207:25 208:1 208:1
209:19 215:8

decisionmaking [1]
64:21

decisions [4] 141:12
141:15 143:17 206:23

defaults [1] 211:14

defer [2] 57:8 58:12

deferred [1] 210:25

definition [1] 105:6

degree [6] 56:6
56:8 56:12 149:9
149:10 149:11

delay [4] 39:6 65:17
77:5 83:2

deleted [1] 173:3

deliver [1] 148:25

demonstrated [1]
14:14

demonstrative [1]
114:4

denial [2] 54:19
54:20

denied [2] 51:18
53:21

denies [2] 190:2
190:3

Denise [2] 228:3
228:17

Denver [1] 108:1

deny [4] 65:20 68:15
160:2 160:22

denying [1] 204:25

depend [1] 89:9

dependent [1] 161:6

depending [3] 165:7
220:4 220:5

deployment [1] 146:21

deposition [20] 99:21
100:9 100:16 101:19
110:3 133:9 133:16
133:21 133:24 134:5
135:10 135:13 136:20
138:3 138:6 138:9
138:15 138:20 142:15
155:8

depreciated [2] 131:18
132:2

describe [6] 66:15
109:5 147:16 147:18
195:3 200:4

described [4] 135:9
179:18 188:16 189:19

describes [3] 51:6
51:16 221:7

description [12] 5:16
6:3 7:3 93:1
127:20 135:12 149:18
150:8 150:11 150:13
150:15 195:4

descriptive [1] 50:25

designated [4] 8:5
18:15 171:21 219:5

desirable [5] 135:3
135:5 136:3 136:3
139:17

desired [2] 149:17
149:21

detail [1] 42:4

determination [3]
13:4 13:8 189:10

determine [18] 8:10
9:12 10:4 10:23
18:22 19:2 19:5
19:13 58:19 71:8
75:17 81:13 86:6
87:2 137:13 208:25
213:3 220:23

determined [4] 11:5
126:6 208:8 215:12

determining [4] 40:7
72:18 72:19 125:1

develop [4] 7:15
72:6 174:20 175:3

developed [1] 181:13

development [2]
13:12 200:5

Devils [46] 10:12
16:6 16:11 18:11
18:25 19:7 25:16
25:20 25:24 26:12
26:15 28:25 37:22
45:5 46:16 46:19
58:21 62:5 66:3

74:8 79:23 82:1
91:11 91:13 94:9
94:15 94:17 104:19
119:15 119:25 120:21
131:18 132:3 137:15
138:1 142:21 142:24
146:14 147:1 147:4
161:4 190:10 191:7
214:10 217:13 224:8

dial [1] 58:15

dialing [1] 13:20

difference [10] 43:2
63:2 120:5 133:4
179:21 180:14 182:3
182:13 208:16 216:17

different [30] 9:9
15:11 15:11 40:1
41:18 41:24 42:1
51:10 58:25 63:8
71:12 73:3 73:23
101:12 109:6 122:8
123:21 128:3 128:4
136:6 136:21 145:18
178:10 178:14 181:23
201:12 208:8 208:11
210:22 215:4

differently [2] 62:18
62:24

difficult [3] 70:19
84:5 202:10

difficulty [2] 14:22
203:5

Dillon [1] 219:11

Dircks [40] 5:3
5:20 6:21 6:23
6:25 17:11 17:12
59:7 60:7 60:10
90:11 90:12 90:14
91:3 91:8 91:10
91:16 92:24 93:12
94:4 96:16 97:14
98:20 98:22 99:7
114:14 115:1 116:4
117:22 127:9 127:18
136:11 145:13 147:12
150:18 154:20 156:22
157:5 168:16 170:2

Dircks' [6] 59:15
59:25 60:4 82:6
93:22 224:13

direct [53] 4:7
4:13 4:18 5:4
5:9 5:17 5:23
6:6 6:8 6:9
6:11 21:1 21:6
21:7 21:9 22:6
22:14 23:2 24:23
24:24 29:19 34:6
34:8 34:15 34:17
34:23 35:3 35:6
37:2 37:3 41:6
47:20 47:23 48:3
48:5 48:9 48:13
48:23 48:24 52:23
53:6 56:20 56:22
66:19 66:23 91:6
111:22 124:22 127:12
144:19 171:2 201:4
201:8

direction [1] 210:15

directions [2] 8:16
227:8

directly [3] 51:20
64:25 201:6

director [2] 17:19
171:7

directors [1] 17:15

DirecTV [11] 29:2
29:9 150:25 151:7
196:11 196:22 197:1
197:19 197:19 197:22
197:23

disadvantages [3]
105:25 106:5 106:10

disagree [5] 79:17
79:21 80:20 193:23
194:3

Disbursement [1]
6:19

disbursements [2]
218:23 219:2

discount [39] 37:17
37:21 40:16 40:18
42:18 45:9 45:12
45:23 46:4 61:19
62:4 69:23 70:4
73:12 80:12 80:14
80:15 80:21 85:17
85:19 85:20 85:21
85:22 86:9 86:10
87:2 155:3 160:5
160:13 191:25 192:20
192:23 194:16 195:9
214:3 214:9 214:21
215:2 223:2

discounts [2] 70:15
194:11

discovery [3] 37:25
222:15 222:17

discuss [4] 66:10
129:5 144:12 198:2

discussed [4] 105:8
133:20 136:21 196:3

discussing [3] 27:3
27:8 106:2

discussion [17] 39:6
49:7 49:9 122:23
124:8 134:4 134:7
167:13 167:21 192:23
199:25 208:12 217:10
217:25 218:6 218:20
226:9

discussions [5] 27:4
38:25 39:2 69:2
83:11

DISH [2] 151:4
196:11

dispute [3] 69:23
69:24 86:2

disputed [1] 71:24

disputes [1] 39:17

dissolved [1] 17:7

distance [13] 57:25
79:1 121:5 125:20
125:23 128:4 128:7
128:8 128:9 145:9
157:15 157:17 196:6

distinction [2] 50:19
51:12

distinguish [2] 52:20
216:16

diversified [1] 67:1

dividend [1] 108:13

dividends [5] 108:9
108:14 108:16 108:17
108:21

Division [1] 12:8

docket [12] 21:10
21:15 24:16 24:18
34:9 34:12 47:24
48:1 48:25 49:1
93:23 173:18

document [18] 24:10
24:12 60:3 66:25
92:24 96:17 96:20
97:3 97:4 97:11
97:19 114:11 117:1
117:2 117:6 174:25
182:6 182:7

documents [5] 24:4
97:15 100:24 116:19
116:25

doesn't [19] 56:24
60:7 79:9 82:25
83:19 83:22 108:8
108:11 129:25 139:4
161:20 164:8 166:25
180:25 202:15 203:3
203:17 210:20 221:17

dollar [1] 147:3

dollars [8] 45:4
45:10 103:5 118:17
118:25 121:14 142:16
167:22

domestic [1] 116:25

Don [3] 3:2 11:23
16:23

done [37] 50:25 61:22
62:7 66:1 70:4
70:5 70:6 74:5
79:5 79:7 79:13
86:5 86:22 86:24
96:18 96:19 133:10
134:18 135:20 137:13
137:25 144:2 159:14
165:18 183:22 187:4
187:5 199:3 199:17
202:8 205:11 212:13
213:24 215:15 222:23
222:25 223:12

dots [1] 67:6

dotted [1] 220:13

double-checking [1]
176:22

doubt [1] 192:12

Douglas [5] 5:8
7:6 17:18 170:24
171:6

Dow [2] 2:19 11:19

down [6] 75:12 81:22
82:2 108:9 108:15
166:8

dozens [2] 61:22
61:22

draft [2] 151:23 191:11

drive [2] 3:4 75:12

DSL [1] 132:6

due [1] 43:5

duly [6] 11:1 20:24
34:4 47:18 91:4
170:25

Duncan [4] 5:8
7:7 170:24 171:6

Durick [109] 2:15
2:16 4:7 4:8
4:13 4:15 4:18
4:22 5:20 6:23
6:24 11:15 11:17
11:17 11:18 12:12
12:14 12:21 19:24
20:1 20:6 20:21
20:22 21:2 22:12
22:20 23:4 23:12
23:13 24:8 24:12
24:15 24:19 24:24
28:16 28:17 28:19
29:6 29:11 32:12
32:13 33:5 33:7
33:10 34:1 34:2
34:7 34:21 35:11
35:14 35:15 35:18
36:1 36:8 36:18
36:22 37:3 43:15
43:16 43:19 44:18
44:19 44:20 45:17
46:22 46:23 47:1
47:15 47:16 47:21
48:16 48:19 48:20
48:25 50:5 56:18
56:24 74:16 74:19
74:22 76:19 87:13
87:14 88:22 88:23
89:13 89:14 89:19
90:5 90:7 92:13
92:14 92:17 92:20
93:5 93:6 96:8
101:9 135:19 153:23
175:12 225:12 225:14
225:16 225:18 225:25
226:3 226:10 226:11

during [14] 9:12
57:11 57:15 110:3
111:25 133:9 133:15
133:23 136:20 142:15
144:23 155:7 168:21
208:13

duties [1] 184:2

duty [5] 184:1 184:1
194:15 201:20 201:21

e [13] 2:1 2:1
2:4 3:1 3:1
4:1 5:1 6:1
7:1 186:5 186:16
211:13 217:25

earliest [1] 217:16

early [3] 15:13 132:22
133:6

easier [2] 20:9
207:19

easily [3] 51:13
77:23 114:9

East [4] 1:19 2:8
2:11 2:17

EchoStar [4] 151:4
151:7 196:22 196:25

economic [1] 214:24

economically [7]
11:7 158:18 158:21
158:23 158:25 166:14
167:4

economics [6] 17:19
56:7 56:9 56:10
56:12 171:7

economists [1] 195:25

effect [12] 40:10
44:25 77:4 108:11
136:7 136:23 138:11
159:9 159:11 162:23
186:12 186:13

effective [4] 146:3
146:5 185:19 187:21

efficiencies [2] 65:1
75:10

efficient [1] 76:15

efficiently [1] 70:5

either [13] 14:8
31:1 39:19 63:12
68:15 86:18 121:6
128:1 131:20 138:22
139:1 139:3 214:6

elaborate [1] 223:3

elapsed [1] 39:11

electronically [1]
112:25

element [2] 40:5
40:21

elements [9] 39:3
40:8 71:16 84:1
178:25 179:11 203:18
213:5 216:19

eligible [6] 84:14
109:1 109:3 109:4
120:22 218:25

Elk [1] 3:4

emphasis [1] 149:13

employees [1] 67:11

enable [2] 145:15
145:22

enacted [1] 12:24

enclosure [1] 151:23

end [14] 14:1 14:6
18:23 78:15 79:22
79:25 80:1 126:16
126:16 126:22 188:19
188:22 193:6 227:19

enforce [2] 80:6
80:10

enjoyed [1] 67:15

enter [12] 30:21
70:22 77:12 77:16
83:10 102:23 131:13
135:3 136:3 136:4
141:2 179:13

entered [1] 107:11

entering [1] 131:14

enters [1] 14:7

entirely [3] 50:24
138:18 223:23

entities [1] 110:4

entitled [3] 175:2
179:8 198:21

entry [3] 82:25 144:12

173:18
equal [1] 126:10
equalization [2] 145:8 145:20
equalizing [1] 145:13
equally [1] 52:12
equipment [2] 142:1 142:4
equity [2] 100:9 102:5
erroneous [1] 54:16
error [1] 36:2
escape [1] 122:14
essence [2] 68:4 78:13
essential [1] 168:2
essentially [7] 100:4 113:15 115:17 142:24 159:21 211:11 211:11
establish [8] 19:6 69:15 69:16 88:5 112:8 116:8 203:13 209:24
established [9] 61:18 61:25 62:3 68:2 69:9 69:10 69:12 185:7 210:16
establishing [2] 85:17 159:21
estimate [1] 77:15
estimated [1] 142:14
estimates [1] 44:1
et [2] 149:16 227:14
ETC [5] 163:7 168:7 211:7 218:25 219:6
Ethernet/IP [1] 146:20
event [1] 113:16
eventual [1] 210:10
Eventually [1] 38:3
everybody [2] 161:16 164:25
everywhere [1] 66:2
evidence [22] 14:3 14:11 15:3 15:22 18:10 18:13 18:14 18:24 19:1 19:19 22:13 32:19 44:10 44:17 49:21 54:22 54:24 80:16 97:11 115:12 173:18 175:11
Evidently [1] 165:10
exact [7] 43:22 44:3 44:21 50:10 95:18 121:22 205:12
exactly [10] 24:3 106:14 106:17 113:22 119:8 134:19 192:2 194:22 197:2 209:11
Examination [64] 4:7 4:8 4:8 4:9 4:9 4:10 4:13 4:14 4:14 4:15 4:16 4:18 4:19 4:19 4:20 4:21 4:22 4:22 4:23 4:24 4:25 5:4 5:5 5:6 5:6 5:9 5:10 5:11 5:11 5:12 5:13 21:1 27:17 28:18 29:17 31:6 31:23 34:6 38:21 41:3 43:18 46:12 47:20 62:14 63:18 68:22 71:2 74:21 77:1 82:20 85:1 87:22 91:6 158:13 162:11 163:15 167:11 169:8 171:2 204:20 209:8 212:17 217:4 224:20
examined [5] 20:24 34:4 47:18 91:4 170:25
examining [1] 114:14
example [6] 57:22 80:11 105:17 183:23 211:8 221:20
Excel [1] 111:8
excellent [2] 75:24 155:21
except [5] 98:12 98:21 113:4 130:23 153:18
excerpts [1] 174:12
exchange [21] 10:12 10:19 18:11 19:1 19:8 37:18 42:14 42:25 45:6 46:16 46:19 62:5 77:22 142:24 146:15 147:5 161:5 179:12 214:10 216:4 216:8
exchanged [1] 201:22
exchanges [2] 31:11 94:11
exclude [1] 115:11
exclusive [1] 30:3
excuse [11] 24:1 34:11 41:6 74:9 81:19 93:9 93:16 97:8 132:23 140:6 181:11
executive [2] 7:4 149:7
exempt [1] 10:18
exemption [103] 1:5 8:11 9:2 9:5 10:6 10:24 11:14 13:15 13:22 13:25 14:3 14:6 14:8 14:12 15:7 15:10 15:14 15:23 15:23 16:3 17:23 18:3 18:18 30:14 30:17 38:24 68:16 68:25 69:14 71:8 72:18 73:25 77:11 77:14 77:18 81:13 81:17 82:14 83:17 84:7 86:13 86:16 88:2 88:4 125:1 153:1 155:12 159:15 160:4 160:10 160:16 160:18 161:18 177:16 178:13 178:14 178:22 180:19 183:7 183:17 183:20 184:3 184:4 184:10 184:21 184:22 190:2 190:3 190:21 190:23 192:15 200:19 200:25 205:1 205:13 205:19 205:22 205:23 205:25 206:4 206:9 206:11 206:18 208:12 208:14 208:15 208:18 209:17 209:22 212:2 212:7 212:9 212:20 212:24 213:1 213:3 213:13 213:15 213:25 214:2 215:20 216:5 216:7
exemptions [4] 28:4 199:11 199:14 199:19
exercise [3] 66:8 79:10 125:15
exhibit [64] 21:10 21:21 21:24 24:8 24:8 24:15 24:25 34:8 34:10 34:14 34:15 34:16 34:17 34:22 34:22 36:22 36:23 36:23 36:24 42:5 47:23 48:2 48:3 48:4 48:6 48:23 55:12 55:20 92:1 92:15 92:21 93:9 93:20 96:14 97:11 98:18 98:21 99:3 110:25 111:1 111:8 115:2 116:16 117:20 126:23 126:25 127:2 128:24 128:25 144:14 145:5 146:10 148:3 149:6 151:17 171:21 174:18 174:22 175:5 178:16 178:17 179:2 207:9 220:8
exhibits [51] 5:15 5:22 6:2 6:6 6:8 6:9 7:2 21:17 22:13 22:14 22:18 22:25 23:9 24:4 24:4 34:24 35:14 35:16 35:20 35:23 36:6 36:15 36:20 48:19 48:21 55:12 55:16 89:16 102:24 112:2 112:3 112:5 112:6 112:7 112:11 112:16 112:23 113:3 113:8 113:17 113:24 115:6 115:12 173:23 174:18 175:10 175:17 176:14 176:19 207:4 207:12
exist [1] 201:13
existing [3] 40:9 76:9 222:7
exists [2] 160:10 160:19
Exmination [2] 5:5 5:7
expand [1] 95:8
expect [3] 106:13 107:7 187:20
expectation [2] 51:19 108:20
expected [2] 51:21 53:1
expects [1] 189:22
expedite [1] 19:17
expense [1] 203:5
expensive [3] 106:21 106:24 202:10
experience [12] 14:19 79:3 146:7 149:12 187:4 194:10 202:12 209:3 210:4 214:6 220:2 223:10
experienced [1] 29:24
experiences [1] 39:24
expert [8] 14:14 49:23 54:10 54:15 54:16 140:1 143:9 161:15
expertise [1] 51:16
experts [3] 49:22 54:14 140:17
explain [3] 41:25 42:5 195:5
explains [1] 43:11
extent [8] 51:18 116:4 116:6 123:14 181:7 181:9 181:17 221:9
f [29] 8:10 8:20 10:18 14:1 15:7 28:4 38:24 51:7 69:13 73:24 74:1 88:3 178:11 178:12 178:20 178:21 180:3 180:8 180:16 180:22 181:2 181:19 182:4 182:10 183:7 183:13 215:23 215:25 216:1
face [2] 18:6 76:6
facilitate [1] 13:12
facilities [3] 131:17 137:15 142:9
facilities-based [16] 18:24 136:9 136:18 136:23 138:11 163:7 167:23 198:23 199:25 200:5 200:7 200:16 200:20 200:23 204:4 216:16
facility-based [9] 120:25 163:5 166:5 168:19 169:2 169:11 203:15 219:4 219:5
facing [2] 75:11 76:13
fact [24] 20:14 33:19 43:3 43:6 47:7 62:25 65:16 68:12 71:6 90:18 117:16 136:12 136:15 152:25 170:14 184:9 193:16 197:19 200:22 215:4 223:18 226:20 226:22 226:23
fact-based [1] 187:1
factor [1] 124:25
factored [1] 42:22
factors [1] 141:15
facts [5] 51:13 52:15 187:6 214:24 215:2
Fahn [2] 2:10 12:7
fair [21] 60:12 103:3 105:5 105:6 106:13 106:17 106:18 106:18 106:19 106:25 107:9 107:9 107:13 118:20 119:11 124:4 139:8 195:4 195:5 195:12 205:5
fairness [1] 111:23
faith [1] 19:9
fall [5] 126:15 131:23 131:24 134:18 191:13
fallen [1] 210:16
false [5] 20:13 33:18 47:7 90:18 170:14
familiar [18] 9:5 26:25 29:10 30:6 61:24 102:9 104:6 109:14 110:9 125:12 138:5 159:13 194:24 197:2 198:14 205:15 206:19 206:20
familiarity [1] 29:22
Family [3] 7:15 174:20 175:4
far [10] 38:11 42:16 45:1 71:9 71:25 126:18 137:14 146:25 153:8 210:13
fast [1] 217:7
favor [2] 117:10 190:2
FCC [35] 6:18 7:13 50:22 50:24 63:2 70:11 80:22 88:10 88:15 111:5 111:14 114:1 114:3 116:3 116:15 117:24 117:24 168:22 172:5 172:6 173:6 182:1 184:6 184:9 185:11 210:3 210:12 210:15 210:19 210:24 211:9 211:11 212:6 212:12 219:13
FCC's [11] 53:9 70:15 182:9 192:23 193:2 193:12 194:25 195:8 198:14 210:8 210:8
feasible [4] 11:9 159:3 166:15 167:2
features [5] 42:14 42:20 43:4 43:6 66:6
February [28] 12:25 76:8 77:13 107:8 133:6 134:23 139:13 139:18 164:19 164:25 187:13 187:16 187:17 187:19 187:20 187:22 187:23 189:25 190:6 190:10 190:24 191:7 215:13 215:13 217:11 217:14 217:19 224:9
federal [6] 19:15 119:9 120:15 174:12 174:13 211:5

federally [1] 63:13
feeling [1] 67:20
felony [5] 20:17 33:21 47:10 90:21 170:17
felt [2] 109:12 134:10
few [5] 43:17 104:11 155:22 158:12 219:20
fiber [33] 109:8 132:15 132:21 133:5 133:8 135:7 137:6 137:12 137:17 137:21 137:22 137:24 138:13 139:12 140:5 140:6 140:24 141:7 141:10 141:13 141:23 141:25 142:14 143:5 143:13 146:22 148:8 148:9 148:19 149:1 217:14 223:21 224:9
fiber-to-the-premise [1] 147:4
fide [10] 10:10 10:14 10:16 178:1 178:8 178:10 178:12 178:23 182:17 192:14
field [20] 82:9 105:3 105:10 105:20 107:19 110:23 122:22 123:10 123:14 123:19 129:3 159:22 160:1 161:23 164:2 164:7 164:10 167:1 196:3 204:23
fifth [1] 135:19
figure [2] 162:1 223:2
figures [7] 41:9 41:12 41:13 41:15 43:22 44:4 44:21
file [1] 226:19
filed [22] 35:4 35:24 52:23 71:6 72:17 91:17 93:23 98:8 112:4 112:17 112:23 112:25 156:1 171:16 174:21 175:15 180:16 180:21 181:18 181:20 182:12 192:15
files [1] 25:12
filing [5] 38:6 111:21 113:3 113:17 115:11
filings [1] 79:19
fill [1] 167:14
final [3] 80:25 83:21 218:19
finalized [2] 132:20 133:5
finally [2] 54:18 174:17
Finance [1] 110:5
finances [1] 143:10
financial [10] 14:15 14:22 15:2 40:12 40:14 45:1 45:15 46:18 99:20 121:16
financially [2] 110:15 110:19
financials [3] 99:22 100:4 100:5
financing [4] 109:2 109:19 109:22 143:2
finding [1] 81:7
findings [2] 226:20 226:22
finds [1] 153:6
fine [9] 20:17 33:22 47:10 90:21 100:8 124:12 129:25 132:17 170:17
finish [3] 81:9 81:10 158:3
finished [1] 16:8
firm [9] 11:23 16:24 17:1 17:6 17:6 17:9 17:21 108:1 171:8
first [51] 8:20 11:6 14:2 15:6 15:18 15:18 18:1 18:5 20:2 20:24 21:19 30:16 34:4 41:12 41:17 42:11 47:18 50:8 50:12 63:24 82:3 91:4 97:22 98:9 98:15 107:19 111:1 111:8 128:9 131:22 141:1 145:4 146:13 146:16 148:6 148:16 158:4 158:17 158:17 170:25 178:19 179:6 180:6 180:10 183:19 205:16 206:9 212:11 213:11 217:10 223:15
Fischer [23] 4:12 5:24 6:4 6:5 6:7 6:8 6:10 12:19 33:11 33:11 33:13 34:3 34:9 34:11 34:13 37:14 43:20 46:25 61:15 63:5 68:7 70:6 193:22
Fischer's [2] 144:19 192:24
fish [1] 67:16
five [12] 20:18 33:23 47:11 90:22 102:19 103:4 137:9 156:5 158:5 170:18 174:3 202:23
five-minute [1] 157:25
five-page [1] 174:3
flavors [1] 201:11
flexible [1] 44:16
flexibly [1] 54:23
focus [1] 64:24
follow [5] 43:15 112:9 210:7 214:7 217:21
followed [3] 172:4 172:7 206:22
following [5] 45:22 82:22 113:6 169:10 183:16
follows [9] 8:3 20:25 34:5 47:19 91:5 98:15 114:23 171:1 211:15
followup [10] 28:15 31:4 32:12 46:22 46:23 74:16 87:13 87:15 167:8 217:1
footnote [2] 224:12 224:12
force [1] 79:12
foregoing [2] 228:6 228:10
forget [4] 81:23 139:4 205:12 223:6
forgive [1] 163:17
formed [1] 94:21
formerly [1] 94:23
formula [1] 63:5
forth [3] 158:16 179:15 217:22
forward [5] 8:23 9:15 9:19 9:24 75:18
found [8] 22:4 25:6 101:6 101:9 127:17 129:7 134:3 208:14
foundation [11] 56:21 97:18 98:1 98:10 112:6 112:9 114:11 114:18 114:20 115:17 117:12
four [5] 30:7 53:6 100:13 101:4 102:20
fourth [3] 11:12 146:10 159:12
frame [5] 73:23 74:10 83:2 133:7 184:15
frames [4] 73:4 73:16 73:17 73:20
franchise [2] 141:1 151:9
frankly [1] 217:20
Friendly [3] 7:15 174:20 175:4
front [3] 91:17 93:12 174:22
fulfill [1] 209:23
full [8] 9:16 148:16 171:6 200:8 200:15 204:11 218:17 222:21
fully [4] 59:9 60:1 62:19 181:23
function [5] 18:21 18:21 18:22 59:1 68:5
functional [1] 132:2
funding [9] 6:18 110:6 110:25 116:7 116:10 117:24 118:8 168:1 169:1
funds [2] 167:21 169:15
furthermore [1] 214:9
future [8] 76:7 123:6 132:14 132:16 139:20 149:1 166:6 219:15
Gates [26] 4:17 6:11 6:13 6:14 12:19 47:2 47:3 47:17 47:23 47:25 48:1 48:8 49:16 50:21 51:13 52:25 53:18 54:3 55:25 56:5 59:14 60:7 61:14 74:23 77:3 89:2
Gates' [8] 49:4 49:6 49:18 50:20 51:1 51:11 52:23 165:12
gather [1] 44:13
gathered [1] 54:25
general [7] 17:12 61:9 91:14 99:14 102:11 128:1 143:16
generally [14] 20:15 33:20 47:9 57:23 64:8 90:20 170:16 197:6 200:18 202:12 202:24 203:16 204:6 210:18
generated [2] 111:4 111:15
gentleman [1] 16:24
given [13] 50:10 100:12 112:1 112:5 113:7 114:22 119:9 151:17 159:19 189:3 191:17 191:18 203:11
global [1] 146:19
goal [2] 53:5 77:25
goes [13] 31:25 49:23 53:10 56:23 56:25 69:4 129:13 162:25 164:17 164:22 186:12 186:13 187:25
golly [1] 217:22
gone [2] 27:23 41:7
good [43] 8:4 9:1 9:11 9:18 9:24 16:18 16:19 16:20 16:21 16:22 19:9 23:18 23:19 37:14 37:15 48:8 56:2 56:3 56:4 59:3 59:6 64:11 64:11 67:12 67:17 76:4 94:6 95:8 95:11 106:22 106:25 120:13 142:19 156:19 157:13 177:5 177:6 207:21 211:8 221:23 227:1 227:12 227:19
government [5] 109:17 109:23 116:19 117:2 117:3
grant [3] 16:14 68:15 213:1
granted [8] 17:24 69:6 83:4 158:22 159:8 207:5 213:13 216:4
Granting [1] 209:10
grants [1] 212:24
great [5] 9:21 67:15 76:2 76:11 89:11
Greenbelt [1] 171:11
grew [1] 95:3
grounds [2] 50:2 51:22
group [2] 126:17 207:16
grown [2] 100:12 102:5
GTE [2] 94:23 99:12
guarantee [1] 164:25
guaranteed [1] 109:22
guess [28] 56:13 56:18 58:12 62:22 66:25 78:10 79:9 80:3 81:19 89:8 105:3 105:16 106:2 122:1 125:13 125:14 128:10 135:1 137:4 137:13 145:25 146:7 161:25 164:9 164:23 165:18 204:23 222:12
guessing [1] 96:10
guidance [2] 214:7 221:3
half [3] 40:14 211:24 211:24
Hampshire [1] 2:20
hand [5] 20:19 33:24 47:12 90:23 170:19
handed [1] 174:23
handle [3] 27:21 55:15 93:6
handled [2] 78:20 211:6
handout [1] 127:17
hands [1] 222:14
happy [2] 59:18 207:1
hard [1] 54:7
harm [1] 68:6
Harrington [108] 2:19 4:3 5:4 5:7 5:10 5:12 11:19 11:19 12:16 12:20 50:5 50:7 50:8 51:25 52:2 53:14 55:6 55:8 74:17 93:6 93:8 93:18 93:19 93:25 94:1 94:3 94:4 96:8 96:11 96:14 97:10 97:20 97:22 98:22 98:23 99:5 99:6 101:11 101:13 101:18 101:24 101:25 102:18 103:2 111:12 112:7 112:12 112:19 113:16 113:18 113:21 114:13 114:25 115:16 115:23 116:12 117:20 117:21 117:22 126:23 127:3 127:6 128:15 129:1

130:9 130:13 130:14
138:17 138:23 138:24
139:6 139:9 144:20
144:23 152:13 153:21
153:22 154:1 154:5
154:7 154:17 154:19
157:19 168:11 168:13
168:15 169:5 175:13
175:14 175:19 176:12
177:1 177:2 177:4
177:7 181:25 204:18
207:18 207:22 211:21
219:19 219:20 219:22
224:14 224:23 225:3
225:4 226:5
hate [1] 82:9
head [1] 89:9
headline [1] 145:7
headquartered [2]
108:1 171:10
hear [7] 8:23 18:10
19:19 19:19 165:15
202:19 212:10
heard [16] 8:21
26:1 26:5 33:13
39:18 87:20 90:14
111:11 166:9 166:10
170:10 196:4 208:12
208:20 213:12 217:9
hearing [45] 1:12
1:24 8:8 8:9
8:14 8:16 8:19
9:2 9:10 9:13
9:20 10:4 11:3
11:4 11:6 18:15
19:18 44:12 54:21
64:16 74:5 78:16
79:16 81:3 81:10
81:11 111:21 112:24
113:4 113:8 113:9
113:18 113:19 113:23
113:24 114:6 115:7
158:16 161:17 165:6
189:25 202:23 212:22
217:17 227:6
hearings [3] 8:6
8:20 83:21
hearsay [1] 114:19
held [2] 64:10 70:9
help [6] 42:5 52:20
92:25 196:21 196:25
197:11
helpful [6] 9:8
9:15 36:16 135:16
227:13 227:19
helping [1] 218:13
helps [2] 37:8 156:25
HEREBY [2] 228:5
228:9
herein [1] 8:1
hereinbefore [1] 228:7
Herigstad [4] 3:3
11:23 16:23 17:1
hesitate [1] 128:23
high [11] 6:18 6:19
75:15 118:9 118:14
126:16 132:10 162:22
194:6 194:9 194:21
high-cost [1] 198:15
high-speed [5] 105:19
140:16 144:7 146:1
146:6
higher [5] 40:18
45:13 122:2 126:22
193:6
highly [2] 134:10
136:19
himself [2] 51:16
197:17
hire [2] 149:25 167:14
hired [2] 167:13 167:16
history [1] 67:18
hitting [1] 70:22
hold [1] 121:21
holding [2] 75:23
99:24
Honor [100] 11:22
12:14 16:17 20:1
20:22 22:22 23:5
23:7 23:14 29:3
29:14 33:7 35:12
36:5 43:16 44:6
46:23 47:16 48:17
48:21 49:2 49:4
49:13 50:2 50:5
52:5 53:13 53:14
55:5 55:9 55:13
55:19 55:22 56:19
59:20 65:23 73:6
74:20 76:19 87:14
88:23 89:3 89:20
90:7 90:10 91:2
92:14 93:8 93:24
94:1 97:13 97:17
98:7 99:1 99:5
111:19 111:20 111:24
112:3 112:9 112:14
113:1 113:5 113:21
114:10 114:19 114:21
114:24 115:23 116:18
116:25 117:9 117:21
128:18 128:20 138:2
138:5 138:25 154:6
154:13 157:19 170:5
170:23 171:20 173:15
175:9 175:19 176:24
177:2 181:11 181:12
217:3 224:15 225:5
225:11 225:14 226:1
226:5 226:7 226:11
hope [2] 76:8 78:17
hoped [1] 52:3
hopefully [5] 59:4
74:6 87:19 149:24
158:11
Horry [2] 183:24
205:23
hour [2] 89:5 111:25
house [1] 142:3
hugely [1] 64:18
human [1] 36:1
hundred [2] 119:13
143:11
hundreds [1] 104:10
hypothetical [3] 197:16
197:18 204:24
I's [1] 220:12
ID [1] 42:21
idea [9] 9:11 54:24
95:8 95:20 96:1
118:12 140:11 161:9
210:14
identical [2] 175:15
182:8
identification [2]
111:16 171:22
identified [7] 34:15
34:25 35:1 48:2
50:15 153:5 168:21
identifies [2] 63:3
69:21
identify [9] 21:20
22:1 48:4 65:4
71:15 168:18 207:16
207:19 207:22
identifying [1] 50:13
ignore [1] 80:4
ignores [1] 80:8
ILEC [3] 57:22 206:15
206:17
imagine [1] 209:2
immutable [1] 13:25
impact [13] 14:22
14:23 18:24 40:13
40:15 45:1 45:15
68:10 68:11 68:14
155:6 162:15 214:15
impacted [1] 40:18
implement [12] 74:7
80:4 81:14 84:10
88:5 88:13 161:1
186:19 186:22 206:11
206:13 209:16
implementation [24]
11:12 19:7 71:5
78:21 78:22 81:14
81:15 81:19 83:18
83:24 84:9 155:13
159:13 159:15 166:20
178:22 188:13 205:13
205:18 206:15 208:9
208:11 209:24 210:1
implemented [3]
13:5 14:21 15:4
implementing [3]
39:7 74:4 205:11
important [3] 9:22
49:14 200:22
impossible [1] 200:12
impressed [1] 67:7
impression [1] 77:9
imprisonment [5]
20:18 33:22 47:11
90:22 170:18
incentive [1] 203:4
incentives [6] 75:4
75:24 76:4 204:10
204:13 204:14
include [5] 123:4
128:6 141:13 201:18
204:14
included [11] 22:19
70:3 84:12 92:18
127:23 141:13 175:6
176:8 195:16 197:23
221:8
includes [3] 24:18
128:9 200:9
including [3] 13:10
66:3 94:18
inclusive [5] 35:17
36:7 175:18 176:15
176:20
Incorporated [2]
17:20 171:9
incorrect [4] 91:20
135:13 193:13 195:6
increase [5] 76:6
119:18 120:8 156:12
198:3
increases [2] 129:17
156:15
incumbent [26] 10:19
13:14 14:4 14:6
65:21 68:2 179:12
195:10 195:11 195:19
196:15 198:17 198:18
198:23 198:24 199:4
216:3 216:8 218:22
219:7 219:8 219:10
220:19 221:10 221:15
222:14
incumbent's [2] 195:13
195:17
incumbents [1] 13:23
incur [1] 195:10
incurred [1] 221:11
Indeed [2] 59:7
176:23
indicate [4] 125:19
151:20 155:20 209:18
indicated [8] 16:23
52:24 125:5 144:24
155:8 225:19 225:19
228:8
indicates [2] 133:23
133:25
indicating [1] 144:25
indirectly [2] 66:13
201:7
individual [1] 40:21
individually [1] 95:21
industry [6] 44:1
66:1 107:5 146:20
147:8 192:2
infeasibility [1] 214:25
infeasible [1] 14:5
informal [1] 69:2
information [33]
9:7 38:1 38:4
38:5 38:8 44:13
44:14 58:22 65:12
70:9 72:11 77:22
97:15 97:25 98:7
98:20 115:18 115:20
116:2 116:13 117:6
117:7 147:21 220:14
220:16 220:17 222:14
222:19 222:22 223:17
224:10 227:13 227:20
informative [2] 9:20
67:17
infrastructure [2]
139:19 146:22
inherent [1] 75:4
initial [2] 27:19
39:17
inputs [5] 63:7
63:8 69:25 80:24
81:5
inquiry [3] 8:9
10:4 10:23
insight [2] 60:23
61:11
insignificant-type [1]
39:13
insist [2] 52:5 112:9
installation [2] 217:14
224:9
instance [7] 50:23
65:23 81:17 88:10
106:20 142:6 193:12
instances [1] 187:5
intangible [1] 65:2
intend [3] 12:18
102:23 133:13
intent [3] 113:6
114:23 176:10
intentions [1] 58:10
interaction [1] 51:7
interconnect [1] 201:6
interconnected [1]
54:6
interconnection [48]
7:8 13:19 19:10
27:7 27:8 27:24
27:25 38:25 39:17
57:2 71:10 71:13
71:16 71:17 71:22
72:15 73:4 73:11
73:15 78:11 78:16
84:1 84:13 103:23
161:7 162:5 177:21
178:1 178:24 179:10
179:24 181:18 184:2
200:9 200:10 200:17
201:2 201:5 201:9
201:10 203:7 203:23
204:12 204:15 206:4
206:14 213:5 216:12
interest [16] 13:3
59:10 60:2 60:13
63:21 63:25 64:2
64:13 64:16 64:18
64:20 64:22 65:3
75:1 75:6 111:23
interested [1] 122:23
interesting [3] 9:23
138:18 227:6
interim [5] 39:9
70:13 192:23 193:12
193:18
internally [1] 143:2
Internet [11] 105:19
127:13 130:1 130:20
132:11 140:16 144:7
146:1 146:6 148:25
196:6

interpretation [5] 51:5 54:12 71:5 78:9 209:20
interpretations [1] 51:15
interstate [3] 118:3 122:2 168:22
intertwined [1] 54:6
intimately [2] 138:4 206:20
intrastate [3] 121:19 121:23 121:24
introduced [2] 116:20 157:18
introducing [1] 97:18
introduction [1] 22:13
inundated [1] 112:5
inure [1] 76:11
invested [2] 126:9 168:2
investigate [1] 110:5
Investigation [1] 1:5
investing [2] 67:9 67:10
investment [1] 168:5
invoke [1] 180:19
involved [8] 70:1 78:24 125:16 126:1 135:11 142:2 143:16 223:20
involves [2] 17:23 208:11
involving [1] 204:24
IP [3] 146:21 146:23 149:13
issue [31] 18:6 49:15 50:6 63:21 64:1 64:19 65:13 71:24 74:6 78:4 78:21 83:18 84:8 86:14 88:14 110:22 139:2 158:17 158:20 159:12 166:19 177:11 181:19 183:3 183:23 185:1 198:4 198:7 206:8 208:18 209:13
issued [7] 11:2 11:2 112:10 177:22 177:25 185:15 185:16
issues [30] 9:5 9:6 9:12 11:5 18:8 18:14 38:12 38:14 40:4 40:6 52:15 64:13 70:3 73:13 74:2 78:22 84:5 107:18 155:9 156:9 158:15 161:15 166:8 177:12 187:13 187:16 189:2 202:20 210:24 211:25
item [2] 24:21 135:19
itself [8] 54:15 139:22 141:7 182:6 182:7 192:17 205:24 210:17
J [7] 3:6 4:17 6:11 6:13 6:14 12:1 53:18
J.G [5] 2:19 11:19 12:16 94:4 177:7
January [10] 1:20 8:3 10:3 17:7 52:17 91:16 171:16 172:16 176:9 228:14
job [9] 7:4 93:1 149:7 149:18 149:19 150:7 150:10 150:14 227:12
jockeying [1] 82:24
John [2] 17:19 171:8
judge [211] 1:23 8:4 8:5 8:25 9:17 10:1 11:21 12:4 12:12 12:20 16:15 16:18 16:19 19:17 19:21 19:24 20:4 20:8 20:21 22:1 22:16 22:21 22:23 22:25 23:6 23:8 23:15 24:1 27:12 27:15 28:9 28:12 28:15 28:17 29:5 29:13 29:16 31:3 31:22 32:11 32:14 32:25 33:2 33:5 33:8 33:13 34:1 34:20 35:13 35:17 35:19 36:6 36:12 37:6 37:10 38:17 38:19 41:2 43:13 43:15 44:8 45:19 46:11 46:21 46:24 47:3 47:15 48:18 48:24 50:7 51:24 52:18 53:15 55:6 55:10 55:17 55:20 56:23 57:4 59:21 62:10 62:13 63:17 68:18 68:20 71:1 74:14 74:16 74:18 76:21 76:23 82:18 84:23 87:9 87:13 87:15 87:17 87:20 88:21 88:24 89:1 89:4 89:13 89:18 89:21 89:25 90:4 90:8 90:12 91:1 92:2 92:13 92:15 92:21 93:5 93:9 93:18 93:20 93:25 96:10 97:12 97:20 98:12 98:24 99:2 101:13 101:21 102:25 111:11 112:13 112:15 113:10 113:19 115:4 116:12 116:22 117:5 117:15 127:4 128:17 128:22 130:9 138:21 139:1 139:8 144:19 152:11 153:20 153:24 153:25 154:15 154:18 157:21 158:1 158:5 158:10 162:9 163:10 163:14 167:8 168:11 169:7 169:21 169:23 170:2 170:4 170:7 170:10 170:22 171:23 173:19 175:12 175:17 175:20 175:22 175:25 176:4 176:13 176:18 176:23 177:1 181:15 204:19 207:5 207:10 207:15 207:21 208:4 209:6 212:16 216:24 217:1 219:19 224:16 224:18 225:2 225:6 225:9 225:12 225:15 225:23 226:2 226:8 226:10 226:12 226:15 226:18 226:21 226:25 227:7 227:21
July [2] 10:15 150:3
June [2] 6:24 92:16
keep [4] 21:16 75:15 89:7 163:19
keeps [2] 145:8 222:6
KEVIN [1] 2:4
key [1] 64:20
kind [7] 65:2 66:14 69:4 77:9 79:12 112:8 210:22
knowledge [26] 56:15 56:21 57:7 57:20 58:8 58:13 61:17 62:2 78:20 91:20 91:24 97:14 98:10 100:6 104:21 120:21 126:15 128:1 149:11 152:15 155:15 157:14 157:16 184:10 205:10 212:6
knows [2] 139:3 140:2
Knudsvig [2] 3:3 16:25
Kraskin [1] 17:5
L.L.P [2] 3:7 12:3
labeled [1] 42:17
labeling [1] 207:14
lacking [1] 210:14
lacks [2] 117:12 117:13
Lake [46] 10:12 16:6 16:11 18:11 18:25 19:7 25:17 25:20 25:24 26:12 26:15 28:25 37:22 45:5 46:16 46:19 58:21 62:5 66:3 74:8 79:23 82:1 91:11 91:13 94:9 94:15 94:18 104:19 119:16 119:25 120:21 131:18 132:4 137:15 138:1 142:22 142:24 146:14 147:2 147:4 161:4 190:10 191:7 214:10 217:13 224:8
landline [3] 103:18 103:19 103:24
language [4] 50:21 50:22 138:3 138:3
large [1] 43:8
largely [1] 165:25
larger [2] 95:21 95:24
last [22] 41:21 41:24 78:24 89:19 93:15 100:13 102:19 102:20 103:4 111:7 112:4 118:22 121:15 139:14 148:3 149:6 151:16 155:18 156:4 172:24 191:13 206:6
late-filed [3] 112:11 207:4 207:9
law [33] 2:16 2:20 3:4 3:7 8:5 11:23 12:25 16:4 16:24 17:1 17:6 19:15 20:12 47:5 49:8 49:16 49:17 52:15 54:5 54:7 54:11 54:17 88:13 88:16 90:16 125:12 125:16 129:19 170:12 173:25 183:11 183:18 226:22
lawyer [5] 49:8 51:23 69:8 87:21 87:24
lawyers [1] 73:19
laying [1] 223:20
layman [1] 195:23
layman's [1] 196:1
lead [1] 19:17
leader [1] 146:21
leads [1] 78:5
leaning [1] 117:11
least [7] 40:12 66:8 83:7 98:1 158:5 190:16 193:4
leave [1] 210:23
LEC [8] 198:17 219:7 219:8 219:10 220:19 221:10 221:15 221:24
LEC's [2] 198:18 218:22
left [1] 127:14
left-hand [1] 127:17
legal [3] 78:9 79:11 125:15
lending [1] 107:25
length [3] 30:4 30:5 105:2
lengthy [1] 211:16
less [11] 27:22 40:16 40:17 95:18 104:11 106:23 120:3 120:5 120:7 132:16 187:2
letter [15] 5:20 6:22 6:24 21:19 92:5 92:16 148:7 151:21 151:23 152:21 152:22 183:5 191:18 192:9 213:7
letters [1] 192:2
level [24] 82:9 105:3 105:10 105:20 107:19 110:23 122:22 123:9 123:14 123:19 129:3 159:22 159:25 160:24 161:23 164:2 164:7 164:8 164:10 166:25 196:2 204:23 222:19 222:23
levels [1] 57:1
lie [5] 20:16 33:21 47:9 90:20 170:16
lift [3] 15:14 204:25 209:22
lifted [22] 14:9 15:8 15:10 15:24 16:4 18:20 30:18 69:14 77:11 77:18 125:2 155:12 159:16 161:18 177:17 184:22 190:22 190:23 199:11 199:14 199:19 208:15
lifting [6] 14:3 14:12 84:7 160:3 178:13 183:16
light [2] 138:19 146:4
likely [2] 16:4 203:11
likewise [1] 49:16
limit [2] 185:9 189:7
limited [14] 40:3 40:4 40:23 73:12 78:13 81:4 98:18 159:21 213:25 214:12 214:17 214:18 214:20 216:7
line [58] 23:24 29:20 41:13 41:14 41:15 42:11 50:3 50:10 50:15 50:17 52:6 52:6 52:14 52:24 52:24 52:25 53:5 53:8 53:11 53:13 58:25 60:3 60:9 60:10 60:25 102:1 102:2 103:9 118:3 119:10 120:10 120:15 120:17 122:4 124:1 129:12 129:13 132:20 132:24 133:2 134:5 134:6 135:18 135:23 147:19 149:2 162:19 162:21 162:23 163:2 168:23 172:2 172:3 172:22 172:25 187:10 187:14 210:7
lines [42] 25:4 26:19 29:20 49:3 50:23 53:6 59:4 59:6 59:11 59:15 59:24 60:5 60:8 60:21 61:5 61:8 65:15 94:14 94:16 95:6 95:8 95:17 100:19 100:20 100:25 102:1 119:5 125:19 126:12 126:19 126:20 129:4 129:12 136:8 138:13 147:14 154:1 154:22 189:18 190:8 209:14 224:6
listening [1] 204:23
literally [1] 202:22
litigated [1] 28:5
litigation [1] 86:4
local [21] 10:19 13:2 13:9 42:12

42:14 42:15 42:25
53:9 58:2 58:9
58:15 67:17 79:1
118:6 128:6 146:1
168:23 179:12 196:5
196:16 216:3
located [1] 17:10
Lohnes [20] 2:19
4:6 5:17 5:19
5:22 11:20 12:19
20:2 20:4 20:10
20:23 21:10 21:11
21:16 23:18 24:9
25:4 28:20 33:9
57:9
Lohnes's [1] 22:14
long-term [7] 29:21
29:22 30:2 30:5
30:20 30:21 32:21
long-time [1] 17:20
longer [4] 160:10
160:18 211:22 215:20
look [19] 8:23 9:19
34:23 35:20 59:18
65:14 75:18 100:16
103:10 110:10 123:25
124:1 129:9 147:14
150:12 150:14 152:14
153:14 221:4
looked [9] 67:3
67:14 109:6 118:22
151:1 152:8 202:2
210:6 211:17
looking [11] 9:15
9:24 60:8 67:25
83:3 121:11 131:17
131:19 147:13 186:5
186:7
looks [3] 127:11 148:11
150:20
loops [2] 78:3 118:9
lose [9] 162:25 163:5
169:1 169:3 169:14
219:10 221:22 221:23
221:25
loses [1] 198:17
losing [1] 162:15
loss [8] 41:16 41:19
41:21 41:23 42:23
43:1 124:11 169:3
lost [5] 96:13 104:8
136:8 162:19 163:5
lots [2] 66:10 192:9
loud [2] 145:12 146:15
low [3] 126:16 194:8
194:21
lower [8] 40:11
45:14 122:2 122:3
142:17 193:6 193:10
193:11
lowering [1] 108:12
luck [2] 119:2 227:2
lunch [2] 89:22
111:25
luxurious [1] 106:24
M [3] 3:3 228:3
228:17
mail [1] 128:10
main [1] 65:4
maintain [2] 75:14
75:21
maintenance [1] 132:16
major [1] 159:9
majority [1] 121:8
makes [3] 85:15
157:8 187:23
manager [6] 17:12
91:14 92:7 99:15
128:1 143:16
mandate [1] 209:24
manner [5] 88:7
88:8 88:15 210:3
210:9
map [1] 67:3
March [4] 133:6
134:24 139:13 139:17
margins [1] 75:22
mark [9] 21:9 21:14
34:8 34:10 34:16
34:22 47:22 48:1
110:25
marked [13] 21:23
34:14 34:17 91:18
92:5 96:9 96:17
173:23 174:22 174:22
174:24 176:3 178:16
market [17] 75:20
77:13 77:16 106:7
106:8 106:11 106:13
106:17 106:19 106:25
107:3 107:7 107:9
131:13 131:15 135:3
135:11
marketplace [2] 106:4
124:25
markets [2] 13:10
82:25
marking [2] 21:24
126:23
markings [1] 153:19
markup [1] 43:8
Mary [8] 4:6 5:17
5:19 5:22 12:19
20:2 20:23 21:3
Maryland [1] 171:11
master's [2] 56:8
56:10
match [2] 101:3
119:14
material [5] 20:14
33:19 47:7 90:18
170:14
materials [2] 68:9
114:2
matter [25] 8:9
18:13 18:17 21:4
38:1 48:10 62:7
63:7 70:18 70:19
70:22 79:19 86:10
117:16 166:9 183:18
200:6 206:13 206:21
206:22 208:19 208:22
210:22 214:1 223:1
matters [2] 71:21
210:11
maximize [1] 189:18
maximum [4] 189:6
189:13 190:20 205:6
may [35] 5:20 6:22
10:8 19:24 21:19
42:19 44:18 57:5
59:19 59:21 64:8
74:17 92:5 112:18
113:5 113:13 117:15
117:20 128:22 136:16
150:8 150:16 151:16
157:24 158:1 168:20
175:24 179:12 181:16
191:12 197:25 204:17
207:7 221:8 221:24
mean [12] 29:23
74:9 83:2 105:4
134:11 145:17 155:5
160:4 164:10 166:10
166:22 190:8
meaning [1] 183:11
means [1] 105:13
meant [8] 36:3
49:24 52:7 52:11
60:25 140:5 145:18
183:2
meat [1] 209:14
mechanisms [1] 151:12
meet [1] 177:9
member [7] 26:16
26:20 26:21 52:9
53:4 108:5 108:24
members [2] 17:15
108:9
memory [1] 223:25
mention [2] 23:20
26:18
mentioned [4] 64:12
75:3 110:4 133:10
Mercedes [1] 106:20
Meredith [29] 5:8
7:7 17:18 17:18
49:9 49:15 50:21
51:3 51:14 51:20
53:25 73:18 153:10
154:12 154:14 154:20
170:7 170:9 170:24
171:7 171:15 173:7
173:21 174:23 177:5
207:23 219:23 224:22
225:10
Meredith's [5] 49:6
49:11 49:14 154:5
176:8
merely [3] 51:3
51:13 114:16
mergers [1] 67:19
met [7] 14:8 15:7
15:19 15:23 18:23
19:3 19:5
methods [1] 71:17
Midco [4] 105:19
105:21 166:4 175:25
Midcontinent [129]
1:4 7:14 10:8
10:10 10:15 10:22
11:7 11:8 11:10
11:18 11:20 12:21
13:7 15:21 16:5
16:10 18:16 19:2
19:3 19:5 20:3
25:15 26:16 27:5
28:20 30:15 30:17
30:21 31:9 32:8
33:10 40:24 47:1
49:5 49:10 52:14
53:3 53:19 53:25
56:16 58:7 58:8
58:14 63:21 66:16
67:1 67:9 68:4
68:12 68:25 70:6
72:7 74:9 77:15
79:3 79:10 80:23
83:5 83:8 83:25
92:6 104:21 104:23
107:10 107:13 114:21
120:20 120:22 122:16
122:17 122:17 123:15
124:4 131:6 135:12
135:22 137:3 152:19
152:23 153:10 154:21
154:24 155:14 158:18
159:2 159:6 160:6
160:12 160:22 161:12
162:16 162:20 164:24
166:13 166:23 169:17
174:19 175:3 177:8
177:25 178:4 182:16
182:21 182:24 184:18
187:17 187:22 188:23
188:25 190:4 190:9
191:1 191:5 191:10
192:10 192:15 193:5
193:8 196:21 196:25
197:21 200:8 200:20
200:23 203:2 203:12
203:19 205:1 213:4
Midcontinent's [15]
14:13 14:19 15:3
15:4 15:6 52:1
123:10 123:18 151:15
160:3 197:3 203:22
204:10 217:10 218:1
middle [1] 126:16
midst [2] 75:8
76:10
might [17] 40:18
42:5 49:20 68:12
75:23 84:3 84:4
106:23 113:1 123:5
150:23 156:16 190:9
198:3 204:11 204:15
219:15
million [10] 100:13
100:14 102:6 102:6
103:5 118:17 118:24
121:14 121:14 142:16
mind [2] 119:12 216:17
mine [1] 153:18
minimis [4] 45:1
45:16 68:6 68:11
Minnesota [1] 99:12
Minot [2] 3:5
11:24
minute [2] 42:9
105:14
minutes [4] 128:4
137:9 158:5 202:23
mislead [1] 54:17
miss [15] 20:4 20:10
21:10 21:11 21:16
22:14 23:18 24:9
25:4 28:20 33:9
57:8 185:9 185:11
185:13
missed [1] 64:4
missing [1] 166:22
misstated [1] 175:24
mistake [1] 65:20
mistaken [3] 169:4
174:17 176:4
mitigate [1] 43:1
model [4] 80:18
80:19 81:4 209:11
modeled [1] 45:8
modeling [1] 223:3
models [2] 80:21
106:23
moment [17] 24:2
42:2 58:24 74:17
85:14 101:2 115:1
115:4 129:9 155:7
176:21 177:15 178:16
193:21 199:2 226:6
226:7
moments [1] 227:17
Monday [2] 8:2
112:4
money [12] 107:21
107:22 107:23 109:7
111:6 111:18 118:13
120:23 126:9 143:18
167:25 168:1
moneys [1] 110:24
monopoly [1] 25:16
month [3] 120:8
186:22 187:3
monthly [3] 69:19
81:1 119:16
months [15] 27:23
83:13 86:25 87:1
185:6 187:25 188:3
189:5 189:6 190:14
190:18 219:25 220:4
223:9 223:12
Moorman [56] 3:6
4:18 5:9 5:12
5:13 12:1 12:1
17:4 17:6 17:8
55:14 55:21 55:22
55:24 55:25 56:24
56:25 57:6 59:19
59:22 62:8 76:21
76:22 87:15 87:16
88:24 88:25 170:5
170:22 170:23 171:3
171:20 171:25 172:18
172:24 173:4 173:7
173:15 173:21 175:9
175:23 176:2 176:6
176:16 176:21 176:24
181:11 207:7 207:8
217:1 217:2 217:5
219:18 224:19 224:21
225:1
morning [22] 8:4

9:1 9:19 9:20
16:18 16:19 16:20
16:21 16:22 16:24
17:2 23:18 23:19
35:8 37:14 37:15
56:1 56:2 56:3
61:14 181:13 211:13

most [5] 39:14 62:22
65:6 181:13 211:1

mostly [1] 107:25

motion [13] 50:9
50:13 50:15 51:18
52:1 53:18 53:23
53:24 54:2 54:20
55:7 55:14 207:5

move [12] 22:13
125:17 129:2 138:20
138:24 139:10 151:15
155:16 155:17 173:16
175:10 203:14

moving [1] 92:4

multi [1] 146:25

multi-million [1]
147:3

must [7] 10:19 14:8
15:8 15:23 64:13
136:5 184:11

mutual [2] 6:16
17:7

mutually [1] 38:9

N [10] 2:1 3:1
4:1 4:1 5:1
5:1 6:1 6:1
7:1 7:1

N.W [2] 2:20 3:8

name [12] 11:22
12:5 26:2 55:25
57:22 58:4 58:9
91:8 148:13 171:4
171:6 206:7

named [1] 171:8

namely [1] 116:15

narrow [1] 13:15

narrowed [1] 213:6

National [1] 32:5

nationwide [1] 29:2

NDCC [1] 7:12

NDTC [37] 6:18
6:20 7:4 7:5
10:14 10:17 53:21
54:1 54:9 56:17
59:8 59:25 60:11
61:19 61:20 62:18
63:8 94:21 96:22
129:5 133:11 135:3
135:21 148:25 153:5
155:7 155:9 155:14
155:20 190:23 191:11
196:11 198:3 199:22
200:21 217:12 223:14

NDTC's [6] 10:24
51:25 58:7 60:24
61:11 148:19

near [1] 28:25

necessarily [1] 66:6

necessary [2] 142:5
210:11

need [31] 19:6 19:13
24:6 32:2 35:20
36:20 71:25 72:23
73:10 77:21 79:6
84:4 85:16 86:13
107:22 132:9 142:1
151:6 151:9 172:5
177:25 182:16 182:21
203:16 203:17 204:6
215:18 220:14 220:16
220:17 222:21

needed [1] 155:13

needs [12] 9:12
15:21 63:22 157:1
157:4 157:9 178:6
180:16 183:15 184:18
187:17 210:2

Negaard [113] 3:2
4:4 4:7 4:11
4:13 4:15 5:4
5:6 11:21 11:22
11:23 16:15 16:17
16:20 16:23 22:16
22:17 23:7 23:15
23:17 25:3 27:10
29:3 29:13 29:14
32:1 32:14 32:16
32:18 32:24 35:19
35:22 36:4 36:9
37:10 37:13 38:15
44:6 45:19 45:21
46:9 48:22 49:2
52:5 52:22 55:3
55:5 55:11 55:13
55:19 90:8 90:10
91:1 91:2 91:7
92:1 92:4 92:12
92:16 92:23 93:4
93:11 93:16 93:21
97:12 97:13 97:17
98:6 98:24 99:1
101:7 111:19 112:14
112:17 113:1 113:11
114:5 114:10 114:18
115:5 116:17 116:18
116:24 117:6 117:9
117:15 128:17 128:18
128:23 133:12 133:23
135:24 136:17 138:2
138:17 154:3 154:6
154:11 154:16 167:8
167:9 167:12 168:9
169:24 170:1 170:4
170:5 173:5 207:6
225:10 225:11 226:13
226:14

Negaard's [1] 46:15

negotiate [4] 19:9
179:13 184:1 210:10

negotiated [3] 194:1
218:9 218:14

negotiating [2] 27:6
39:22

negotiation [6] 7:10
39:8 179:9 184:19
205:18 218:5

negotiations [9] 51:10
83:6 83:20 177:21
178:1 179:9 199:18
202:3 206:1

neither [1] 80:13

net [3] 41:20 103:8
103:9

network [12] 16:9
40:21 42:13 71:15
84:1 142:10 148:24
151:4 178:25 179:11
196:12 203:17

networking [1] 149:15

networks [2] 40:5
146:21

never [7] 13:11 87:20
118:24 153:8 153:11
154:21 165:18

new [16] 2:20 9:6
18:4 26:2 41:10
61:23 76:7 149:1
149:3 165:17 177:25
182:16 205:16 206:20
206:25 208:1

news [1] 59:3

newsletter [1] 93:13

next [13] 33:11 78:5
83:18 89:9 103:20
145:11 162:21 170:6
185:15 186:18 190:24
215:13 218:14

nice [2] 86:3 177:9

nightmares [1] 165:5

nine [8] 83:13 121:25
185:6 187:25 188:3
189:5 189:6 190:14

nine-month [2] 182:19
185:9

nobody [1] 138:22

none [4] 27:9 28:13
43:14 71:20

nonregulated [1]
125:11

noon [2] 89:5 90:2

normally [2] 30:4
73:15

north [168] 1:1
1:5 1:19 2:9
2:12 2:18 3:5
8:7 8:11 10:5
10:12 10:12 11:24
11:24 12:2 13:10
14:13 14:16 14:17
14:25 15:9 15:12
15:15 15:17 16:1
16:1 16:6 17:12
17:16 17:17 17:24
18:3 18:5 18:12
18:18 18:24 19:12
20:16 25:11 25:23
27:5 31:14 32:20
33:16 33:21 43:22
44:4 44:21 45:1
45:13 45:23 46:5
46:8 47:9 49:21
53:16 58:16 61:18
61:24 62:3 62:4
62:19 65:16 66:7
66:16 67:2 67:9
67:14 68:1 68:5
68:11 68:25 70:7
70:16 70:20 72:5
72:12 72:21 75:13
76:2 76:12 77:4
77:12 79:8 79:17
80:3 80:8 80:12
80:23 82:25 83:9
85:6 85:14 90:20
91:11 91:14 94:8
94:8 94:12 94:13
95:21 95:24 96:15
96:23 99:7 99:12
99:22 100:1 100:5
100:9 100:10 102:15
103:12 103:16 103:22
104:14 108:5 109:1
111:6 111:16 116:1
116:6 116:8 116:21
117:23 121:7 122:19
123:1 123:5 125:20
125:23 127:1 127:7
127:10 128:13 131:12
135:20 146:24 150:24
152:14 152:17 156:2
161:20 162:18 162:24
163:22 165:20 167:5
170:16 171:14 174:8
182:23 182:25 183:6
191:2 191:16 191:17
192:5 194:3 194:13
196:4 198:12 205:3
208:24 215:11 216:13
224:7 228:13

notable [1] 211:1

notation [1] 174:14

note [6] 42:17 66:25
75:2 207:6 213:11
224:6

noted [5] 17:3 93:22
114:17 117:14 193:22

notes [1] 228:11

nothing [26] 29:15
32:13 33:7 38:15
55:5 62:8 76:20
87:11 87:14 87:16
88:19 88:23 88:25
93:24 113:23 156:19
157:20 181:2 198:20
204:18 215:15 216:25
219:18 225:4 225:14
226:11

notice [26] 10:14
11:2 11:3 11:3
64:16 102:22 102:25
111:4 111:13 112:1
112:6 113:7 114:1
114:17 114:22 115:19
117:18 129:6 129:17
130:15 130:23 131:7
131:9 158:16 178:25
180:23

noticed [1] 10:4

notices [1] 129:19

notified [1] 10:15

notion [3] 105:2
129:3 198:2

November [1] 167:18

now [71] 15:12 15:15
17:8 22:5 26:2
31:11 31:15 42:9
54:3 62:18 83:19
83:25 86:6 86:18
89:11 89:11 94:21
97:4 99:20 100:8
105:23 108:8 112:7
112:18 115:10 119:4
119:16 120:20 121:1
122:9 122:22 124:2
127:6 129:25 132:7
132:19 133:9 134:1
135:9 137:19 137:21
137:22 139:23 144:23
146:9 148:2 152:22
153:9 155:16 157:4
159:1 159:12 160:15
164:19 166:21 166:24
178:8 179:2 182:15
186:17 190:1 190:13
191:2 193:11 193:20
195:13 196:4 200:19
222:5 223:7 223:13

number [37] 13:20
17:15 24:11 24:12
41:10 41:17 41:20
41:23 42:6 48:23
50:3 52:6 53:12
53:13 70:10 70:14
70:23 80:25 95:8
95:19 99:11 101:8
104:10 111:16 119:8
119:11 126:12 126:19
126:20 144:14 149:25
156:7 174:18 194:20
201:19 207:12 221:23

numbered [1] 59:3

numbers [14] 50:10
50:16 50:18 58:25
81:9 111:9 114:5
116:10 119:14 122:14
134:13 144:21 189:3
221:1

numerous [1] 141:5

O [4] 4:1 5:1
6:1 7:1

o'clock [3] 89:24
89:25 90:1

oath [13] 20:11 20:13
22:9 33:16 33:18
35:7 47:5 47:6
48:14 90:16 90:17
170:12 170:13

object [3] 56:18
114:5 154:10

objected [5] 53:24
54:1 133:15 138:15
191:14

objecting [1] 55:18

objection [28] 22:21
22:24 35:25 36:4
44:8 44:17 49:3
49:5 53:11 53:16
53:17 54:19 54:20
55:4 57:4 92:14
92:20 93:8 93:19
98:13 99:3 115:15
117:13 128:20 128:25
138:6 175:16 181:15

objectionable [1]
153:7

objections [2] 51:22
159:21

objective [3] 59:10
60:2 60:11

objectives [1] 60:13

objects [1] 54:3

obligations [5] 13:14 13:16 13:17 13:23 57:2
observation [1] 61:10
observations [1] 61:8
obtain [2] 141:1 160:22
obvious [1] 65:7
obviously [4] 18:5 40:16 109:15 111:24
occupation [1] 91:13
occur [1] 39:5
occurs [2] 47:24 181:1
October [1] 167:15
off [3] 162:4 226:6 226:9
Off'd [3] 5:16 6:3 7:3
offensive [2] 52:13 53:2
offer [56] 10:19 15:13 16:5 16:7 23:9 28:24 29:7 35:13 35:15 48:18 48:20 76:7 81:23 85:7 86:24 89:16 92:1 92:12 92:19 93:4 93:17 96:4 96:22 97:4 97:10 104:21 105:21 105:22 106:23 123:5 123:15 124:5 125:19 125:22 128:15 139:12 139:17 139:20 140:8 140:23 141:8 141:20 145:9 161:24 162:6 164:6 164:11 164:20 165:1 190:9 191:1 191:6 194:16 197:22 197:24 205:2
offered [6] 27:1 111:11 115:7 128:12 128:12 130:19
offering [24] 82:7 85:15 115:11 120:25 124:6 145:1 149:24 155:6 155:10 160:7 160:9 161:3 161:19 163:23 166:4 196:21 196:24 197:14 197:15 197:16 197:20 200:21 205:4 216:9
offerings [4] 28:21 28:22 65:8 76:16
offers [8] 85:14 98:4 106:21 120:20 123:5 123:16 143:22 196:5
Office [1] 8:6
officer [3] 1:24 8:8 8:19
official [13] 102:22 102:25 111:4 111:13 114:1 114:3 114:8 114:17 115:19 116:3 116:15 117:3 117:18
old [2] 67:13 131:18
once [19] 14:7 16:3 74:2 74:5 75:7 77:18 83:3 140:23 141:8 155:12 157:17 177:24 178:3 185:14 185:16 186:17 203:9 209:16 213:2
one [78] 8:20 8:23 13:7 16:24 16:25 21:19 27:19 30:7 31:8 32:16 38:23 40:7 46:14 51:17 58:24 59:8 62:16 63:1 65:4 68:21 74:17 74:19 78:13 83:20 84:16 84:18 87:18 87:19 89:24 89:25 90:1 97:2 104:4 104:4 104:16 105:1 105:5 108:23 109:8 110:3 114:20 124:15 125:17 126:1 128:9 129:2 131:5 136:22 136:22 138:10 138:12 141:14 145:19 149:1 149:4 153:23 155:2 156:7 159:5 162:13 166:7 168:22 168:24 172:2 174:19 175:5 176:21 182:22 183:12 202:7 203:10 205:16 209:10 219:7 220:14 220:20 221:21 226:6
one-day [1] 81:3
ones [3] 36:20 104:3 175:15
opening [6] 4:3 4:4 7:4 12:17 16:16 19:22
operate [1] 82:8
operating [4] 26:3 26:8 26:11 65:24
operation [1] 16:4
operational [1] 77:23
operations [7] 45:7 60:24 61:11 168:7 197:3 222:9 222:10
operator [2] 197:12 221:21
operators [1] 146:5
opinion [6] 44:5 44:24 74:11 201:25 202:1 213:22
opportunity [5] 19:9 66:8 210:9 213:14 222:2
opposed [2] 39:23 42:24
optic [1] 149:2
order [46] 53:9 70:12 72:10 74:6 74:6 77:5 80:4 80:6 80:8 83:21 84:8 112:2 112:10 112:13 112:15 112:20 112:22 112:24 113:7 113:11 114:24 115:9 115:10 116:20 128:20 134:25 177:20 177:22 177:24 184:5 185:1 185:14 185:16 185:21 186:2 186:3 187:13 187:16 189:2 206:2 206:5 206:10 208:21 209:16 220:25 226:23
ordered [2] 113:2 206:1
orderly [1] 113:9
orders [2] 50:22 70:15
organization [1] 26:17
original [1] 176:9
originally [2] 17:4 175:6
originate [1] 121:6
otherwise [2] 55:11 166:5
ought [2] 122:23 124:24
ours [2] 122:21 226:3
Outlook [1] 7:5
outlying [1] 142:22
outside [4] 44:6 51:15 56:22 151:7
outstanding [2] 38:12 166:19
overbuild [1] 147:4
overlooked [1] 16:25
overruled [9] 44:8 44:17 53:16 53:18 57:4 98:14 99:3 115:15 128:25
overruling [1] 54:19
overturned [1] 184:11
overused [1] 82:10
own [14] 14:6 15:2 57:22 58:4 58:9 69:1 70:8 83:2 83:10 96:21 120:18 120:23 128:1 216:17
owner [2] 96:6 104:17
owners [5] 95:7 95:13 95:14 96:15 126:3
ownership [4] 126:5 126:6 126:10 126:18
owns [1] 125:24
P [5] 2:1 2:1 3:1 3:1 96:9
P.C [1] 3:3
p.m [4] 90:3 158:9 158:9 227:23
P.O [2] 2:17 3:5
P1 [2] 5:17 21:10
P10 [3] 6:9 34:22 36:6
P11 [3] 6:11 47:23 48:24
P12 [3] 6:12 47:25 49:1
P13 [4] 6:14 55:12 55:18 55:20
P14 [5] 6:15 96:10 96:11 96:17 99:3
P15 [5] 6:18 111:1 116:16 117:19 117:19
P16 [5] 6:20 126:24 127:3 128:24 128:25
P2 [2] 5:18 21:15
P3 [7] 5:20 21:23 22:14 22:25 24:8 144:21 151:18
P4 [11] 5:22 21:24 22:14 22:25 24:15 144:15 144:22 145:5 146:10 148:4 148:5
P5 [2] 5:23 34:8
P6 [4] 6:4 34:10 34:18 34:19
P7 [5] 6:5 34:14 35:17 36:6 36:22
P8 [4] 6:6 34:16 36:23 42:5
P9 [3] 6:8 34:20 34:21
page [114] 4:2 5:2 6:20 23:24 25:4 25:4 26:19 29:20 32:1 41:5 42:8 42:9 42:10 49:7 50:3 50:10 50:15 50:18 50:23 52:6 52:6 52:14 52:24 52:25 53:6 53:8 53:12 58:24 59:8 59:15 60:5 60:9 60:9 60:21 60:22 60:25 61:2 61:3 63:20 63:23 65:6 65:6 65:14 66:12 66:22 72:8 74:23 97:7 100:19 100:20 100:21 100:22 100:25 101:4 101:8 101:9 101:25 107:6 111:8 112:20 113:2 114:4 124:1 124:3 125:18 126:25 127:7 127:9 127:14 127:16 127:16 128:11 129:4 129:11 129:12 132:19 132:23 132:24 133:20 133:20 134:5 134:6 135:14 135:18 135:23 136:14 136:16 145:4 145:11 146:10 146:11 147:13 147:14 148:3 149:6 153:11 154:1 154:20 155:23 155:23 172:2 172:19 172:20 172:21 172:22 174:19 178:16 178:20 196:4 198:1 217:24 221:1 224:2 224:4
pages [18] 6:15 7:13 93:1 96:15 101:3 101:4 111:2 111:14 171:18 171:18 173:24 174:4 174:7 174:11 174:15 176:7 211:18 228:10
pagination [2] 100:23 101:12
paid [3] 108:14 108:16 108:17
paperwork [1] 24:3
paragraph [4] 148:16 148:19 148:23 186:7
Pardon [1] 97:8
parity [1] 13:20
part [21] 74:1 92:10 94:13 111:2 115:15 116:2 131:23 134:6 138:4 139:12 141:20 143:2 144:11 145:21 149:18 152:19 152:20 159:7 193:23 211:19 220:7
part-owners [1] 125:23
participated [2] 9:2 227:12
particular [23] 19:1 21:4 35:4 37:18 42:12 50:4 50:13 52:9 52:12 53:3 75:2 113:25 123:17 133:14 180:25 186:7 202:2 202:6 211:16 221:18 221:24 221:25 224:11
particularly [2] 50:11 168:24
parties [27] 9:10 19:8 27:5 38:10 39:22 69:18 73:21 79:8 79:12 80:1 81:1 106:10 112:22 113:13 113:15 185:20 186:11 186:18 186:21 188:4 200:10 201:22 202:19 206:12 218:4 218:16 226:19
partners [1] 17:1
parts [5] 54:4 64:2 111:1 153:6 200:25
party [6] 80:13 103:22 106:8 178:23 203:1 211:22
pass [5] 23:14 35:11 36:8 48:16 96:9
passage [2] 12:23 57:11
passed [3] 49:25 52:8 52:12
passing [1] 57:17
past [5] 9:3 18:9 27:21 81:18 108:17
Pat [3] 5:20 11:17 12:21
Patrick [5] 2:10 2:15 6:23 6:24 12:7
pay [3] 108:13 108:21 157:15
paying [3] 71:19 121:6 143:1
payments [3] 198:19 198:21 198:25
PDF [1] 59:1
Pearce [2] 2:16 11:18

penetration [1] 45:8
people [4] 9:22 13:11 214:14 223:19
per [9] 41:13 41:14 119:10 120:9 120:10 120:15 120:17 162:23 163:2
perceive [1] 210:18
percent [11] 70:11 70:13 70:14 121:12 136:8 143:11 193:3 193:4 193:4 193:9 221:14
percentage [11] 42:18 61:19 121:9 126:5 126:6 126:10 140:12 143:6 143:12 143:24 144:6
perform [2] 198:6 198:10
performed [3] 194:13 194:18 199:22
perhaps [4] 64:17 76:6 106:24 114:25
period [20] 20:18 33:23 39:8 39:10 47:11 57:16 74:7 90:22 161:13 170:18 179:20 179:24 183:14 185:13 188:4 188:13 188:14 188:24 189:11 190:20
periods [4] 188:19 188:20 188:21 188:22
perjury [15] 20:12 20:13 20:16 33:17 33:18 33:21 47:6 47:7 47:9 90:17 90:18 90:20 170:13 170:14 170:16
permanent [1] 121:18
permissible [1] 54:13
permission [1] 151:6
permit [1] 14:9
permitted [2] 51:22 113:4
person [2] 167:13 167:19
personal [2] 97:14 98:10
personally [4] 64:19 104:12 206:19 223:19
perspective [3] 75:8 75:14 82:8
perspectives [1] 73:3
petition [2] 16:14 83:8
PETITIONER [1] 2:22
Petitioner's [2] 4:5 144:16
phone [1] 132:10
phrase [3] 82:10 101:5 105:5
physical [5] 200:9 201:4 201:8 203:7 203:23
pick [3] 40:11 40:14 70:14
picking [1] 25:7
picks [1] 211:15
picture [1] 67:16
pile [1] 36:19
place [11] 63:6 63:25 64:3 70:15 100:23 100:24 162:6 168:25 172:16 183:21 228:7
placed [1] 150:2
Plains [1] 206:7
Plaintiff's [1] 144:15
plan [4] 145:8 148:9 163:25 164:18
planned [4] 111:24 116:3 164:21 164:22
planning [1] 15:13
plans [8] 58:22 127:21 127:23 128:6 128:12 131:13 132:21 133:5
plant [5] 132:1 132:6 132:13 139:23 141:13
play [16] 81:23 81:25 82:1 124:5 146:21 146:23 147:6 147:8 147:15 147:16 147:21 147:24 163:23 163:23 204:3 204:8
playing [20] 82:9 105:3 105:10 105:20 107:19 110:23 122:22 123:9 123:14 123:19 129:3 159:22 159:25 161:23 164:2 164:7 164:10 166:25 196:3 204:23
plays [1] 197:4
plopping [1] 221:1
plus [2] 188:6 188:17
POI [2] 71:19 71:20
point [40] 15:20 22:12 23:13 38:11 39:1 41:8 45:9 49:20 50:19 56:19 66:20 71:9 71:17 73:1 86:11 87:1 87:5 97:21 105:5 123:23 124:2 124:3 128:19 135:17 153:5 160:9 160:21 161:19 167:6 183:12 183:14 200:22 203:14 205:16 207:21 215:14 216:11 217:16 218:19 222:6
pointed [1] 54:9
Polar [4] 6:17 95:14 96:24 96:25
policy [2] 17:19 171:8
populate [1] 70:7
populating [1] 70:22
portability [2] 13:21 201:19
portion [2] 45:6 121:2
portions [3] 49:18 49:25 50:13
pose [2] 14:12 14:15
position [10] 12:10 82:11 86:20 158:20 159:24 164:8 167:14 205:2 217:12 224:7
positioned [1] 106:14
positions [2] 183:10 183:18
possibility [4] 23:21 141:14 164:23 204:24
possible [16] 87:6 87:7 138:19 181:14 188:2 200:7 200:12 200:14 200:15 202:5 203:11 204:5 205:1 205:8 205:9 217:16
possibly [1] 203:6
potential [6] 41:11 41:15 41:18 41:19 41:22 41:23
potentially [2] 162:16 191:6
practical [3] 14:25 54:9 200:6
practices [1] 203:22
precedent [3] 8:22 9:24 39:20
precise [1] 133:1
prefaced [1] 49:7
prefer [4] 65:17 82:7 153:19 177:14
prefiled [15] 19:16 21:3 22:19 23:10 35:24 48:9 60:4 91:18 93:2 171:16 171:22 172:1 173:16 175:7 176:9
prehearing [3] 112:15 114:24 115:10
preliminarily [2] 173:23 174:24
premise [1] 148:20
premised [1] 111:21
premises [1] 148:9
preparation [2] 198:9 198:11
prepare [4] 65:22 65:25 77:5 166:6
prepared [4] 133:24 150:15 165:7 166:1
preparing [2] 165:20 165:22
preponderance [2] 14:2 15:21
presence [1] 75:20
PRESENT [1] 2:2
presentation [1] 8:24
presented [3] 9:8 18:14 80:16
president [2] 8:16 16:21
press [2] 89:12 146:11
presumably [1] 219:6
presume [4] 194:9 196:20 197:19 201:1
presumption [5] 13:4 165:12 221:13 221:16 221:22
pretty [4] 9:11 67:8 157:16 223:1
prevails [1] 191:8
prevent [4] 155:9 163:22 196:11 200:19
previous [4] 33:14 41:20 90:15 170:11
previously [9] 18:14 91:16 92:18 93:1 93:22 120:7 134:17 173:17 174:25
price [8] 62:21 62:23 75:19 128:5 129:6 129:17 131:7 131:9
price-capped [1] 63:10
prices [3] 76:17 130:22 157:15
pricing [8] 26:25 39:3 39:7 39:12 40:4 40:21 84:2 194:24
primarily [2] 42:13 43:5
Pringle [4] 3:3 11:23 16:23 17:1
printed [1] 59:2
problem [4] 59:5 79:8 207:14 217:23
problems [1] 132:14
procedural [1] 8:8
procedure [2] 7:10 211:16
procedures [3] 172:4 172:7 174:5
proceed [6] 12:18 19:24 44:18 57:5 117:20 154:18
proceeding [28] 8:14 12:11 12:22 17:5 38:24 39:13 39:24 40:22 69:4 72:11 72:15 73:24 75:2 79:13 79:20 79:22 82:24 84:4 102:22 123:1 171:17 172:14 173:13 177:12 187:25 191:8 209:17 213:8
proceedings [9] 8:1 27:25 28:1 28:5 30:12 39:19 61:21 78:24 228:6
process [10] 18:4 61:23 64:21 85:16 139:13 161:2 164:5 180:1 180:25 187:24
processed [1] 185:19
processes [2] 185:7 202:11
produce [1] 220:20
produced [1] 116:25
produces [1] 111:17
products [2] 149:1 149:3
Professional [2] 228:4 228:17
professionally [1] 64:20
profit [6] 103:8 103:9 195:14 195:16 195:20 195:23
profitable [2] 103:12 143:21
profits [2] 102:15 103:4
program [7] 109:5 109:17 118:6 118:14 118:14 120:16 219:3
programming [8] 23:22 133:11 135:22 137:2 137:10 216:6 217:13 224:8
programs [2] 117:25 118:18
progress [3] 69:20 81:2 81:2
prohibits [1] 113:23
project [2] 109:8 133:8
promise [1] 208:3
promptly [1] 14:21
proof [6] 18:16 19:3 19:6 220:6 220:10 222:1
property [2] 94:24 99:13
proportion [1] 94:14
proposal [2] 225:17 225:18
propose [1] 80:13
proposed [6] 50:18 72:13 112:21 226:19 226:22 226:23
proposes [1] 51:4
proposing [1] 51:14
proposition [1] 224:24
propounded [1] 37:25
proprietary [2] 134:11 136:19
protracted-type [1] 39:23
prove [2] 18:17 222:2
proves [1] 221:10
provide [35] 13:18 14:17 15:1 58:21 65:11 72:9 75:25 78:9 85:9 101:20 107:12 129:6 129:16 129:19 130:15 131:7 132:10 133:11 142:5 142:10 197:9 198:3 200:23 201:21 203:18 206:23 207:1 209:13 212:22 216:5 216:15 217:13 219:1 223:15 224:8
provided [11] 9:14 58:16 60:12 137:2

189:4 189:5 189:11 189:13 191:10 207:4 227:14
provider [7] 25:20 146:19 197:12 197:14 197:15 197:21 216:8
providers [6] 103:17 141:3 142:4 145:16 145:23 197:8
provides [7] 10:21 14:1 109:19 155:21 198:22 216:5 221:2
providing [18] 8:12 10:6 10:24 18:19 25:23 42:23 43:6 76:2 132:6 135:21 141:14 160:12 160:17 162:2 188:23 188:25 190:6 215:13
provision [7] 42:15 51:8 76:15 210:2 211:4 211:14 214:4
provisions [5] 13:6 51:4 201:16 201:17 214:4
prudent [1] 192:4
PU-05-451 [1] 1:5
public [30] 1:2 2:7 2:10 2:13 7:12 8:7 11:1 12:6 12:7 12:8 13:2 54:13 59:10 60:2 60:13 63:21 63:25 64:2 64:13 64:16 64:18 64:20 64:22 65:3 75:1 75:6 117:7 144:12 144:25 174:9
publicly [1] 97:24
published [1] 11:2
Puerto [2] 202:18 202:21
pull [1] 24:6
punishable [5] 20:17 33:22 47:10 90:21 170:17
purchase [1] 141:11
purchased [2] 95:1 99:13
purchasing [2] 26:17 26:23
pure [1] 204:3
purely [1] 50:25
purpose [9] 17:5 44:12 81:4 82:23 98:19 115:9 144:13 212:25 213:18
purposes [10] 78:14 102:21 123:9 123:16 124:8 125:4 162:21 171:22 207:20 217:17
pursuant [11] 8:6 8:9 23:11 92:2 112:24 171:23 173:15 173:19 176:19 179:11 202:4
pursued [1] 151:3
purview [1] 184:13
push-back [1] 82:15
put [11] 63:6 114:2 114:7 115:25 141:25 142:10 148:9 165:11 187:10 188:4 210:13
putting [1] 111:15
qualification [1] 61:6
Qualifications [1] 6:14
qualified [1] 78:9
quality [1] 66:5
quarrel [1] 60:11
questions [51] 27:13 27:15 28:8 28:10 29:12 31:3 32:11 35:8 38:18 38:19 43:12 43:17 45:17 46:21 48:12 62:12 62:12 76:22 76:25 82:17 82:18 84:22 87:9 101:19 115:1 116:4 123:10 133:14 134:2 143:4 158:12 162:8 162:9 163:11 163:12 167:10 169:6 169:23 172:10 173:9 192:10 200:1 209:5 209:6 209:15 219:20 219:24 223:14 224:15 224:18 227:14
quicker [2] 20:9 81:10
quickly [11] 39:22 44:9 79:22 79:24 79:25 187:5 187:6 203:15 217:6 225:2 225:15
quite [9] 36:19 51:12 66:1 67:7 119:14 149:25 161:17 217:19 221:17
quotations [1] 50:24
quote [5] 51:4 59:7 59:8 59:25 60:18
quoted [1] 60:10
quotes [1] 50:4
quoting [3] 50:21 51:5 59:16
Qwest [12] 31:11 39:15 40:2 40:10 61:20 61:25 62:21 70:13 95:6 193:22 193:25 194:1
Qwest's [1] 193:9
R [10] 2:1 3:1 4:12 5:24 6:4 6:5 6:7 6:8 6:10 34:3
R1 [3] 6:21 91:18 92:2
R10 [3] 7:13 174:11 220:8
R11 [7] 7:14 174:24 175:10 176:2 176:3 176:14 176:20
R12 [7] 175:17 175:25 207:9 207:14 207:16 207:23 207:25
R13 [1] 207:25
R14 [1] 208:1
R2 [4] 6:22 92:5 92:12 92:15
R3 [5] 6:24 92:16 92:19 92:21 92:21
R4 [5] 7:4 92:23 93:2 93:4 93:9
R5 [4] 7:5 93:11 93:17 93:20
R6 [4] 7:6 171:21 173:17 176:17
R7 [7] 7:8 173:24 175:10 175:17 176:14 176:19 178:16
R8 [4] 7:9 174:3 179:3 217:24
R9 [2] 7:12 174:7
raise [5] 20:19 33:24 47:12 90:23 170:19
raised [1] 156:20
range [8] 70:11 103:5 103:7 122:15 192:24 193:1 193:2 193:7
rate [39] 37:18 37:21 39:9 40:9 40:14 40:19 45:12 46:4 46:7 62:4 69:3 70:13 70:17 71:24 76:6 80:14 80:15 85:17 119:18 120:1 120:8 121:18 122:5 127:21 127:23 145:19 156:12 156:15 165:13 192:23 192:24 193:5 193:9 193:22 193:23 194:1 194:3 219:8 223:2
rate-of-return [2] 62:20 63:12
rates [21] 25:13 39:16 40:7 45:8 45:9 62:17 71:14 75:15 119:22 119:23 128:3 145:15 145:18 156:20 165:25 193:12 193:13 193:19 195:11 195:17 221:9
rather [7] 15:15 39:22 44:16 89:5 135:8 187:4 203:9
rational [1] 19:14
RBOCs [1] 65:23
re-read [1] 115:9
reach [1] 81:5
reached [2] 73:21 161:7
read [29] 9:7 53:23 54:3 54:4 54:4 77:9 82:6 115:10 127:24 127:25 135:15 145:9 145:11 146:13 147:1 147:19 148:5 148:15 148:22 149:7 152:7 178:19 179:6 191:21 192:8 192:9 192:11 192:13 218:18
readily [1] 117:7
reading [4] 61:12 98:3 159:18 192:14
reads [1] 172:6
ready [8] 12:13 19:25 37:11 55:21 65:17 90:9 165:2 165:2
real [2] 143:9 163:21
realistic [1] 161:13
realize [3] 87:24 187:13 187:15
realized [1] 119:14
really [24] 40:6 64:16 68:1 71:25 78:3 78:8 79:16 79:17 79:21 81:6 81:22 82:2 82:24 95:20 105:11 115:13 130:10 161:11 163:4 183:2 187:6 202:15 223:1 227:12
realm [1] 36:1
reask [1] 59:22
reason [9] 14:17 15:11 15:19 16:11 45:4 54:18 110:14 114:6 166:23
reasonable [6] 44:1 75:16 105:23 106:1 118:23 197:10
reasonably [4] 54:25 54:25 108:19 118:19
reasons [4] 16:13 53:22 66:10 98:14
rebalanced [1] 119:22
rebalancing [2] 119:25 165:25
rebuild [1] 148:8
rebuilding [1] 137:14
rebuttable [1] 64:7
rebuttal [30] 5:18 5:22 6:4 6:12 21:12 21:18 21:21 21:24 22:6 22:15 23:2 24:9 24:16 26:19 32:2 34:11 35:3 35:7 47:24 48:9 48:13 49:1 58:23 60:19 65:12 65:15 74:24 98:8 111:22 115:14
Rec'd [3] 5:16 6:3 7:3
recalculate [2] 162:21 163:2
receive [10] 38:8 38:13 98:17 98:18 117:19 117:23 118:2 118:5 118:8 161:2
received [24] 23:1 23:10 36:7 38:1 55:21 92:2 92:15 92:22 93:10 93:20 99:4 111:7 111:18 116:16 118:16 118:20 128:24 128:25 151:21 167:25 173:19 175:18 176:20 178:6
receives [4] 116:7 116:9 121:2 198:24
receiving [1] 179:10
recent [2] 39:15 165:24
recently [2] 108:14 119:19
recess [6] 89:7 89:22 90:1 90:2 158:1 158:9
reciprocal [5] 13:21 200:10 201:19 201:20 203:9
recognizing [1] 117:9
recollection [7] 96:21 98:4 102:5 112:17 113:12 115:6 115:8
recommendation [1] 13:3
recommendations [1] 140:20
reconvene [1] 89:23
record [36] 8:2 9:8 9:16 10:2 11:16 17:3 17:8 21:16 47:22 49:12 49:19 53:22 55:1 55:4 55:7 73:2 91:8 93:16 93:21 98:13 98:25 113:10 114:2 116:17 128:24 130:11 171:5 176:14 181:14 210:13 226:6 226:9 226:13 227:4 227:21 228:7
recorded [1] 228:5
records [6] 106:22 106:25 114:3 114:8 116:3 116:15
recross [1] 224:22
Recross-examination [7] 4:11 4:15 5:7 5:12 32:17 45:20 219:21
redirect [13] 4:8 4:15 4:22 5:6 5:12 5:13 28:18 43:18 74:21 167:11 217:4 223:13 224:20
reduce [2] 75:21 75:25
reduced [2] 76:16 157:17
reduction [1] 75:19
refer [10] 26:18 36:16 97:7 100:10 112:19 136:13 144:13 145:23 147:7 180:8
reference [5] 54:2 64:17 115:2 207:19 217:11
referenced [4] 64:8 138:9 138:15 138:16
references [1] 64:25
referencing [2] 23:22 25:8
referral [1] 72:20

referred [7] 10:9 10:13 65:5 136:2 174:25 205:21 218:3
referring [18] 24:5 36:21 59:14 59:23 73:3 73:7 74:23 74:24 88:10 101:17 102:13 129:15 138:10 144:18 145:25 168:18 168:19 201:2
refers [3] 180:7 180:10 224:13
reflect [2] 119:21 203:13
reflects [1] 119:18
refresh [2] 96:20 223:25
refund [1] 70:17
regard [6] 9:3 55:4 55:7 136:13 179:15 181:22
regarding [8] 20:12 30:11 33:17 47:6 90:17 159:14 162:14 170:13
regardless [3] 86:6 86:17 116:5
regime [1] 199:1
Regional [1] 65:24
Registered [2] 228:3 228:17
regulated [11] 43:9 62:20 63:1 123:2 124:10 124:19 129:22 130:17 131:3 131:9 143:10
regulation [4] 88:8 210:4 210:8 210:19
regulations [4] 88:9 88:15 174:12 201:18
regulatory [2] 199:1 211:10
reject [1] 186:10
relates [4] 18:11 139:10 202:8 212:19
relating [1] 101:19
relationship [2] 110:15 110:20
relationships [1] 68:3
relative [1] 67:20
release [1] 146:11
relevance [1] 67:24
relevant [10] 54:13 54:25 70:11 123:1 123:6 123:11 123:18 124:9 134:7 135:24
reliable [1] 132:10
relying [1] 140:17
remain [2] 214:4 222:4
remember [2] 81:15 120:4
removal [4] 206:2 206:8 213:25 214:2
remove [2] 18:2 206:10
removed [11] 184:3 184:4 184:21 205:19 205:23 205:24 206:5 206:18 213:16 213:17 213:17
removing [1] 212:9
render [1] 18:8
repeat [3] 24:3 32:2 196:23
replace [1] 138:13
replacing [1] 131:17
reply [10] 6:21 7:6 34:10 49:6 49:10 111:22 124:23 125:4 153:9 172:16
report [7] 69:19 81:1 111:4 111:14 111:15 118:11 121:16
reported [1] 193:1
Reporter [3] 228:1 228:4 228:17
reporting [1] 51:13
reports [4] 102:10 102:14 102:19 103:4
represent [4] 12:21 36:2 41:9 116:14
representation [1] 116:13
Representative [1] 57:11
represented [1] 127:7
reproducible [2] 115:24 116:14
request [69] 8:7 10:10 10:14 10:16 11:6 11:8 11:9 11:13 15:4 68:15 72:17 83:6 88:6 151:16 158:18 158:22 159:2 159:5 159:8 160:3 166:12 166:14 166:15 178:1 178:4 178:6 178:9 178:10 178:12 178:23 179:1 179:10 179:18 179:19 179:22 179:22 179:25 180:20 180:24 182:4 182:4 182:10 182:17 182:21 182:23 182:25 183:2 183:6 183:13 183:13 183:16 183:19 183:20 184:19 187:17 187:23 190:4 190:15 192:14 204:15 204:25 206:3 207:3 213:5 214:8 214:8 214:9 215:9 226:17
requested [10] 38:2 38:4 38:6 40:24 56:16 153:11 154:21 212:20 213:6 214:1
requesting [1] 179:14
requests [4] 10:22 30:14 181:3 226:21
require [8] 14:9 69:18 72:5 78:8 116:19 116:19 193:14 193:16
required [15] 20:10 20:12 33:15 33:17 47:4 47:5 73:7 85:4 85:24 90:15 90:16 129:18 140:13 170:11 170:12
requirement [6] 10:18 71:10 88:12 129:5 130:15 131:7
requirements [5] 14:10 15:22 129:16 220:5 220:6
resale [95] 5:21 8:13 10:7 10:20 10:25 14:15 14:18 14:21 18:19 27:22 40:3 40:9 40:23 41:14 41:16 41:19 41:21 42:24 44:25 45:24 46:6 56:17 58:1 58:2 58:3 61:19 62:4 64:23 65:7 66:4 68:4 69:22 69:23 70:3 71:22 72:9 73:8 73:9 73:12 74:5 74:8 78:1 78:14 78:18 78:23 78:25 79:23 80:5 84:7 84:10 84:12 103:23 120:20 130:6 130:19 136:19 151:16 151:24 152:2 152:23 153:11 154:22 154:25 155:7 155:10 160:4 160:13 160:22 164:6 165:12 188:23 188:25 190:9 191:1 191:2 191:5 191:6 191:11 191:19 191:19 191:20 191:24 194:24 195:20 198:22 201:19 203:8 203:14 212:23 212:25 213:18 214:15 216:15 216:20 219:1
Rescheduled [1] 11:3
resell [3] 57:21 104:16 122:16
reseller [5] 58:3 198:18 198:22 218:22 218:24
resellers [2] 57:21 57:25
reselling [4] 66:7 67:10 150:25 196:11
resells [1] 58:7
residence [1] 122:9
residential [5] 30:23 119:15 120:10 122:5 122:9
resold [4] 10:11 16:5 39:3 195:10
resolve [2] 161:15 210:11
resolved [3] 39:23 49:15 78:7
resolving [1] 172:8
resources [1] 79:15
respect [3] 38:12 58:11 75:19
respects [1] 214:12
respond [1] 83:12
responded [4] 32:4 49:9 55:11 162:14
RESPONDENT [1] 3:9
RESPONENT'S [1] 5:2
response [13] 15:9 51:24 52:1 53:11 53:13 54:1 56:11 97:21 101:5 129:13 152:18 183:5 223:7
responses [1] 35:9
responsibility [6] 69:15 183:25 185:12 220:21 220:22 220:23
responsible [2] 71:18 143:20
responsive [4] 157:1 157:4 157:9 225:25
rest [3] 104:13 135:24 143:3
rested [1] 90:5
result [1] 94:21
resumes [2] 150:5 208:16
retail [18] 10:21 56:17 62:17 69:3 85:18 85:21 85:22 152:23 153:11 154:21 154:24 155:2 183:4 191:2 191:19 195:11 195:21 201:19
retailing [1] 68:5
return [2] 108:9 219:8
revenue [12] 40:17 41:13 41:14 41:16 41:19 41:23 42:13 42:14 42:23 43:1 120:9 121:3
revenues [10] 67:20 68:9 75:13 96:2 121:1 121:9 121:15 122:18 122:20 126:2
review [6] 70:20 82:13 96:16 183:7 208:14 213:15
reviewed [6] 22:6 35:2 35:5 48:9 191:13 211:12
reviewing [4] 57:16 65:19 97:3 154:4
reviews [1] 185:18
revised [1] 150:20
revisions [2] 57:12 57:17
revisit [1] 125:9
revolves [1] 82:5
reweight [1] 162:22
Rico [2] 202:18 202:21
right [118] 12:12 20:19 24:17 25:1 28:15 31:15 33:8 33:24 35:19 42:16 43:2 43:11 46:24 47:12 53:15 55:10 55:20 66:19 66:20 69:9 74:12 79:17 85:13 89:1 89:25 90:12 90:23 94:22 94:25 95:15 99:2 100:2 100:15 101:5 102:3 103:6 106:12 108:24 113:20 116:12 117:16 119:8 119:16 120:5 120:10 120:18 120:19 122:5 129:23 130:13 132:3 136:21 136:25 137:19 139:8 140:21 142:22 144:10 145:21 148:2 149:3 149:5 150:4 152:24 158:7 160:22 160:25 162:23 166:9 166:21 166:24 169:18 170:7 170:19 176:5 176:16 177:1 178:11 179:2 180:2 180:18 180:22 185:14 186:4 186:14 186:15 186:19 187:10 188:1 188:8 188:18 188:18 189:5 189:8 189:17 191:2 191:4 193:20 196:6 201:4 201:6 201:8 201:10 203:1 207:15 209:1 210:21 215:24 216:3 220:1 220:22 222:15 223:9 225:2 225:12 225:15 226:24 227:21
right-hand [1] 174:14
rights [2] 79:11 125:16
risk [2] 45:4 45:10
role [2] 18:7 18:10
roughly [5] 118:13 119:7 121:9 126:11 150:9
route [1] 84:20
RTFC [1] 110:9
rule [7] 49:21 50:9 69:20 80:22 117:10 184:6 221:6
rules [25] 44:10 44:17 49:21 50:2 54:22 63:2 63:2 116:21 177:15 182:9 184:9 185:4 190:1 193:2 193:12 195:1 195:8 195:13 198:14 198:25 201:18 211:16 218:21 219:9 219:14
ruling [1] 98:14
rulings [1] 53:23
run [3] 69:5 108:19 150:9
runs [1] 111:5
rural [80] 1:5 9:2 9:4 13:16 13:18 14:12 15:7 17:23 17:25 18:3 18:18 31:19 71:8

73:25 77:11 81:13
83:4 86:12 86:16
94:18 109:2 109:14
109:19 110:1 110:4
125:1 152:25 155:12
159:15 160:3 160:15
160:18 161:18 177:16
178:13 178:14 178:24
180:19 183:20 184:3
184:4 184:10 184:21
184:22 192:14 194:11
196:15 199:4 199:10
199:18 200:19 200:24
205:19 205:22 205:23
205:25 206:4 206:9
206:10 206:18 208:12
208:13 208:14 208:18
212:2 212:7 212:9
212:20 212:24 213:1
213:3 213:13 213:15
213:25 214:2 216:4
219:9 221:17 221:24
222:23

S [6] 2:1 3:1
4:1 5:1 6:1
7:1

S-t-a-u-r-u-l-a-k-i-s [1] 171:10

safe [2] 165:21 224:23

safety [2] 106:22
106:25

sake [2] 58:6 187:18

sat [1] 39:14

satellite [6] 28:21
29:7 197:12 197:13
197:15 197:16

satellites [1] 28:24

savings [2] 42:19
43:4

say-so [2] 115:18
115:20

says [24] 15:12 15:15
49:9 49:16 52:25
74:1 83:22 88:4
88:17 103:11 103:11
112:22 128:11 132:19
136:17 138:20 146:14
150:3 172:3 180:22
181:3 182:10 210:2
221:8

scenario [8] 85:3
184:23 186:25 202:6
205:7 208:17 208:17
214:13

schedule [33] 11:12
15:12 19:7 19:13
19:14 69:15 69:16
71:5 72:13 72:14
72:25 74:4 74:4
81:14 81:16 83:15
83:16 83:24 84:9
88:6 88:13 159:13
166:20 178:23 205:12
205:13 205:18 208:9
208:11 209:16 209:18
209:25 210:1

schedules [1] 159:15

scheduling [1] 51:8

School [1] 173:25

scope [8] 44:7
51:15 56:19 56:22
212:19 212:21 213:6
213:18

scores [3] 194:11
199:4 199:8

Scott [2] 3:3 16:25

seal [3] 117:1 117:1
117:3

seat [2] 20:5 90:13

seated [2] 20:9
33:12

second [21] 11:8
14:5 15:25 54:13
60:13 111:2 111:13
112:20 127:15 127:15
137:1 137:5 137:10
148:3 148:6 148:15
148:16 148:18 148:22
149:8 183:16

Secondly [1] 98:17

secret [1] 149:23

section [41] 7:8
7:10 7:13 8:10
10:11 10:17 11:10
13:19 13:22 13:23
14:1 15:7 15:19
51:7 51:8 56:16
65:5 101:16 159:6
174:4 174:14 178:9
178:10 178:12 179:3
179:7 179:16 179:20
180:2 180:4 180:7
180:9 201:16 201:18
201:24 202:4 217:24
218:4 218:15 218:18
221:2

secure [1] 146:20

security [1] 149:16

see [16] 9:21 70:18
70:21 71:8 73:10
83:15 97:6 97:8
115:2 117:11 125:17
146:3 147:18 161:14
187:11 227:1

seeing [3] 82:15
98:8 166:12

seek [1] 204:12

seeking [1] 139:3

seem [3] 65:25 164:8
209:18

self [1] 116:19

self-evident [1] 98:15

sell [1] 104:14

selling [1] 167:19

Senator [1] 57:15

send [4] 152:17 177:25
182:16 182:22

sends [1] 178:4

sense [1] 140:12

sent [5] 148:7 152:21
182:7 182:23 183:6

sentence [13] 145:9
146:14 146:16 147:6
148:6 148:15 148:18
148:23 149:8 172:3
178:19 179:7 180:6

separately [1] 207:19

September [1] 156:3

sequentially [1] 59:4

series [1] 13:13

seriously [1] 18:8

serve [3] 94:10 94:12
95:17

served [5] 67:7
95:9 112:23 112:24
219:7

serves [4] 31:9
67:2 94:9 113:12

service [136] 1:2
2:7 2:10 2:13
8:7 11:1 12:6
13:9 14:24 15:13
16:6 29:2 40:8
42:16 42:24 54:14
57:21 58:3 58:7
58:9 58:11 58:15
58:21 64:18 64:23
66:4 66:5 66:7
67:3 68:4 71:22
74:8 76:1 76:3
76:9 76:15 76:16
78:1 78:18 78:23
79:23 80:5 82:1
83:24 84:7 84:10
84:17 85:9 101:1
103:18 104:8 104:15
104:16 104:22 105:22
107:12 109:2 109:15
110:1 110:24 110:25
111:5 115:25 116:7
116:9 117:24 118:14
119:9 119:15 120:16
120:17 120:21 120:22
120:25 122:5 123:4
125:6 125:7 125:18
125:20 128:7 130:1
130:4 130:7 130:12
130:20 132:3 132:10
136:9 140:14 143:8
143:11 143:14 143:25
146:1 150:24 155:21
159:7 159:10 160:13
160:13 160:18 161:4
161:19 162:7 162:13
162:15 162:17 164:6
164:11 164:20 166:5
166:17 168:17 169:1
169:14 183:4 183:4
196:5 196:24 197:23
198:2 198:15 198:19
198:22 200:21 205:3
214:25 218:20 218:23
219:2 219:12 221:20
222:1 222:9 222:10

service-related [1] 156:9

services [60] 8:12
10:6 10:11 10:14
10:20 10:24 16:8
18:20 25:16 25:24
28:25 29:7 30:23
30:24 31:10 31:12
32:22 42:20 42:24
42:25 43:9 45:25
46:6 76:7 84:18
85:7 105:19 122:17
122:25 123:2 123:8
123:11 123:15 123:18
124:9 124:19 124:19
125:11 129:22 130:16
130:19 130:23 131:3
131:3 131:10 143:22
145:16 145:22 160:24
161:3 163:24 178:25
179:11 195:10 195:21
196:8 196:18 199:25
205:4 215:13

serving [1] 168:2

session [1] 90:5

set [15] 8:22 39:9
73:9 73:17 74:3
74:4 77:22 80:15
83:23 84:8 85:3
126:8 158:16 179:15
215:4

sets [1] 195:8

setting [5] 9:24
39:12 62:16 72:19
72:25

settled [3] 166:10
202:14 202:22

several [4] 86:25
87:1 111:7 173:22

shall [6] 44:16 88:5
112:24 113:4 178:25
180:23

shareholders [1] 75:22

short [1] 12:17

short-term [1] 159:11

shorthand [2] 228:6
228:11

show [13] 10:2
14:2 14:11 15:21
21:17 59:18 66:22
101:14 101:21 116:22
127:15 153:19 221:15

showed [1] 68:7

showing [1] 34:13

showings [1] 15:1

shown [2] 102:15
103:4

shows [3] 14:20
111:6 221:18

side [7] 71:19 71:20
103:24 104:2 127:17
142:3 162:13

side's [1] 8:24

sides [1] 227:13

sign [4] 30:2 32:20
148:12 227:1

significant [7] 16:2
50:11 50:19 51:12
68:10 121:2 221:2

significantly [3] 40:15 45:13 73:23

simple [7] 45:3
62:7 63:6 71:23
73:14 78:23 79:2

simply [9] 15:16
65:21 73:7 73:24
80:7 84:6 117:8
203:10 211:2

simultaneous [1] 225:20

situation [5] 51:11
80:2 99:20 165:3
204:24

situations [1] 77:23

six [1] 173:24

six-something [1] 122:10

size [4] 66:15 66:15
66:16 67:20

skip [2] 101:4 135:23

slight [1] 120:8

slowly [1] 36:14

small [6] 39:19 43:7
45:5 45:6 45:11
219:9

smaller [1] 95:23

society [1] 64:11

solely [1] 18:21

solution [1] 146:23

solutions [1] 146:20

someday [1] 75:18

someone [5] 115:24
149:25 167:14 211:20
225:19

sometime [5] 107:8
134:18 134:21 139:20
190:10

sometimes [5] 10:9
10:13 185:9 185:11
185:12

somewhere [3] 119:10
120:9 120:14

soon [4] 16:8 163:24
163:25 165:2

soonest [1] 188:22

sorry [38] 31:4
34:19 36:8 37:20
46:1 46:3 48:22
55:12 61:2 61:7
74:18 81:21 93:5
96:12 100:19 101:7
102:20 116:24 132:21
144:20 144:21 155:23
168:20 172:15 175:20
180:5 185:12 186:3
190:3 195:15 196:23
197:21 198:10 200:12
200:13 217:8 219:24
226:18

sort [5] 39:8 58:1
100:11 107:18 209:13

sought [1] 183:1

sounds [7] 82:5
82:6 100:15 120:12
120:19 121:17 166:9

sources [1] 168:21

South [10] 13:10
31:17 67:2 183:23
205:20 205:25 206:7
206:20 206:24 207:25

speaking [9] 20:16
33:20 47:9 77:8
90:20 119:7 170:16
182:6 221:5

special [3] 201:11
201:11 222:20

specific [19] 13:5
13:23 36:15 37:18
37:21 46:7 46:16

46:19 50:15 51:4
58:2 60:23 61:2
61:11 70:8 107:18
193:21 215:1 221:11
specifically [11] 42:8
51:6 63:3 79:3
102:12 112:3 112:16
141:19 198:13 210:13
214:2
specified [1] 190:25
speed [1] 132:11
spending [1] 143:17
spent [1] 27:6
spirit [2] 113:6 114:23
spotted [1] 64:4
spreadsheet [3] 42:12
70:21 111:9
spreadsheets [1] 81:9
spring [1] 131:23
sprinkled [1] 64:6
square [1] 220:12
staff [6] 12:9 12:10
44:15 54:15 54:18
69:19
stand [2] 61:15 90:11
standard [8] 64:15
65:18 82:12 82:13
147:8 194:24 194:25
195:8
standards [3] 179:15
220:7 220:10
standing [1] 128:19
start [21] 9:10 44:20
83:6 83:19 84:11
86:6 94:7 99:17
99:18 105:3 107:11
131:14 158:6 166:21
177:10 178:3 182:19
206:15 209:23 215:12
215:12
started [16] 72:16
73:8 99:9 120:24
131:17 131:19 134:15
144:3 160:17 180:25
184:4 202:14 202:23
205:19 206:17 213:7
starting [11] 71:9
102:1 124:1 133:19
133:20 146:16 148:8
149:9 203:14 217:16
222:6
starts [10] 85:6
134:4 145:10 177:20
178:7 184:19 200:21
208:18 209:20 216:5
state [50] 1:1 1:18
2:8 2:11 11:16
18:4 19:15 26:2
26:3 26:9 26:11
44:9 46:3 59:7
60:8 63:13 67:11
88:5 125:25 171:4
172:4 172:7 178:21
179:1 180:17 180:24
181:9 181:18 181:20
182:13 183:22 183:24
184:14 185:18 186:6
186:9 193:11 193:14
205:17 205:21 206:16
208:19 210:5 210:20
211:14 213:14 214:5
221:10 221:16 222:2
statement [14] 4:3
4:4 12:17 16:16
19:22 20:14 33:19
47:7 60:17 60:23
61:10 90:18 145:25
170:14
statements [3] 60:22
144:12 144:25
states [33] 28:1
28:5 29:8 29:9
30:12 30:14 31:16
57:10 60:11 60:15
60:16 67:4 67:8
78:19 78:20 81:12
81:16 117:3 131:16
159:14 178:21 185:8
193:16 193:20 205:10
205:11 208:8 208:10
210:15 210:23 210:25
210:25 213:24
statute [9] 13:1
14:9 15:20 50:22
62:21 64:15 74:1
88:3 189:12
statutory [3] 13:6
51:4 129:15
Staurulakis [2] 17:20
171:9
stay [1] 76:5
stays [1] 181:21
step [2] 185:15 186:18
steps [2] 69:5 140:22
still [10] 13:18 22:9
116:5 122:19 122:21
126:24 132:2 132:3
142:16 187:15
stipulate [1] 154:9
stipulating [1] 23:1
stipulation [7] 23:11
92:3 113:15 171:24
173:16 173:20 176:19
stock [1] 100:2
stop [1] 81:2
straight [1] 21:16
straightforward [1]
80:23
strategic [1] 197:4
strategy [1] 197:7
stream [1] 40:17
stretch [2] 86:25
87:1
stricken [5] 49:11
49:19 50:1 50:14
50:18
strictly [1] 40:23
strike [5] 51:18
53:19 172:5 173:4
173:5
struck [1] 194:1
structure [1] 40:2
studied [1] 133:4
studies [11] 135:19
136:6 136:12 136:21
136:22 138:7 138:10
199:4 199:17 220:15
220:20
study [42] 18:8
133:10 133:15 133:17
133:24 134:13 134:16
134:22 134:25 135:2
135:9 135:25 136:1
136:6 136:9 136:17
137:1 137:5 137:10
137:11 137:13 137:25
138:5 138:6 138:8
138:8 138:12 138:16
139:4 139:7 198:6
198:10 199:22 208:23
208:25 220:1 220:6
220:25 221:18 222:23
222:24 224:24
subject [15] 39:10
40:11 41:14 61:9
70:17 103:3 131:6
135:21 201:15 201:17
201:24 211:5 218:2
218:7 218:10
submission [3] 181:1
186:11 218:16
submit [4] 178:25
180:23 185:23 226:3
submitted [2] 186:2
186:3
subpart [1] 221:5
subscriber [1] 122:4
subscribers [1] 10:21
subsection [1] 180:8
subsections [2] 11:11
179:16
subsequent [1] 38:25
substantial [4] 116:9
149:9 149:10 149:11
substantially [2]
112:21 113:12
substantive [1] 152:18
subtracted [1] 41:22
subtracting [1] 195:9
successful [1] 202:13
such [9] 60:14 72:6
76:7 79:10 119:2
133:24 135:25 162:18
199:22
suddenly [1] 165:4
suggest [4] 69:16
69:17 89:21 207:24
suggested [2] 80:25
161:12
suggesting [1] 76:1
Suite [1] 2:21
summarize [1] 105:12
summary [2] 105:16
205:5
summer [3] 71:7
93:15 131:23
supplier [1] 142:7
suppliers [2] 141:20
141:22
support [13] 118:3
118:6 118:6 119:9
162:15 162:18 162:22
162:25 168:17 168:18
168:22 168:23 168:24
suppose [3] 78:15
84:19 134:18
supposed [2] 36:21
221:3
surface [1] 162:4
surprised [2] 156:6
156:8
surprises [1] 155:19
surround [2] 40:6
95:2
surveillance [1] 149:16
SUSAN [1] 2:4
suspends [1] 208:13
sustained [2] 29:5
181:15
switching [2] 118:6
168:23
sworn [12] 20:6
20:20 20:24 33:12
33:25 34:4 47:14
47:18 90:25 91:4
170:21 170:25
system [1] 168:6
T [8] 4:1 4:1
5:1 5:1 6:1
6:1 7:1 7:1
T's [1] 220:12
table [2] 41:5 41:10
tables [1] 41:7
takes [5] 111:9 185:11
187:18 223:11 223:11
taking [2] 12:10
19:17
talks [9] 41:10 52:7
52:15 53:4 53:10
57:1 67:18 73:18
88:3
tariff [4] 25:12 25:13
130:25 191:3
tariffed [2] 62:19
123:7
tasks [1] 222:20
technical [6] 14:16
140:1 140:17 140:22
155:9 214:25
technicalities [1]
98:17
technically [8] 11:9
14:5 56:13 159:3
166:15 166:22 167:2
183:19
technology [2] 54:5
54:8
Tel [24] 65:16 66:7
67:14 68:2 68:6
68:11 69:1 70:7
70:20 76:2 76:13
77:12 79:9 80:3
80:8 80:12 80:24
83:1 83:9 162:18
162:24 182:23 183:6
205:4
Tel's [1] 75:13
Telecom [4] 45:13
95:15 96:16 209:10
telecommunications
[24] 6:16 10:20
12:24 18:1 18:20
23:23 25:9 25:10
25:24 26:13 31:9
32:22 50:1 52:8
77:16 159:23 160:5
160:12 161:4 164:6
168:3 179:14 205:3
205:17
telephone [139] 1:5
6:16 8:12 10:5
10:13 11:25 12:2
13:2 13:9 13:14
13:16 13:18 14:13
14:16 14:17 14:20
14:25 15:12 15:15
16:2 16:6 17:13
17:16 17:18 17:20
17:24 18:6 18:12
18:18 18:25 25:12
25:23 27:6 30:3
30:23 31:12 31:15
32:20 43:23 44:4
44:22 45:2 45:24
46:6 46:8 53:17
58:16 62:5 66:17
70:17 72:6 72:12
72:21 77:4 79:18
85:6 85:9 85:14
91:15 94:8 94:9
95:22 95:24 99:7
99:22 100:2 100:5
100:10 100:11 102:15
103:12 103:16 103:18
103:23 104:14 104:17
105:22 107:12 108:5
109:1 109:20 110:5
111:7 111:16 116:1
116:6 116:8 117:23
123:5 125:20 127:1
127:8 127:10 128:13
131:12 132:3 135:20
140:13 143:8 143:10
143:13 143:25 146:6
146:24 148:25 150:24
152:14 152:17 161:20
163:22 165:20 166:4
167:5 171:14 178:24
183:1 183:24 191:3
191:16 191:17 192:5
194:4 194:11 194:14
196:5 196:16 196:21
196:24 197:11 197:20
197:23 198:12 205:24
208:24 215:11 216:13
219:9 221:17 224:7
Telephone's [6] 15:9
15:18 16:1 121:7
122:20 123:2
telephony [1] 149:12
Telesyn [4] 142:7
146:11 146:17 146:19
television [8] 14:7
23:23 25:16 25:19
28:21 28:22 30:25
32:5
telling [2] 58:14
136:1
TELRIC [2] 71:14
84:2

TELRIC-type [1] 39:16
template [2] 70:5 70:19
ten [3] 65:25 104:11 125:25
ten-year [1] 12:23
tens [1] 104:10
tenth-of-a-cent [1] 121:22
term [4] 81:23 147:6 195:24 196:1
terminate [7] 8:11 10:5 10:24 38:24 77:14 82:14 121:6
terminated [7] 11:14 68:25 81:13 81:17 83:23 86:13 205:14
termination [11] 68:15 68:24 69:6 73:25 83:3 83:4 83:17 88:2 88:4 178:22 212:2
terminology [1] 205:12
terms [13] 14:25 19:11 27:6 39:7 54:11 66:13 67:20 69:1 126:19 186:19 186:22 188:5 203:8
terribly [1] 192:18
territory [3] 67:3 95:2 121:7
test [2] 15:6 15:19
testified [12] 20:24 34:4 47:18 91:4 119:4 164:5 165:14 168:16 170:25 182:15 190:13 210:12
testify [6] 17:13 49:16 49:17 49:24 52:11 53:21
testifying [4] 17:22 37:17 112:8 171:12
testimonies [1] 64:9
testimony [214] 5:17 5:18 5:22 5:23 6:4 6:6 6:8 6:9 6:11 6:12 6:21 7:6 9:13 15:6 19:16 20:10 21:3 21:5 21:6 21:7 21:9 21:12 21:18 21:21 21:25 22:7 22:10 22:15 22:19 23:3 23:9 23:10 23:20 23:25 24:9 24:16 24:23 24:24 26:18 26:19 27:19 29:19 32:2 33:15 34:9 34:11 34:16 34:18 34:23 35:3 35:3 35:7 35:7 35:24 36:14 37:2 37:3 38:6 41:6 41:8 47:4 47:23 47:25 48:3 48:5 48:7 48:10 48:13 48:23 49:4 49:6 49:6 49:10 49:11 49:14 49:19 49:21 50:20 50:20 51:2 51:12 52:13 52:23 53:2 53:7 53:17 53:20 53:24 53:25 54:2 54:10 54:16 56:24 57:1 57:2 58:23 59:8 59:12 59:15 59:17 59:25 60:5 60:19 60:20 61:12 63:24 64:1 64:2 64:3 64:24 66:10 66:14 69:16 72:8 72:23 73:19 74:24 75:10 77:9 82:6 90:15 91:18 91:19 92:10 92:18 93:22 98:8 98:19 105:2 105:9 105:10 107:6 111:21 111:22 111:22 111:23 112:23 113:3 113:17 114:12 114:20 123:13 123:22 123:23 124:1 124:20 124:22 124:23 125:5 125:18 129:4 131:16 132:19 144:11 144:24 145:1 146:4 147:10 147:11 147:17 147:24 150:7 150:18 151:20 153:10 153:12 153:13 153:14 154:3 154:8 154:10 154:12 154:20 154:23 155:20 159:18 159:19 164:17 170:11 171:16 171:18 171:22 172:1 172:13 172:14 172:17 173:12 173:13 173:17 173:24 175:7 175:16 176:9 177:19 187:12 192:22 192:24 193:1 196:3 196:4 198:1 198:4 198:7 198:9 198:11 200:1 200:4 203:12 203:13 204:22 205:5 223:16 224:1 224:13
tests [1] 14:8
Texas [5] 206:6 206:16 206:22 206:25 208:1
text [1] 181:2
thank [83] 8:18 9:13 9:18 9:20 10:1 12:14 19:18 19:20 20:1 20:22 23:13 24:13 25:1 25:6 27:11 28:13 28:17 29:15 30:9 31:2 31:21 32:10 32:24 33:8 34:2 36:25 37:5 37:9 38:15 40:25 43:10 43:14 43:16 46:24 47:16 48:16 52:19 55:22 56:4 63:15 68:17 73:1 74:12 76:19 84:22 87:8 88:19 89:1 89:3 91:2 94:1 99:5 107:17 117:14 117:21 153:22 157:19 158:7 158:11 163:9 168:9 169:5 169:20 170:2 170:23 172:23 173:1 177:2 180:13 181:8 181:8 212:14 216:23 217:2 218:12 219:16 224:14 225:1 225:9 227:5 227:11 227:15 227:22
thanks [4] 70:25 87:12 211:18 227:17
Thayer [1] 2:17
themselves [4] 114:9 184:14 203:18 211:5
theory [3] 15:18 16:1 206:2
therefore [5] 40:17 178:8 192:4 206:11 222:1
thereof [1] 11:12
they've [5] 61:25 83:11 111:18 210:6 211:2
thinking [1] 181:22
third [8] 11:9 54:18 94:19 96:7 98:4 111:14 127:16 159:5
Thomas [2] 3:6 12:1
thought [10] 13:11 95:7 95:12 111:25 113:14 124:23 154:24 175:25 202:5 217:6
three [12] 27:22 41:24 81:23 95:1 109:6 172:24 205:15 206:19 219:25 220:3 223:8 223:12
three-month [1] 209:4
three-page [1] 92:24
three-way [1] 42:21
threshold [1] 217:18
through [42] 27:1 27:23 35:17 36:6 36:14 39:14 41:7 52:6 52:21 53:11 59:24 60:8 60:22 61:5 61:9 61:21 65:15 69:1 69:5 79:13 84:3 84:5 85:16 89:16 100:20 100:21 104:16 125:22 129:5 129:13 145:19 147:19 152:8 154:2 156:3 164:4 175:10 175:17 176:14 176:19 179:9 185:6
throughout [1] 64:6
tick [1] 71:9
times [3] 61:22 192:1 219:11
timetable [4] 72:1 72:2 83:19 210:16
timing [5] 77:20 82:24 139:11 177:12 223:14
Timothy [8] 4:17 6:11 6:12 6:14 12:19 47:2 47:17 53:18
title [10] 7:8 7:9 7:12 171:4 171:7 174:8 179:12 179:17 180:11 202:5
TJG-1 [1] 48:3
today [33] 9:16 12:9 17:11 17:14 17:14 17:17 17:22 19:18 22:9 25:17 37:17 48:13 60:20 62:23 67:15 96:5 103:16 103:18 105:18 112:4 132:17 132:18 146:22 151:12 165:6 166:3 167:19 171:13 172:10 173:9 200:24 225:22 227:12
today's [1] 198:25
together [7] 24:7 95:23 146:2 161:17 162:5 187:11 220:11
Tom [1] 55:25
tone [1] 58:15
Tony [2] 2:3 8:17
too [8] 105:21 153:23 194:6 194:8 194:9 194:21 194:21 226:23
took [3] 161:17 211:9 211:23
top [7] 42:11 60:9 65:6 122:5 127:16 150:14 188:3
topic [2] 184:7 202:7
total [23] 40:8 42:24 45:6 45:10 64:23 66:4 68:4 69:2 69:2 71:22 72:10 74:7 78:1 78:18 78:23 79:23 80:5 84:7 84:10 94:16 114:19 185:6 222:8
totally [1] 40:1
touched [1] 201:14
touching [2] 200:24 211:10
tough [1] 217:22
towns [1] 119:23
TPC [3] 99:23 100:4 100:11
TPC's [1] 100:1
track [2] 96:13 163:19
tracked [1] 63:9
traffic [2] 121:19 201:22
transcript [2] 1:11 228:11
trial [1] 44:10
tried [1] 66:18
trigger [2] 179:23 182:11
triggers [4] 179:19 180:1 181:19 183:13
triple [13] 81:25 82:1 124:5 146:21 146:23 147:6 147:8 147:15 147:16 147:21 147:23 163:23 163:23
trouble [1] 115:16
true [13] 20:15 33:20 42:23 47:8 58:14 87:21 90:19 91:23 106:3 113:20 130:18 144:5 170:15
true-up [4] 39:10 40:11 70:17 193:14
true-ups [1] 193:16
trunks [2] 71:18 71:20
try [8] 19:17 45:22 66:18 75:11 75:20 75:25 124:15 204:8
trying [11] 32:20 39:15 96:12 125:15 162:1 163:19 181:13 181:22 182:25 216:16 217:20
turn [18] 42:4 70:6 107:17 110:22 121:1 131:12 145:4 146:9 148:2 149:5 155:6 178:15 179:2 185:20 193:13 199:2 199:24 217:23
turning [2] 58:23 177:11
turns [1] 165:5
twice [1] 138:15
two [44] 14:1 15:17 21:17 22:14 31:17 39:1 39:21 41:24 52:20 67:4 67:22 73:8 92:25 96:6 97:23 98:1 98:12 104:5 111:1 111:2 118:22 136:5 136:12 136:21 138:7 138:10 168:21 174:7 174:11 174:15 180:14 181:3 182:14 183:10 201:22 209:4 214:12 219:25 220:3 221:22 223:8 223:11 225:22 226:4
two-month [1] 209:4
two-thirds [1] 120:17
type [6] 28:1 53:2 78:15 79:4 98:6 148:24
typewritten [1] 228:10
typical [2] 27:23 51:1
typically [6] 43:7 43:8 57:21 58:3 186:21 186:25
U.S [6] 7:8 7:9 57:15 117:2 173:25 174:4
ultimate [2] 44:24 45:12
ultimately [3] 57:17 76:14 81:7
unable [1] 190:9
unbundled [7] 40:5 71:15 78:3 84:1 203:17 213:5 216:19

unclear [1] 191:18
under [50] 10:10 10:17 13:19 13:21 13:23 15:6 15:19 19:15 20:11 22:9 25:12 25:13 33:15 35:7 41:17 42:24 47:4 48:13 77:16 83:1 84:12 84:17 88:3 88:16 90:16 94:19 116:20 116:25 170:12 178:9 178:10 179:20 179:25 182:4 182:4 185:2 188:25 189:11 189:13 193:12 194:25 195:8 195:13 198:25 198:25 201:1 211:13 218:21 219:9 219:14
underlying [1] 198:23
understand [47] 8:21 30:9 41:8 41:11 41:13 41:15 41:17 43:21 44:10 50:17 56:6 60:20 69:5 69:13 82:11 102:12 106:12 106:16 119:7 123:12 129:18 130:25 154:18 155:2 157:5 160:8 162:17 163:1 164:4 164:16 164:17 166:24 167:22 168:4 177:13 188:20 192:1 195:22 203:12 208:16 213:8 213:9 214:11 215:6 217:17 222:12 223:16
understanding [26] 37:16 40:22 52:2 71:4 85:4 85:8 99:21 105:4 123:7 124:13 125:13 128:23 147:23 175:14 182:24 183:5 189:24 190:5 193:8 204:3 204:7 206:13 212:21 218:21 222:21 224:12
understands [3] 59:9 60:1 143:21
understood [3] 188:6 188:17 208:4
undue [3] 14:4 14:12 214:24
unduly [3] 11:7 158:18 166:13
UNE [1] 39:15
UNEs [8] 71:15 78:2 203:8 203:17 203:19 215:5 216:14 216:15
unfair [1] 107:2
unique [3] 19:12 215:8 215:9
United [10] 6:16 29:8 29:9 57:10 95:15 97:1 97:2 97:4 104:17 117:3
universal [31] 14:23 64:17 110:23 110:24 111:5 115:25 116:7 116:9 117:24 118:13 119:9 120:15 120:17 120:22 159:7 159:9 162:13 162:15 162:17 166:16 168:17 169:1 169:14 198:2 198:15 198:19 214:25 218:20 218:23 219:2 219:12
University [1] 56:9
unless [4] 120:24 155:18 166:10 166:11
unlikely [2] 54:15 187:14
unregulated [1] 131:2
unsure [1] 188:13
up [49] 20:17 20:18 32:21 33:12 33:22 33:23 41:7 43:15 45:22 47:10 47:11 70:10 70:23 71:25 72:25 73:9 73:17 75:13 77:22 78:15 80:2 82:22 85:3 90:21 90:22 100:18 101:3 101:14 111:10 111:25 114:5 122:14 126:8 127:15 144:15 146:14 147:1 169:10 170:17 170:18 176:11 183:23 185:6 188:9 190:16 211:15 220:3 223:8 226:25
upgrade [17] 132:9 132:21 132:21 134:24 137:7 137:12 139:12 139:22 140:24 141:12 141:24 142:14 142:21 143:5 143:6 143:13 144:3
upgraded [1] 139:23
upper [1] 94:12
URL [1] 117:8
USC [6] 8:10 10:10 10:17 11:10 159:6 166:16
used [5] 112:2 193:5 193:8 193:19 193:22
useful [1] 197:7
uses [2] 203:19 203:23
USF [4] 167:21 168:1 218:21 219:10
using [8] 41:12 105:17 110:6 117:8 190:8 193:20 195:22 209:20
USOA [1] 63:3
usually [2] 70:2 71:12
utilities [6] 7:12 12:8 109:2 109:15 110:1 174:9
utility [1] 12:7
valid [4] 178:6 183:20 184:3 206:3
variation [1] 176:11
various [5] 22:3 45:8 57:1 67:19 185:7
verbal [1] 101:5
verifiable [1] 51:14
verify [2] 108:15 126:4
Verizon [3] 26:5 104:4 104:16
versus [1] 62:20
via [5] 41:16 41:19 41:21 151:12 198:22
video [74] 15:13 16:8 23:22 25:8 76:8 82:7 96:4 96:22 97:5 98:5 105:21 107:7 107:11 107:14 123:11 123:18 124:9 124:25 125:6 125:7 130:4 130:12 130:16 131:13 131:14 131:20 132:20 133:11 135:3 135:11 135:21 136:3 136:4 136:9 137:2 137:10 137:25 139:12 139:17 139:20 140:7 140:23 141:8 141:14 141:20 142:5 142:11 144:13 145:1 147:9 147:20 147:22 149:4 149:15 149:18 149:24 150:23 151:11 159:23 160:7 160:10 160:18 161:19 164:20 167:19 189:23 190:6 200:21 205:4 216:6 216:10 217:13 223:15 224:8
view [15] 105:24 106:8 107:3 107:8 122:25 177:24 178:5 178:8 179:18 182:16 187:3 197:10 201:15 201:24 213:23
Virginia [5] 211:2 211:4 211:8 211:9 211:9
Virginia-type [1] 211:6
virtue [1] 211:3
visit [1] 30:1
voice [5] 128:10 147:9 147:21 149:13 162:16
voluntarily [2] 193:25 205:24
voluntary [3] 179:9 199:18 202:3
vulnerable [1] 168:24
W [4] 2:6 2:15 6:23 6:24
Wahl [209] 1:23 8:4 8:4 8:25 9:17 10:1 11:21 12:4 12:12 12:21 16:15 16:18 16:19 19:21 19:24 20:4 20:8 20:21 22:2 22:16 22:21 22:23 22:25 23:6 23:8 23:15 24:2 27:12 27:15 28:9 28:12 28:15 28:17 29:5 29:13 29:16 31:3 31:22 32:11 32:14 32:25 33:2 33:5 33:8 33:13 34:1 34:20 35:13 35:17 35:19 36:6 36:12 37:6 37:10 38:17 38:19 41:2 43:13 43:15 44:8 45:19 46:11 46:21 46:24 47:3 47:15 48:18 48:24 50:7 51:24 52:18 53:15 55:6 55:10 55:17 55:20 56:23 57:4 59:21 62:10 62:13 63:17 68:18 68:20 71:1 74:14 74:16 74:18 76:21 76:23 82:18 84:23 87:9 87:13 87:15 87:17 87:20 88:21 88:24 89:1 89:4 89:13 89:18 89:21 89:25 90:4 90:8 90:12 91:1 92:2 92:13 92:15 92:21 93:5 93:9 93:18 93:20 93:25 96:10 97:12 97:20 98:12 98:24 99:2 101:13 101:21 102:25 111:11 112:13 112:15 113:10 113:19 115:4 116:12 116:22 117:5 117:15 127:4 128:17 128:22 130:9 138:21 139:1 139:8 144:19 152:11 153:20 153:25 154:15 154:18 157:21 158:1 158:5 158:10 162:9 163:10 163:14 167:8 168:11 169:7 169:21 169:23 170:2 170:4 170:7 170:10 170:22 171:23 173:19 175:12 175:17 175:20 175:22 175:25 176:4 176:13 176:18 176:23 177:1 181:15 204:19 207:5 207:10 207:15 207:21 208:4 209:6 212:16 216:24 217:1 219:19 224:16 224:18 225:2 225:6 225:9 225:12 225:15 225:23 226:2 226:8 226:10 226:12 226:15 226:18 226:21 226:25 227:7 227:21
Wahl's [1] 19:17
wait [13] 15:16 15:20 16:11 82:7 85:13 86:19 86:21 86:23 107:10 107:13 114:15 204:11 204:16
waiting [1] 42:21
wants [5] 65:21 82:8 114:5 203:13 212:22
Warren [10] 4:12 5:23 6:4 6:5 6:7 6:8 6:10 12:19 33:10 34:3
Warwick [1] 205:17
Washington [5] 2:21 3:8 12:3 17:9 17:10
ways [3] 14:1 19:4 150:23
web [4] 6:15 6:20 96:15 146:10
website [9] 67:14 67:15 111:5 111:14 115:22 115:25 127:1 127:8 127:10
weeks [2] 225:22 226:4
Wefald [62] 2:4 4:10 4:14 4:19 4:21 4:24 5:11 8:25 9:1 12:15 16:22 24:1 24:10 24:13 24:17 24:20 25:1 28:9 28:10 31:22 31:24 32:10 36:10 36:12 36:13 36:19 36:25 37:4 37:5 37:7 37:8 41:2 41:4 43:10 52:16 52:19 63:17 63:19 68:17 69:10 71:1 71:3 74:12 75:1 84:23 85:2 87:8 157:24 158:6 158:7 163:10 163:12 172:15 172:19 172:22 173:1 212:16 212:18 216:1 216:22 225:7 227:10
weight [3] 15:5 56:23 139:15
welcome [3] 8:19 9:19 170:3
well-made [1] 106:21
Western [2] 9:3 26:1
what-if [1] 215:10
whereas [1] 106:22
wherever [1] 67:6
whichever [2] 104:3 153:25
whole [9] 36:17 75:8 81:21 82:4 119:5 162:24 163:6 204:16 218:18
wholesale [54] 10:11 14:14 14:18 18:19 45:25 46:6 61:19 62:4 62:16 69:3 69:22 70:3 80:21 85:17 85:19 85:20 85:21 85:22 86:7 86:9 86:10 87:2 136:18 152:2 152:23 153:2 155:1 155:10 160:5 160:13 160:23 160:24 183:4 191:4 191:6 191:11 191:19 191:23 191:25 194:10 194:16 195:20 203:8 203:14 212:23 212:25 213:18 214:3 214:9 214:15 214:20 215:2 216:20 221:9

width [2] 140:3 140:4
Willamette [1] 56:8
William [2] 2:6 12:5
willing [1] 164:24
wireless [13] 9:3 26:1 26:3 26:6 103:20 104:1 104:2 104:8 104:14 104:22 130:6 130:19 196:6
Wisconsin [1] 3:8
wish [1] 91:20
within [17] 15:22 36:1 42:5 72:7 72:9 72:9 72:14 77:23 79:6 79:24 83:1 118:20 156:4 186:10 186:22 218:15 226:3
without [17] 27:3 50:13 51:5 54:7 54:8 86:15 98:16 115:1 121:11 130:23 158:6 179:15 200:8 200:17 200:24 201:13 203:16
witness [59] 17:16 20:2 20:5 20:20 23:14 24:5 27:14 29:12 32:15 33:6 33:11 33:14 33:25 35:11 36:8 44:7 45:18 47:14 48:17 49:22 50:4 52:7 52:9 53:1 53:4 53:8 53:20 55:16 56:20 59:19 69:12 89:3 89:6 89:19 90:25 93:7 97:16 98:9 101:14 101:16 101:22 101:23 111:20 138:10 139:3 152:12 153:9 158:3 169:25 170:3 170:6 170:21 172:21 176:3 176:24 181:16 181:17 207:24 211:23
witnesses [9] 4:5 5:2 12:18 14:14 54:11 64:9 90:15 170:11 227:11
wonder [1] 111:20
wonderful [1] 202:17
wondering [4] 21:25 64:4 72:13 215:7
Woods [3] 3:7 12:2 17:9
word [2] 147:19 195:23
wording [2] 86:7 113:14
words [13] 20:15 33:20 47:8 90:19 124:11 165:1 165:6 170:15 172:6 172:24 173:2 173:5 219:11
worked [4] 99:11 164:9 165:19 206:21
working [1] 166:21
works [5] 132:3 132:17 163:3 164:18 194:24
worry [2] 215:18 215:19
worst-case [1] 205:6
WRF-1 [3] 34:15 36:22 37:1
WRF-2 [3] 34:17 36:23 42:5
WRF-3 [2] 34:18 36:23
WRF-4 [2] 34:22 36:24
write [1] 226:25
written [1] 188:5
wrong [5] 15:17 112:18 144:21 184:17 224:3
wrote [1] 147:24
year [25] 16:5 17:8 119:9 120:8 120:10 121:15 124:5 131:23 134:21 139:14 151:16 156:7 162:21 164:19 164:19 165:7 189:1 189:16 189:19 190:24 204:11 204:16 205:3 211:24 211:24
years [22] 20:18 30:8 33:23 47:12 65:25 67:13 78:25 79:2 90:23 99:11 100:13 102:14 102:19 102:20 103:4 111:8 118:20 118:22 150:1 156:5 170:19 193:19
yet [7] 49:23 62:7 114:16 126:25 134:3 153:2 199:23
York [4] 205:16 206:20 207:1 208:1
yourself [3] 92:17 118:12 124:6

76 **PU-05-451** Pages: 0

Original Transcript

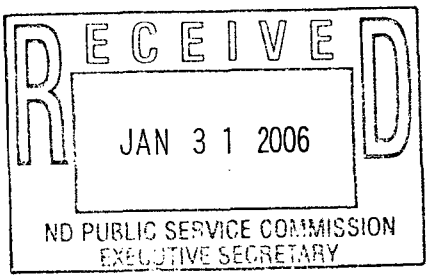
by Emineth & Associates Court Reporters
01/31/2006 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No.
PU-05-451



TRANSCRIPT OF

HEARING

Taken At
State Capitol
600 East Boulevard
Bismarck, North Dakota
January 23, 2006

BEFORE JUDGE AL WAHL
-- HEARING OFFICER --

EMINETH & ASSOCIATES
Court Reporters
BISMARCK, NORTH DAKOTA
(701) 255-3513

RPR
Registered
Professional
Reporters

ORIGINAL

A P P E A R A N C E S

COMMISSIONERS PRESENT:

COMMISSIONER TONY CLARK
COMMISSIONER SUSAN E. WEFALD
COMMISSIONER KEVIN CRAMER

MR. WILLIAM W. BINEK
Commission Counsel
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

MR. PATRICK FAHN
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

FOR THE PUBLIC
SERVICE COMMISSION.

MR. PATRICK W. DURICK of
Pearce & Durick
Attorneys at Law
314 East Thayer Avenue
P.O. Box 400
Bismarck, North Dakota 58502-0400

MR. J.G. HARRINGTON of
Dow, Lohnes & Albertson
Attorneys at Law
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-2222

FOR THE PETITIONER.

A P P E A R A N C E S (cont'd)

MR. DON NEGAARD
MR. SCOTT M. KNUDSVIG of
Pringle & Herigstad, P.C.
Attorneys at Law
2525 Elk Drive
P.O. Box 1000
Minot, North Dakota 58702-1000

MR. THOMAS J. MOORMAN of
Woods & Aitken, L.L.P.
Attorneys at Law
2154 Wisconsin Avenue, N.W.
Washington, D.C. 20007

FOR THE RESPONDENT.

C O N T E N T S

	Page No.
OPENING STATEMENT BY MR. HARRINGTON	12
OPENING STATEMENT BY MR. NEGAARD	16
PETITIONER'S WITNESSES:	
MARY LOHNES	
Direct Examination by Mr. Durick	21
Cross-examination by Mr. Negaard	23
Examination by Commissioner Clark	27
Redirect Examination by Mr. Durick	28
Examination by Mr. Binek	29
Further Examination by Commissioner Clark	29
Examination by Commissioner Wefald	31
Recross-examination by Mr. Negaard	32
WARREN R. FISCHER	
Direct Examination by Mr. Durick	34
Cross-examination by Mr. Negaard	37
Examination by Commissioner Clark	38
Examination by Commissioner Wefald	41
Redirect Examination by Mr. Durick	43
Recross-examination by Mr. Negaard	45
Examination by Mr. Binek	46
TIMOTHY J. GATES	
Direct Examination by Mr. Durick	47
Cross-examination by Mr. Moorman	55
Examination by Commissioner Clark	62
Examination by Commissioner Wefald	63
Further Examination by Commissioner Clark	68
Further Examination by Commissioner Wefald	71
Redirect Examination by Mr. Durick	74
Examination by Mr. Binek	77
Further Examination by Commissioner Clark	82
Further Examination by Commissioner Wefald	85
Further Examination by Mr. Binek	87

C O N T E N T S (continued)

RESPONENT'S WITNESSES:	Page No.
DAVID DIRCKS	
Direct Examination by Mr. Negaard	91
Cross-examination by Mr. Harrington	94
Exmination by Mr. Binek	158
Examination by Commissioner Clark	162
Examination by Commissioner Cramer	163
Redirect Examination by Mr. Negaard	167
Recross-examination by Mr. Harrington	168
Further Exmination by Mr. Binek	169
DOUGLAS DUNCAN MEREDITH	
Direct Examination by Mr. Moorman	171
Cross-examination by Mr. Harrington	177
Examination by Mr. Binek	204
Examination by Commissioner Clark	209
Examination by Commissioner Wefald	212
Redirect Examination by Mr. Moorman	216
Recross-examination by Mr. Harrington	219
Redirect Examination by Mr. Moorman	224

EXHIBITS:

No.	Description	Off'd	Rec'd
P1	Direct Testimony of Mary Lohnes		
P2	Rebuttal Testimony of Mary Lohnes		
P3	May 12, 2005, letter to Dave Dircks from Pat Durick and Resale Agreement	22	22
P4	Exhibits for rebuttal testimony of Mary Lohnes	22	22
P5	Direct Testimony of Warren R. Fischer		

C O N T E N T S (continued)

EXHIBITS:

No.	Description	Off'd	Rec'd
P6	Rebuttal Testimony of Warren R. Fischer		
P7	CV of Warren R. Fischer	35	36
P8	Exhibits for Direct Testimony of Warren R. Fischer	35	36
P9	Exhibits for Direct Testimony of Warren R. Fischer	35	36
P10	Exhibits for Direct Testimony of Warren R. Fischer	35	36
P11	Direct Testimony of Timothy J. Gates	48	
P12	Rebuttal Testimony of Timothy J. Gates	48	
P13	Qualifications of Timothy J. Gates	48	55
P14	Web pages for Dakota Central Telecommunications, United Telephone Mutual Aid Corporation and Polar Communications	97	99
P15	NDTC - FCC High Cost Funding 2003 to 2005, High Cost Disbursement Data		117
P16	NDTC Web page	128	128
R1	Reply Testimony of David Dircks	92	92
R2	May 12, 2005, letter to David Dircks from Patrick W. Durick	92	92
R3	June 10, 2005, letter to Patrick W. Durick from Dave Dircks	92	92

C O N T E N T S (continued)

EXHIBITS:

No.	Description	Off'd	Rec'd
R4	Ad for job opening for account executive for NDTC	93	93
R5	Articles from Outlook, NDTC	93	93
R6	Reply Testimony of Douglas Duncan Meredith	173	173
R7	U.S. Code collection, Title 47 Section 251, Interconnection	176	176
R8	U.S. Code collection, Title 47 Section 252, Procedure for negotiation, arbitration, and approval of agreements	175	176
R9	NDCC, Title 49, Public Utilities	175	176
R10	Pages from FCC Section 51	175	176
R11	12/12/2005 Article Midcontinent Communications to Develop Family Friendly Choice	175	176

(The proceedings herein were had and made of record, commencing at 10:05 a.m., Monday, January 23, 2006, as follows:)

JUDGE WAHL: Good morning. I'm Al Wahl, the administrative law judge designated by the Office of Administrative Hearings pursuant to the request of the North Dakota Public Service Commission to act as the procedural hearing officer for the matter of a hearing as an inquiry pursuant to 47 USC Section 251(f)(1)(a) to determine whether to terminate the exemption of North Dakota Telephone Company from providing its services for resale.

Before proceeding with the hearing, I will ask the commissioners for their comments and any directions for the hearing. Commission president Tony Clark.

COMMISSIONER CLARK: Thank you, Mr. Hearing Officer. Just welcome to everyone. This is the first one of these 251(f) hearings that the Commission has heard, so we understand that there's always some precedent that's being set when we do hear one of these cases, so just look forward to each side's presentation.

JUDGE WAHL: Commissioner Wefald.

COMMISSIONER WEFALD: Yes. Good morning. I have participated in a rural exemption hearing in the past in regard to Western Wireless coming before the Commission and asking about the rural exemption, so some of the issues are familiar to me, although there's always new issues in a case. And I've read all the information that's been presented on the record, and it is helpful to get those back-and-forth comments from the different parties before we start the hearing because then the Commission has a pretty good idea of what the issues are that it needs to determine during this hearing. So thank you for your advance testimony that you've already provided to the Commission. It's been very helpful and I'm looking forward to getting a full record today.

JUDGE WAHL: Commissioner Cramer.

COMMISSIONER CRAMER: Thank you. And good morning to everyone, welcome, look forward to a very informative hearing this morning and thank you all for being here. It's great to see so many people. I know we know it's very important and interesting and, as Commissioner Clark said, precedent setting, but looking forward to a good day.

JUDGE WAHL: Thank you, Commissioners. The record will show that it is a little after 10:00 a.m., January 23, 2006, the time and the date noticed for a hearing as an inquiry to determine whether to terminate North Dakota Telephone Company's exemption from providing its services for resale.

On May 12, 2005, Midcontinent Communications, sometimes referred to as Midcontinent, made a bona fide request under 47 USC Section 251(c) for a wholesale resold services for the Devils Lake, North Dakota, exchange from North Dakota Telephone Company, sometimes referred to as NDTC. By notice of bona fide request for services dated July 15, 2005, Midcontinent notified the Commission of its bona fide request.

NDTC claims that under 47 USC Section 251(f) it is exempt from the requirement that incumbent local exchange carriers must offer for resale the telecommunications services that it provides to retail subscribers.

Midcontinent requests that the Commission conduct an inquiry to determine whether to terminate NDTC's exemption from providing services for resale.

The Public Service Commission has duly issued its notice -- issued and published its Notice of Hearing and its Notice of Rescheduled Hearing.

The issues to be considered and determined upon this hearing are, first, whether the request of Midcontinent is unduly economically burdensome; second, whether the request of Midcontinent is technically feasible; third, whether the request of Midcontinent is consistent with 47 USC Section 254 other than subsections (b)(7) and (c)(1)(D) thereof; and, fourth, the implementation schedule for compliance with the request should the exemption be terminated.

Mr. Durick, will you and co-counsel please state your appearance for the record.

MR. DURICK: Yes. I'm Pat Durick of Pearce & Durick for Midcontinent Communications.

MR. HARRINGTON: J.G. Harrington of Dow, Lohnes & Albertson for Midcontinent Communications.

JUDGE WAHL: Mr. Negaard.

MR. NEGAARD: Yes, Your Honor. My name is Don Negaard with the Pringle & Herigstad law firm in Minot, North Dakota, appearing for North Dakota Telephone Company.

MR. MOORMAN: Thomas J. Moorman appearing on behalf of North Dakota Telephone Company, Woods & Aitken, L.L.P., Washington, D.C.

JUDGE WAHL: Mr. Binek, please.

MR. BINEK: My name is William Binek. I'm counsel for the Public Service Commission. With me is Patrick Fahn, a public utility analyst in the Public Utilities Division of the Commission. The Commission staff is appearing today as Commission advisers. Staff is not taking an advocacy position in this proceeding.

JUDGE WAHL: All right. Mr. Durick, when you're ready.

MR. DURICK: Thank you, Your Honor. Commissioner Clark, Commissioners Wefald and Cramer. To begin with, Mr. J.G. Harrington would like to just make a short opening statement what we intend to do and then we'll proceed with witnesses, Mary Lohnes, Warren Fischer and Timothy Gates.

MR. HARRINGTON: Commissioners, Judge Wahl, with Pat Durick, I represent Midcontinent Communications in this proceeding. We are just about at the ten-year anniversary of the passage of the Telecommunications Act of 1996. It was enacted into law on February 2nd, 1996.

In that statute Congress decided that local telephone competition was in the public interest. This was not a recommendation or a presumption. It was a determination that consumers would benefit and it was implemented by specific statutory provisions.

Midcontinent is one of the companies that has taken advantage of that determination to bring competition in local telephone service to consumers in North and South Dakota, including in markets where many people thought competition would never happen. To facilitate the development of competition, the Act created a series of obligations for incumbent telephone companies. It also created a narrow exemption from those obligations for rural telephone companies, which apply to only some of the carrier's obligations. Rural telephone companies still have to provide interconnection under Section 251(a) of the Communications Act and dialing parity, number portability and reciprocal compensation under Section 251(b). The exemption covers only the obligations specific to incumbents under Section 251(c).

The exemption is not immutable, though.

Section 251(f) provides two ways to end that. First, a competitor can show by a preponderance of the evidence that lifting the exemption will not create an undue burden on the incumbent and that it's not technically infeasible or, second, the incumbent can end the exemption by its own actions when it enters the cable television business. Once either of these tests is met, the exemption must be lifted. The statute does not require or permit any other requirements.

In this case the evidence will show that lifting the rural exemption will not pose any undue burden on North Dakota Telephone. Midcontinent's expert witnesses have demonstrated that wholesale resale will pose little or no financial burden on North Dakota Telephone and there is no technical reason why North Dakota Telephone cannot provide wholesale resale.

Further, Midcontinent's experience with other telephone companies in the Dakotas shows that resale can be implemented promptly with little difficulty. In the absence of a financial impact, there also will not be any impact on universal service.

In practical terms, North Dakota Telephone

does not challenge these showings, does not provide its own financial analysis to contradict Midcontinent's evidence. It is not argued that Midcontinent's request cannot be implemented. Thus, if you accord any weight at all to Midcontinent's testimony, the first test under Section 251(f) has been met and the rural exemption must be lifted.

North Dakota Telephone's response is to admit that the exemption should be lifted, but for a different reason and on a much different schedule. North Dakota Telephone now says that it's planning to offer video service in early 2007, which would lift the exemption automatically. Rather than acting now, North Dakota Telephone says the Commission should simply wait.

There are two things wrong with North Dakota Telephone's theory. First, if the first test under Section 251 is met, there's no reason to wait. The statute is clear on this point. All Midcontinent needs to do is show by a preponderance of the evidence that the requirements within the exemption have been met and the exemption must be lifted.

Second, if the Commission were to adopt

North Dakota Telephone's theory, North Dakota Telephone would be afforded a significant competitive advantage. Once the exemption was lifted by operation of law, it likely would be a year or more before Midcontinent could offer resold service in Devils Lake while North Dakota Telephone would be able to offer its customers a complete bundle of services as soon as it finished its video network. This competitive balance would be bad not just for Midcontinent, but also for consumers in Devils Lake. There is no reason to make them wait until 2008 for the competition that Congress said they could have in 1996. For these reasons we ask you to grant our petition.

JUDGE WAHL: Mr. Negaard, will you make an opening statement at this time?

MR. NEGAARD: Yes, Your Honor, I will. Good morning, Judge Wahl.

JUDGE WAHL: Good morning.

MR. NEGAARD: Good morning, Commission President Clark. Good morning, Commissioner Wefald. Good morning, Commissioner Cramer. As I indicated, Don Negaard with the Pringle & Herigstad law firm this morning. One gentleman that got overlooked is Scott Knudsvig. He's one of my

partners in the Pringle & Herigstad law firm. He's with me this morning.

For the record, I want it noted that Mr. Moorman originally appeared and was admitted for the purpose of this proceeding with the Kraskin, Moorman & Cosson Law firm and that firm was dissolved by mutual assent on January 1st of this year. And so for the record, Mr. Moorman is now with the Washington, D.C., firm Woods & Aitken located in Washington.

Appearing with me today is David Dircks. Mr. Dircks is the general manager of North Dakota Telephone Company. He will testify on behalf of that company today. In the audience today are a number of the members of the board of directors of North Dakota Telephone Company. Another witness who appears today on behalf of North Dakota Telephone is Douglas Meredith. Mr. Meredith is the director of economics and policy at John Staurulakis, Incorporated, a long-time telephone communications consulting firm, and he will be testifying today on their behalf.

This case involves a rural exemption granted to North Dakota Telephone Company and other rural companies by Congress in the

Telecommunications Act of 1996. This is the first time this Commission has been asked to remove a rural exemption in this context for a North Dakota company. It's a new process in the state and it's obviously the first time that North Dakota Telephone has had to face this issue. We have confidence that this Commission will take its role seriously, will study the issues and render a careful decision as it has been in the past.

Your role is to hear the evidence in this case as it relates to the Devils Lake exchange of North Dakota Telephone Company, make a decision in this matter based on the evidence, and only the evidence presented here, on the issues previously designated by this Commission for this hearing.

Midcontinent has the burden of proof in this matter. They have to prove to you that the rural exemption of North Dakota Telephone Company for providing wholesale resale of its telecommunications services should be lifted. This is solely your function. It's not my function. And your function is to determine if that burden has been met. At the end of the day there will be no facilities-based evidence on the impact of North Dakota Telephone Company in Devils Lake, and the

evidence will only be on that particular exchange.

If you determine that Midcontinent has not met its burden of proof, then Midcontinent can compete in other ways that are available to it. If you determine that Midcontinent has met its burden of proof, then you need to establish an implementation schedule for the Devils Lake exchange that will allow the parties the opportunity to negotiate in good faith for a business arrangement, an interconnection agreement, if you will, that will contain the terms and conditions of this unique arrangement in North Dakota. That schedule would need to determine a rational schedule based on the authority that this Commission has under state and federal law.

The testimony has been prefiled. I think taking Judge Wahl's lead that we try to expedite the hearing today, and thank you for being here to hear this case and to hear the evidence and make your decision. Thank you.

JUDGE WAHL: Mr. Binek, will you make an opening statement?

MR. BINEK: No.

JUDGE WAHL: Mr. Durick, you may proceed when you're ready.

MR. DURICK: Thank you, Your Honor. We call Mary Lohnes as the first witness for Midcontinent.

JUDGE WAHL: Miss Lohnes, you can go ahead and have a seat in the witness --

MR. DURICK: Do you want her to be sworn here?

JUDGE WAHL: I'll do that. Let her be seated. It's easier, quicker.

Miss Lohnes, your testimony is required to be under oath, as I'm sure you're well aware, and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, of course, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.

(Witness sworn.)

JUDGE WAHL: Mr. Durick.

MR. DURICK: Thank you, Your Honor.

MARY LOHNES,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DURICK:

Q. Mary, there has been testimony prefiled in this particular matter. Do you have a copy of your testimony before you?

A. The direct testimony?

Q. Yes, the direct testimony.

A. Yes, I do.

Q. We're going to mark the direct testimony of Miss Lohnes as Exhibit P1, and that's Docket No. 50 for the Commission. Miss Lohnes, do you also have your rebuttal testimony before you?

A. Yes, I do.

Q. Okay. And we're going to mark that for the Commission as P2, and that's Docket No. 61, just to keep the record straight. Miss Lohnes, I'm going to show you the two exhibits that we have that are attached to your rebuttal testimony, the first one being the letter from myself dated May 12th, 2005, with an attachment. Can you identify that as Exhibit A to your rebuttal testimony?

A. Yes, it is.

Q. Okay. And I've marked that as P3. And I'm marking as P4 the Exhibit B to your rebuttal testimony, and I'm just wondering if you could

identify that for the Commission and for Judge Wahl.

A. Yes. These are various articles which we found.

Q. Okay. Now, I would like to ask you, you have reviewed your direct and your rebuttal testimony, have you?

A. Yes, I have.

Q. And under oath today, is that still your testimony before this Commission?

A. Yes, it is.

MR. DURICK: Okay. At this point we'd move for the introduction into evidence of Exhibits P3 and P4, the two exhibits to Miss Lohnes's direct and rebuttal testimony, and we would --

JUDGE WAHL: Mr. Negaard.

MR. NEGAARD: And I have the assurance of counsel those are the same exhibits that were included in the prefiled testimony?

MR. DURICK: Yes.

JUDGE WAHL: I have no objection, Your Honor.

JUDGE WAHL: Mr. Binek.

MR. BINEK: No objection.

JUDGE WAHL: Exhibits P3 and P4 are

received. I'm assuming that counsel is stipulating to the admission of the direct and rebuttal testimony.

MR. DURICK: That's the assumption I'm making, Your Honor.

JUDGE WAHL: Yes.

MR. NEGAARD: Yes, Your Honor.

JUDGE WAHL: Mr. Binek. We're going to offer the exhibits to the testimony and address those, and the prefiled testimony will be received pursuant to counsel's stipulation. Go ahead, Mr. Durick.

MR. DURICK: Thank you. At that point we would pass the witness, Your Honor.

JUDGE WAHL: Mr. Negaard.

CROSS-EXAMINATION

BY MR. NEGAARD:

Q. Good morning, Miss Lohnes.

A. Good morning.

Q. In your testimony you mention the possibility of a company cherry-picking customers. Are you referencing video programming, cable television or telecommunications when you talk about that? I believe it's on page 4, line 6 of your testimony.

COMMISSIONER WEFALD: Excuse me, Judge Wahl. Could I have just a moment to get my paperwork -- could he repeat again exactly which exhibits are -- what documents are the exhibits we're going to be referring to with this witness? And I have everything here, I just need to pull it together so that I have it.

MR. DURICK: Exhibit P3 would be Exhibit A to the rebuttal testimony of Miss Lohnes.

COMMISSIONER WEFALD: And that's document number?

MR. DURICK: That is document number 61.

COMMISSIONER WEFALD: 61. Okay. Thank you.

MR. DURICK: And P4 is Exhibit A to the rebuttal testimony, which is docket 61.

COMMISSIONER WEFALD: All right. And that's also in docket 61? That includes this?

MR. DURICK: Yes.

COMMISSIONER WEFALD: And then there was another item.

COMMISSIONER CRAMER: 50. That's the direct testimony.

MR. DURICK: 50 is the direct testimony, and that's Exhibit No. 1.

COMMISSIONER WEFALD: All right. Thank you.

Q. (MR. NEGAARD CONTINUING) And I apologize, Miss Lohnes. I said page 4. Page 5, lines 6 and 7.

A. I found it. Thank you.

Q. When you talked about cherry picking, the question was, are you referencing video or telecommunications?

A. Telecommunications.

Q. Okay. Are you aware that North Dakota Telephone Company is under tariff, files their rates under tariff?

A. I am not aware.

Q. Okay. And does Midcontinent have a monopoly on cable television services in Devils Lake today?

A. I don't know that.

Q. Do you know of any other cable television provider in Devils Lake?

A. I do not.

Q. Do you know of any other companies other than North Dakota Telephone providing telecommunications services in Devils Lake?

A. I am not aware of any others.

Q. Have you heard of Western Wireless, which has now taken on a new name in the state, that they're operating in the state, wireless carrier?

A. Yes.

Q. Okay. And you've heard of Verizon Wireless?

A. Yes.

Q. And you're aware that they're operating in the state?

A. Yes.

Q. So if they're operating in the state in the Devils Lake area, there are other competitors for telecommunications business in the area, aren't there?

A. I'm not aware that they're in Devils Lake.

Q. Okay. Is Midcontinent a member of the cooperative purchasing organization that you mention in your testimony? I refer to your rebuttal testimony, page 4, lines 20-21.

A. Yes, we are a member of that.

Q. You are a member of that cooperative --

A. Yes.

Q. -- purchasing association?

A. Yes.

Q. Are you familiar with the pricing that's

offered through that association?

A. I am not.

Q. Without discussing the content of any discussions, how many days -- how much time have the parties, Midcontinent and North Dakota Telephone, spent negotiating the terms and conditions of an interconnection agreement?

A. Discussing an interconnection agreement, none.

MR. NEGAARD: I don't have anything further. Thank you.

JUDGE WAHL: Mr. Binek?

MR. BINEK: I have no questions of this witness.

JUDGE WAHL: Questions from the Commission. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have one. In your initial testimony you talk about the amount of time that it's taken in the past to handle commercial agreements for resale, and I think you stated less than three months is typical. Have you gone through interconnection agreements in other -- interconnection arbitration proceedings, 251-, 252-

type proceedings, in other states that you've been active in?

A. Not for arbitration.

Q. Have you had other 251(f) exemptions litigated in proceedings like this in other states?

A. No, we have not.

COMMISSIONER CLARK: That's all the questions I have.

JUDGE WAHL: Commissioner Wefald.

COMMISSIONER WEFALD: I have no questions at this time.

JUDGE WAHL: Commissioner Cramer.

COMMISSIONER CRAMER: I have none. Thank you.

JUDGE WAHL: All right. Followup, Mr. Durick.

MR. DURICK: Thank you, Judge Wahl.

REDIRECT EXAMINATION

BY MR. DURICK:

Q. Miss Lohnes, does Midcontinent consider satellite television offerings to be competition to the cable television offerings?

A. Yes, we do.

Q. And are there satellites that offer services in Devils Lake, as near as you know?

A. Not that I'm aware of, but there could be.

Q. DirecTV is a nationwide service, is it?

MR. NEGAARD: Your Honor, it's been asked and answered, I believe.

JUDGE WAHL: Sustained.

Q. (MR. DURICK CONTINUING) What are the satellite companies that offer services in the United States?

A. In the United States, DirecTV. I'm not familiar with them.

MR. DURICK: Okay. I have no further questions of the witness.

JUDGE WAHL: Mr. Negaard.

MR. NEGAARD: No, Your Honor. I have nothing further. Thank you.

JUDGE WAHL: Mr. Binek.

EXAMINATION

BY MR. BINEK:

Q. A question. In your direct testimony at the bottom of line -- page 4, lines 24 and 25, you talk about long-term agreements. What is your familiarity with these long-term agreements? What do you mean?

A. We have experienced in some communities where our competitors will go out to their customer

base and visit with their customers and have them sign long-term agreements with their company -- exclusive agreements for telephone, cable.

Q. What is the length -- normally what is the length of these long-term agreements that you're familiar with?

A. We've seen them anywhere from one to four years.

Q. Okay. Thank you. Did I understand you correctly that you haven't -- I think the question was regarding -- and it was Commissioner Clark asking -- about proceedings in other states. Did you say that there have been no -- had there been exemption requests in other states or not?

A. Not that Midcontinent has been in.

Q. So this is the first time that Midcontinent has asked that the exemption be lifted?

A. Correct.

Q. Getting back to these long-term contracts, does Midcontinent enter into any long-term contracts?

A. For the residential services, telephone services, we do not.

Q. What about cable television?

A. We do not for cable, either.

MR. BINEK: Thank you.

JUDGE WAHL: Any further questions from the commissioners? Followup? I'm sorry. Commissioner Clark.

FURTHER EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have just one. Of the communities that Midcontinent serves telecommunications services to, how many of them are not -- ballpark now -- how many of them are not Qwest exchanges?

A. I work with telephone services.

Q. Mm-hmm.

A. In North Dakota I don't think we have any that we're in with telephone right now.

Q. Okay. Other states?

A. In South Dakota we are in two communities.

Q. Are those both -- would they both be classified as rural carriers?

A. Yes.

COMMISSIONER CLARK: Thank you.

JUDGE WAHL: Commissioner Wefald.

EXAMINATION

BY COMMISSIONER WEFALD:

Q. Yes. This goes back to the question Mr.

Negaard had for you on the bottom of page 4 of your rebuttal testimony, and I need to have you repeat the answer because I'm not sure if I caught your answer when you responded to his question. Do you belong to this National Cable Television Cooperative --

A. Yes, we do.

Q. -- Midcontinent?

A. Yes.

COMMISSIONER WEFALD: Okay. Thank you.

JUDGE WAHL: Any further questions from the Commission? Followup, Mr. Durick?

MR. DURICK: I have nothing.

JUDGE WAHL: Mr. Negaard, anything further for this witness?

MR. NEGAARD: Just one question.

RECROSS-EXAMINATION

BY MR. NEGAARD:

Q. Are you aware of or have any evidence that North Dakota Telephone has been trying to sign their customers up to long-term commitments for telecommunications services?

A. I'm not aware of it.

MR. NEGAARD: Okay. Thank you.

JUDGE WAHL: Mr. Binek, anything further?

MR. BINEK: No.

JUDGE WAHL: Anything further from the Commission?

COMMISSIONER CLARK: No.

JUDGE WAHL: Mr. Durick, anything further for this witness?

MR. DURICK: Nothing further, Your Honor.

JUDGE WAHL: All right. Thank you very much, Miss Lohnes.

MR. DURICK: Midcontinent will call Warren Fischer as our next witness. Mr. Fischer, would you come up and be seated and be sworn?

JUDGE WAHL: Mr. Fischer, as you heard me advise the previous witness and as I'm sure you're well aware, your testimony is required to be under oath. In North Dakota I'm advised to -- I'm required to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please?

(Witness sworn.)

JUDGE WAHL: Mr. Durick.

MR. DURICK: Thank you.

WARREN R. FISCHER,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DURICK:

Q. I'm going to mark as Exhibit P5 the direct testimony of Mr. Fischer, which is Docket No. 52, and I'm going to mark as Exhibit P6 the reply -- excuse me -- the rebuttal testimony of Mr. Fischer, which is 62 on the docket.

Mr. Fischer, I'm showing you what has been marked as Exhibit No. P7, and that has been identified as Exhibit WRF-1 to your direct testimony, and I'm going to mark as Exhibit P8 what is marked as Exhibit WRF-2 to your direct testimony, and P6 is going to be WRF-3 to your -- not P6. I'm sorry.

JUDGE WAHL: No, no. P9.

Q. (MR. DURICK CONTINUING) P9. And I'm going to mark as Exhibit P10 Exhibit WRF-4 to your direct testimony. I would ask if you would look at those exhibits and tell me whether I have correctly identified them.

A. They are correctly identified.

Q. And you have, I take it, reviewed your direct testimony and rebuttal testimony which has been filed in this particular action.

A. I have reviewed it.

Q. And I'd like to ask you if that direct and rebuttal testimony is your testimony under oath here this morning. If those questions were asked, would your responses be the same?

A. They would be the same.

MR. DURICK: We'll pass this witness, Your Honor.

JUDGE WAHL: Are you going to offer your exhibits, Mr. Durick?

MR. DURICK: Yes, and I'd offer the exhibits.

JUDGE WAHL: P7 through 10, inclusive?

MR. DURICK: Yes.

JUDGE WAHL: All right. Mr. Negaard, do you have those exhibits or do you need to look at them?

MR. NEGAARD: If I have counsel's assurance that those are the same exhibits that were filed with prefiled testimony, we would have no objection.

MR. DURICK: Within the realm of human error, I would represent that they are the same. They're certainly meant to be the same.

MR. NEGAARD: I have no objection, Your Honor.

JUDGE WAHL: Exhibits P7 through P10, inclusive, are each received. Anything -- no, I'm sorry. You did pass the witness, Mr. Durick. Mr. Negaard, cross-exam.

COMMISSIONER WEFALD: I have a question, please.

JUDGE WAHL: Commissioner Wefald.

COMMISSIONER WEFALD: Yes. I have the testimony. If you could go more slowly through the specific exhibits, though, that you're asking the Commission to refer to, that would be helpful, because we have a whole --

MR. DURICK: Certainly.

COMMISSIONER WEFALD: We have quite a pile of exhibits here and I need to know which ones I'm supposed to be referring to.

MR. DURICK: WRF-1 would be Exhibit P7. WRF-2 would be Exhibit P8. WRF-3 would be Exhibit 9. And WRF-4 would be Exhibit 10.

COMMISSIONER WEFALD: Thank you. And

those WRF-1, 2 and 3 and 4, are they attached to the December 21, 2005, direct testimony?

MR. DURICK: Direct testimony, yes, Commissioner Wefald.

COMMISSIONER WEFALD: Thank you.

JUDGE WAHL: Anything further, Commissioner Wefald?

COMMISSIONER WEFALD: No. That helps me. Thank you.

JUDGE WAHL: Mr. Negaard, when you're ready.

CROSS-EXAMINATION

BY MR. NEGAARD:

Q. Good morning, Mr. Fischer.

A. Good morning.

Q. It's my understanding that you're not testifying today that you have computed a discount rate specific to this particular exchange or application; is that correct?

A. I'm sorry. Your question was whether or not I computed a discount rate that's specific to Devils Lake?

Q. Yes.

A. No, I have not.

Q. And you propounded some discovery in this

matter and you received the information you had requested; is that correct?

A. Eventually we did, but not all the information we initially requested.

Q. Okay. But you did get the information that you had requested prior to filing testimony in this case; is that correct?

A. Yes, we did receive the information that we had mutually agreed upon would be acceptable to both parties.

Q. And as far as you know, at this point there's no outstanding issues with respect to anything you've asked for that you didn't receive?

A. Yes, there's no further issues.

MR. NEGAARD: Thank you. I have nothing further.

JUDGE WAHL: Mr. Binek.

MR. BINEK: No questions at this time.

JUDGE WAHL: Questions from the Commission, please. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have one. If the Commission were to terminate the 251(f) exemption in this proceeding, then in any subsequent interconnection discussions

between the two companies, is that the point at which you would anticipate discussions about pricing of those elements that are to be resold? Is that where that would happen?

A. I think it should occur no later than that discussion and that there should be no delay in implementing a certain pricing in terms of the conclusion of some sort of negotiation period. I think the Commission can set an interim rate subject to true-up after that period of time has elapsed.

Q. In setting a pricing, though, it's not an insignificant-type proceeding, is it? I haven't sat through a lot of them, but I have the most recent Qwest UNE case where you're trying to calculate TELRIC-type rates, and I know before that some of the initial interconnection disputes that this Commission heard, which was prior to my time, they weren't small proceedings, either. How much precedent do you believe the Commission has to build on to be able to do something, the two parties negotiating to get something rather quickly resolved as opposed to a more protracted-type proceeding from your experiences? Because we are dealing with a company we haven't dealt with before

and certainly have a totally different cost structure than, say, Qwest.

A. I think because this is limited to resale, a lot of the pricing issues are much more limited. You're not dealing with unbundled element networks and all of the other issues that surround -- really determining what correct rates for each one of those elements. When dealing with total service resale, I think you can adopt an existing rate, let's say, for Qwest that's currently in effect subject to true-up or you can pick something lower, and what you'll find is, at least from financial impact that we've calculated, even if you were to pick a rate that's half of that, the financial impact on the company is going to be significantly less obviously because the discount is that much less and, therefore, its revenue stream will not be as impacted as it might be with a higher discount rate.

Q. But you don't anticipate getting into individual network element pricing?

A. From my understanding, this proceeding is strictly limited to resale, and that's what Midcontinent has requested.

COMMISSIONER CLARK: Thank you. That's

all I have.

JUDGE WAHL: Commissioner Wefald.

EXAMINATION

BY COMMISSIONER WEFALD:

Q. I have a question on page 17, table 5.

A. Excuse me. Of my direct testimony?

Q. Yes. I've gone through your tables up to this point in the testimony and I understand them and what the figures represent, and then I come to table 5 and there is a new number. It talks about the potential of what it cost. And I understand the figures that you're using in the first column, 2004 revenue per line, and I understand the figures in 2004 revenue per line subject to resale, and I understand the figures in the line potential revenue loss via resale, but what I don't understand is why the first number, 45.72, under potential avoided cost in that column is different than the potential revenue loss via resale in the previous column, and then you have a number net loss via resale in the last column, which I believe is the potential avoided cost subtracted from the potential revenue loss. It's the only number that is different in those two -- in those last three columns, so if you can explain to me why it is

different.

A. Sure. If you give me just a moment here.

Q. Okay.

A. If I can turn you back to the detail within Exhibit WRF-2 or P8, that might help explain where that number comes from.

Q. Okay.

A. Specifically it would be page 3 of 8.

Q. Page 3. It will take me a minute now to find this. Page 3 of 8. I have that.

A. At the very top, the very first line of that particular spreadsheet, it deals with local network access revenue, which is primarily the local exchange revenue as well as other features that are associated with the provision of local service. In the column to the far right that's labeled "note," what I've assumed in this analysis is that with an avoided cost discount percentage, the actual cost savings may not be applicable to services that are considered features, call waiting, caller ID, three-way calling. So we have factored back into the analysis that there would be some true revenue loss from providing those services under total service resale as opposed to local exchange or some of the other services where

the avoided costs should mitigate any revenue loss.

Q. All right. So the difference between 49.86 and 45.72 is the fact that there is no cost savings on features?

A. Because -- and that's primarily due to the fact that the costs for providing features is typically very small and that the companies typically have a very large markup on them because they're not considered regulated services.

COMMISSIONER WEFALD: Thank you. All right. That explains that. I have no other questions at this time.

JUDGE WAHL: Commissioner Cramer.

COMMISSIONER CRAMER: None. Thank you.

JUDGE WAHL: Follow up, Mr. Durick.

MR. DURICK: Thank you, Your Honor. I have a few questions.

REDIRECT EXAMINATION

BY MR. DURICK:

Q. Mr. Fischer, in your analysis you made some assumptions that I understand were made when you didn't have exact figures from North Dakota Telephone Company; is that correct?

A. That is correct.

Q. Okay. And were those assumptions based on

reasonable estimates from the industry?

A. Yes, they were.

Q. Let me ask you, if you had the exact figures from North Dakota Telephone Company, would that change your opinion that the --

MR. NEGAARD: Your Honor, this is outside the scope of any cross-examination of this witness.

JUDGE WAHL: The objection is overruled. Let me just quickly state for counsel that this is not a trial. I understand the Rules of Evidence apply, no question about that, but that being said, as an administrative hearing, our purpose here is to gather the information, to collect as much information as will conceivably benefit the Commission and its staff. So, accordingly, you will find me rather, shall we say, flexible about the Rules of Evidence. The objection is overruled and, Mr. Durick, you may proceed.

MR. DURICK: Okay.

Q. (MR. DURICK CONTINUING) Let me start over. If you had the exact figures for North Dakota Telephone Company for some of the assumptions that you made in your analysis, in your opinion, would that change your ultimate conclusion that the effect of a resale agreement here would be

de minimis as far as its financial impact on North Dakota Telephone Company?

A. No, it would not, and for the simple reason that the absolute dollars that are at risk here are very small to begin with. The Devils Lake exchange is only a small portion of the total company's operations, and the assumptions that we've modeled here, the various penetration rates or assumed discount rates, all point back to the same thing, that the total dollars that are at risk here are very small. So whether you -- the ultimate discount rate that is appropriate for North Dakota Telecom is significantly higher or lower than what we've assumed in our analysis, the absolute financial impact is going to be de minimis.

MR. DURICK: I have no further questions of the witness.

JUDGE WAHL: Mr. Negaard.

RECROSS-EXAMINATION

BY MR. NEGAARD:

Q. Following up on that, you did not try to calculate any companywide discount for North Dakota Telephone that would be appropriate for resale wholesale services, did you?

A. I'm sorry. Could you clarify your question, please?

Q. And I'm sorry if I didn't state it well. You did not calculate any companywide discount rate that would be appropriate for North Dakota Telephone for resale wholesale services, did you?

A. We did not calculate a rate specific to North Dakota Telephone.

MR. NEGAARD: I don't have anything further.

JUDGE WAHL: Mr. Binek.

EXAMINATION

BY MR. BINEK:

Q. One clarifying question getting back to Mr. Negaard's question. The calculations that you made were specific to the Devils Lake exchange; is that correct?

A. Yes, the financial calculations we made were specific to the Devils Lake exchange.

MR. BINEK: That's all I have.

JUDGE WAHL: Any further questions from the Commission? If not, Mr. Durick, any followup?

MR. DURICK: No followup, Your Honor.

JUDGE WAHL: All right. Thank you very much, Mr. Fischer.

MR. DURICK: Midcontinent would call Mr. Timothy Gates.

JUDGE WAHL: Mr. Gates, as I'm sure you're well aware, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please?

(Witness sworn.)

JUDGE WAHL: Mr. Durick.

MR. DURICK: Thank you, Your Honor.

TIMOTHY GATES,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DURICK:

Q. For the record, I'm going to mark as Exhibit P11 the direct testimony of Mr. Gates, which occurs at Docket No. 51, and the rebuttal testimony of Mr. Gates as P12, and that appears as

Docket No. 60. And, Mr. Gates, I am going to mark as Exhibit No. 13 what has been identified as Exhibit TJG-1 to your direct testimony. I'd ask you just to identify that as the exhibit to your direct testimony.

A. Yes, this is a copy of the exhibit to my testimony.

Q. Very good. And, Mr. Gates, I take it you have reviewed your direct and rebuttal prefiled testimony in this matter.

A. I have.

Q. And if you were asked those questions in your direct and rebuttal testimony today under oath, your answers would be the same?

A. Yes, they would.

MR. DURICK: Thank you. We pass the witness, Your Honor.

JUDGE WAHL: Are you going to offer your exhibits, Mr. Durick?

MR. DURICK: Yes, I'm going to offer the exhibits, Your Honor.

MR. NEGAARD: I'm sorry. And what was the exhibit number for the direct testimony?

JUDGE WAHL: Direct was P11.

MR. DURICK: That's 51 of the docket, and

the rebuttal is P12 and it's 60 in the docket.

MR. NEGAARD: Okay. Your Honor, we do have an objection based upon the lines of Mr. Gates' testimony. The basis for that, Your Honor, is the same objection that Midcontinent made to Mr. Meredith's reply testimony. Mr. Gates' testimony beginning at page 4 begins a discussion prefaced with, "I'm not a lawyer, but this is what the law says." Mr. Meredith responded to this discussion in his reply testimony and Midcontinent asked to have Mr. Meredith's testimony stricken from the record.

Your Honor, before we get to Mr. Meredith's testimony, it's important that this issue be resolved because if Mr. Meredith can't testify what the law says, Mr. Gates, likewise, should not be able to testify what the law is. And we would ask that those portions of Mr. Gates' testimony be stricken from the record because he's not an attorney. And might I point the Court to Rule 702, North Dakota Rules of Evidence, testimony by experts. The witness has said that he's not an expert, he's not an attorney, yet goes on to testify what he believes Congress meant or said when it passed certain portions of the '96

Telecommunications Act. We'd ask it be stricken on those grounds, Your Honor. And if the Court rules that way, we can get line and page number as a cite for those particular quotes from this witness.

MR. DURICK: Your Honor, Mr. Harrington will address that issue.

JUDGE WAHL: Mr. Harrington.

MR. HARRINGTON: First, I don't think that it's appropriate to rule on the motion until we're given the exact line and page numbers because it's particularly significant to know what they are first. I don't think it's appropriate to make a motion without identifying particular portions that should be stricken. That's what we did in our motion. We identified specific page and line numbers.

That said, if I understand the line and page numbers that are being proposed to be stricken at this point, there's a significant distinction between Mr. Gates' testimony and the testimony of Mr. Meredith. Mr. Gates is quoting language from the statute and language from orders of the FCC. For instance, on page 6 from lines 117 to 135, that consists almost entirely of quotations from the FCC and those are purely descriptive of what was done,

and that's typical of what's in Mr. Gates' testimony.

Mr. Meredith, by contrast, does not merely quote statutory provisions, but proposes a specific interpretation without quoting anything else. He specifically describes what he believes is the correct interaction between Section 251(f), a provision concerning scheduling, and Section 252 of the Communications Act, which concerns arbitrations and negotiations. That's a much different situation from what you find in Mr. Gates' testimony. That distinction is quite significant. Mr. Gates is merely reporting facts that are easily verifiable. Mr. Meredith is proposing interpretations which are outside the scope of his expertise as he describes it himself.

One other thing I think I should say, to the extent that our motion to strike is denied, we have an expectation that we'll be able to cross-examine Mr. Meredith directly on what he has said, and we've not expected there should be any objections permitted on the grounds that he's not a lawyer.

JUDGE WAHL: Your response -- do I take it, Mr. Harrington, you're addressing, also, NDTC's

response to Midcontinent's motion?

MR. HARRINGTON: Yes. My understanding is that you had hoped to deal with both at the same time.

MR. NEGAARD: Your Honor, if they insist on line and page number, page 7, line 139 through 150, the witness talks about what Congress meant when it passed the 1996 Telecommunications Act. This particular witness was not a member of Congress at the time, he's not an attorney. For him to testify that this is what Congress meant when it passed a particular act is equally as offensive as the testimony being complained of by Midcontinent. And, again, page 8, line 170, he talks about the facts and the law on the issues.

COMMISSIONER WEFALD: Is this on the January 16th or on the --

JUDGE WAHL: December 21st, 2005.

COMMISSIONER WEFALD: 21. Thank you. It would help to distinguish between the two as you're going through.

MR. NEGAARD: I apologize. It's Mr. Gates' direct testimony filed December 21st, 2005, line -- as I indicated, page 8, line 170 and again page 10 on line 215, Mr. Gates says "Congress

wanted and expected." Again, this witness -- the same offensive type of testimony that's being complained of by Midcontinent. This particular witness wasn't a member of Congress. He talks about the Act's goal on line 218 and 219. So there are four lines on page 10 of that direct testimony.

On page 12, line 255, this witness, "Yes. The Act and the FCC's local competition order contemplates" and then goes on and talks about that through line 257. So in response to the objection that we weren't articulate enough in page number and line number, that's our response, Your Honor.

MR. HARRINGTON: Your Honor --

JUDGE WAHL: All right. Counsel, the objection is overruled. That is, North Dakota Telephone Company's objection to the testimony of Timothy J. Gates is overruled. The motion by Midcontinent Communications to strike certain testimony of a witness who will be later called to testify on behalf of NDTC is denied.

The reasons, just briefly for the record, for my rulings is that I read both the motion and the testimony objected to, that is, the motion of Midcontinent and the testimony of Mr. Meredith

objected to. I had from NDTC its response to that motion and the reference to the testimony of Mr. Gates which it now objects to. I've read that. I've read the Alaska case. I read parts of the code. It seems to me that the law and technology are intertwined and interconnected in these cases. I think it's hard to consider the law without the technology and without its -- I agree, I think it was NDTC pointed out -- its practical application.

So I think the testimony of the expert witnesses in terms of the law -- not for its interpretation, but for its application -- is relevant and permissible. Second, the Public Service Commission is an agency of experts in itself with expert staff. I think it's unlikely that erroneous expert testimony as to the application of the law will mislead the Commission or its staff. Finally, for the third reason for the denial of the objection -- or the overruling of the objection and the denial of the motion is, as I have said, this is an administrative hearing, and although the Rules of Evidence are certainly applicable, they should be applied flexibly with the idea of bringing in as much evidence as can be reasonably gathered and as reasonably relevant for

the consideration of the agency and for the record for the courts on appeal.

Counsel -- Mr. Negaard, anything further for the record with regard to your objection?

MR. NEGAARD: Nothing, Your Honor.

JUDGE WAHL: Mr. Harrington, anything further for the record with regard to your motion?

MR. HARRINGTON: Not at this time, Your Honor.

JUDGE WAHL: All right. Okay. Mr. Negaard, you have not otherwise responded to Exhibits -- I'm sorry -- to Exhibit P13?

MR. NEGAARD: Your Honor, I argued the motion. I appreciate your time. Mr. Moorman is going to handle the cross-examination and the exhibits on this witness.

JUDGE WAHL: But I don't take it you were objecting to P13.

MR. NEGAARD: No, Your Honor, we're not.

JUDGE WAHL: All right. So Exhibit P13 is received. Mr. Moorman, when you're ready.

MR. MOORMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MOORMAN:

Q. Mr. Gates, my name is Tom Moorman. I'll

be cross-examining you this morning.

A. Good morning.

Q. Good morning. How are you?

A. Good. Thank you.

Q. Mr. Gates, I just want to make sure I understand your background. Do you have a degree in economics?

A. I have a master's degree from Willamette University and it had economics courses, but it is not a master's of economics.

Q. So your response is you do not -- do you have a degree in economics?

A. I guess the answer technically would be no.

Q. To the best of your knowledge, has Midcontinent ever requested Section 251(b)(1) retail resale of NDTC?

MR. DURICK: I guess I would object, Your Honor, at this point. It's beyond the scope of the direct and I don't know that this witness would have any knowledge of that, so on foundation and outside the scope of the direct.

JUDGE WAHL: Goes to the weight of his testimony, doesn't it, Mr. Durick? Mr. Moorman?

MR. MOORMAN: Well, it goes to his

testimony. He also talks about the various levels of interconnection obligations in his testimony. I can find that cite.

JUDGE WAHL: The objection is overruled. You may proceed.

Q. (MR. MOORMAN CONTINUING) To the best of your knowledge.

A. I don't know. I would defer that to Miss Lohnes.

Q. Were you ever a United States Representative at the time or during the passage of the 1996 revisions to the Communications Act of 1934, as amended?

A. No.

Q. Were you ever a U.S. Senator during that same time period when Congress was reviewing the 1996 and ultimately passing the 1996 revisions to the Communications Act of 1934, as amended?

A. No, I was not.

Q. To the best of your knowledge, do resellers typically brand the service they resell of another ILEC, for example, in their own name?

A. Are we talking just generally --

Q. Yes.

A. -- resellers? It could be long distance

or any sort of resale even commodities?

Q. Let's get specific. Local resale. Does a resale -- reseller typically brand that service in their own name?

A. Sure.

Q. And assuming for sake of argument that Midcontinent resells NDTC's service, to the best of your knowledge, will Midcontinent be branding that local service in its own name?

A. I don't know what the intentions of the company are with respect to that service, but -- I guess I would have to defer that.

Q. To the best of your knowledge, would it also be true that Midcontinent would be telling customers that the local dial tone service would be provided by North Dakota Telephone Company?

A. I don't know what the company is going to say to its customers. I think that's probably something that they will decide and determine if and when they get approval from this Commission to provide service in Devils Lake, but I don't have any information about their business plans.

Q. Turning to your rebuttal testimony, if you would, for just one moment. On page 3 -- and I apologize if my line numbers are different from

yours, it could be a function of PDF or when I printed it out.

A. Well, the good news is I've numbered all the lines sequentially, so hopefully that avoids that problem.

Q. Very good. But at lines 66 to 68, you state, and I quote, Indeed, Mr. Dircks stated at page one of his testimony that, quote, NDTC understands fully that advancing competition has been stated to be a public interest objective. Is that what you stated on those lines in your testimony?

A. Yes, it is.

Q. Mr. Gates, were you referring to Mr. Dircks' testimony at page 1, lines 21 to 22, when you were quoting?

A. I don't have his testimony with me, but if you could show me, I would be happy to look at it.

MR. MOORMAN: May I approach the witness, Your Honor?

JUDGE WAHL: You may.

Q. (MR. MOORMAN CONTINUING) Let me reask you the question, if I could. Were you referring when you stated -- on lines 66 through 68 you had a quote from Mr. Dircks' testimony that stated, "NDTC

understands fully that advancing competition has been stated to be a public interest objective." Is that the same line that you find in the document before you, which is Mr. Dircks' prefiled testimony, on page 1, lines 21 to 22?

A. Yes, it is.

Q. And, Mr. Gates, doesn't Mr. Dircks go on to state, and I'm looking at lines 23 through -- 23, page 1, to top of page 2, line 2, that in addition to the line that you quoted, Mr. Dircks states, NDTC does not quarrel with the objective provided the competition is fair and that other public interest objectives are not made second class citizens to such competition"? Is that what he states?

A. That's what it states, but I believe the company's actions belie the statement, but that's a correct quote.

Q. On your rebuttal testimony -- I just want to make sure that I understand your testimony today -- on lines 85 to 90, which was on my page 4, your statements on page 86 through 90 are all caveated by the statement, "While I have no specific insight into NDTC's operations"; is that correct?

A. Yes. You said page, but you meant line;

correct?

Q. Page 4. I'm sorry. If I wasn't specific, page 4 --

A. Yes.

Q. -- lines 85 through 90.

A. And the qualification that I made? I'm sorry.

Q. Your observations on 86 -- lines 86 through 90 are all subject to the general observation you made or statement, "While I have no specific insight into NDTC's operations"; is that a correct reading of your testimony?

A. Yes, it is.

Q. Mr. Gates, you were here this morning when Mr. Fischer was on the stand; correct?

A. Yes, I was.

Q. To the best of your knowledge, has the North Dakota Commission ever established a wholesale resale discount percentage for NDTC?

A. Not for NDTC, but certainly for Qwest. We went through those proceedings and we've certainly done it dozens and dozens of times all over the country, so it's not a new process.

Q. So for North Dakota you were familiar that they've established it for Qwest?

A. Yes.

Q. Has -- to the best of your knowledge then, has the North Dakota Commission ever established a wholesale resale discount rate for the North Dakota Telephone Company's Devils Lake exchange?

A. No, I don't believe it has. It would be a simple matter, but they haven't done it yet.

MR. MOORMAN: I have nothing further at this time.

JUDGE WAHL: Mr. Binek.

MR. BINEK: I don't believe I have any questions. We have no questions.

JUDGE WAHL: Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have one. If in setting wholesale retail rates, how would you approach doing that differently for a company like NDTC, which is now North Dakota's only fully tariffed and rate-of-return regulated company versus, say, a Qwest, who is price capped by statute or, you know, carriers that are -- I guess most carriers probably around the country are price capped today. Approaching that, how would you do it differently?

A. I don't think, Mr. Chairman, that the fact

that they're regulated one way or another would make any difference in the rules. The FCC rules, 51.607, specifically identifies the USOA accounts that are to be considered in making that calculation, and the formula Mr. Fischer has already put in place. It would just be a simple matter of changing out some of the inputs if we find that the actual NDTC inputs are different.

Q. So those are tracked in the same accounts, whether it's a price-capped company --

A. Yes.

Q. -- or a rate-of-return company, either federally or state?

A. Yes.

COMMISSIONER CLARK: Thank you. That's all I have.

JUDGE WAHL: Commissioner Wefald.

EXAMINATION

BY COMMISSIONER WEFALD:

Q. On the bottom of page 19 is where Midcontinent addresses the public interest issue that the Commission needs to consider in this case, and this is page 19 on the December 21, 2005, testimony. First, can you tell me, is this the only place where you address the public interest

issue in your testimony, or will I find other public interest testimony in other parts of your testimony, as well? This is the only place I spotted it, but I'm just wondering if I missed something.

A. I think it's sprinkled throughout, Commissioner, and it's in my rebuttable and I believe it may be referenced generally in the testimonies of the other witnesses because I think it's a commonly held belief that competition is good for society and good for consumers. But if I could, initially you mentioned that the Commission must consider the public interest issues. I think the Commission should, but according to the standard that we have in the statute and in your notice of hearing, public interest really is not addressed other than perhaps to reference universal service, which I think is hugely a public interest issue. But I agree with you personally and professionally that public interest is key to your decisionmaking process, and I do believe that the public interest will benefit from this competition even though it's only total service resale. But this is the focus in my testimony where I address it directly, but I think there are other references

to that, the benefits and the efficiencies and those other kind of intangible benefits to the public interest.

Q. The main one that you identify in that section that I just referred to at the bottom of page 19 and the top of page 20 is, "The most obvious benefit of competition -- even from resale -- is the availability of alternative offerings for consumers."

A. Yes.

Q. Did you provide any other additional information, did you say, in your rebuttal about that issue?

A. Yes. If you look at page 3 of my rebuttal, there on lines, say, 55 through 59, I talk about the fact that North Dakota Tel would prefer a delay until it's ready to compete, but, of course, that isn't the standard that this Commission is reviewing. And I believe that it would be a mistake to deny customers the benefits of competition simply because the incumbent wants to prepare even more for the advent of competition. For instance, Your Honor, the RBOCs, the Regional Bell Operating Companies, didn't have ten years to prepare for competition and they seem

to have done quite well in the industry. And I just think it's time for consumers everywhere, including Devils Lake, to have an alternative choice, even if it's just total service resale, so the service quality is the same and a lot of the features will be the same necessarily since they will be reselling the North Dakota Tel service. At least consumers have the opportunity to exercise a choice, and I think that will be beneficial for lots of reasons that I discuss in my testimony, and I talk further about the benefits of competition on this page.

Q. In terms of the -- indirectly in your testimony and in some others there has been kind of the size of the companies. Describe the size of Midcontinent in comparison to the size of North Dakota Telephone Company.

A. I could try to do that. I think I tried in my direct right in the beginning.

Q. All right. Why don't you point me to where that is.

A. Let me show you where that is. On page 3 of my direct --

Q. Mm-hmm.

A. -- which I guess is document 51, I note

that Midcontinent is a diversified company and it serves more than 200 communities in North and South Dakota. I looked at a service territory map of the two states --

Q. Yes.

A. -- and there were little dots wherever they served, and I was quite impressed that it seemed to cover both states pretty completely. So Midcontinent is investing in North Dakota -- not only reselling, but investing and they have employees and they have a commitment to the state, which is good. And I said the company is over 60 years old.

I looked on the North Dakota Tel website, which is a great website, I enjoyed it. Today there is a picture of a little boy with a big fish, and it's very local, very good, very informative. And there is a history there and it talks about the various acquisitions and mergers, but I don't have a feeling of the relative size in terms of revenues or customers.

Q. Between the two companies?

A. No, I don't.

Q. Do you think there's any relevance for the Commission looking at that?

A. Not really, because, after all, North Dakota Tel is the incumbent, they're established, they have their customer relationships, and this is total service resale. So in essence Midcontinent will be doing the retailing function for North Dakota Tel. So the harm is de minimis, as Mr. Fischer showed --

Q. Yes.

A. -- in materials of revenues and customer impact. The benefits are significant, but the impact on North Dakota Tel is de minimis. So the fact that Midcontinent might be bigger -- and I'm not saying it is, I just don't know -- would have no impact on your decision, I don't believe, to either grant or deny the request for termination of the exemption.

COMMISSIONER WEFALD: Thank you.

JUDGE WAHL: Commissioner Cramer.

COMMISSIONER CRAMER: I don't have any.

JUDGE WAHL: Commissioner Clark.

COMMISSIONER CLARK: I do have one.

FURTHER EXAMINATION

BY COMMISSIONER CLARK:

Q. If the termination was -- or if the exemption was terminated and Midcontinent and North

Dakota Tel can't come to terms through their own informal discussions about total -- the total wholesale retail rate, what happens then? Is it a 252 proceeding? Is that what it goes to? Or kind of run through, as you understand it, the steps that happen if the termination is granted.

A. Okay. And, again, as we all know, I'm not a lawyer.

Q. Right. We established that.

COMMISSIONER WEFALD: We established that.

THE WITNESS: We established that, haven't we? What I understand is, based on 251(f), if this exemption is lifted, then this Commission has the responsibility to establish a schedule, and I in my testimony suggest that you establish a schedule, whether it's 90 days as we suggest or some other amount of time, require the parties to come in and report to the Commission or its staff on a monthly basis as to the progress. The Rule 51.6-07 identifies all of the accounts that are to be considered in calculating a resale -- or wholesale resale discount, so there's not much of a dispute there. The only dispute would be whether the inputs are accurate.

I've been involved in many of those cases. They were usually bigger, though, and included more issues than just the wholesale resale discount. So I think this could be done very efficiently. We have the template already done. Mr. Fischer has that done. Midcontinent could turn that over to North Dakota Tel, they could populate it with their own very specific company-specific information, which could be held in confidence, and we will come up with a number. And we also have a relevant FCC range between 17 and 25 percent. So if this Commission wanted to, it could order the Qwest rate of 16.1 percent on an interim basis or pick a number between 17 and 25 percent based on the FCC's orders, have those discounts in place while we calculate the actual North Dakota Telephone rate subject to refund and true-up. But I don't see this as a complex matter or even a difficult matter. I think we have the template. North Dakota Tel has it, they can review it. It's a spreadsheet. They can see all the assumptions. Just a matter of populating it and hitting enter and they come up with a number.

COMMISSIONER CLARK: That's all I have. Thanks.

JUDGE WAHL: Commissioner Wefald.

FURTHER EXAMINATION

BY COMMISSIONER WEFALD:

Q. Is it my understanding that your interpretation of the implementation schedule is based on the fact that when you filed with the Commission this summer and asked for us to determine the rural exemption, that you see the clock starting to tick at that point as far as the interconnection agreement requirement?

A. This is so -- well, yes and no. This is so different from what we usually do in an interconnection case, because in those cases we come in and we're talking about TELRIC rates for UNEs and we identify all those unbundled network elements. We're arguing about the interconnection methods and where the point of interconnection is going to be and who is responsible for the trunks on this side of the POI and who's paying for the trunks on this side of the POI. None of that matters in this case. The only thing we're talking about is total service resale. The interconnection would be very simple -- I don't think that would be a disputed issue -- and the rate is the only thing we really need to come up with. And as far as the

timetable?

Q. Yes. Because your timetable you asked for --

A. 90 days.

Q. "The Commission should require North Dakota Telephone Company to develop such an agreement with Midcontinent within 30 days" -- I'm on page 24 of your December 21 testimony -- "and to provide resale within 60 days later, that is within a total of 90 days after the Commission's order in this proceeding." Then we got the information back from North Dakota Telephone Company about their proposed schedule. So I'm just wondering, is yours -- your schedule within 90 days, does it have to do with the interconnection agreement proceeding and are you saying that yours would have started at the -- when you filed the request for the Commission about determining the exemption? Are you determining setting the clock from that date for both of your things? There was referral to that in the North Dakota Telephone Company --

A. Yes.

Q. -- testimony and so I just need to clarify, where did you get your dates? How are you setting up the schedule?

A. Thank you. I think that is a point of confusion in the record, and we have completely different perspectives here. I wasn't referring to the interconnection, the 251(c) time frames.

Q. Oh, you weren't?

A. No, Your Honor, I was not. I was referring simply to the actual time required to get resale started between the two companies who agree to set up a resale agreement.

Q. You don't see that you need an interconnection agreement?

A. Only limited to the resale discount and some of the billing issues. You know, a very simple agreement. It's not the 500-, 600-page interconnection agreements that we normally consider. And as for the time frames --

Q. The time frames, yes, that are set up.

A. Mr. Meredith talks about that in his testimony and the lawyers, I'm sure, will talk about those time frames, but that's for an arbitration where the parties haven't reached agreement and go to arbitration, and that time frame, I think, is significantly different than a 251(f) proceeding. Here we're simply asking for you to consider termination of the rural exemption,

and in that part of the statute, 251(f), it says once you've made a decision on these issues, after you've made the decision, then you set the schedule. You set the schedule for implementing resale. So once we're done with this hearing and you issue an order, in that order hopefully will be a period of time over which we will implement total service resale in Devils Lake. And when I say "we," excuse me, I mean Midcontinent. So that arbitration time frame does not apply, in my opinion.

COMMISSIONER WEFALD: All right. Thank you.

JUDGE WAHL: Anything further from the Commission?

JUDGE WAHL: Mr. Durick, followup?

MR. HARRINGTON: May we have one moment?

JUDGE WAHL: I'm sorry.

MR. DURICK: I have one question, Your Honor.

REDIRECT EXAMINATION

BY MR. DURICK:

Q. Mr. Gates, I'm referring you to page 4 of your rebuttal testimony, and I'm referring you to there in the context of the question asked by

Commissioner Wefald on the public interest aspects of this particular proceeding. And I note there -- I don't think that's been mentioned before, but there you talk about the incentives inherent in competition. Is that something that's also addressed in the public interest?

A. Oh, absolutely. Once you have a competitor in your midst, your whole perspective on your business, of course, changes. And I talk in my testimony about the efficiencies that I believe any company facing competition would try to achieve because you want to drive your costs down and your revenues up. And from North Dakota Tel's perspective, they want to maintain their customer base, they want to keep their rates as high as they can as long as they're just and reasonable as you determine. But if you bring a competitor in, they will probably look forward to someday having a price reduction with respect to that competitor's presence in the market, so they're going to try to reduce their costs so they can maintain their margins for their shareholders or the cooperatives or the holding company, whoever that might be.

So the incentives are excellent. Not only do they reduce their costs, but they try to provide

better customer service. And I'm not suggesting that North Dakota Tel isn't providing great service. I'm sure it probably is. But they will have good incentives to do even better because they want their customers to stay with them even in the face of perhaps a rate increase or maybe they'll have new services to offer in the future, such as video in February of 2007, in which case they hope their existing customers will take that service.

So with a competitor in their midst, yeah, the benefits are great and all of those inure to the consumer, because all those things that North Dakota Tel will do, and any other company facing competition, will ultimately benefit consumers by, you know, more efficient provision of service, better customer service, more offerings, reduced prices. All of those things will benefit consumers.

MR. DURICK: Thank you, Your Honor. I have nothing further.

JUDGE WAHL: Mr. Moorman?

MR. MOORMAN: No questions.

JUDGE WAHL: Mr. Binek, anything further?

MR. BINEK: Yes, I do have some questions.

EXAMINATION

BY MR. BINEK:

Q. Mr. Gates, you made a comment basically to the effect that North Dakota Telephone Company would like a delay in order to prepare for competition. I think that's basically what you had said.

A. Yes. I wasn't speaking for them. That's kind of my impression of the testimony as I've read it.

Q. If the rural exemption is not lifted and assuming that North Dakota Tel does enter the cable market in February 2007, that would automatically terminate the exemption, of course. How long would you estimate that it would take Midcontinent to enter the telecommunications market under those circumstances?

A. Once the exemption is lifted?

Q. Yes.

A. The timing would be the same. There's a certain amount of time in which the companies need to talk, exchange information, set up billing and other operational situations, but easily within 90 days, assuming the companies cooperate and they both want to achieve this goal, because, again,

we're talking about total service resale, not talking about going in there and buying UNEs or unbundled loops or anything like that. It's really just a billing issue.

Q. That leads to my next question. What happens if the companies cannot agree? How is this going to be resolved?

A. That really does require, I believe, a legal interpretation I'm not qualified to provide. I could guess.

Q. You are dealing with an interconnection agreement, aren't you?

A. In essence, yes, a limited one for purposes of just resale. But I don't believe -- I suppose you could end up in a 251(c) type interconnection hearing, but I don't think -- I just would hope that wouldn't happen over just total service resale.

Q. How have other states -- to your knowledge, how have other states handled the implementation issue?

A. The implementation issues have been very simple for total service resale, and I have been involved in many, many proceedings over the last 20 years or so that dealt with resale. Whether we're

talking about long distance or local, a very, very simple application, we've been doing it for years, and Midcontinent has experience specifically with this type of application and are very confident they can get it done -- you know, they don't even need 90 days, but certainly within 90 days it could be done.

The problem is if the parties -- if North Dakota Tel doesn't want to do it, then I guess the companies such as Midcontinent have to exercise their legal rights to come to this Commission to kind of force the parties to cooperate, and that could be done through a 251(c) proceeding, which could take an awful long time and a lot of resources.

Q. So you don't really -- if I'm hearing you right, you don't really disagree with what North Dakota Telephone Company has stated in their filings that this matter could go into an arbitration proceeding?

A. I really do disagree with what they are saying. This proceeding can end quickly and we can have total service resale in Devils Lake very, very quickly, certainly within 90 days.

Q. I agree that it could end quickly, but if

the parties cannot agree, don't you basically end up in an arbitration situation?

A. I guess if North Dakota Tel chooses to ignore this Commission's order and not implement total service resale, then I would think this Commission could act to enforce its order. I don't think we have to go to arbitration simply because North Dakota Tel ignores this Commission's order. I think this Commission has the authority to enforce it.

Q. Well, let's just say, for example, that North Dakota Tel does not agree with the discount that you propose -- that neither party can agree on a discount rate, how would this Commission be able to arbitrarily set a discount rate when they don't have any evidence presented?

A. Well, I don't think it would be arbitrary in any case. We've already got the model, and the companies can talk about the model if they disagree, but this is something we've been doing since 1996, doing these wholesale discount models, and based on this FCC rule it's very straightforward. So if Midcontinent and North Dakota Tel could not agree on some inputs or they couldn't agree on the final number -- I suggested

that the parties report to the Commission monthly on the progress. If we stop making progress, then this Commission could have a one-day hearing for the limited purpose of addressing that model and the inputs and then reach a decision and say, you know, it's not 16.1, it's really 12.2 or some finding, but this Commission can ultimately make that decision. We're talking about accounting numbers and spreadsheets, and we would finish that hearing much quicker than we will finish this hearing.

Q. Are there other states that have terminated a rural exemption and had to determine and implement an implementation schedule?

A. I don't remember an implementation schedule. I know there are some states that have terminated the exemption. I think, for instance, Alaska has in the past, but I don't recall the implementation. But I guess it would be -- excuse me.

Q. I'm sorry. This whole case, does it really boil down to which company gets to be able to offer this -- I forget the term -- three play or something like that?

A. Triple play.

Q. -- triple play service in Devils Lake? Is that what it really boils down to, is who can get there first?

A. I'm not certain if that's what this whole case revolves around. It sounds that way when you read Mr. Dircks' testimony. It sounds like he would prefer to wait until they are offering video, and from his perspective he wants to operate, you know, on a level playing field. I hate to use that phrase, we've overused it so much. But I believe that's their position, and I can understand that. But that's not the standard. That's not the standard this Commission has to review in deciding whether to terminate that exemption, but I think that's why we're seeing the push-back, why we don't have an agreement.

MR. BINEK: I have no further questions.

JUDGE WAHL: Any further questions from the Commission? Commissioner Clark.

FURTHER EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have some just following up on Mr. Binek's question. If the purpose of this proceeding is really just a jockeying for timing on entry into each other's markets, doesn't North

Dakota Tel under the Act have some ability within its own control to delay that time frame? I mean, just looking at the Act, once the termination would be granted -- the rural termination, then I assume you would have to make a -- Midcontinent would have to make a request to start negotiations and then it's not until at least what, 135 days after that that Midcontinent could even petition the Commission and that would be if North Dakota Tel just on its own decided not to enter into discussions, and then they've got a certain amount of time to respond after that, and then even then the Commission has what, nine months to decide the case.

A. I don't see that schedule. I don't think that schedule applies in this case. We have a termination of the exemption, which you decide, but then the next issue is the implementation timetable. It doesn't say now you start all over again at day one and do negotiations for 135 days and then you have hearings and a final order. It doesn't say that. It says you decide whether or not that is terminated and then you set the implementation schedule for the service.

Now, if Midcontinent was asking for

unbundled network elements, interconnection, collocation, TELRIC pricing, you know, all of those things, it might take a long time to get through all of that, and you might need another proceeding to get through some of those difficult issues. But in this case when we're talking about simply lifting the exemption for total service resale, I think you issue your order and then you set the implementation schedule based on how long you think it will take to implement total service resale, not start the clock all over again.

Q. But isn't resale included under 251 interconnection just the same as other -- isn't it just as eligible for 252 arbitration as any other --

A. It is one of those --

Q. -- service under the Act?

A. It is one of those services, yes, so I suppose the answer would be yes, but I don't think we have to go that route.

COMMISSIONER CLARK: That's all the questions I have. Thank you.

JUDGE WAHL: Commissioner Wefald.

FURTHER EXAMINATION

BY COMMISSIONER WEFALD:

Q. Let's just set up another scenario here. Okay. My understanding is that it's required to give -- that your company is able automatically to compete when North Dakota Telephone Company starts to offer cable services. Is that correct?

A. Yes, that's my understanding.

Q. They're able to provide telephone service at that time?

A. Yes.

Q. At that -- let's say both companies decided to wait till then. All right. At that moment when North Dakota Telephone Company offers -- makes a cable offering in its community, then would you need to go through the process of establishing a discount rate for -- is it wholesale retail? What is it called?

A. Wholesale discount.

Q. Wholesale discount?

A. Wholesale retail discount.

Q. Wholesale retail discount --

A. Yes.

Q. -- at that time, or are you not required to do that at that time?

A. You could at that time if there's a dispute. The companies could agree. Wouldn't that be nice? The companies could agree and avoid all of the arbitration and the litigation.

Q. My question is, does that have to be done regardless of whether we start now to determine what that wholesale -- tell me the correct wording of that again.

A. Wholesale discount.

Q. -- the wholesale discount? Is it a matter of -- at some point that has to happen, whether it happens, let's say, if the -- if the rural exemption is terminated, we would need to address that issue then, or it has to be addressed at the time you would be able to go in without getting the rural exemption. It has to be addressed regardless?

A. Yes, you're absolutely correct, either now or we can wait and do it later, but it has to be addressed, and our position is consumers shouldn't have to wait.

Q. And you would like to have it done because if you have to wait until you're able to go in when they offer competition to have that done, then it could stretch out several more months -- it could

stretch out several more months at that point to determine what the wholesale discount is?

A. It could.

Q. And it could have to come to the Commission at that point for a decision?

A. It's possible. If they can't agree, it's very possible.

COMMISSIONER WEFALD: Okay. Thank you.

JUDGE WAHL: Any other questions by the Commission?

COMMISSIONER CRAMER: I have nothing. Thanks.

JUDGE WAHL: Followup, Mr. Durick?

MR. DURICK: Nothing further, Your Honor.

JUDGE WAHL: Mr. Moorman, any followup?

MR. MOORMAN: Nothing further.

JUDGE WAHL: Mr. Binek?

MR. BINEK: Yes. I do have one -- hopefully just one more question.

JUDGE WAHL: I've never, ever heard that to be true when said by a lawyer.

FURTHER EXAMINATION

BY MR. BINEK:

Q. I realize that you're not a lawyer --

COMMISSIONER CRAMER: Or a congressman.

Q. (MR. BINEK CONTINUING) -- but when we're talking about the termination of the exemption under 251(f)(1)(b), where the statute talks about -- it says, Upon termination of the exemption, a state commission shall establish an implement schedule for compliance with the request that is consistent in time and manner with commission regulation. What is consistent in time and manner with commission regulations? Commission in this instance referring to the FCC.

A. I don't know.

Q. Would you agree that that's a requirement of the law, that any implement schedule that this Commission would issue has to comply -- has to be consistent in time and manner with FCC regulations under the law?

A. I'm sure that's what it says, so I would agree.

MR. BINEK: Thank you. I have nothing further.

JUDGE WAHL: Anything further from the Commission? Mr. Durick?

MR. DURICK: Nothing further, Your Honor.

JUDGE WAHL: Mr. Moorman?

MR. MOORMAN: Nothing further.

JUDGE WAHL: All right. Thank you very much, Mr. Gates.

THE WITNESS: Thank you, Your Honor.

JUDGE WAHL: Commissioner Clark, we're very close to the noon hour. Rather than have -- continue with another witness, would the Commission recess or would the Commission keep going?

COMMISSIONER CLARK: Well, I guess it would depend on where we head next. If it's another long cross-examination, then I would say probably break now. If now is convenient, great. If not, let's press on a little more.

JUDGE WAHL: Mr. Durick.

MR. DURICK: It's convenient because we don't have anything else. We just want to make sure that our offer of Exhibits 1 through 13, I believe, are accepted.

JUDGE WAHL: They were.

MR. DURICK: That's the last witness we have, Your Honor.

JUDGE WAHL: Then I suggest, Commissioner, we recess for lunch. When will the Commission reconvene?

COMMISSIONER CLARK: One o'clock.

JUDGE WAHL: One o'clock. All right.

We'll be in recess until one o'clock.

(Noon recess taken at 11:49 a.m. to 1:05 p.m.)

JUDGE WAHL: Let's go back to work. We'll be in session. Mr. Durick, you've rested, I believe.

MR. DURICK: Yes, Your Honor.

JUDGE WAHL: Mr. Negaard, when you're ready.

MR. NEGAARD: Your Honor, we would call Mr. David Dircks to the stand, please.

JUDGE WAHL: All right. Mr. Dircks, if you would just have a seat, be as comfortable as you can. Mr. Dircks, as you have heard me advise previous witnesses, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.

(Witness sworn.)

JUDGE WAHL: Mr. Negaard.

MR. NEGAARD: Thank you, Your Honor.

DAVID DIRCKS,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NEGAARD:

Q. For the record, your name is David Dircks?

A. Yes.

Q. And your address, Mr. Dircks?

A. 2229 12th Avenue, Devils Lake, North Dakota.

Q. Devils Lake. And your occupation?

A. I'm the general manager of North Dakota Telephone Company.

Q. Okay. Previously, Mr. Dircks, on January 9th, we filed in this case, and it's in front of you marked as R1, your prefiled testimony. Is there anything in your testimony that, to your knowledge, is incorrect or any corrections you wish to make at this time?

A. No, sir.

Q. And it's true to the best of your knowledge and belief?

A. Yes.

MR. NEGAARD: We would offer Exhibit 1.

JUDGE WAHL: R1 is received pursuant to stipulation of counsel.

Q. (MR. NEGAARD CONTINUING) Then moving on, before you, marked as R2, is a letter dated May 12th, 2005, on behalf of Midcontinent Communications to you as the manager; is that correct?

A. Yes, it is.

Q. It was part of your testimony?

A. Yes.

MR. NEGAARD: We would offer R2.

JUDGE WAHL: Mr. Durick.

MR. DURICK: No objection, Your Honor.

JUDGE WAHL: Exhibit R2 is received.

MR. NEGAARD: And R3, a letter dated June 10th from yourself to Mr. Durick, which was previously included in your testimony, we would offer R3.

MR. DURICK: No objection.

JUDGE WAHL: R3 -- Exhibit R3 is received.

Q. (MR. NEGAARD CONTINUING) R4 before you, Mr. Dircks, is actually a three-page document consisting of a copy of a help wanted ad and two

pages of job description that was previously prefiled; is that correct -- R4?

A. Yes.

MR. NEGAARD: We would offer R4.

JUDGE WAHL: Mr. Durick -- or I'm sorry.

MR. DURICK: Mr. Harrington will handle this witness.

MR. HARRINGTON: No objection, Your Honor.

JUDGE WAHL: Excuse me. Exhibit R4 is received.

Q. (MR. NEGAARD CONTINUING) Then R5, Mr. Dircks, in front of you, is that a copy of your newsletter to customers --

A. Yes, it is.

Q. -- from last summer?

MR. NEGAARD: And for the record -- excuse me. I would offer R5.

JUDGE WAHL: Mr. Harrington.

MR. HARRINGTON: No objection.

JUDGE WAHL: Exhibit R5 is received.

MR. NEGAARD: And for the record it should be noted that Mr. Dircks' testimony was previously filed as Docket No. 56.

I have nothing further, Your Honor.

JUDGE WAHL: Mr. Harrington.

MR. HARRINGTON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HARRINGTON:

Q. Mr. Dircks, I'm J.G. Harrington. How are you this afternoon?

A. Good.

Q. I would like to start by talking a little bit about North Dakota Telephone. North Dakota Telephone serves Devils Lake, and where else does it serve?

A. We have, I believe, 25 other exchanges. We serve basically in the upper -- north central part of North Dakota.

Q. And what proportion of your lines are in Devils Lake?

A. We have a total of 18,000 access lines, and I believe there's approximately 5,500 in Devils Lake, including the rural.

Q. So a little bit under a third?

A. Yes.

Q. Now, NDTC was formed as the result of an acquisition; is that right?

A. Yes, it was. It was formerly some GTE property --

Q. Right.

A. -- that was purchased by three cooperatives that surround that territory.

Q. And then it grew again in 1996; is that correct?

A. Yes, it did. We acquired some more access lines from Qwest.

Q. So the owners of your company thought that it was a good idea to expand the number of lines they served; they were doing well with what they had?

A. Yeah, it was a good business decision I thought, yeah.

Q. Let's talk a little bit about the owners. Your owners are Polar Communications, Dakota Central Telecom and United; is that right?

A. Yes.

Q. How many lines do those companies serve, more or less? I know you won't have an exact number.

A. I don't really have any idea.

Q. Are they individually larger than North Dakota Telephone?

A. They're smaller, but together they're probably larger than North Dakota Telephone Company.

Q. Do you have any idea of their combined revenues?

A. No, I don't.

Q. Do any of those companies offer video today?

A. I believe two of the owner companies do -- I know for sure. I'm not sure of the third.

MR. HARRINGTON: Mr. Durick is going to pass out what I think will be marked as P --

JUDGE WAHL: P14, I'm guessing.

MR. HARRINGTON: P14, that is correct. Yes. I'm sorry. I was trying to find my count and I lost track.

Q. (MR. HARRINGTON CONTINUING) This exhibit is web pages from each of the owners of North Dakota Telecom. Mr. Dircks, would you review the document that's been marked P14, please? Just let me know when you're done.

A. I'm done.

Q. Does this document refresh your recollection as to which of the companies that own NDTC offer video?

A. North Dakota Central, yes.

Q. And Polar?

A. Polar, yes.

Q. And United?
A. United was one I was not sure of.
Q. But this document -- in reviewing this document, do you believe now that United does offer video?
A. I did not see that on there.
Q. I refer you to the page --
A. Okay. Excuse me. Pardon me. I do see it, yes.
MR. HARRINGTON: We'd like to offer this document into evidence as an exhibit.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Your Honor, if I could. Mr. Dircks, do you have any personal knowledge of this information in these documents?
THE WITNESS: No.
MR. NEGAARD: Your Honor, I don't know what foundation there is for introducing this document.
JUDGE WAHL: Well, Mr. Harrington, he's made a point, I think. Do you have any response?
MR. HARRINGTON: Yes. I think that first it confirms things he said as to two of the companies already and this is publicly available information. I think that it's appropriate

foundation certainly for at least two of the companies and he's conceded that he believes based on -- on the basis of reading this, his recollection is the third company also offers video.

MR. NEGAARD: This is the type of information, Your Honor, that should have been filed with rebuttal testimony, and we're seeing it for the first time here. This witness has no personal knowledge of it and there's no foundation for it.

JUDGE WAHL: Well, except it's two things. For the record, the objection is overruled. My reasons for the ruling are as follows: First, it's almost self-evident -- almost, and I -- you know, without getting in the technicalities. Secondly, I'll receive -- the Commission will receive the exhibit for the limited purpose of considering the testimony of Mr. Dircks. That is not for the information contained in the exhibit except as acknowledged by Mr. Dircks. Is that clear, Mr. Harrington?

MR. HARRINGTON: Yes.

JUDGE WAHL: Mr. Negaard, anything further for the record?

MR. NEGAARD: No, Your Honor.

JUDGE WAHL: All right. With that caveat, the objection is overruled. Exhibit P14 is received.

MR. HARRINGTON: Thank you, Your Honor.

Q. (MR. HARRINGTON CONTINUING) How long have you been at North Dakota Telephone, Mr. Dircks?

A. I've been there since 1993 when the company started.

Q. And before that where did you work?

A. I worked a number of years for Contel of Minnesota and Contel of North Dakota before GTE purchased the property.

Q. And how long have you been the general manager?

A. Since 1993.

Q. Since the start?

A. Since the start, yes.

Q. I'd like to talk a little bit about the financial situation of your company. Now, my understanding from your deposition is that the financials of North Dakota Telephone are consolidated with a company called TPC, which is a holding company.

A. Yes.

Q. That's correct? TPC's only asset is North Dakota Telephone Company's stock; is that right?

A. I believe so, yes.

Q. So the financials of TPC are essentially the financials of North Dakota Telephone?

A. To the best of my knowledge, they are, yes.

Q. Okay. That's fine. Now, in your deposition you agreed that the equity in North Dakota Telephone -- and I'm going to refer to North Dakota Telephone and TPC as sort of the same thing here given what you've said -- has grown in the last four years from about 21.6 million to about 29.2 million.

A. That sounds right.

Q. Would you like to look at your deposition to confirm that? We have a copy.

A. I've got a copy up here.

Q. That would be page 21, lines -- I'm sorry, page 22, lines 7 through 11.

A. 7 through 11. Did you say page 22?

Q. Page 22 from the copy I have. We do appear to have some pagination changes from place to place in documents.

A. My page 22, those lines are talking about

cell service.

Q. I apologize. We'll take a moment to find out why the pages don't match up. Why don't you skip ahead about four pages, the page on which the phrase "no verbal response" appears and it's right after that. Have you found that?

MR. NEGAARD: I'm sorry. Do we have a page number?

MR. DURICK: I found it on page 22 on yours, but it's not 22 on his.

MR. HARRINGTON: The copy he has apparently has different pagination.

JUDGE WAHL: Mr. Harrington, why don't you just take your copy up to the witness and show it to him, please.

THE WITNESS: I've got the section you're referring to.

MR. HARRINGTON: I'm going to have other questions relating to the deposition so I'll provide him with a copy.

JUDGE WAHL: Sure. Just take it and show it to the witness.

THE WITNESS: 22?

MR. HARRINGTON: Yes.

Q. (MR. HARRINGTON CONTINUING) We're on page

22, lines -- starting at line 7.

A. Line 7?

Q. Right. The question I asked you, going back to this, was, is it consistent with your recollection that the equity has grown to 29.2 million approximately from 21.6 million approximately between 2000 and 2004?

A. Yes.

Q. Okay. Are you familiar with your company's annual reports to the Commission in a general way?

A. I don't understand specifically, but I know what you're referring to, yes.

Q. And over the years those reports have shown the profits that North Dakota Telephone has made; is that correct?

A. That's correct.

MR. HARRINGTON: I have here copies of the annual reports for the last five years, and I'm going to ask -- I'm sorry -- the last four years, and I'm going to ask for the purposes of this proceeding that the Commission take official notice of them. I do not intend to enter them as exhibits.

JUDGE WAHL: Official notice will be

taken.

Q. (MR. HARRINGTON CONTINUING) Is it -- subject to check, is it fair to say that over the last five years those reports have shown profits in the range of 3.4 to 4.3 million dollars on an annual basis? Is that approximately the right range?

A. Net profit or --

Q. Net profit, the bottom line.

A. I would have to look at them. If that's what it says in there, that's what it says.

Q. So North Dakota Telephone is a profitable company?

A. Yes, we are.

Q. I'd like to talk a little bit about competition today for North Dakota Telephone. Do you have any competition from other providers of landline telephone service today?

A. Landline?

Q. Yeah. I'll ask about wireless next.

A. No.

Q. Has any other party asked North Dakota Telephone for interconnection or for resale on the landline side?

A. No, they haven't.

Q. Let's talk a little bit about the wireless side. Who are your wireless competitors?

A. Well, whichever ones are there. I'm not sure. Verizon is one of them. Cellular One would be another. Those are the only two that I'm familiar with.

Q. Do you know of any customers that you've lost to wireless service?

A. Yeah. I know of some, yes.

Q. Number in the tens, the hundreds?

A. They would be just in a few. Ten or less that I personally know about. I wouldn't know about the rest of them.

Q. Does North Dakota Telephone sell wireless service?

A. We resell Verizon service through one of our owner companies, United Telephone.

Q. About how many customers do you have in Devils Lake for that?

A. I do not know.

Q. To your knowledge, does Midcontinent offer wireless service?

A. Midcontinent?

Q. Yes.

A. I don't know if they do.

Q. Okay. One of the things you talk about in your testimony at some length is the notion of a level playing field. I guess I'd like to start with an understanding of what you mean by that. You use the phrase at one point "fair competition." What's your definition of "fair competition"?

A. I think I probably discussed that in my testimony, but also it was in some of your testimony about a level playing field. That's really all I'm asking for.

Q. I'd like you to summarize what you think it means.

A. Give me a minute to think about that.

Q. Sure.

A. I guess just the basic summary of that would be that -- using the example we have here today is that, you know, we currently compete with Midco for high-speed Internet services, and to me a level playing field would be that we would be able to offer video, too, at the same time that Midco would like to offer telephone service.

Q. Now, is it reasonable to say, in your view, that every competitor has advantages and disadvantages?

A. I wouldn't say it would be reasonable, but I guess that's why we're here discussing it.

Q. You don't think it's true that every competitor in a marketplace has some advantages and some disadvantages compared to its competitors?

A. Would you say that again?

Q. Okay. In a competitive market, is it your view that each party in that market, each competitor, has some advantages and some disadvantages as compared to the other parties in the market?

A. If I understand the question right, yes.

Q. So in a fair market you don't expect every competitor to be exactly positioned the same way, do you?

A. I'm not sure I understand the question. In a fair market they can't be exactly, I'm sure, but fair is fair.

Q. So do you think it's a fair market, for instance, if you have some company like Mercedes that offers expensive, very well-made automobiles that have very good safety records whereas Chevrolet might offer models that are less expensive, not as luxurious, perhaps don't have as good safety records? Is that a fair market?

A. I don't know the answer to that.

Q. Is there something unfair about that market, in your view?

A. I don't know anything about the automobile industry.

Q. Okay. In your testimony on page 9, you say that you expect to be in the video market sometime after February 2007. In your view of what's a fair market, would it be fair for Midcontinent to have to wait until after you've entered the video business to be able to start to provide telephone service?

A. Would it be fair for Midcontinent to wait till after we're in the video business?

Q. Mm-hmm.

A. No.

Q. Thank you. I'd like to turn to some of the sort of specific issues about what constitutes a level playing field. The first thing I would like to talk about is access to capital. Who do you get your capital from? Who do you borrow money from when you need to borrow money?

A. We borrow our money from CoBank.

Q. And what's CoBank?

A. It's a -- mostly an agricultural lending

firm, I think. They're headquartered in Denver, Colorado.

Q. Is it a cooperative?

A. Yes.

Q. Is North Dakota Telephone a member of that cooperative?

A. Yes.

Q. Now, as a cooperative, doesn't CoBank return dividends back down to its members?

A. They do.

Q. And doesn't that have the effect of lowering your cost of capital?

A. If they pay a dividend, it would, yes.

Q. Have they paid dividends recently?

A. I did not verify that before I came down here, but they have paid dividends.

Q. They have paid dividends in the past?

A. Yes, they have.

Q. And if the business is run reasonably well, you would have an expectation they would continue to pay dividends?

A. Yes.

Q. That's, after all, one of the advantages of a cooperative to its member; right?

A. Yes.

Q. Is North Dakota Telephone eligible for financing from the Rural Utilities Service?

A. We're eligible, yes. We would be eligible.

Q. Can you describe that program for me?

A. No, I can't. We looked at three different agencies when we were going to borrow some money for this fiber project. They were one of them, and we chose not to use them.

Q. Because CoBank was more advantageous?

A. We've dealt with them since the conception of the company and we felt it was more advantageous, yes.

Q. But you're familiar with the Rural Utilities Service obviously?

A. Yes.

Q. That's a government program?

A. Yes.

Q. And it provides financing to rural telephone companies among others?

A. Mm-hmm. Yes.

Q. Is that financing guaranteed by the government?

A. I believe it is.

Q. Do you happen to know if cable companies

have access to Rural Utilities Service capital?

A. No, I don't.

Q. And during your deposition one of the other entities that was mentioned was the Rural Telephone Finance Cooperative. Did you investigate using that, as well, for your funding?

A. Yes, we did.

Q. And it's a coop like CoBank?

A. I'm not familiar with RTFC.

Q. But you did look at them?

A. Yes.

Q. And they were available to you?

A. They were.

Q. And so the reason you chose CoBank was the relationship or because it was financially more advantageous than the other choices, or something else?

A. Both.

Q. Both. So it was both financially advantageous and a relationship you already had?

A. Yes.

Q. I'd like to turn then to another issue about level playing field, which is universal service and the moneys you get from universal service funding. And we're going to mark Exhibit

P15. This exhibit consists of two parts, the first part for which -- is actually the second two pages, but which I'm going to ask the Commission to take official notice, is a report generated by the universal service website that the FCC runs that shows the amounts of money that North Dakota Telephone has received over the last several years. The first page of the exhibit is an Excel spreadsheet that takes those numbers and adds them up.

JUDGE WAHL: I haven't heard it offered.

MR. HARRINGTON: I've asked for the Commission to take official notice of the second and third pages as a report from the FCC website. That report was generated by putting in the identification number for North Dakota Telephone Company into a database which then produces the amounts of money they've received.

MR. NEGAARD: Your Honor, I'm beginning to wonder who the witness is here. Again, Your Honor, this hearing was premised on filing testimony, direct testimony, reply testimony, rebuttal testimony. In the interest of fairness, Your Honor, this obviously has been planned. This was not thought up during the lunch hour. We were

given absolutely no notice that there was going to be any of these exhibits used. Your order specifically said, Your Honor, that all exhibits had to be filed by last Monday, and today we're being inundated by more exhibits. We've been given no notice of these exhibits. There's no foundation for these exhibits. And now Mr. Harrington is testifying in an attempt to establish some kind of foundation. Your Honor, I insist that you follow the order that you issued that said there would be no late-filed exhibits.

MR. HARRINGTON: Let me --

JUDGE WAHL: Was that my order? Did I --

MR. NEGAARD: Yes, Your Honor, it was.

JUDGE WAHL: Did the prehearing order specifically say that all exhibits had to be filed? That's not my recollection, Mr. Negaard. Now, I may be wrong.

Well, Mr. Harrington, I refer you to the second page of my order, which I think was substantially taken from the proposed -- or the agreement of the parties, but that order says that all testimony and exhibits served and filed for the hearing pursuant to this order shall be served and filed electronically.

MR. NEGAARD: Your Honor, if I might add, also at the bottom of page 1, ordered that no other or further filing of testimony or exhibits prior to the hearing shall be permitted except as the Commission may allow. Your Honor, I don't think that this is following the spirit and intent of your order that we be given notice of these exhibits prior to the hearing so we could have an orderly hearing.

JUDGE WAHL: Well, for the record and to clarify, Mr. Negaard, this is my order, but it was also, as my recollection serves me, substantially the agreement of the parties. That is, I may have changed the wording, but I thought this was essentially the stipulation of the parties. In any event, Mr. Harrington, it does say no other or further filing of testimony or exhibits.

MR. HARRINGTON: Prior to the hearing.

JUDGE WAHL: Prior to the hearing, that's true. All right. Go ahead.

MR. HARRINGTON: Your Honor, that is exactly what I was going to say, prior to the hearing. There's nothing in there that prohibits the admission of exhibits at the hearing. And in this particular case what we're asking the

Commission to do is take official notice of FCC materials that we could have put into the record in a brief, they're official records of the FCC, and then a demonstrative cover page that adds the numbers up. If Mr. Negaard wants to object to them being admitted to this hearing, there's no reason we could not continue to put them in the brief because they're official records that they could acquire themselves just as easily as we did.

MR. NEGAARD: Your Honor, there's no foundation for this document other than the testimony.

MR. HARRINGTON: I'm going to be cross-examining Mr. Dircks on this. If you would like me to wait to ask for admission until after -- I did not actually ask for admission yet. I merely said -- noted that I wanted official notice taken.

MR. NEGAARD: The only foundation for this, Your Honor, is total hearsay. The only foundation for this is the testimony of one of the attorneys for Midcontinent. Your Honor, if we would have been given some notice on this -- I don't think it follows the spirit and the intent of your prehearing order, Your Honor.

MR. HARRINGTON: Perhaps I could ask Mr.

Dircks some questions without at the moment reference to the exhibit and we'll see where we go from there.

JUDGE WAHL: Just a moment, please. Mr. Negaard, let me say that it was not and is not my recollection that no other exhibits could be offered at the hearing for cross-examination. That's not -- that's not my recollection of the purpose of this order and I don't -- as I re-read the prehearing order now, I don't read that to exclude the filing of -- or the offering of additional evidence -- of additional exhibits for cross-examination or for, what it really amounts to, rebuttal in the circumstances, I think. So that part of the objection is overruled.

Mr. Harrington, I have a little trouble with foundation. What I essentially have is your say-so that this information is what it is. How is the Commission to take official notice of this information? It does so on your say-so that this is a compilation or this is taken from the website.

MR. HARRINGTON: Your Honor, this is reproducible. All someone has to do is go to the universal service website and put in the

appropriate code for North Dakota Telephone Company and this information appears. It is part of the official records of the FCC. I planned to ask Mr. Dircks some questions about the extent to which -- and I still will regardless of the admission -- about the extent to which North Dakota Telephone receives universal service funding, and I think that will establish that North Dakota Telephone receives a substantial amount of universal service funding and that these numbers are consistent with that.

JUDGE WAHL: All right. Mr. Harrington, I accept your representation that this information is reproducible and that it is what you represent it is, namely, the official records of the FCC. And on that basis Exhibit P15 is received. Mr. Negaard, anything further for the record?

MR. NEGAARD: Yes, Your Honor. Even government documents require self -- they require authentication in order to be introduced under the North Dakota rules.

JUDGE WAHL: Show me. I don't know that that's -- that's about 803, about 8, maybe?

MR. NEGAARD: 901. I'm sorry, Your Honor. 902, domestic documents produced under

seal, document bearing a seal. In this case if it's a U.S. Government document, if it bears the official seal of the United States Government, it's admissible.

JUDGE WAHL: Yeah, but it's not a document, Mr. Negaard. It's information. It's public information that is readily available. It is available simply by using this URL, I take it.

MR. NEGAARD: Your Honor, recognizing that you are probably not going to rule in my favor since I can see that's where you're leaning, let me just say that I believe it lacks foundation and it lacks authentication and my objection can be noted. Thank you.

JUDGE WAHL: Mr. Negaard, you may be right, as a matter of fact, but that being said, I think that -- I think -- I'm going to allow the Commission to take official notice. I'm going to accept P15. I'm going to receive P15 as the exhibit. You may proceed, Mr. Harrington.

MR. HARRINGTON: Thank you, Your Honor.

Q. (MR. HARRINGTON CONTINUING) Mr. Dircks, does North Dakota Telephone Company receive universal service funding from the FCC or the FCC programs?

A. Yes, it does.
Q. Is it correct to say that you receive interstate common line support?
A. Yes.
Q. Is it also correct to say you receive support on the local switching support program?
A. Yes.
Q. It appears you don't receive funding for high cost loops; is that correct?
A. Not on a constant basis, no, according to this report.
Q. And do you have an idea yourself of roughly how much money you get from the universal service program -- high cost program on an annual basis?
A. I believe in 2005 we received approximately 1.7 million dollars from these programs.
Q. Is that reasonably consistent with what you've received in other years, within a fair approximation?
A. I only looked at the last two years, but I could say that would be reasonable.
Q. You've never gotten, say, 10 million dollars?

A. No.
Q. No such luck.
A. No.
Q. Now, you testified earlier that the company as a whole has about 18,000 lines.
A. Yes.
Q. So roughly speaking, and I understand this number is not exactly right, you're getting in federal universal service support in any given year somewhere between 95 and $105 per line? Is that a fair number?
A. Just calculating in my mind, yes.
Q. I was going to say a hundred, but I realized the numbers didn't match quite. How much do you charge for residential service in Devils Lake right now on a monthly basis?
A. I believe it's $13.12 -- will be.
Q. Will be. That reflects a rate increase that was recently approved?
A. No.
Q. It does not reflect the 27?
A. No. We rebalanced our rates, so all the rates in all of our towns will be the same. That's what it will be, is 13.12.
Q. Devils Lake prior to the rebalancing, what

was the rate?

A. It was close to that.

Q. More or less?

A. I don't remember. I think it was a 27-cent difference, if I recall it right, less -- or more.

Q. Previously it was 27 cents less, so a slight rate increase. So 13.12 a month over a year is somewhere in the $160 annual revenue per residential line per year, is that right, give or take?

A. I don't have a calculator. It sounds good.

Q. So if you're getting somewhere between 95 and $110 per line from the federal universal service program and 160, you're getting close to two-thirds as much per line from universal service as you do from your own customers; is that right?

A. Sounds right.

Q. Okay. Now, if Midcontinent offers resale service in Devils Lake, to your knowledge, will Midcontinent be eligible for any universal service money of its own?

A. They would not be unless they started offering facility-based service.

Q. I'd like to turn to access revenues. Now, your company receives a significant portion of its revenue from access charges; is that correct?

A. Yes.

Q. And those come from long distance carriers who are paying either to originate or terminate calls in North Dakota Telephone's territory?

A. That's the majority of it, yes.

Q. Roughly what percentage of your revenues come from access?

A. Without looking, I would say probably 60 percent.

Q. That's what I had. That would have been about 10 million out of your 16 million dollars in revenues last year?

A. I don't have a financial report with me, but it sounds close.

Q. What's your permanent access rate for intrastate traffic?

A. I'm not sure.

Q. Do you have a ballpark? I won't hold you to an exact tenth-of-a-cent amount.

A. Intrastate?

Q. Intrastate.

A. I believe it's nine cents. I don't know.

That's just a guess.

Q. Interstate, is that higher or lower?

A. It would be lower.

Q. And you charge subscriber line charge on top of your residential service rate; right?

A. Yes.

Q. And what's that?

A. That's different for business and residence. I think residential now is six-something.

Q. Business is more?

A. Yes.

Q. About?

A. Some of these numbers escape me up here, but I think it's in the $9 range.

Q. And if Midcontinent gets to resell your services, Midcontinent will -- will Midcontinent be able to have access to any of those access revenues of yours, or will those still be North Dakota Telephone's revenues?

A. They would still be ours.

Q. Now, for the level playing field discussion I'm interested in what you think ought to be considered by the Commission in that analysis. Is it your view that the only services

that are relevant in this proceeding are North Dakota Telephone's regulated services?

A. Yes.

Q. So you wouldn't include any other service that North Dakota Telephone offers or might offer in the future as relevant to this conversation?

A. My understanding is it's just our tariffed services.

Q. So for the purposes of your level playing field questions then, you think Midcontinent's video services are relevant?

A. I'm not sure I understand.

Q. Well, in your testimony you argued that we have a level playing field only to the extent that you're able to offer the same services Midcontinent offers. My question is, for the purposes of that particular argument, are you saying that Midcontinent's video services are relevant to the question of whether there's a level playing field?

A. I don't know how to answer that.

Q. So are you saying something different in your testimony then?

A. Point out my testimony to me, would you? I'm confused.

Q. Oh, let's find it. Let's look -- let's

look at page 3 of your testimony, starting at line 20. Now, at that point you argue -- and continue on to page 4. At that point you say that you do not believe it would be fair for Midcontinent to be able to offer triple play a year before you're offering the same thing yourself.

A. Yes.

Q. So for the purposes of this discussion you think it's then relevant to consider video services that are not regulated by the Commission?

A. I'm just at a loss for words.

Q. That's fine.

A. I don't know if I'm not understanding your question or what.

Q. Well, let me try again one more time.

A. Okay.

Q. You've just told me that you don't think it's appropriate for the Commission to consider any services that are not regulated services. That was your cross-examination testimony.

A. Yes.

Q. However, in your direct testimony -- your reply testimony, you said that you thought that the Commission ought to consider the ability of your company to be in the video marketplace as a factor

in determining when the rural exemption should be lifted.

A. Yes.

Q. So for the purposes of your reply testimony, you indicated that the Commission should consider when the availability of video service and a competition in video service; is that correct?

A. Yes.

Q. So would you care to revisit the answer to the question about whether the Commission should consider nonregulated services?

A. No. I'm not familiar with the law, I guess, and I'm confused on my understanding of this, but -- and I guess based on advice from our legal counsel, I'm just trying to exercise my rights of what's involved in this case by law.

Q. I see. Let's move on to one other service. On page 5 of your testimony, and this is at lines 4, 5 and 6, you indicate you do not offer long distance service at North Dakota Telephone Company; is that correct?

A. We offer it through a company that we're part-owners in, North Dakota Long Distance.

Q. Who else owns the company?

A. There's ten companies in the state

involved in that. We're one of them.

Q. How are the revenues from that company allocated to its owners?

A. I believe it's by -- I have to verify this for sure, but based on percentage of ownership.

Q. And percentage of ownership was determined in what way; do you know?

A. Whatever -- however the board set it up. Every company invested the same amount of money, so the ownership was an equal percentage.

Q. Do each of the companies have roughly the same number of lines?

A. No. There's some that have more than others.

Q. To your knowledge, does your company fall in the low end, the middle, the high end of that group?

A. As far as ownership or --

Q. In terms of number of lines.

A. Oh, number of lines?

Q. Yeah.

A. Probably in the higher end.

MR. HARRINGTON: We're marking Exhibit P16, if I'm still counting correctly. I'm not asking to admit it yet. This exhibit is a page

from the North Dakota Telephone website.

MR. BINEK: What exhibit is this?

MR. HARRINGTON: This is P16 if I've counted correctly. Judge Wahl seems to believe I have.

Q. (MR. HARRINGTON CONTINUING) Now, I've just represented this is a page from the North Dakota Telephone website, but I'm going to ask you, Mr. Dircks, is this a copy of the page from the North Dakota Telephone website?

A. It looks like it.

Q. I'd like you to direct your attention to what would be, if we were on the Internet, the bottom left of the page, which is probably going to show up on the second -- the bottom of the second page and going on to the top of the third page on the left-hand side on that handout. Have you found that, Mr. Dircks?

A. Yeah.

Q. This is a description of what are called the 1st Rate plans; is that correct?

A. Yes.

Q. What is included in the 1st Rate plans?

A. Would you like me to read this?

Q. You can read it or you can tell me from

your own knowledge as the general manager. Either way.

A. Okay. Just have different rates for different amounts of long distance minutes at a certain price.

Q. So these are plans that include both local and long distance service, or are they just long distance?

A. Long distance. The first one includes voice mail, I guess.

Q. Is there anything on that page that says that it's offered -- that these plans are offered by any company other than North Dakota Telephone?

A. I don't believe it does.

MR. HARRINGTON: I'd like to offer this for admission.

JUDGE WAHL: Mr. Negaard.

MR. NEGAARD: Your Honor, I'm not going to belabor the point. If I could just have a standing objection based on your earlier order, Your Honor, that's all I want.

JUDGE WAHL: You may, but with the understanding, Mr. Negaard, you should not hesitate to make your record. Exhibit P16 is received. The objection is overruled. Exhibit P16 is received.

Q. (MR. HARRINGTON CONTINUING) I'd like to move on to one of the other claims you make concerning the notion of a level playing field, and on page 10 of your testimony, and this is at lines 8 through 12, you discuss the requirement that NDTC provide notice of price changes.

A. I haven't found it, but I know what you're talking about.

Q. I'll give you a moment to take a look at it.

A. Page what?

Q. Page 10, lines -- the question is line 6, the response goes through line 12.

A. Okay.

Q. You're referring to the statutory requirements that your company provide -- I think it's 20 days notice on price increases; is that correct? You just understand that you're required by law to provide those notices?

A. To the Commission?

Q. To the Commission.

A. On our regulated services?

Q. Right.

A. I don't know that it's 20 days.

Q. Okay. That's fine. Now, that doesn't

apply to your Internet service, does it?

A. No.

Q. You don't believe -- do you believe it will apply to your video service?

A. No.

Q. Does it apply to your wireless resale service?

A. No.

JUDGE WAHL: Mr. Harrington, the question and the answer was really not clear for the record. You don't believe that it will apply to your video service and the answer was no?

MR. HARRINGTON: No. That's right.

Q. (MR. HARRINGTON CONTINUING) You don't believe that the requirement you provide notice will apply to your video services?

A. It's not regulated.

Q. And the same thing is true of your wireless services that you offered by resale and your Internet service?

A. Yes.

Q. So you can change the prices on any of those services without notice to anyone except, of course, your customer?

A. That's the way we understand the tariff,

yes.

Q. And can you bundle those unregulated services with your regulated services?

A. We could.

Q. And one more question in this area. Are you aware that Midcontinent also is subject to the requirement to provide notice of its price changes?

A. To?

Q. Notice of its price changes for regulated services.

A. No.

Q. I'd like to turn to North Dakota Telephone Company's plans to enter the video market. When did you start considering entering the video market?

A. I think my testimony states that we started looking at replacing our facilities in Devils Lake because they were old and depreciated out, and I think in 2004 we started looking at a way to either do that by copper or video since we were going to do it anyway.

Q. That was about when in 2004? The first part of the year, spring, summer, fall?

A. I would say fall, probably. I just don't recall.

Q. Back to your copper plant. It's depreciated. It's still functional, though; right? Telephone service still works in Devils Lake?

A. Yes.

Q. And you're providing DSL over that plant now, aren't you?

A. Mm-hmm. Yes, we are.

Q. So you don't actually need to upgrade to continue to provide reliable phone service or high-speed Internet to your customers?

A. Well, we wouldn't have had to, but, as I said, the plant is aging, probably would cause some future problems, and we just made a decision that fiber would be the way to go because it has more capacity and it's less maintenance for the future.

Q. But today everything works fine?

A. Today it does.

Q. Now, your testimony says on page 9, and this is line 4, that you finalized your video upgrade -- I'm sorry -- your fiber upgrade plans in early 2005.

A. Which page again? Excuse me.

Q. Page 9, line 4.

A. Yes.

Q. Can you be a little more precise?

A. Line 4?

Q. Yes.

A. I think we studied the difference between fiber and copper and then plans were finalized in early 2005. It was probably the February or March time frame that the board approved to go ahead with the fiber project.

Q. Okay. Now, during your deposition you mentioned a study that was done on the question of whether NDTC should provide video programming. And before I go any further, let me say, so Mr. Negaard is aware of this, I do not intend to ask any questions at all about the particular data in the study. I know that was objected to during the deposition and we're not going to go there. But I want to talk to you a little bit about that study.

A. Where is --

Q. You talk about it starting -- actually it's discussed starting on page 11, going to page 12 of your deposition.

A. 11 and 12.

Q. Mr. Negaard indicates during the deposition that such a study was prepared and indicates it's not going to be made available, and

we're not asking for it now, but I have a couple questions about it.

A. Okay. I haven't found it yet.

Q. Okay. It's -- the discussion starts on page 11, line 21 of your deposition and continues on to page 12, line 13 is the part that's actually relevant. There's further discussion of why it won't be made available, but that's not what I'm asking about.

A. Other than we felt it was highly proprietary, is that what you mean?

Q. We're not going to ask you about the numbers in the study.

A. Okay.

Q. But I'd like to know when it was started. When did you commission the study?

A. Well, I think I previously stated that it was done sometime in the fall, so I suppose in the -- I don't know exactly sure when.

Q. Okay.

A. Sometime earlier that year.

Q. And when was that study completed? Was it completed prior to the decision in February or March of 2005 to do the upgrade?

A. Well, we did the study in order to take it

to the board to get it approved, so, yes, I guess.

Q. And did that study conclude that it was desirable for NDTC to enter the video market?

A. No.

Q. It concluded it was not desirable?

A. It didn't conclude that. It just concluded that we decided to go with the fiber rather than the copper cable.

Q. Now, the study is described in the deposition as concerning whether or not you should be involved in the video market in competition with Midcontinent. You're saying that the description in the deposition is incorrect?

A. We're talking again about that same page?

Q. Yes. Let me read to you. I think it would be helpful.

A. Why don't you point it out to me.

Q. This is page 11, line 21, question by Mr. Durick, "The fifth item is a copy of any studies done by North Dakota Telephone Company or consultants on the subject of NDTC providing video programming in competition with Midcontinent." Then I'm going to skip to line 6 on page 12 because the rest of it's not that relevant. Mr. Negaard: "There is -- there is such a study." So my

question is, are you telling me that that study that's referred to there concluded it was not desirable to enter video or that it was desirable to enter video?

A. Well, I'm confused. There must be two different studies. I think the study we're talking about there is what the effect on the company would be if they lost 10 percent of their access lines to a facilities-based service. The video -- the study here was just to --

Q. Mr. Dircks, I believe that that's not -- that there were in fact two studies and you're correct in that regard. But I would refer you to just before that, it's page 10 on the copy I have, but in fact I think it's probably going to be -- it may be page 10 on the copy you have, as well. And Mr. Negaard says there's a study on facilities-based competition, not on wholesale resale and we believe it's highly proprietary, confidential. So during your deposition there were two different studies discussed, is that right, and one was on -- one of those studies, as you've just said, was on the effect of facilities-based competition?

A. Right.

Q. The second study was on competition in video programming provided by your company with Midcontinent; is that correct?

A. Yes, I guess it is.

Q. That second study you just told me was completed before the decision to do the fiber upgrade. That's correct?

A. Say it again.

Q. You just told me about five minutes ago that the study on video programming, the second study, was completed prior to the decision to do the upgrade with fiber. Is that correct?

A. I guess the study was done to determine which way we were going to go as far as rebuilding our facilities in Devils Lake.

Q. And you concluded that you were going to do fiber?

A. We talked about it, yes.

Q. You're doing it now; right?

A. No.

Q. You're building fiber now?

A. Oh, we're building fiber now, yes.

Q. Okay. So in conjunction with the conclusion you were going to go to fiber, you had the study that was done on the question of video

competition in Devils Lake? Yes?

MR. NEGAARD: Your Honor, if I could, the language in the deposition is my language. I think part of the confusion here is I'm not intimately familiar with this study, Your Honor. It was at a deposition. I made an objection about that study. I'm not sure that there were two studies. I believe that the study is the same study and that was referenced in the deposition, and I think that the witness is referring to two studies, one on the effect of a facilities-based competitor, the other one being the study whether or not they should replace their copper lines with fiber. And I think that's where some of the confusion is. I think at the deposition I referenced and objected twice. I think it's the same study that was referenced.

MR. HARRINGTON: Mr. Negaard, that's interesting. Not entirely clear to me how that confusion is possible in light of what the deposition says, but I'm going to move on.

JUDGE WAHL: Well, it's not at all clear to me, either, and I'm sure to nobody else, Mr. Harrington, so let's --

MR. HARRINGTON: I'm going to move on, Your Honor.

JUDGE WAHL: Well, either that or let's get to the issue that you're -- the question that you're seeking, the witness either knows the answer or he doesn't and let's forget about which study it is.

MR. HARRINGTON: I'm not going to ask about the study anymore.

JUDGE WAHL: All right. Fair enough.

Q. (MR. HARRINGTON CONTINUING) I'm going to move on and just ask a question as it relates to the timing of all of that, which is, was the ability to offer video over the fiber upgrade part of the decision process in February or March of last year?

A. It carried some weight, yes.

Q. So the board concluded that it was desirable to be able to offer video in March or February of 2005?

A. We were building our infrastructure so that we could offer video sometime in the future. We made that decision, yes.

Q. Let's talk about the upgrade, itself, now. What's the capacity of your upgraded plant going to be compared to current capacity besides much more?

A. I'm not a technical expert. I don't know if I could answer that. I think everyone knows the band width has much more -- or copper has much more band width and capacity than copper does.

Q. You meant fiber has more capacity?

A. Or fiber, yes. Excuse me.

Q. How many video channels do you think you will be able to offer over that, ballpark?

A. I don't know.

Q. More than 50?

A. I have no idea.

Q. Do you have a sense of what percentage of your capacity will be required for telephone service?

A. No, I don't.

Q. How about for high-speed Internet?

A. Again, I'm relying on technical experts that work for our company --

Q. Okay.

A. -- to say that -- make recommendations as that's the right decision.

Q. What technical steps do you know of that you'll have to take to offer video once you've built the fiber upgrade?

A. Basically I just know that we have to

first obtain a franchise from the city and then enter into some agreements with the content providers.

Q. Mm-hmm.

A. And there's probably numerous other things that I'm not aware of.

Q. The fiber, itself, won't have to be changed in any way once you decide to offer video, will it?

A. The fiber won't, no.

Q. When you were making your purchase decisions to decide what to buy to upgrade the plant to fiber, you included the -- did you include the possibility of providing video as one of your factors in those decisions?

A. I think you just asked me that. Would you say that again?

Q. When you were deciding what to buy, specifically when you went out to make contracts with suppliers, was the ability to offer video part of what you asked about when you were talking to those suppliers?

A. For just the fiber?

Q. For the upgrade.

A. To actually put in fiber and cut it over,

there wouldn't need to be any other equipment involved other than what the customer currently has on the side of their house, and, yes, we did go out and talk to providers about some of the equipment necessary to provide video.

Q. So, for instance, when you talked to Allied Telesyn who, I believe, is your supplier, you talked to them about whether they would be able to -- whether the facilities you bought from them to put in your network would be able to provide video?

A. Yes.

Q. I would like to talk a little bit about the cost of the fiber upgrade. You estimated during your deposition the cost would be about 11.5 million dollars. Is that still correct?

A. Actually, it came in a little lower than that.

Q. That's good.

A. It's close, yes.

Q. And that's to upgrade all of the Devils Lake area and some outlying areas; is that right?

A. Yes.

Q. But the Devils Lake exchange essentially?

A. Yes.

Q. How are you paying for it again?
A. Part of it we're financing internally and the rest we're borrowing from CoBank.
Q. I'm going to ask some questions about how you're allocating the cost of this fiber upgrade on your books. What percentage of the upgrade are you going to allocate -- have you allocated to telephone service?
A. You know, I'm not a real expert on finances, but if it's just for regulated telephone service, it would be a hundred percent allocated.
Q. But the question is, what percentage of your fiber upgrade are you allocating to telephone service?
A. I don't know.
Q. As the general manager, are you involved in decisions about cost allocation and spending money?
A. Yes.
Q. Are you responsible for making sure the company is appropriately profitable and understands what its costs and services it offers are?
A. Should be, yes.
Q. And you don't know what percentage of the cost is being allocated to telephone service?

A. Not for sure, no.

Q. Was that allocation done prior to the time that you started the upgrade?

A. No, I don't believe so.

Q. Is the same thing true that you do not know what percentage of those costs have been allocated to high-speed Internet?

A. I just don't know. I can find out. I'm just not sure.

Q. That's all right. I'd like to talk a little bit about the part of your testimony where you discuss public statements on your entry into video. And for this purpose I would like to refer you to -- let me get the exhibit number correctly -- P4. Do you have a copy of Plaintiff's 4 up there -- Petitioner's 4? While we're at it, we should get 3 and 5, as well, because we'll be referring to them a little later.

JUDGE WAHL: That's Fischer's direct.

MR. HARRINGTON: I'm sorry. Maybe I have the numbers wrong. I'm sorry. It's only P3 and P4.

Q. (MR. HARRINGTON CONTINUING) Now, during your testimony you indicated that there had been no public statements from your company indicating you

were offering video prior to your testimony. Is that correct? Is that correct?

A. Yes.

Q. I'd like you to turn to the first page of Exhibit P4.

A. Mm-hmm.

Q. And there's an article with the headline, "Company keeps equalization plan, cans long-distance offer." I'd like you to read the sentence that starts at the very bottom of that article and it continues on to the next page. Would you read it out loud, please?

A. "Dircks said equalizing"? --

Q. Yes.

A. -- "rates will even enable the company to bundle services and compete with cable providers".

Q. What did you mean when you said that?

A. I meant that our rates were all different at one time and that's why we went through the rate equalization.

Q. Right. What about the part where you say you'll enable the company to bundle services and compete with cable providers? What does that refer to?

A. I guess in that statement I was referring

to local service and high-speed Internet, bundling those together.

Q. I see. Do you think it's effective -- in light of your other testimony, do you think it's effective for you to compete with cable operators just with telephone and high-speed Internet?

A. I guess I don't have any experience on that.

Q. Okay. I'd like you to turn now to what is the fourth page of Exhibit P4, which is the web page, press release from Allied Telesyn.

A. Mm-hmm.

Q. And I would like you to read the first sentence up to where it says "Devils Lake exchange," please, out loud.

A. First sentence starting with Allied Telesyn?

Q. Yes.

A. "Allied Telesyn, a global provider of secure Ethernet/IP access solutions and an industry leader in the deployment of IP Triple Play networks over copper and fiber infrastructure, today announced that its IP Triple Play solution has been chosen by North Dakota Telephone Company for a multi" -- is that far enough?

Q. I was going to have you read up to Devils Lake.

A. Okay. -- "for a multi-million dollar fiber-to-the-premise overbuild of its Devils Lake exchange."

Q. In that sentence, the term "Triple Play," what does that refer to?

A. Triple Play in the industry standard, I believe, is voice, video, and data.

Q. Is that what you said in your testimony? Is that what you said in your testimony, Mr. Dircks?

A. Which page are you looking at?

Q. Let's look at page 4, lines 2 to 3.

A. I did say Triple Play, yes.

Q. And what did you describe the Triple Play as in your testimony?

A. I don't see where I did describe it.

Q. Why don't you read line 3 through the word "video."

A. "Triple play of voice, information, and video."

Q. So that was the understanding of Triple Play that you had when you wrote your testimony? Yes?

A. Yes.

Q. All right. I'd like you to turn now in that exhibit to the second to the last page.

A. P4?

Q. Of P4, yes. And I'd like you to read the second sentence of -- let me ask first, this is a letter that you sent to customers where you're starting to do your fiber rebuild to tell them that you plan to put fiber on their premises; is that correct?

A. Looks like it, yes.

Q. And you didn't actually sign it, but your name is at the bottom?

A. Yes.

Q. I'd like you to read the second sentence of the second first full paragraph, please, begins "By converting."

A. The second sentence of the --

Q. The paragraph begins, "NDTC's fiber to the premise."

A. Mm-hmm.

Q. I would like you to read the second sentence of that paragraph, please.

A. "By converting to this type of network, NDTC will be able to deliver telephone, Internet

and new products in the future all on one fiber optic line."

Q. Right. What new products?

A. Video would be one of them.

Q. All right. I'd like you to turn to the last page of that exhibit, which is the ad for the account executive job, and I'd like you to read the second sentence of that ad, please.

A. Starting with "a substantial degree"?

Q. A substantial degree.

A. "A substantial degree of knowledge and experience in all aspects of telephony with emphasis in voice, data, IP" --

Q. Continue.

A. -- "computer based networking, video, surveillance and security cameras, et cetera, is desired."

Q. So video was part of the job description in the ad for that job?

A. It's something we had in there as desired.

Q. Okay.

A. I don't think it's any secret that we're not going to be offering video. Hopefully when you hire someone, it will be for quite a number of

years.

Q. When was that ad placed?

A. July 5th, 2005, it says.

Q. That's the closing date; right? That's the date by which you had to have the resumes in?

A. Yes.

Q. In your testimony you attach to that a job description that is dated -- was approved in May of 2005. So would the ad have been run roughly contemporaneously with the approval of the job description?

A. I'm going to have to look at the description because --

Q. Because if you look at the top of the job description, it has a prepared date and an approved date and they're both May '05.

A. Do I have this in here?

Q. It's in your testimony, Mr. Dircks. Are those dates accurate?

A. Apparently it looks like we revised it and then it was approved that day, yeah, 5-5.

Q. Okay. I'd also like to ask you about other ways you might have of getting into video service. Has North Dakota Telephone considered reselling DirecTV?

A. We've looked at it, yes.
Q. But decided not to?
A. Haven't pursued it, no.
Q. How about EchoStar DISH Network?
A. No.
Q. Do you need anybody's permission to do that outside of DirecTV or EchoStar?
A. No.
Q. You don't need a franchise?
A. I don't believe you do with those.
Q. So if you wanted to make video available to your customers today via those mechanisms, you could?
A. We could, yes.
Q. I'd like to move on to Midcontinent's request to you for resale in May of last year, and that is the other exhibit that you were given, which is P3.
A. Mm-hmm.
Q. You indicate in your testimony that you received that letter. That's correct?
A. Yes.
Q. The enclosure in that letter was a draft resale agreement, wasn't it?
A. Yes.

Q. Are you aware that the agreement was an agreement for wholesale resale?

A. That's the agreement that's attached here?

Q. Yes.

A. I think I probably did, yes.

Q. Okay. Did you ever read the agreement?

A. I looked through it.

Q. Not closely?

A. No.

JUDGE WAHL: The answer is no?

THE WITNESS: No.

Q. (MR. HARRINGTON CONTINUING) Did anyone else at North Dakota Telephone look at it closely, to your knowledge?

A. I don't believe so.

Q. Did North Dakota Telephone ever send a substantive response to that agreement to Midcontinent saying we don't like this part, we do like this part, or something like that?

A. We sent a letter of clarification.

Q. Now, that letter said you weren't sure if Midcontinent wanted wholesale or retail resale; right?

A. Based on the fact that we have the rural

exemption.

Q. And yet the agreement is a wholesale agreement, isn't it?

A. Yes.

Q. Okay. Has NDTC at any point identified any parts of this agreement that it finds objectionable?

A. Never got that far with it.

Q. Now, your other witness in his reply testimony, Mr. Meredith, said Midcontinent has never requested retail resale. That's on page 10 of his testimony. How is that consistent with your testimony?

A. I'm going to have to look at his testimony because I don't know.

Q. Do you have a copy?

A. I don't think so.

Q. I would give you mine except that it has markings that I prefer not to show you.

JUDGE WAHL: I have a copy, Mr. Harrington.

MR. HARRINGTON: Thank you.

MR. DURICK: I've got one here, too, Judge.

JUDGE WAHL: Whichever.

MR. HARRINGTON: This is on page 10, lines 3 through 4.

MR. NEGAARD: Whose testimony are we reviewing?

MR. HARRINGTON: Mr. Meredith's.

MR. NEGAARD: Your Honor --

MR. HARRINGTON: Are you asking whether it's appropriate for me to cross on testimony that's not been admitted? We'll stipulate we are not going to object to that testimony.

MR. NEGAARD: If you want to ask Mr. Meredith about his testimony, I believe, Your Honor, that that would be more appropriate to ask Mr. Meredith.

JUDGE WAHL: I don't think that's the question, Mr. Negaard.

MR. HARRINGTON: I'm asking --

JUDGE WAHL: I understand. Proceed.

Q. (MR. HARRINGTON CONTINUING) So, Mr. Dircks, on page 10 of his testimony, Mr. Meredith said Midcontinent has never requested retail resale, on lines 3 and 4. How is that consistent with your testimony where it appears that you thought that Midcontinent was asking for retail resale?

A. Well, apparently wholesale. If I understand, retail is the one that's not in the discount.

Q. That's correct.

A. That's what I mean.

Q. I want to turn to the impact of offering resale on NDTC for a moment. During your deposition you indicated that there were no technical issues that would prevent NDTC from offering wholesale resale; is that correct?

A. That's correct.

Q. So once the rural exemption is lifted, all that's needed prior to implementation is an agreement between NDTC and Midcontinent?

A. Yes, to the best of my knowledge.

Q. I'd also like to move on -- I'd now like to move on to the benefits of competition. This is the last thing I'll be asking you about unless something surprises me.

In your testimony you indicate that NDTC provides excellent customer service and that there have been very few complaints against your company. That's on page 1 -- I'm sorry -- page 4, I believe.

A. Okay.

Q. Do you know how many complaints were filed against your company at the North Dakota Commission from September 2004 through August 2005?

A. I did check, and I think within the last five years we had 15.

Q. Would you be surprised to know that the correct number is 94 for that one year?

A. I would be surprised. I'm talking about service-related issues.

Q. Oh, okay. So what would the other complaints be about? Would they have been about your rate increase?

A. They could have been.

Q. So if you think -- if customers were concerned enough to complain about rate increases, do you think they might find competition beneficial?

A. I'm not saying that competition isn't good. I've had nothing against that. I'm not afraid of it. We haven't raised our rates since 1984.

Q. Mr. Dircks, do you think your customers would find competition beneficial?

A. I think they would, yes.

Q. Do you think competition helps make you

more responsive to customer needs?

A. I'll just answer that by saying, again, I'm not against competition. I think we're very responsive to our customers' needs now.

Q. I understand, Mr. Dircks. I would like you, though, to answer the question.

A. Say it again.

Q. Do you think competition makes you more responsive to customer needs?

A. I think it could, yes.

Q. Do you think choice is better for customers?

A. Choice is good.

Q. To your knowledge, how did choice affect long distance customers in the prices they pay?

A. It's pretty common knowledge that it reduced the cost of long distance once the competition was introduced.

MR. HARRINGTON: Thank you. Your Honor, I have nothing further.

JUDGE WAHL: Mr. Binek.

MR. BINEK: An awful lot has been covered here.

COMMISSIONER WEFALD: May we take a five-minute break?

JUDGE WAHL: We may. We'll be in recess for --

THE WITNESS: Why don't you let me finish first.

JUDGE WAHL: -- at least five minutes. We won't start without you, Commissioner Wefald.

COMMISSIONER WEFALD: All right. Thank you.

(Recess taken at 2:37 p.m. to 2:48 p.m.)

JUDGE WAHL: You're on, Mr. Binek.

MR. BINEK: Thank you. Hopefully I just have a few questions.

EXAMINATION

BY MR. BINEK:

Q. I'm going to address the issues that were set forth in the Commission's hearing notice. First of all, the first issue is whether the request of Midcontinent is unduly economically burdensome. And I just would like clarification as to what your position is on that issue. Do you believe that it's economically burdensome for the request to be granted?

A. I can't argue that it's economically burdensome.

Q. So it is not economically burdensome?

A. Not now, but --

Q. Okay. Is the request of Midcontinent technically feasible?

A. I believe it is, yes.

Q. And the third one is whether the request of Midcontinent is consistent with 47 USC Section 254, which is the universal service part of it. Do you believe that if the request is granted, that there will be any major effect on universal service?

A. Should not be any short-term effect, no.

Q. Now, getting to -- the fourth issue is the implementation schedule. Are you familiar with what other states have done regarding implementation schedules when a rural exemption has been lifted?

A. No, I'm not.

Q. Based on my reading of the testimony in this case and the testimony that's been given here, it appeared that -- to me that the concerns or objections are essentially limited to establishing a level playing field for competitors both for telecommunications and for video. Is that your position?

A. Yeah. We'd like to have a level playing

field, yes.

Q. If the Commission were to deny Midcontinent's request for lifting the rural exemption, that would mean basically that resale of telecommunications at a wholesale discount would not be available to Midcontinent until you began offering video; is that correct?

A. That's how I understand it, yes.

Q. At the point that you begin offering video, of course, your exemption no longer exists. How long would you say it would take for Midcontinent to begin providing telecommunications service -- resale service at a wholesale discount from your company?

A. Now, you're saying if the rural exemption --

Q. Assume that you have started providing video service so your rural exemption no longer exists.

A. Mm-hmm.

Q. At that point you would not be able to deny Midcontinent the right to obtain resale --

A. At a wholesale --

Q. -- services at a wholesale level.

A. Right.

Q. How long would it take to implement that process of having them be able to receive those services from you and begin offering telecommunications service in the Devils Lake exchange?

A. I'm assuming that would be dependent on when an agreement was reached on an interconnection agreement.

Q. Do you have any idea how long that would take?

A. No, not really, I don't.

Q. Midcontinent has suggested a 90-day time period. Do you think that's realistic?

A. I don't see how it could be. There's a lot of issues to resolve there. I'm not an expert on what those would be, but just getting everybody together for this hearing took quite some time.

Q. So if the rural exemption were not lifted and you began offering video service, at that point doesn't North Dakota Telephone Company have the advantage?

A. They would have, but I'm saying that to have a level playing field, that we should be able to offer that both at the same time.

Q. How is that going to happen? I guess

that's what I'm trying to figure out. How can you get both companies providing the same thing at the same time?

A. Just off the surface, we'd have to work together to make sure that an interconnection agreement was in place so we could both offer that service at the same time.

MR. BINEK: I have no further questions.

JUDGE WAHL: Questions by the Commissioners. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:

Q. Just one. On the universal service side, I think you responded to Mr. Binek regarding universal service support and the impact of losing voice customers to Midcontinent potentially would have. As you understand it, is universal service support calculated for North Dakota Tel as such that if you lost a line to a customer to a Midcontinent or any competitor, that when you recalculate that line next year for purposes of high cost support, that you just reweight the average cost per line, right, so that in effect is North Dakota Tel made whole on the case when you lose a customer and the support goes away? Do you

understand what I'm asking? So that all you do is you recalculate the average cost per line?

A. I believe that's the way it works, yeah. The only way we would really be affected is if we lost it to a facility-based, then we would lose the whole thing, of course.

Q. A facilities-based ETC?

A. Yeah.

COMMISSIONER CLARK: Okay. Thank you.

JUDGE WAHL: Commissioner Wefald, any questions?

COMMISSIONER WEFALD: I have no questions at this time.

JUDGE WAHL: Commissioner Cramer.

EXAMINATION

BY COMMISSIONER CRAMER:

Q. I have a couple, and forgive me if they have been answered and I know that some have, so I'm been trying to keep track of that.

Getting back to what, I think, Mr. Binek was asking, and I'm not sure I got it real clear, what would prevent North Dakota Telephone Company from offering triple play bundle or triple play services as soon as you're able?

A. That's what we plan on doing as soon as

we're able.

Q. But is that in a level playing field then with the competition, because they're going to have to, as I understand it, go through what you and -- you have testified would be a long process to be able to offer resale telecommunications service. So if a level playing field is the basis of your position, that doesn't seem level to me.

A. Well, however it's worked out. I guess what I mean by a level playing field is that we both would be able to offer that service at the same time.

Q. Okay.

A. And I'm not sure how all that would work out.

Q. So you're saying, as I understand it and if I understand your testimony, if all goes according to plan and the buildout works, basically a year from now or a year from February, you'll be able to offer video service?

A. If things go as planned, yes.

Q. If everything goes as planned. Well, then would you be -- is there a possibility, I guess, or would you be willing to work with Midcontinent that would guarantee that on February 1st everybody

would be able to offer everything? In other words, as soon as you're ready to go, they would be ready to go and that we wouldn't have another situation where suddenly we would be talking about 90 days and then 90 days turns into all the nightmares we have been hearing about today? In other words, we have a year to be prepared for this, depending on, of course, the Commission's decision.

A. Yes.

Q. Evidently you don't agree, but -- maybe this is a better way to put it. Do you agree with Mr. Gates' presumption that calculating a resale rate agreement should not be complicated? You know, he testified that it shouldn't be that complicated. I hear you saying it could be very complicated. Which is --

A. Again, this is all new to me and I've never done it before, but I guess I believe it could be complicated or it could be worked out.

Q. Has North Dakota Telephone been preparing for competition? Would it be safe to say you have been preparing for competition?

A. Yes.

Q. Certainly the recent decision by this Commission on your rebalancing rates was -- largely

your arguments were you want to be prepared for competition?

A. Well, we have competition today and we know that Midco is going to be offering telephone service, both facility-based and otherwise, and we have to prepare for the future.

Q. Just one other thing then. Mr. Binek went down the issues that we have to consider in this matter and, if I heard you right, it almost sounds like they're settled -- I mean, unless I heard something -- unless there's something that I'm not seeing, but you said that the request by Midcontinent is not unduly burdensome -- economically burdensome, that the request is technically feasible and that the request is consistent with 47 USC 254, basically the universal service.

A. Yes, sir.

Q. Then the only outstanding issue would be the implementation schedule for compliance, which we can start working on it right now, or am I missing something? I mean, technically there's no reason we couldn't do what Midcontinent is asking right now other than, as I understand you to say, other than it just doesn't create a level playing

field?

A. You know, it's technically feasible to do it, but --

Q. And it's not economically burdensome to North Dakota Telephone?

A. At this point in time, no, it isn't.

COMMISSIONER CRAMER: That's all I have.

JUDGE WAHL: Mr. Negaard, followup.

MR. NEGAARD: Okay. Just a couple questions.

REDIRECT EXAMINATION

BY MR. NEGAARD:

Q. The discussion about the person you hired, did you hire someone to fill that position?

A. Yeah. It was October, I think, they were hired.

Q. Okay.

A. Or November. I'm not sure.

Q. Is that person out selling video today?

A. No.

Q. The discussion about the USF funds, some of those dollars could go away, as I understand it, if there were a facilities-based competitor?

A. That's correct.

Q. And the money that's received from that

USF funding, is that for money that your company has invested in serving as an essential telecommunications carrier?

A. The way I understand it, yes.

Q. Is that from the investment that you've made in the system that you have and the business operations that you conduct as an ETC?

A. Yes.

MR. NEGAARD: That's all I have. Thank you.

JUDGE WAHL: Mr. Harrington, anything further?

MR. HARRINGTON: Just a couple.

CROSS-EXAMINATION

BY MR. HARRINGTON:

Q. Mr. Dircks, you just testified that some of the universal service support could go away. Can you identify what support you're referring to?

A. I was referring to a facility-based.

Q. I'm sorry. I may not have been clear. During cross-examination you identified two sources of support from the FCC, one was interstate common line support and the other was local switching support. Is one of those vulnerable particularly, or both of them, or is there some other place you

would lose universal service funding?

A. Not that I know of. On a facility-based loss of a customer, I think we lose all that, if I'm not mistaken.

MR. HARRINGTON: Thank you. No further questions.

JUDGE WAHL: Anything further, Mr. Binek?

FURTHER EXAMINATION

BY MR. BINEK:

Q. Just a clarification following up here. We're not talking about facility-based competition here, are we?

A. No.

Q. So you wouldn't lose any universal service funds --

A. No.

Q. -- from competition from Midcontinent at this time; is that right?

A. That's correct, I believe, yes.

MR. BINEK: Thank you.

JUDGE WAHL: Anything further, Mr. Binek?

MR. BINEK: No.

JUDGE WAHL: Any further questions from the Commissioners? If not, Mr. Negaard, anything further for this witness?

MR. NEGAARD: Not at this time, no.
JUDGE WAHL: Thank you, Mr. Dircks.
THE WITNESS: You're welcome.
JUDGE WAHL: Mr. Negaard.
MR. NEGAARD: Your Honor, Mr. Moorman will take the next witness.
JUDGE WAHL: All right. Mr. Meredith, I believe.
MR. MEREDITH: Yes, sir.
JUDGE WAHL: As you heard me advise previous witnesses, your testimony is required to be under oath and I'm required by law to advise you regarding perjury before administering the oath. Perjury is a false statement of material fact which you do not believe to be true; in other words, generally speaking, a lie. In North Dakota perjury is a Class C felony, punishable by a fine up to $5,000, imprisonment for a period of up to five years, or both. Will you raise your right hand, please.
(Witness sworn.)
JUDGE WAHL: Mr. Moorman.
MR. MOORMAN: Thank you, Your Honor.

DOUGLAS DUNCAN MEREDITH,

being first duly sworn, was examined and testified

as follows:

DIRECT EXAMINATION

BY MR. MOORMAN:

Q. Would you please state your name, title and business address for the record?

A. Yes. My full name is Douglas Duncan Meredith. My title is director of economics and policy for a consulting firm named John Staurulakis, Incorporated -- that's S-t-a-u-r-u-l-a-k-i-s -- headquartered in Greenbelt, Maryland.

Q. And on whose behalf are you testifying today?

A. North Dakota Telephone Company.

Q. Are you the same Mr. Meredith that had caused to be filed prefiled testimony on January 9th, 2006, in this proceeding consisting of 17 pages of testimony and 16 pages of attachments?

A. Yes.

MR. MOORMAN: Your Honor, I would like to have designated as Exhibit, I believe, R6 his prefiled testimony for identification purposes.

JUDGE WAHL: It is, pursuant to stipulation of counsel.

Q. (MR. MOORMAN CONTINUING) Do you have any

corrections to that prefiled testimony?

A. Yes, I have one correction on page 8, line 23. The sentence that begins in that line says, "These procedures are followed by state commissions and the FCC," and I need to strike the words "and the FCC." So it reads, "These procedures are followed by state commissions in resolving."

Q. With that correction, if I ask you the same questions today, would your answers be the same?

A. Yes.

Q. Do you accept this testimony as your testimony in this proceeding?

COMMISSIONER WEFALD: I'm sorry. I can't find the place. Is this the January 9th reply testimony?

MR. MOORMAN: Yes.

COMMISSIONER WEFALD: Was it on page 23?

COMMISSIONER CLARK: Page 8.

THE WITNESS: Page 8.

COMMISSIONER WEFALD: Page 8, line 23. Thank you.

MR. MOORMAN: The last three words on that line.

COMMISSIONER WEFALD: Okay. Thank you.

MR. BINEK: What should those words be that were deleted?

MR. MOORMAN: Strike it.

MR. NEGAARD: Strike the words "and the FCC."

Q. (MR. MOORMAN CONTINUING) Mr. Meredith, again, with that correction, if I asked you the same questions today, would your answers be the same?

A. Yes.

Q. And do you accept this testimony as your testimony in this proceeding?

A. Yes.

MR. MOORMAN: Your Honor, pursuant to stipulation, I would like to move the prefiled testimony, R6, which was previously, I believe, docket entry 55, into evidence.

JUDGE WAHL: It is received pursuant to the stipulation of counsel.

Q. (MR. MOORMAN CONTINUING) Mr. Meredith, you also had several attachments which have been preliminarily marked as exhibits to your testimony. I believe R7 consists of six pages from Cornell Law School, U.S. Code collection; is that

correct?

A. Yes.

Q. R8, I believe, is a five-page -- five pages, U.S. Code collection, Section 252 procedures?

A. Yes.

Q. R9, I believe, consists of two pages dealing with the North Dakota Century Code, Title 49, public utilities?

A. Yes.

Q. I believe R10 is two pages consisting of excerpts from the Code of Federal Regulations, Federal Communications Commission, in the bottom right-hand corner a notation Section 51.611 and continuing for two pages?

A. Yes.

Q. And, finally, if I haven't mistaken the number of exhibits, we have also an exhibit consisting of one page, 12/12/2005 Midcontinent Communications to Develop Family Friendly Choice?

A. Yes, I had filed that, but I do not have that marked as a marked exhibit in front of me.

Q. Mr. Meredith, I just handed to you something preliminarily marked as R11. Is that the document that I previously referred to?

A. Yes.
Q. And that is entitled?
A. Midcontinent Communications to Develop Family Friendly Choice.
Q. And that was one of the exhibit attachments that were originally included in your prefiled testimony?
A. Yes.
MR. MOORMAN: Your Honor, I would like to move Exhibits, I believe, R7 through R11 into evidence.
JUDGE WAHL: Mr. Durick or Mr. Harrington.
MR. HARRINGTON: With the understanding that these are identical to the ones filed with the testimony, we have no objection.
JUDGE WAHL: Exhibits R7 through R12, inclusive, are each received.
MR. HARRINGTON: 12 or 11, Your Honor?
JUDGE WAHL: 12. I'm sorry.
COMMISSIONER CRAMER: 11.
JUDGE WAHL: 11.
MR. MOORMAN: Let's just make sure because I may have misstated.
JUDGE WAHL: I thought R12 was the Midco

announcement.

MR. MOORMAN: I believe that's R11.

THE WITNESS: No, that's marked as R11.

JUDGE WAHL: Then I'm mistaken. All right.

MR. MOORMAN: Just with confirmation of counsel, that should consist of the 16 pages of attachments that were included with Mr. Meredith's original testimony prefiled on January 9th, and that's the intent here. If there is some variation, we can clean that up, counsel.

MR. HARRINGTON: Okay.

JUDGE WAHL: Well, but, counsel, for the record, what we have is Exhibits R7 through R11, inclusive.

MR. MOORMAN: Right. And we already admitted R6, I believe.

JUDGE WAHL: Yes. Well, it comes in pursuant to stipulation. So Exhibits R7 through R11, inclusive, are each received.

MR. MOORMAN: Just one moment. Just double-checking.

JUDGE WAHL: Indeed.

MR. MOORMAN: Your Honor, the witness is available for cross-examination.

JUDGE WAHL: All right. Mr. Harrington.

MR. HARRINGTON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HARRINGTON:

Q. Good afternoon, Mr. Meredith.

A. Good afternoon.

Q. I'm J.G. Harrington. I'll be doing the cross-examination for Midcontinent.

A. Nice to meet you.

Q. I want to start with what I think is turning out to be the central issue in this proceeding, which are timing issues, and although I understand that this is probably an assumption you prefer not to make, I'd like you to assume for the moment that the Commission rules against your client and concludes that the rural exemption should be lifted.

A. Okay.

Q. In your testimony you argue that the Commission should adopt an order that starts the clock for interconnection negotiations only after the order is issued; is that correct?

A. Yes.

Q. Is it your view that once that order is issued, that Midcontinent will need to send a new

bona fide request for interconnection negotiations?

A. Yes.

Q. So the clock will only start once Midcontinent sends a request to your client, in your view?

A. Yes. A valid request needs to be received before the clock starts.

Q. Now, therefore, your view that a bona fide request under Section 252 of the Communications Act is different from a bona fide request under Section 251(f); is that right?

A. A bona fide request for Section 251(f) deals with the rural exemption and the lifting of the rural exemption. They are different.

Q. I'd like you to turn then to what has been marked as Exhibit R7 for the moment, and page 4 of 6 in that exhibit.

A. Yes.

Q. Could you read the first sentence of what is (f)(1)(B) on that page?

A. Yes. "(f)(1)(B) states, "State termination of exemption and implementation schedule. The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice

of its request to the State commission."

Q. All right. Now, would you turn to Exhibit R8, which is Section 252 of the Communications Act.

A. Yes.

Q. And I would like you to read the first sentence of Section (a)(1).

A. 252(a)(1) entitled "Agreements arrived through negotiation, (1) Voluntary negotiations. Upon receiving a request for interconnection, services, or network elements pursuant to 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title."

Q. Is it your view that the request described here would also be a request that triggers the period for arbitration under Section 252?

A. The difference is --

Q. This request, the request in 251 -- 252(a)(1), would that also trigger the 270-day period for interconnection arbitrations?

A. A 252 request under 252(a)(1), yes,

triggers this -- the process.

Q. All right. Does 252(a)(1) say Section 251(c) or 251(f) or 251(b), or does it just say Section 251?

A. I'm sorry. 251(a)(1)?

Q. The first sentence of 252(a)(1). When it refers to Section 251, does it say 251(a) or (b) or (c) or (f) or any subsection, or does it just refer to that section?

A. The first clause refers to 251 of this title.

Q. Okay. That's the question I asked you. Thank you.

A. There is a difference between those two.

Q. Between 252?

A. Yeah, an (f)(1) needs to be filed with the state commission --

Q. Right.

A. -- to invoke the rural exemption.

Q. Let's talk about that. The request has to be filed with the Commission after it's made; right? That's what 251(f)(1) says, isn't it?

A. Yes. They shall submit a notice of its request to the state commission, and that particular process doesn't get started until that

submission occurs.

Q. So there's nothing in the text of 251(f) or 252(a)(1) that says that those two requests can't be the same, is there?

A. No. They can be the same --

Q. Ah, okay.

A. -- to the extent that --

Q. Thank you. Thank you.

A. -- to the extent that the state commission --

MR. MOORMAN: Excuse me, Your Honor. Counsel is asking a question. Your Honor said this morning you were trying to get the most developed record possible.

JUDGE WAHL: The objection is sustained. The witness may be allowed to --

THE WITNESS: To the extent that the interconnection agreement is filed with the state commission, then that triggers a 251(f)(1) issue, and if it is not filed with the state commission, it stays over there in 252. So to my way of thinking in this regard, trying to answer your question fully, they have some different characteristics.

Q. (MR. HARRINGTON CONTINUING) Do you know

of any cases at the FCC that say that?

A. That say what?

Q. That there's a difference between the request under 251(f)(1) and the request under 252(a).

A. Are you speaking of the document, itself, that is sent? The document, itself, can be identical.

Q. Is there anything in the FCC's rules that says a 251(f)(1) request cannot also at the same time trigger 252?

A. No, it can't, as long as it's filed with the state commission. That's the only difference between those two.

Q. But you've now testified that, in your view, Midcontinent will need to send a new bona fide request after this Commission acts --

A. Yes.

Q. -- to start the nine-month clock. How is it consistent for you to say that they can be the same request, but that Midcontinent will need to send another one?

A. The request sent to North Dakota Tel by Midcontinent, my understanding is that apparently it was trying to be a 252(a)(1) request and North

Dakota Telephone Company sought clarification as to whether it really meant it to be a 251(a) request or something else because of the issue of whether it was a retail service or a wholesale service. And my understanding is the response to that letter that North Dakota Tel sent was a request by this Commission to review an (f)(1) exemption.

Q. That, however, was not the question. The question was, how is it consistent -- how are the two positions you have taken here about what the meaning of the law is consistent? That is, you have said at one point that they are the same request and that a 251(f)(1) request triggers a 270-day period and at another point in your cross-examination you have said that there needs to be a second request following the lifting of the exemption, and my question is, how are those positions consistent as a matter of law?

A. The first request was not technically a valid request because there was a rural exemption that was already in place, and this is consistent with what other state commissions have done. For example, in South Carolina the same issue came up with Horry Telephone Company, and the state commission there said the responsibility -- the

duty to negotiate, the duty to have an interconnection agreement for 251(c) duties is not valid until the rural exemption is removed. They removed the rural exemption and the clock started at the time of that order.

Q. Is there an FCC rule that addresses this topic?

A. No, I do not believe so.

Q. In fact, are there any FCC rules, to your knowledge, that address how the rural exemption must be applied that have not been overturned by a court?

A. No. I believe that's the purview of the state commissions, themselves.

Q. Let's go back to your time frame. I'm going to work on the assumption that, although I believe you are wrong, that you are correct. If you're correct and Midcontinent needs to make a request, that starts the clock for negotiation arbitration; correct?

A. If the rural exemption is removed --

Q. After the rural exemption is lifted in your scenario.

A. Yes.

Q. How long does that give this Commission to

issue an arbitration order?

A. Under 252 --

Q. Yes.

A. -- rules?

Q. Yes.

A. It's a total of up to nine months through the various processes that are established in 252.

Q. Do states always make the 270-day, nine-month limit, or do they miss it sometimes?

A. They -- no, I believe they -- they make it. Sometimes they miss it and the FCC takes the responsibility, so, I'm sorry, sometimes they do miss the 270-day time period.

Q. All right. Once the arbitration order is issued, what's the next step?

A. Once an arbitration order is issued?

Q. Mm-hmm.

A. The state commission reviews that and it gets processed and becomes effective.

Q. Do the parties have to turn the arbitration order into an agreement?

A. Yes, they do.

Q. Do they have to submit the agreement to the Commission?

A. Yes, they do.

Q. How long does the Commission have after the order is submitted to approve -- the agreement is submitted -- I'm sorry -- to approve the order -- approve the agreement? I will get it right.

A. I'm looking for it. It's in (e)(4) of 252, state commission -- I believe it's 90 days, if I'm looking at that particular paragraph correctly.

Q. So 90 days.

A. If the state commission does not act to approve or reject the agreement within 90 days after submission by the parties --

Q. It goes into effect?

A. -- then it goes into effect.

Q. All right.

A. I think that's the right -- it's 252(e)(4).

Q. Okay. Now, once the agreement is approved, the next step is for the parties to implement the terms; is that right?

A. Yes.

Q. Okay. Do you think that parties typically implement the terms of an agreement within a month after it's been approved?

A. It depends on the circumstances. I can't say typically in that scenario. It's all

fact-based.

Q. Is it common for it to be less than a month, in your view?

A. In my experience, it can be done rather quickly. In other instances, it is not done quickly. So it depends really on the facts and the circumstances of the carriers.

Q. So is it common?

A. I don't know.

Q. All right. I'd like to put this time line together to see if you agree with me. Based on your testimony, what you've said is if a commission issues an order February 1st -- I realize that's unlikely, but we'll just use a time line. I realize we'll probably still be briefing on February 1st. If the Commission issues an order on February 1st, Midcontinent needs to make a request, let's just say for argument's sake that it takes until February 4th.

A. Oh, I would expect it to be February 1st, the effective date.

Q. Let's say February 1st. Midcontinent makes the request February 1st. The Commission then -- the process could then take, if the proceeding goes to arbitration, nine months or a

bit more; is that right?

A. That's possible.

Q. On top of that nine months there's a period of time for the parties to put the agreement into written terms?

A. That's what I understood your "plus more" was.

Q. Right. And then after that, as you said, the Commission has up to 90 days to act on the agreement?

A. Yes.

Q. And as you said, after that there's an implementation period where you're unsure of how long it would take, but it would take some period of time?

A. That's all what I described -- what I understood you to say what "plus more" was.

Q. Right. All right. So in your analysis if all the time periods go to the end of the time periods -- and I understand you probably think they don't have to, but if all the time periods go to the end of the time periods, the soonest Midcontinent could be providing resale in your analysis would be about -- a time period which Midcontinent could be providing resale under your

analysis is a year from the date the Commission issues an order; is that correct?

A. Given the numbers that you've just provided, yes.

Q. You provided the nine months; right?

A. The nine months is the maximum time limit --

Q. Right.

A. -- for this Commission to make a determination and arbitration.

Q. You provided the 90-day period under the statute; correct?

A. That is the maximum time provided under the Act for the Commission to act on an approved agreement.

Q. That's correct. But it could be a year or more; is that right?

A. If you maximize the time lines as we've just described, it can be a year.

Q. So that's yes?

A. Yes.

Q. When did your client say that it expects to be in the video business?

A. My understanding is the date in this hearing is February 1st, 2007.

Q. Okay. Now let's say the Commission rules in favor of your client and denies the exemption -- or continues the exemption -- I'm sorry -- denies the request of Midcontinent. As you just stated, your understanding is your client is going to be providing video in February of 2007.

A. Yes.

Q. Using the same time lines, does that mean that Midcontinent might be unable to offer resale in Devils Lake until sometime after February 1st, 2008?

A. No.

Q. Now, you've just testified that the Commission has nine months from the time the request is made and that the Commission has at least -- has up to another 90 days after that --

A. Mm-hmm.

Q. -- which by my calculation is 12 months.

A. Yes.

Q. And that's the maximum period. And you just agreed that would apply if the exemption were lifted, and you're saying it would not apply if the exemption were lifted by the action of NDTC in February of next year?

A. Yes, because you specified the question as

resale, and Midcontinent has the ability to offer retail resale right now out of North Dakota Telephone Company's tariff.

Q. All right. Then let's ask about wholesale resale. The same question. Wouldn't Midcontinent potentially not be able to offer wholesale resale in Devils Lake until February 2008 if your client prevails in this proceeding?

A. Yes.

Q. Are you aware that Midcontinent provided a draft agreement for wholesale resale to NDTC in May?

A. I reviewed it, yes, last fall.

Q. Has your client objected to that agreement in any way?

A. North Dakota Telephone Company at the time that it was given to North Dakota Telephone Company was unclear given its cover letter whether it applied to resale -- retail resale or wholesale resale.

Q. You've read the agreement, though?

A. Yes.

Q. Does the agreement call for wholesale resale?

A. The agreement has a wholesale discount. I

also understand that a lot of times in this industry cover letters don't correspond exactly to what the attachments are, and so that's -- therefore, it was very prudent for the company -- for North Dakota Telephone Company to ask for clarification.

Q. You had no question what the agreement said when you read it?

A. When I read the cover letter, I had lots of questions as to what Midcontinent wanted to do.

Q. When you read the agreement, did you have any doubt what the agreement said?

A. No, because I read it in the context of reading it after a bona fide request for rural exemption was filed by Midcontinent.

Q. Is there anything ambiguous in the agreement, itself?

A. I didn't find anything terribly ambiguous, no.

Q. Let's talk about the discount analysis.

A. Mm-hmm.

Q. In your testimony you criticize the discussion of the FCC's interim rate -- discount rate range that's in Mr. Fischer's testimony.

A. Yes.

Q. Is the range reported in the testimony the same as the range in the FCC's rules?

A. Yes, I believe it is, 17 percent -- at least 17 percent and no more than 25 percent.

Q. Was the rate used in the Midcontinent analysis higher or lower than the bottom end of that range?

A. My understanding is that Midcontinent used Qwest's rate, which was 16 percent and something, so it was lower.

Q. It was lower. Now, when a state adopts interim rates, for instance, under the FCC's rules and those rates turn out to be incorrect, can the state require a true-up?

A. Yes.

Q. States in fact do require true-ups, don't they?

A. I don't know of a case where the interim rates have been used for many, many years, so I'm not sure what states are using them right now.

Q. Let's talk for a moment about the specific rate. As you noted, Mr. Fischer used the Qwest rate as part of his analysis. Do you disagree with that choice?

A. For Qwest, no. It was a voluntarily

negotiated rate that Qwest struck with its competitor.

Q. Do you disagree with that rate for North Dakota Telephone?

A. Oh, yes.

Q. Is it too high?

A. I'm not sure.

Q. Is it too low?

A. I would presume it to be too high based upon my experience in calculating wholesale discounts for scores of rural telephone companies around the country.

Q. Have you performed an analysis for North Dakota Telephone?

A. No, I have not. They don't have a duty to offer wholesale discount.

Q. That was not my question. You have not performed an analysis?

A. I answered no.

Q. So you don't actually know if that number is too high or too low then?

A. That's exactly what I said.

Q. Let's talk a little bit about how the resale pricing standard works. You're familiar with the avoided cost standard under the FCC's

rules?

A. Yes, I am.

Q. I'm going to describe that, and I'm going to ask you if the description is fair, and if it's not fair, I would like you to explain why it's incorrect.

A. Okay.

Q. The standard under the FCC's rules sets the discount by subtracting costs that the incumbent carrier will not incur on resold services from the incumbent carrier's retail rates.

A. Fair.

Q. Now, under those rules, is the incumbent's profit an avoided cost?

A. I'm sorry.

Q. The profit that's included in the incumbent's rates, is that an avoided cost?

A. No.

Q. So the incumbent continues to make the same profit on wholesale resale that it would make on retail services?

A. Yes. I understand how you're using the word "profit" and, yes, I agree with that layman term.

Q. I don't think economists think that's a

layman's term, but we'll go from there.

Let me ask you a little bit about level playing field, which is discussed in your testimony on page 14. Now, we've heard testimony that North Dakota Telephone offers local service, long distance, Internet, and wireless; isn't that right?

A. Yes.

Q. Can those services be bundled?

A. I believe they can, yes.

Q. Are you aware of any barrier that would prevent NDTC from reselling DirecTV or DISH Network?

A. I don't know of any. I'm not -- I don't know of any.

Q. Are you aware of other rural incumbent local telephone companies that do just that?

A. Yes.

Q. Could those services be added to a bundle, as well?

A. I presume, yes.

Q. Would offering telephone help Midcontinent compete against DirecTV and EchoStar?

A. Repeat the question. I'm sorry.

Q. Would offering telephone service allow -- help Midcontinent to compete against EchoStar and

DirecTV?

A. I'm not exactly sure. I'm not familiar with Midcontinent's operations, what they think are strategic plays against their competitors. I don't know that.

Q. You agree that bundling generally is a strategy that's useful in competing against other providers?

A. Yes, bundling can provide an advantage.

Q. So would it be reasonable, in your view, to believe that adding telephone would help a cable operator compete against a satellite provider?

A. Well, it depends on what the satellite provider is offering. I don't know what the satellite provider is offering. Is he just offering in your hypothetical only satellite and isn't bundling himself?

Q. Well, let's make it a hypothetical. Presume in fact that it is DirecTV and DirecTV is not offering telephone. Would it assist Midcontinent -- or a cable provider -- I'm sorry -- in competing against DirecTV to be able to offer a bundle that included telephone service when DirecTV could not offer the same bundle?

A. It may.

Q. On page 14 of your testimony you also discuss the notion that the universal service burden on NDTC might increase. Did you provide any data on this issue in your testimony?

A. No.

Q. Did you perform any study or analysis on this issue in your testimony?

A. No.

Q. Or in preparation for your testimony. I'm sorry. Did you perform any study or analysis in preparation for your testimony?

A. Not for North Dakota Telephone Company specifically.

Q. Are you familiar with the FCC's rules on universal service for high-cost areas?

A. Yes.

Q. If an incumbent LEC loses a customer to a reseller, what happens to the incumbent LEC's universal service payments?

A. Nothing.

Q. Who is entitled to those payments if a carrier provides service via resale, the reseller or the underlying facilities-based incumbent?

A. The incumbent, like I said, receives the payments under current rules, under today's

regulatory regime.

Q. I'd like to turn back for a moment to something you said earlier. You said you've done scores of avoided cost studies for rural incumbent carriers.

A. Yeah. I believe it's over -- it's over 40.

Q. That's scores.

A. Yes.

Q. Were those in the context of rural exemptions that had been lifted or in other contexts?

A. Both.

Q. So in some cases for lifted exemptions and some cases for not?

A. Yes.

Q. Were those studies done in the context of voluntary negotiations for rural carriers that had not had their exemptions lifted?

A. Yes. In some cases, yes.

Q. And you have not, as you said earlier, performed such a study for NDTC?

A. Not yet.

Q. I'd like to turn to some of your discussion of facilities-based services in your

testimony and I just have a couple questions about that.

A. Okay.

Q. In your testimony you describe concerns about the development of facilities-based competition. As a practical matter, is facilities-based competition possible for Midcontinent without what we think of as the full interconnection agreement that includes physical interconnection between the parties and reciprocal compensation and the like?

A. I'm sorry. Is it possible or impossible? I'm sorry.

Q. Possible.

A. Is it possible to have full facilities-based competition --

Q. Without an interconnection agreement.

A. Not generally, no.

Q. Now, would the rural exemption prevent facilities-based competition for Midcontinent after NDTC starts offering video service?

A. No. In fact, this is an important point, that Midcontinent can provide facilities-based competition today without touching any of the rural exemption parts of 251(c).

Q. Under 251(a), which I presume is what you're referring to for interconnection --

A. Yes.

Q. -- do you have a right to direct physical interconnection?

A. You have a right to interconnect directly or indirectly with another carrier.

Q. But not a right to direct physical interconnection?

A. No. You have a right to interconnection. So if you want special flavors or special arrangements, then we're talking a different thing, but competition can't exist without 251(c) being touched.

Q. Is it your view that 251(a) is subject to the arbitration provisions of Section 252?

A. The provisions in 251(b) are subject to Section 252 regulations or rules, which include retail resale, number portability, reciprocal compensation, the duty to -- reciprocal compensation is the duty to provide compensation for traffic that is exchanged between two parties.

Q. But I did ask about 251(a). What is your view on 251(a)? Is it subject to Section 252 arbitration, in your opinion?

A. In 252 -- I'm not sure I have an opinion on that. I haven't looked at that particular question. But in 252, the voluntary negotiations deals with all of 251, pursuant to Section 251 of the title, so it's possible. I haven't thought about that particular scenario.

Q. I'd like to cover one other topic which relates to arbitration. You've done arbitrations?

A. Yes.

Q. They're long, difficult, expensive processes, aren't they?

A. Generally. Although I have experience with a very successful arbitration where everything settled before the arbitration actually started.

Q. That doesn't really count, though, does it?

A. Well, it was a wonderful time because I didn't have to -- that was in Puerto Rico and I did not have to hear the parties talk about those issues.

Q. But you didn't get to go to Puerto Rico.

A. Oh, I was in -- no, it settled literally five minutes before the hearing started. But generally they are -- they can be. They don't have to be, but they can be.

Q. Right. So if a party that's a CLEC is going to arbitration, if Midcontinent is going to have to go to an arbitration, doesn't it have an incentive, since it's already going to have all the cost and difficulty and time and expense of doing it, to ask for everything it could possibly want, to ask for physical interconnection and collocation and UNEs and wholesale resale and all the terms on reciprocal compensation all at once rather than simply asking for one thing?

A. It's possible, but it's not likely given the testimony of Midcontinent. I understand the testimony to reflect that it wants to establish wholesale resale as a starting point and then move quickly to facility-based competition, which wouldn't need collocation generally, can be without it, doesn't need UNEs, or unbundled network elements, because it will provide them themselves.

Q. Are you aware that Midcontinent uses UNEs in some cases?

A. No.

Q. Are you aware of Midcontinent's practices for physical interconnection whether or not it uses collocation?

A. No.

Q. So you don't actually have a basis for concluding they wouldn't want to do those things?

A. My understanding for cable play is a pure facilities-based bypass, which is -- which avoids those things as best as possible. And certainly some carriers need to use them, but generally that's the case where a cable -- my understanding of the cable play is that they try not to use those.

Q. Do you think Midcontinent's incentives might be affected if it had to wait a full year before it could actually seek interconnection?

A. Incentives, I'm not sure --

Q. Incentives about what to include in an interconnection request and arbitration might be affected if it had to wait a whole year.

A. It may, yes.

MR. HARRINGTON: I have nothing further.

JUDGE WAHL: Mr. Binek.

EXAMINATION

BY MR. BINEK:

Q. There's been a lot of testimony here about level playing field, and I guess listening to this hypothetical situation involving the possibility of the Commission denying the request to lift the

exemption, it's possible then that Midcontinent would not be in a position to offer telecommunications service until a year after North Dakota Tel has been offering video services; is that a fair summary of your testimony?

A. That's the absolute maximum worst-case scenario.

Q. But it's possible?

A. Possible.

Q. What is your knowledge of other states -- what other states have done in implementing a schedule for -- I forget the exact terminology -- implementation schedule if the exemption is terminated?

A. I'm familiar with three cases that are on this point. The first one happened in New York State with Warwick and Citizens Telecommunications, and an implementation schedule for negotiation was started after a rural exemption was removed. I also know that in 1999 South Carolina, the case that I referred to before, when the state commission had to deal with a rural exemption, it removed a rural exemption -- or I should say Horry Telephone Company voluntarily removed itself from the rural exemption, and then the South Carolina

Commission ordered that negotiations begin the date of the order of that removal, and its theory was that there was no valid request for a 251(c) interconnection until after the rural exemption was removed, which was the date of the order. And then also in Texas, just last -- just in 2004, there was a case in South Plains, I believe, is the name of the company, dealt with an issue of removal of a rural exemption and the Commission in its first order said, okay, we're going to remove the rural exemption and, therefore, go implement, and then, of course, the parties did not come to an understanding of how to implement the matter. The CLEC wanted 30 to 60 days for interconnection and for implementation and the ILEC said, no, we start with the 252 clock. The state commission in Texas agreed with the ILEC and started a 252 clock after the rural exemption was removed. Those are the three cases that I'm personally familiar with. I'm intimately familiar with New York and South Carolina because I worked on that matter and then I followed closely the Texas matter.

Q. Can you provide copies of those decisions?

A. Yes, I have copies of the South Carolina and the Texas. I'll have to find a copy of the New

York, but I would be happy to provide you copies of those.

MR. BINEK: I'd request that those be provided as late-filed exhibits in the case.

JUDGE WAHL: The motion is granted. Mr. Negaard, you will note that, of course, or Mr. Moorman, as the case may be.

MR. MOORMAN: Just as a clarification, late-filed Exhibit R12?

JUDGE WAHL: Well, why don't we do -- Mr. Binek, what's the Commission's custom? Do you number those as exhibits?

MR. BINEK: Sure. I don't think it would be a problem labeling it as R12.

JUDGE WAHL: All right. Do you want to identify them as a group as R12?

MR. BINEK: Sure.

MR. HARRINGTON: It would probably be easier to identify them separately for reference purposes.

JUDGE WAHL: Yeah, that's a good point, Mr. Harrington. I agree. So let's identify them as -- Mr. Meredith, R12 is going to be what?

THE WITNESS: I would suggest that we use R12 as the South Carolina decision and R13 as the

Texas decision and R14 as the New York decision, if it is available. I do not have a copy of that and I cannot promise that I can get that to you.

JUDGE WAHL: That's understood. Mr. Binek, anything further?

MR. BINEK: Yes.

Q. (MR. BINEK CONTINUING) Are you aware of any states that have determined a different implementation schedule?

A. I am not aware of any states or any case that involves a different implementation schedule. I have heard discussion where a rural exemption suspends the 252 clock during the time of a rural exemption review, and if it's found that the rural exemption should be lifted, then the 252 clock resumes. Do you understand? There's a difference between that scenario and the scenario where the clock starts after the rural exemption issue matter. But I do not know of any cases -- state cases where that has happened. I've heard that be argued, but I have not seen an order on that matter.

Q. How long would it take to do a cost study of North Dakota Telephone Company?

A. To determine -- an avoidable cost study?

Q. Right.

A. I do not know, but I can imagine, based upon my experience, that it's probably in the two-month -- two- to three-month time.

MR. BINEK: I have no further questions.

JUDGE WAHL: Questions from the Commission. Commissioner Clark.

EXAMINATION

BY COMMISSIONER CLARK:

Q. I do have one. Granting that the Telecom Act is not exactly a model of clarity, how have other commissions that you've been aware of dealt with this issue of -- maybe you can provide sort of a little bit more meat to the bones along the lines of some of Mr. Binek's questions. The Act does say to implement a schedule once we make an order coming out of 250 exemption proceeding. It would seem to indicate that a schedule is more than just saying, okay, the decision has been made, the clock starts. How did they -- using your interpretation of how the commission should deal with this if we do lift the exemption, how do you both do something more than just start the clock, but also fulfill your mandate to establish an implementation schedule?

A. The implementation schedule in 250 -- in that provision of the Act says that it needs to be consistent with the time and manner of FCC regulation, and so my experience with these other commissions -- these other state commissions is that they've looked at that and said we're going to follow the Act's time line in 252 as consistent with the FCC's -- FCC's regulation or with the time and manner to allow the opportunity for carriers to negotiate and then allow for eventual arbitration, if it's necessary, to resolve any matters.

Q. And you've testified that the FCC hasn't specifically put a lot on the record as far as what that should be, so is the idea that, lacking any clear direction from the FCC then, states have fallen back on the timetable established in the Act, itself?

A. That's what I generally perceive them to be doing. The FCC has regulation on what happens if a state commission doesn't act. That's clear.

Q. Right.

A. That's a different matter. They kind of leave it to the states. They don't --

Q. Has the FCC dealt with any of these issues in those states where the states have deferred

action? I think probably the most notable would be Virginia where they've said that they simply are not going to -- I think by virtue of a constitutional provision in Virginia they're not going to subject themselves to being in federal court. Have they handled the Virginia-type case like they have with some of the ETC cases?

A. The Virginia case is a good example. The FCC took the Virginia case after the Virginia body -- regulatory body said we're not touching it and essentially said -- the FCC essentially said we'll deal with this -- and I just reviewed this this morning -- we'll deal with this under the (e)(5) provision, which is if the state defaults, then the Commission picks up the ball and follows its rules. That particular procedure was very lengthy, it's a very big case. If you've looked at it at all, it's many, many pages, thanks to -- I think you were part of that, weren't you, or you were counsel for someone.

MR. HARRINGTON: I was counsel for the party that didn't make it longer.

THE WITNESS: Okay. And it took like a year and a half -- I think a year and a half to do all those issues.

Q. (COMMISSIONER CLARK CONTINUING) Was that a rural exemption termination?

A. No. No. This was with a -- this was the arbitration.

Q. That was the arbitration -- big arbitration. To your knowledge, the FCC has not dealt with any rural exemption cases?

A. No, not in that -- not in this context of removing a rural exemption.

Q. Would they have been the body to hear the case first?

A. I don't recall of any case where the FCC has done that.

COMMISSIONER CLARK: Thank you. That's all I have.

JUDGE WAHL: Commissioner Wefald.

EXAMINATION

BY COMMISSIONER WEFALD:

Q. Okay. My question relates to the scope of the rural exemption that's being requested here. Is it your understanding that the scope for this hearing is that the company wants to provide wholesale resale only, and that if the Commission grants the rural exemption, it's only for the purpose of wholesale resale, or -- I'm going to go

on a little -- or do we grant a rural exemption and then it allows the company to not only -- once we determine if there's a rural exemption, could Midcontinent then decide they want to go for an interconnection request for unbundled elements, or is the scope narrowed by what they have requested in their letter to you that started this proceeding? Do you understand the question?

A. Yes, I do understand the question.

Q. Okay.

A. First of all, I would like to just note, and I'm sure it was just maybe how I heard it, but the rural exemption was granted by Congress and then the state commission has the opportunity to review whether that rural exemption should be removed.

Q. Okay. Removed. Should it be removed only for the purpose for the scope of wholesale resale, or --

A. Yes.

Q. What is the answer to that, in your opinion?

A. My view is -- and this is consistent with what other states have done -- is that they have limited it to the removal of the rural exemption to

the matter that's been requested. So it would be specifically removal of a rural exemption for 251(c)(4), which is the wholesale discount provision. The other provisions remain. Although it's ambiguous because a state could -- you could go either way, but my experience is when you're dealing with that, you follow the guidance of the request, and the request is in this case for wholesale discount, and, furthermore, the request is only for the Devils Lake exchange.

Q. Yes, I understand that.

A. So I think it's limited in two respects.

Q. Okay. Then in that scenario, we talk about -- people say if they only use it for wholesale resale, there's not a lot of impact.

A. Mm-hmm.

Q. But wouldn't it be limited if the Commission chose to do that -- it would be limited to only --

A. Yes, it would be limited to wholesale discount.

Q. Yes.

A. And think of it this way, if you would, please. The facts for undue economic burden, technical infeasibility, universal service are very

specific, and in this case before you you have facts dealing with wholesale discount.

Q. Mm-hmm.

A. The fact set can be very different if you're dealing with UNEs.

Q. Oh, I understand. I know. That's why I was wondering.

A. So each decision would be unique to the request and unique to the case that's before you.

Q. Then I'm going to do another what-if. So then what if North Dakota Telephone Company determined that they wanted to start and did start providing cable services next February, February 2007. At that point -- and let's say what if nothing had been done by this Commission before then.

A. Okay.

Q. Then they don't need to worry about 251(a) -- (1)(a), they don't have to worry about the exemption any longer; is that correct?

A. 251 --

Q. 251 and then I'm asking --

A. (c) or -- there's an (f).

Q. Right here.

COMMISSIONER CLARK: 251(f)(1).

Q. (COMMISSIONER WEFALD CONTINUING) (f)(1). Okay.

A. That's right. When an incumbent local exchange carrier who has been granted a rural exemption by Congress provides -- starts to provide video programming after the date of the Act, then their exemption is limited and it does not apply to the incumbent cable provider in that same exchange -- in that same area where they're offering video.

Q. So at that point the company could come in and do an interconnection agreement with you -- with North Dakota Telephone Company?

A. For UNEs or --

Q. For UNEs or resale or they could provide facilities-based. I'm just trying to distinguish the difference in my own mind here. And they could have come in at this time and they could have asked for unbundled elements in this application, but they didn't, they asked for wholesale resale?

A. Correct.

COMMISSIONER WEFALD: Okay. I've got it. Thank you.

JUDGE WAHL: Commissioner Cramer?

COMMISSIONER CRAMER: I have nothing.

JUDGE WAHL: Mr. Moorman, followup?

MR. MOORMAN: Yes. Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. MOORMAN:

Q. Very quickly. And I thought I was accused of talking fast.

A. I'm sorry.

Q. No. So I just want to make sure I heard. First, in your discussion with Midcontinent's counsel you reference February 1st, 2007. Was that the date that -- NDTC is not in the position to provide video programming in Devils Lake on its fiber installation until after February 1st, 2007?

A. Yes, that is the date. That's the date that is the earliest possible starting point. For purposes of this hearing, as I understand it, that's the date that we have as a threshold date.

Q. Until after February 1st. And, quite frankly, I am an attorney and I was trying to follow all of the cites that were going back and forth and, by golly, it was tough. I don't know if anyone else had that problem. But I turn your attention to page 4 of 5 of R8 dealing with Section 252(e)(4), I believe. And you had a discussion

about that with Midcontinent's counsel.

A. Yes, subject -- yes, I did.

Q. The 90 days that is referred to in that section, is that 90 days by the parties of an agreement adopted by negotiation?

A. When I had this discussion, that was subject to check, but I believe that this is a 90 days.

Q. If there is a negotiated agreement and 30 days if it is subject to arbitration?

A. Yes. If we continue on with that -- that's the cite, and thank you very much for clarifying -- or helping me clarify. 90 days of a negotiated agreement, and then the next clause in that same section, "or within 30 days after submission by the parties of an agreement adopted by arbitration." So to be full, we should have probably read the whole section.

Q. The final point. There was some discussion on universal service, and is it your understanding that under current USF rules a reseller would not get any of the incumbent LEC's universal service disbursements?

A. A competitor who is a reseller, who is also -- is not eligible to become an ETC if they

only provide resale, so they would not be getting any disbursements from the universal service program.

Q. And if it was a facility-based competitor, and that facility-based competitor was designated presumably by this Commission as an ETC and it served one of the customers of an incumbent LEC, would the incumbent LEC, if its rate of return, a small rural telephone company, under current rules would that incumbent LEC lose any USF?

A. No, but in the words of Bob Dillon, times are a-changing, and there is universal service change afoot at the FCC, so I don't know what -- under current rules that's the case, but in the future it might change.

COMMISSIONER CRAMER: Thank you for clarifying that.

MR. MOORMAN: Nothing further.

JUDGE WAHL: Mr. Harrington.

MR. HARRINGTON: Just a few questions.

RECROSS-EXAMINATION

BY MR. HARRINGTON:

Q. Mr. Meredith, when you were asking -- answering -- I'm sorry -- Mr. Binek's questions, you told him it would take two to three months to

do an avoided cost study; is that right?

A. Yeah. My experience dealing with these other companies, it can take up to two to three months depending upon the availability of the data, depending upon the requirements -- you know, there are requirements for a study and there's some proof standards in the CFR in 51.609. That's part of my R10 exhibit.

Q. Yes.

A. And those proof standards take a little bit of time to get together so that everything is square and all the T's are crossed and all the I's are dotted.

Q. What information do you need to do one of those studies?

A. You need current information -- accounting information, and then you also need to make an analysis of some of those accounts and what costs would be avoidable, because the incumbent LEC, when they produce one of these studies, they have the -- they have the responsibility -- I claim it's the responsibility -- they have the right or responsibility to determine in those accounts whether some of those costs are not avoidable, and in order to do that, some study has to be taken

besides just plopping numbers on a page.

Q. Section 6 of 51.609 provides significant guidance as to which accounts you're supposed to look at; correct?

A. Yes. And I'm speaking of subpart (d) of that same rule. It's 50 CFR -- that's 47 CFR 51.609(d), which describes the accounts and then it says, these costs are avoidable and may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable. So what happens is there's a presumption of avoidability, saying these accounts are all avoidable or 90 percent of them are avoidable. But the incumbent LEC can show to a state commission that, oh, no, that presumption doesn't quite work for a rural telephone company and that this particular study shows that these costs are not going to be avoidable.

An example is this, customer service operator. In some companies there's only one or two, and the presumption here is that you lose all of them or you lose a good number of them, and it may be for that particular rural LEC that you're not going to lose anybody for that particular

service, and so, therefore, there's a proof -- there's an opportunity to prove to a state commission that those costs are not avoidable and should remain.

Q. Now, those accounts are all accounts the company keeps already, so you have a starting point from the existing accounts; correct?

A. You have the total amount, but for like customer service operations, how much customer service operations is affected can take a little bit of time, and that's why I say 90 days.

Q. I understand what you're saying. I guess the other question I would have about that is, all that information is in the hands of the incumbent carrier; right? You don't have to do discovery for the CLEC or any of those things, do you?

A. No, you don't have to do any discovery for anyone else, but you don't have all that -- all that information at the aggregated level is there for the account, but there are special tasks that need to be analyzed for a full understanding of that account, and that information is not available at the rural company level until the study is done, until you actually do the study.

Q. And you've done all those allocations,

isn't it really pretty much a matter of arithmetic to figure out what the discount rate is? You don't have to do any elaborate cost modeling or any of those things, do you?

A. No. It's arithmetic and algebra.

Q. Can't forget the algebra. And just to confirm what you said now in response to my question, is it could take up to two to three months; that's right?

A. My experience with a cost -- with cost companies is it takes -- it takes, you know, two to three months to get that done.

Q. Now, on redirect you had a couple of questions concerning the timing of when NDTC is going to first provide video, and I just want to confirm what I understand from your testimony, which is that all the information you have on that question in fact comes from what you've been told by people at the company? You, personally, are not involved in any of that; you're not laying any fiber or the like?

A. That is correct.

Q. So this is entirely based on what the company has told you?

A. Let me just refresh my memory in my

testimony.

Q. I think it's around page 4, but I could be wrong.

A. It's on page, I think, 8.

Q. 8. Well --

A. Lines 1 and 2, and I say, "I note that North Dakota Telephone Company is not in a position to provide video programming in Devils Lake on its fiber installation until after February 1, 2007."

Q. And that information is from the company?

A. Yes, that is a -- that particular understanding is cited as a footnote -- a footnote 2 and it refers to Mr. Dircks' testimony.

MR. HARRINGTON: Thank you very much. No further questions, Your Honor.

JUDGE WAHL: Mr. Binek, anything further?

MR. BINEK: No.

JUDGE WAHL: Any further questions from the Commissioners? Mr. Moorman.

REDIRECT EXAMINATION

BY MR. MOORMAN:

Q. Mr. Meredith, based on your recross by Mr. Harrington, is it safe to say that an avoidable cost study is not an add-water-and-mix proposition?

A. Yes, it is.

MR. MOORMAN: Thank you.

JUDGE WAHL: All right. Quickly, anything further, Mr. Harrington.

MR. HARRINGTON: Nothing further, Your Honor.

JUDGE WAHL: Commissioners?

COMMISSIONER WEFALD: No.

COMMISSIONER CLARK: No.

JUDGE WAHL: Thank you very much, Mr. Meredith. Anything further, Mr. Negaard?

MR. NEGAARD: No, Your Honor.

JUDGE WAHL: All right. Mr. Durick, anything further?

MR. DURICK: Nothing further, Your Honor.

JUDGE WAHL: All right. Counsel, quickly, beginning with you, Mr. Durick, briefing, what's your proposal?

MR. DURICK: Our proposal would be, I think you indicated -- or someone indicated it would be simultaneous briefs. We would like to do that on the Commission -- what would you like? -- two weeks from today.

JUDGE WAHL: Are you agreeing -- are you -- do you --

MR. DURICK: We would like responsive

briefs, Your Honor.

JUDGE WAHL: So --

MR. DURICK: We would submit ours within two weeks.

MR. HARRINGTON: Your Honor, could we have one moment? Could we go off the record for a moment, Your Honor?

JUDGE WAHL: Sure.

(Discussion had off the record.)

JUDGE WAHL: Anything else, Mr. Durick?

MR. DURICK: Nothing here, Your Honor.

JUDGE WAHL: Anything further for the record, Mr. Negaard?

MR. NEGAARD: Not at this time.

JUDGE WAHL: Mr. Binek?

MR. BINEK: In addition to briefs, we would also request --

JUDGE WAHL: Oh, I'm sorry.

MR. BINEK: -- the parties file proposed findings of fact.

JUDGE WAHL: The Commission also requests proposed findings of fact, conclusions of law. In fact, I assume you want a proposed order, too.

MR. BINEK: Right.

JUDGE WAHL: You want to -- write it up

the way you would like to see them sign it. Good luck.

Commissioner Clark, anything further for the record?

COMMISSIONER CLARK: Just thank you for a very interesting hearing.

JUDGE WAHL: Anything else, Commissioners? Any other directions from the Commission?

COMMISSIONER WEFALD: No. I would just like to say thank you, also. The witnesses who participated today really did a very good job on both sides and a lot of helpful information was provided by the questions of the counsel, et cetera. Thank you.

COMMISSIONER CRAMER: I would say the same thanks to everyone, although there were moments where I was more confused than when we began. In the end I think we had a lot of very good, helpful information.

JUDGE WAHL: All right. The record will be closed. Thank you, counsel.

(Concluded at 4:17 p.m., the same day.)

CERTIFICATE OF COURT REPORTER

I, Denise M. Andahl, a Registered Professional Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Bismarck, North Dakota, this 30th day of January, 2006.

Denise M. Andahl
Registered Professional Reporter

HARD COPY OF Floppy disk of original Transcript

DOCKET SEQUENCE NO. 76

EXHIBIT

CASE NO. PU-05-451

ON FILE IN

STATE ARCHIVES

CONTROL NUMBER: 80051

EXHIBIT LIST

Docket #	Matter	Midcontinent Communications North Dakota Telephone Company Public Service Commission PU-05-451					2005-0316 AW
	Hearing	January 23, 2005					
	No.	Description	Mkd	Idd	Ofd	W/D	Adm	Note
50	P1	direct testimony of Lohnes	√	√	√		√	per stipulation of counsel
61	P2	rebuttal testimony of Lohnes	√	√	√		√	"
"	P3	exhibits for rebuttal testimony of Lohnes re resale agreement	√	√	√		√	
"	P4	other exhibits for rebuttal testimony of Lohnes	√	√	√		√	
52	P5	direct testimony of Fischer	√	√	√		√	per stipulation of counsel
62	P6	rebuttal testimony of Fischer	√	√	√		√	"
52	P7	exhibits for direct testimony of Fisher	√	√	√		√	Exhibit WRF-1
52	P8	"	√	√	√		√	Exhibit WRF-2
52	P9	"	√	√	√		√	Exhibit WRF-3
52	P10	"	√	√	√		√	Exhibit WRF-4
51	P11	direct testimony of Gates	√	√	√		√	per stipulation of counsel
60	P12	rebuttal testimony of Gates	√	√	√		√	"
54	P13	exhibits for direct testimony of Gates	√	√	√		√	Exhibit TJG-1
56	R1	reply testimony of Dircks	√	√	√		√	per stipulation of counsel
"	R2	exhibit for reply testimony of Dircks	√	√	√		√	Pearce & Durick letter, May 12, 2005
"	R3	exhibit for reply testimony of Dircks	√	√	√		√	NDTC letter, June 10 2005
"	R4	exhibit for reply testimony of Dircks	√	√	√		√	job opening advertisement and account executive job description
"	R5	exhibit for reply testimony of Dircks	√	√	√		√	NDTC "Outlook", Summer 2005

Exhibit List (with docket entry numbers)
by Office of Administrative Hearings
01/23/2006 CC: Comm Legal Illona, Pat, Annette

Docket #

EXHIBIT LIST

Matter	Midcontinent Communications North Dakota Telephone Company Public Service Commission PU-05-451						2005-0316 AW
Hearing	January 23, 2006						
No.	Description	Mkd	Idd	Ofd	W/D	Adm	Note
72 P14	exhibit for cross-examination of Dircks	√	√	√		√	portion of Dakota Central Telecommunications Web site
73 P15	"	√	√	√		√	FCC data re North Dakota Telephone Company
74 P16	"	√	√	√		√	portion of North Dakota Telephone Company Web site
55 R6	Reply testimony of Meredith	√	√	√		√	per stipulation of counsel
" R7	exhibit for reply testimony of Meredith	√	√	√		√	part 47 U.S.C. § 251
" R8	"	√	√	√		√	part 47 U.S.C. § 252
" R9	"	√	√	√		√	N.D.C.C. § 49-21-01.7
" R10	"	√	√	√		√	47 C.F.R. § 51.607 *et sec.*
" R11	"	√	√	√		√	"Midcontinent Communications to Develop Family Friendly Choice"
70 R12	documentation re action of South Carolina regulatory agency upon inquiry to terminate rural exemption						exhibit to be filed by North Dakota Telephone Company pursuant to the request of the Commission
69 R13	documentation re action of Texas regulatory agency upon inquiry to terminate rural exemption						"
68 R14	documentation re action of New York regulatory agency upon inquiry to terminate rural exemption						"

EXHIBIT tabbies P 16

NDTC North Dakota Telephone Company

North Dakota Telephone Company

Today is January 20, 2006

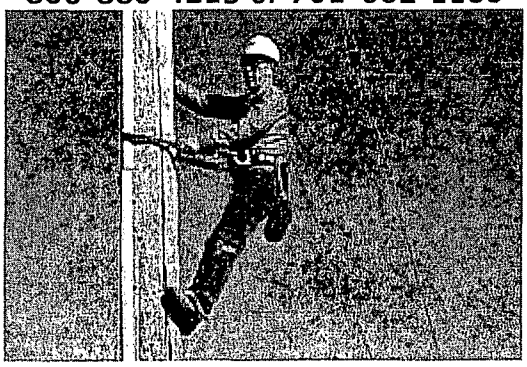
CHECK ONLINE TIME | CHECK SPEED | NDTC POLL | $20 DRAWING | JUNK MAIL LOGIN | NDTC WEB

- HOME
- CONTACT US
- PHONE SERVICES
- DIRECTORY
- INTERNET
- NDLD
- LOCAL NEWS
- EMPLOYMENT
- HISTORY
- NEWSLETTERS
- E-MAIL US
- LOCAL WEATHER
- ROAD REPORTS
- SEARCH THE WEB

CUSTOMER SERVICE

Email: service@ndtel.com

For Local Rates please call 800-880-4213 or 701-662-1100



- LifeLine/LinkUp Assistance Form
- LifeLine/LinkUp Assistance Form - Tribal

SERVICES

Email: service@ndtel.com

CLASS & CUSTOM CALLING SERVICES

Instructions for most of these services can be found by clicking on the services below and then clicking on the name of the service next to the description.

- **Voice Mail 5000**
- **Class Services**
  - + Caller ID
  - + Call Waiting Display*
  - + Caller ID Blocking
  - + Custom Ringing
  - + Call Trace
  - + Auto Recall
  - + Toll Denial with PIN
  - + Auto Call Back
  - + Selective Call Acceptance

CONFERENCE

Email: marketing@ndtel.com

You **can** be there - using the ND Conference Bridge Center. It's available anytime!

Set up a conference call today for only $10 plus 25 cents per minute per participant in the continenta USA.

The NDTC Conference Bridge Cen available 24 hours a day, 7 days a 365 Days a year. This service offe ability to have a conference call with 24 participants!

With the Conference Bridge Center call can last as long as you want it.

Use the Conference Bridge Cente meetings, conference calls, pla sessions, or any business function rather not spend time travelin Whether its the weather, road convenience, you can be there w **really** being there!

Conference Bridge calls are cost efl with a $10 set up fee and 25 cen minute per participant in the USA.

The Conference Bridge Center ha ability to utilize 24 ports at the sam and its easy to use!

Call NDTC if you any questions reg this new service at 701-662-1100 free at 1-800-880-4213. Call wee 8AM - 5PM to schedule your Confe Bridge Call.

74 **PU-05-451** Pages: 4

Portion of NDTC Web site

by Midcontinent Communications

01/23/2006 CC: Comm Legal Ilona, Pat, Annette . .

Exhibit # P16

+ Selective Call Rejection
+ Anonymous Call Rejection*
+ Selective Call Forwarding

- **Custom Calling Features**
  + Call Waiting
  + Call Forwarding
  + Call Forwarding Remote Access
  + 3-Way Calling
  + Speed Call 8 / Speed Call 30
  + Home Intercall
- **Touch Tone**
  + Warm Line
  + Twin Line
  + Auto Wakeup
- **Lines Keeper** (wire maintenance)
- **Business Telephone Equipment**
- **Residential Telephone Equipment**
- **North Dakota Long Distance**
- **Computer Wiring**

* These services are only available for customers in the eastern NDTC region.

1st RATE PLANS

Email: service@ndtel.com

YOU Come First with NDTC's 1st Rate Plans

Optional Toll Calling Plans for Business and Residents *1st Rate plans include all 1+ calls in the United States: Interstate, including Alaska, Hawaii, US Virgin Islands, Puerto Rico, Guam, and Saipan.

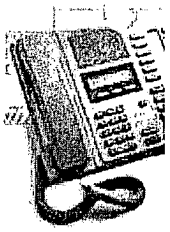
Choose a great communication plan for all your needs:

- **1st Rate 100 Plus**
  + 100 minutes anytime
  + Voice mail 5000

PRODUCT

Email: marketing@ndtel.com

NDTC prides itself on providin customers with the highest business systems available at prices that make having an efficient telephone system easier and more affordable than ever before. Regardless of what the size or nature of your business is, NDTC has the equipmer will meet all your needs.



Some of the business equipr services NDTC has available inclu

- **CENTREX SERVICE**
- **PBX's**
  + Nortel
  + Mitel
- **KEY SYSTEMS**
  + Nortel Norstar
  + Sprint Protege
- **VOICE MAIL**
  + Residential
  + Commercial
  + Paging Notification
  + Voice Mail with Fax Delivery
- **NORTEL COMPANION WIRELE PCS SYSTEMS**
- **2 & 3-LINE BUSINESS SYSTEM**
  + With & Without Intercom
- **PAGING EQUIPMENT**
- **SECURITY ALARM DIALERS**
- **CORDLESS PHONES**
  + Residential & Commercial
- **BUSINESS SYSTEM REPAIR**
  + Available on Most Systems
- **INTERNET SERVICES**
  + Dialup

+ All Class Services

+ $17.95 per month*

1st Rate 150

+ 150 long distance minutes anytime

+ $18.75 per month

1st Rate 300

+ 300 long distance minutes anytime

+ $30 per month

1st Rate 600

+ 600 long distance minutes anytime

+ $50 per month

1st Rate 1200

+ 1200 long distance minutes anytime

+ $99.00 per month

*1st Rate 100 Plus is available to single line businesses and residents.

*All 1st Rate Plans exclude international, directory assistance, operator services, calling card and 800 calls.

CELLULAR

Email: service@ndtel.com

Verizon Wireless Call Plans
Choices to fit your lifestyle and your budget.

Verizon Wireless and NDTC

Everyone has different wireless needs. That's why NDTC has lots of plans for you to choose from, each with special options and features. So you can pick and choose to customize your service and get exactly what you need. Call us or visit the Verizon Wireless web site for information on plans.

Please note: Certain phones are designed to work with specific plans. As you customize your service, you will be offered phones that work with the plan you have selected.

+ High Speed DSL

+ Web Site Hosting & DNS Hostir

+ Web Site Design

+ Commercial E-mail

DATA SERVICES

+ Building, Configuring, & Mainta Computer Networks

We offer both rental and purchase o on all equipment installed.

BROADBA

Email: marketing@ndtel.com

North Dakota Telephone Compan connect your business to any lo within the state of North Dakot provide assistance with any connections as well.

North Dakota Telephone Compan assist your business to find the t broadband service to meet your indi needs along with the best route wi access to a state-wide network th DCN (Dakota Carrier Network).

56K

DS1 (T-1) 1.544 Mbps

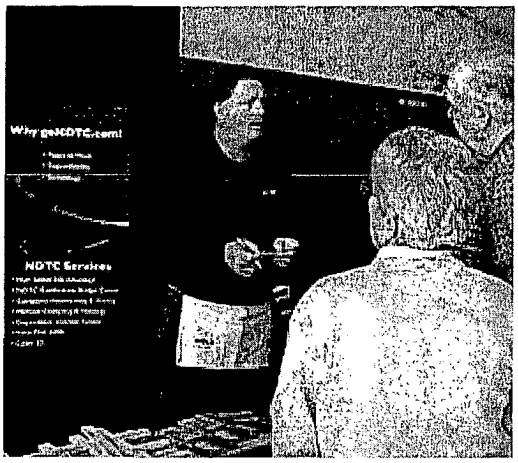
Frame Relay (Fractional DS1's)

+ High bandwidth at low costs

+ Capable of connecting multiple locations

ATM (Asynchronous Transfer Moc

+ Capable of serving voice, data, video services



HELP DESK HIGH SPEED INTERNET HELP DESK PHOTO CONTEST DIALUP APPLICATION MAINTEN/

| Home | Contact | Directory | Telephone | Internet | NDLD | Local | Employment | History | Newsletters | Email | Weather | Roads | Sea

North Dakota Telephone Company
PO Box 180
Devils Lake, ND 58301
Phone: 701-662-1100
Toll Free: 800-880-4213

Search this site:

Find!

Site Map

© 2005 NDTC - All Rights F

North Dakota Telephone Company - FCC High Cost Funding 2003 to 2005

(Data extracted from Universal Service Administrative Corporation web site - www.universalservice.org)

Month	Year	HCL	HCM	IAS	ICLS	LSS	LTS	SNA	SVS	Totals
Jan	2003	$51,905	$0	$0	$15,724	$91,277	$36,310	$0	$0	$195,216
Feb	2003	$51,905	$0	$0	$15,724	$91,277	$36,310	$0	$0	$195,216
Mar	2003	$51,905	$0	$0	$15,724	$91,277	$36,310	$0	$0	$195,216
Apr	2003	$39,825	$0	$0	$15,724	$172,661	$36,310	$0	$0	$264,520
May	2003	$48,885	$0	$0	$15,724	$91,277	$36,310	$0	$0	$192,196
Jun	2003	$48,885	$0	$0	$15,723	$91,277	$36,310	$0	$0	$192,195
Jul	2003	$48,885	$0	$0	$18,204	$91,277	$36,310	$0	$0	$194,676
Aug	2003	$48,885	$0	$0	$18,204	$91,277	$36,310	$0	$0	$194,676
Sep	2003	$25,296	$0	$0	$18,204	$91,277	$36,310	$0	$0	$171,087
Oct	2003	$46,264	$0	$0	$18,204	$91,277	$36,310	$0	$0	$192,055
Nov	2003	$43,260	$0	$0	$18,204	$91,277	$36,310	$0	$0	$189,051
Dec	2003	$46,264	$0	$0	$18,204	$91,277	$36,310	$0	$0	$192,055
2003 Subtotals		**$552,164**	**$0**	**$0**	**$203,567**	**$1,176,708**	**$435,720**	**$0**	**$0**	**$2,368,159**
Jan	2004	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	$152,951
Feb	2004	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	$152,951
Mar	2004	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	$152,951
Apr	2004	$0	$0	$0	$18,221	$174,331	$36,721	$0	$0	$229,273
May	2004	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	$152,951
Jun	2004	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	$152,951
Jul	2004	$0	$0	$0	$49,890	$98,009	$0	$0	$0	$147,899
Aug	2004	$0	$0	$0	$49,890	$98,009	$0	$0	$0	$147,899
Sep	2004	$0	$0	$0	$49,890	$98,009	$0	$0	$0	$147,899
Oct	2004	($53,145)	$0	$0	$49,890	$98,009	$0	$0	$0	$94,754
Nov	2004	($420)	$0	$0	$49,890	$98,009	$0	$0	$0	$147,479
Dec	2004	$0	$0	$0	$49,890	$98,009	$0	$0	$0	$147,899
2004 Subtotals		**($53,565)**	**$0**	**$0**	**$408,666**	**$1,252,430**	**$220,326**	**$0**	**$0**	**$1,827,857**
Jan	2005	$0	$0	$0	$59,801	$84,649	$0	$0	$0	$144,450
Feb	2005	$0	$0	$0	$59,801	$84,649	$0	$0	$0	$144,450
Mar	2005	$0	$0	$0	$59,801	$84,649	$0	$0	$0	$144,450
Apr	2005	$0	$0	$0	$59,801	$195,889	$0	$0	$0	$255,690
May	2005	$0	$0	$0	$59,801	$84,649	$0	$0	$0	$144,450
Jun	2005	$0	$0	$0	$59,801	$84,649	$0	$0	$0	$144,450
Jul	2005	$0	$0	$0	$48,832	$84,649	$0	$0	$0	$133,481
Aug	2005	$0	$0	$0	$48,831	$84,649	$0	$0	$0	$133,480
Sep	2005	$0	$0	$0	$48,831	$84,649	$0	$0	$0	$133,480
Oct	2005	$0	$0	$0	$48,831	$84,649	$0	$0	$0	$133,480
Nov	2005	$0	$0	$0	$48,831	$84,649	$0	$0	$0	$133,480
Dec	2005	$0	$0	$0	$48,831	$84,649	$0	$0	$0	$133,480
2005 Subtotals		**$0**	**$0**	**$0**	**$651,793**	**$1,127,028**	**$0**	**$0**	**$0**	**$1,778,821**
Three Year Totals		***$498,599***	***$0***	***$0***	***$1,264,026***	***$3,556,166***	***$656,046***	***$0***	***$0***	***$5,974,837***

High Cost Disbursement Data (Spin = 143002198 , Sac = ALL , San = ALL , Year = ALL , Month = ALL , State = ALL)
This disbursement tool contains data from Jan 2003 through Dec 2005.

State	Spin	Study Area Code	Study Area Name	HCL	HCM	IAS	ICLS	LSS	LTS	SNA	SVS	Year	Month
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$48,831	$84,649	$0	$0	$0	2005	Dec
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$48,831	$84,649	$0	$0	$0	2005	Nov
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$48,831	$84,649	$0	$0	$0	2005	Oct
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$48,831	$84,649	$0	$0	$0	2005	Sep
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$48,831	$84,649	$0	$0	$0	2005	Aug
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$48,832	$84,649	$0	$0	$0	2005	Jul
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$59,801	$84,649	$0	$0	$0	2005	Jun
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$59,801	$84,649	$0	$0	$0	2005	May
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$59,801	$195,889	$0	$0	$0	2005	Apr
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$59,801	$84,649	$0	$0	$0	2005	Mar
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$59,801	$84,649	$0	$0	$0	2005	Feb
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$59,801	$84,649	$0	$0	$0	2005	Jan
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$49,890	$98,009	$0	$0	$0	2004	Dec
ND	143002198	381447	NORTH DAKOTA	($420)	$0	$0	$49,890	$98,009	$0	$0	$0	2004	Nov

			TEL CO										
ND	143002198	381447	NORTH DAKOTA TEL CO	($53,145)	$0	$0	$49,890	$98,009	$0	$0	$0	2004	Oct
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$49,890	$98,009	$0	$0	$0	2004	Sep
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$49,890	$98,009	$0	$0	$0	2004	Aug
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$49,890	$98,009	$0	$0	$0	2004	Jul
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	2004	Jun
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	2004	May
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$18,221	$174,331	$36,721	$0	$0	2004	Apr
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	2004	Mar
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	2004	Feb
ND	143002198	381447	NORTH DAKOTA TEL CO	$0	$0	$0	$18,221	$98,009	$36,721	$0	$0	2004	Jan
ND	143002198	381447	NORTH DAKOTA TEL CO	$46,264	$0	$0	$18,204	$91,277	$36,310	$0	$0	2003	Dec
ND	143002198	381447	NORTH DAKOTA TEL CO	$43,260	$0	$0	$18,204	$91,277	$36,310	$0	$0	2003	Nov
ND	143002198	381447	NORTH DAKOTA TEL CO	$46,264	$0	$0	$18,204	$91,277	$36,310	$0	$0	2003	Oct
ND	143002198	381447	NORTH DAKOTA TEL CO	$25,296	$0	$0	$18,204	$91,277	$36,310	$0	$0	2003	Sep
ND	143002198	381447	NORTH DAKOTA TEL CO	$48,885	$0	$0	$18,204	$91,277	$36,310	$0	$0	2003	Aug

ND	143002198	381447	NORTH DAKOTA TEL CO	$48,885	$0	$0	$18,204	$91,277	$36,310	$0	$0	2003	Jul
ND	143002198	381447	NORTH DAKOTA TEL CO	$48,885	$0	$0	$15,723	$91,277	$36,310	$0	$0	2003	Jun
ND	143002198	381447	NORTH DAKOTA TEL CO	$48,885	$0	$0	$15,724	$91,277	$36,310	$0	$0	2003	May
ND	143002198	381447	NORTH DAKOTA TEL CO	$39,825	$0	$0	$15,724	$172,661	$36,310	$0	$0	2003	Apr
ND	143002198	381447	NORTH DAKOTA TEL CO	$51,905	$0	$0	$15,724	$91,277	$36,310	$0	$0	2003	Mar
ND	143002198	381447	NORTH DAKOTA TEL CO	$51,905	$0	$0	$15,724	$91,277	$36,310	$0	$0	2003	Feb
ND	143002198	381447	NORTH DAKOTA TEL CO	$51,905	$0	$0	$15,724	$91,277	$36,310	$0	$0	2003	Jan

Return to Disbursement Data Search

www.daktel.cor

DAKOTA CENTRAL TELECOMMUNICATIONS

Central Dakota TV

Dakota Central is bringing

CABLE TV to the COUNTRY

CDTV began in November of 1990 to provide cable TV to rural customers. Our service area extends from Sheyenne to Gackle and Tuttle to Wimbledon. CDTV also serves Cable TV to the cities of Bowdon, Cleveland, Glenfield, Sykeston, Woodworth, Ypsilanti, Montpelier and Sheyenne.

CDTV Equipment and Installation Costs	CDTV Plans and Monthly Charges
Equipment:.....$200.00 + tax Antenna, integrated feedhorn, coaxial cable, power inserter, descrambler box and remote control.	Limited Service.....$10.00 5 Channels
Technician Install:.....$100.00 A DCT technician will come to your home and install the equipment.	Basic Service.....$23.50 17 Channels (may vary by location)
Connection Fee:.....$15.00	Premium Channel.....$10.00 HBO

Central Dakota TV

Channe Lis

CDTV FAQ's

Request information for all Services

!NOTE! When installing the CDTV equipment do **NOT** plug the power inserter into the wall outlet until ALL cables are connected!

Google Google Search

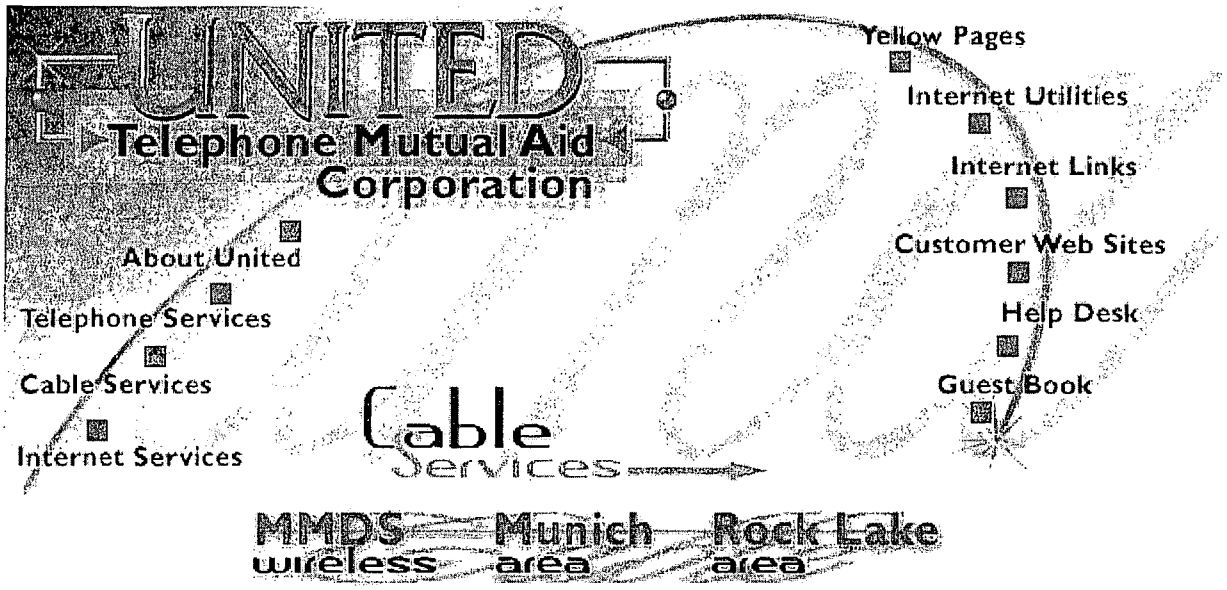
Search WWW Search www.daktel.com

Site map | © Copyright 2001-2005 Dakota Central Telecommunications | E-mail Us

EXHIBIT P14

72 PU-05-451 Pages: 3

Portion of Dakota Central Telecommunications Web site
by Midcontinent Communications by
01/23/2006 CC: Comm Legal Ilona, Pat, Annette . .
Exhibit # P14



BASIC SERVICES - $15.00/Month	EXPANDED BASIC - $10.00/Month
70 KXJB - Channel 4 CBS	82/90 FAMILY
71 WDAZ - Channel 8 ABC	83/91 USA
72 KVLY - Channel 11 NBC	84/92 TNT
73 KVRR FOX	85/93 DISNEY
74 WTBS Atlanta	86/94 A&E (Arts and Entertainment)
75 WGN Chicago	87/95 CMT (Country Music Television)
76 CNN News	88/96 The Weather Channel
77 ESPN Sports	89/97 TCM (Turner Classic Movies)
98 DISC Discovery Channel	
99 TNN The Nashville Network	

[About United] * [Telephone Services] * [Cable Services] * [Internet Services] * [Yellow Pages]
[Internet Utilities] * [Internet Links] * [Customer Web Sites] * [Help Desk] * [Guest Book]

Glossary of terms

UTMA contact

United Telephone Mutual Aid
411 7th Avenue, Langdon, North Dakota 58249
701-256-5156 * 1-800-844-9708

SERVICES: TELEVISION SERVICES

Cable Television

Polar Cablevision delivers the ultimate cable TV experience. Lots of channels. Lots of options. A lot more entertainment for your money! Polar Cablevision provides services to these great communities: Fordville, St.Thomas, Michigan, Cavalier, Cavalier Air Station, Pisek, Hensel, Mountain, Park River, Petersburg, Crystal, Neche, Hoople, Adams, Edinburg, Pembina, Mayville and Portland.

Basic Cable Package is $31.95

To see a channel line up, click here

Digital Cable Television

For just a few dollars more than basic cable, add digital cable featuring additional channels, including music channels, Pay-Per-View with the latest movies and events, parental control features, TV Guide Interactive on-Screen Guide and more.

Digital Cable Package is $36.95 (includes Basic Cable Package)

To see a channel line up, click here

Call Polar to schedule an installation and start enjoying cable television!

Want to add HBO, Showtime, or to have Pay-Per-View options, etc.? Simply e-mail service@polarcomm.com or call us at **1-800-284-7222**. If you are currently a digital cable subscriber...adding premium channels takes a matter of minutes!! If you have Basic Cable and would like to learn more or add these great features, simply call our office at **1-800-284-7222** or e-mail us at service@polarcomm.com.

Service Center Hours:
Monday-Friday: 7:30AM-6:30PM
Saturday: 8:00AM-4:30PM

24-Hour Trouble Line:
701-284-7127

Equipment Rates for Digital Cable Television
Digital Cable Television requires a DCT 2000 (Digital Consumer Terminal). There is a $3.50/month charge.

© Copyright, Polar Communications, 2004

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JAN 27 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

January 26, 2006

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for late filing as requested in the above proceeding are Exhibits R-12, R-13, and R-14. In R-13, the Texas Commission includes a reference to a local regulation so I have included that as well in Exhibit R-13. We have included an original and seven copies of each exhibit.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

71 **PU-05-451** Pages: 1

Cover letter re Late Files Exhibits R-12, R-13 & R-14
by North Dakota Telephone Company by Don Negaard,
01/27/2006 CC: Comm Legal Illona, Pat, Annette . .

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 97-476-C - ORDER NO. 98-993

DECEMBER 14, 1998

IN RE: Application of Myrtle Beach Telephone, L.L.C. for a Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange, Local Exchange, and Exchange Access Telecommunications Services within the State of South Carolina.	))))))	ORDER REVOKING RURAL EXEMPTION

This matter comes before the Public Service Commission of South Carolina (Commission") on a Notice filed by Myrtle Beach Telephone, L.L.C. in which Myrtle Beach Telephone, L.L.C. gives notice of its intent to provide local telecommunications service within the service area of Horry Telephone Cooperative, Inc.

Myrtle Beach Telephone, L.L.C. was granted a Certificate of Public Convenience and Necessity to provide local telecommunications service within South Carolina by Order No. 98-101, dated February 11, 1998. Myrtle Beach Telephone, L.L.C. and the South Carolina Telephone Coalition entered a Stipulation dated January 5, 1998, which was approved by Order No. 98-101. The Stipulation stated that Myrtle Beach Telephone, L.L.C. would provide at least 30 days written notice of its intent to provide local service to any customer located in a rural incumbent LEC's service area, during which time the rural incumbent LEC would have the opportunity to exercise all rights afforded it under Federal and State law.

South Carolina PSC Order Revoking Rural Exemption
by North Dakota Telephone Company
01/27/2006 CC: Comm Legal Ilona, Pat, Annette ALJ
Exhibit # Late Filed R-12

EXHIBIT
tabbies
R - 12

Horry Telephone Cooperative, Inc. filed a Return to Myrtle Beach Telephone, L.L.C.'s Notice in which Horry Telephone Cooperative, Inc. asserted that Myrtle Beach Telephone, L.L.C.'s request was so vague and general as not to constitute a bona fide request for interconnection, services, or network elements. Thereafter, Myrtle Beach Telephone, L.L.C. filed a Response dated September 15, 1998, in which Myrtle Beach Telephone, L.L.C. submitted that its request was bona fide and that Horry Telephone Cooperative, Inc.'s argument was an attempt to delay competition. However, Myrtle Beach Telephone, L.L.C., in order to eliminate Horry Telephone Cooperative, Inc.'s vagueness objection, included in its Response a formal request for interconnection, service, and network elements. Myrtle Beach Telephone, L.L.C. and Horry Telephone Cooperative, Inc. then agreed to treat Myrtle Beach Telephone, L.L.C.'s Response dated September 15, 1998, as the bona fide request for interconnection, services, and network elements pursuant to Section 251 of the Telecommunications Act of 1996, and further agreed that the thirty day notice required by the Stipulation between Myrtle Beach Telephone, L.L.C. and the South Carolina Telephone Coalition approved in Order No. 98-101, dated February 11, 1998, would also begin on September 15, 1998. By Commission Order No. 98-755, dated October 1, 1998, the Commission approved the agreement of Myrtle Beach Telephone, L.L.C. and Horry Telephone Cooperative, Inc. that the September 15, 1998, Response of Myrtle Beach Telephone, L.L.C. should be viewed as the bona fide request of Myrtle Beach Telephone, L.L.C. for interconnection, services, and network elements pursuant to Section 251 of the Telecommunications Act of 1996.

On October 15, 1998, Horry Telephone Cooperative, Inc. then filed a Second Return to Notice in which Horry Telephone Cooperative, Inc. states that it does not intend to assert a continued rural exemption. While Horry Telephone Cooperative, Inc. acknowledges that it believes it is entitled to continue to assert its automatic rural exemption, Horry Telephone Cooperative, Inc. further acknowledges that it has no duty to negotiate as long as its automatic rural exemption is in place. Horry Telephone Cooperative, Inc. asserts that it could not begin the negotiation of an interconnection agreement until the Commission issues an order terminating the rural exemption. Horry Telephone Cooperative, Inc. further states that it intends to negotiate in good faith with Myrtle Beach Telephone, L.L.C. to reach an interconnection agreement that does not have an adverse impact on the subscribers of Horry Telephone Cooperative, Inc., which does not create an undue economic burden for the company, which is technically feasible, and which is in the public interest. Horry Telephone Cooperative, Inc. also asserts in its Second Return to Notice that the initial terms and conditions proposed by Myrtle Beach Telephone, L.L.C. are not appropriate but further states that during the course of negotiations that many issues will be debated. Horry Telephone Cooperative, Inc. specifically reserves its right to assert any appropriate suspensions and modifications to which it may be entitled, pursuant to Section 251(f)(2) of the Telecommunications Act of 1996.

47 U.S.C.§ 251(f)(1)(B) provides, in part, that "the State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption

under subparagraph (A)[1]." The Commission has conducted an inquiry pursuant to 47 U.S.C. § 251(f)(1)(B) for the purpose of determining whether to terminate Horry Telephone Cooperative, Inc.'s rural telephone exemption.

The Telecommunications Act of 1996, 47 U.S.C. § 251(f)(1)(B), provides in part:

> Within 120 days after the State commission receives notice of [a bona fide request for interconnection, services, or network elements], the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other that subsections (b)(7) and (c)(1)(D) thereof).

In light of Horry Telephone Cooperative, Inc.'s position on this matter, the Commission has no basis upon which to make a finding that the request is unduly economically burdensome, not technically feasible, or inconsistent with the provision of universal service. Therefore, the Commission finds that Horry Telephone Cooperative, Inc.'s automatic rural telephone company exemption should be terminated.

However, the Commission's action in terminating the automatic rural telephone company exemption should not be taken or viewed as an endorsement of the bona fide request for interconnection, services, and network elements made by Myrtle Beach Telephone, L.L.C. Based on the position of Horry Telephone Cooperative, Inc. that it does not intend to assert a continued rural telephone company exemption and that it is willing to negotiate in good faith to reach an interconnection agreement with Myrtle Beach Telephone, L.L.C., the Commission recognizes that the automatic rural telephone company exemption must be removed for negotiations to commence. If the rural

[1] Subparagraph (A) of 47 U.S.C. § 251(f)(1)(A) contains the exemption of rural telephone companies from, among other things, the duty to negotiate interconnection, unbundled access, and resale.

telephone company from whom interconnection is sought is willing to negotiate in good faith with the requesting carrier, as evidenced by Horry Telephone Cooperative, Inc., a continued automatic exemption serves no purpose. Of course, any negotiated agreement must be submitted to the Commission for approval, and an agreement may be rejected by the Commission pursuant to 47 U.S.C. § 252(e)(2)(A)(ii) if implementation of the agreement is not consistent with the public interest, convenience, and necessity. Additionally, as noted by Horry Telephone Cooperative, Inc. in its Second Return, Horry Telephone Cooperative, Inc. has the right to assert any appropriate suspensions and modifications to which it may be entitled, pursuant to Section 251 (f)(2) of the Telecommunications Act of 1996, as issues may arise during the course of negotiations.

Finally, 47 U.S.C. § 251 (f)(1)(B) requires the State Commission upon termination of the exemption to establish an implementation schedule for compliance with the request. In accordance with this requirement, the Commission finds that the appropriate schedules as set forth in Section 252 of the Telecommunications Act of 1996 shall apply.

Therefore, the Commission concludes that, as of the date Horry Telephone Cooperative, Inc. receives a copy of this Order, the rural exemption as it pertains to Horry Telephone Cooperative, Inc. is terminated and the time period for negotiating an agreement will commence.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

RECEIVED
04 NOV -5 PM 1:42
FILING CLERK

PUC DOCKET NO. 29248
SOAH DOCKET NO. 473-04-2991

NTS COMMUNICATIONS REQUEST FOR WAIVER OF RURAL EXEMPTION OF SOUTH PLAINS TELEPHONE COOPERATIVE, INC.	§ § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER SETTING IMPLEMENTATION SCHEDULE

I. Introduction

On September 15, 2004, the Public Utility Commission of Texas (Commission) entered an Order addressing the application of NTS Communications (NTS) to terminate the rural exemption of South Plains Telephone Cooperative, Inc. (South Plains) pursuant to § 251(f)(1)(A) of the Federal Telecommunications Act.[1] The Order granted NTS's request to terminate the rural exemption of South Plains for the Woodrow exchange. The Order further directed that an implementation schedule be set to allow the parties to negotiate the terms of interconnection pursuant to FTA § 251(f)(1)(B). This Order sets that implementation schedule.

II. Discussion

NTS requested an expedited schedule because more than nine months have elapsed since NTS delivered the request to South Plains that triggered this docket. NTS suggested a period of 30 to 60 days to negotiate before opening the arbitration window, specifically requesting that the arbitration window open on October 15 and close on November 9, 2004, with arbitration to be completed by February 28, 2005.

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified, as amended, in Sections 15 and 47 U.S.C.) (FTA).

69 PU-05-451 Pages: 17

Texas PUC Order Setting Implementation Schedule
by North Dakota Telephone Company
01/27/2006 CC: Comm. Legal Iliona, Pat. Annette ALJ .
Exhibit # Late Filed R-13

EXHIBIT
tabbies
R - 13

South Plains argues that the standard timelines for negotiation and arbitration of interconnection agreements are set forth in FTA § 252(a) and (b) and P.U.C. SUBST. R. 26.272(f) and (g). These timelines require a period of 135 days for negotiations with a window to request arbitration between the 135th and the 160th day and are triggered by a request for interconnection meeting the requirements of P.U.C. SUBST. R. 26.272(f)(3). It is South Plains's position that no such request meeting these requirements has been received by South Plains.

The Commission finds the arguments of South Plains persuasive. The September 15, 2004 Commission Order, in Finding of Fact No. 11, found that the December 4, 2003 letter (officially filed on January 28, 2004) from NTS to South Plains was a request to interconnect that showed NTS's sincere and clear intent to interconnect with South Plains. That letter was sufficient to commence this docket for termination of South Plains' rural exemption, but it does not meet all of the requirements of P.U.C. SUBST. R. 26.272(f)(3)(A)-(D). Therefore, no deadlines have yet been triggered in this docket, and the Commission enters an implementation schedule consistent with the following findings of fact and conclusions of law.

III. Findings of Fact

1. Section 251 of the FTA requires telecommunications carriers such as NTS and South Plains to interconnect for the purpose of exchanging telephone traffic originated by their customers.

2. NTS is a competitive local exchange carrier currently serving the cities of Amarillo, Lubbock, Midland, Odessa, and surrounding areas.

3. NTS seeks in this proceeding an interconnection with South Plains within the South Plains Woodrow exchange in order to provide local exchange service within a one-half mile wide area, along a fiber route it purchased as part of a larger facilities acquisition from a competitive local exchange carrier leaving the Lubbock area.

4. The interconnection NTS seeks is for the Woodrow exchange only, and only for a connection between South Plains' Woodrow switch and NTS's switch.

5. By letter dated December 4, 2003, NTS requested to negotiate interconnection with South Plains, pursuant to FTA § 251(f)(1)(A).

6. NTS mailed a copy of the December 4, 2003 letter to the Public Utility Commission of Texas (Commission) without filing the letter with the Commission filing clerk as required by P.U.C. PROC. R. 22.71(b).

7. On January 28, 2004, NTS filed its December 4, 2003 letter in compliance with P.U.C. PROC. R. 22.71(b), notifying the Commission of its intent to interconnect with South Plains.

8. The Commission referred this case to the State Office of Administrative Hearings (SOAH) on February 9, 2004, requesting the assignment of an Administrative Law Judge (ALJ) to conduct a hearing on the merits and issue a Proposal for Decision.

9. The parties participating in that proceeding were: NTS represented by Lawrence S. Smith, Smith Majcher & Mudge, L.L.P.; South Plains represented by Brook Bennett Brown, McGinnis Lochridge & Kilgore; and Commission Staff represented by Mark Gladney, Legal and Enforcement Division.

10. The ALJ convened the hearing on the merits on May 18, 2004.

11. On September 15, 2004, the Commission entered the Order adopting the ALJ's Proposal for Decision and terminating South Plains's exemption to the Woodrow exchange only.

IV. Conclusions of Law

1. Section 251(f) of the FTA exempts rural telephone companies such as South Plains from the statutory requirement to negotiate agreements for interconnection unless the Commission has terminated the exemption.

2. The Commission has jurisdiction over this proceeding pursuant to the FTA § 251(f) and § 52.002 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. (Vernon 1998 and Supp. 2005) (PURA).

3. Under FTA § 251(f)(1)(A), a rural telephone company is exempt from the requirements to interconnect under FTA § 251(c) until the rural company receives a bona fide request to interconnect.

4. *Bona fide* is defined as in good faith, sincere, or genuine. *American Heritage Dictionary of the English Language*, 3rd Edition (Houghton Mifflin 1992).

5. It is not a requirement under FTA § 251(f)(1)(A) for NTS to provide the specific details of the interconnection in its bona fide request.

6. A *bona fide* request to interconnect pursuant to FTA § 251(f)(1)(A) does not have to meet all of the requirements of P.U.C. SUBST. R. 26.272(f)(3) necessary to determine the beginning date for negotiations of an interconnection agreement.

7. NTS's December 4, 2003 letter was a *bona fide* request to interconnect pursuant to FTA § 251(f)(1)(A), but it does not meet the requirements of P.U.C. SUBST. R. 26.272(f)(3); therefore, no date beginning negotiations between NTS and South Plains has been established.

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. NTS is ordered to file a request for interconnection from South Plains that meets the requirements of P.U.C. SUBST. R. 26.272(f)(3)(A)-(D) with the Commission and serve South Plains with that request. The timelines set forth in the FTA and P.U.C. SUBST. R. 26.272(f) and (g) shall be calculated from the date the request is filed with the Commission.

2. All other motions, requests for specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 5th day of November 2004.

PUBLIC UTILITY COMMISSION OF TEXAS

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, CHAIRMAN

BARRY T. SMITHERMAN, COMMISSIONER

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS PROVIDERS.

Subchapter L. WHOLESALE MARKET PROVISIONS.

§26.272. Interconnection.

(a) **Purpose.** The purpose of this section is to ensure that all providers of telecommunications services which are certificated to provide local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintain interoperable networks such that the benefits of local exchange competition are realized as envisioned under the provisions of the Public Utility Regulatory Act (PURA). The commission finds that interconnection is necessary to achieve competition in the local exchange market and is, therefore, in the public interest.

(b) **Definition.** The term "customer" when used in this section, shall mean an end-user customer.

(c) **Application and Exceptions.**

(1) **Application.** This section applies to all certificated telecommunications utilities (CTUs) providing local exchange service.

(2) **Exceptions.** Except as herein provided, all CTUs providing local exchange service must comply with the requirements of this section.

(A) Holders of a service provider certificate of operating authority (SPCOA).

(i) The holder of an SPCOA that does not provide dial tone and only resells the telephone services of another CTU shall be subject only to the requirements of subsections (e)(1)(B)(ii) and (e)(1)(D)(i)-(vii) of this section and subsection (i)(1) - (3) of this section.

(ii) The underlying CTU providing service to the holder of an SPCOA referenced in subparagraph (A)(i) of this paragraph shall comply with the requirements of this section with respect to the customers of the SPCOA holder.

(B) Small incumbent local exchange companies (ILECs).

(i) This section shall apply to small ILECs to the extent required by 47 United States Code §251(f) (1996).

(ii) Not withstanding the requirement in clause (i) of this subparagraph, small ILECs shall terminate traffic of a CTU which originates and terminates within the small ILEC's extended local calling service (ELCS) or extended area service (EAS) calling scope, where the small ILEC has an ELCS or EAS arrangement with another dominant certificated telecommunications utility (DCTU). The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(C) Rural telephone companies.

(i) This section shall also apply to rural telephone companies as defined in 47 United States Code §153 (1996) to the extent required by 47 United States Code §251(f) (1996).

(ii) Rural telephone companies shall terminate traffic of a CTU which originates and terminates within the rural telephone company's ELCS or EAS calling scope, where the rural telephone company has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(D) Small CTUs.

(i) A small CTU may petition for a suspension or modification of the application of this section pursuant to 47 United States Code §251(f)(2) (1996).

§26.272(c)(2)(D) continued

(ii) Small CTUs shall terminate traffic of a CTU which originates and terminates within the small CTU's ELCS or EAS calling scope, where the small CTU has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(d) **Principles of interconnection.**

(1) **General principles.**

(A) Interconnection between CTUs shall be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.

(B) Interconnection between CTUs shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.

(C) A CTU may not unreasonably:

(i) discriminate against another CTU by refusing access to the local exchange;

(ii) refuse or delay interconnections to another CTU;

(iii) degrade the quality of access provided to another CTU;

(iv) impair the speed, quality, or efficiency of lines used by another CTU;

(v) fail to fully disclose in a timely manner, on request, all available information necessary for the design of equipment that will meet the specifications of the local exchange network; or

(vi) refuse or delay access by any person to another CTU.

(D) Interconnecting CTUs shall negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required pursuant to this section.

(E) This section should not be construed to allow an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information, customer-specific as defined in §26.5 of this title (relating to Definitions) unless otherwise permitted in this section.

(2) **Technical interconnection principles.** Interconnecting CTUs shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and are in compliance with §23.61 of this title (relating to Telephone Utilities) and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.

(A) Interconnecting CTUs shall ensure that customers of CTUs shall not have to dial additional digits or incur dialing delays that exceed industry standards in order to complete local calls as a result of interconnection.

(B) Interconnecting CTUs shall provide each other non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.

(C) Interconnecting CTUs shall provide each other Common Channel Signaling System Seven (SS7) connectivity where technically available.

(D) Interconnecting CTUs shall be permitted a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single local access and transport area (LATA), as requested by the interconnecting CTU, and may negotiate

§26.272(d)(2)(D) continued

with the other CTU for additional interconnection points. Interconnecting CTUs shall agree to construct and/or lease and maintain the facilities necessary to connect their networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect their networks. The financial responsibility for construction and maintenance of such facilities shall be borne by the party who constructs and maintains the facility, unless the parties involved agree to other financial arrangements. Each interconnecting CTU shall be responsible for delivering its originating traffic to the mutually-agreed-upon point of interconnection or points of interconnection. Nothing herein precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are used by other CTUs.

(E) Interconnecting CTUs shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each CTU shall be responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and is in compliance with §23.61 of this title.

(F) If a CTU has sufficient facilities in place, it shall provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport shall not negotiate termination on behalf of another CTU, unless the terminating CTU agrees to such an arrangement. Upon request, DCTUs within major metropolitan areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.

(G) Each interconnecting CTU shall be responsible for ensuring that traffic is properly routed to the connected CTU and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting CTUs.

(H) Interconnecting CTUs shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner and/or appropriate governmental authority.

(I) Interconnecting CTUs shall provide each other physical interconnection in a non-discriminatory manner. Physical collocation for the transmission of local exchange traffic shall be provided to a CTU upon request, unless the CTU from which collocation is sought demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented at the option of the CTU requesting the interconnection.

(J) Each interconnecting CTU shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

(3) **Principles regarding billing arrangements.**

(A) Interconnecting CTUs shall cooperatively provide each other with both answer and disconnect supervision as well as accurate and timely exchange of information on billing records to facilitate billing to customers, to determine intercompany settlements for local and non-local traffic, and to validate the jurisdictional nature of traffic, as necessary. Such billing records shall be provided in accordance with national industry standards. For billing interexchange carriers for jointly provided switched access services, such billing records shall include meet point billing records, interexchange carrier billing

§26.272(d)(3)(A) continued

name, interexchange carrier billing address, and Carrier Identification Codes (CICs). If exchange of CIC codes is not technically feasible, interconnecting CTUs shall negotiate a mutually acceptable settlement process for billing interexchange carriers for jointly provided switched access services.

(B) CTUs shall enter into mutual billing and collection arrangements that are comparable to those existing between and/or among DCTUs, to ensure acceptance of each other's non-proprietary calling cards and operator-assisted calls.

(C) Upon a customer's selection of a CTU for his or her local exchange service, that CTU shall provide notification to the primary interexchange carrier (IXC) through the Customer Account Record Exchange (CARE) database, or comparable means if CARE is unavailable, of all information necessary for billing that customer. At a minimum, this information should include the name and contact person for the new CTU and the customer's name, telephone number, and billing number. In the event a customer's local exchange service is disconnected at the option of the customer or the CTU, the disconnecting CTU shall provide notification to the primary IXC of such disconnection.

(D) All CTUs shall cooperate with interexchange carriers to ensure that customers are properly billed for interexchange carrier services.

(4) **Principles regarding interconnection rates, terms, and conditions.**

(A) Criteria for setting interconnection rates, terms, and conditions. Interconnection rates, terms, and conditions shall not be unreasonably preferential, discriminatory, or prejudicial, and shall be non-discriminatory. The following criteria shall be used to establish interconnection rates, terms, and conditions.

(i) Local traffic of a CTU which originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU shall be terminated by the CTU at local interconnection rates. The local interconnection rates under this subclause also apply with respect to mandatory EAS traffic originated and terminated within the local calling area of a DCTU if such traffic is between exchanges served by that single DCTU.

(ii) If a non-dominant certificated telecommunications utility (NCTU) offers, on a mandatory basis, the same minimum ELCS calling scope that a DCTU offers under its ELCS arrangement, a NCTU shall receive arrangements for its ELCS traffic that are not less favorable than the DCTU provides for terminating mandatory ELCS traffic.

(iii) With respect to local traffic originated and terminated within the local calling area of a DCTU but between exchanges of two or more DCTUs governed by mandatory EAS arrangements, DCTUs shall terminate local traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar mandatory EAS traffic for the affected area. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar mandatory EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

§26.272(d)(4)(A) continued

(iv) With respect to traffic that originates and terminates within an optional flat rate calling area, whether between exchanges of one DCTU or between exchanges of two or more DCTUs, DCTUs shall terminate such traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar traffic. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar optional EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

(v) A DCTU with more than one million access lines and a NCTU shall negotiate new EAS arrangements in accordance with the following requirements.

(I) For traffic between an exchange and a contiguous metropolitan exchange local calling area, as defined in §26.5 of this title (relating to Definitions), the DCTU shall negotiate with a NCTU for termination of such traffic if the NCTU includes such traffic as part of its customers' local calling area. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(II) For traffic that does not originate or terminate within a metropolitan exchange local calling area, the DCTU shall negotiate with a NCTU for the termination of traffic between the contiguous service areas of the DCTU and the NCTU if the NCTU includes such traffic as part of its customers' local calling area and such traffic originates in an exchange served by the DCTU. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(III) A NCTU shall have the same obligation to negotiate similar EAS interconnection arrangements with respect to traffic between its service area and a contiguous exchange of the DCTU if the DCTU includes such traffic as part of its customers' local calling area.

(vi) NCTUs are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings.

(B) Establishment of rates, terms, and conditions.

(i) CTUs involved in interconnection negotiations shall ensure that all reasonable negotiation opportunities are completed prior to the termination of the first commercial call. The date upon which the first commercial call between CTUs is terminated signifies the beginning of a nine-month period in which each CTU shall reciprocally terminate the other CTU's traffic at no charge, in the absence of mutually negotiated interconnection rates. Reciprocal interconnection rates, terms, and conditions shall be established pursuant to the compulsory arbitration process in subsection (g) of this section. In establishing these initial rates and three years from termination of the first commercial call, no cost studies shall be required from a new CTU.

(ii) An ILEC may adopt the tariffed interconnection rates approved for a larger ILEC or interconnection rates of a larger ILEC resulting from negotiations without providing the commission any additional cost justification for the adopted rates. If an ILEC adopts the tariffed interconnection rates approved for a larger ILEC, it

§26.272(d)(4)(B)(ii) continued

shall file tariffs referencing the appropriate larger ILEC's rates. If an ILEC adopts the interconnection rates of a larger ILEC, the new CTU may adopt those rates as its own rates by filing tariffs referencing the appropriate larger ILEC's rates. If an ILEC chooses to file its own interconnection tariff, the new CTU must also file its own interconnection tariff.

(C) Public disclosure of interconnection rates, terms, and conditions. Interconnection rates, terms, and/or conditions shall be made publicly available as provided in subsection (h) of this section.

(e) **Minimum interconnection arrangements.**

(1) Pursuant to mutual agreements, interconnecting CTUs shall provide each other non-discriminatory access to ancillary services such as repair services, E-911, operator services, white pages telephone directory listing, publication and distribution, and directory assistance. The following minimum terms and conditions shall apply:

(A) Repair services. For purposes of this section, a CTU shall be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, or provided by the CTU for resale purposes, or whether the facilities are ordered by another CTU for purposes of collocation.

(B) E-911 services. E-911 services include Automatic Number Identification (ANI), ANI and Automatic Location Identification (ALI), ANI and/or ALI and selective routing, and/or any other combination of enhanced 9-1-1 features required by the Regional Planning Commission or the 9-1-1 emergency communication district responsible for the geographic area involved. This requirement is in accordance with Health and Safety Code, Chapter 771, and the applicable regional plan approved by the Commission on State Emergency Communications or by the emergency communication district, defined in Health and Safety Code, §771.001(2), responsible for the geographic area involved or other local authority responsible for the geographic area involved.

(i) As a prerequisite to providing local exchange telephone service to any customer and thereafter, a CTU must meet the following requirements.

(I) The CTU is responsible for ordering or provisioning the trunk groups necessary to provide E-911 services.

(II) The CTU is responsible for enabling all its customers to dial the three digits 9, 1, 1, and only these numbers, to access 9-1-1 service.

(III) The CTU is responsible for providing the telephone number of the 9-1-1 calling customer to the appropriate CTU's E-911 tandems or appropriate 9-1-1 Public Safety Answering Point, as applicable. This number must include both the numbering plan area (NPA) code, or numbering plan digit (NPD), as appropriate and necessary, and the local telephone number of the 9-1-1 calling customer, that can be used to successfully complete a return call to the customer. ANI represents this capability.

(IV) The CTU is responsible for selectively routing a 9-1-1 customer call, as well as interconnecting traffic on its network, to the appropriate CTU's E-911 tandems or appropriate 9-1-1 Public Safety Answering Point, as applicable, based on the ANI and/or location of the calling party. The appropriate CTU and/or appropriate 9-1-1 entity, as applicable, shall provide routing information to the CTU for routing purposes.

§26.272(e)(1)(B)(i) continued

(V) The CTU is responsible for providing appropriate information describing the location from which a CTU customer is placing a 9-1-1 call. This information shall consist of the calling customer name, physical location, appropriate emergency service providers, and other similar data. For purposes of this subclause, appropriate or other similar data shall be determined by the Regional Planning Commission responsible for the geographic area involved, in accordance with Health and Safety Code, Chapter 771, and the applicable regional plan approved by the Commission on State Emergency Communications or by the emergency communication district, defined in Health and Safety Code, §771.001(2), responsible for the geographic area involved or other local authority responsible for the geographic area involved.

(ii) Each interconnecting CTU is responsible for providing to the local authority and the appropriate CTU, accurate and timely current information for all published, nonpublished, and nonlisted information associated with its customers for the purposes of emergency or E-911 services.

(I) For purposes of this clause, the appropriate CTU refers to the CTU designated by the local authority for purposes of maintaining the 9-1-1 database.

(II) For purposes of this clause, the information is considered timely if within 24 hours of receipt of the information, it is delivered by the CTU to the appropriate CTU and the local authority, and/or placed into the database by the appropriate CTU.

(III) For purposes of this clause, the information sent by a CTU to the appropriate CTU or the information used by the appropriate CTU shall be maintained in a fashion to ensure that it is accurate at a percentage as close to 100% as possible. "Accurate" means a record that correctly routes a 9-1-1 call, and/or provides correct location information relating to the origination of such call. "Percentage" means the total number of accurate records in that database divided by the total number of records in that database. In determining the accuracy of records, a CTU shall not be held responsible for erroneous information provided to it by a customer or another CTU.

(IV) Interconnecting CTUs shall execute confidentiality agreements with each other, as necessary, to prevent the unauthorized disclosure of non-published/non-listed numbers. Interconnecting CTUs shall be allowed access to the ALI database by the appropriate CTU for verification purposes. The local 9-1-1 entity shall provide non-discriminatory access to the Master Street Address Guide.

(iii) Each CTU is responsible for developing a 9-1-1 disaster recovery, service restoration plan with input from the applicable Regional Planning Commission or emergency communication district and the Commission on State Emergency Communications. This plan shall identify the actions to be taken in the event of a network-based 9-1-1 service failure. The goal of such actions shall be the efficient and timely restoration of the 9-1-1 service. CTUs shall notify the applicable Regional Planning Commission or emergency communications district of any changes in CTU network based services and other services that may require changes to the plan.

§26.272(e)(1)(B) continued

(iv) Interconnecting CTUs shall provide each other and the appropriate 9-1-1 entity notification of scheduled outages for 9-1-1 trunks at least 48 hours prior to such outages. In the event of unscheduled outages for 9-1-1 trunks, interconnecting CTUs shall provide each other and the appropriate 9-1-1 entity immediate notification of such outages.

(v) Each NCTU's rates for 9-1-1 service to a Public Safety Answering Point shall be presumed to be reasonable if they do not exceed the rates charged by the ILEC for similar service.

(C) Operator services. Interconnecting CTUs shall negotiate to ensure the interoperability of operator services between networks, including but not limited to the ability of operators on each network to perform such operator functions as reverse billing, line verification, call screening, and call interrupt.

(D) White pages telephone directory and directory assistance. Interconnecting CTUs shall negotiate to ensure provision of white pages telephone directory and directory assistance services.

(i) The telephone numbers and other appropriate information of the customers of NCTUs shall be included on a non-discriminatory basis in the DCTU's white pages directory associated with the geographic area covered by the white pages telephone directory published by the DCTUs. Similarly, any white pages telephone directory provided by a NCTU to its customers shall have corresponding DCTU listings available on a non-discriminatory basis. The entries of NCTU customers in the DCTU white pages telephone directory shall be interspersed in correct alphabetical sequence among the entries of the DCTU customers and shall be no different in style, size, or format than the entries of the DCTU customers, unless requested otherwise by the NCTU. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not directly charge the customer of another CTU located in the geographic areas covered by the white pages telephone directory for white pages listings or directory.

(ii) Listings of all customers located within the local calling area of a NCTU, but not located within the local calling area of the DCTU publishing the white pages telephone directory, shall be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.

(iii) CTUs shall provide directory listings and related updates to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU or to any CTU providing directory assistance, in a timely manner to ensure inclusion in the annual white page listings and provision of directory assistance service that complies with §23.61 of this title. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

(iv) CTUs shall, upon request, provide accurate and current subscriber listings (name, address, telephone number) and updates in a readily usable format and in a timely manner, on a non-discriminatory basis, to publishers of yellow pages telephone directory. CTUs shall not provide listings of subscribers desiring non-listed status for publication purposes.

§26.272(e)(1)(D) continued

(v) White pages telephone directories shall be distributed to all customers located within the geographic area covered by the white pages telephone directory on non-discriminatory terms and conditions by the CTU or its affiliate publishing the white pages telephone directory.

(vi) A CTU or its affiliate that publishes a white pages telephone directory on behalf of the CTU shall provide a single page per CTU in the information section of the white pages telephone directory, for the CTU to convey critical customer contact information regarding emergency services, billing and service information, repair services and other pertinent information. The CTU's pages shall be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory shall be subject to negotiations.

(vii) CTUs must provide information that identifies customers desiring non-listed and/or non-published telephone numbers and/or non-published addresses to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not divulge such non-listed and/or non-published telephone numbers or addresses and the CTU maintaining the directory assistance database shall not divulge such non-published telephone numbers or addresses.

(viii) CTUs shall provide each other non-discriminatory access to directory assistance databases.

(2) At a minimum, interconnecting CTUs shall negotiate to ensure the following:

(A) Non-discriminatory access to databases such as 800 and Line Information Data Base (LIDB) where technically feasible, to ensure interoperability between networks and the efficient, timely provision of service to customers;

(B) non-discriminatory access to Telecommunications Relay Service;

(C) Common Channel Signaling interconnection including transmission of privacy indicator where technically available;

(D) non-discriminatory access to all signaling protocols and all elements of signaling protocols used in routing local and interexchange traffic, including signaling protocols used to query call processing databases, where technically feasible;

(E) number portability and the inclusion of the NCTU's NXX code(s) in the Local Exchange Routing Guide and related systems;

(F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including, but not limited to, 900 and 976 calls;

(G) provision of intercept services for a specific telephone number in the event a customer discontinues service with one CTU, initiates service with another CTU, and the customer's telephone number changes;

(H) cooperative engineering, operations, maintenance and billing practices and procedures; and

(I) non-discriminatory access to Advanced Intelligent Network (AIN), where technically available.

(f) **Negotiations.**

(1) CTUs and other negotiating parties shall engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

(2) Before terminating its first commercial telephone call, each CTU requesting interconnection shall negotiate with each CTU or other negotiating party that is necessary to complete all telephone calls, including local service calls and EAS or ELCS calls, made by or placed to the customers of the requesting CTU. Upon request, DCTUs within major metropolitan calling areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussions of network efficiencies and intercompany billing arrangements.

(3) Unless the negotiating parties establish a mutually agreeable date, negotiations are deemed to begin on the date when the CTU or other negotiating party from which interconnection is being requested receives the request for interconnection from the CTU seeking interconnection. The request shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) identify the initial specific issues to be resolved, the specific underlying facts, and the requesting CTU's proposed resolution of each issue;

(C) provide any other material necessary to support the request, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the requesting CTU.

(4) The requesting CTU may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.

(5) The CTU or negotiating party from which interconnection is sought shall respond to the interconnection request no later than 14 working days from the date the request is received. The response shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) respond specifically to the requesting party's proposed resolution of each initial issue identified by the requesting party, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting party's proposed resolution of each issue, the responding party's proposed resolution of each issue;

(C) provide any other material necessary to support the response, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the responding party.

(6) At any point during the negotiations required under this subsection, any CTU or negotiating party may request the commission designee(s) to participate in the negotiations and to mediate any differences arising in the course of the negotiation.

(7) Interconnecting CTUs may, by written agreement, accelerate the requirements of this subsection with respect to a particular interconnection agreement except that the requirements of subsection (g)(1)(A) of this subsection shall not be accelerated.

(8) Any disputes arising under or pertaining to negotiated interconnection agreements may be resolved pursuant to Chapter 22, Subchapter Q, of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(g) **Compulsory arbitration process.**

(1) A negotiating CTU that is unable to reach mutually agreeable terms, rates, and/or conditions for interconnection with any CTU or negotiating party may petition the commission to arbitrate any unresolved issues. In order to initiate the arbitration procedure, a negotiating CTU:

§26.272(g)(1) continued

(A) shall file its petition with the commission during the period from the 135th to the 160th day (inclusive) after the date on which its request for negotiation under subsection (f) of this section was received by the other CTU involved in the negotiation;
(B) shall provide the identity of each CTU and/or negotiating party with which agreement cannot be reached but whose cooperation is necessary to complete all telephone calls made by or placed to the customers of the requesting CTU;
(C) shall provide all relevant documentation concerning the unresolved issues;
(D) shall provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;
(E) shall provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and
(F) shall send a copy of the petition and any documentation to the CTU or negotiating party with which agreement cannot be reached, not later than the day on which the commission receives the petition.

(2) A non-petitioning party to a negotiation under subsection (f) of this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the commission receives the petition.
(3) The compulsory arbitration process shall be comp leted not later than nine months after the date on which a CTU receives a request for interconnection under subsection (f) of this section.
(4) Any disputes arising under or pertaining to arbitrated interconnection agreements may be resolved pursuant to Chapter 22, Subchapter Q, of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(h) **Filing of rates, terms, and conditions.**
(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.
(A) A CTU from which interconnection is requested shall file any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission shall make such agreement available for public inspection and copying within ten days after the agreement is approved by the commission pursuant to subparagraphs (C) and (D) of this paragraph.
(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that it generally offers within the state pursuant to 47 United States Code §252(f) (1996). The commission shall make such statement available for public inspection and copying within ten days after the statement is approved by the commission pursuant to subparagraph (E) of this paragraph.
(C) The commission shall reject an agreement (or any portion thereof) adopted by negotiation if it finds that:
(i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.
(D) The commission shall reject an agreement (or any portion thereof) adopted by compulsory arbitration, under subsection (g) of this section, pursuant to guidelines found in 47 United States Code §252(e)(2)(B) (1996).

§26.272(h)(1) continued

(E) The commission shall review the statement of generally available terms filed under subparagraph (B) of this paragraph, pursuant to guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph shall not relieve an ILEC serving greater than five million access lines of its duty to negotiate the terms and conditions of an agreement pursuant to §47 United States Code §251 (1996).

(2) **Rates, terms and/or conditions among DCTUs.** Within 15 days of a request from a CTU negotiating interconnection arrangements with a DCTU, a non-redacted version of any agreement reflecting the rates, terms, and conditions between and/or among DCTUs which relate to interconnection arrangements for similar traffic shall be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement shall be disclosed to commission staff at the same time if requested, subject to commission-approved non-disclosure or protective agreement.

(i) **Customer safeguards.**

(1) **Requirements for provision of service to customers.** Nothing in this section or in the CTU's tariffs shall be interpreted as precluding a customer of any CTU from purchasing local exchange service from more than one CTU at a time. No CTU shall connect, disconnect, or move any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §26.130 of this title, (relating to Selection of Telecommunications Utilities).

(2) **Requirements for CTUs ceasing operations.** In the event that a CTU ceases its operations, it is the responsibility of the CTU to notify the commission and all of the CTU's customers at least 61 working days in advance that their service will be terminated. The notification shall include a listing of all alternative service providers available to customers in the exchange and shall specify the date on which service will be terminated.

(3) **Requirements for service installations.** DCTUs that interconnect with NCTUs shall be responsible for meeting the installation of service requirements under §23.61(e)(2) of this title in providing service to the NCTU. NCTUs shall make a good-faith effort to meet the requirements for installation in §23.61(e)(2) of this title, and may negotiate with the DCTU to establish a procedure to meet this goal.

(A) For those customers for whom the NCTU provides dial tone but not the local loop, 95% of the NCTU's service orders shall be completed in no more than ten working days from request for service, unless a later date is agreed to by the customer.

(B) For those customers for whom the NCTU does not provide dial tone and resells the telephone services of a DCTU, 95% of the NCTU's service orders shall be completed in no more than seven working days from request for service, unless the customer agrees to a later date.

(C) For those customers where the NCTU uses facilities other than a DCTUs' resale facilities obtained through PURA §60.041, the NCTU shall complete service orders within 30 calendar days from request of service, unless a later date is agreed to by the customer.

(D) The DCTU shall not discriminate between its customers and NCTUs if the DCTU is able to install service in less than the time permitted under §23.61(e)(2) of this title.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on December 16, 1998

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett

CASE 98-C-1249 - Proceeding to Consider Petition of Warwick Valley Telephone Company for Mediation of an Interconnection Agreement with Citizens Telecommunications Company of New York, Inc. and any Resulting Interconnection Agreement.

ORDER REQUIRING INTERCONNECTION AND ADOPTING AN IMPLEMENTATION PLAN

(Issued and Effective December 23, 1998)

BY THE COMMISSION:

INTRODUCTION

On July 2, 1998, Warwick Valley Telephone Company (Warwick) sent Citizens Telecommunications Company of New York, Inc. (Citizens) its bona fide interconnection request to operate as a competitive local exchange carrier in Middletown, New York.[1] Warwick is a state-certified common carrier. As such, it can provide various telecommunication services throughout the State, including local exchange service.

As an incumbent local exchange carrier, Citizens serves about 300,000 access lines in rural and suburban areas throughout the State. With about 24,000 inhabitants, Middletown is the largest community it serves.[2] Middletown is also the closest city to Warwick's established service area. Warwick has purchased a building and plans to install a central office switch

[1] Tr. 33 and 406; Exhibit 19.

[2] Tr. 32.

68 PU-05-451 Pages: 13

NYPSC Order Requiring Interconnection & Adopting an Implementation Plan by North Dakota Telephone Company by
01/27/2006 CC: Comm Legal Ilona, Pat, Annette ALJ
Exhibit # Late Filed R-14

EXHIBIT
tabbies
R-14

in Middletown. It currently provides cellular and paging services in Middletown, and access to the internet.[1]

In July and August 1998, Warwick and Citizens made substantial progress negotiating an interconnection agreement. According to Citizens, it will absorb the cost of transporting its originating traffic to Warwick's Middletown switch.[2] Citizens is also committed to a timetable for resolving the provision of unbundled network elements to Warwick.[3] For its part, Warwick says it has kept its interconnection proposal simple and has avoided making any unusual requests. Like Citizens, Warwick will be responsible for the costs of delivering its originating traffic to Citizens' central office.[4]

Despite their ability to agree on these matters, the companies could not agree to a compensation arrangement for completing each other's local calls.[5] Warwick has sought usage-based reciprocal compensation;[6] Citizens prefers a bill-and-keep arrangement.[7] Consequently, on August 28, 1998, Warwick asked the Commission to help resolve this matter by participating in the parties' negotiations pursuant to the Telecommunications Act of 1996 (the Act).

---

[1] Tr. 405.

[2] Tr. 34.

[3] Id.

[4] Tr. 406.

[5] Tr. 33 and 413.

[6] Such an arrangement requires each company to pay the per minute costs of completing its calls on the other company's network. Citizens objects to this approach as long as the majority of calls from its customers to Warwick flow to Warwick's internet service provider.

[7] Under this approach the companies do not make any payments to each other; instead, each absorbs the costs of terminating the other carrier's traffic. Such arrangements are common between contiguous carriers with extended area service (EAS) agreements.

In accordance with the Act, Department of Public Service Staff (Staff) was assigned to the case and a mediator appointed to assist the parties.[1] But the mediation efforts conducted in September 1998 did not produce any further agreements. In fact, to avoid a reciprocal compensation arrangement with Warwick, Citizens claimed "rural telephone company" status under the Act.[2]

Specifically, Citizens says it cannot afford to pay usage-based compensation for the one-way traffic flowing to Warwick's internet service provider (ISP) without incurring adverse effects. Citizens says such payments would increase its operating costs and force it to charge residential customers higher rates for basic local service. Moreover, Citizens claims a reciprocal compensation arrangement would impair its ability to provide universal service.[3]

Consequently, this proceeding continued in accordance with 47 U.S.C. §251(f)(1). Under this section, a rural telephone company is initially exempt from having to provide interconnections, unbundled access, wholesale services, and other items to competitive telecommunications carriers, until it receives a bona fide request for interconnection, services, or network elements, and the state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with universal service requirements. When the state commission is notified that a bona fide interconnection request has been presented to a rural telephone company, it has 120 days in which to conduct an inquiry and determine whether the rural exemption should be terminated. If it decides to do so, the state commission must also establish an

---

[1] See, 47 U.S.C. §252(a)(2).

[2] Citizens' September 18, 1998 letter citing 47 U.S.C. §§153(37)(A) and 251(f)(1).

[3] Tr. 35.

implementation schedule for the incumbent local telephone company to comply with the competitive carrier's request.

On November 18 and 19, 1998, an evidentiary hearing was held in the Commission's New York City offices to consider Citizens' "rural telephone company" status and the terms of an implementation plan. Five witnesses testified for Citizens;[1] Warwick's President and a consultant testified on its behalf. Staff presented a panel of three witnesses. The record consists of 587 pages of transcript and 24 exhibits. The parties filed initial and reply briefs on November 30 and December 7, 1998, respectively.

THE CONTESTED ISSUE: RECIPROCAL COMPENSATION

Citizens' Case

Citizens estimated that it would pay Warwick about $6,000 a week, or $310,000 annually, were it to agree to usage-based compensation. This figure is based on the current amount of traffic to Warwick's ISP and assumes a theoretical compensation rate of $0.0025 per minute of use.[2] Citizens also observed that Warwick's ISP will save $300,000 a year when it stops purchasing connecting circuits from Citizens.[3] Further, Citizens claims it would be unfair for Warwick to obtain revenues

---

[1] Citizens Utilities Company's Vice President for Regulatory and Government Affairs testified as Citizens' policy witness. Three managers for interconnections, revenue and earnings, and economic cost analyses also testified, as did an independent consultant who helped design and evaluate the company's total service long-run incremental cost (TSLRIC) study.

[2] Exhibit 16. In contrast, Staff estimated first-year payments from Citizens to Warwick between $240,000 and $452,000, growing to between $547,000 and $1 million in the following year. Tr. 539. Staff's estimate assumes that the traffic to Warwick's ISP would grow by 1.6% per week and the compensation rate could be as low as Citizen's $0.001326 per minute switching cost. During the hearing, Citizens attempted to update and increase its estimate but, on Staff's motion, the untimely new estimate was stricken from the record. Tr. 183-186.

[3] Tr. 302-303.

for providing internet access both from Citizens and from ISP charges to end users.[1] Citizens seeks to avoid usage-based compensation for ISP traffic, believing instead that all carriers should keep the revenues they collect from their respective customers.[2]

Citizens estimated that it receives $22.55 in average monthly revenues from residential customers who subscribe to basic, flat-rate local service. This figure includes not only the local exchange revenues and the federal subscriber line charges (SLCs) that residential customers pay, but also the federal presubscribed interexchange carrier charges (PICCs) and the carrier common line (CCL) access charges that interexchange carriers pay. It includes, as well, the federal universal service funds (USF) that Citizens receives, but it excludes revenues obtained from second, or non-primary, residential lines.[3]

According to Citizens, these revenues do not cover its cost to provide basic residential service. The company says its TSLRIC for basic local service is $26.43, excluding common costs. Assuming $5.46 for common costs, Citizens estimates a TSLRIC of $31.89.[4] Thus, Citizens concludes that basic residential service is subsidized by other service categories and, it says,

---

[1] Tr. 43.

[2] Tr. 44. Staff estimated, were Citizens to pay usage-based reciprocal compensation to the other 21 ISPs operating in its service territory, payments to each such company would be between $40,000 and $76,000 in the first year, and between $92,000 and $173,000 in the second. Tr. 538. Citizens considers Staff's estimates conservative and expects greater growth to occur.

[3] Tr. 384-385, 389-390; Exhibit 18. Citizens objects to including CCL, PICC, and USF revenues in its residential service figure but has done so to conform its calculation with recent Commission precedent. See Cases 94-C-0095 and 28425, Access Charges and Targeted Accessibility Fund, Opinion No. 98-10 (issued June 2, 1998).

[4] Tr. 368; Exhibit 17.

any amount of reciprocal compensation for Warwick's ISP would increase costs and threaten universal service.[1] Until a method is established to provide explicit funding for universal service, Citizens urges that the implicit funding provided in its prevailing rate structure not be disturbed.[2]

In sum, Citizens says it should keep its rural telephone company exemption and not pay reciprocal compensation for traffic flowing to Warwick's ISP. Citizens emphasizes that it will interconnect with Warwick, provide it network elements, and negotiate in good faith. But, Citizens insists, it needs its current revenues to meet its service responsibilities.[3]

The Other Parties' Presentations

Staff supports competitive entry in Middletown and notes that Citizens disavows any technical difficulty for it to interconnect with Warwick.[4] Since Warwick plans to install a switch and operate as a full-service provider to business and residence customers, Staff says the company should receive incremental, cost-based rates for all local traffic terminating on its system, including calls to ISPs. Only if Warwick were to avoid its commitments as a provider of local exchange services would Staff recommend that the company be denied reciprocal compensation.[5]

---

[1] Tr. 387-388.

[2] Tr. 387-388.

[3] Tr. 45. Citizens sponsored Exhibit 15, a preliminary evaluation of the company's earned return on common equity for a recent period, as proof that it is not overearning in New York.

[4] Tr. 524.

[5] Staff notes that none of the other 21 ISPs operating in the 12 counties that Citizens serves qualify for reciprocal compensation. Unlike Warwick, they do not provide local telephone services.

Staff recommended that the reciprocal compensation rate be set temporarily at $0.001326 per minute, subject to refund, pending a thorough examination of Citizens' and Warwick's costs.[1] Staff believes that Citizens should not delay the physical interconnection Warwick has requested, and Warwick should be able to begin to provide service as soon as its tariff for competitive services is implemented.[2]

Warwick disputes Citizens' rural telephone company status by pointing to Citizens' parent company and claiming it is too large for any of the subsidiary companies to be considered rural.[3] Warwick observes that the holding company obtains $1.4 billion in annual revenues, its subsidiaries are dispersed throughout 14 states, and it has foreign interests in Hungary.[4] It also notes that the holding company enjoys the same federal, price-cap regulation that applies to the Regional Bell Operating Companies.[5]

Addressing the Act's definition of a "rural telephone company", Warwick doubts that the holding company satisfies the

---

[1] In the time provided for this proceeding, Staff performed a limited review of Citizens' TSLRIC study. Staff says it has concerns about the company's use of economic depreciation lives rather than the regulatory depreciation rates the Commission has approved. Staff is also concerned about the company's use of its current maintenance costs when they could be lower in the future. In this regard, Staff points to our decision in the Unbundled Network Elements Proceeding which suggests that the company's forward-looking costs should be developed with reference to a newly-installed network using the most efficient technology available. Tr. 542-546. Citizens submitted surreply testimony in this proceeding defending its economic depreciation rates, its use of current maintenance costs, and stating its opposition to the "scorched node" method of developing forward-looking costs. See, Tr. 263-271 and 300-303.

[2] Tr. 542.

[3] Citizens Telecommunication Company of New York, Inc. is a wholly-owned subsidiary of Citizens Utility Company.

[4] Tr. 408 and 447.

[5] Tr. 448.

criteria of 47 U.S.C. §153(37)(B)or(D) and that the study area in which Middletown is located qualifies pursuant to 47 U.S.C. §153(37)(A)or(C). Even if Citizens were deemed to be a rural telephone company, Warwick insists that the Act requires it to pay reciprocal compensation. Warwick says 47 U.S.C. §251(b)(5) imposes a duty on all local exchange carriers to pay reciprocal compensation, irrespective of their rural status.[1]

Warwick also denies that its interconnection request, and its demand for reciprocal compensation, place an undue economic burden on Citizens. It says Citizens should not be heard to complain about the sales and revenues it loses to competitors. Warwick observes that both it and Citizens have ISPs that compete in Middletown, and Citizens is not precluded from entering and competing in Warwick's service area. In these circumstances, Warwick believes reciprocal compensation should be deemed the norm.

As noted above, Staff estimated that Citizens' reciprocal compensation payments to Warwick could be as high as $452,000 in their first year, and could grow to $1 million thereafter.[2] Staff also observed that Citizens could be subject to additional payments were other ISPs in its service area to become associated with competitive local exchange carriers. Staff has estimated Citizens' financial exposure to be 0.2% of annual total company revenues, growing to 0.5% in the second year of Warwick's Middletown operations.[3]

Finally, Warwick and Staff doubt that Citizens' ability to provide universal service would be adversely affected by paying reciprocal compensation. Warwick estimated that Citizens would only lose $0.08 per access line per month, an amount far

---

[1] Tr. 455-457. In opposition to Warwick's position, Citizens points specifically to 47 U.S.C. §252(d)(2)(B)(i) which says that bill-and-keep arrangements are permissible.

[2] Supra, p. 5.

[3] Tr. 539-540.

less than the company's uncollectible revenues.[1] It also noted that Citizens will continue to receive federal support for rural areas. Warwick will not become an "eligible telecommunications carrier" in Citizens' areas.[2] Warwick claims that its competitive telecommunications services in Middletown will enhance universal service by lowering prices to consumers, thereby causing subscribership to rise.[3] Staff pointed out that 2.3% of Citizens' subscribers in New York are Lifeline customers.[4] Staff also observed that residence subscription to telephone service stands at about 95% statewide and six of the twelve counties Citizens serves exceed this level.[5]

DISCUSSION AND CONCLUSION

In this interconnection case, we must determine whether Citizens has provided a sufficient basis to excuse it from complying with one of the requirements that the Act imposes on local exchange carriers. Relief is available for certain local exchange carriers if they can show that the Act's requirements produce a significant adverse economic impact on users of telecommunications services, or that it would be unduly economically burdensome or technically infeasible, and such action is consistent with the public interest, convenience, and

---

[1] Tr. 462-465.

[2] Tr. 464.

[3] Tr. 412. In comparison to Citizens' $13.98 per month charge in Middletown for flat-rate residential service, Staff notes that Warwick's comparable rate is $6.04 per month. Tr. 533.

[4] Tr. 528. The Lifeline program reduces end-user charges for network access and local calling for a single telephone line in the principal residence of a qualified customer. Support is provided in the form of a waiver of the federal subscriber line charge (SLC) and a comparable amount of local charges. More Citizens customers may qualify for this program than those who have enrolled to date.

[5] Tr. 532.

necessity.[1] However, on the record here, we find that Citizens has not presented an adequate basis to suspend or modify any of the Act's requirements.

In general, we have determined that local calls to ISPs may be included in local exchange carriers' reciprocal compensation payments.[2] The Act entitles local exchange carriers to receive such compensation in order for them to recover the costs they incur to transport and terminate telecommunications.[3] In this instance, Citizens claims that the Act's reciprocal compensation requirement should be modified to a "bill-and-keep" arrangement in order to avoid an undue economic burden for the company and its ratepayers, and to provide it funds for universal service requirements.[4]

Contrary to these claims, Staff has shown that Warwick's interconnection in Middletown need not precipitate a substantial economic burden for Citizens. Significantly, Staff

---

[1] Warwick attempted to show that Citizens, as a rural telephone company, cannot be exempted from the Act's reciprocal compensation requirements. However, the legal issues Warwick has raised neither preclude nor bar Citizens from seeking a modification of the Act's requirements. As a local exchange carrier with fewer than two percent of the nation's subscriber lines in the aggregate nationwide, Citizens may petition a state commission to suspend or modify the requirements of 47 U.S.C. § 251(b) or (c). While the company has petitioned us pursuant to 47 U.S.C. §251(f)(1)(B), rather than §251(f)(2), it is nonetheless clear that Citizens can seek relief from the Act's reciprocal compensation requirement as it has done here. For this reason, we have examined the merits of Citizens' position and ruled on it accordingly.

[2] Case 97-C-1275, Reciprocal Compensation and Internet Traffic Proceeding, Order Closing Proceeding (issued March 19, 1998), p. 6. Carriers need not enter into reciprocal compensation arrangements in the interconnection agreements they negotiate if both parties agree.

[3] 47 U.S.C. §§ 251(b)(5) and 252(d)(2)(A).

[4] Since the Act explicitly refers to bill-and-keep arrangements and does not preclude their use, Citizens urges that such arrangements be deemed a permissible form of reciprocal compensation for its interconnection with Warwick.

has shown that less than one percent of Citizen's revenues (about 0.2% in the first year and 0.5% in the second year) are at risk due to Warwick's provision of local service in Middletown to an ISP. This exposure does not present an exceptional economic burden for Citizens to warrant a modification of the Act's requirements. For its part, Warwick has shown that Citizens' potential payments to it are not out of line with other costs the company incurs.

With respect to universal service, we cannot credit Citizen's TSLRIC study due to the limited opportunity Staff has had to review it. In the short time available here, Staff identified several concerns about the methods Citizens used to estimate its costs which require additional consideration. Nevertheless, were Citizens able to demonstrate ultimately that its basic residential service is being subsidized by other service offerings, this fact alone would not require a modification of the compensation arrangement and interconnection plan we are adopting for it and Warwick. Universal service is a valid concern in the areas Citizens serves; however, these requirements can be met without impeding Warwick's competitive entry in Middletown. Such competition can have a salutary effect by providing Middletown customers opportunities for lower prices and a greater choice of services. In turn, this can increase telephone subscription in the City without reducing or adversely affecting subscription levels elsewhere.

Inasmuch as Citizens disavows any technical difficulty providing a physical interconnection for Warwick, and we have found no undue economic burden nor any adverse effects for universal service, we are adopting Staff's proposed temporary, reciprocal compensation rate of $0.001326 per minute of use pending a full examination of Citizens' and Warwick's costs. This rate will remain subject to adjustment, and permanent rates will not be established, until we review the companies' respective costs of transporting and terminating telecommunications. Our final determination on the proper rates to apply here will also depend upon the results of our inquiry

into the costs of and compensation arrangements for terminating large volumes of local traffic to single customers, such as occurs with ISPs.[1]

We are also adopting, on a temporary basis, staff's proposed $15.54 per month link rate which will remain subject to adjustment pending our review of Citizen's costs. We expect Citizens to use its best efforts to provide Warwick the unbundled network elements it requires by March 31, 1999, and in no event any later than June 30, 1999. The remainder of the implementation plan for these companies, with few exceptions, is covered by the terms of the interconnection agreement that the parties have been able to negotiate.[2]

This order is being adopted as an emergency measure pursuant to §202(6) of the State Administrative Procedure Act (SAPA). Immediate action is necessary for the preservation of the general welfare and compliance with the advance notice and comment requirements of SAPA §202(1) would be contrary to the public interest. Swift action will promote competition in the state's telecommunication markets and will permit compliance with federal statutory deadlines.

The Commission orders:

1. Citizens Telecommunications Company of New York, Inc. (Citizens) and Warwick Valley Telephone Company (Warwick) are directed to execute, by no later than January 15, 1999, an interconnection agreement consistent with the results of their

---

[1] Citizens may continue to present its opposition to usage-based reciprocal compensation arrangements for ISPs in that proceeding.

[2] With respect to service order and directory listing matters that the companies are still considering, Warwick should complete its review of Citizen's "Local Interconnection Guide" and determine whether it can accept the Guide. Should any dispute remain on these matters after Warwick reviews the Guide, it should be reported to the Director of the Communications Division who is authorized to resolve it.

negotiations and which incorporates the requirements of the implementation plan contained in this order.

2. Citizens shall, without delay, provide Warwick a physical interconnection to its local network in Middletown.

3. Citizens shall use its best efforts to provide Warwick, by March 31, 1999, the unbundled network elements it needs to serve end users. Any technical difficulty in meeting this date shall be reported in writing to the Director of the Communications Division by no later than February 1, 1999 who is authorized to extend the date for good cause.

4. The reciprocal compensation rate applicable to traffic between Citizens' and Warwick's respective networks shall be set at $0.001326 per minute of use on a temporary basis, and subject to adjustment, pending a further review of Citizens' and Warwick's costs to transport and terminate calls.

5. The rate for Citizens-provided unbundled loops shall be set at $15.54 per month on a temporary basis, and subject to adjustment, pending review of the unbundled network element cost study required by ordering clause 6, below.

6. Citizens shall file, by no later than March 31, 1999, a study detailing and supporting the company's costs to provide unbundled network elements.

7. Warwick may file, by no later than March 31, 1999, a study detailing its costs to transport and terminate local calls.

8. This order is adopted on an emergency basis pursuant to §202(6) of the State Administrative Procedure Act.

9. This proceeding is continued.

By the Commission,

(SIGNED) DEBRA RENNER
Acting Secretary

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JAN 20 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

January 20, 2006

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for filing on behalf of the respondent in the above proceeding are an original and seven copies of the following:

1. Prehearing Brief of North Dakota Telephone Company, including attachments.

2. Brief in Response to Motion to Strike.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

67 PU-05-451 Pages: 1
Cover letter re ND Telephone Company filings
by North Dakota Telephone Company by Don Negaard
01/20/2006 CC: Comm Legal Illona, Pat, Annette ALJ

RECEIVED
JAN 20 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**PREHEARING BRIEF OF NORTH DAKOTA TELEPHONE COMPANY**
North Dakota Telephone Company,	)	
Respondent.	)	

North Dakota Telephone Company ("NDTC"), by counsel, hereby files this Prehearing Brief in this matter. NDTC respectfully submits this filing in an effort to outline for the North Dakota Public Service (the "Commission") and the Hearing Officer the legal and analytical framework within which the issues in this proceeding are to be resolved. Because this matter is of first impression to the Commission, the proper legal framework applicable to this proceeding is of the utmost importance. Proper application of the framework will ensure that the Commission's action resolving the issues in this proceeding is accomplished in the manner prescribed by the 1996 revisions of the Communications Act of 1934, as amended (the "Act") and controlling precedents regarding proceedings (like this one) undertaken pursuant to Section 251(f)(1)(B). *See* 47 U.S.C. §251(f)(1)(B). Thus, Commission-application of the framework provided herein should avoid the unnecessary expenditure of additional resources that a contrary course may take. At the same time, this will also ensure that future proceedings are conducted in a manner wholly consistent with the Commission's authority

66 PU-05-451 Pages: 27

Prehearing Brief of North Dakota Telephone Company
by North Dakota Telephone Company
01/20/2006 CC: Comm Legal Illona, Pat, Annette ALJ

under Section 251(f)(1) of the Act and Section 49-21-01.7(9) and (11) of the North Dakota Century Code.

FACTS

To place this proceeding in context, NDTC provides these specific facts that will be adduced at hearing and concerning which NDTC does not believe there is any significant dispute (if any dispute) between the parties.[1] In 2004, NDTC initiated planning to replace aging copper wire plant used for the provision of telecommunications service and high-speed internet services in Devils Lake, North Dakota. Plans to install fiber optic cable were finalized in early 2005, and installation began in August 2005. Construction has not been completed and no service over the fiber has begun. NDTC plans to finish installation of the fiber in the first quarter of 2007 and will not be in a position to offer video programming using this fiber until after February 1, 2007. NDTC does not have a franchise to provide video programming in Devils Lake, North Dakota. Likewise, it does not yet have licenses or agreements to distribute video content.

On May 12, 2005, before any new fiber cable had been installed, Midcontinent Communications Company ("Midcontinent") sent a letter to 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,

---

[1] NDTC has attempted not to characterize any of these facts and has specifically limited this brief background of facts to those historical events that should not be in dispute. At the same time, however, NDTC fully recognizes that the hearing will develop the record and evidence upon which this matter will be resolved and, as such, nothing in this Pre-Hearing Brief is intended to limit NDTC's arguments and/or underlying evidentiary basis for its position in the January 23, 2006 hearing in this matter or the post-hearing submissions that will be made by it in this proceeding.

NDTC properly asked whether the Midcontinent request was, in fact, intended to trigger the "rural exemption" under Section 251(f)(1) of the Act since NDTC is a rural company under federal law and, as such, was exempt from providing wholesale resale services. On July 15, 2005, Midcontinent filed this 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 Lakes exchange.[2]

By interim orders and decisions of the Commission, this matter was set for hearing for January 23, 2006. At the same time, the 120 day time frame required by Section 251(f)(1) for resolving this matter would not be applied by agreement of the parties. *See* 47 U.S.C. § 251(f)(1)(B).

---

[2] Section 251(c)(4) states as follows:

> (c) Additional Obligations of Incumbent Local Exchange Carriers.--In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:
>
> (4) Resale.--The duty--
>
> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.
>
> 47 U.S.C. §251(c)(4). These obligations, however, are not applicable to a Rural Telephone Company until and unless action by a State commission is taken pursuant to the requirements of Section 251(f)(1). *See generally* 47 U.S.C. §251(f)(1).

APPLICABLE LAW AND ANALYTICAL FRAMEWORK

A. General

Through the Act, Congress has established a general framework that, on the one hand, provides the interconnection obligations required for the establishment of competition within the exchange service areas of telephone companies, while on the other hand, encourages and establishes foundational requirements for universal service policies in the United States. Against this general framework, in turn, is the distinct treatment afforded Rural Telephone Companies (like NDTC) with respect to interconnection obligations such as that found in Section 251(f)(1) of the Act.

In Section 251(f)(1) of the Act, Congress recognized the appropriateness of vesting in the Commission the right to continue the exemption of the more onerous interconnection obligations found in Section 251(c) of the Act. Through Section 251(f)(1)(B), Congress evidenced that it fully understood that the implementation of the interconnection requirements found in Section 251 (c) are unduly economically burdensome, are technically infeasible, and/or are otherwise inconsistent with universal service in areas of the nation such as those served by NDTC and other Rural Telephone Companies. Congress' incorporation of the Section 251(f)(1) exemption mechanism also reflects the general understanding that the State commissions (like the Commission here) are the appropriate authority to make the determination in their own respective state as to whether the current exemption should be removed as to a specific request.

The Act establishes a very specific framework for the consideration of a request for the removal of the exemption applicable to a Rural Telephone Company with respect Section 251(c) interconnection obligations. As a result of this framework, the Commission is vested with the authority to determine, based on the scope of a specific request, whether, as here, the exemption applicable to Rural Telephone Company with respect to Section 251(c)(4) should be removed.

> (1) Exemption for certain rural telephone companies.--
>
> > (A) Exemption.--Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).
> >
> > (B) State termination of exemption and implementation schedule.--The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

47 U.S.C. §§ 251(f)(1)(A) and (B).[3]

---

[3] As discussed *infra*, the Act does provide for a limitation on the exemption applicable to a Rural Telephone Company. Specifically, Section 251(f)(1)(C) states as follows:

> (C) Limitation on exemption

The Commission's statement of issues in this matter effectively mirrors these Congressional directives.

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.

Notice of Rescheduled Hearing, Case No. PU-05-451, dated December 14, 2005.

Accordingly, Congress fully understood that the implementation of Section 251(c) interconnection requirements, in general, and "resale at a wholesale discount" in particular, create undue economic burdens, are technically infeasible, and/or are contrary to universal service, and it is up to the party seeking to remove the exemption to demonstrate that they are not. *See* Section C, Burden of Proof, *infra*. If the exemption applicable to the specific request is removed, however, the Commission's analysis continues with respect to establishing a rational implementation timeline consistent "in time and manner

---

> The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) of this section from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

47 U.S.C. § 251(f)(1)(C).

with" any applicable Federal Communications Commission ("FCC") regulations. *See* 47 U.S.C. §251(f)(1)(B). Thus, the Section 251(f)(1) mechanism ensures that State Commissions have the opportunity to determine whether, such as here, Section 251(c)(4) resale at a wholesale discount is appropriate in the Devils Lake exchange operated by NDTC and, consistent with Congressional and FCC direction, to determine the schedule for how that will occur.

B. Scope of Analysis

In undertaking its analysis of the case before it, the Commission must review the specific request made by Midcontinent. *See, e.g.,* 47 U.S.C. §251(f)(1)(B)(". . . the State Commission shall terminate the exemption if *the request* is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c(1)(D)")(emphasis added).

The record that will be developed in this proceeding will make it abundantly clear that the focus of any analysis is solely with respect to NDTC's Devils Lake exchange. This is the scope of the request made by Midcontinent in the first instance, and the analysis provided by all witnesses in this proceeding. Absent this focused analysis, the Commission could be engaged in improper analysis. *See ASC of Alaska, Inc. v. Regulatory Commission of Alaska*, 81 P.3d 292, 301 (S.Ct. Alaska, 2003) ("[e]ven if the burden of proof had been properly allocated, the RCA [the Regulatory Commission of Alaska] would have erred in terminating the Glacier State Study Area exemption, except as applied to the

North Pole exchange" (which was the exchange for which the request for interconnection was made)).

C. Burden of Proof

It is clear the first issue the Commission needs to resolve in this case is whether the rural exemption of NDTC in Devils Lake is to be lifted. The proponent of removal of a rural exemption bears the burden of proof in such a proceeding. *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744 (8th Cir., 2000); see also *ASC of Alaska,* 81 P.3d at 299. Thus, Midcontinent bears the burden of proving that the NDTC exemption in its Devils Lake exchange should be removed regarding the provision of resale at a wholesale discount. Because, as the evidence at the hearing will demonstrate, Midcontinent has failed to present satisfactory evidence on the effect of removal of the rural exemption of NDTC on NDTC's Devils Lake operations, the request to have the rural exemption lifted should be denied. As such, the complaint should be dismissed and the Commission's analysis should end.

D. Implementation

As the Act reflects, and assuming for sake of argument that NDTC's exemption with respect to the offering of resale at a wholesale discount within the NDTC Devils Lake exchange was removed, the Commission would be required to establish an implementation schedule. The Act, in turn, makes clear that any such implementation schedule must be consistent with applicable FCC regulations. *See* 47 U.S.C. §251(f)(1)B). While no specific regulations from the FCC are on point, the Commission's analysis is not subject to a blank canvas as

it would appear the prefiled testimonies of Midcontinent suggests. Rather, consistent with its considerable experience in approving and/or arbitrating interconnection agreements ("ICAs") under the framework of the Act, the Commission is fully aware that Congress provided a framework for the negotiation of and, where required, arbitration of outstanding issues with respect to ICAs. *See* 47 U.S.C. §§251 and 252.

To be sure, it is only logical under the structure of the Act that if the duty to offer resale at wholesale discounts were imposed on a Rural Telephone Company (like NDTC)(and thus the existing exemption removed), the duty to negotiate terms and conditions for the offering of that resale at wholesale discounts would *only then* apply. Section § 251(f) confirms this fact.

> (A) Exemption
>
> Subsection (c) of this section shall not apply to a rural telephone company ***until***
>
> (i) such company has received a bona fide request for interconnection, services, or network elements, and
>
> (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

47 U.S.C. § 251(f)(1)(A) (emphasis added.) Absent such conclusion Congress' use of the term "until" would be superfluous, a conclusion contrary to law.[4]

Notwithstanding applicable law, the conclusion that a Rural Telephone Company has no "wholesale resale" interconnection duties *until* a state

---

[4] See *Reiter v. Sonotone Corp.*, 442 US 330 (1979), citing *US v. Menasche*, 348 US 528, 538-539 (1955) ("In construing a statute, we are obliged to give effect, if possible, to every word Congress used.").

commission determines that a rural exemption should be lifted is also grounded in common sense. It would be counter productive (let alone burdensome and expensive) to suggest that companies should negotiate an interconnection agreement *before* it is ever determined whether the company has a duty to offer § 251(c)(4) resale at a wholesale discount. Any other conclusions would result in the absurd result that parties would be negotiating terms and conditions regarding interconnection only to find out later that the negotiations (and the time, energy and effort involved in them) were not necessary.[5]

As the Commission is aware, interconnection arrangements between two carriers do not occur automatically. Interconnection occurs within the framework of Section 251 of the Act and, but for the need to first address the rural exemption issue (§ 251(f)(1)), is initiated by a request of one carrier to another. As such, the Act includes the time frames for negotiation of an interconnection agreement. Section 252(b)(1) of the Act specifically states:

> (1) Arbitration
>
> During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

---

5 This same conclusion can be demonstrated based on the FCC's regulations. For example, the FCC regulations require a cost study to be completed if the parties are unable to agree on a discount rate to be applied to the wholesale resale services. *See* 47 C.F.R. 51.611 (copy attached). A cost study is an expensive and time-consuming process, and it would be counter-intuitive for a Rural Telephone Company to be required to complete such a study before that Rural Telephone Company even knows if its rural exemption will be lifted. From a practical perspective, the costs of conducting such study do not go away if the underlying Section 251(c)(4) interconnection requirement is ultimately not imposed. Such costs would, like other operating costs, be recovered from the rates (and any increases thereto) assessed by the Rural Telephone Company to its end users and other customers.

47 U.S.C. §252(b)(1). Congress' mandate of a minimum of 135 days for parties to negotiate an interconnection agreement before a party could invoke arbitration from a Commission under § 252(b) is unequivocal, and the rationale for it is clear.

The parties should be allowed to develop their own detailed agreement and to narrow the scope of any disagreement before invoking the resources of a Commission to try to attempt to write an agreement for them. Thus, there is no sustainable basis to conclude that this same framework should not be applied by the Commission even if one were to assume, that the requirement to negotiate the Section 251(c)(4) request at issue in this proceeding for the NDTC Devils Lake is established. Any suggestion to the contrary is both contrary to the framework established under the Act of the negotiation of an ICA and conflicts with common sense.

Congress set the minimum standards for an implementation schedule in the Act. When Congress established that a State commission had authority to establish an implementation schedule in § 251(f), it clearly recognized that the State commissions needed to have the flexibility at the local level to establish rational implementation procedures. The law mandates certain minimum periods but also allows this Commission to establish schedules for implementation and the Commission is provided the right to ensure that such schedule guarantee fairness. After all, fairness is what Midcontinent's witnesses state that Midcontinent desires. Thus, the starting point for any implementation schedule, assuming that the existing Section 251(c)(4) exemption for NDTC's Devils Lake

exchange is removed, is that found in Section 252(b)(1) and the nine month period found in Section 252(b)(4)(C).[6]

CONCLUSION

The claim for the removal of NDTC's rural exemption for "wholesale resale" should be denied. The record only addresses the Devils Lake exchange. Assuming, *arguendo*, that NDTC's rural exemption with respect to "wholesale resale" is removed for the Devils Lake exchange, NDTC believes the Commission should adopt a negotiation period and, if necessary, an arbitration proceeding, as contained in Section 252(b) of the Act.

---

[6] Section 252(b)(4)(C) of the Act states that:

> (C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

47 U.S.C. §252(b)(4)(C).

Dated this 20th day of January, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

WOODS & AITKEN LLP

Thomas J. Moorman
2154 Wisconsin Avenue, NW,
Suite 200
Washington, D.C. 20007
Telephone: (202) 944-9500
Fax: (202) 944-9501
tmoorman@woodsaitken.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Prehearing Brief of North Dakota Telephone Company was served electronically and by regular mail on the 20th day of January, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Don Negaard, ND Bar ID #03598

end-users that are not telecommunications carriers.

(e) Except as provided in §51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

[61 FR 45619, Aug. 29, 1996, as amended at 65 FR 6915, Feb. 11, 2000]

§51.607 Wholesale pricing standard.

The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, less avoided retail costs, as described in section 51.609. For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

[65 FR 6915, Feb. 11, 2000]

§51.609 Determination of avoided retail costs.

(a) Except as provided in §51.611, the amount of avoided retail costs shall be determined on the basis of a cost study that complies with the requirements of this section.

(b) Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier.

(c) For incumbent LECs that are designated as Class A companies under §32.11 of this chapter, except as provided in paragraph (d) of this section, avoided retail costs shall:

(1) Include as direct costs, the costs recorded in USOA accounts 6611 (product management and sales), 6613 (product advertising), 6621 (call completion services), 6622, (number services), and 6623 (customer services) (§§32.6611, 32.6613, 32.6621, 32.6622, and 32.6623 of this chapter);

(2) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121–6124 (general support expenses), 6720 (corporate operations expenses), and uncollectible telecommunications revenue included in 5300 (uncollectible revenue) (Secs. 32.6121 through 32.6124, 32.6720 and 32.5300 of this chapter); and

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (§§32.6112–6114, 32.6211–6565 of this chapter).

(d) Costs included in accounts 6611, 6613 and 6621–6623 described in paragraph (c) of this section (§§32.6611, 32.6613, and 32.6621–6623 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6112–6114 and 6211–6565 described in paragraph (c) of this section (§§32.6112–32.6114, 32.6211–32.6565 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

(e) For incumbent LECs that are designated as Class B companies under §32.11 of this chapter and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of the specific USOA accounts listed in paragraphs (c) and (d) of this section.

[61 FR 45619, Aug. 29, 1996, as amended at 67 FR 5700, Feb. 6, 2002; 69 FR 53652, Sept. 2, 2004]

§51.611 Interim wholesale rates.

(a) If a state commission cannot, based on the information available to it, establish a wholesale rate using the methodology prescribed in §51.609, then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.

(b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25

percent. below the incumbent LEC's existing retail rates. and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.

(c) A state commission that establishes interim wholesale rates shall. within a reasonable period of time thereafter. establish wholesale rates on the basis of an avoided retail cost study that complies with §51.609.

§ 51.613 Restrictions on resale.

(a) Notwithstanding §51.605(b). the following types of restrictions on resale may be imposed:

(1) *Cross-class selling.* A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale. telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers. from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

(2) *Short term promotions.* An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

(i) Such promotions involve rates that will be in effect for no more than 90 days: and

(ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation. for example by making available a sequential series of 90-day promotional rates.

(b) With respect to any restrictions on resale not permitted under paragraph (a). an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

(c) *Branding.* Where operator. call completion. or directory assistance service is part of the service or service package an incumbent LEC offers for resale. failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.

(1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory. such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.

(2) For purposes of this subpart. unbranding or rebranding shall mean that operator. call completion. or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers. or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

§ 51.615 Withdrawal of services.

When an incumbent LEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past. the incumbent LEC must also make such a service available at wholesale rates to requesting carriers to offer on a resale basis to the same limited group of customers that have purchased such a service in the past.

§ 51.617 Assessment of end user common line charge on resellers.

(a) Notwithstanding the provision in §69.104(a) of this chapter that the end user common line charge be assessed upon end users. an incumbent LEC shall assess this charge. and the charge for changing the designated primary interexchange carrier. upon requesting carriers that purchase telephone exchange service for resale. The specific end user common line charge to be assessed will depend upon the identity of the end user served by the requesting carrier.

(b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale. the incumbent LEC shall continue to assess the interstate access charges provided in part 69 of this chapter. other than the end user common line charge. upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international telecommunications services

Westlaw.

81 P.3d 292

(Cite as: 81 P.3d 292)

C

Briefs and Other Related Documents

Supreme Court of Alaska.
ACS OF ALASKA, INC., ACS of The Northland, Inc., and ACS of Fairbanks, Inc., Appellants,
v.
REGULATORY COMMISSION OF ALASKA, and GCI Communication Corp., d/b/a General Communication, Inc., Appellees.
No. S-10466.

Dec. 12, 2003.

Background: Competitive local exchange carrier (CLEC) sought to terminate certain rural exemptions of incumbent local exchange carrier (ILEC). The Public Utilities Commission (PUC) continued ILEC's rural exception. CLEC sought judicial review. After finding that PUC erroneously placed burden of proof on CLEC, the Superior Court remanded to PUC for another hearing. On remand, PUC granted CLEC's petition to terminate ILEC's rural exemptions. ILEC petitioned PUC's successor, Regulatory Commission of Alaska (RCA), for review of decision to terminate ILEC's rural exemption. On grant of ILEC's motion for reconsideration, RCA affirmed termination of exemptions. ILEC sought judicial review. The Superior Court, Third Judicial District, Anchorage, John Reese, J., affirmed the RCA. ILEC appealed.

Holdings: The Supreme Court, Fabe, C.J., held that:
(1) CLECs, rather than ILECs, must bear burden of proof in rural exemption proceedings;
(2) RCA's error in placing burden of proof on ILEC was not harmless error and, thus, remand was required for additional proceedings before RCA with CLEC shouldering burden of proof; and
(3) RCA could not terminate ILEC') rural exemption for entire study area, where CLEC's underlying request was limited and did not covering entire study area.
Reversed and remanded.

West Headnotes

[1] Appeal and Error ⇦1082(1)
30k1082(1) Most Cited Cases
Supreme Court does not defer to a superior court decision when that court acts as an intermediate court of appeal.

[2] Administrative Law and Procedure ⇦796
15Ak796 Most Cited Cases

[2] Statutes ⇦219(1)
361k219(1) Most Cited Cases
Supreme Court applies the substitution of judgment standard when reviewing legal questions that do not require administrative agency expertise or where the agency's specialized knowledge and experience would not be particularly probative as to the meaning of the statute.

[3] Appeal and Error ⇦1195(1)
30k1195(1) Most Cited Cases
The "doctrine of law of the case" requires a lower court to follow an appellate court's prior decision and prohibits reconsideration of issues which have been adjudicated in an appeal of the case.

[4] Telecommunications ⇦870
372k870 Most Cited Cases
(Formerly 372k267)
Competitive local exchange carriers (CLECs), rather than incumbent local exchange carriers (ILECs), must bear burden of proof in rural exemption proceedings, administrative proceedings in front of Regulatory Commission of Alaska (RCA) to terminate a rural ILEC's exemption from competition under federal Telecommunications Act.

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

81 P.3d 292

(Cite as: 81 P.3d 292)

Communications Act of 1934, § 251(f)(1), as amended, 47 U.S.C.A. § 251(f)(1).

[5] Telecommunications ⇐911
372k911 Most Cited Cases
(Formerly 372k267)
Regulatory Commission's (RC's) error in placing burden of proof on incumbent local exchange carrier (ILEC), rather than on competitive local exchange carrier (CLEC), in rural exemption proceedings, was not harmless error and, thus, remand was required for additional proceedings before RCA with CLEC shouldering burden of proof, although, on judicial review, the Superior Court implicitly found that RCA's decision was based on weight of the evidence, rather than on unmet burden of proof, where examination of RCA's reasoning revealed that it based some of its conclusions either on unmet burden of proof or on general lack of proof. Communications Act of 1934, § 251(f)(1), as amended, 47 U.S.C.A. § 251(f)(1).

[6] Telecommunications ⇐867
372k867 Most Cited Cases
(Formerly 372k267)
Regulatory Commission of Alaska (RCA) could not terminate incumbent local exchange carrier's (ILEC's) rural exemption for entire study area, where competitive local exchange carrier (CLEC), which sought termination of ILEC's rural exemption, made only a limited request not covering entire study area; although RCA argued that it could not grant a partial or divisible termination of exemption under applicable Telecommunications Act (TA), such interpretation of TA would have resulted in anomalous consequences, for it could open broad areas to competition based on artificially constructed evidence. Communications Act of 1934, § 251(f)(1) , as amended, 47 U.S.C.A. § 251(f)(1).

West Codenotes
Recognized as Invalid

47 C.F.R. § 51.405(a).

*293 S. Lynn Erwin, Alaska Communications Systems, Anchorage, and Elizabeth H. Ross, Birch, Horton, Bittner & Cherot, Washington, D.C., for Appellants.

Ron Zobel, Assistant Attorney General, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee Regulatory Commission of Alaska.

Martin M. Weinstein, General Communication, Inc., Anchorage, for Appellee GCI.

Before: FABE, Chief Justice, MATTHEWS, EASTAUGH, and BRYNER, Justices.

OPINION

FABE, Chief Justice.

I. INTRODUCTION

This case arises under the local telephone competition provisions of the federal Telecommunications Act of 1996. GCI petitioned the Regulatory Commission of Alaska (RCA) to terminate the rural exemptions of three Alaska Communication Systems (ACS) subsidiaries so that GCI could compete with these companies in rural Alaska. The RCA terminated ACS's rural exemptions, and ACS appeals that decision. Because the RCA erred in allocating the burden of proof to ACS, we reverse and remand for additional proceedings before the RCA with GCI shouldering the burden of proof. Additionally, because the RCA erred in terminating ACS's rural exemption for its Glacier State Study Area, we reverse that decision.

II. FACTS AND PROCEEDINGS

A. The Telecommunications Act of 1996

The federal Telecommunications Act significantly changed the delivery of telephone service in this country. [FN1] At the heart of the Act, and at issue in this case, are the provisions designed to promote local telephone competition. [FN2] These provisions eliminate state-imposed barriers to competition and force incumbent local exchange

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

carriers to cooperate with their potential competitors. [FN3] These competitors are referred to as competitive local exchange carriers. [FN4] The Act facilitates*294 competition in a number of ways. [FN5] First, the Act requires incumbents to allow competitors to interconnect with the incumbent's existing local network. [FN6] This provision, referred to as interconnection, allows new entrants to use the incumbent's existing network to provide competing local telephone service. [FN7] Second, the unbundled access provision of the Act requires incumbents to provide competitors with access to elements of the incumbent's network on an unbundled basis. [FN8] The unbundling provision permits new entrants "that have not completely built out their own networks to offer services over a combination of their own facilities and those leased from incumbents." [FN9] Third, the Act requires incumbents to sell to competitors, at wholesale prices, any telecommunications services it sells to its customers at retail rates. [FN10] This provision, referred to as the resale provision, allows competitors to resell to customers at retail prices the telecommunications services they purchase from the incumbent at wholesale. [FN11] These competitive provisions are found in section 251(c) of the Telecommunications Act.

FN1. *See, e.g.,* STUART MINOR BENJAMIN ET AL., TELECOMMUNICATIONS LAW AND POLICY 717 (2001); Salvatore Massa et al., *Pricing Network Elements Under the Telecommunications Act of 1996: Back to the Future,* 23 HASTINGS COMM. & ENT. L.J. 751, 752 (2001) (noting Act is "revolutionary piece of legislation"); Aimee M. Adler, Notes and Comment, *Competition in Telephony: Perception or Reality? Current Barriers to the Telecommunications Act of 1996,* 7 J.L. & Pol'y 571, 571 (1999).

FN2. BENJAMIN ET AL., *supra* TELECOMMUNICATIONS LAW AND POLICY, at 716.

FN3. *Id.*

FN4. *Id.* at 1047.

FN5. 47 U.S.C. § 251(c) (2001); Michael Glover & Donna Epps, *Is the Telecommunications Act of 1996 Working?,* 52 ADMIN. L.REV. 1013, 1014 (2000).

FN6. 47 U.S.C. § 251(c)(2) (2001).

FN7. *Id.*

FN8. 47 U.S.C. § 251(c)(3) (2001).

FN9. Glover and Epps, *supra* at 1014.

FN10. 47 U.S.C. § 251(c)(4) (2001).

FN11. *Id.*

Despite the Act's general theme favoring competition, [FN12] Congress, in the interest of promoting universal service, exempted rural telephone companies from the duty to compete. Congress defined "rural telephone company" as

FN12. BENJAMIN ET AL., *supra* n. 1.

> a local exchange carrier operating entity to the extent that such entity--
> (A) provides common carrier service to any local exchange carrier study area that does not include either--
> (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
> (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
> (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
> (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.[[FN13]]

FN13. 47 U.S.C. § 153(37) (2001).

Because these rural telephone companies are free from the competitive obligations imposed by the Act, these ILECs remain monopolist providers of local telephone service in their areas. The rural exemption is contained in section 251(f)(1) of the Act and provides, in pertinent part:

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).[[FN14]]

FN14. 47 U.S.C. § 251(f)(1)(A) (2001).

Until a state commission makes the requisite findings under these three elements, rural telephone companies are exempt from competition. [FN15]

FN15. *Id.*

B. The Rural Exemption Proceedings

In April 1997 GCI requested interconnection with three rural telephone companies. These companies were PTI Communications of Alaska, Inc., Telephone Utilities of Alaska, ***295** Inc., and Telephone Utilities of the Northland, Inc. These companies are now subsidiaries of ACS and we refer to them collectively as ACS.

The Alaska Public Utilities Commission (APUC) [FN16] held public hearings in December 1997 to determine whether to terminate ACS's rural exemptions. In an order issued January 8, 1998, APUC continued ACS's rural exemptions reasoning that (1) the evidence in the record did not support an affirmative finding that the utility would not suffer an undue economic burden if the exemptions were terminated and (2) support mechanisms had not yet been reformed to accommodate competition in local service.

FN16. APUC is the forerunner to the RCA. On July 1, 1999, APUC ceased to exist and the RCA assumed its duties. Ch. 25, SLA 1999.

GCI appealed APUC's decision to the superior court. Finding that APUC had erroneously placed the burden of proof on GCI, the superior court remanded the case to APUC for another hearing. APUC held a second hearing in June of 1999. On June 30, 1999, APUC granted GCI's petition to terminate ACS's rural exemptions. APUC reasoned that adequate mechanisms were in place to preserve and further universal service such that terminating ACS's exemptions would not frustrate these goals.

ACS petitioned APUC's successor, the RCA, for review of the decision to terminate ACS's rural exemptions. ACS asserted that APUC's revocation of the exemptions "exposed high cost rural consumers to the detriments of competition without establishing the basis for offsetting competitive benefits." Because the RCA found that APUC's decision lacked an adequate analysis of the disputed legal, factual, and policy issues, it granted ACS's motion for reconsideration. However, after reviewing the record, the RCA affirmed APUC's termination of the utility's rural exemptions. ACS appealed to the superior court, Judge John E. Reese presiding. The superior court affirmed the RCA, and ACS appeals the RCA's decision to this court.

III. STANDARD OF REVIEW

[1][2] We do not defer to a superior court decision when that court acts as an intermediate court of appeal. [FN17] We apply the substitution of judgment standard when reviewing legal questions that do not require agency expertise "or where the agency's specialized knowledge and experience would not be particularly probative as to the meaning of the statute." [FN18]

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

FN17. *Tlingit-Haida Reg'l Elec. Auth. v. State.* 15 P.3d 754, 761 (Alaska 2001); *United Utils., Inc. v. Alaska Pub. Utils. Comm'n.* 935 P.2d 811, 814 (Alaska 1997).

FN18. *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987); *see also id.* (" '[This] standard is appropriate where the knowledge and experience of the agency is of little guidance to the court *or* where the case concerns statutory interpretation or other analysis of legal relationships about which the courts have specialized knowledge and experience.' ") (quoting *Earth Res. Co. of Alaska v. State, Dep't of Revenue,* 665 P.2d 960, 965 (Alaska 1983) (internal quotations omitted)).

IV. DISCUSSION

A. Progression of Federal and State Litigation Over 47 U.S.C. § 251(f)(1) Rural Exemption Proceedings

The central issue on appeal is whether the RCA erred in allocating the burden of proof to ACS in the rural exemption proceeding. Because telecommunications regulation is primarily federal, it is important to view the history of the present controversy in the context of significant federal litigation that was proceeding simultaneously.

1. *Iowa I*

Shortly before GCI sought to compete with ACS, the Federal Communications Commission (FCC) promulgated a rule allocating the burden of proof in rural exemption proceedings to the incumbent local exchange carrier. [FN19] The regulation provided: "Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled ***296** ... to continued exemption" from the Telecommunications Act's interconnection requirements. [FN20]

FN19. 47 C.F.R. § 51.405(a) (2002).

FN20. *Id.*

Three months before APUC held the initial hearing in this case, the United States Court of Appeals for the Eighth Circuit vacated this rule in *Iowa Utilities Board v. Federal Communications Commission* (*Iowa I*), reasoning that the FCC exceeded its jurisdiction in promulgating the regulation. [FN21] The court noted: "The plain meaning of subsection [ ] 251(f)(1) (governing exemptions) ... indicates that the state commissions have the exclusive authority to make these determinations, and nothing in [this provision], or in the Act generally, provides the FCC with the power to prescribe the governing standards for such determinations." [FN22] The Eighth Circuit also looked to the legislative history of the Telecommunications Act to support its conclusion that the FCC exceeded its authority in promulgating 47 C.F.R. § 51.405(a):

FN21. 120 F.3d 753, 802 (8th Cir.1997), *aff'd in part, rev'd in part,* 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

FN22. *Id.*

> Congress rejected both a Senate bill and a House bill that gave the FCC concurrent jurisdiction with state commissions to administer the exemption and waiver provisions. It would be unreasonable to infer from subsection 251(d) or the other general rulemaking provisions cited by the FCC that Congress intended to put the Commission--the agency it decided to exclude from the exemption process--in a position to dictate the substantive standards governing the exemption process.[[FN23]]

FN23. *Id.* (citing S.Rep. No. 104-23, 1995 WL 142161 at *206-07 (§ 251(i)(3)) (1995); H.R. 1555, 104th Cong. § 242(e) (1995)).

The clear guidance that the FCC had provided through its regulation 47 C.F.R. § 51.405(a) therefore no longer existed when APUC first

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

addressed this case.

In the first hearing, APUC assigned the burden of proof to GCI. APUC denied GCI's petition to terminate ACS's rural exemptions on January 8, 1998, and GCI appealed APUC's decision to the superior court.

2. United States Supreme Court's review of *Iowa I* and state superior court's response

Prior to the superior court decision, the United States Supreme Court reversed the Eighth Circuit's *Iowa I* ruling, concluding that the FCC had "jurisdiction to promulgate rules ... regarding rural exemptions...." [FN24] The Court remanded the case to the Eighth Circuit to consider the substantive challenges to the regulation. [FN25] The superior court had the benefit of the Supreme Court's decision in deciding GCI's appeal from APUC. The superior court concluded that APUC erred in allocating the burden of proof to GCI and remanded for another agency hearing, noting that "fairness concerns prescribe the conclusion that the party in control of the evidence, in this case [ACS], bears the burden of proving that evidence."

> FN24. *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).
>
> FN25. *Id.* at 385, 397, 119 S.Ct. 721.

After the superior court remanded the case to APUC, APUC held a second hearing in June 1999, with ACS shouldering the burden of proof. APUC issued its decision terminating the rural exemptions on June 30, 1999. In its brief order, APUC determined that ACS would not face an undue economic burden, were it required to interconnect with GCI. Additionally, APUC noted that GCI's request for interconnection was technically feasible. Thus, APUC turned to consider whether interconnection would be consistent with the goals of universal service. APUC concluded that federal and state universal service funds would adequately preserve and advance universal service. APUC emphasized the importance of competition in its order:

> Without removal of [ACS's] rural exemption, it is questionable whether the rural portions of Alaska that are the subject of GCI's petition will ever have competitive local exchange service. Therefore, the Commission has determined that it is appropriate ***297** to remove that roadblock and proceed down the path to competition.

The RCA reconsidered APUC's decision and affirmed on October 11, 1999. ACS appealed to the superior court.

3. Eighth Circuit's decision on remand--*Iowa II*

In the midst of ACS's administrative appeal to the superior court, the Eighth Circuit decided *Iowa Utilities Board v. Federal Communications Commission* [FN26] (*Iowa II*). This time, the federal court vacated on substantive grounds the FCC's rule that, under the Telecommunications Act, a rural incumbent telephone company must bear the burden of proof in demonstrating to a state commission that it is entitled to a continued exemption from competition. [FN27] The court reasoned that "[t]he plain meaning of the statute requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption." [FN28]

> FN26. 219 F.3d 744 (8th Cir.2000), *reversed in part on other grounds by Verizon Communications, Inc. v. Fed'l Communications Comm'n*, 535 U.S. 467, 122 S.Ct. 1646, 152 L.Ed.2d 701 (2002).
>
> FN27. *Id.* at 762.
>
> FN28. *Id.*

In reviewing ACS's administrative appeal, Judge Reese acknowledged the Eighth Circuit's authority but concluded that any error in the burden of proof allocation was harmless, even in light of *Iowa II*. Judge Reese noted: "This [c]ourt recognizes the authority of the Eighth Circuit in this matter, but does not find the *Iowa Utilities Bd. II* decision decisive on the outcome of the current appeal."

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Judge Reese emphasized that the RCA based its decision on the evidence presented at the hearings and not on a consideration of the burden of proof. Judge Reese concluded:

> "This [c]ourt must determine the applicability of *Iowa Utilities Bd. II* to the current appeal. The APUC used a record created in two separate hearings in its decision to terminate ACS['s] rural exemption. Both ACS and GCI were responsible for bearing the burden of proof at one of the hearings. Both ACS and GCI presented evidence and created a record accordingly. The RCA found that the record from both hearings justified termination of the rural exemption. The RCA's [decision to terminate ACS's rural exemptions] clearly shows that the Commission made its findings based on the weight of the evidence and not because of an unmet burden of proof[.]"

Implicit in Judge Reese's statement is an apparent determination that any error in the allocation of proof to ACS in light of *Iowa II* was harmless. Accordingly, the superior court affirmed the RCA's termination of ACS's rural exemptions.

B. The RCA Erred in Placing the Burden of Proof on ACS, the Incumbent Local Exchange Carrier.

On appeal, ACS argues that the RCA erred in placing the burden of proof on ACS because this is contrary to federal law as announced in the Eighth Circuit's *Iowa II* decision. In *Iowa II*, the Eighth Circuit concluded that the plain meaning of 47 U.S.C. § 251(f)(1)(A) and (B) "requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption." [FN29] Given the Eighth Circuit's holding, ACS asserts that "federal law squarely places the burden of proof on GCI rather than [ACS]."

FN29. *Id.*

[3] GCI responds to ACS's contentions with a number of policy reasons for placing the burden of proof on ACS; two of these reasons have some strength. [FN30] First, GCI ***298** notes that ACS, as the incumbent local exchange carrier, controls relevant information on issues including: its financial health and status, its ability to withstand the expected competitive pressures exerted by competition, its ability to withstand the costs of providing the services requested by the competitor, and its network design and ability to facilitate the competitor's requests. GCI asserts that because ACS has superior access to this information, ACS should bear the burden of proof because it is "in the best position to produce the relevant information and to explain how competitive pressures could harm the incumbent or service to rural customers." Second, GCI argues that placing the burden of proof on ACS is consistent with the Telecommunications Act's statutory scheme for rural exemption proceedings. This is true, according to GCI, because under 47 U.S.C. § 251(c) , after a competitor files notice with the state commission that it seeks to compete with an incumbent, the state commission has 120 days to gather the necessary information to determine whether to terminate the incumbent's rural exemption. [FN31] GCI argues that this short time frame "does not permit rounds of discovery, delay and associated costs frequently tolerated in the traditional model of civil litigation." GCI concludes that the limited time frame and ACS's superior access to information relevant to the continuation of its rural exemption weigh in favor of ACS's shouldering the burden of proof.

FN30. In addition to the policy reasons put forward by GCI, the RCA argues that after the first appeal from APUC to the superior court, the superior court's allocation of the burden of proof to ACS became the law of the case. "The doctrine of law of the case requires a lower court to follow an appellate court's prior decision and prohibits reconsideration of issues which have been adjudicated in an appeal of the case." *Bauman v. Day,* 942 P.2d 1130, 1132 n. 1 (Alaska 1997). To the extent that APUC was bound by the superior court's decision on remand, the superior court's allocation of the burden of proof to ACS was the law of the case. We, however, are not bound by the superior

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

court's allocation of the burden of proof, as this issue has not been brought to this court before. *See, e.g., Denuptiis v. Unocal Corp.*, 63 P.3d 272, 277 (Alaska 2003).

FN31. 47 U.S.C. § 251(f)(1)(A), (B) (2001).

While we see the logic in GCI's arguments, policy arguments cannot control the outcome in this case. A number of developments suggest to us that we should be guided by the Eighth Circuit's decision in *Iowa II.*

[4] The United States Supreme Court has held that the FCC, a federal agency, has jurisdiction to promulgate regulations under the Telecommunications Act to guide state commissions. [FN32] After the FCC promulgated regulations under the Telecommunications Act, in its *First Report and Order*, [FN33] numerous parties challenged those regulations. [FN34] Under the Hobbs Act, the federal circuit courts of appeal have exclusive jurisdiction over those challenges. The Hobbs Act provides:

FN32. *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

FN33. *See GTE South, Inc. v. Morrison*, 199 F.3d 733, 737 (4th Cir.1999) (citing *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 F.C.C.R. 15499, 1996 WL 452885 (1996)).

FN34. *MCI Telecommunications Corp. v. U.S. West Communications*, 204 F.3d 1262, 1267 (9th Cir.2000).

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of--

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47.[[FN35]]

FN35. 28 U.S.C. § 2342 (1994).

The parties challenging the FCC regulations brought suits in various federal appellate courts. [FN36] When agency regulations are challenged in multiple circuits, the panel on multidistrict litigation, acting under 28 U.S.C. § 2112, consolidates the petitions and assigns them to a single court of appeal. [FN37] The panel assigned the challenges concerning the FCC's Telecommunications Act regulations to the Eighth Circuit. [FN38] Thus, the Eighth Circuit became the only forum to consider the challenges to the FCC regulations following the FCC's *First Decision and Order*. [FN39]

FN36. *MCI*, 204 F.3d at 1267.

FN37. *Id.*

FN38. *Id.*

FN39. *GTE South, Inc. v. Morrison*, 199 F.3d 733, 743 (4th Cir.1999).

In addition to the FCC's jurisdiction to promulgate regulations under the Telecommunications Act and the federal appellate courts' (in this case, Eighth Circuit's) exclusive ***299** jurisdiction to hear challenges to those regulations, the United States Supreme Court has recognized the need for a national standard for telecommunications regulation under the 1996 Act, noting that the federal government has unquestionably "taken local telecommunications competition regulation away from the States [ ][w]ith regard to the matters addressed by the 1996 Act," and that "a federal program administered by 50 independent state agencies [would be] strange." [FN40] All of these factors suggest that we should look to the only available federal guidance in deciding which party shoulders the burden of proof in a rural exemption proceeding: the Eighth Circuit's decision in *Iowa II.* The Eighth Circuit is the only federal court to speak to the issue of the burden of proof allocation

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

in rural exemption proceedings under 47 U.S.C. § 251(f)(1). We adopt the Eighth Circuit's holding that the competitor must bear the burden of proof. Therefore, we now turn to the question whether the RCA's error in placing the burden of proof on ACS was harmless.

FN40. *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n. 6, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

1. Harmless error analysis

[5] As discussed above, the superior court implicitly found that any error in the RCA's allocation of the burden of proof to ACS was harmless, noting: "The RCA's conclusion [to terminate ACS's rural exemptions] clearly shows that the Commission made its findings based on the weight of the evidence and not because of an unmet burden of proof[.]" Despite the superior court's assertion, an examination of the RCA's analysis reveals that the RCA did indeed base a number of its conclusions either on ACS's failure to satisfy the burden of proof or on a general lack of proof. For example, when discussing the economic burden element of section 251(f)(1)(a), the RCA explicitly based its finding in favor of GCI on the fact that "[t]he Commission finds that [ACS] did not meet [its] burden of proving undue economic burden." Similarly, with regard to one aspect of universal service, the RCA based its decision in favor of GCI on the fact that "[t]here was no showing by [ACS] that customers would have any less access to advanced services than they do now if the rural exemption [were] terminated." The RCA's repeated dependence upon the burden of proof allocation in reaching its decision suggests that this error affected ACS's substantial rights. [FN41] Because we cannot conclude that the RCA's error was harmless, we remand this case for the RCA to analyze the rural exemption issue with GCI shouldering the burden of proof on the three elements of 47 U.S.C. § 251(f)(1)(A): undue economic burden, technical feasibility, and universal service.

FN41. Alaska R. Civ. P. 61; *see, e.g., Sloan v. Atlantic Richfield Co.*, 541 P.2d 717, 722 (Alaska 1975) (noting appellant must show substantial prejudice to demonstrate error not harmless).

2. Proceedings on remand

On remand, the RCA may elect to hold a supplemental evidentiary hearing on one or more of the issues, as it sees fit. The RCA is free to consider the current state of the evidence and is not bound by the record before it in 1999 when it issued its last order in these proceedings. As noted above, GCI has expressed concern about its ability to amass the relevant information to shoulder its burden of proof. Specifically, it noted ACS's superior access to information and the short 120-day time frame for the RCA to gather information before making its decision. These concerns can be relieved by the RCA's control and management of the discovery process in the remand proceedings. Generally, "the conduct and extent of discovery is left to the sound discretion of the agency...." [FN42] The RCA may order discovery and require ACS's active participation in assisting GCI to analyze and organize the information, including ordering ACS to produce summaries of information and provide analyses to accompany documents it produces. [FN43]

FN42. CHARLES H. KOCH, ADMINISTRATIVE LAW AND PRACTICE § 5.40 (2d ed.1997).

FN43. The legislature has accorded to the RCA authority to "issue subpoenas, subpoenas duces tecum, and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts, and documents in a[ ] ... hearing.... The commission may petition a court of this state to enforce its subpoenas, subpoenas duces tecum, or other process." AS 42.05.151(c).

***300** Moreover, because we are remanding this case to the RCA, there will be a period of time between this decision and the RCA's determination on remand. Thus, we must consider how the parties

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

should proceed during that interim period. ACS asks us to roll the clock back and reinstate APUC's original 1998 order in this case, in which APUC denied GCI's request to terminate ACS's rural exemption. GCI responds that reinstating the 1998 order would not be in the public interest, asserting that if the 1998 order were reinstated, service to its customers in the areas covered by the order would be disrupted. GCI also points out that "[s]uch harm and confusion to the public might be entirely unnecessary if the RCA were to subsequently terminate the rural exemption again on remand." We decline to reinstate APUC's original order and instead leave it to the RCA's discretion whether to continue the status quo and allow ACS and GCI to provide service to these areas simultaneously.

C. The RCA Erred in Terminating ACS's Glacier State Study Area Exemptions.

[6] Initially, GCI sought to compete with ACS throughout the Glacier State Study Area. A "study area" is the designated geographic area that a carrier serves. [FN44] The Glacier State Study Area encompasses areas near Fairbanks, on Kodiak Island, and cities on the Kenai Peninsula. GCI formally withdrew its request to compete with ACS throughout the entire Glacier State Study Area, however. Thereafter, GCI maintained that its request was limited to only one exchange in the Glacier State Study Area. As Gene Strid, GCI witness and Vice President and General Manager of Local Services at GCI, explained at the first hearing: "GCI at the present time seeks an interconnection for the termination and transport of local traffic, only at [ACS's] North Pole exchange." On remand, in May of 1999, Strid gave identical testimony. He testified explicitly that GCI had not requested interconnection at any other location in the Glacier State Study Area. "At the present time no interconnection other than at the North Pole wire center is contemplated." At the June 1999 remand hearing before APUC, Strid testified on cross-examination that GCI was only seeking collocation at the North Pole exchange office. The RCA appeared to understand the limited nature of GCI's request, recognizing that "GCI's request as modified during the hearing process is for interconnection at one location and resale throughout the balance of [ACS's] service area."

> FN44. 47 U.S.C. § 214(e)(5) (2001). ACS-N has two study areas, the Glacier State Study Area and the Sitka Study Area.

Ultimately, however, the RCA terminated ACS's exemptions for the entire Glacier State Study Area. ACS appealed this decision, arguing primarily that by terminating ACS's exemption for the entire study area, despite GCI's limited request, the RCA acted contrary to the plain language of section 251(f)(1)(A) of the Telecommunications Act. The superior court affirmed the RCA's decision without discussing the scope of the Glacier State termination. ACS then filed a motion for clarification with the RCA, requesting that the RCA specify whether the scope of the termination was limited to the parameters of GCI's request. The RCA denied this motion.

ACS argues that the RCA erred by terminating its rural exemption for the entire Glacier State Study Area when GCI made only a limited request. The RCA responds that a "partial" or "divisible" exemption cannot be granted under section 251(f) and that, once a bona fide request--even a narrow, localized request--is made, and once evidence supporting that request is presented, the Act requires the RCA to terminate the areawide exemption completely. But we find this response unpersuasive. The RCA cites no authority to support its reading of section 251(f). Moreover, nothing in section 251(f)'s language precludes localized termination or requires areawide termination when, as here, a request is specifically limited to one exchange among many included in an exempted study area. Indeed, the RCA's proposed ***301** reading of section 251(f) would invite anomalous consequences, for it would open broad areas to competition based on artificially constricted evidence and findings concerning the economic and technical hardships that a competitor's presence might create in an isolated segment of the exempted area. We thus agree with ACS's argument and hold that, even if the burden of proof had been properly allocated, the RCA would have erred in terminating

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

81 P.3d 292

(Cite as: 81 P.3d 292)

the Glacier State Study Area exemption, except as it applied to the North Pole exchange.

V. CONCLUSION

Because the RCA erred in allocating the burden of proof to ACS, we REVERSE and REMAND the RCA's decision. Additionally, we REVERSE the RCA's decision with regard to the Glacier State Study Area.

CARPENETI, Justice, not participating.

81 P.3d 292

Briefs and Other Related Documents (Back to top)

- 2002 WL 32829714 (Appellate Brief) Supplemental Brief of Appellee Gci Communication Corp. d/b/a General Communication, Inc. d/b/a GCI (Nov. 18, 2002)

- 2002 WL 32829715 (Appellate Brief) Supplemental Brief of Appellee Regulatory Commission of Alaska (Nov. 18, 2002)

- 2002 WL 32829713 (Appellate Brief) Reply Brief of Appellants (Sep. 09, 2002)

- 2002 WL 32829711 (Appellate Brief) Brief of Appellee Gci Communication Corp. d/b/a General Communication, Inc. d/b/a Gci (Jul. 03, 2002)

- 2002 WL 32829712 (Appellate Brief) Brief of Appellee Regulatory Commission of Alaska (Jul. 03, 2002)

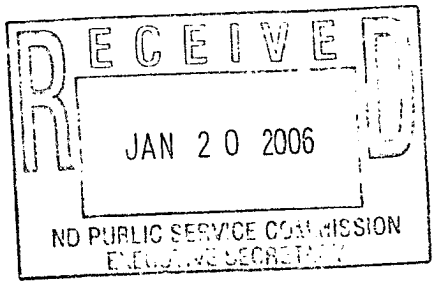
- 2002 WL 32829710 (Appellate Brief) Opening Brief of Appellants (Apr. 18, 2002)

END OF DOCUMENT

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**BRIEF IN RESPONSE TO MOTION TO STRIKE**
North Dakota Telephone Company,	)	
Respondent.	)	

North Dakota Telephone Company ("NDTC"), by counsel, hereby provides this response to the Motion to Strike (the "Motion") filed by Midcontinent Communications ("Midcontinent") received on January 19, 2006 (the "Motion"). In the Motion, Midcontinent is attempting to strike portions of the pre-filed reply testimony on behalf of NDTC by Douglas Duncan Meredith in this proceeding filed on January 9, 2006 (the "Meredith Testimony").

It is unfortunate that the North Dakota Public Service Commission (the "Commission") and NDTC needs to expend their respective resources in responding to the Motion. NDTC respectfully submits that the Motion actually highlights the deficiencies contained in the Midcontinent testimonies with respect to the issue of what a rational implementation schedule would be for any interconnection agreement ("ICA") that may be required in the event that the NDTC existing exemption from the provision of resale at a wholesale discount is removed. For the reasons provided herein, the Motion lacks any foundation and amounts to nothing more than an 11th hour effort to thwart NDTC's testimony that will assist the Commission in resolving this case. Accordingly, the Commission should deny the Motion in total.

The Motion is based on a single underlying premise – Mr. Meredith is interpreting the law that is applicable to the Commission's decision in this proceeding. Such premise is without merit.

Midcontinent fails to note that Mr. Meredith has significant practical experience in both assisting companies with addressing interconnection requests and in assisting a regulatory utility board in resolving arbitrations. *See* Meredith Testimony at 2, lines 1-11. As such, Mr. Meredith has working experience with the framework and requirements of the 1996 revisions to the Communications Act of 1934, as amended, (the "Act") and useful and practical insight as to how the plain-English directives from Congress contained within the Act have been implemented. As a result, his testimony regarding a practical reconciliation of the issues raised by the Commission in this proceeding and the timing guidelines contained in the Act are appropriate.

Testimony from an individual seasoned in resolving and negotiating interconnection issues (such as Mr. Meredith) is entirely appropriate and Mr. Meredith is providing only that – testimony as to a rational implementation schedule using the guideposts provided by Congress that anyone capable of reading the Act can determine. Mr. Meredith's insights are based on the invaluable experience he has gained in assisting companies and decision makers with ensuring that the Act's directives are achieved. Midcontinent should not be permitted to suggest otherwise; its Motion should be denied outright.

Independent of this basis, however, is the fact that Mr. Meredith is responding to the testimony provided by Midcontinent. Midcontinent witness provided opinions as to the Act (*see, e.g.,* Gates Testimony at 7 (line 159) to 9 (line 192) and at 22 (line 485) to

23 (line 513)) as well as an implementation schedule for an ICA should that be required arising from the outcome of this proceeding. *See id.* at 22, lines 516-527. Midcontinent, therefore, "opened the door" to the very testimony that Mr. Meredith provides. The fact that Mr. Meredith's testimony, based on considerable practical experience, demonstrates that Midcontinent's views are without merit is the direct result of Midcontinent's own testimony. That Midcontinent apparently disagrees with NDTC's views on implementation is no basis for efforts to shut the door to the testimony of Mr. Meredith, particularly where Midcontinent opened the door to it and the Commission has specifically noted that implementation is an issue in this proceeding. *See Notice of Rescheduled Hearing,* Case No. PU-05-451, dated December 14, 2005.

NDTC, through Mr. Meredith, did not view the Commission's issue so narrowly as apparently Midcontinent now contends, and provided insightful testimony on a rational implementation schedule should an ICA between the parties be required to be entered arising from decisions in this proceeding. Mr. Meredith has the experience to provide his testimony and Midcontinent can argue as to its weight but not the appropriateness of it.

Further, it appears Midcontinent has interjected a new issue into this proceeding. The issue is whether <u>any</u> witness has the requisite authority and experience under Rules 701 and 702 of the North Dakota Rules of Evidence to give an opinion on the timing schedules that the Commission may be required to establish vis-à-vis those contained in the Act. As such, it appears this issue needs to be addressed at the outset of the testimony of Midcontinent witnesses.

CONCLUSION

For the reasons stated, Midcontinent's Motion is entirely without merit and should be denied outright.

Dated this 20th day of January, 2006.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com

WOODS & AITKEN, LLP

Thomas J. Moorman
2154 Wisconsin Avenue, NW, Suite 200
Washington, D.C. 20007
Telephone: (202) 944-9500
Fax: (202) 944-9501
tmoorman@woodsaitken.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Brief in Response to Motion to Strike was served electronically and by regular mail on the 20th day of January, 2006, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Don Negaard, ND Bar ID #03598

PEARCE & DURICK

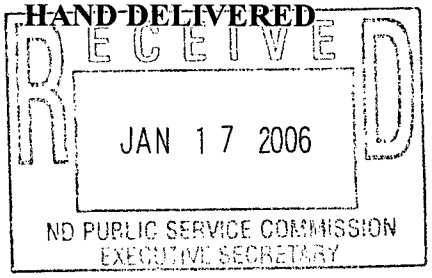
WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE • •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

January 17, 2006

HAND-DELIVERED



Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: ***Midcontinent Communications v. North Dakota Telephone Company***
Case No. PU-05-451

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1) Midcontinent Communications' Motion to Strike;
2) Rebuttal Testimony of Timothy J. Gates;
3) Rebuttal Testimony of Mary Lohnes; and
4) Rebuttal Testimony of Warren R. Fischer.

We are also furnishing the PSC with a copy of these documents by email.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosures.
cc w/enc: Mr. Don Negaard
Mr. William W. Binek
Mr. Al Wahl

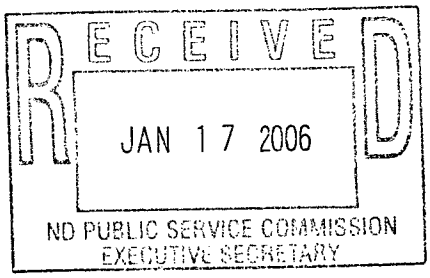
64 **PU-05-451** Pages: 1

Cover letter re Rebuttal Testimony

by Midcontinent Communications by Patrick Durick, Atto
01/17/2006 CC: Comm Legal Illona, Pat, Annette ALJ .

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	)	

MIDCONTINENT COMMUNICATIONS' MOTION TO STRIKE

Midcontinent Communications ("Midcontinent"), by its attorneys, hereby moves to strike certain portions of the reply testimony filed in this proceeding on behalf of North Dakota Telephone Company. For the reasons shown below, the materials subject to this motion are not the proper subject for prefiled testimony.

Midcontinent objects to the following portions of the reply testimony of Douglas Duncan Meredith, a consultant retained by NDTC:

(1) Page 7, lines 15 through 23

(2) Page 8, line 7 through page 9, line 3.

(3) Page 12, line 10 through page 13, line 13.

These passages purport to describe the legal requirements that apply to timing of Commission action under Sections 251(f)(1) and 252 of the federal Communications Act of 1934, as amended. Unlike other passages of the testimony, which merely recite statutory or regulatory language, these passages propose an interpretation of the specific provisions, *i.e.,* that the nine-month clock for arbitrations is triggered by termination of the rural exemption, not by a carrier's

Midcontinent Communications's Motion to Strike
by Midcontinent Communications by Patrick Durick, Atto
01/17/2006 CC: Comm Legal illona, Pat, Annette ALJ

bona fide request. These passages do not address any factual or policy issues relevant to this proceeding.

Such legal interpretation is outside the permissible scope of witness testimony in this proceeding, and consequently should be struck from Mr. Meredith's testimony. Legal analysis is not the purpose of testimony, and therefore it is inappropriate to permit witnesses, except in unusual circumstances, to testify as to the meaning of the law.[1] Further, even to the extent that there were a reason for NDTC to present testimony on the interpretation and interaction of Sections 251(f) and 252, Mr. Meredith's testimony establishes that he has no legal training or any other special qualifications that would provide a basis for him to offer legal analysis.[2] Thus, he is not qualified as an expert on these issues.

For these reasons, Midcontinent respectfully requests that the Commission strike the referenced portions of Mr. Meredith's testimony from the record of this proceeding.

Respectfully submitted,

PEARCE & DURICK

PATRICK W. DURICK *ND #03141*
Individually and as a Member of the Firm
314 E. Thayer Avenue
P. O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890

[1] Neither Mr. Meredith nor NDTC has suggested that there are any special circumstances that would warrant testimony on legal interpretation issues.
[2] *See* Reply Testimony of Douglas Duncan Meredith at 2 to 3 (describing qualifications, including degrees in economics).

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Kathryn Crawford hereby certifies that on January *17*, 2006, she served a copy of the following:

1) Midcontinent Communications' Motion to Strike;
2) Rebuttal Testimony of Timothy J. Gates;
3) Rebuttal Testimony of Mary Lohnes; and
4) Rebuttal Testimony of Warren R. Fischer,

by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. addressed to the following:

Mr. Donald Negaard
Pringle & Herigstad
P. O. Box 1000
Minot, ND 58702-100
via facsimile 701- 857-1361

William W. Binek
Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505
via facsimile 328-2410

Mr. Al Wahl
Administrative Law Judge
1707 North Ninth Street
Bismarck, ND 58501-1882
via facsimile 328-3254

Kathryn Crawford

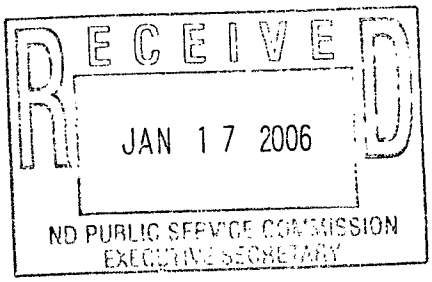
Subscribed and sworn to before me this *17* day of January, 2006.

Notary Public

My commission expires:

JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007

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	)	

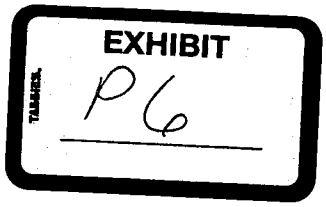
REBUTTAL TESTIMONY OF

WARREN R. FISCHER

On Behalf Of

MIDCONTINENT COMMUNICATIONS

January 16, 2006



62 PU-05-451 Pages: 8

Rebuttal Testimony of Warren R. Fischer

by Midcontinent Communications by Patrick Durick, Atto

01/17/2006 CC: Comm Legal Illona, Pat, Annette . . .

Exhibit # P6

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PURPOSE OF TESTIMONY 1

III. RESPONSE TO MR. MEREDITH'S CONCERNS 1

IV. RESPONSE TO MR. DIRCKS' CONCERNS 3

I. INTRODUCTION

Q. MR. FISCHER, PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is Warren R. Fischer. My business address is 2500 Cherry Creek Drive South, Suite 319, Denver, Colorado 80209.

Q. ARE YOU THE SAME MR. FISCHER WHO FILED HIS DIRECT TESTIMONY IN THIS CASE?

A. Yes.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to respond to certain claims made in the reply testimony of NTDC's witnesses Messrs. Douglas Meredith[1] and David Dircks[2].

III. RESPONSE TO MR. MEREDITH'S CONCERNS

Q. ON PAGE 11 OF HIS REPLY TESTIMONY MR. MEREDITH DISCUSSES "SEVERAL ERRORS" IN MIDCONTINENT'S ANALYSIS REGARDING THE FCC DEFAULT WHOLESALE DISCOUNT RATE. IS MR. MEREDITH'S CRITICISM WARRANTED?

A. No. Mr. Meredith argues against positions that I did not take: I did not suggest that "the Commission apply the interim rate without giving NDTC the opportunity to

---

1 See Reply Testimony of Douglas Duncan Meredith submitted on January 9, 2006 ("Meredith Reply").

2 See Reply Testimony of David Dircks submitted on January 9, 2006 ("Dircks Reply")

produce a wholesale cost study[.]"[3] Nowhere in my testimony did I propose a specific wholesale discount. I did mention the FCC default rate, along with Qwest North Dakota's wholesale discount rate, but simply to provide a "typical" and "reasonable" range for the wholesale discount rates assumed in my financial analysis.[4] Moreover, one of the key points in my testimony is that the specific discount *negotiated between parties* can be different than the actual costs that are avoided.[5] As I demonstrated in my financial analysis, if the negotiated discount is lower than the actual avoided costs, NDTC may experience a *net gain* rather than a net loss from Midcontinent's resale entry.[6]

Q. ARE YOU SAYING THAT YOU DID NOT USE THE FCC INTERIM DISCOUNT RATE IN YOUR FINANCIAL ANALYSIS?

A. That is correct. Most of my financial analysis used the level of discount currently offered by Qwest North Dakota, which is 16.15%. In addition, I considered hypothetical wholesale discount rates of 10% and 14%. These rates are less than the lower boundary of the FCC interim discount rate range, which is 17.00%.

As I showed in my direct testimony,[7] *lowering* the wholesale discount results in a *lower* revenue loss to NDTC. In other words, if the actual discount rate under which NDTC would provision resale services to Midcontinent is less than 16.15%, the NDTC's financial impact from Midcontinent's resale entry into the Devils Lake

---

3 See Meredith Reply, p. 11 lines 15-16.

4 See Fischer Direct, p. 11 lines 210-214.

5 *Id.*, p. 19 lines 337-340.

6 *Id.*, p. 19 Table 7.

7 *Id.* p. 14 lines 251-261 and Table 4.

exchange would be even lower than my estimates – estimates that already show that the impact will be minimal.

IV. RESPONSE TO MR. DIRCKS' CONCERNS

Q. MR. DIRCKS STATES THAT THE TESTIMONIES OF MS. LOHNES, MR. GATES AND MR. FISCHER DO NOT ACCURATELY REFLECT NDTC'S OPERATIONS.[8] DO ANY SPECIFIC "INACCURACIES" CLAIMED BY MR. DIRCKS AFFECT THE CONCLUSIONS IN YOUR DIRECT TESTIMONY?

A. No. Mr. Dircks only explains that his position is related to Mr. Gates' list of "services and scope of NDTC operations," and Ms. Lohnes' statements about "NDTC's public communications."[9] On the next page Mr. Dircks briefly discusses NDTC's operations in relation to Mr. Gates' testimony,[10] and the rest of Mr. Dircks' testimony appears to be related to NDTC's entry into video market.

Q. HOW DOES MR. DIRCKS' POSITION REGARDING NDTC'S OPERATIONS[11] COMPARE TO THE SCOPE OF YOUR FINANCIAL ANALYSIS?

A. Mr. Dircks' position does not contradict the scope of my financial analysis. Mr. Dircks states that "[t]he regulated company is the entity in question for this proceeding[]"[12] and "only the financials of the regulated company should be

---

8 See Dircks Reply p. 4 lines 17-21.

9 *Id.*

10 *Id.*, p. 5 lines 1-13.

11 *Id.*

12 *Id.*, line 8.

considered in this proceeding."[13] Although I disagree that non-regulated activities or actions by an affiliate are necessarily irrelevant to a case involving a regulated company, the financial analysis presented in my direct testimony is done exclusively for the *regulated entity* "NDTC," as provided to Midcontinent by NDTC. Specifically, my analysis is based on NDTC's 2004 financial data provided in response to discovery. NDTC's financial results are reported under the format prescribed by the section 47 C.F.R. Part 32 accounting rules used by incumbent local exchange carriers.[14]

Under the Part 32 accounting system a non-regulated activity that does not involve the joint or common use of resources in the provision of both regulated and non-regulated services is accounted for under separate accounts such as Account 7990, Non-regulated Net Income.[15] NDTC did not provide any data for this account; therefore, it was not included in my study.[16] Similarly, under Part 32 accounting, revenue from a non-regulated activity that does involve the joint or common use of resources in the provision of both regulated and non-regulated services is reported under revenue account 5280, Non-regulated Operating Revenue. Again, NDTC did not provide any data for this account; therefore, it was not included in my study. To summarize, my financial analysis complies not only with Mr. Dircks' insistence that

---

13 *Id.*, lines 10-12.

14 47 C.F.R. § 32.11.

15 47 C.F.R. § 32.23(b).

16 In contrast to the revenue data used in my analysis, NDTC's 2004 Annual report contains such non-operating income items as "Internet Net Income" and "Nonregulated Net Income."

only finances of the regulated entity be considered, but also excludes non-regulated income of the related entity.

Q. WHEN DISCUSSING NDTC'S OPERATIONS, MR. DIRCKS LISTS LONG-DISTANCE SERVICE AS ONE OF THE SERVICES NOT OFFERED BY THE REGULATED COMPANY.[17] AT THE SAME TIME YOUR FINANCIAL ANALYSIS INCLUDED NDTC'S LONG-DISTANCE REVENUE. PLEASE COMMENT.

A. As I already explained, my financial analysis is based on NDTC's booked revenue (not the booked revenue of North Dakota Long Distance – a company referenced by NDTC's web site[18] and owned by 10 local exchange companies including NDTC[19]). In any case, long-distance revenue booked by NDTC is so small that its inclusion in (or exclusion from) the analysis does not make a material difference. This revenue accounts for less than 1% of NDTC's total operating revenue ($13,418 over $16,977,056 in 2004) according to NDTC's 2004 Annual Report.

Furthermore, in my financial analysis I assumed that long-distance revenue would be subject to resale. If this is not the case, NDTC's revenue loss from resale would be even smaller than I estimated. However, this reduction would be immaterial for that same reason – that long-distance revenue constitutes a very small portion of NDTC's total revenue.

[17] See Dircks Reply, p. 5, lines 4-7.

[18] http://www.ndtel.com/telephone.htm.

[19] http://www.ndld.com/owners.htm.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

RECEIVED
JAN 17 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

REBUTTAL TESTIMONY OF MARY LOHNES

On Behalf Of

MIDCONTINENT COMMUNICATIONS

January 13, 2006

EXHIBIT
TAKEN
P2

61 PU-05-451 Pages: 43
Rebuttal Testimony of Mary Lohnes
by Midcontinent Communications by Patrick Durick, Atto
01/17/2006 CC: Comm Legal Illona, Pat, Annette . . .
Exhibit # P2, P3, P4

Q. PLEASE STATE YOUR NAME FOR THE RECORD:

A. Mary Lohnes.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Midcontinent Communications as Manager Regulatory Affairs.

Q. DID YOU FILE DIRECT TESTIMONY?

A. Yes.

Q. WHAT IS THE PURPOSE OF THIS REBUTTAL TESTIMONY?

A. I am providing this testimony to respond to certain specific claims made in the testimony of Douglas Meredith and David Dircks.

Q. MR. MEREDITH'S TESTIMONY, ON PAGES 12 AND 13, DISCUSSES YOUR CONCLUSION THAT IT WOULD BE REASONABLE TO EXPECT RESALE TO BE IMPLEMENTED WITHIN 90 DAYS OF COMMISSION ACTION IN THIS PROCEEDING. COULD YOU RESPOND TO HIS STATEMENTS ON THIS ISSUE?

A. Yes. My estimate was based on Midcontinent's experience in beginning resale service in other markets following the time that Midcontinent has made a request.

In practical terms, once an agreement is reached there is very little work that needs to be done technically, and the time necessary largely is related to setting up the back office processes. Midcontinent appreciates that this is new processes for NDTC but we have experience and industry standard processes in place that can be shared with NDTC for a quick and smooth set-up. Mr. Meredith's testimony makes the assumption that the full arbitration period would be necessary before resale could begin, but that is not necessarily the case.

Q. ON PAGES 2 AND 3 OF HIS TESTIMONY, MR. DIRCKS ASSERTS THAT NDTC COULD NOT DETERMINE FROM MIDCONTINENT'S MAY 12, 2005, LETTER WHETHER MIDCONTINENT WAS SEEKING TO OBTAIN RETAIL RESALE OR WHOLESALE RESALE. DO YOU HAVE A RESPONSE TO THAT CLAIM?

A. Yes. Midcontinent's request should have been clear to NDTC because of the attachment to the letter. As described in my direct testimony, the attachment was the form of a resale agreement between Midcontinent and NDTC. That agreement called for wholesale resale. A copy of the letter, with the attachment, is attached to this rebuttal testimony as Exhibit 1.

Q. MR. DIRCKS' DIRECT TESTIMONY ON PAGE 5 STATES THAT YOUR DIRECT TESTIMONY INCORRECTLY CONSTRUES NDTC'S ADVERTISING, NEWSLETTERS AND HELP WANTED ADVERTISING CONCERNING TO INDICATE THAT NDTC PLANS TO OFFER VIDEO SERVICES. WOULD YOU LIKE TO RESPOND TO THIS STATEMENT?

A. Yes. First, Mr. Dircks has now confirmed that NDTC is, in fact, planning to enter the video business in Devils Lake in early 2007, and that it began construction of the fiber optic plant that will be used to support video service last year.

Second, Mr. Dircks provided only selected materials concerning NDTC's future plans, and other materials support the statements I made in my direct testimony. For instance, in a press release dated October 3, 2005, NDTC and one of its vendors announced that NDTC was purchasing the vendor's "Triple Play" solution for fiber facilities. "Triple play" is a term that refers to offering voice,

high-speed Internet and video services. Similarly, Mr. Dircks was quoted in an article in the *Minot Daily News* on August 23, 2005 as saying that NDTC required certain regulatory action "to bundle services and compete with cable providers." Another NDTC executive, Richard Ellison, told Telephony Online that video service is "probably in our future." These statements are consistent with a variety of NDTC communications to its customers, such as a customer notice concerning the construction of fiber that stated that the fiber plant would allow NDTC "to deliver telephone, Internet and new products in the future all on one fiber optic line." (I have attached copies of the materials described above and other relevant communications from NDTC to this testimony as Exhibit 2.) Finally, even the help wanted advertisement attached to Mr. Dircks's testimony indicates that the position requires experience in "video."

Q. MR. DIRCKS ASSERTS ON PAGE 8 OF HIS TESTIMONY THAT HE DOES "NOT EXPECT THAT NDTC WILL RECEIVE THE SAME RATES FROM PROGRAMMERS THAN MIDCONTINENT IS ABLE TO RECEIVE." DO YOU WISH TO RESPOND TO THAT CLAIM?

A. Yes. Although NDTC will offer video service to only a small number of customers when it begins to provide service, that does not mean it cannot obtain discounted programming by joining with other small cable operators. For instance, many small cable operators are members of the National Cable Television Cooperative, which negotiates programming contracts on behalf of all of its members. The cooperative's membership includes rural telephone companies like NDTC that provide video service. Together, the members of the

cooperative serve many times more video customers than Midcontinent does, and so the cooperative can negotiate favorable rates with programmers.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
BONNIE L. CHRISTNER •

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

May 12, 2005

Mr. Dave Dircks, General Manager
North Dakota Telephone Company
P.O. Box 180
Devils Lake, ND 58301-0180

Re: Resale Agreement
Midcontinent Communications

Dear Sir:

We represent Midcontinent Communications and the purpose of this letter is to propose a Resale Agreement between North Dakota Telephone Company and Midcontinent Communications. A copy of a proposed agreement is enclosed for your review and comment.

Please review the enclosed agreement and contact me with any suggested revisions to the agreement. I look forward to working with you to reach an agreement.

Thank you for your anticipated cooperation.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosure.
cc: Mary Lohnes

EXHIBIT
P3

RESALE AGREEMENT

Between

NORTH DAKOTA TELEPHONE COMPANY

AND

MIDCONTINENT COMMUNICATIONS

IN THE STATE OF

NORTH DAKOTA

_____, 2005

TABLE OF CONTENTS

SECTION 1.0 – GENERAL TERMS	3
SECTION 2.0 – TERMS AND CONDITIONS	3
2.1 - GENERAL PROVISIONS	3
2.2 - TERM OF AGREEMENT	3
2.3 - PROOF OF AUTHORIZATION	4
2.4 - PERFORMANCE	4
2.5 - TAXES	6
2.6 - INSURANCE	6
2.7 - FORCE MAJEURE.	6
2.8 - LIMITATION OF LIABILITY.	7
2.9 - INDEMNITY	7
2.10 - WARRANTIES	8
2.11 - ASSIGNMENT	8
2.12 - DISCLAIMER OF AGENCY	9
2.13 - SEVERABILITY	9
2.14 - NONDISCLOSURE	9
2.15 - SURVIVAL	10
2.16 - CONTROLLING LAW	10
2.17 - NOTICES	10
2.18 - RESPONSIBILITY OF EACH PARTY	11
2.19 - NO THIRD PARTY BENEFICIARIES	11
2.20 - PUBLICITY	12
2.21 - EXECUTED IN COUNTERPARTS	12
2.22 - COMPLIANCE	12
2.23 - COMPLIANCE WITH THE COMMUNICATIONS ASSISTANCE LAW ENFORCEMENT ACT OF 1994	12
2.24 - COOPERATION	12
2.25 - AMENDMENTS	13
2.26 - ENTIRE AGREEMENT	13
2.27 - DISPUTE RESOLUTION	13
SECTION 3.0 - RESALE	16
3.1 - DESCRIPTION	16
3.2 - GENERAL PROVISIONS	16
3.3 - RESELLER RESPONSIBILITIES	19
3.4 - ESTABLISHMENT OF SERVICE	20
3.5 - MAINTENANCE OF SERVICE	22
3.6 - DISCONTINUANCE OF SERVICE	23
3.7 - BILLING AND PAYMENTS	24
3.8 - CUSTOMER BILLING DATA	25
SECTION 4.0 – DEFINITIONS	25
SECTION 5.0 – SIGNATURE PAGE	27
APPENDIX A	28

Section 1.0 - GENERAL TERMS

1.1 This Agreement must be filed with the North Dakota Public Service Commission (Commission). Absent Commission action within 90 days of the filing the Agreement will be deemed approved. The Agreement is between North Dakota Telephone Company (NDTC), a North Dakota cooperative and Midcontinent Communications (Midcontinent), a South Dakota General Partnership.

1.2 This Agreement sets forth the terms, conditions and pricing under which NDTC will offer and provide to Midcontinent, telecommunications services available for resale within the Devils Lake, ND exchange and for which NDTC is the incumbent local exchange carrier with the State of North Dakota for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.

Section 2.0 - TERMS AND CONDITIONS

2.1 General Provisions

2.1.1 Each Party is solely responsible for the services it provides to its end users and to other telecommunications carriers. This provision does not limit the liability of either Party for its failure to perform under this agreement.

2.1.2 The Parties shall work cooperatively to minimize third party fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement. Blocking of these services may be necessary to minimize fraud.

2.2 Term of Agreement

2.2.1 This Agreement shall become effective in accordance with the time frame set by North Dakota Statute. This Agreement shall be binding upon the Parties for a term of two (2) years unless terminated earlier pursuant to Section 2.2.3. It shall remain effective following the initial term on a month-to-month basis until the Parties enter into a successor agreement or the Agreement is terminated pursuant to Section 2.2.3.

2.2.2 Any Party may request negotiation for a successor Agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the initial term and at any time thereafter.

2.2.3 This Agreement shall terminate:

2.2.3.1 Following the expiration of the initial term upon one hundred sixty

(160) days prior notice from one Party to the other, provided that the Agreement shall continue in effect until a successor agreement becomes effective.

2.2.3.2 Pursuant to the terms of Section 2.4.2 hereof.

2.2.3.3 Except as otherwise provided in this Agreement, upon fifteen (15) days written notice from one Party, if that Party previously notified the other Party in writing that the other Party was in breach of a material provision of this Agreements, and the other Party failed to correct the breach within thirty (30) days from receipt of written notice and to notify the first Party in writing that the breach has been corrected. If a Party fails to exercise its right to terminate the agreement pursuant to this Section 2.2.3.3 within sixty (60) days of a notice of breach, it shall be required to provide a new notice of breach in accordance with this section 2.2.3.3 before it can terminate the Agreement.

2.3 Proof of Authorization (POA)

2.3.1 Each Party shall be responsible of obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

2.4 Performance

2.4.1 Amounts payable under this Agreement are due and payable within twenty (20) calendar days after bill date. If the payment due date is not a business day, the payment shall be due the next business day.

2.4.2 Except for amounts disputed pursuant to Section 2.4.5 herein, the following shall apply:

2.4.2.1 If payment is not received thirty (30) days from the bill date, NDTC may provide written notice to Midcontinent that additional applications for service will be refused, and that any pending orders for service will not be completed if payment is not received by the fifteenth (15th) day following the date of the notice. If NDTC does not refuse additional applications for service on the date specified in the notice, and Midcontinent's noncompliance continues, nothing contained herein shall preclude NDTC's right to refuse additional applications for service without further notice.

2.4.2.2 If Midcontinent fails to make any payment following the notice under Section 2.4.2.1, NDTC may, on thirty (30) days written notice to Midcontinent's designated representative, discontinue the provision of

existing services to Midcontinent at any time thereafter. Such notice will be sent by certified mail, return receipt requested. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If NDTC does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and Midcontinent's noncompliance continues, nothing contained herein shall preclude NDTC's right to discontinue the provision of the services to Midcontinent without further notice.

2.4.2.3 If payment is not received within sixty (60) days of the notice under Section 2.4.2.1, NDTC may terminate this Agreement.

2.4.3 After disconnect procedures have begun, NDTC shall not accept service orders from Midcontinent until all unpaid charges are paid in full in immediately available funds. NDTC shall have the right to require a deposit equal to two month's charges (based on the highest previous month of service from NDTC) prior to resuming service to Midcontinent after disconnect for nonpayment has occurred.

2.4.4 In the event NDTC properly terminates the provisioning of any resold services to Midcontinent for any reason, and subject to the requirements of the Commission and the FCC, Midcontinent shall be responsible for providing any and all necessary notice to its end users of the termination. NDTC shall not be responsible for providing such notice to Midcontinent's end users unless required by the Commission or the FCC.

2.4.5 Disputes: Midcontinent shall, in writing, advise NDTC of any disputes with respect to billing within forty-five (45) calendar days of the receipt of the invoice and include the specific amount (the "Disputed Amount"), details and reasons for disputing each item. If Midcontinent provides written notice of such dispute within thirty (30) days of receipt of an invoice, it shall not be required to pay the Disputed Amount and the provisions of Sections 2.4.2 shall not apply to the Disputed Amount during the pendency of this dispute. The Parties agree to expedite the investigation of any Disputed Amount in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be resolved in favor of NDTC, Midcontinent shall thereafter pay to NDTC any unpaid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute. Should the dispute be resolved in favor of Midcontinent, NDTC shall pay to Midcontinent any paid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute, and shall remove any unpaid Disputed Amount resolved in favor of Midcontinent from Midcontinent's invoices. If a Disputed Amount remains unpaid thirty (30) days after final resolution of such dispute, NDTC may disconnect service to Midcontinent upon providing ten

(10) days' written notice.

2.5 Taxes

2.5.1 Any federal, state or local taxes including but not limited to sales, use, excise, franchise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges, from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever required by law, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to qualify for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

2.6 Insurance

2.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain all insurance required by law and Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage and contractual liability with respect to the liability assumed by that Party hereunder. The limits of insurance shall not be less than $1,000,000 each occurrence and $2,000,000 general aggregate limit. Each Party will provide a certificate of insurance evidencing coverage within 90 days of execution of this Agreement and every year thereafter that this Agreement is in effect.

2.7 Force Majeure

2.7.1 Neither party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work

stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without the Party's fault or negligence. If affected by a Force Majeure Event, a Party shall give prompt notice to the other Party, and shall be excused from performance of its obligations hereunder on a Day to Day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the affected Party agrees to provide service to the other Party at a level equivalent to the level the affected Party provides itself.

2.8 Limitation of Liability

2.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to the other Party under this Agreement during the contract year in which the cause accrues or arises.

2.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

2.8.3 Nothing contained in this Section shall limit either Party's liability to the other for (I) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of a Party's respective agents, subcontractors, or employees.

2.8.4 Nothing contained in this Section shall limit either Party's indemnification obligations pursuant to Section 2.9 of this Agreement, nor shall this Section limit a Party's liability for failing to make any payment due under this Agreement.

2.9 Indemnity

2.9.1 Each Party (the Indemnifying Party) agrees to release, indemnify, defend

and hold harmless the other Party (the Indemnified Party) and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any person or entity, for invasion of privacy, bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

2.9.2 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

2.9.3 If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

2.9.4 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party.

2.10 Warranties

NDTC HEREBY STATES AND MIDCONTINENT HEREBY ACKNOWLEDGES THERE DOES NOT EXIST ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

2.11 Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other party, except that either Party may assign or transfer this agreement in connection with the acquisition of all or substantially all of the Party by another entity with sixty (60) days written notice to the other Party. Any attempted assignment or transfer that is not permitted is void ab initio.

2.12 Disclaimer of Agency

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute designation of either Party as a legal representative or agent of the other Party, nor shall either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted in writing by other Party. Except as otherwise expressly provided in this Agreement, neither Party undertakes to perform any obligation of the other Party, whether regulatory or contractual.

2.13 Severability

In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

2.14 Nondisclosure

2.14.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (I) furnished by one Party to the other Party dealing with business or marketing plans end user customer specific, facility specific, or usage specific information, other than end user customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the other Party at the time of delivery, or by written within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Confidential Information"), shall remain

the property of disclosing Party.

2.14.2 Upon termination of this agreement or any time during this Agreement upon request by the disclosing Party, the other Party shall return all tangible copies of Confidential Information, whether written graphic or otherwise.

2.14.3 The receiving Party shall keep the disclosing Party's Confidential Information confidential. In no case shall retail marketing, sales personnel, or strategic planning have access to such Confidential Information. Each Party shall use the other Party's Confidential Information only in connection with this Agreement.

2.14.4 Each Party agrees that the other Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement and that a disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

2.15 Survival

Any liabilities or obligations by a Party for acts or omissions prior to the termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

2.16 Controlling Law

This Agreement is made in accordance with applicable federal law and the state law of North Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of North Dakota.

2.17 Notices

Any notices required by or concerning this Agreement shall be in writing sent by certified mail, return receipt requested to NDTC and Midcontinent at the addresses shown below:

North Dakota Telephone Company:

North Dakota Telephone Company
P.O. Box 180
Devils Lake, ND 58301-0180

With copy to:

And to Midcontinent at the address shown below:

Midcontinent Communications
Mary Lohnes, Regulatory Affairs Manager
5001 W 41st Street
Sioux Falls, SD 57106
Phone (605) 357-5459
Fax (605) 339-4419

Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section.

2.18 Responsibility of Each Party

Each Party is an independent contractor with respect to the other party, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (I) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations, and (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (I) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

2.19 No Third Party Beneficiaries

The provisions of this Agreement are for the benefit of the Parties and not for any other person. This Agreement will not provide any person not a Party to this Agreement with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

2.20 Publicity

Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Neither Party may use the other Party's logo or any other symbol or language for which the other Party has trademark or copyright protection.

2.21 Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

2.22 Compliance

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, each Party agrees to keep and maintain in full force and in effect all permits, licenses, certificates, and other authorizations needed to perform obligations hereunder.

2.23 Compliance with the Communications Assistance Law Enforcement Act of 1994.

Each Party represents and warrants that any equipment, facilities or services provided under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance.

2.24 Cooperation

The Parties agree that this Agreement involves the provision of NDTC services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, and provisioning.

2.25 Amendments

Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing the desired amendment and proposed language changes. This Agreement can only be amended in writing, executed by duly authorized representatives of the Parties.

2.26 Entire Agreement

This Agreement constitutes the entire agreement between NDTC and Midcontinent and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

2.27 Dispute Resolution

2.27.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 2.27 shall be the preferred, but not the exclusive remedy for all disputes between NDTC and Midcontinent arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 2.27 shall limit the right of either Party, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 2.27. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

2.27.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar Days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted on an informal basis. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

2.27.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar Days after the date of the Resolution Request, then either Party may request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar Days after the Resolution Request pursuant to the terms of Section 2.27.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million ($5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 2.27. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute.

The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in a mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).

2.27.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its end user customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar Days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 2.27.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

2.27.3.2 There shall be no discovery except for the exchange of

documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. NDTC and Midcontinent shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either NDTC or Midcontinent may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between NDTC and Midcontinent, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

2.27.4 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

2.27.5 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the Arbitrator shall remain in effect, but the enjoined Party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review, a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

2.27.6 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 2.14 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide prior written notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

2.27.7 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the

court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

2.27.8 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

2.27.9 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

2.27.10 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

2.27.11 This Section does not apply to any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, trade name, trade dress or service mark of a Party.

Section 3.0 - RESALE

3.1 Description

3.1.1 NDTC shall offer to Midcontinent for resale at wholesale rates any Telecommunications Services tariffed with the Commission that it provides at retail to subscribers who are not telecommunications carriers, subject to the terms and conditions of this Agreement. Appendix A lists services which are available for resale under this Agreement and the applicable discounts, and is attached and incorporated herein by this reference.

3.1.2 Upon request by NDTC, Midcontinent shall make its Telecommunications Services available to NDTC for resale pursuant to the applicable provisions of the Telecommunications Act of 1996, the FCC's relevant orders and rules, and the Commission's relevant orders and rules.

3.2 General Provisions

3.2.1 Residential services and Lifeline/Link-up services are available only to the same class of end user eligible to purchase these services from NDTC. Universal emergency number service is not available for resale.

3.2.2 Non-Telecommunications Services, including but not limited to inside

wiring and maintenance, CPE, ADSL, and directory listing charges are not available for resale under this Agreement unless NDTC in its sole discretion decides to make the services available. If NDTC at its sole discretion provides non-regulated services to Midcontinent for resale, said services shall be resold to Midcontinent according to terms and conditions established by NDTC.

3.2.3 Telecommunications Services provided directly to Midcontinent for its own use and not resold to end users must be identified by Midcontinent as such, and Midcontinent will pay NDTC retail prices for such services.

3.2.4 Resold services are available only where adequate facilities currently exist that are capable of providing such services without construction of additional facilities or enhancement of existing facilities, except to the extent that NDTC would provide such additional construction or enhancement had the end user chosen not to move service to Midcontinent and that Midcontinent pays NDTC's standard charges for such construction or enhancement.

3.2.5 Midcontinent has no right to the telephone number or any other call number designation associated with services furnished by NDTC. NDTC reserves the right to change telephone numbers if necessary as a result of regulatory requirements or safety concerns.

3.2.6 Discontinuance of end user service for cause.

3.2.6.1 The service is furnished subject to the condition it will not be used for an unlawful purpose. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advices that such service is being used or will be used in violation of law. If NDTC receives other evidence giving reasonable cause to believe that such service is being used or will be so used, it will either discontinue or deny the service or refer the matter to the appropriate law enforcement agency.

3.2.6.2 NDTC reserves the right to suspend or discontinue service to an end user in the event of prohibited, unlawful or improper use of facilities or service, abuse of facilities, or any other violation or noncompliance of the rules and regulations of the NDTC Local Exchange Tariff.

If NDTC discontinues, suspends or denies service pursuant to this Section 3.2.6, NDTC will provide notice to Midcontinent of such discontinuance or denial.

3.2.7 NDTC accepts no responsibility for any unlawful act committed by Midcontinent or its end users as part of providing service to Midcontinent for purposes of resale or otherwise.

3.2.8 NDTC is authorized, but not required to cooperate with law enforcement agencies with respect to their investigation of any alleged unlawful activity of Midcontinent or its end users. Law enforcement agency subpoenas and court orders regarding the end users of Midcontinent will be directed to Midcontinent. NDTC shall be entitled to bill Midcontinent for any cost associated with complying with any requests by law enforcement agencies regarding Midcontinent or Midcontinent's end users that NDTC does not recover from law enforcement agencies. NDTC will determine whom to bill for these costs. If NDTC provides such assistance in response to a request from Midcontinent, it shall be entitled to bill Midcontinent for any cost associated with providing such assistance.

3.2.9 NDTC will accept at no charge one primary listing for each main telephone number belonging to Midcontinent's end user customer based on end user information provided to NDTC by Midcontinent. NDTC will place Midcontinent's listings in the NDTC directory and will make listings available to directory publishers and other third parties. NDTC reserves the right to charge Midcontinent for subsequent changes to directory listing information at NDTC's Tariffed rates.

3.2.10 Interexchange carried traffic (e.g. sent-paid, information services and alternate operator services messages) received by NDTC with respect to Midcontinent end-user accounts will be returned to the IXC as unbillable, and will not be passed on to Midcontinent for billing. An unbillable code returned with those messages to the carrier will indicate that the messages originated from a resold account and will not be billed by NDTC.

3.2.11 NDTC shall continue to have the right to serve and market directly to any end user within NDTC's service area, including but not limited to Midcontinent's end users. NDTC shall have the right to continue to directly market its own telecommunications products and services, and in doing so may establish independent relationships with Midcontinent's end users.

3.2.12 The circuits, facilities or equipment provided by any person or entity other than NDTC and use, operation, maintenance or installation thereof shall not:

3.2.12.1 interfere with or impair NDTC's business operations including but not limited to providing service over NDTC's facilities or those of NDTC's affiliates, or connecting and concurring carriers;

3.2.12.2 cause damage to NDTC's plant;

3.2.12.3 impair the privacy of any communications of NDTC or its

customers; or

3.2.12.4 create hazards to any NDTC employees or the general public.

3.2.13 Facilities and/or equipment utilized by NDTC to provide service to Midcontinent shall remain the property of NDTC.

3.2.14 All costs incurred by NDTC for providing services to Midcontinent that are not covered in the NDTC tariffs or in this Agreement shall be recovered from Midcontinent. NDTC shall attempt to provide advance written notice to Midcontinent if NDTC expects costs to exceed $500. NDTC may not always be able to provide such notice in the event of unexpected expenses.

3.2.15 The rates applicable to Midcontinent for purchase of services from NDTC for resale shall be the retail rate for the telecommunications services as provided in NDTC's applicable Local Exchange Tariff less the wholesale discount listed in Appendix A.

3.2.16 Directory assistance and operator handled service are available through a third party provider. These services are not directly provided by NDTC and will not be discounted.

3.2.17 Prior to placing any orders for services under this Agreement, the Parties will jointly complete NDTC'S "New Customer Questionnaire."

3.2.18 NDTC shall provide to Midcontinent, for Midcontinent's end users, E911/911 call routing to the appropriate public safety answering point (PSAP). NDTC shall not be responsible for any failure of Midcontinent to provide accurate end user information for listings in any databases in which NDTC is required to retain and/or maintain such information. NDTC shall provide Midcontinent's end user information to the Automatic Location Identification/Database Management System (ALI/DMS).

3.3 Reseller Responsibilities

3.3.1 Midcontinent will be the customer of record for all services purchased hereunder from NDTC. NDTC will take service orders from, bill and collect payment from Midcontinent for all services purchased pursuant to this Agreement. Midcontinent alone, not Midcontinent's agents or third parties hired by Midcontinent will be NDTC's single point of contact for all services purchased pursuant to this Agreement. NDTC will accept a request from another local service provider for conversion of the end user's service from Midcontinent to the other local service provider in accordance with applicable requirements of the FCC and the Commission.

3.3.2 Midcontinent shall resell telecommunications services only to the same class of customers to which NDTC sells the services; e.g. residential service may not be resold to business customers. Except where explicitly provided in the NDTC Local Exchange Tariff or where NDTC otherwise permits such use, Midcontinent shall not permit the sharing of a service by multiple end users or the aggregation of traffic from multiple end users onto a single line service.

3.3.3 Midcontinent shall not use resold local exchange telephone service to provide access services to interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunication service providers.

3.3.4 All necessary information with respect to an end-user, including telephone number, requested service dates, and products and services desired will be provided to NDTC by Midcontinent in accordance with the practices and procedures established by NDTC.

3.3.5 Midcontinent shall not interfere with the right of any person or entity to obtain service directly from NDTC.

3.3.6 If NDTC determines that an unauthorized change in local service by a local service provider has occurred, NDTC will reestablish service with the appropriate local service provider, and will assess against the local service provider an unauthorized change charge. Appropriate nonrecurring charges, as set forth in the Local Exchange Tariff as applicable, will also be assessed to the local service provider.

3.3.7 To the extent allowable by law, Midcontinent shall be responsible for primary interexchange carrier (PIC) change charges associated with such local exchange line and trunks. Midcontinent shall pay for PIC changes at the tariffed rate.

3.3.8 Midcontinent is solely responsible for the payment of charges for all services furnished under this Agreement.

3.3.9 NDTC shall not be responsible for the manner in which the use of Telecommunications Services or the associated charges are billed to others by Midcontinent.

3.3.10 If Midcontinent does not wish to be responsible for toll, collect, third number billed, 900 calls, last call return, caller originated trace, directory assistance inquiries, operator assistance charges Midcontinent must order blocking services as outlined in the NDTC Local Exchange Tariff and pay any applicable charges.

3.3.11 Midcontinent shall be responsible for providing to its end users, and to NDTC a telephone number or numbers that Midcontinent end users can use to contact Midcontinent in the event of service or repair requests.

3.4 Establishment of Service

3.4.1 Midcontinent will provide NDTC with the necessary documentation to enable NDTC to establish a master account for Midcontinent.

3.4.2 Service orders will be submitted in the format designated by NDTC. The format shall conform to the formats adopted by the Ordering and Billing Forum or shall require only the information necessary for NDTC to process an order, including customer-identifying information, services requested and the date on which service is to commence, be changed or be discontinued.

3.4.3 When NDTC receives a properly completed service order from Midcontinent that a customer is subscribing to Midcontinent's services, standard service order intervals for the appropriate class of service will apply.

3.4.4 Except as required by applicable laws or rules, NDTC will not require end user confirmation prior to establishing service for Midcontinent's end user customers. Midcontinent must, however, be able to demonstrate lawful end user authorization upon request.

3.4.5 At Midcontinent's request, NDTC will provide to Midcontinent's customers per customer, blocking of calls (e.g., toll, 900, international calls, and third party or collect calls) by line or trunk, to the extent that NDTC provides such blocking capabilities to its customers and to the extent required by law. A nonrecurring charge will apply for any changes.

3.4.6 When ordering Telecommunications Services via a service order, Midcontinent may order from NDTC separate InterLATA and IntraLATA service providers (i.e., two PICs) on a line or trunk basis. NDTC will accept PIC change orders from Midcontinent for Midcontinent's end users. PIC change fees will not be discounted.

3.4.7 NDTC based on a credit check, may require Midcontinent to provide NDTC a security deposit to ensure payment of Midcontinent's account.

3.4.7.1 Such security deposit shall be a cash deposit or other form of security acceptable to NDTC. Any such security deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

3.4.7.2 If NDTC determines that a security deposit is required prior to the activation of service, it shall provide notice to Midcontinent within fifteen (15) days following Commission approval of this agreement.

3.4.7.3 The provision of a security deposit does not relieve Midcontinent from complying with NDTC's regulations as to prompt payment of bills on presentation and does not constitute a waiver or modification of the provisions of Section 2.4.2.

3.4.7.4 NDTC reserves the right to increase the security deposit requirements when, in its sole judgment, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the security deposit. In no event shall the deposit exceed twice the highest amount of any previous invoice. NDTC shall reduce or eliminate any deposit in accordance with its standard policies governing such deposits after satisfactory credit is established, and shall refund the excess deposit including interest accrued within forty-five (45) days after determining that the deposit should be reduced or eliminated.

3.4.7.5 In the event this Agreement is terminated by NDTC any security deposits will be applied to Midcontinent's account and NDTC may pursue any other remedies available by law. To the extent the security deposit exceeds the amounts owed by Midcontinent, NDTC will refund the excess including any interest accrued within one hundred and twenty (120) days after termination of the Agreement.

3.4.7.6 In the case of a cash deposit, interest at a rate as set forth in the appropriate NDTC tariff shall be paid to Midcontinent during the possession of the security deposit by NDTC. Interest on a security deposit shall accrue annually and, if requested, shall be annually credited to Midcontinent by the accrual date.

3.5 Maintenance of Service

3.5.1 NDTC's facilities and equipment provided by NDTC shall be maintained solely by NDTC or its agent.

3.5.2 Midcontinent or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by NDTC without the written consent of NDTC.

3.5.3 Midcontinent shall promptly notify NDTC of any situations that arise that may result in a service problem.

3.5.4 Midcontinent will be NDTC's single point of contact for all repair calls on

behalf of Midcontinent's end users with respect to Telecommunications Services.

3.5.5 Midcontinent will contact NDTC's repair center in accordance with procedures established by NDTC. Midcontinent will refer repair calls to NDTC by telephone.

3.5.6 For all repair requests, Midcontinent shall adhere to NDTC's prescreening guidelines mutually agreed upon prior to referring the trouble to NDTC.

3.5.7 For purposes of this Section, Telecommunications Services is considered restored or a trouble resolved when the quality of Telecommunications Services is equal to that provided before the outage or the trouble occurred.

3.5.8 NDTC will bill Midcontinent for handling troubles that are found not to be in NDTC's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what NDTC charges to its retail customers for the same services.

3.5.9 NDTC Maintenance of Service Charges, when applicable, will be billed by NDTC to Midcontinent, and not to Midcontinent's end-user customers.

3.5.10 NDTC technicians will be dispatched to Midcontinent customer premises pursuant to a repair request being received from Midcontinent.

3.5.11 If trouble cannot be cleared without access to Midcontinent local customer's premises and the customer is not at home, the NDTC technician will leave at the customer's premises a "no access" card requesting the customer to call "their local service provider" for rescheduling of repair.

3.5.12 NDTC will perform testing (including trouble shooting to isolate any problems) of Telecommunications Services purchased by Midcontinent in order to identify any new circuit failure performance problems.

3.5.13 NDTC reserves the right to contact Midcontinent's end users, if deemed necessary, for maintenance purposes.

3.6 Discontinuance of Service

3.6.1 End User Disconnect Procedures

3.6.1.1 At the request of Midcontinent, NDTC will disconnect a

Midcontinent end user customer.

3.6.1.2 All requests by Midcontinent for denial or disconnection of an end user for nonpayment must be provided to NDTC in writing in the manner and format prescribed by NDTC.

3.6.1.3 Midcontinent will be solely responsible for notifying the end user of the proposed disconnection of service.

3.6.1.4 Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of Midcontinent.

3.6.1.5 NDTC may report annoyance calls to Midcontinent when it is determined that annoyance calls are originated from one of Midcontinent's end user's locations. NDTC shall be indemnified, defended and held harmless by Midcontinent against any claim, loss or damage arising from providing this information to Midcontinent. It is the responsibility of Midcontinent to take the corrective action necessary with its customers who make annoying calls. Failure to do so may result in NDTC's disconnecting the end user's service. If either party disconnects a customer pursuant to this Section 3.6.1.5 (Midcontinent via instructions to NDTC to disconnect service or NDTC acting without instructions from Midcontinent), the other Party shall be indemnified, defended and held harmless by the disconnecting Party against any claim, loss or damage arising from a claim of wrongful disconnection.

3.7 Billing and Payments

3.7.1 Pursuant to this Agreement, NDTC shall bill Midcontinent those charges, which Midcontinent incurs as a result of Midcontinent purchasing Telecommunications Services from NDTC.

3.7.2 NDTC shall provide Midcontinent a monthly bill including all charges incurred by and credits and/or adjustments due to Midcontinent for the Telecommunications Services ordered, established, utilized, discontinued or performed pursuant to this Agreement. Each bill provided by NDTC to Midcontinent will include:

3.7.2.1 All non-usage sensitive charges which are billed in advance and usage sensitive charges which are billed in arrears;

3.7.2.2 Any previously unbilled non-usage and usage sensitive charges for prior periods; and

3.7.2.4 NDTC will also bill to Midcontinent all other charges, including

but not limited to 911 and E911fees, telecommunications relay charges, subscriber line charges, local number portability charges and applicable taxes.

3.7.3 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due NDTC from the Interexchange Carrier.

3.7.4 All end user common line (EUCL) charges, subscriber line charges (SLC), Local Number Portability (LNP) or other similar charges will continue to apply for each local exchange line resold under this Agreement. All applicable federal and state rules, tariffs and regulations associated with such charges shall be applicable, as may be amended from time to time.

3.7.5 Each Party will provide the other Party at no charge a contact person for the handling of any Resale Billing questions or problems.

3.7.6 NDTC will render bills each month on established bill days

3.7.7 If Midcontinent requests an additional copy(ies) of a bill, Midcontinent will pay NDTC a reasonable fee per additional bill copy, unless such copy(ies) was requested due to errors, omissions, or corrections, or the failure of the original transmission to comply with the specifications set forth in this Agreement.

3.7.8 Payment of all charges will be the responsibility of Midcontinent. NDTC is not responsible for payments not received by Midcontinent from Midcontinent's customer. NDTC will not become involved in billing disputes that arise between Midcontinent and its customer. Payments made to NDTC, as payment on account, will be credited to an accounts receivable master account and not to an end user's account. NDTC will not accept payments from Midcontinent's customers to apply on Midcontinent's account.

3.8 Customer Billing Data

3.8.1 End user billing data will be provided according to NDTC practices and procedures. Usage data with respect to end users who have subscribed to a local measured service will be provided by NDTC to Midcontinent when the end user has been transferred to Midcontinent, and Midcontinent purchases Telecommunications Services from NDTC.

3.8.2 NDTC will bill and Midcontinent will pay the applicable charges for usage data set forth in this Agreement. Billing and payment will be in accordance with the applicable terms and conditions set forth in this Agreement.

Section 4.0 - DEFINITIONS

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms maybe defined elsewhere in this Agreement, as well as terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the Effective Date of this Agreement.

"Agreement" refers to the resale agreement signed by both parties.

"Commission" means the North Dakota Public Service Commission.
"Confidential Information" has the meaning set forth in Section 2.14 of this Agreement.

"Parties" means NDTC or Midcontinent collectively.

"Party" means either NDTC or Midcontinent as applicable.

"Tariff" as used throughout this Agreement refers to the NDTC North Dakota tariff filed with the Commission.

"Telecommunications Service(s)" means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. As used in this definition, "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

"Work Locations" means any real estate that NDTC or Midcontinent owns, leases or licenses or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Section 5.0 -SIGNATURE PAGE

By Signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Resale Agreement.

Midcontinent Communications	North Dakota Telephone Company
_____	_____
Signature	Signature
_____	_____
Name Printed/Typed	Name Printed/Typed
_____	_____
Title	Title
_____	_____
Date	Date

APPENDIX A – NORTH DAKOTA
LOCAL EXCHANGE SERVICES
RESALE OF SERVICES

The Parties agree the following charges apply to the Resale of Local Service:

1. Nonrecurring Charges

a. Customer Transfer Charge (CTC): The following nonrecurring charges apply when converting a NDTC account to a Reseller account or when changing an end user from one reseller to another.

Residence and Business $22.20

b. Product Specific Nonrecurring Charge: As set forth in NDTC tariffs, the product specific nonrecurring charges, without discount, will apply when additional lines or trunks are added or when the end user adds features or services to existing lines or trunks.

2. NDTC shall offer to Midcontinent for resale at wholesale rates from the tariffed pricing Telecommunications Services tariffed with the Commission that NDTC provides at retail to subscribers who are not telecommunications carriers, subject to the terms and conditions of this Agreement. Except as qualified below, NDTC telecommunications services shall be available for resale at a 16.15% discount from the tariffed prices.

a. The services not available for resale include but are not limited to the following services:

Customer Premises Equipment
Inside Wire
Dedicated or Switched Access Service
Promotions of 90 days or less in length
Non Tariffed items
Voice Mail
Toll services
ADSL
Operator Services*
Directory Listing charges
Nonregulated services
Directory Assistance Services*

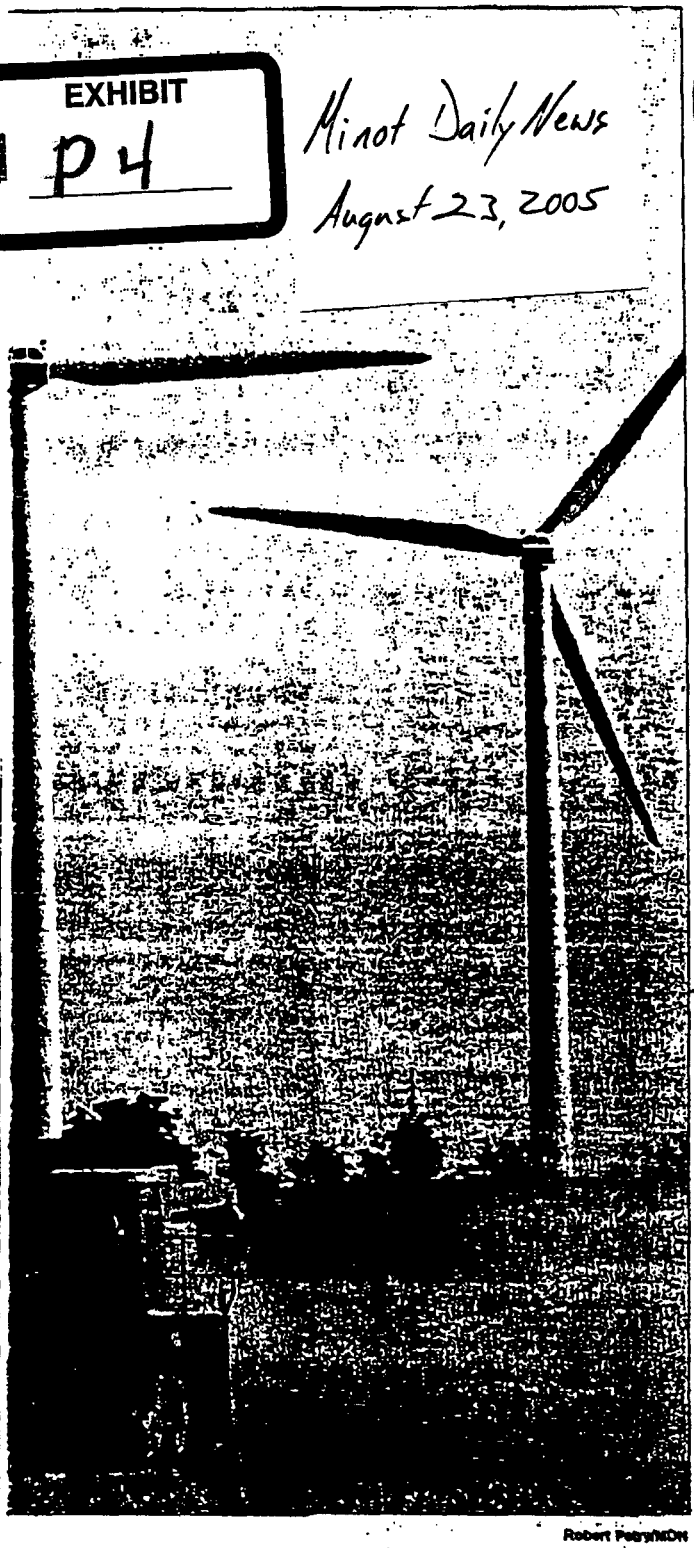
Services marked with an * are available for resale, but not at discounted rates.

hc com- · The township has conducte[d] 7018528688 s attorney's office that See FEMA — Page B4

Hearty harvest

EXHIBIT P4

Minot Daily News August 23, 2005



Robert Peterson

ued Monday in the Minot area. Across the state, the harains ahead of schedule.

NORTH DAKOTA TELEPHONE CO.

Company keeps equalization plan, cans long-distance offer

August 23, 2005

By JILL SCHRAMM
Staff Writer
jschramm@ndweb.com

DEVILS LAKE – Protests from subscribers have led North Dakota Telephone Co. to withdraw a proposal to offer toll-free, long-distance calling within its service area.

The phone company's plan to raise local rates by about $4.50 a month in exchange for toll-free long distance drew objections from its more western communities, particularly Velva, general manager Dave Dircks, Devils Lake, said. Residents of communities within Minot's trade area reported they wouldn't benefit because few of their long-distance calls go to Devils Lake or other eastern towns in the service area.

North Dakota Telephone Co. serves 26 towns in an area from Velva to McVille, including Devils Lake, Rugby and Harvey.

The company is going forward with a separate proposal to the North Dakota Public Service Commission to equalize rates among cities served. The equalization would result in no change in company revenue, Dircks said.

Rates differ now because North Dakota Telephone Co. left existing rates in place at the time it added cities formerly served by other providers. The equalization plan also proposes a rate reduction for about 1,200 farm subscribers by reclassifying them as residential customers. They currently pay a rate that falls between residential and the higher commercial rate.

Dircks said equalizing

See PHONE — Page B4

LOCAL ARTIST VERN SKAUG

Mural nears completion

By KATINA TENGESDAL
Staff Writer
ktengesdal@ndweb.com

Minot artist Vern Skaug has been working on a mural at Joe's Smoke Shop, located on Burdick Expressway E., for about three weeks now. Weather permitting, he hopes to have it finished in another week or so.

Rain has been just one of the weather problems he has dealt with.

"When it's hot, I have to go slower because the paint dries faster," Skaug said.

Skaug is at work on the mural, weather permitting, from 9:30 a.m. to 4 or 5 in the afternoon.

Skaug has been an artist for 40 years, and has painted several murals in the last eight years. He helped with a mural in Rolla, painted a mural for Rolette's centennial celebration, and painted the mural near the Herberger's in Dakota Square Mall, among others.

"I started with Herberger's and that was commissioned. I do murals for people in towns with centennials or if they have a big, blank wall," Skaug said.

The mural he is currently working on is painted entirely with farm implement paint. "It's all tractor and combine colors," Skaug said.

The design is a "hodge-

See MURAL — Page B4

Received Time JAN-13-2006 11:09 FROM: 7018528688 TO:695 339 4419 P.004/004

State University, and Haas and Charpentier attend the University of Mary in Fargo.

The three hit the road every weekend this summer in a rented car fueled by ethanol and adorned with GoE stickers.

"It's been really fun getting

In addition to promoting ethanol, distributing information and answering questions, the GoE Guys perform "random acts of ethanol." They gave away at least 30 tanks each weekend, Charpentier said.

"Money spent on (ethanol)

Sunday in Bismarck.

stays in our economy," Klava said. "It supports our North Dakota farmers, and the new ethanol plants create jobs."

The GoE Guys also promote ethanol use from an environmental stance. Charpentier said E-10 gas — 90 percent gasoline blended with 10 percent ethanol — has 30 percent less toxic emissions than regular fuel and is better for an engine. He said it cleans out a vehicle's filters so they do not need to be replaced as often as with other fuels.

Mural

Continued from Page B1

...ge of different scenes," and ...ures a place "somewhere in ...th Dakota, with no place in ...ticular," Skaug explained.

Skaug's one direction from business owner Joe Mitzel was an order for something outdoorsy and full of wildlife. Other than that, Skaug was on his own.

"He just let me do whatever I wanted, which was great," Skaug said. "I make it up as I go. I do a sketch first and then I photograph it as I go along."

Skaug said that since the wall is a rough surface, it can be difficult to get things to look realistic, and it also has been a challenge fitting together the scenes to make them believable. All in all, though, Skaug has made good progress with his mural, and he looks forward to the end result.

Murals are only one of Skaug's artistic focuses.

"I mainly do portraits, and I teach private classes or workshops," said Skaug.

Phone

Continued from Page B1

rates will enable the company to bundle services and compete with cable providers.

The lack of toll-free calling within the service area will hamper bundling, but the company continues to look at its options. Dircks said the company plans to survey its subscribers to get a better idea of a direction to take.

The PSC has yet to set a hearing on the rate equalization.

Commissioner Tonya Clark said the PSC received numerous comments about the toll-free long distance.

Clark said the use of cell phones has reduced people's use of land lines for long distance, creating less interest in seeing those rates reduced.

"It's having a significant impact on the phone industry," he said. "It's also one of the reasons that they would want to move to a company wide toll-free calling. They are seeing so much less long distance due to cell-phone bypass."

FEMA

Continued from Page B1

special meeting Monday afternoon to see if anything had come up in the meantime, but was told by township officials that their attorney had told them to come to the county for the money.

There was a suggestion that maybe the money could be transferred from the county special assessment district fund to the general fund and then the county could lend Surrey Township the money. Commissioner Jim Lee said that would go against the county's policy on special assessment districts and as a precedent could cause problems down the line.

It was decided that another special meeting might be necessary. The township officials said in the meantime they would check with the state bonding agency to see if they could come up with the money there.

The county commissioners said they would do some pencil pushing, too, to see if a solution to the problem could be found before the deadline for certifying to FEMA that the township has the money in hand for the match.

Four of the five commissioners were present for the special meeting Monday. Commissioner Darlene Watne was absent.

In other action, the commissioners voted to keep the 45 mph speed limit on portions of Ward County Road 12 until turnout lanes can be established for heavy traffic areas.

That portion of Ward County 12 runs from the area of Gravel Products, near 27th Street Northwest, to Surrey. There are several industrial developments along part of the road and more are planned. Owners of those properties asked for a reduction in speed near their businesses because of heavy truck traffic.

Speeds adjacent to those properties were reduced on a temporary basis until the improvements can be made.

Shooting

Continued from Page B1

...ise that was terrorist-related

natural disaster mode. So I think that's helped somewhat."

Authorities said the rampage began after officers tried to serve ... armed with a pistol, shot at the officers, then drove about 10 miles to the county courthouse in Cavalier and started a fire in ... firefighters were trying to extinguish the flames and shot Wolf.

State Insurance Commissioner Jim Poolman

was also a longtime member of the CPO Wive's Club. She was a member of the Mohall American Legion Branch #52 and the Legion Auxiliary. She loved bingo and gambling, and all kinds of puzzles and games on the computer.

Family: daughter, Roberta 'Robbie' (Terry) Pettapiece, Port Rowan, Ontario, Canada; brothers, Howard (Beulah) Ingalls, Grand Manan, New Brunswick, Canada; Owen 'Junior' (Mae) Ingalls, Grand Manan; Henry Ingalls, Yuma, AZ; sisters, Kay (Harvey) Janes, Saint John, New Brunswick; Daisy (Paul Kahl) Annis, Calais, ME; brothers-in-law, Verland 'Bucky' (Shirley) Kissner, Antler, ND; Leonard Kissner, Ephrata, WA; Terry (Janet) Kissner, Westhope, ND; sister-in-law, Donna (Gabe) Thompson, Antler, ND; and many nieces and nephews.

Jean was preceded in death by her husband, Lyle; brother, Jack Ingalls; and sister-in-law, Darlene Elven.

Memorial Service: Wednesday at 2:00 p.m. at the Antler Community Church.

Interment: Antler Community Cemetery

Visitation: There will be no revieval, but friends may sign the register book Tuesday from Noon to 4:00 p.m. at Anderson-Nelson Funeral Home, Mohall.

Memorials: Memorials are preferred to the Mohall Ambulance Service, Mohall American Legion Post #52, the Humane Society, Hospice or the donor's choice.

Melvin Reule

June 19, 1929-Aug. 21, 2005

McCLUSKY – Melvin Reule, 76, McClusky, died Sunday, Aug. 21, 2005, in his

Bethel Lutheran Buckstop Junction h lage, in Bismarck. Cremation has taken there will be no visit Burial will be later Ariz. (Eastgate Funer Bismarck)

BRIEF

Vet warns aga cattle disease

BISMARCK (A stock disease that blisters has Montana and W ranchers may not into North Dakot states without a h tion, the state vete

The viral illness ular stomatitis, or mostly affects catt hogs. It can cause s lesions on an animal's nostrils and hooves. It c animals to lose weight, the sores inhibit eating.

North Dakota has n confirmed case of th since 1995, Keller said. cases recently repo Montana were the firs state since 1982. It re foot-and-mouth disease is much more serious.

BIRTHD

Engene

Doris (Field) Eng Garrison, formerly of I will celebrate her 75t day at an open house Aug. 28, from 2 to 5 p.m Douglas Senior C Center. Her family will h event. She requests no

7018528688

DEVILS LAKE

Phone company customers facing rate increases

BISMARCK (AP) — North Dakota Telephone Co. has dropped plans to boost residential rates by $4.54 monthly to allow unlimited long-distance calling within its northwestern North Dakota service area, the company's manager said.

However, the Devils Lake company is going ahead with a separate proposal to charge the same monthly residential and business rates for the 26 communities it serves, Dave Dircks said. The "rebalancing" initiative would boost telephone bills for many residential customers by more than $2 monthly.

North Dakota Telephone now has about 20,000 customers and an assortment of rates, depending on each customer's location and service type. The state Public Service Commission is reviewing the company's proposal, and held an informal hearing last week with Dircks and James Howard Jr., a consultant.

"This is not intended to bring us more revenue," Dircks said in an interview. "What we are trying to do is to treat all of our customers the same."

Telephone rate hearings are rare for the PSC. It has no jurisdiction over cellular telephone companies, rural telephone cooperatives and small independent companies.

Qwest, which serves most of North Dakota's largest cities, is limited by state law to charging $18 monthly for basic telephone service.

"This is the last true rate-regulated phone company in North Dakota," Commissioner Kevin Cramer said. "We have the final say in exactly what their rates will look like."

North Dakota Telephone is asking to charge its residential phone customers $13.12 monthly. In Devils Lake, that represents a 27-cent increase. For Cando customers, the phone bill would rise by 82 cents, regulatory filings say.

For 11 communities, including McVille, Starkweather, Tolna and Warwick, the increase would be $1.12, the company's proposal says. For another dozen, including Rugby, Velva, Esmond, Fessenden and Balta, monthly phone bills would go up by $2.23.

The proposal would also cut costs for some ratepayers. Monthly "combo" rates charged to farm customers would fall by more than $4 monthly for most exchanges, while multiline rates extended to some small businesses would also drop.

> This is not intended to bring us more revenue. What we are trying to do is to treat all of our customers the same.
>
> **— Dave Dircks, manager, North Dakota Telephone Co.**

North Dakota Telephone had also proposed charging an additional $4.54 monthly for all of its residential customers to call anywhere within the company's territory without long-distance charges. For business customers, the increases would have been much steeper.

Customers in Rugby, Velva and other communities on the western border of North Dakota Telephone's service territory balked at the idea.

The Public Service Commission got dozens of messages from customers saying they seldom made long-distance calls within North Dakota Telephone's service area, and that the proposal would make them pay for a service they wouldn't use.

The idea "would be of no benefit for most people in the area," Duane Veach of Rugby told the commission. "It will only mean increased rates that would benefit maybe one of 100 people."

Another customer, Dan Humble of Rugby, said he and his wife "don't call Devils Lake often enough to receive any benefit from such a large increase."

North Dakota Telephone is owned by three rural cooperatives — United Telephone Mutual Aid Corp. of Langdon, Dakota Central Telecommunications Cooperative of Carrington and Polar Communications Corp. of Park River.

The company purchased Devils Lake and 14 rural phone exchanges from the Contel phone company in 1993. Three years later, it bought 11 rural exchanges from Qwest, which was then known as U S West, as part of a U S West divestment of its rural North Dakota telephone properties.

Dircks said the different rates are a lingering remnant of those acquisitions. The company intends to survey its customers about the extended area service charges to see what other options they might prefer, he said.

"I think most of the customers probably perceived it as a general overall rate increase," he said. "They didn't like it."

TMCnet On the Web

LEARN MORE
GET "MOBILE WORKFORCE FOR DUMMIE

Channels Home
CHANNELS
Service Provider
SERVICE PROVIDER
Developer
ENTERPRISE
Reseller
DEVELOPER
Consumer
RESELLER
About TMC
GOVERNMENT
Blogs
CONSUMER
News Alerts
About TMC
Free eNews
Advertise
Events
Blogs
Publications
Whitepapers
Content Submission

Subscribe Today!
CUSTOMER INTERACTION

Channels Home
VoIP
Broadband Telephony
Conference Call/Audio Web
Customer Interaction Management
Enterprise VoIP Gateways
Headsets
Hosted IP
Hybrid IP

Home VoIP CRM Call C
:: What's new :: Events :: Magazines :: Forums :: Contributors Type your
E-mail to a Friend | Order Reprints | Print | TrackBack | Bookmark | Free Magazines

TMCnet NEWS

[October 03, 2005]

Powered by Business Wire

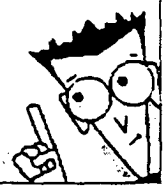
Allied Telesyn Wins North Dakota Telephone Company Bid; Rural ILEC Will Deploy Allied Telesyn iMAPs, iMGs in $2M FTTH Overbuild

SAN JOSE, Calif. --(Business Wire)-- Oct. 3, 2005 -- Allied Telesyn, a global provider of secure Ethernet/IP access solutions and an industry leader in the deployment of IP Triple Play networks over copper and fiber infrastructure, today announced that its IP Triple Play solution has been chosen by North Dakota Telephone Company (NDTC) for a multi-million dollar FTTx overbuild of its Devils Lake Exchange, which serves more than 3500 subscribers. Products to be deployed by NDTC include the iMAP integrated Multiservice Access Platform, capable of 100 megabit symmetrical service, and iMG intelligent Multiservice Gateways.

ONE NUMBER.
YOUR CHOICE OF DEVICE.
MOBILE AND SECURE.

Learn about our mobility solutions —
download *Mobile Workforce for Dummies.* ›

AVAYA
COMMUNICATIONS
AT THE HEART OF BUSINESS



NDTC currently uses Allied Telesyn's iMAP and iMG platforms to deliver ADSL2+ internet and telephone services. Phase One of the Devil's Lake overbuild will begin this summer and incorporate approximately 1000 lines. Phases Two and Three are expected to be completed in 2006 and will reach

IPCC

IP Conferencing and Collaboration

IP-PBX

IP-Phone System

IP Services

Media Processing

Open Source PBX

Packet Telephony

Session Border Control

Selecting VoIP Solutions

Telecom Expense Mgmt

Triple Play Channel

Voice over Broadband

VoIP

VoIP Alternatives

VoIP Contact Center

VoIP Developer

VoIP Gateways

VoIP Headsets

VoIP Switching and Service Delivery

VoIP Test Solutions

Wholesale VoIP

CRM

another 2200+ subscribers.

"We knew we wanted an active fiber network and Allied Telesyn had the solution that fit our needs best," says Rich Ellison, NDTC's Network Services Manager. "They had a gateway for any size of deployment: from MDUs, to business, to single homes. They even customized products specifically for our needs."

"We've also been very impressed with Allied's responsiveness and customer service," adds Ellison. "Anything we wanted to see, they brought out and set up for us, and then proved it would work in our design. We've been really pleased with the commitment and the quality of the products they offer."

Says Allied Telesyn's Executive Vice President of Marketing and Product Development Philip Yim, "Allied Telesyn's solution was ideal for NDTC. They knew they needed to upgrade to fiber to stay competitive in their market. The iMAP and iMGs offer NDTC the flexibility not just to match what their competition can offer, but to easily expand that offering in the future without a costly forklift upgrade. Delivery of 100Mb symmetrical service differentiates NDTC from its competitors, and deploying active end-to-end fiber without sharing bandwidth eliminates potential fiber exhaustion. Plus, future services with very high bandwidth requirements can be deployed without complex OSP re-engineering and bandwidth restrictions, which is key for any service provider."

The RUS-accepted iMAP is the industry's most flexible solution for deploying FTTx, ADSL2+ and POTS from a single platform. A secure, carrier-grade, chassis-based access platform with built-in redundancy and QoS, it is built to easily accommodate both an expanding subscriber base and expanding IP voice, video and data application needs.

iMG series Residential Gateways come in a variety of models supporting fiber, ADSL2+, 10/100 and Gigabit Ethernet, VoIP and POTS, as well as RG and serial interfaces. These highly-secure, carrier-grade solutions incorporate options including: Stateful Inspection Firewall, LAN and FXS ports, tagged-based VLAN (IEEE 802.1Q), Layer 2 & Layer 3 QoS, IGMP Snooping & Proxying and PPPoE protocol support, and environmentally hardened chassis options. Zero-touch configuration makes deployment and firmware upgrades simple and virtually maintenance-free.

North Dakota Telephone Company is an ILEC formed in 1993 through the purchase of 15 former GTE exchanges serving 10,000 lines in north central North Dakota. In 1996 they purchased an additional 11 exchanges from US West and currently serve nearly 19,000 lines.

For more information on Allied Telesyn products and solutions, call 1-800-424-4284 or visit http://www.alliedtelesyn.com

About Allied Telesyn, Inc.

Allied Telesyn was founded in 1987 with the global goal of producing reliable, standards-based IP/Ethernet networking products. Focused on secure Ethernet/IP solutions geared to application solutions, Allied Telesyn offers carrier-class access-edge products including Layer 3/2 switches & Routers,

Bus. Relationship Software

Conference Call/Audio Web

Converged Solutions

CRM Solutions

Cust. Experience Mgmt

Customer Interaction Management

eBusiness Solutions

Headsets

Hosted Contact Center

IP Conferencing and Collaboration

OnDemand Communication

Open Source CRM

Sales Force Automation

Speech Applications

Speech Lifecycle Mgmt

Speech Recognition ASR

Speech Technologies

Web Based Help Desk

Workforce Optimization

Call Center

Remote Call Monitoring

Agent Performance

Call Center

Call Center Software

transport systems, fiber/copper Multiservice Access Platforms, and multiservice CPE/media converters. Our customer-focused approach has made Allied Telesyn the ideal choice for IT/SP professionals looking for high-quality, feature-rich IP/Ethernet network solutions. With an extensive product portfolio that covers telephony POTS to 40G transport systems Allied offers providers the one stop networking choice for IP/Ethernet solutions.

[Back To TMCnet.com's Homepage]

- NEC CEO to Keynote INTERNET TELEPHONY Conference & EXPO Fall 2005
- VoIP Security Focus of Sessions at INTERNET TELEPHONY Conference & EXPO Fall 2005
- Submit Your Application for Customer Interaction Solutions' 2006 Top 50 Teleservices Agencies Award
- New IMS Summit Debuts at INTERNET TELEPHONY Conference & EXPO Fall 2005
- New IPTV Summit Debuts at INTERNET TELEPHONY Conference & EXPO Fall 2005
- Submit Your Application for Customer Interaction Solutions' 2005 MVP Quality Award
- INTERNET TELEPHONY Magazine Announces 2005 INTERNET TELEPHONY Excellence Award Winners
- VoIP Solutions for SMBs Highlighted at INTERNET TELEPHONY Conference & EXPO Fall 2005
- Service Provider Summit Conference Debuts at INTERNET TELEPHONY Conference & EXPO Fall 2005
- Customer Interaction Solutions announce the 2005 TMC Labs Innovation Award Winners
- Submit Your Application for the 2005 Customer Interaction Solutions Product of the Year Award
- Submit Your Application for the 2005 INTERNET TELEPHONY Product of the Year Award
- INTERNET TELEPHONY Conference & EXPO Fall 2005 Conference Grid Now Available
- INTERNET TELEPHONY Conference & EXPO Fall 2005 Exhibitor Prospectus Available

E-mail to a friend | Order Reprints | Print | TrackBack | Bookmark | Free Magazines

Mark Your Calendars!

Don't miss Carly Fiorina and Michael Powell - Keynote speakers at INTERNET TELEPHONY Conference & INTERNET TELEPHONY Conference & EXPO: Jan 24-27, 2006 - Fort Laude

Reserve Your Space Now!

TELEPHONY ONLINE

PRINTTHIS
Powered by Clickability

NDTEL gets active on FTTP

By Vince Vittore

Oct 1, 2005 12:00 AM

Like many independents, NDTel is deploying fiber-to-the-premises. Based in Devils Lake, N.D., the company has launched a two-phase buildout using Allied Telesyn's access gear. Unlike most telcos, though, the company has opted to use an active Ethernet system versus the passive optical network architecture.

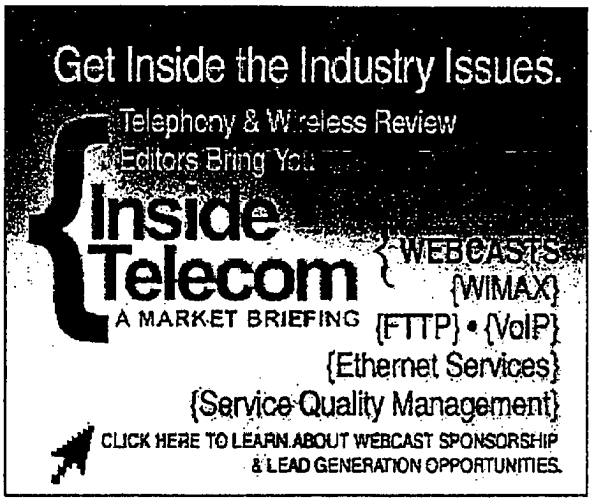
"We started construction in August, and we're doing probably 1000 premises in phase one, which is this year," said Richard Ellison, network services manager for NDTel. "We'll do an additional 2200 in phase two next year."

NDTel decided to use active Ethernet largely because it wanted the opportunity to offer bandwidth beyond what copper could provide, he said. Currently, NDTel faces off with Midcontinent Cable in Devils Lake. In areas where copper is in good shape, the company is providing a 4 Mb/s service (with 500 kb/s upstream).

In the FTTP areas, though, it wants to go up to 100 Mb/s, and active Ethernet made that easier.

"The mathematics were a little more logical with the active solution," Ellison said. "This product is easy for us to manage all the way into the home. It's just so versatile, and the deliverable bandwidth isn't shared until quite a bit back in the network."

In a PON architecture, bandwidth is split multiple times before it hits the home. Most existing telco FTTP deployments are PON because carriers believe it is more cost effective. Conversely, many municipalities have opted for active solutions, believing they offer greater bandwidth in situations where penetration rates are high, said James Mustarde, vice president of marketing for Allied Telesyn.



The Pragmatic Evolution to IMS
Experts explore the requirements for IMS-ready services and how deploying them can help increase ARPU and reduce capital costs for network upgrades. View Webcast now.
Sponsored by Stratus.

Allied, though, has seen increased interest from telcos as they begin to do more long-range planning.

"The real driving force is that PON is not nearly as scalable as active solutions," Mustarde said. "The bandwidth requirement for building and scaling a network plays very significantly into the decisions you make."

The counter argument in favor of PONs is that as users begin signing up for high-end access services, the cost of providing enough bandwidth at aggregation points increases, cutting further into margins.

Mustarde defends against such assertions by noting that the cost of transport from aggregation points is continually dropping. Moreover, the objective in providing high-speed data isn't always to make it the most profitable service.

"A lot of the IOCs are very happy with adoption rates lower than 50%, but the long-term objective is to stop erosion of voice revenue," he said. "What they're really looking to do is see a retention in customers who are moving to other voice services."

For NDTel, that line of thinking makes perfect sense. Initially, the company will offer voice and data services over the FTTP network, but it's definitely contemplating other parts of the bundle.

"It's not for video, but that's probably in our future," Ellison said. "It's definitely been mentioned."

More Than a Telephone Company!

211 2nd St NW, PO Box 180
Devils Lake, ND 58301-0180
701-662-1100 or 1-800-880-4213
Fax 701-662-6446
www.goNDTC.com

Dear Valued NDTC Customer:

The opportunity we've been waiting for is here! This year, NDTC will begin installing a brand new state-of-the-art telecommunications network in Devils Lake and some surrounding areas. This new fiber optic network will give you more of what you want:

- Advanced telecommunication services
- Access to new products
- Our strong commitment of keeping you connected to who's important to you

NDTC's "Fiber to the Premise" will bring fiber optic cable right to your home or business. By converting to this type of network, NDTC will be able to deliver telephone, Internet and new products in the future all on one fiber optic line! As technology advances, you will also have infinite telecommunication capabilities in the future.

As an NDTC "Fiber to the Premise" customer you will experience:

- Improved quality of your telephone service
- Enhanced Internet services
- Availability of advanced data networking services.

We are excited about converting all customers to this state-of-the-art network. The "Fiber to the Premise" construction is scheduled to begin in your neighborhood late this summer or early fall.

To accomplish this conversion, we will need to bury a new fiber cable to your premise; which will be done at no charge to you. NDTC will be placing North Dakota One Call, the electric company, the cable provider and other utilities on notice of the upgrade and these utilities will locate their underground facilities during the construction process.

As a property owner, we ask that you identify any buried facilities that will not show up on the North Dakota One Call report. Examples of what would ***not*** show up on a ND One Call report include: underground sprinkler systems, electrical or propane lines that you have installed from your house to the garage, underground pet retention systems, etc. Please inform us of any buried facilities that would not show up on a ND One Call report. You can do this by listing them on the enclosed drop permit form or contacting NDTC.

NDTC will make every effort to keep your premise minimally disturbed. In most cases, the fiber will be cut into the ground and you will notice no disturbance on your property. In the cases of any disturbance NDTC will restore your property to as near original condition as possible.

By signing the enclosed drop permit form you are giving NDTC permission to enter upon your property to complete the connection to the network. When you have completed the drop permit form, please return it to NDTC in the self addressed stamped envelope. If you are not the property owner, please contact NDTC for assistance.

If you have any questions regarding this notice, please call one of our customer service representatives at 662-1100. Our office hours are Monday – Friday, 8 a.m. – 5 p.m. We look forward to receiving your signed drop permit form so we can begin offering you enhanced quality and future telecommunication services.

Sincerely,

Dave Dircks
General Manager
North Dakota Telephone Company

Job Opening - Account Executive

North Dakota Telephone Company is searching for a highly motivated individual excited about selling state-of-the-art telecommunication services and equipment. A substantial degree of knowledge and experience in all aspects of telephony with emphasis in voice, data, IP, computer based networking, video, surveillance and security cameras, etc. is desired. Individuals applying must be detail oriented and possess excellent communication skills, a professional demeanor, a strong commitment to provide excellent customer service, ability to develop and maintain knowledge of an expanding product line and ever changing details of the competitive market place. This position will involve contacting businesses located within (but not exclusive to) NDTC's 26 exchanges, which covers an area from McVille to Velva and New Rockford to Cando. Individuals will develop leads to prepare and present sales proposals to customers regarding new and/or additional telecommunication products and services and all follow-up associated with such proposals. Some overnight travel will be required. NDTC offers a comprehensive benefit package.

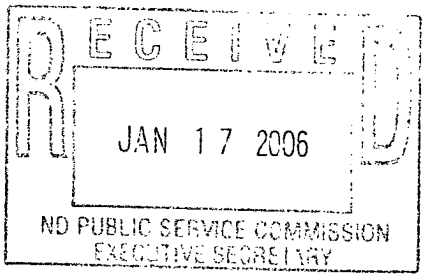
Requirements: Associate's degree (A.A.) or equivalent from two-year college or technical school; or two years experience in sales/marketing field; or equivalent combination of both. Proficient knowledge and use of computers is required.

Interested parties should complete and mail to NDTC Application for Employment, letter of interest and current resume no later than July 5th, 2005 to:

NDTC
ATTN: Human Resource Administrator
PO Box 180
Devils Lake, ND 58301-0180

The job description and the NDTC Application form can be found on the website at www.goNDTC.com or at Job Service ND. North Dakota Telephone Company is an Equal Opportunity Employer.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



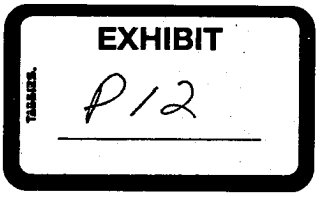
MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
	)	Case No. PU-05-451
VS.	)	
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

REBUTTAL TESTIMONY OF TIMOTHY J GATES

On Behalf Of

MIDCONTINENT COMMUNICATIONS

January 16, 2006



60 PU-05-451 Pages: 11

Rebuttal Testimony of Timothy J. Gates

by Midcontinent Communications by Patrick Durick, Atto

01/17/2006 CC: Comm Legal Ilona, Pat, Annette . .

Exhibit # P12

TABLE OF CONTENTS

I. INTRODUCTION 1
II. PURPOSE OF TESTIMONY 1
III. BURDEN OF PROOF 2
IV. CONDITIONS FOR TERMINATION OF THE EXEMPTION 3
V. TIMETABLE FOR IMPLEMENTATION 9

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

A. My name is Timothy J Gates. My business address is QSI Consulting, 819 Huntington Drive, Highlands Ranch, Colorado 80126.

Q. ARE YOU THE SAME TIMOTHY GATES WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING ON BEHALF OF MIDCONTINENT?

A. Yes.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to respond to some of the statements and characterizations of the North Dakota Telephone Company ("NDTC") witnesses in this proceeding. Specifically, I will respond to some of the comments made by Mr. Douglas Duncan Meredith of John Staurulakis, Inc. ("JSI") and Mr. David Dircks on behalf of NDTC.

Q. WHAT ARE SOME OF THE ISSUES YOU WILL ADDRESS IN YOUR REBUTTAL TESTIMONY?

A. At several places in Mr. Meredith's testimony he recommends that the Commission deny Midcontinent's request to terminate the rural exemption for NDTC. (See Meredith Reply at 7 and 16) Mr. Dircks also opposes the request by Midcontinent to terminate the exemption. (See Dircks Reply at 10) It appears

that the premise of NDTC's refusal to allow resale is that it wants to be offering video before any competitive entry by Midcontinent. For instance, Mr. Dircks states, "NDTC believes it can be successful competing with Midcontinent when both have triple play services." (*Id.*) NDTC also argues that the proposed implementation schedule is too short, and, in any case, should only be considered if Commission orders termination of the exemption. I will address these and other statements in this rebuttal testimony.

III. BURDEN OF PROOF

Q. AT PAGE 5 OF MR. MEREDITH'S TESTIMONY HE STATES THAT "MIDCONTINENT HAS THE BURDEN OF PROOF IN THIS PROCEEDING." DO YOU AGREE?

A. Yes, but NDTC also has obligations. For instance, NDTC should not withhold information necessary for Midcontinent to prove its case or that NDTC can simply ignore Midcontinent's calculations.

Q. HAS NDTC REFUSED TO PROVIDE INFORMATION NECESSARY FOR MIDCONTINENT TO MAKE ITS CASE?

A. NDTC did provide some information in response to discovery, but it was incomplete and lacked details that would have allowed Midcontinent to directly calculate NDTC's revenues subject to resale or the wholesale discount. As a consequence, and as discussed in Mr. Fischer's direct testimony, some assumptions had to be made. (See Fischer Direct at 9-11.)

IV. CONDITIONS FOR TERMINATION OF THE EXEMPTION

Q. MR. DIRCKS SUGGESTS AT PAGE 10 OF HIS TESTIMONY THAT "NDTC BELIEVES IT CAN BE SUCCESSFUL COMPETING WITH MIDCONTINENT WHEN BOTH HAVE TRIPLE PLAYS." IS THAT REASON FOR THE COMMISSION TO DENY MIDCONTINENT'S REQUEST?

A. No. I can see why NDTC would prefer to delay competition until it can offer all services that its potential competitors would offer. Such a result would make it easier for NDTC to retain its customers in the face of competition. Not being ready for competition, however, is not a good reason to delay the benefits of competition.

Q. MR. DIRCKS STATED THAT "CUSTOMERS ARE HAPPY WITH OUR SERVICE." (DIRCKS REPLY AT 4) ASSUMING THAT CLAIM IS TRUE, IS THAT A REASON TO DENY MIDCONTINENT'S REQUEST TO TERMINATE THE EXEMPTION?

A. No. Competition is beneficial even to customers who are happy with their current providers because it creates incentives for competitors to improve their services and lower their prices. Indeed, Mr. Dircks stated at page one of his testimony that "NDTC understands fully that advancing competition has been stated to be a public interest objective."

Q. MR. MEREDITH MAKES SOME GENERAL STATEMENTS AT PAGE 10 OF HIS TESTIMONY SUGGESTING THAT YOUR STATEMENT

THAT "COMPETITION WILL PROVIDE INCENTIVES FOR NDTC TO OFFER NEW AND BETTER SERVICES AND TO OPERATE MORE EFFICIENTLY" IS NOT SUPPORTED BY EVIDENCE. PLEASE RESPOND.

A. This statement is accepted by most, if not all, mainstream economists. Competition provides incentives to provide better and more efficient services so as to retain customers in the face of competition. We see this every day when we shop for commodities or specialized products. Manufacturers and producers work hard to differentiate their products and services so as to attract and keep their customers and market share. They also are diligent in managing their operations and expenses so as to provide the most efficient cost structure to maximize profits.

If Mr. Meredith's intends to suggest that NDTC is already as efficient and responsive as it could ever be, then I would disagree. There is always room to improve on operations and efficiencies. While I have no specific insight into NDTC's operations, it could be that employee scheduling could be refined, overtime minimized, new and more efficient electronics deployed for transport, or any other number of improvements in network or human resource management. I think it is a mistake for any company or organization to believe that they can't do any better than they are today.

Q. IF NDTC WERE ALREADY OPERATING AT TOP EFFICIENCY, WOULD THAT BE A REASON TO DENY MIDCONTINENT'S REQUEST TO TERMINATE THE EXEMPTION?

A. No. The issues for this Commission to consider do not include whether NDTC is efficient or inefficient. Nevertheless, I'm sure the Commission recognizes the important market discipline that competitive entry provides. That market discipline will benefit NDTC, consumers and the economy of the State.

Q. MR. MEREDITH REFERS TO THE EXISTENCE OF WIRELESS SERVICE AS EVIDENCE OF COMPETITION. PLEASE COMMENT.

A. Wireless is an important service in today's communications market. There is a small segment of today's society (perhaps as much as 5 percent) that has decided to rely entirely on wireless service and no longer subscribe to wireline service. Wireless pricing plans are also responsible for reducing long-distance rates in the last few years. Nevertheless, for the vast majority of businesses and consumers, wireless is a complement to and not a substitute for wireline service.

Comparing landline local exchange service to wireless service would be similar to comparing the functionality received from a car and a motorcycle. The car and motorcycle both provide transportation, have disk brakes, dual exhaust, halogen headlights, windshields, turn signals, stereos, seating for additional passenger, storage for belongings, and get similar mileage. One could even argue that they cost the same depending upon the model purchased and how they are equipped. Indeed, one could argue that the motorcycle even provides features and characteristics that the car does not.[1] In fact, I would have to admit that I "could" replace my car with a motorcycle; but "would" I? No.

Q. WHY IS THE DISTINCTION BETWEEN "COULD" AND "WOULD"

[1] Motorcycles provide that "open air" experience, are more maneuverable, have a tighter turning radius, stop quicker and accelerate faster, etc.

IMPORTANT TO YOUR ANALYSIS?

A. If someone asked me if I "could" replace my car with a motorcycle, I would have to answer yes. It would be technically possible to sell my car and replace it with a motorcycle. Technically, there is no reason why I could not replace my car with a motorcycle. But, because the car and motorcycle provide different kinds of transportation for different situations, I would never get rid of my car and rely solely on my motorcycle. Instead, I would prefer to have both.

This is similar to the comparison of landline local exchange service and wireless service. One could technically replace landline local service with wireless service, but because wireless services provide different kinds of functionality for different situations, very few businesses would actually disconnect their landline service and rely solely upon wireless service. Indeed, like the motorcycle scenario, businesses with the means to do so would likely prefer both.

While wireless service can provide many of the features of wireline service, it does not meet all the standards for what consumers expect from wireline telephone service. For instance, when you pick up your phone at your office you expect to receive dialtone and when the call completes you expect a high quality connection. Wireless service is famous for variable quality of service based on the technology deployed and the extent of deployment. Dropped or clipped calls are very common and, for customers of any single provider, reliable service is not available in many parts of the state (which parts may differ by

provider).[2] Further, it would be difficult or impossible for a business to replace its dial-up or broadband Internet connection on the landline with a wireless counterpart.

Q. IF COMPETITION EXISTS FROM OTHER SOURCES IN NDTC'S SERVING TERRITORY, IS THAT REASON FOR THIS COMMISSION TO DENY MIDCONTINENT'S REQUEST TO TERMINATE THE EXEMPTION?

A. No. To the contrary, if NDTC is already facing competition, the addition of one more competitor, especially a total resale competitor, would have little marginal impact on NDTC. In other words, NDTC already would be attempting to streamline and groom its operations. That is not to say, however, that consumers, who would benefit from additional alternative providers, would not benefit.

Q. DO THE STATEMENTS FROM NDTC'S WITNESSES DISCUSSED ABOVE HAVE ANY RELEVANCE TO THE COMMISSION'S CRITERIA FOR TERMINATING THE RURAL EXEMPTION?

A. No. NDTC's main objections – NDTC isn't currently offering the same services as Midcontinent; NDTC is already operating efficiently; NDTC's customers are happy with its service; NDTC already has competition from wireless and Internet service providers – do not address the criteria that the Commission has identified. Those criteria are

1. Whether the request of Midcontinent is unduly economically burdensome.
2. Whether the request of Midcontinent is technically feasible.

[2] The manual for my wireless phone directs the customer to "move to a higher elevation, to a window or open space" when a call is dropped or you can't make a network connection. One does not have to suffer

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.[3]

Q. PLEASE SUMMARIZE YOUR POSITION ON EACH OF THE CRITERIA ABOVE.

A. As to item number one, it is clear the total service resale is not unduly economically burdensome. Based on theory alone, one could reach this conclusion, but Mr. Fischer's analysis shows, even with aggressive assumptions, that Midcontinent's resale of NDTC's services will have only a minimal impact. That impact is certainly not unduly economically burdensome.

As to item number two, based on almost 10 years of experience since the passage of the Telecommunications Act of 1996, we know that resale is technically feasible. To the extent NDTC has limited experience with resale, Midcontinent has offered to share their experience and systems expertise to aid NDTC.

The third item relates to the preservation and advancement of universal service. Given the minimal impact calculated by Mr. Fischer, we know that terminating the exemption to allow for resale will not harm universal service in Devils Lake. All parties to this case recognize the benefits that competition can bring to society.

---

these inconveniences with a traditional wireline phone.

[3] *See* Commission's **Notice of Hearing** dated July 28, 2005, at page one.

The final item is the timetable for implementation. That is discussed below.

V. TIMETABLE FOR IMPLEMENTATION

Q. AS NOTED ABOVE, THERE IS A DISPUTE AS TO THE TIMETABLE FOR IMPLEMENTATION. IS THIS A LEGAL ARGUMENT?

A. Midcontinent's proposal relies upon factual experience in the industry and is not a legal argument. As noted above, the criterion is "The implementation schedule for compliance with the request should the exemption be terminated." This is a matter of fact and policy, not law. The most logical approach, once the exemption is terminated, is for the two companies to enter into good faith efforts to get a resale agreement in place and operational. That does not mean that we start from the beginning with yet another bona fide request because Midcontinent already made its request in mid-2005. Recall that Midcontinent is not negotiating standard interconnection issues, collocation, UNEs or UNE rates, just a resale agreement with a wholesale discount – the calculation of which we have been doing for years.

Mr. Meredith seems to suggest that even if Midcontinent did submit another bona fide request that NDTC would not agree to the request and that even after the negotiations failed that yet another set of hearings would be held. (See, for instance, Meredith Reply at 8) While this is not surprising, given the incentives of NDTC to keep competitors out, it is not in the public interest. Forcing the parties to engage in yet another round of negotiations with no likely

change in result is wasteful for Midcontinent and the Commission. Only NDTC would benefit from such an approach.

Q. BUT DIDN'T MR. MEREDITH TESTIFY AT PAGE 8 OF HIS REPLY THAT "NDTC WOULD NOT BE OPPOSED TO HAVING THE COMMISSION ORDER THE PARTIES TO CONDUCT NEGOTIATIONS ON THE PROPER BUSINESS TERMS AND CONDITIONS FOR A RESALE AGREEMENT WITH A WHOLESALE DISCOUNT SPECIFIC TO THE DEVILS LAKE EXCHANGE"?

A. Midcontinent already has tried this approach and it is unlikely that NDTC will change its positions the second time around. This proposal – to start over – is consistent with NDTC's position in this case to delay any possible entry – even by total service resale – until NDTC has its fiber in place and is capable of offering video. Mr. Meredith's suggestion that the companies once again negotiate terms and conditions – for another 135 days – before a party could seek arbitration would unnecessarily delay Midcontinent's participation in the Devils Lake exchange.

Q. WHAT IS YOUR RECOMMENDATION TO THE COMMISSION REGARDING THE TIMETABLE FOR IMPLEMENTATION SHOULD THE EXEMPTION BE TERMINATED?

A. I recommend that the Commission order the parties to commence discussions on implementation of a resale agreement immediately upon release of its Order in this proceeding, using the agreement proposed by Midcontinent in its first letter to NDTC as the template. The Commission should order the parties to provide

monthly reports to the Commission on their progress toward getting this agreement in place, and allow the Commission Staff to mediate any disagreements along the way. With this direction from the Commission, and assistance from the Staff if needed, I'm confident the parties can have an agreement in place promptly.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

OAH 20050316

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
JAN 17 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

January 13, 2006

Emineth & Associates
P.O. Box 2655
Bismarck, ND 58502-2655

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
PSC CASE NO. PU-05-451

This letter will confirm the arrangements for a court reporter to be at the hearing scheduled in the above PSC matter at the State Capitol on January 23, 2006, starting at 10 a.m. Enclosed for your information is a copy of the hearing notice.

Thank you.

Don Negaard

jt

Enclosure

cc: Public Service Commission, Attention William W. Binek

59 **PU-05-451** Pages: 1

Copy of letter confirming court reporter arrangements for hearing by North Dakota Telephone Company by Don Negaard, 01/17/2006 CC: Comm Legal Illona, Pat, Annette ALJ .

PY-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Scott M Knudsvig
Pringle + Herigstad
PO Box 1000
Minot ND 58702-1000

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson
C. Date of Delivery 4-28-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APR 28 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3176

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Don Heggard
Pringle + Herigstad
PO Box 1000
Minot ND 58702-1000

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Cheryl Hanson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cheryl Hanson
C. Date of Delivery 4-28-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APR 28 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3169

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-451 Settlement

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick W Durick
Pearce + Durick
314 E Thayer Ave
Bismarck ND 58502-0400

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Belinda Dicks ☐ Agent ☐ Addressee

B. Received by (Printed Name) Belinda Dicks
C. Date of Delivery 4-28-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

BISMARCK ND APR 28 2006

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3121

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Dave Dicks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Angela Herda ☑ Agent ☐ Addressee

B. Received by (Printed Name) Angela Herda
C. Date of Delivery 5-1-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3138

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
J. G. Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington DC 20036

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X A Cobb ☐ Agent ☐ Addressee

B. Received by (Printed Name) A Cobb
C. Date of Delivery 5-7-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3152

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J. Moorman
Krashin Moorman & Cosson
2120 L St NW Ste 520
Washington DC 20037

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Sidemen
C. Date of Delivery 5-5-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
2154 Wisconsin Ave NW
WDC 20007

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 3145

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

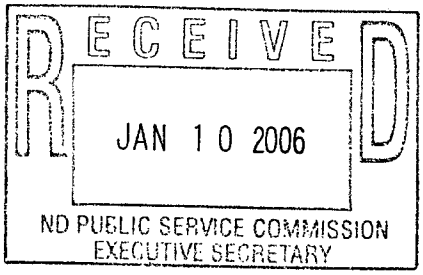
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

January 10, 2006



VIA FAX TRANSMISSION & REGULAR MAIL

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for filing on behalf of the respondent in the above proceeding are an original and seven copies of the Affidavit of Service in regard to service of the respondent's reply testimonies of David Dircks and Douglas Duncan Meredith.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

58 **PU-05-451** Pages: 2

Affidavit of Service (for service of respondent's reply testimonies)
by North Dakota Telephone Company by Don Negaard
01/10/2006 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF WARD)

Jo Thompson, being first duly sworn, deposes and says:

She is a citizen of the United States of America, of legal age and not a party to nor interested in the matter; on the 9th day of January, 2006, this affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following documents:

REPLY TESTIMONY OF DAVID DIRCKS
REPLY TESTIMONY OF DOUGLAS DUNCAN MEREDITH

Said envelopes were addressed to the following persons at their known addresses as follows:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
(also via electronic means)

William W. Binek
PUBLIC SERVICE COMMISSION
600 East Boulevard
Bismarck, ND 58505-0480
(also via electronic means)

The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Jo Thompson

Subscribed and sworn to before me this 9th day of January, 2006.

Judith A. Tossett

JUDITH A. TOSSETT
Notary Public
State of North Dakota
My Commission Expires Jan. 8, 2010

Judith A. Tossett, Notary Public
For the State of North Dakota
My commission expires: 01/08/10

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

January 9, 2006

RECEIVED
JAN - 9 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for filing on behalf of the respondent in the above proceeding are an original and seven copies of the following:

1. Reply Testimony of David Dircks, including attachments.

2. Reply Testimony of Douglas Duncan Meredith, including attachments..

Electronic versions of these will also be filed with the Commission.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

57 PU-05-451 Pages: 1
Cover letter re Reply Testimony
by North Dakota Telephone Company by Don Negaard,
01/09/2006 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

RECEIVED
JAN - 9 2006
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

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

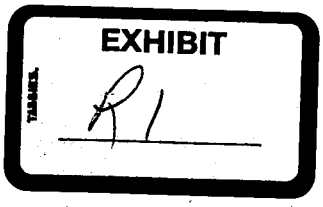
REPLY TESTIMONY

OF

DAVID DIRCKS

ON BEHALF OF

NORTH DAKOTA TELEPHONE COMPANY



January 9, 2006

56 PU-05-451 Pages: 21
Reply Testimony of David Dircks
by North Dakota Telephone Company by Don Negaard.
01/09/2006 CC: Comm Legal Ilona, Pat, Annette . .
Exhibit # R1 R2 R3 R4 R5

Q. WOULD YOU STATE YOUR NAME PLEASE?

A. David Dircks.

Q. WHERE DO YOU LIVE?

A. Devils Lake, North Dakota.

Q. HOW LONG HAVE YOU LIVED THERE?

A. Fifteen years.

Q. WHAT IS YOUR OCCUPATION?

A. I am the General Manager of North Dakota Telephone Company ("NDTC"). NDTC is a North Dakota owned and based telecommunications carrier that serves a number of rural communities in north central North Dakota, including Devils Lake.

Q. PLEASE STATE THE PURPOSE OF YOUR TESTIMONY.

A The purpose of my testimony is to ensure that the record is clear with respect to NDTC's operations, business activities, and positions on competition. NDTC provides excellent customer service and a range of regulated services that are attractive to our customers, and I believe the records at the North Dakota Public Service Commission (the "Commission") confirm that fact. NDTC understands fully that advancing competition has been stated to be a public interest objective. NDTC does not quarrel with that objective provided the competition is fair and

that other public interest objectives are not made second class citizens to such competition. In fact, NDTC appreciates the challenges of a competitive market in that it must compete with wireless providers today for basic telephone service. With respect to this proceeding, however, I am concerned that Midcontinent Communications, Inc. ("Midcontinent") may be expanding the facts to fit its objective of seeking a removal of our exemption from offering resale tariffed service offerings at a discount. For example, contrary to Midcontinent's inferences and suggestions, NDTC has not made public statements concerning offering video service to residential customers. That said, I can tell the Commission that we are planning on offering video at some point, but we simply are not there yet.

Q: DO YOU HAVE OTHER EXAMPLES OF WHERE YOU WANT TO CLARIFY THE RECORD BASED ON MIDCONTINENT'S TESTIMONY?

A: Yes, for example, Midcontinent suggests that we have refused to resell our services to it.

Q. HAS NDTC REFUSED TO RESELL SERVICE TO MIDCONTINENT AS ALLEGED IN MR. GATES TESTIMONY (PG 5 LN 97)?

A. No. NDTC received a request for resale in a letter dated May 12, 2005. This request letter is attached. NDTC could not determine based on this request if Midcontinent wanted resale without a discount or resale with a discount as described by Mr. Meredith in his testimony. Accordingly, we asked Midcontinent

what it was seeking so that we could properly respond. I understand that NDTC cannot generally impose any restrictions on reselling its services listed in their local tariff if purchased at the tariffed rates (or what Mr. Meredith states is "retail resale"). However, NDTC does have a rural exemption from reselling at a discount (or what Mr. Meredith states is "wholesale resale") which is the focus of this proceeding. Therefore, I responded to Midcontinent on June 10, 2005, to determine if the request fell under the NDTC rural exemption. This letter is attached. Quite frankly, I cannot see how requesting clarification of a Midcontinent request and now asserting our legal rights can be viewed as refusing to offer resale.

Q; WHAT WAS MIDCONTINENT'S RESPONSE TO THE NDTC CLARIFICATION LETTER?

A. There was no further correspondence between Midcontinent and NDTC until July 15, 2005, when Midcontinent filed its request to terminate NDTC's rural exemption. Only then did NDTC have its clarification that Midcontinent did in fact want resale at a discount.

Q. ARE YOU AGAINST FAIR COMPETITION IN DEVILS LAKE?

A. No, quite the opposite. As I mentioned above, we understand that the competitive marketplace is here and expanding and, in fact, we have competed with wireless carriers for several years. Midcontinent is another competitor. However, NDTC wants the opportunity to compete on equal footing. Allowing a cable company to

use our own facilities to resell to our customers, at a discount, without any investment in voice service within the Devils Lake community and offering the "triple play" of voice, information, and video a year before we are even physically capable of doing so over our fiber optic network is not a fair result, in my opinion.

Q. DOES NDTC PROVIDE EXCELLENT CUSTOMER SERVICE?

A Yes. Customers are happy with our service. It is sometimes difficult to measure customer satisfaction; one measure is filed complaints. NDTC has had very few complaints filed against it with the Commission throughout its history.

Q: ARE THERE OTHER EXAMPLES OF THE NEED FOR CLARIFICATION OF THE RECORD BASED ON MIDCONTINENT'S TESTIMONIES?

A: Yes, with respect to the services we offer that would be subject to resale and the scope of our operations.

Q DO THE TESTIMONIES OF MS. LOHNES, MR. GATES, AND MR. FISCHER ACCURATELY REFLECT NDTC'S OPERATIONS?

A. No. Mr. Gates has inaccurately listed the services and scope of the NDTC's operations. Likewise, Ms. Lohnes has not accurately stated the nature of NDTC public communications.

Q. PLEASE CLARIFY THE SERVICES OFFERED BY NDTC.

A. We use the name NDTC to market both regulated and deregulated services. Mr. Gates (at 4) lists services that generally are listed on our website (800 and video are not listed and not marketed by NDTC). However, many of these services such as long distance, directory, internet, paging, and wireless services are not offered by the regulated company and, it is my understanding, outside of the scope of the Devils Lake exchange resale obligations which is the focus of this proceeding. The regulated telephone company is the entity in question for this proceeding. We offer regulated local exchange service in our Devils Lake exchange, including customer calling features such as caller ID. Thus, we believe that only the financials of the regulated telephone company should be considered in this proceeding. The other entities are not part of this proceeding nor should their respective operations be considered by the Commission.

Q. HAS MIDCONTINENT CONSTRUED YOUR ADVERTISING, NEWSLETTER AND HELP WANTED ADS CORRECTLY?

A. No. In her testimony, Mary Lohnes (Lohnes at 4) claims that "NDTC has made it clear through its advertising, newsletters and a help wanted ad that it plans to offer video services in Devils Lake.". The specific items in question are attached. Not one of these items states that NDTC is entering the video market.

Instead these items show that, like other entities, we are undertaking the necessary planning and steps to position ourselves for possible future market opportunities

and service provisioning needs. For example, with the reliance more and more on the internet, people will want higher speed access to it. Accordingly, we are installing fiber which we believe will provide the backbone network necessary to accomplish high speed internet access. In fact, NDTC competes today with Midcontinent for high speed internet services and the newsletter and ads reflect this competitive environment.

Q: WHAT ABOUT THE ADVERTISEMENT FOR A NEW EMPLOYEE YOU HAVE ATTACHED?

A: The ad speaks for itself. It is advertisement for an Account Executive (sales person) who is knowledgeable in the communication business or associated with communications. That ad, however, does not state that NDTC is offering cable TV services or selling cable TV service. Although video is listed as one of the seven types of knowledge that is desirable, the job responsibilities only include selling telecommunications services.

Q. SINCE THESE COMMUNICATIONS HAVE BEEN MISCONSTRUED, PLEASE PROVIDE BACKGROUND ON NDTC PLANS TO INSTALL FIBER IN DEVILS LAKE.

A. Our company is constantly reviewing the state of the network and investigating network upgrades to maintain a high quality network in the communities we serve. As the outside plant in Devils Lake was aging and customer demand for high speed data started to increase, alternatives for outside plant upgrades were

investigated. It was obvious that it was a better choice to install fiber instead of new copper. Fiber promises to be more reliable, have less maintenance associated with it, and has the ability to handle high bandwidth services that customers desire both now and into the future. This technology would also be capable of carrying video service.

Q. IS THE SOLE PURPOSE OF PLACING FIBER IN DEVILS LAKE TO PROVIDE VIDEO SERVICES?

A. No. The fiber upgrade is to replace aging copper plant and improve data bandwidth capabilities of the existing DSL service provided to customers.

Q. CAN THE FIBER BE USED TO DELIVER VIDEO SERVICES?

A. Yes. The fiber we are installing in Devils Lake will be capable of supporting a video signal. However, there is much more to delivering a video service than simply installing fiber to the home.

Q. WHAT ELSE IS REQUIRED TO OFFER VIDEO IN ADDITION TO THE FIBER TO THE HOME LOOP TECHNOLOGY?

A. Because NDTC does not offer video programming or cable television service, I can respond based on what I have read and learned. As such, it is my understanding that, in order to offer a video service, a company must obtain a cable TV franchise in the area they wish to serve. Once that is obtained, the company must deploy "headend" equipment to receive the video signal and

purchase video modulation equipment which formats the signal to allow it to be transmitted on the fiber to the home system. In addition, a company must enter into contracts with programmers to allow each channel to be broadcast on the system and must also comply with other FCC regulations for registering the video service and complying with consumer protection rules.

Q. IS NDTC INVESTIGATING OFFERING VIDEO?

A. Yes. As I stated at my deposition for this proceeding, we feel at some point we will offer video, but that time has not come.

Q. DOES NDTC HAVE A FRANCHISE TO PROVIDE VIDEO OR CABLE TELEVISION IN DEVILS LAKE?

A. No.

Q. HAS NDTC ACQUIRED ANY VIDEO PROGRAMMING TO BEGIN SERVING CABLE TELEVISION CUSTOMERS?

A. No, we have not. We have no expertise in acquiring content, and I am sure we will have some obstacles because it is the first time we are contracting for programming. In addition, due to the scale of our operations, I do not expect that NDTC will receive the same rates from programmers that Midcontinent is able to receive.

Q. HOW LONG WILL THE CONSTRUCTION OF THE FIBER TO THE HOME TAKE?

A. NDTC has been investigating fiber to the home and planning for the replacement of the copper plant since 2004. Plans were finalized in early 2005. We began the actual physical construction on the project in August of 2005. All the fiber to the home construction in Devils Lake is expected to be completed in the first quarter of 2007. Our goal is to offer video services sometime after February 1, 2007.

Q; WHEN NDTC DOES OFFER VIDEO SERVICE IN DEVILS LAKE, WILL ITS RURAL EXEMPTION STILL APPLY TO MIDCONTINENT?

A. Douglas Meredith's testimony discusses the regulatory framework that applies to this situation. Should NDTC enter the video market, the issue raised in this proceeding regarding wholesale resale in our Devils Lake exchange may be moot. We will still need terms and conditions to be in place that will establish the business relationship as to how any resale will work.

Q. IS THERE A DISPARITY IN WHAT NDTC WILL OFFER TO MIDCONTINENT AS OPPOSED TO WHAT MIDCONTINENT WOULD OFFER TO NDTC?

A. Yes, as far as I understand the rules, NDTC is generally required to resell our tariffed local services such as dial tone at retail rates, which is and has been our core product. Midcontinent, in turn, has no obligation to resell its core product (which is video service) to NDTC or even to provide access to programming that

it may control. The resale obligation is one sided and allows Midcontinent to enter the market with little or no risk. NDTC on the other hand must make investment in the community and work to obtain programming that is attractive to its customers.

Q. ARE THERE OTHER REGULATORY HURDLES OR OBSTACLES YOU FACE IN COMPETING WITH MIDCONTINENT?

A. Yes, because NDTC is a regulated entity, I believe any promotions or new packaging of regulated services would have to be filed and approved by the Commission. Midcontinent will then have advanced notice of any promotions that NDTC offers and could develop a competing offer before NDTC actually offers the promotion.

Q. IS NDTC TRYING TO AVOID COMPETITION?

A. No. NDTC believes it can be successful competing with Midcontinent when both have triple play services. We would only ask for what Midcontinent claims it wants: a level playing field.

Q. WHAT DO YOU RECOMMEND IS A FAIR OUTCOME OF THIS PROCEEDING?

A. My recommendation is that the Commission deny this request to terminate NDTC's rural exemption. When NDTC begins offering video programming in Devils Lake, then any rural exemption as it applies to the Devils Lake exchange

and to Midcontinent may be moot since Midcontinent is the incumbent cable carrier offering service in Devils Lake. At that time, NDTC and Midcontinent will be able to compete as equally as possible for one-stop shoppers.

Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?

A. Yes.

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
BONNIE L. CHRISTNER •

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

May 12, 2005

Mr. Dave Dircks, General Manager
North Dakota Telephone Company
P.O. Box 180
Devils Lake, ND 58301-0180

Re: Resale Agreement
Midcontinent Communications

Dear Sir:

We represent Midcontinent Communications and the purpose of this letter is to propose a Resale Agreement between North Dakota Telephone Company and Midcontinent Communications. A copy of a proposed agreement is enclosed for your review and comment.

Please review the enclosed agreement and contact me with any suggested revisions to the agreement. I look forward to working with you to reach an agreement.

Thank you for your anticipated cooperation.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosure.
cc: Mary Lohnes

• ALSO LICENSED IN MINNESOTA • ALSO LICENSED IN SOUTH DAKOTA AND MINNESOTA

EXHIBIT
P2

North Dakota Telephone Company

More Than a Telephone Company!

211 22nd St NW, PO Box 180
Devils Lake, ND 58301-0180
701-662-1100 or 1-800-880-4213
Fax 701-662-6446
www.goNDTC.com

June 10, 2005

Patrick W. Durick
Pearce & Durick
314 East Thayer Avenue
PO Box 400
Bismarck ND 58502

Dear Mr. Durick:

North Dakota Telephone Company (NDTC) has received your request for a resale agreement. The request letter is not specific on the exact nature of the request. I would like to clarify the exact nature of Midco's request.

Is the request a 251(b) request for resale of NDTC telecommunications services or is it a 251(c) request for resale at discounted rates? The proposed agreement seems to indicate a 251(c) request.

NDTC will certainly fulfill all of its obligations under the Telecommunications Act. However; currently NDTC has a rural exemption from 251(c) requirements.

Please clarify the nature of the request so NDTC can more forward appropriately.

Sincerely,

Dave Dircks
General Manager
NDTC

DD/plm

EXHIBIT
R3

Job Opening - Account Executive

North Dakota Telephone Company is searching for a highly motivated individual excited about selling state-of-the-art telecommunication services and equipment. A substantial degree of knowledge and experience in all aspects of telephony with emphasis in voice, data, IP, computer based networking, video, surveillance and security cameras, etc. is desired. Individuals applying must be detail oriented and possess excellent communication skills, a professional demeanor, a strong commitment to provide excellent customer service, ability to develop and maintain knowledge of an expanding product line and ever changing details of the competitive market place. This position will involve contacting businesses located within (but not exclusive to) NDTC's 26 exchanges, which covers an area from McVille to Velva and New Rockford to Cando. Individuals will develop leads to prepare and present sales proposals to customers regarding new and/or additional telecommunication products and services and all follow-up associated with such proposals. Some overnight travel will be required. NDTC offers a comprehensive benefit package.

Requirements: Associate's degree (A.A.) or equivalent from two-year college or technical school; or two years experience in sales/marketing field; or equivalent combination of both. Proficient knowledge and use of computers is required.

Interested parties should complete and mail to NDTC Application for Employment, letter of interest and current resume no later than July 5th, 2005 to:

NDTC
ATTN: Human Resource Administrator
PO Box 180
Devils Lake, ND 58301-0180

The job description and the NDTC Application form can be found on the website at www.goNDTC.com or at Job Service ND. North Dakota Telephone Company is an Equal Opportunity Employer.

EXHIBIT
R4

North Dakota Telephone Company
Job Description

Job Title: Account Executive
Department: Marketing Department
Reports To: Marketing Manager
FLSA Status: Exempt
Prepared By: Marketing Manager
Prepared Date: Revised 05/05
Approved By: General Manager
Approved Date: 05/05

SUMMARY: This position is responsible for contacting residential, commercial, and industrial telephone customers to provide state-of-the-art telecommunications services and equipment solutions, which will provide the company with increased revenues and superior customer service for customers in our area. This position is also responsible for managing the accounts after the sale to ensure customer satisfaction with NDTC.

ESSENTIAL DUTIES AND RESPONSIBILITIES include the following. Other duties may be assigned.

Develop leads and maintains positive, productive relationship with residential and business customers to attract and retain desired sales volume to increase usage and knowledge of telecommunications services, and to expand awareness of new and enhanced service offerings.

Analyzes business customers telecommunication needs. Prepares and presents proposals for new and/or additional products and services. Proposals should include a detailed network, hardware or Internet solution to business customers as well as product demonstrations when applicable. (Business Customer telecommunications needs are defined as both regulated and non-regulated services.)

Prepares sales contracts and all associated documents required in the completion of a sale. Sales are to include but are not conclusive of the following: Regulated services such as features, lines and trunks, small business systems, key systems, PBXs, DSL, computer networks and surveillance camera systems.

Responsible for gathering information, preparing the database and detailed layouts for the installation of systems.

Develops and maintains good working relationships with other NDTC departments in order to provide timely implementation of products and services by which to ensure customer satisfaction.

Provides assistance and proficient direction on sales of services and products to business customers.

Develops good client relationships by representing NDTC with a positive and enthusiastic attitude.

Maintains customer relationships with periodic telephone and premise visits to ensure ongoing customer satisfaction with all services purchased from NDTC. This includes keeping customers informed of current upgrade offerings or changes to their telecommunication services.

Responsible for customer training required for phone systems and follow-up as needed.

Provides monthly reports of sales and/or losses to the Sales and Marketing Director.

Assists management in determining company product needs and requests by staying current with changes and developments in the telecommunications industry. This includes gathering competitive information on products and services, maintaining market awareness, and sharing this information with the sales team.

Presents a professional manner, personally, and as an image of the company.

SUPERVISORY RESPONSIBILITIES
This job has no supervisory responsibilities.

QUALIFICATIONS
To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION and/or EXPERIENCE
Associate's degree (A. A.) or equivalent from two-year college or technical school; or two years experience in sales/marketing field; or equivalent combination of both. Proficient knowledge and use of computers is required.

LANGUAGE SKILLS
Ability to read, analyze, and interpret general business periodicals, professional journals, technical procedures, or governmental regulations. Ability to write reports, business correspondence, and procedure manuals. Ability to effectively present information and respond to questions from groups of managers, clients, customers, and the general public.

MATHEMATICAL SKILLS
Ability to calculate figures and amounts such as discounts, interest, commissions, proportions, and percentages.

REASONING ABILITY
Ability to solve practical problems and ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form.

CERTIFICATES, LICENSES, REGISTRATIONS
Valid Driver's License Required.

PHYSICAL DEMANDS
The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to use hands to finger, handle, or feel, talk, hear, stand walk, sit, reach with hands and arms; lift and/or move up to 25 pounds. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl; and lift and/or move up to 100 pounds. Specific vision abilities required by this job include close vision, and color vision.

WORK ENVIRONMENT
The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently exposed to outside weather conditions. The noise level in the work environment is usually moderate.

EXHIBIT
R-5

Outlook

North Dakota Telephone Company

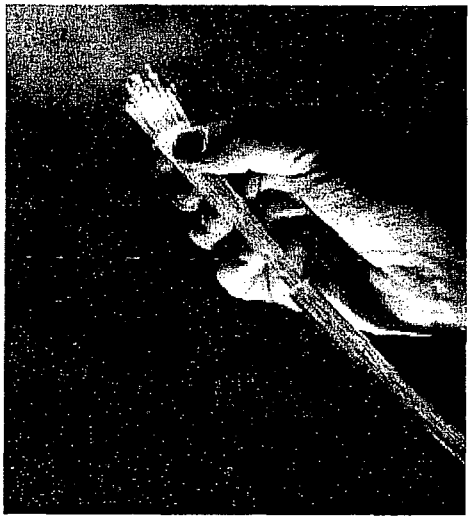
Inside this issue:

Fiber Optic
NDTC Awards '
Relax with NDTC Lineskeeper Service

Summer 2005

NDTC Lights Up Devils Lake

Devils Lake Soon to Boast of City-Wide Fiber Optic Network



Devils Lake, North Dakota, has been known for being one of the "Best Small Towns in America," but in the near future this small town will be able to claim the status of "technology giant" in America. Taking that step into the limelight will happen due to the newest NDTC project, Fiber-to-the-Premises.

The Fiber-to-the-Premises project will upgrade NDTC's current copper cable facilities to a fiber optic cable destined to reach every home and business within the city limits and some outlying areas. Few towns in the nation, just over 200 as of a report last fall, can lay claim to having a fiber optic network right to the customers' premises. NDTC is proud to be able to make this type of investment in the community and be able to offer this advanced technology.

With this $11.5 million fiber optic network, NDTC will be able to offer you improved quality telephone service, availability of advanced Internet and data networking services, as well as plan for futuristic telecommunication products.

Construction for Phase I of this state of the art project is scheduled to begin this fall with initial plans for Phase II construction to take place in 2006.

NDTC "Measures Up" Service at Community Events and Shows

NDTC played up the "Measure Up Your Telecommunications" theme at the area expos and home shows this spring. We enjoy being involved and meeting so many of our customers face to face. We are proud to serve you with the best telecommunications available to the area. Remember, you can always count on us!

Here are a few pictures we were able to take at the Towner County Ag-Technology Expo and the Harvey Spring Home and Garden Show.

If you ever have questions or comments about any NDTC service, you don't have to wait for a community event to tell us, just contact us at:

662-1100
800-880-4213
www.goNDTC.com

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

Notes from NDTC's General Manager

New Project Expected to Keep NDTC Employees Extremely Busy

Now that summertime is in full swing, everyone should be enjoying the benefit of our beautiful summertime weather. However, the employees of NDTC will be extremely busy.

Beginning in August of this year, NDTC will be embarking on one of our most extensive projects in the history of our company. A project so technologically advanced, that as of last October, just over 200 communities in the nation can boast its relevance.

Over the next two construction seasons, we will be placing fiber optic cable throughout the city of Devils Lake and portions of some outlying areas. As a result, every home and business will be served by state of the art fiber optic technology.

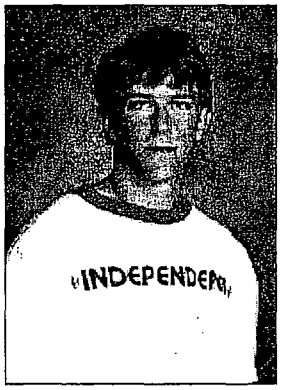
By the time you have received this newsletter, those of you who reside or have a business located in Devils Lake will have received an informational letter from us regarding the construction. We will do our best to keep you informed of our progress on this exciting project. Should you have any questions, please call us at 662-1100 or 800-880-4213. We will also be posting updated information on our web site and in future issues of the Outlook. We will also be submitting periodic news releases to the area newspapers, radio, and television stations.

We are extremely proud to be able to bring this technology to you and are excited about breaking new ground with this fiber-to-the-premises network.

Youth Tour 2005

NDTC Sponsors Ulrich

Daniel Ulrich, Devils Lake, represented the area by attending the 11th annual Foundation for Rural Service (FRS) Youth Tour this month. Ulrich, sponsored by North Dakota Telephone Company (NDTC), received a first-hand look at the telecommunications industry and was educated on the legislative and governmental processes.



Ulrich, along with over 100 high school students from throughout rural communities in the United States, also toured many of the historical sites in the nation's capital.

Ulrich is the son of Mark and Wendy Ulrich of Webster and attends high school in Starkweather, North Dakota.

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

Scholarships Total *$5000*

NDTC Announces '05 Recipients

Sarah Boone
Steve & Barb Boone
Devils Lake High School

Amanda Nelson
Dale & Joan Nelson
Dakota Prairie High School

NDTC is excited to announce the winners of this year's NDTC College Scholarship Program.

Fifty-seven graduating seniors applied for the scholarships this year. A scholarship committee comprised of NDTC employees reviewed the application packets and judged the students on community and school activities, achievements, grades and the appearance of their application.

Congratulations to these ten students who were chosen as recipients of the NDTC College Scholarship Program! Each student will receive $500 to be used for continuing their education through an accredited college, university or vocational school.

NDTC is proud to show it's commitment to our service area by investing in the future of our youth. Since the NDTC College Scholarship Program began in 2000, the company has awarded a total of $27,000 to area graduating seniors.

Congratulations to the NDTC College scholarship winners and every 2005 high school graduate!

Cameron Halverson
Stanley & Judy Halverson
Cando High School

Jayme Fiesel
Darrell & Marcia Fiesel
Harvey High School

Kristina Sieg
Tom & Lorie Sieg
Anamoose High School

Valerie Moller
Thomas & Marzocita Moller
Rugby High School

Katie Henschel
Robert & Cathy Henschel
Starkweather High School

Jeffrey Wald
Gary & Rebecca Wald
Maddock High School & Our Lady of Good Counsel Home Study School

Danielle Krahler
Kelly & Lee Ann Krahler
Fessenden-Bowdon High School

Laura Odland
John & Mary Odland
Velva High School

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

Win $25 Credit from NDTC!

Just return this coupon to NDTC to be eligible for the drawing!

Name:_____

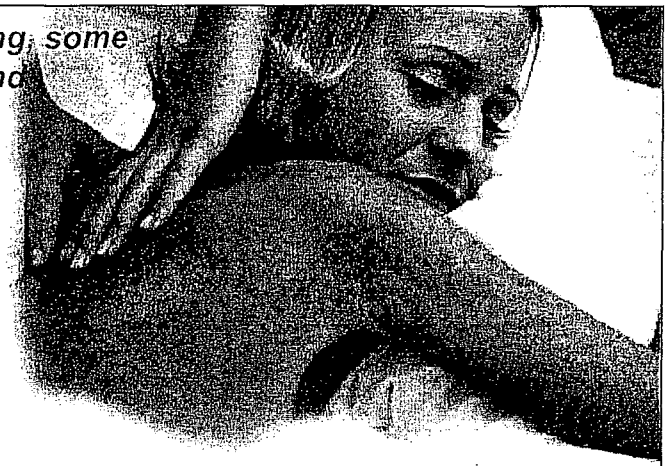
Telephone Number:_____

Congratulations to Elizabeth Berthold of McVille! Winner of the NDTC Credit from the *Outlook* spring *2005* issue!

Heart of America Medical Center Receives New Phone System

Jim Frueh, Director of Plant Operations, and John Skwiera, Director of Pharmacy, observe as Harris Saele, NDTC Marketing Manager, demonstrates the new phone system installed recently at the Heart of America Medical Center in Rugby.

When it comes to repairing inside wiring, some people are afraid of what they might find.



Order Lineskeeper & RELAX

Did you know that if you rent or own a home, have rental property or a commercial building, you are responsible for the telephone wiring inside the walls? Sometimes that can come as a shock - if you find an exposed wire the hard way; or receive an unexpected repair bill.

That's why NDTC offers Lineskeeper Service. It's a valuable insurance policy that provides fast, reliable repairs with nothing to be afraid of.

Sign and return to NDTC to receive 2 months free Lineskeeper service!

*Name:*_____

*Telephone Number:*_____

Return to NDTC, PO Box 180, Devils Lake, ND 58301. Offer valid through June 30, 2005. Some restrictions may apply. Call NDTC for details and monthly pricing of Lineskeeper Service. Upon completion of 2 months free offer, Lineskeeper Service will be included on your monthly NDTC statement.

The *Outlook* is published by NDTC
211 22nd St NW
PO Box 180
Devils Lake, ND 58301
701-662-1100 or 800-880-4213
Fax: 701-662-6444

Payment Drop-off Points
-NDTC office in Devils Lake
-Ramsey Bank in Cando,
Rugby, Esmond, Maddock,
and three Devils Lake locations

Office Hours
Weekdays 8:00 A.M. - 5:00 P.M.
Repair Center also available
Saturdays 8:00 A.M. - 5:00 P.M.
To report trouble after hours call 662-1100
and follow prompts for repair.

w w w . g o N D T C . c o m

NDTC™ North Dakota Telephone Company

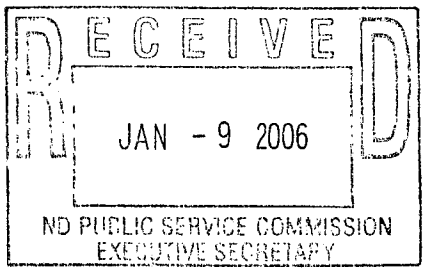
211 22nd St NW, PO Box 180, Devils Lake, ND 58301

PRSRT STD
U.S. POSTAGE
PAID
PERMIT NO. 55
DEVILS LAKE, ND 58301

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



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

REPLY TESTIMONY

OF

DOUGLAS DUNCAN MEREDITH

ON BEHALF OF

NORTH DAKOTA TELEPHONE COMPANY

January 9, 2006

55 PU-05-451 Pages: 34

Reply Testimony of Douglas Duncan Meredith

by North Dakota Telephone Company by Don Negaard,

01/09/2006 CC: Comm Legal Ilona, Pat, Annette . . Exhibit # R6,7,8,9,10,11

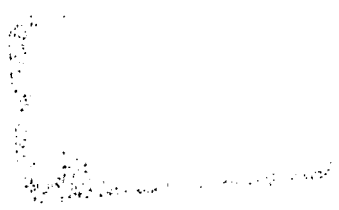


TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RESPONSE TO CERTAIN STATEMENTS	9
III.	PUBLIC POLICY SUPPORTING THE PUBLIC INTEREST IN THIS CASE	13
IV.	ATTACHMENTS	
	A. 47 U.S.C. SECTION 251	
	B. 47 U.S.C. SECTION 252	
	C. NORTH DAKOTA CENTURY CODE SECTION 49-21-01.7	
	D. 47 C.F.R. SECTION 51.611	
	E. PRESS RELEASE	

I. INTRODUCTION

Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND BUSINESS ADDRESS.

A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis, Inc. (JSI). JSI is a telecommunications consulting firm headquartered in Greenbelt, Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah 84010.

Q: PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND.

A: At JSI, I am the Director of Economics and Policy. In this capacity, I assist clients with the development of policy pertaining to economics, pricing and regulatory affairs. I have been employed by JSI since 1995. Prior to my work at JSI, I was an independent research economist in the District of Columbia and a graduate student at the University of Maryland – College Park.

In my employment at JSI, I have participated in numerous proceedings for rural and non-rural telephone companies. These activities include, but are not limited to, the creation of forward-looking economic cost studies, the development of policy related to the application of the rural safeguards for qualified local exchange carriers, the determination of Eligible Telecommunications Carriers, and the sustainability and application of universal service policy for

telecommunications carriers. I have participated in and have assisted a number of telephone companies in negotiation of interconnection agreements, including situations similar to the one involved in this matter.

In addition to assisting telecommunications carrier clients, I have served as the economic advisor for the Telecommunications Regulatory Board of Puerto Rico since 1997. In this capacity, I provide economic and policy advice to the Board Commissioners on all telecommunications issues that have either a financial or economic impact. I have participated in a number of arbitration panels established by the Board to arbitrate interconnection issues under Section 252 of the Telecommunications Act of 1996 (the "Act").

I am participating or have participated in numerous national incumbent local exchange carrier and telecommunications groups, including those headed by NTCA, OPASTCO, USTA, and the Rural Policy Research Institute. My participation in these groups focuses on the development of policy recommendations for advancing universal service and telecommunications capabilities in rural communities and other policy matters.

I have testified or filed pre-filed regulatory testimony in various states including North Dakota, South Dakota, South Carolina, Vermont, New Hampshire, New York, Michigan, Texas, Utah, and Wisconsin. I have also participated in regulatory proceedings in many other states that did not require formal testimony,

including Florida, Louisiana, Mississippi, North Carolina, Puerto Rico, and Virginia. In addition to participation in state regulatory proceedings, I have participated in federal regulatory proceedings through filing of formal comments in various proceedings and submission of economic reports in an enforcement proceeding.

I have a Bachelor of Arts degree in economics from the University of Utah and a Masters degree in economics from the University of Maryland – College Park. While attending the University of Maryland – College Park, I was also a Ph.D. candidate in Economics. This means that I completed all coursework, comprehensive and field examinations for a Doctorate of Economics without completing my dissertation.

Q: ON WHOSE BEHALF ARE YOU PRESENTING THIS PRE-FILED DIRECT TESTIMONY?

A: I am testifying on behalf of North Dakota Telephone Company ("NDTC"), a rural telephone company operating in North Dakota.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to respond to the Direct Testimonies filed on behalf of Midcontinent Communications ("Midcontinent"). The testimonies of Messrs. Gates and Fischer as well as Ms. Lohnes are designed to support Midcontinent's request under Section 251(c) for wholesale resold service for the

Devils Lake, North Dakota, exchange. (Gates at 3 and Fischer at 2, "request under 47 U.S.C. § 251(c) for wholesale resold service for the Devils Lake, North Dakota, exchange within NDTC's serving territory;" and Lohnes at 4, "Midcontinent's request asks that the company be granted authority under Section 251(c) of the federal Communications Act to receive wholesale telephone services from NDTC in the Devils Lake exchange.") My testimony also responds to several statements included in those testimonies in an effort to ensure that the record is clear with respect to NDTC's conduct and position on the issues raised at this point in this proceeding. Furthermore, I provide evidence supporting the public policy and the mandates of the Act that NDTC believes that the North Dakota Public Service Commission ("NDPSC" or the "Commission") should consider and adopt as it resolves the issues in this proceeding.

Q: WHAT IS YOUR UNDERSTANDING OF WHAT NEEDS TO BE DONE IN THIS PROCEEDING?

A: My layman's understanding is that this proceeding is being conducted under Section 251(f)(1)(B) of the Act. Based on the words used by Congress in this section of the Act, I understand that the Commission needs to determine whether NDTC's rural exemption for wholesale resale (47 U.S.C. § 251(c)(4)) for NDTC's Devils Lake exchange area should be terminated. In the event the NDPSC terminates NDTC's rural exemption for wholesale resale in the Devils Lake exchange, the NDPSC then would need to establish an implementation schedule consistent "in time and manner" with FCC regulations. Based on my

familiarity and reading of other decisions regarding Section 251(f)(1) of the Act, I also understand that Midcontinent has the burden of proof in this proceeding.[1]

Q: WHAT STANDARDS MUST THE COMMISSION USE IN DETERMINING WHETHER THE EXEMPTION SHOULD BE REMOVED?

A: Actually, the Commission's "Notice of Rescheduled Hearing" issued on December 14, 2005, and its stated issues 1 through 3 in that Notice appear to mirror the standards included by Congress in Section 251(f)(1)(A).

Q: IS THERE ANYTHING ELSE THAT NEEDS TO BE DONE IN THIS PROCEEDING?

A: Yes. I have examined Midcontinent's testimonies and I believe there needs to be corrections and clarifications made regarding some of the statements that Midcontinent makes. I also believe that a reasonable implementation schedule needs to be considered by the NDPSC but only if, first, the NDPSC determines that Midcontinent has met its burden of proof on the issues and, second, the Commission determines that NDTC's rural exemption for wholesale services in the Devils Lake exchange should be terminated.

[1] See IOWA UTILITIES BOARD, et al., Petitioners v. FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA, Respondents 219 F3d 744 (2000) and FCC Order re: ACS et al. Petition, 16 FCC Rcd 15672 (2001).

Q: DO YOU AGREE WITH MIDCONTINENT'S SUGGESTED IMPLEMENTATION SCHEDULE?

A: No. It is clear to me that Midcontinent is advocating an implementation schedule which is not consistent in time and manner with the general negotiation and arbitration time frames included in the Act: all possibly based on Midcontinent's mistaken belief that the wholesale resale discount that it believes should apply to NDTC's Devils Lake exchange will be established in this proceeding. As I explain later, however, that discount (even assuming its determination is necessary) is first subject to negotiation and then arbitration if not agreed to by the parties. Again, those negotiations and/or any arbitration would only occur if the NDPSC determines to remove the exemption in place for NDTC in the Devils Lake exchange for NDTC's retail tariffed telecommunications service at a wholesale discount. If this were to occur, then the NDPSC's determination of a proper implementation schedule is a very important matter, and rational public policy supports the conclusion that the NDPSC should follow the time frames established by Congress in the Act.

Q: WHAT ARE THE TIME FRAMES YOU REFERENCE THAT ARE INCLUDED IN THE ACT?

A: These are contained in Section 252 of the Act. Under Section 252(b), arbitration may be conducted if the parties are unable to reach an agreement within 135 days to 160 days of the receipt of a valid interconnection request and one of the parties, either Midcontinent or NDTC, requests the NDPSC to arbitrate. It is my

understanding the Commission has done this in the past under its authority contained in Section 49-21-01.7(8) of the North Dakota Century Code.

For example, I was previously involved in a proceeding involving the rural North Dakota companies and Western Wireless. This Commission appointed a third party to serve in the arbitration, and the North Dakota Rural Telephone Company Group was able to agree on an Interconnection Agreement with Western Wireless and file it with the Commission for approval. (See Case No. PU-2077-02-308)

Q: WHAT IS YOUR RECOMMENDATION TO THIS COMMISSION?

A: I recommend the NDPSC deny Midcontinent's request to terminate NDTC's rural exemption for wholesale services in the Devils Lake exchange for the reasons stated below and later in this testimony.

Assuming, for sake of completeness, that the NDPSC should determine that the NDTC wholesale resale exemption for its Devils Lake exchange be lifted, then the Commission should order the parties to begin negotiating the entirety of the terms and conditions for a resale interconnection agreement, including, but not limited to, the applicable wholesale resale discount percentage for the Devils Lake exchange. Once this agreement is finalized and/or arbitrated in a manner consistent with the time periods stated in Section 252 (with the time periods beginning to run as of the date of the Commission's decision), then the parties would implement the agreement after it is approved by the Commission.

I note that NDTC is not in a position to provide video programming in Devils Lake on its fiber installation until after February 1, 2007.[2] It is my understanding Midcontinent's request to terminate NDTC's rural exemption in Devils Lake would become moot under Section 251(f)(1)(C) once NDTC begins to offer video.

Q: COULD YOU EXPLAIN YOUR REFERENCE TO THE TIME FRAMES YOU PROVIDED ABOVE ?

A: Yes. If the Commission were to terminate the wholesale resale exemption for NDTC's Devil Lakes exchange as to Midcontinent, it should follow the 1996 Telecommunications Act regarding the implementation of this Section 251(c) duty. Specifically, after terminating the rural exemption as to Midcontinent in Devils Lake, NDTC would not be opposed to having the Commission order the parties to conduct negotiations on the proper business terms and conditions for a resale agreement with a wholesale discount specific to the Devils Lake exchange. Based on my familiarity with Section 252, that would allow the parties to negotiate such business terms and conditions for at least 135 days before a party could seek arbitration before the Commission (and, at the outside, up to 160 days from the effective date of the Commission's decision in this proceeding). Section 252 would also allow the Commission up to nine months from the date of its decision in this proceeding to render a decision on what the proper terms and conditions should be for any unresolved issue that was the subject of the negotiations. These procedures are followed by state commissions and the FCC

[2] See Reply Testimony of Mr. David Dircks at 9.

in resolving disputes regarding Section 251(c) duties. As I indicated above for the Western Wireless matter, this is also consistent with this Commission's prior practices.

II. RESPONSE TO CERTAIN STATEMENTS

Q: DO YOU AGREE WITH MIDCONTINENT'S DISCUSSION THAT NDTC'S RURAL EXEMPTION TERMINATES WHEN NDTC OFFERS VIDEO PROGRAMMING?

A: Not in its entirety. If NDTC begins to offer video programming in Devils Lake, its rural exemption would not apply in the Devils Lake exchange for Midcontinent (where Midcontinent acts as the incumbent cable operator providing video programming in Devils Lake). Therefore, Midcontinent's conclusion does not follow that because of this limitation, the termination of the exemption is not likely to be unduly economically burdensome since NDTC does not provide video programming. (Gates at 23; "That is another reason to conclude that termination of the exemption is unlikely to be unduly economically burdensome.")

Q: WHAT IS YOUR UNDERSTANDING OF TWO AVENUES OF RESALE DISCUSSED BY MR. DIRCKS?

A: There are two avenues for resale offered by the Act. The first is Section 251(b)(1) resale which is commonly called retail resale because it does not have a wholesale discount applied to the rates. The second is Section 251(c)(4) resale which is

called wholesale resale because this resale is offered at a wholesale discount. Should it wish, Midcontinent is able to request retail resale at any time because there is no rural exemption granted to NDTC for this offering. Midcontinent has never requested retail resale. Consequently, Midcontinent's claim that NDTC has refused to allow resale is not correct. (Gates at 5) At best, Midcontinent's statement is overly broad. Any effort to infer some anti-competitive motivation by Midcontinent to NDTC is misplaced.

Q: WHAT IS YOUR RESPONSE TO MIDCONTINENT'S ALLEGATION THAT NDTC'S OPERATIONS WILL BECOME MORE EFFICIENT? (GATES AT 20)

A: Mr. Gates has offered no evidence suggesting that NDTC will become more efficient once it faces wireline telecom competition. He seems to allude to unspecified improvements that NDTC will need to undertake if Midcontinent resells NDTC's service. Moreover, Midcontinent fails to grasp the impact that wireless service has on wireline operations as well as NDTC's experience with competition for high speed internet service.

Q: HAS MIDCONTINENT PROVIDED SUPPORT FOR ITS ALLEGATION THAT IT PROVIDES SUPERIOR SERVICE QUALITY? (LOHNES AT 5)

A: No. Midcontinent has provided no support that it will provide superior quality service. Furthermore, I believe any discussion regarding operational quality superiority is moot in the context of resold services because a reseller is reselling

the underlying carrier's service. Thus, it is unclear how Midcontinent expects to improve operational service quality in the Devils Lake exchange.

Q: WHAT IS WRONG WITH MIDCONTINENT'S ANALYSIS REGARDING THE FCC'S DEFAULT WHOLESALE DISCOUNT RATE? (FISCHER AT 4)

A: There are several errors with Midcontinent's analysis. First, the FCC standard for determining a wholesale discount rate does not apply except in arbitration: the parties can reach a voluntary agreement without any regard to the FCC's pricing standard. (47 U.S.C. § 252(a) and 252(d)(3))

Second, the FCC's interim rate quoted by Midcontinent's witness would apply only when the NDPSC cannot establish a wholesale rate using the incumbent's avoided retail cost study. (47 CFR § 51.611(a)) Apparently, Midcontinent seeks to have the Commission apply this interim rate without giving NDTC the opportunity to produce a wholesale cost study in the event arbitration is required. To date, NDTC has not produced a wholesale cost study for its Devils Lake exchange because it is exempt from this provision in the Act. In the event the NDPSC terminates NDTC's rural exemption for wholesale resale as to Midcontinent in Devils Lake, NDTC would then need to be in the position to offer a specific wholesale discount rate. If Midcontinent does not agree with this proposed discount percentage during negotiations, NDTC may need to produce a study, and an arbitrator may need to examine a NDTC cost study and establish a

wholesale discount based on that cost study. Only if the arbitrator or NDPSC determined that the NDTC study is defective would the interim rate apply – and the interim rate would only apply for a limited time. (See 47 CFR § 51.611(c))

Furthermore, as explained later, I disagree with the methodology used by Mr. Fischer. His analysis is largely incomplete and in some instances inaccurate. I recommend the NDPSC disregard his numerical assessment of Midcontinent's proposed competition strategy in Devils Lake.

Q: WHAT IS YOUR RESPONSE TO MIDCONTINENT'S PROPOSED 90-DAY IMPLEMENTATION TIMELINE? (GATES AT 24 AND LOHNES AT 5)

A: Midcontinent's proposal is unrealistic and is not consistent with the time and manner standard established by Congress for Section 251(c) requests. This will only be a Section 251(c) request if the Commission decides wholesale resale is required to be provided by NDTC in its Devils Lake exchange. Under the Act, the parties may negotiate for 135 days and, if no resolution is reached, arbitration may be requested between 135 and 160 days from the request. The NDPSC has up to nine months to approve an arbitration award for disputed items. Once the rural exemption determination is resolved, either the matter is dismissed or the normal Section 252 clock then applies. Imposing an arbitrary 90-day implementation deadline on the resolution of terms and conditions and, more

importantly, the development and review of an avoided cost study before the rural exemption issue is decided is unrealistic and unduly burdensome.

Accordingly, I think it is clear by the time frames included within the Act that interconnection arrangements under the Act are not established out of thin air. Rather, the practical affect of the Act's structure is to allow the parties sufficient time to negotiate all of the terms and conditions that each party feels necessary to ensure that its business interests are properly addressed in both the agreement and the agreement's implementation. Midcontinent appears to focus solely on the discount rate (which has yet to be negotiated) and apparently wants the Commission to look past the need for all of the other terms and conditions necessary to establish and implement a resale agreement (whether that be a resale with a wholesale discount or a simple retail resale arrangement).

III. PUBLIC POLICY SUPPORTING THE PUBLIC INTEREST IN THIS CASE

Q: DO YOU AGREE WITH MIDCONTINENT'S CONCERN ABOUT ESTABLISHING A LEVEL PLAYING FIELD? (LOHNES AT 5)

A: Yes. I believe there is a public policy concern about establishing a level playing field. As expressed by Mr. Dircks, contrary to Midcontinent's allegation, the playing field in the Devils Lake exchange favors Midcontinent. Customers appear to enjoy "one-stop shopping" and Midcontinent actually acknowledges

this fact. (Gates at 15) However, the favorable treatment associated with "bundled" service offerings, particularly where the video service is bundled, that Midcontinent may receive is not reciprocal for NDTC. For example, Midcontinent may resell NDTC's telecommunications service, but NDTC cannot at present resell Midcontinent's cable service. Compounding this inequity is the clear advantage Midcontinent has being affiliated with cable giant Comcast. In its latest press release on the internet (December 12, 2005), Midcontinent describes itself as follows:

> Midcontinent Communications, a subsidiary of Midcontinent Media, Inc. and Comcast, is the Upper Midwest's leading provider of cable television, local and long distance telephone service, high-speed Internet access, and cable advertising services to communities in North and South Dakota, Northern Nebraska, and Western Minnesota. Midcontinent's service area includes over 200 communities serving over 200,000 customers.[3]

The size and scope of Midcontinent is further confirmed by Ms. Lohnes. (Lohnes at 3)

Accordingly, the NDPSC should consider the size of giant Midcontinent versus NDTC in Devils Lake when it makes a determination in removing a rural exemption designed to preserve and advance universal service. As the core of the Devils Lake exchange experiences competition, the periphery may be left to carry the burden of universal service; the possibility of this result has not been examined by Midcontinent and should be considered in any universal service analysis. The legislative presumption is that NDTC's rural exemption helps promote universal service.

[3] http://www.midcocomm.com/LatestNews/NewsDetail40.cfm?Id=0,69

Q: IS MIDCONTINENT A LARGE PLAYER IN VIDEO?

A: Yes, as noted above.

Q: DOES THAT LIKELY MAKE MIDCONTINENT A SIZEABLE COMPETITOR IN DEVILS LAKE?

A: Yes. Based on the testimony of Midcontinent and Mr. Gates in particular, it appears that the objective of Midcontinent is to establish a beachhead in Devils Lake with NDTC wholesale resale and then convert the Midcontinent's resale customers to some form of facilities-based telecommunications service offering that may or may not require the use of NDTC network. The public policy objectives within North Dakota should include an examination of the ultimate goal of Midcontinent's migration strategy – starting with wholesale resale but ultimately ending up with facilities-based competition. Facilities-based competition can be a healthy development in a community, but at the very least that result can only occur if the playing field is level and fair. Duties to serve all customers in a timely manner should be reciprocal. At present, Midcontinent does not have any of these duties. The reality is that Midcontinent is in the best position to "cherry pick" customers. The NDPSC should examine seriously the potential of Midcontinent's strategy because it will be copied in other rural communities in North Dakota, just as it has in the past. The consequences of overturning a presumed rural protection can be harmful to universal service and harmful to the public interest of North Dakota.

Q: IN THE EVENT THIS COMMISSION LIFTS NDTC'S RURAL EXEMPTION FOR 251(C)(4) DUTIES IN DEVILS LAKE FOR MIDCONTINENT, WHAT RECOMMENDATION DO YOU HAVE REGARDING ALLOWING MIDCONTINENT TO RESELL NDTC TELECOMMUNICATIONS SERVICES AT A WHOLESALE DISCOUNT?

A: I recommend the NDPSC deny Midcontinent's petition to terminate NDTC's exemption. When NDTC begins offering video programming in Devils Lake, then its rural exemption in Devils Lake will no longer apply to Midcontinent as the incumbent cable carrier offering service in Devils Lake. At that time, NDTC and Midcontinent will be able to compete as equally as possible for one-stop shoppers.

In the event, however, that the NDPSC terminates NDTC's rural exemption in Devils Lake for wholesale resale as to Midcontinent, I recommend the use of the standard Section 252 schedule for the negotiation and potential arbitration of an interconnection agreement between the parties. This process is well tested and provides equal opportunities for parties to negotiate and, if necessary, arbitrate issues.

Q: IS YOUR ALTERNATE RECOMMENDATION -- TO LIFT NDTC'S RURAL EXEMPTION FOR MIDCONTINENT'S RESALE AND ALLOW FOR NEGOTIATION REGARDING TERMS AND CONDITIONS, INCLUDING THE WHOLESALE DISCOUNT – CONSISTENT WITH THE PUBLIC POLICY OF NORTH DAKOTA?

A: Yes.

Q: DOES THIS CONCLUDE YOUR REPLY TESTIMONY?

A: Yes.

Cornell Law School

LII / Legal Information Institute

U.S. Code collection

TITLE 47 > CHAPTER 5 > SUBCHAPTER II > Part II > § 251

§ 251. Interconnection

Release date: 2005-03-17

(a) General duty of telecommunications carriers

Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

(b) Obligations of all local exchange carriers

Each local exchange carrier has the following duties:

(1) Resale

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

(2) Number portability

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) Dialing parity

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) Access to rights-of-way

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

(5) Reciprocal compensation

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

(c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

(1) Duty to negotiate

Search this title:

Notes
Updates
Parallel authorities (CFR)
Your comments

EXHIBIT
R-7

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

(3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

(4) Resale

The duty—

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) Notice of changes

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) Collocation

The duty to provide, on rates, terms, and conditions that are just,

reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

(d) Implementation

(1) In general

Within 6 months after February 8, 1996, the Commission shall complete all actions necessary to establish regulations to implement the requirements of this section.

(2) Access standards

In determining what network elements should be made available for purposes of subsection (c)(3) of this section, the Commission shall consider, at a minimum, whether—

(A) access to such network elements as are proprietary in nature is necessary; and

(B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

(3) Preservation of State access regulations

In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

(e) Numbering administration

(1) Commission authority and jurisdiction

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

(2) Costs

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

(3) Universal emergency telephone number

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9-1-1 as the universal emergency telephone number within the United States for

reporting an emergency to appropriate authorities and requesting assistance. The designation shall apply to both wireline and wireless telephone service. In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9-1-1 is not in use as an emergency telephone number on October 26, 1999.

(f) Exemptions, suspensions, and modifications

(1) Exemption for certain rural telephone companies

(A) Exemption

Subsection (c) of this section shall not apply to a rural telephone company until

(i) such company has received a bona fide request for interconnection, services, or network elements, and

(ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).

(B) State termination of exemption and implementation schedule

The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(C) Limitation on exemption

The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) of this section from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on February 8, 1996.

(2) Suspensions and modifications for rural carriers

A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary—

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

(g) Continued enforcement of exchange access and interconnection requirements

On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996, under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996. During the period beginning on February 8, 1996, and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

(h) "Incumbent local exchange carrier" defined

(1) Definition

For purposes of this section, the term "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that—

(A) on February 8, 1996, provided telephone exchange service in such area; and

(B)

(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or

(ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

(2) Treatment of comparable carriers as incumbents

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if—

(A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);

(B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and

(C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

(i) Savings provision

Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201 of this title.

Prev | Next

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

Cornell Law School

LII / Legal Information Institute

U.S. Code collection

Prev | Next

TITLE 47 > CHAPTER 5 > SUBCHAPTER II > Part II > § 252

§ 252. Procedures for negotiation, arbitration, and approval of agreements

Release date: 2005-03-17

(a) Agreements arrived at through negotiation

(1) Voluntary negotiations

Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

(2) Mediation

Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(b) Agreements arrived at through compulsory arbitration

(1) Arbitration

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

(2) Duty of petitioner

(A) A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning—

(i) the unresolved issues;

(ii) the position of each of the parties with respect to those issues; and

(iii) any other issue discussed and resolved by the parties.

(B) A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.

(3) Opportunity to respond

Search this title:

Notes
Updates
Parallel authorities (CFR)
Your comments

A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the State commission receives the petition.

(4) Action by State commission

(A) The State commission shall limit its consideration of any petition under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

(B) The State commission may require the petitioning party and the responding party to provide such information as may be necessary for the State commission to reach a decision on the unresolved issues. If any party refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission, then the State commission may proceed on the basis of the best information available to it from whatever source derived.

(C) The State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

(5) Refusal to negotiate

The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State commission shall be considered a failure to negotiate in good faith.

(c) Standards for arbitration

In resolving by arbitration under subsection (b) of this section any open issues and imposing conditions upon the parties to the agreement, a State commission shall—

(1) ensure that such resolution and conditions meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title;

(2) establish any rates for interconnection, services, or network elements according to subsection (d) of this section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) Pricing standards

(1) Interconnection and network element charges

Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251 of this title, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—

(A) shall be—

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

(2) Charges for transport and termination of traffic

(A) In general

For the purposes of compliance by an incumbent local exchange carrier with section 251 (b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) Rules of construction

This paragraph shall not be construed—

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) Wholesale prices for telecommunications services

For the purposes of section 251 (c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject—

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that—

(i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.

(3) Preservation of authority

Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

(4) Schedule for decision

If the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a) of this section, or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b) of this section, the agreement shall be deemed approved. No State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section.

(5) Commission to act if State will not act

If a State commission fails to act to carry out its responsibility under this section in any proceeding or other matter under this section, then the Commission shall issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission under this section with respect to the proceeding or matter and act for the State commission.

(6) Review of State commission actions

In a case in which a State fails to act as described in paragraph (5), the proceeding by the Commission under such paragraph and any judicial review of the Commission's actions shall be the exclusive remedies for a State commission's failure to act. In any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 of this title and this section.

(f) Statements of generally available terms

(1) In general

A Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251 of this title and the regulations thereunder and the standards applicable under this section.

(2) State commission review

A State commission may not approve such statement unless such statement complies with subsection (d) of this section and section 251 of this title and the regulations thereunder. Except as provided in section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such statement, including requiring compliance with intrastate

telecommunications service quality standards or requirements.

(3) Schedule for review

The State commission to which a statement is submitted shall, not later than 60 days after the date of such submission—

(A) complete the review of such statement under paragraph (2) (including any reconsideration thereof), unless the submitting carrier agrees to an extension of the period for such review; or

(B) permit such statement to take effect.

(4) Authority to continue review

Paragraph (3) shall not preclude the State commission from continuing to review a statement that has been permitted to take effect under subparagraph (B) of such paragraph or from approving or disapproving such statement under paragraph (2).

(5) Duty to negotiate not affected

The submission or approval of a statement under this subsection shall not relieve a Bell operating company of its duty to negotiate the terms and conditions of an agreement under section 251 of this title.

(g) Consolidation of State proceedings

Where not inconsistent with the requirements of this chapter, a State commission may, to the extent practical, consolidate proceedings under sections 214 (e), 251 (f), 253 of this title, and this section in order to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State commission in carrying out its responsibilities under this chapter.

(h) Filing required

A State commission shall make a copy of each agreement approved under subsection (e) of this section and each statement approved under subsection (f) of this section available for public inspection and copying within 10 days after the agreement or statement is approved. The State commission may charge a reasonable and nondiscriminatory fee to the parties to the agreement or to the party filing the statement to cover the costs of approving and filing such agreement or statement.

(i) Availability to other telecommunications carriers

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

(j) "Incumbent local exchange carrier" defined

For purposes of this section, the term "incumbent local exchange carrier" has the meaning provided in section 251 (h) of this title.

Prev | Next

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

NORTH DAKOTA CENTURY CODE
TITLE 49. PUBLIC UTILITIES
CHAPTER 49-21. TELECOMMUNICATIONS COMPANIES.

49-21-01.7 Powers in general.

The commission has the power to:

1. Investigate all methods and practices of telecommunications companies.

2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.

3. Require reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.

4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.

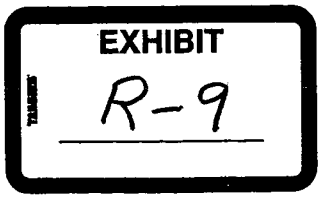
5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.

6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the rate of six percent per annum. Amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.

7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.

8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.

9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.



10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.

11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.

12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.

13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.

14. Investigate and resolve numbering issues relating to assignment of NII dialing codes and resolve numbering resource conservation administration and area code assignment issues in accordance with the federal communication commission's numbering resource orders. The commission's jurisdiction with regard to numbering resource conservation administration is limited to those prefixes that are unassigned on January 1, 2005.

15. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are greater than obligations imposed under the act.

Source: S.L. 1993, ch. 469, § 14; 1995, ch. 30, § 6; 1999, ch. 411, § 5; 2003, ch. 405, § 1; 2005, ch. 399, § 5; 2005, ch. 400, § 1.

NOTES, REFERENCES, AND ANNOTATIONS

Effective Date. -- The 2005 amendment of this section by section 5 of chapter 399, S.L. 2005 became effective August 1, 2005.The 2005 amendment of this section by section 1 of chapter 400; S.L. 2005 became effective August 1, 2005.The 2003 amendment of this section by section 1 of chapter 405, S.L. 2003 became effective August 1, 2003.The 1999 amendment of this section by section 5 of chapter 411, S.L. 1999 became effective August 1, 1999.

Note. -- Section 49-21-01.7 was amended 2 times by the 2005 Legislative Assembly. Pursuant to section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in section 5 of chapter 399, Session Laws 2005, Senate Bill 2216; and section 1 of chapter 400, Session Laws 2005, House Bill 1105.

NDCC 49-21-01.7, **ND ST 49-21-01.7**

Current through the 2005 Regular Session

Copyright © 2005 by Matthew Bender & Company, Inc. a member of the LexisNexis

Group. All rights reserved

END OF DOCUMENT

end-users that are not telecommunications carriers.

(e) Except as provided in §51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

[61 FR 45619, Aug. 29, 1996, as amended at 65 FR 6915, Feb. 11, 2000]

§51.607 Wholesale pricing standard.

The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, less avoided retail costs, as described in section 51.609. For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

[65 FR 6915, Feb. 11, 2000]

§51.609 Determination of avoided retail costs.

(a) Except as provided in §51.611, the amount of avoided retail costs shall be determined on the basis of a cost study that complies with the requirements of this section.

(b) Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier.

(c) For incumbent LECs that are designated as Class A companies under §32.11 of this chapter, except as provided in paragraph (d) of this section, avoided retail costs shall:

(1) Include as direct costs, the costs recorded in USOA accounts 6611 (product management and sales), 6613 (product advertising), 6621 (call completion services), 6622, (number services), and 6623 (customer services) (§§32.6611, 32.6613, 32.6621, 32.6622, and 32.6623 of this chapter);

(2) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121–6124 (general support expenses), 6720 (corporate operations expenses), and uncollectible telecommunications revenue included in 5300 (uncollectible revenue) (Secs. 32.6121 through 32.6124, 32.6720 and 32.5300 of this chapter); and

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (§§32.6112–6114, 32.6211–6565 of this chapter).

(d) Costs included in accounts 6611, 6613 and 6621–6623 described in paragraph (c) of this section (§§32.6611, 32.6613, and 32.6621–6623 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6112–6114 and 6211–6565 described in paragraph (c) of this section (§§32.6112–32.6114, 32.6211–32.6565 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

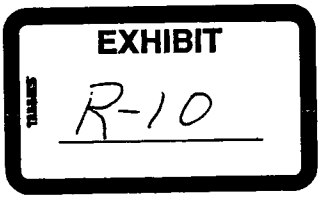
(e) For incumbent LECs that are designated as Class B companies under §32.11 of this chapter and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of the specific USOA accounts listed in paragraphs (c) and (d) of this section.

[61 FR 45619, Aug. 29, 1996, as amended at 67 FR 5700, Feb. 6, 2002; 69 FR 53652, Sept. 2, 2004]

§51.611 Interim wholesale rates.

(a) If a state commission cannot, based on the information available to it, establish a wholesale rate using the methodology prescribed in §51.609, then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.

(b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25



percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.

(c) A state commission that establishes interim wholesale rates shall, within a reasonable period of time thereafter, establish wholesale rates on the basis of an avoided retail cost study that complies with § 51.609.

§ 51.613 Restrictions on resale.

(a) Notwithstanding § 51.605(b), the following types of restrictions on resale may be imposed:

(1) *Cross-class selling.* A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

(2) *Short term promotions.* An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

(i) Such promotions involve rates that will be in effect for no more than 90 days; and

(ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

(b) With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

(c) *Branding.* Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.

(1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.

(2) For purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

§ 51.615 Withdrawal of services.

When an incumbent LEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the incumbent LEC must also make such a service available at wholesale rates to requesting carriers to offer on a resale basis to the same limited group of customers that have purchased such a service in the past.

§ 51.617 Assessment of end user common line charge on resellers.

(a) Notwithstanding the provision in § 69.104(a) of this chapter that the end user common line charge be assessed upon end users, an incumbent LEC shall assess this charge, and the charge for changing the designated primary interexchange carrier, upon requesting carriers that purchase telephone exchange service for resale. The specific end user common line charge to be assessed will depend upon the identity of the end user served by the requesting carrier.

(b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC shall continue to assess the interstate access charges provided in part 69 of this chapter, other than the end user common line charge, upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international telecommunications services

12/12/2005

Midcontinent Communications to Develop Family Friendly Choice

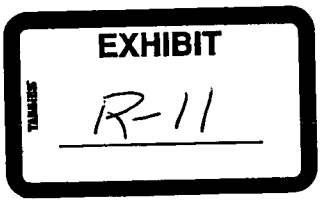
Sioux Falls, SD, December 12, 2005--- Midcontinent Communications announced today that it will join several other major cable operators committed to developing a "family friendly" offering of cable programming. Because of programming and technical complexities, the process is expected to take some time. Program contracts will have to be reviewed and, in many cases, renegotiated. Technical delivery systems will also have to be redesigned to carry this additional offering. The greatest challenge may well be establishing a reasonable definition of indecency and determining which of the available channels pass the "family friendly" test.

According to Midcontinent Communications Vice President of Public Policy, Tom Simmons, "Midcontinent is committed to making a best effort in all of our full service communities to offer a family friendly tier of services as soon as possible, but we have a lot of work to do. We anticipate negotiations with program providers will be difficult, but we're ready to work in the best interest of our customers to meet customers' expectations and give them what they want".

The major cable operators joining Midcontinent in the pledge to develop family programming tiers are Comcast, Time Warner Cable, Advance/Newhouse Communications, Insight Communications, and Bresnan Communications. Others are expected to follow in the near future. Each cable operator is responsible for developing their definition of indecency and must decide which channels will be included in any special family friendly tier.

About Midcontinent Communications

Midcontinent Communications, a subsidiary of Midcontinent Media, Inc. and Comcast, is the Upper Midwest's leading provider of cable television, local and long distance telephone service, high-speed Internet access, and cable advertising services to communities in North and South Dakota, Northern Nebraska, and Western Minnesota. Midcontinent's service area includes over 200 communities serving over 200,000 customers. For more information, please visit our website at www.midcocomm.com.



PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE • •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

December 23, 2005

The Honorable Al Wahl
Office Of Administrative Hearings
1707 North 9 Street
Bismarck, ND 58501-1882

RE: Midcontinent Communications v. North Dakota Telephone Company
Case No. PU-05-451
OAH No. 20050316

Dear Sir:

Enclosed for filing is:

EXHIBITS TO THE DIRECT TESTIMONY OF TIMOTHY J. GATES.

This exhibit was inadvertently omitted when filing the Direct Testimony on December 21, 2005.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Mr. Don Negaard
Mr. William Binek (Original/7 Copies)
Ms. Mary Lohnes
Mr. J. G. Harrington

54 PU-05-451 Pages: 30
Exhibits to the Direct Testimony of Timothy J. Gates
by Pearce & Durick by Patrick W. Durick
12/23/2005 CC: Comm Legal Illona, Pat, Annette . .
Exhibit # P13

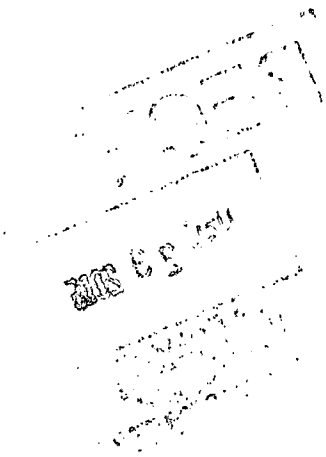


EXHIBIT
P13

QSI consulting, inc.

Qualifications of Timothy J Gates
Exhibit ____ (TJG-1)

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.

A. Prior to my current position with QSI Consulting, I was a Senior Executive Staff Member in MCI WorldCom's ("MCIW") National Public Policy Group. In this position, I was responsible for providing public policy expertise in key cases across the country and for managing external consultants for MCIW's state public policy organization. In certain situations, I also provided testimony in regulatory and legislative proceedings.

Prior to my position with MCIW in Denver, I was an Executive Staff Member II at MCI Telecommunications ("MCI") World Headquarters in Washington D.C.. In that position I managed economists, external consultants, and provided training and policy support for regional regulatory staffs. Prior to that position I was a Senior Manager in MCI's Regulatory Analysis Department, which provided support in state regulatory and legislative matters to the various operating regions of MCI. In that position I was given responsibility for assigning resources from our group for state regulatory proceedings throughout the United States. At the same time, I prepared and presented testimony on various telecommunications issues before state regulatory and legislative bodies. I was also responsible for managing federal tariff reviews and presenting MCI's position on regulatory matters to the Federal Communications Commission. Prior to my assignment in the Regulatory Analysis Department, I was the Senior Manager of Economic Analysis and Regulatory Policy in the Legal, Regulatory and Legislative Affairs Department for the Midwest Division of MCI. In that position I developed and promoted regulatory policy within what was then a five-state operating division of MCI. I promoted MCI policy positions through negotiations, testimony and participation in industry forums.

Prior to my positions in the Midwest, I was employed as Manager of Tariffs and Economic Analysis with MCI's West Division in Denver, Colorado. In that position I was responsible for managing the development and application of MCI's tariffs in the fifteen MCI West states. I was also responsible for managing regulatory dockets and for providing economic and financial expertise in the areas of discovery and issue analysis. Prior to joining the West Division, I was a Financial Analyst III and then a Senior Staff Specialist with MCI's Southwest Division in Austin, Texas. In those positions, I was responsible for the management of regulatory dockets and liaison with outside counsel. I was also responsible for discovery, issue analysis, and for the development of working relationships with consumer and business groups. Just prior to joining MCI, I was employed by the Texas Public Utility Commission as a Telephone Rate Analyst in the Engineering Division responsible for examining

telecommunications cost studies and rate structures.

I was employed as an Economic Analyst with the Public Utility Commissioner of Oregon from July, 1983 to December, 1984. In that position, I examined and analyzed cost studies and rate structures in telecommunications rate cases and investigations. I also testified in rate cases and in private and public hearings regarding telecommunications services. Before joining the Oregon Commissioner's Staff, I was employed by the Bonneville Power Administration (United States Department of Energy) as a Financial Analyst, where I made total regional electric use forecasts and automated the Average System Cost Review Methodology. Prior to joining the Bonneville Power Administration, I held numerous positions of increasing responsibility in areas of forest management for both public and private forestry concerns.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL CREDENTIALS.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. I have also attended numerous courses and seminars specific to the telecommunications industry, including the NARUC Annual and Advanced Regulatory Studies Program.

Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

A. Effective April 1, 2000, I joined QSI Consulting as Senior Vice President and Partner. In this position I provide analysis and testimony for QSI's many clients. The deliverables include written and oral testimony, analysis of rates, cost studies and policy positions, position papers, presentations on industry issues and training.

Q. PLEASE IDENTIFY THE JURISDICTIONS IN WHICH YOU HAVE TESTIFIED.

A. I have filed testimony or comments on telecommunications issues in the following 44 states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming. I have also filed comments with the FCC and made presentations to the Department of Justice.

I have testified or presented formal comments in the following proceedings and forums:

Alabama:

October 18, 2000; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

January 31, 2001; Docket No. 27867; Adelphia Business Solutions Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Arkansas:

September 7, 2004; Docket No. 04-0999-U; In the Matter of Level 3 Petition for Arbitration with Southwestern Bell Telephone, L.P. D/B/A SBC Arkansas; Direct Testimony on Behalf of Level 3.

Arizona:

September 23, 1987; Arizona Corporation Commission Workshop on Special Access Services; Comments on Behalf of MCI.

August 21, 1996; Affidavit in Opposition to USWC Motion for Partial Summary Judgment; No. CV 95-14284, No. CV-96-03355, No. CV-96-03356, (consolidated); On Behalf of MCI.

October 24, 1997; Comments to the Universal Service Fund Working Group; Docket No. R-0000-97-137; On Behalf of MCI.

May 8, 1998; Comments to the Universal Service Fund Working Group; Docket No.R-0000-97-137; On Behalf of MCI.

November 9, 1998; Docket No. T-03175A-97-0251; Application of MCImetro Access Transmission Services, Inc. to Expand It's CCN to Provide IntraLATA Services and to Determine that Its IntraLATA Services are Competitive; Direct Testimony on Behalf of MCI WorldCom, Inc.

September 20, 1999; Docket No. T-00000B-97-238; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc.

January 8, 2001; Docket Nos. T-03654A-00-0882, T-01051B-00-0882; Petition of Level 3 Communications, LLC, for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

February 20, 2001; Superior Court of Arizona; Count of Maricopa; ESI Ergonomic Solutions, LLC, Plaintiff, vs. United Artists Theatre Circuit; No. CV 99-20649; Affidavit on Behalf of United Artists Theatre Circuit.

September 2, 2001; Docket No. T-00000A-00-0194 Phase II – A; Investigation into Qwest's Compliance with Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts; Rebuttal Testimony on Behalf of WorldCom, Inc.

January 9, 2004; Docket No. T-00000A-03-0369; In the Matter of ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

November 18, 2004; Docket No. T-01051B-0454; In the Matter of Qwest Corporation's Amended Renewed Price Regulation Plan; Direct Testimony on Behalf of Time Warner Telecom, Inc.

July 15, 2005; Docket No. T-03654-05-0350, T-01051B-05-0350; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation, Direct Testimony on Behalf of Level 3.

August 15, 2005; Docket No. T-03654-05-0350, T-01051B-05-0350; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation, Rebuttal Testimony on Behalf of Level 3.

Arkansas:

September 7, 2004; Docket No. 04-099-U; In the Matter of Level 3 Petition for Arbitration Pursuant to Section 252(b) with Southwestern Bell Telephone, L.P. D/B/A SBC Arkansas; Direct Testimony on Behalf of Level 3 Communications, LLC.

California:

August 30, 1996; Application No. 96-08-068; MCI Petition for Arbitration with Pacific Bell; Direct Testimony on Behalf of MCI.

September 10, 1996; Application No. 96-09-012; MCI Petition for Arbitration with GTE California, Inc.; Direct Testimony on Behalf of MCI.

June 5, 2000; Docket No. A0004037; Petition of Level 3 Communications for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company; Direct Testimony on Behalf of Level 3 Communications, LLC.

June 1, 2004; Docket No. A.04-06-004; Petition of Level 3 Communications for Arbitration with SBC; Direct Testimony on Behalf of Level 3 Communications LLC.

Colorado:

December 1, 1986; Investigation and Suspension Docket No. 1720; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

October 26, 1988; Investigation and Suspension Docket No. 1766; Mountain States Telephone and Telegraph Company's Local Calling Access Plan; Direct Testimony of Behalf of MCI.

September 6, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Direct Testimony on Behalf of MCI.

September 17, 1996; MCImetro Petition for Arbitration with U S WEST Communications, Inc.; Docket No. 96A-366T (consolidated); Rebuttal Testimony on Behalf of MCI.

September 26, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. Docket No. 90A-665T (consolidated); Direct Testimony on Behalf of MCI.

October 7, 1996; Application of U S WEST Communications, Inc. To Modify Its Rate and Service Regulation Plan; Docket No. Docket No. 90A-665T (consolidated); Rebuttal Testimony on Behalf of MCI.

July 18, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Direct Testimony on Behalf of MCI.

August 15, 1997; Complaint of MCI to Reduce USWC Access Charges to Economic Cost; Docket Nos. 97K-237T, 97F-175T (consolidated) and 97F-212T (consolidated); Rebuttal Testimony on Behalf of MCI.

March 10, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Supplemental Direct Testimony on Behalf of MCI.

March 26, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Rebuttal Testimony on Behalf of MCI.

May 8, 1998; Application of WorldCom, Inc. for Approval to Transfer Control of MCI to WorldCom, Inc.; Docket No. 97A-494T; Affidavit in Response to GTE.

November 4, 1998; Proposed Amendments to the Rules Prescribing IntraLATA Equal Access; Docket No. 98R-426T; Comments to the Commission on Behalf of MCI WorldCom and AT&T Communications of the Mountain States, Inc.

May 13, 1999; Proposed Amendments to the Rules on Local Calling Area Standards; Docket No. 99R-128T; Oral Comments before the Commissioners on Behalf of MCIW.

January 4, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Direct Testimony on Behalf of Level 3.

January 16, 2001; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 00B-601T; Rebuttal Testimony on Behalf of Level 3.

January 29, 2001; Qwest Corporation, Inc., Plaintiff, v. IP Telephony, Inc., Defendant. District Court, City and County of Denver, State of Colorado; Case No. 99CV8252; Direct Testimony on Behalf of IP Telephony.

June 27, 2001; US WEST Statement of Generally Available Terms and Conditions; Docket No. 991-577T; Direct Testimony on Behalf of Covad Communications Company, Rhythms Links, Inc., and New Edge Networks, Inc.

January 26, 2004; Regarding the Unbundling Obligations of ILECs Pursuant to the Triennial Review Order; Docket No. 03I-478T; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

February 18, 2005; Regarding Application of Qwest for Reclassification and Deregulation of Certain Products and Services; Docket No. 04A-411T; Direct Testimony on Behalf of Time Warner Telecom.

July 11, 2005; Petition of Level 3 Communications, LLC for Arbitration with Qwest Corporation; Docket No. 05B-210T; Direct Testimony on Behalf of Level 3.

Connecticut:

November 2, 2004; Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) with Southern New England Telephone Company d/b/a/ SBC Connecticut; Level 3/SNET Arbitration; Direct Testimony on Behalf of Level 3 Communications, LLC.

Delaware:

February 12, 1993; Diamond State Telephone Company's Application for a Rate Increase; Docket No. 92-47; Direct Testimony on Behalf of MCI.

Florida:

July 1, 1994; Investigation into IntraLATA Presubscription; Docket No. 930330-TP; Direct Testimony on Behalf of MCI.

October 5, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Direct Testimony On Behalf of Level 3.

October 13, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Direct Testimony On Behalf of US LEC.

October 27, 2000; Petition of BellSouth for Arbitration with US LEC of Florida Inc.; Docket No. 000084-TP; Rebuttal Testimony On Behalf of US LEC.

November 1, 2000; Petition of Level 3 for Arbitration with BellSouth; Docket No. 000907-TP; Rebuttal Testimony On Behalf of Level 3.

June 11, 2004; Petition of KMC Telecom for Arbitration with Sprint Communications; Docket No. 031047-TP; Direct Testimony on Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc., and KMC Data, L.L.C.

July 9, 2004; Petition of KMC Telecom for Arbitration with Sprint Communications; Docket No. 031047-TP; Rebuttal Testimony on Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc., and KMC Data, L.L.C.

Georgia:

December 6, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

December 20, 2000; Docket No. 12645-U; Petition of Level 3 for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Level 3.

Idaho:

November 20, 1987; Case No. U-1150-1; Petition of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

March 17, 1988; Case No. U-1500-177; Investigation of the Universal Local Access Service Tariff; Direct Testimony on Behalf of MCI.

April 26, 1988; Case No. U-1500-177; Investigation of the Universal Local Access Service Tariff; Rebuttal Testimony on Behalf of MCI.

November 25, 2002; Case No. GNR-T-02-16; Petition of Potlatch, CenturyTel, the Idaho Telephone Association for Declaratory Order Prohibiting the Use of "Virtual" NXX Calling; Comments/Presentation on Behalf of Level 3, AT&T, WorldCom, and Time Warner Telecom.

August 12, 2005; Case No. QWE-T-05-11; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

September 16, 2005; Case No. QWE-T-05-11; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Rebuttal Testimony on Behalf of Level 3.

Illinois:

January 16, 1989; Docket No. 83-0142; Appropriate Methodology for Intrastate Access Charges; Rebuttal Testimony Regarding Toll Access Denial on Behalf of MCI.

February 16, 1989; Docket No. 83-0142; Appropriate Methodology for Intrastate Access Charges; Testimony Regarding ICTC's Access Charge Proposal on Behalf of MCI.

May 3, 1989; Docket No. 89-0033; Illinois Bell Telephone Company's Rate Restructuring; Direct Testimony on Behalf of MCI.

July 14, 1989; Docket No. 89-0033; Illinois Bell Telephone Company's Rate Restructuring; Rebuttal Testimony on Behalf of MCI.

November 22, 1989; Docket No. 88-0091; IntraMSA Dialing Arrangements; Direct Testimony on Behalf of MCI.

February 9, 1990; Docket No. 88-0091; IntraMSA Dialing Arrangements; Rebuttal Testimony on Behalf of MCI.

November 19, 1990; Docket No. 83-0142; Industry presentation to the Commission re Docket No. 83-0142 and issues for next generic access docket; Comments re the Imputation Trial and Unitary Pricing/Building Blocks on Behalf of MCI.

July 29, 1991; Case No. 90-0425; Presentation to the Industry Regarding MCI's Position on Imputation.

November 18, 1993; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Direct Testimony on Behalf of MCI and LDDS.

January 10, 1994; Docket No. 93-0044; Complaint of MCI and LDDS re Illinois Bell Additional Aggregated Discount and Growth Incentive Discount Services; Rebuttal Testimony on Behalf of MCI and LDDS.

May 30, 2000; Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

July 11, 2000: Docket No. 00-0332; Level 3 Petition for Arbitration to Establish and Interconnection Agreement with Illinois Bell Telephone Company; Supplemental Verified Statement on Behalf of Level (3) Communications, LLC.

June 22, 2004; Docket No. 04-0428; Level 3 Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 3, 2004; Docket No. 04-0428; Level 3 Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Indiana:

October 28, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI.

December 16, 1988; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding GTE.

April 14, 1989; Cause No. 38561; Deregulation of Customer Specific Offerings of Indiana Telephone Companies; Direct Testimony on Behalf of MCI Regarding Staff Reports.

June 21, 1989; Cause No. 37905; Intrastate Access Tariffs -- Parity with Federal Rates; Direct Testimony on Behalf of MCI.

June 29, 1989; Cause No. 38560; Reseller Complaint Regarding 1+ IntraLATA Calling; Direct Testimony on Behalf of MCI.

October 25, 1990; Cause No. 39032; MCI Request for IntraLATA Authority; Direct Testimony on Behalf of MCI.

April 4, 1991; Rebuttal Testimony in Cause No. 39032 re MCI's Request for IntraLATA Authority on Behalf of MCI.

September 2, 2004; Cause No. 42663-INT-01; In the Matter of Level 3 Communications, LLC Petition for Arbitration with SBC Indiana; Direct Testimony on Behalf of Level 3 Communications, LLC.

October 5, 2004; Cause No. 42663-INT-01; In the Matter of Level 3 Communications, LLC Petition for Arbitration with SBC Indiana; Rebuttal Testimony on Behalf of Level 3 Communications, LLC.

Iowa:

September 1, 1988; Docket No. RPU 88_6; IntraLATA Competition in Iowa; Direct Testimony on Behalf of MCI.

September 20, 1988; Docket No. RPU_88_1; Regarding the Access Charges of Northwestern Bell Telephone Company; Direct Testimony on Behalf of MCI.

September 25, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 3, 1991; Docket No. NOI-90-1; Presentation on Imputation of Access Charges and the Other Costs of Providing Toll Services; On Behalf of MCI.

November 5, 1991; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

December 23, 1991; Docket No. RPU-91-4; Investigation of the Earnings of US WEST Communications; Inc.; Supplemental Testimony on Behalf of MCI.

January 10, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Rebuttal Testimony on Behalf of MCI.

January 20, 1992; Docket No. RPU-91-4; Investigation of the Earnings of U S WEST Communications, Inc.; Surrebuttal Testimony on Behalf of MCI.

June 8, 1999; Docket NOI-99-1; Universal Service Workshop; Participated on numerous panels during two day workshop; Comments on Behalf of MCIW.

October 27, 1999: Docket NOI-99-1; Universal Service Workshop; Responded to questions posed by the Staff of the Board during one day workshop; Comments on Behalf of MCIW and AT&T.

November 14, 2003; Docket Nos. INU-03-4, WRU-03-61; In Re: Qwest Corporation; Sworn Statement of Position on Behalf of MCI.

December 15, 2003; Docket Nos. INU-03-4, WRU-03-61; In Re: Qwest Corporation; Sworn Counter Statement of Position on Behalf of MCI.

July 20, 2005; Docket No. ARB-05-4; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest; Direct Testimony on Behalf of Level 3.

August 12, 2005; Docket No. ARB-05-4; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest; Rebuttal Testimony on Behalf of Level 3.

August 24, 2005; Docket No. ARB-05-4; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest; Surrebuttal Testimony on Behalf of Level 3.

Kansas:

June 10, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Direct Testimony on Behalf of MCI.

September 16, 1992; Docket No. 181,097-U; General Investigation into IntraLATA Competition within the State of Kansas; Rebuttal Testimony on Behalf of MCI.

August 31, 2004; Docket No. 04-L3CT-1046-ARB; In the Matter of Arbitration Between Level 3 Communications LLC and SBC Communications; Direct Testimony on Behalf of Level 3 Communications, LLC.

Kentucky:

May 20, 1993; Administrative Case No. 323, Phase I; An Inquiry into IntraLATA Toll Competition, an Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality; Direct Testimony on Behalf of MCI.

December 21, 2000; Case No. 2000-404; Petition of Level 3 Communications, LLC for Arbitration with BellSouth; Direct Testimony on Behalf of Level 3.

January 12, 2001; Case No. 2000-477; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

Louisiana:

December 28, 2000; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

January 5, 2001; Docket No. U-25301; Petition of Adelphia Business Solutions for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

Maryland:

November 12, 1993; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Direct Testimony on Behalf of MCI.

January 14, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

May 19, 1994; Case No. 8585; Re Bell Atlantic Maryland, Inc.'s Transmittal No. 878; Testimony on Behalf of MCI.

June 2, 1994; Case No. 8585; Competitive Safeguards Required re C&P's Centrex Extend Service; Rebuttal Testimony on Behalf of MCI.

September 5, 2001; Case No. 8879; Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996; Rebuttal Testimony on behalf of the Staff of the Public Service Commission of Maryland.

October 15, 2001; Case No. 8879; Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996; Surrebuttal Testimony on behalf of the Staff of the Public Service Commission of Maryland.

Massachusetts:

April 22, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Direct Testimony on Behalf of MCI.

May 10, 1993; D.P.U. 93-45; New England Telephone Implementation of Interchangeable NPAs; Rebuttal Testimony on Behalf of MCI.

Michigan:

September 29, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Direct Testimony on Behalf of MCI.

November 30, 1988; Case Nos. U_9004, U_9006, U_9007 (Consolidated); Industry Framework for IntraLATA Toll Competition; Rebuttal Testimony on Behalf of MCI.

June 30, 1989; Case No. U-8987; Michigan Bell Telephone Company Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

July 31, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

November 17, 1992; Case No. U-10138; MCI v Michigan Bell and GTE re IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

July 22, 1993; Case No. U-10138 (Reopener); MCI v Michigan Bell and GTE re IntraLATA Equal Access; Direct Testimony on Behalf of MCI.

February 16, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Direct Testimony on Behalf of AT&T. (Adopted Testimony of Michael Starkey)

May 11, 2000; Case No. U-12321; AT&T Communications of Michigan, Inc. Complainant v. GTE North Inc. and Contel of the South, Inc., d/b/a GTE Systems of Michigan; Rebuttal Testimony on Behalf of AT&T.

June 8, 2000; Case No. U-12460; Petition of Level 3 Communications for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 27, 2000; Case No. U-12528; In the Matter of the Implementation of the Local Calling Area Provisions of the MTA; Rebuttal Testimony on Behalf of Focal Communications, Inc.

June 1, 2004; Case No. U-14152; Petition of Level 3 Communications LLC for Arbitration with SBC Michigan; Direct Testimony on Behalf of Level 3 Communications, LLC.

Minnesota:

January 30, 1987; Docket No. P_421/CI_86_88; Summary Investigation into Alternative Methods for Recovery of Non-traffic Sensitive Costs; Comments to the Commission on Behalf of MCI.

September 7, 1993; Docket No. P-999/CI-85-582, P-999/CI-87-697 and P-999/CI-87-695, In the Matter of an Investigation into IntraLATA Equal Access and Presubscription; Comments of MCI on the Report of the Equal Access and Presubscription Study Committee on Behalf of MCI.

September 20, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Direct Testimony on Behalf of MCI.

September 30, 1996; Petition for Arbitration with U S WEST Communications, Inc.; Docket No. P-442, 421/M-96-855; P-5321, 421/M-96-909; and P-3167, 421/M-96-729 (consolidated); Rebuttal Testimony on Behalf of MCI.

September 14-16, 1999; USWC OSS Workshop; Comments on Behalf of MCI WorldCom, Inc. re OSS Issues.

September 28, 1999; Docket No. P-999/R-97-609; Universal Service Group; Comments on Behalf of MCI WorldCom, Inc. and AT&T Communications.

April 18, 2002; Commission Investigation of Qwest's Pricing of Certain Unbundled Network Elements; Docket Nos. P-442, 421, 3012/M-01-1916; P-421/C1-01-1375; OAH Docket No. 12-2500-14490; Rebuttal Testimony on Behalf of McLeod USA Telecommunications Services, Inc., Eschelon Telecom of Minnesota, Inc., US Link, Inc., Northstar Access, LLC, Otter Tail Telecomm LLC, VAL-Ed Joint Venture, LLP, dba 702 Communications.

January 23, 2004; In the Matter of the Commission Investigation into ILEC Unbundling Obligations as a Result of the Federal Triennial Review Order; Docket No.: P-999/CI-03-961; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

Mississippi:

February 2, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 16, 2001; Docket No. 2000-AD-846; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Montana:

May 1, 1987; Docket No. 86.12.67; Rate Case of AT&T Communications of the Mountain States, Inc.; Direct Testimony on Behalf of MCI.

September 12, 1988; Docket No. 88.1.2; Rate Case of Mountain States Telephone and Telegraph Company; Direct Testimony on Behalf of MCI.

May 12, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

June 1, 1998; Docket No. D97.10.191; Application of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Amended Rebuttal Testimony on Behalf of MCI.

Nebraska:

November 6, 1986; Application No. C_627; Nebraska Telephone Association Access Charge Proceeding; Direct Testimony on Behalf of MCI.

March 31, 1988; Application No. C_749; Application of United Telephone Long Distance Company of the Midwest for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

New Hampshire:

April 30, 1993; Docket DE 93-003; Investigation into New England Telephone's Proposal to Implement Seven Digit Dialing for Intrastate Toll Calls; Direct Testimony on Behalf of MCI.

January 12, 2001; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Direct Testimony on Behalf of BayRing Communications.

April 5, 2002; Docket No. DT 00-223; Investigation Into Whether Certain Calls are Local; Rebuttal Testimony on Behalf of BayRing Communications.

New Jersey:

September 15, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

October 1, 1993; Docket No. TX93060259; Notice of Pre-Proposal re IntraLATA Competition; Reply Comments in Response to the Board of Regulatory Commissioners on Behalf of MCI.

April 7, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Direct Testimony on Behalf of MCI.

April 25, 1994; Docket Nos. TX90050349, TE92111047, and TE93060211; Petitions of MCI, Sprint and AT&T for Authorization of IntraLATA Competition and Elimination of Compensation; Rebuttal Testimony on Behalf of MCI.

New Mexico:

September 28, 1987; Docket No. 87_61_TC; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

August 30, 1996: Docket No. 95-572-TC; Petition of AT&T for IntraLATA Equal Access; Rebuttal Testimony on Behalf of MCI.

September 16, 2002; Utility Case No. 3495, Phase B; Consideration of Costing and Pricing Rules for OSS, Collocation, Shared Transport, Nonrecurring Charges, Spot Frames, Combination of Network Elements and Switching; Direct Testimony on Behalf of the Staff of the New Mexico Public Regulation Commission.

February 9, 2004; Case Nos. 03-00403-UT and 03-00404-UT; Triennial Review Proceedings (Batch Hot Cut and Local Circuit Switching); Testimony on Behalf of WorldCom, Inc. (MCI).

May 11, 2004; Case No. 00108-UT; Regarding Unfiled Agreements between Qwest Corporation and Competitive Local Exchange Carriers; Testimony on Behalf of Time Warner Telecom

September 14, 2005; Case No. 05-00211-UT; In the Matter of a Notice of Inquiry to Develop a Rule to Implement House Bill 776, Relating to Access Charge Reform, Oral Comments on Behalf of MCI.

December 5, 2005; Case No. 05-00094-UT; In the Matter of the Implementation and Enforcement of Qwest Corporations' Amended Alternative Form of Regulation; Direct Testimony on Behalf of the New Mexico Attorney General.

New York:

April 30, 1992; Case 28425; Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

June 8, 1992; Case 28425; Reply Comments of MCI Telecommunications Corporation on IntraLATA Presubscription.

North Carolina:

August 4, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Direct Testimony on Behalf of Level (3) Communications, LLC.

September 18, 2000; Docket No. P779 SUB4; Petition of Level (3) Communications, LLC for Arbitration with Bell South; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 18, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions of North Carolina, LP for Arbitration with BellSouth; Direct Testimony on Behalf of Adelphia.

December 8, 2000; Docket No. P-886, SUB 1; Petition of Adelphia Business Solutions of North Carolina, LP for Arbitration with BellSouth; Rebuttal Testimony on Behalf of Adelphia.

North Dakota:

June 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Direct Testimony on Behalf of MCI.

October 24, 1991; Case No. PU-2320-90-183 (Implementation of SB 2320 -- Subsidy Investigation); Rebuttal Testimony on Behalf of MCI.

December 4, 2002; Case No. PU-2065-02-465; Petition of Level 3 for Arbitration with SRT Communications Cooperative; Direct Testimony on Behalf of Level (3) Communications, LLC.

May 2, 2003; Case No. PU-2342-01-296; Qwest Corporation Price Investigation; Direct Testimony on Behalf of the CLEC Coalition (US Link, Inc., VAL-ED Joint Venture LLP d/b/a 702 Communications, McLeodUSA Telecommunications, Inc. and IdeaOne Telecom Group, LLC).

Ohio:

February 26, 2004; Case No. 04-35-TP-COI; In the Matter of the Implementation of the FCC's Triennial Review Regarding Local Circuit Switching in the Cincinnati Bell Telephone Company's Mass Market; Direct Testimony on Behalf of AT&T.

Oklahoma:

April 2, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Direct Testimony on Behalf of MCI.

June 22, 1992; Cause No. 28713; Application of MCI for Additional CCN Authority to Provide IntraLATA Services; Rebuttal Testimony on Behalf of MCI.

Oregon:

October 27, 1983; Docket No. UT 9; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

April 23, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Direct Testimony on Behalf of the Public Utility Commissioner of Oregon.

May 7, 1984; Docket No. UT 17; Pacific Northwest Bell Telephone Company Business Measured Service; Rebuttal Testimony on Behalf of the Public Utility Commissioner of Oregon.

October 31, 1986; Docket No. AR 154; Administrative Rules Relating to the Universal Service Protection Plan; Rebuttal Testimony on Behalf of MCI.

September 6, 1996; Docket ARB3/ARB6; Petition of MCI for Arbitration with U S WEST Communications, Inc.; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Direct Testimony on Behalf of MCI.

November 5, 1996; Docket No. ARB 9; Interconnection Contract Negotiations Between MCImetro and GTE; Rebuttal Testimony on Behalf of MCI.

November 6, 2002; Docket No. UM 1058; Investigation into the Use of Virtual NPA/NXX Calling Patterns; Comments/Presentation on Behalf of Level (3) Communications, LLC.

August 12, 2005; Docket No. ARB 665; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

September 6, 2005; Docket No. ARB 665; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Rebuttal Testimony on Behalf of Level 3.

Pennsylvania:

December 9, 1994; Docket No. I-00940034; Investigation Into IntraLATA Interconnection Arrangements (Presubscription); Direct Testimony on Behalf of MCI.

September 5, 2002; Docket No. C-20028114; Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

Rhode Island:

April 30, 1993; Docket No. 2089; Dialing Pattern Proposal Made by the New England Telephone Company; Direct Testimony on Behalf of MCI.

South Carolina:

October 2000; Docket No. 2000-0446-C; US LEC of South Carolina Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of US LEC.

November 22, 2000; Docket No. 2000-516-C; Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

December 14, 2000; Docket No. 2000-516-C; Adelphia Business Solutions of South Carolina, Inc. Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

South Dakota:

November 11, 1987; Docket No. F_3652_12; Application of Northwestern Bell Telephone Company to Introduce Its Contract Toll Plan; Direct Testimony on Behalf of MCI.

May 27, 2003; Docket No. TC03-057; Application of Qwest to Reclassify Local Exchange Services as Fully Competitive; Direct Testimony on Behalf of WorldCom, Inc., Black Hills FiberCom and Midcontinent Communications.

Tennessee:

January 31, 2001; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Direct Testimony on Behalf of Adelphia.

February 7, 2001; Petition of Adelphia Business Solutions for Arbitration with BellSouth Telecommunications; Rebuttal Testimony on Behalf of Adelphia.

Texas:

June 5, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Direct Testimony on Behalf of Level (3) Communications, LLC.

June 12, 2000; PUC Docket No. 22441; Petition of Level 3 for Arbitration with Southwestern Bell Telephone Company; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

October 10, 2002; PUC Docket No. 26431; Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.; Direct Testimony on Behalf of Level (3) Communications, LLC.

October 16, 2002; PUC Docket No. 26431; Petition of Level 3 for Arbitration with CenturyTel of Lake Dallas, Inc. and CenturyTel of San Marcos, Inc.; Reply Testimony on Behalf of Level (3) Communications, LLC.

July 19, 2004; PUC Docket No. 28821; Arbitration of Non-costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement; Direct Testimony on Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc. (d/b/a KMC Network Services, Inc.), and KMC Data, L.L.C.

August 23, 2004; PUC Docket No. 28821; Arbitration of Non-costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement; Rebuttal Testimony on Behalf of KMC Telecom III, L.L.C, KMC Telecom V, Inc. (d/b/a KMC Network Services, Inc.), and KMC Data, L.L.C.

Utah:

November 16, 1987; Case No. 87_049_05; Petition of the Mountain State Telephone and Telegraph Company for Exemption from Regulation of Various Transport Services; Direct Testimony on Behalf of MCI.

July 7, 1988; Case No. 83_999_11; Investigation of Access Charges for Intrastate InterLATA and IntraLATA Telephone Services; Direct Testimony on Behalf of MCI.

November 8, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Direct Testimony on Behalf of MCI.

November 22, 1996; Docket No. 96-095-01; MCImetro Petition for Arbitration with USWC Pursuant to 47 U.S.C. Section 252; Rebuttal Testimony on Behalf of MCI.

September 3, 1997; Docket No. 97-049-08; USWC Rate Case; Surrebuttal Testimony on Behalf of MCI.

September 29, 1997; Docket No. 97-049-08; USWC Rate Case; Revised Direct Testimony on Behalf of MCI.

February 2, 2001; Docket No. 00-999-05; In the Matter of the Investigation of Inter-Carrier Compensation for Exchanged ESP Traffic; Direct Testimony on Behalf of Level 3 Communications, LLP.

January 13, 2004; Docket No. 03-999-04; In the Matter of a Proceeding to Address Actions Necessary to Respond to the FCC's Triennial Review Order; Direct Testimony on Behalf of WorldCom, Inc. (MCI).

Washington:

September 27, 1988; Docket No. U-88-2052-P; Petition of Pacific Northwest Bell Telephone Company for Classification of Services as Competitive; Direct Testimony on Behalf of MCI.

October 11, 1996; Docket No. UT-96-0338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Direct Testimony on Behalf of MCI.

November 20, 1996; Docket No. UT-96-0338; Petition of MCImetro for Arbitration with GTE Northwest, Inc., Pursuant to 47 U.S.C.252; Rebuttal Testimony on Behalf of MCI.

January 13, 1998; Docket No. UT-97-0325; Rulemaking Workshop re Access Charge Reform and the Cost of Universal Service; Comments and Presentation on Behalf of MCI.

December 21, 2001; Docket No. UT-003013, Part D; Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination; Direct Testimony on Behalf of WorldCom, Inc.

October 18, 2002; Docket No. UT-023043; Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.; Direct Testimony on Behalf of Level (3) Communications, LLC.

November 1, 2002; Docket No. UT-023043; Petition of Level 3 for Arbitration with CenturyTel of Washington, Inc.; Rebuttal Testimony on Behalf of Level (3) Communications, LLC.

January 31, 2003; Docket No. UT-021569; Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns; Comments on Behalf of WorldCom, Inc. and KMC Telecom.

May 1, 2003; Docket No. UT-021569; Developing an Interpretive or Policy Statement relating to the Use of Virtual NPA/NXX Calling Patterns; Workshop Participation on Behalf of MCI, KMC Telecom, and Level (3) Communications, LLC.

August 13, 2003; Docket No. UT-030614; In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Exchange Telecommunications Services; Direct Testimony on Behalf of MCI, Inc.

August 29, 2003; UT-030614; In the Matter of the Petition of Qwest Corporation for Competitive Classification of Basic Exchange Telecommunications Services; Rebuttal Testimony on Behalf of MCI, Inc.

September 13, 2004; Docket No. UT-033011; In the Matter of Washington Utilities and Transportation Commission, Petitioners, v. Advanced Telecom Group, Inc., et al, Respondents; Direct Testimony on Behalf of Time Warner Telecom of Washington, LLC.

West Virginia:

October 11, 1994; Case No. 94-0725-T-PC; Bell Atlantic - West Virginia Incentive Regulation Plan; Direct Testimony on Behalf of MCI.

June 18, 1998; Case No. 97-1338-T-PC; Petition of WorldCom, Inc. for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.; Rebuttal Testimony on Behalf of MCI.

Wisconsin:

October 31, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

November 14, 1988; Docket No. 05_TR_102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Rebuttal Testimony on Behalf of MCI.

December 12, 1988; Docket No. 05_TI_116; In the Matter of Provision of Operator Services; Rebuttal Testimony on Behalf of MCI.

March 6, 1989; Docket No. 6720_TI_102; Review of Financial Data Filed by Wisconsin Bell, Inc.; Direct Testimony on Behalf of MCI.

May 1, 1989; Docket No. 05_NC_100; Amendment of MCI's CCN for Authority to Provide IntraLATA Dedicated Access Services; Direct Testimony on Behalf of MCI.

May 11, 1989; Docket No. 6720_TR_103; Investigation Into the Financial Data and Regulation of Wisconsin Bell, Inc.; Rebuttal Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Disconnection of Local and Toll Services for Nonpayment -- Part A; Direct Testimony on Behalf of MCI.

July 5, 1989; Docket No. 05-TI-112; Examination of Industry Wide Billing and Collection Practices -- Part B; Direct Testimony on Behalf of MCI.

July 12, 1989; Docket No. 05-TI-112; Rebuttal Testimony in Parts A and B on Behalf of MCI.

October 9, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Direct Testimony on Behalf of MCI.

November 17, 1989; Docket No. 6720-TI-102; Review of the WBI Rate Moratorium; Rebuttal Testimony on Behalf of MCI.

December 1, 1989; Docket No. 05-TR-102; Investigation of Intrastate Access Costs, Settlements, and IntraLATA Access Charges; Direct Testimony on Behalf of MCI.

April 16, 1990; Docket No. 6720-TR-104; Wisconsin Bell Rate Case; Direct Testimony of Behalf of MCI.

October 1, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Direct Testimony on Behalf of MCI.

October 15, 1990; Docket No. 2180-TR-102; GTE Rate Case and Request for Alternative Regulatory Plan; Rebuttal Testimony on Behalf of MCI.

November 15, 1990; Docket No. 05-TR-103; Investigation of Intrastate Access Costs and Intrastate Access Charges; Direct Testimony on Behalf of MCI.

April 3, 1992; Docket No. 05-NC-102; Petition of MCI for IntraLATA 10XXX 1+ Authority; Direct Testimony on Behalf of MCI.

September 30, 2002; Docket No. 05-MA-130; Petition of Level 3 for Arbitration with CenturyTel; Direct Testimony on Behalf of Level (3) Communications, LLC.

October 9, 2002; Docket No. 05-MA-130; Petition of Level 3 for Arbitration with CenturyTel; Reply Testimony on Behalf of Level (3) Communications, LLC.

September 1, 2004; Docket No. 05-MA-135; Petition of Level 3 for Arbitration with Wisconsin Bell, Inc. d/b/a/ SBC Wisconsin; Direct Testimony on Behalf of Level (3) Communications, LLC.

Wyoming:

June 17, 1987; Docket No. 9746 Sub 1; Application of MCI for a Certificate of Public Convenience and Necessity; Direct Testimony on Behalf of MCI.

May 19, 1997; Docket No. 72000-TC-97-99; In the Matter of Compliance with Federal Regulations of Payphones; Oral Testimony on Behalf of MCI.

September 8, 2005; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Direct Testimony on Behalf of Level 3.

November 18, 2005; In the Matter of Level 3 Communications, LLC Petition for Arbitration with Qwest Corporation; Rebuttal Testimony on Behalf of Level 3.

Comments Submitted to the Federal Communications Commission and/or the Department of Justice

March 6, 1991; Ameritech Transmittal No. 518; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates for OPTINET 64 Kbps Service.

April 17, 1991; Ameritech Transmittal No. 526; Petition to Suspend and Investigate on Behalf of MCI re Proposed Flexible ANI Service.

August 30, 1991; Ameritech Transmittal No. 555; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 30, 1991; Ameritech Transmittal No. 562; Petition to Suspend and Investigate on Behalf of MCI re Proposed Rates and Possible MFJ Violations Associated with Ameritech's OPTINET Reconfiguration Service (AORS).

October 15, 1991; CC Docket No. 91-215; Opposition to Direct Cases of Ameritech and United (Ameritech Transmittal No. 518; United Transmittal No. 273) on Behalf of MCI re the introduction of 64 Kbps Special Access Service.

November 27, 1991; Ameritech Transmittal No. 578; Petition to Suspend and Investigate on Behalf of MCI re Ameritech Directory Search Service.

September 4, 1992; Ameritech Transmittal No. 650; Petition to Suspend and Investigate on Behalf of MCI re Ameritech 64 Clear Channel Capability Service.

February 16, 1995; Presentation to FCC Staff on the Status of Intrastate Competition on Behalf of MCI.

November 9, 1999; Comments to FCC Staff of Common Carrier Bureau on the Status of OSS Testing in Arizona on Behalf of MCI WorldCom, Inc.

November 9, 1999; Comments to the Department of Justice (Task Force on Telecommunications) on the Status of OSS Testing in Arizona and the USWC Collaborative on Behalf of MCI WorldCom, Inc.

Presentations Before Legislative Bodies:

April 8, 1987; Minnesota; Senate File 677; Proposed Deregulation Legislation; Comments before the House Committee on Telecommunications.

October 30, 1989; Michigan; Presentation Before the Michigan House and Senate Staff Working Group on Telecommunications; "A First Look at Nebraska, Incentive Rates and Price Caps," Comments on Behalf of MCI.

May 16, 1990; Wisconsin; Comments Before the Wisconsin Assembly Utilities Committee Regarding the Wisconsin Bell Plan for Flexible Regulation, on Behalf of MCI.

March 20, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Committee re SB 124 on behalf of MCI.

May 15, 1991; Michigan; Presentation to the Michigan Senate Technology and Energy Commission and the House Public Utilities Committee re MCI's Building Blocks Proposal and SB 124/HB 4343.

March 8, 2000; Illinois; Presentation to the Environment & Energy Senate Committee re Emerging Technologies and Their Impact on Public Policy, on Behalf of MCI WorldCom, Inc.

February 19, 2004; Presentation to the Iowa Senate Committee Regarding House Study Bill 622/Senate Study Bill 3035; Comments on Behalf of MCI.

November 30, 2004; A Report to the Wyoming Legislature: The Wyoming Universal Service Fund – Basis and Qualification for Funding.

Presentations Before Industry Groups -- Seminars:

May 17, 1989; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 15-18, 1989; Panel Presentation -- Interexchange Service Pricing Practices Under Price Cap Regulation; Comments on Behalf of MCI.

July 24, 1989; National Association of Regulatory Utility Commissioners -- Summer Committee Meeting, San Francisco, California. Panel Presentation -- Specific IntraLATA Market Concerns of Interexchange Carriers; Comments on Behalf of MCI.

May 16, 1990; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation; May 14-18, 1990; Presentation on Alternative Forms of Regulation.

October 29, 1990; Illinois Telecommunications Sunset Review Forum; Two Panel Presentations: Discussion of the Illinois Commerce Commission's Decision in Docket No. 88-0091 for the Technology Working Group; and, Discussion of the Treatment of Competitive Services for the Rate of Return Regulation Working Group; Comments on Behalf of MCI.

May 16, 1991; Wisconsin Public Utility Institute -- Telecommunications Utilities and Regulation Course; May 13-16, 1991; Participated in IntraLATA Toll Competition Debate on Behalf of MCI.

November 19, 1991; TeleStrategies Conference -- "Local Exchange Competition: The $70 Billion Opportunity." Presentation as part of a panel on "IntraLATA 1+ Presubscription" on Behalf of MCI.

July 9, 1992; North Dakota Association of Telephone Cooperatives Summer Conference, July 8-10, 1992. Panel presentations on "Equal Access in North Dakota: Implementation of PSC Mandate" and "Open Network Access in North Dakota" on Behalf of MCI.

December 2-3, 1992; TeleStrategies Conference -- "IntraLATA Toll Competition -- A Multi-Billion Dollar Market Opportunity." Presentations on the interexchange carriers' position on intraLATA dialing parity and presubscription and on technical considerations on behalf of MCI.

March 14-17, 1993; NARUC Introductory Regulatory Training Program; Panel Presentation on Competition in Telecommunications on Behalf of MCI.

May 13-14, 1993; TeleStrategies Conference -- "IntraLATA Toll Competition -- Gaining the Competitive Edge"; Presentation on Carriers and IntraLATA Toll Competition on Behalf of MCI.

May 23-26, 1994; The 12th Annual National Telecommunications Forecasting Conference; Represented IXCs in Special Town Meeting Segment Regarding the Convergence of CATV and Telecommunications and other Local Competition Issues.

March 14-15, 1995; "The LEC-IXC Conference"; Sponsored by Telecommunications Reports and Telco Competition Report; Panel on Redefining the IntraLATA Service Market -- Toll Competition, Extended Area Calling and Local Resale.

August 28-30, 1995; "Phone+ Supershow '95"; Playing Fair: An Update on IntraLATA Equal Access; Panel Presentation.

August 29, 1995; "TDS Annual Regulatory Meeting"; Panel Presentation on Local Competition Issues.

December 13-14, 1995; "NECA/Century Access Conference"; Panel Presentation on Local Exchange Competition.

October 23, 1997; "Interpreting the FCC Rules of 1997"; The Annenberg School for Communication at the University of Southern California; Panel Presentation on Universal Service and Access Reform.

February 5-6, 2002; "Litigating Telecommunications Cost Cases and Other Sources of Enlightenment"; Educational Seminar for State Commission and Attorney General Employees on Litigating TELRIC Cases; Denver, Colorado.

February 19-20, 2003; Seminar for the New York State Department of Public Service entitled "Emerging Technologies and Convergence in the Telecommunications Network". Presented with Ken Wilson of Boulder Telecommunications Consultants, LLC.

July 25, 2003; National Association of Regulatory Utility Commissioners Summer Committee Meetings; Participated in Panel regarding "Wireless Substitution of Wireline – Policy Implications."

December 8-9, 2005, CLE International 8th Annual Conference, "Telecommunications Law", "VoIP and Brand X – Legal and Regulatory Developments."

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

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Jeanne Feist hereby certifies that on December *23,* 2005, she served a copy of the foregoing:

EXHIBITS TO THE DIRECT TESTIMONY OF TIMOTHY J. GATES,

by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck North Dakota or Hand Delivered and e-mailed as noted, addressed to the following:

Mr. Donald Negaard
Pringle & Herigstad
P. O. Box 1000
Minot, ND 58702-1000
(also served via e-mail)

Mr. William W. Binek
Chief Counsel
PSC
600 East Boulevard Avenue, 9 Floor
Bismarck, ND 58505
(Hand Delivered)

Jeanne A. Feist
Jeanne Feist

Subscribed and sworn to before me this *23* day of December, 2005.

Suzanne M Cahill
Notary Public

My commission expires:

SUZANNE M CAHILL
Notary Public
State of North Dakota
My Commission Expires Jan 29, 2011

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ••
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

December 21, 2005

RECEIVED
DEC 21 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

The Honorable Al Wahl
Office Of Administrative Hearings
1707 North 9 Street
Bismarck, ND 58501-1882

RE: Midcontinent Communications v. North Dakota Telephone Company
Case No. PU-05-451
OAH No. 20050316

Dear Sir:

Enclosed for filing are the following:

1) DIRECT TESTIMONY OF WARREN R. FISCHER and EXHIBITS;

2) DIRECT TESTIMONY OF TIMOTHY J. GATES; and

3) DIRECT TESTIMONY OF MARY LOHNES.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Mr. Don Negaard
Mr. William Binek (Original/7 Copies)
Ms. Mary Lohnes
Mr. J. G. Harrington

53 PU-05-451 Pages: 2

Cover letter re Testimony and Affidavit of Service
by Midcontinent Communications by Patrick Durick, Atto
12/21/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Tara Erickson hereby certifies that on December *21*, 2005, she served a copy of the foregoing:

1) DIRECT TESTIMONY OF WARREN R. FISCHER and EXHIBITS;
2) DIRECT TESTIMONY OF TIMOTHY J. GATES; and
3) DIRECT TESTIMONY OF MARY LOHNES.

by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck North Dakota or Hand Delivered and e-mailed as noted, addressed to the following:

Mr. Donald Negaard
Pringle & Herigstad
P. O. Box 1000
Minot, ND 58702-1000
(also served via e-mail)

Mr. William W. Binek
Chief Counsel
PSC
600 East Boulevard Avenue, 9 Floor
Bismarck, ND 58505
(Hand Delivered)

Tara Erickson

Subscribed and sworn to before me this *21* day of December, 2005.

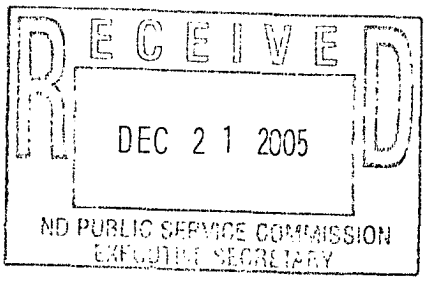
Jeanne A Feist
Notary Public

My commission expires:

JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

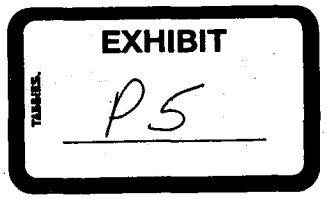


DIRECT TESTIMONY OF

WARREN R. FISCHER

On Behalf Of

MIDCONTINENT COMMUNICATIONS



December 21, 2005

52 PU-05-451 Pages: 56
Direct Testimony of Warren R. Fischer
by Midcontinent Communications
12/21/2005 CC: Comm Legal Ilona, Pat, Annette . .
Exhibit # P5 P7 P8 P9 P10

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PURPOSE OF TESTIMONY 2

III. RESALE REQUIREMENTS 3

IV. THE ESTIMATED FINANCIAL IMPACT OF RESALE ON NDTC 6

EXHIBITS

Exhibit WRF-1:	Curriculum Vitae
Exhibit WRF-2:	Financial Impact With 16.15% Discount
Exhibit WRF-3:	Financial Impact With 10% Discount
Exhibit WRF-4:	Financial Impact of Different Resale and Avoided Cost Discount %

I. INTRODUCTION

Q. MR. FISCHER, PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS FOR THE RECORD.

A. My name is Warren R. Fischer. My business address is 2500 Cherry Creek Drive South, Suite 319, Denver, Colorado 80209.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I currently serve as Director of Business Services and Research for QSI Consulting, Inc.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I have a Bachelor of Science degree in Business Administration with a concentration in Accounting from the University of Colorado in Boulder, Colorado. I am licensed as a Certified Public Accountant in the States of Colorado and California.

Q. WHAT IS YOUR EMPLOYMENT BACKGROUND?

A. After graduating from the University of Colorado, I worked for several years as an accountant with Deloitte & Touche conducting financial audits. Thereafter, I worked for two major corporations as a financial analyst. I joined AT&T Wireless Services in 1995 as a financial analyst, and I managed the preparation of annual revenue forecasts for the company's cellular division. In 1996, I transferred to AT&T Corp. where I became a financial manager and a subject matter expert on pricing and

costing issues involving local exchange and exchange access services. In 2000, I joined QSI as a Senior Consultant.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS OR OTHER PUBLIC UTILITY COMMISSIONS?

A. Yes. I testified before the North Dakota Public Service Commission ("Commission") on universal service cost issues in Docket No. PU-314-97-465 in 1998 on behalf of AT&T Communications of the Midwest, Inc. I have also testified at the FCC and before 13 other state commissions on access reform and appropriate cost-based rates under the FCC's Total Element Long-Run Incremental Cost ("TELRIC") methodology. A more detailed description of the cases I have testified in is included in my curriculum vitae as Exhibit WRF-1.

Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?

A. This testimony was prepared on behalf of the Midcontinent Communications ("Midcontinent").

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to support Midcontinent's bona fide request under 47 U.S.C. § 251(c) for wholesale resold service for the Devils Lake, North Dakota exchange within North Dakota Telephone Company's ("NDTC's") serving territory.

This testimony, combined with that of my partner, Mr. Timothy Gates, will address reasons why NDTC's exemption under 47 U.S.C. § 251(f) should be terminated. The Commission's July 28, 2005 Notice of Hearing notes that the following must be considered in evaluation a request for terminating the exemption under 47 U.S.C. § 251(f):

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.

My testimony focuses on demonstrating that Midcontinent's provisioning of resold services in Devils Lake will not be unduly economically burdensome to NDTC.

III. RESALE REQUIREMENTS

Q. WHAT IS RESALE?

A. Resale is one of three forms of competitive entry into the local exchange market contemplated by the Telecommunications Act of 1996 ("the Act"). The other two are construction of new networks and the use of unbundled network elements of the incumbent's network. 47 U.S.C. § 251(c)(4)(A) requires incumbent LECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. The incumbent LEC

sells its finished services to a CLEC at wholesale rates based upon an interim wholesale discount rate between 17 and 25% or based upon the discount produced by an avoided retail cost study for that LEC that complies with FCC pricing rules.[1] The discount reflects the retail related costs that are considered avoided or avoidable by the incumbent LEC.

Q. HOW DOES THE RESALE FORM OF COMPETITIVE ENTRY COMPARE TO THE OTHER TWO FORMS IN TERMS OF POTENTIAL FINANCIAL IMPACT ON AN INCUMBENT LEC?

A. Of the three forms of competitive entry, resale will have the smallest financial impact on the incumbent LEC while also requiring far less capital investment on the part of the CLEC. In a resale environment, the incumbent LEC will retain the physical connection with its former retail customer since the CLEC will resell an existing service. No costs are incurred to disconnect and reconnect customers, nor are network reconfigurations required. The incumbent LEC will continue to receive revenue for each customer now served by the CLEC, albeit at a lower rate than before. However, its revenue losses will be mitigated by avoiding costs required to serve customers on a retail basis.

Potential financial losses for the incumbent LEC are greater with facilities-based competition as are the risks for the new entrant. When a competitor enters the

[1] See 47 C.F.R. § 51.611.

market with its own network or by leasing the incumbents unbundled network elements on a wholesale basis, the incumbent LEC loses its retail customer entirely. In exchange for investing a significant amount of capital with no guaranteed financial return, a facilities-based carrier has the opportunity to serve the incumbent LEC's retail customers more cost effectively if it builds a more advanced and efficient network and can offer innovative service packages. This translates into a real loss of market share and profitability for the incumbent LEC if the CLEC can retain the customer.

Q. HOW ARE AVOIDED COSTS IDENTIFIED?

A. In ¶ 911of its *Local Competition First Report and Order*, the FCC concluded that, "the avoided costs are those that an incumbent LEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers."[2] Subsequently, the FCC adopted rules governing the resale of telecommunications services in 47 C.F.R. §§ 51.601 – 51.617. Section 51.609(a) requires that avoided retail costs be determined by a cost study that complies with the requirements of §51.609 which identifies direct and indirect cost accounts within the 47 C.F.R. Part 32 account system used by telecommunications carriers that contain avoided or reasonably avoidable costs. Reasonably avoidable costs include direct retail costs such as marketing, sales, and billing and collection, as well as a portion of indirect or shared costs such as general overhead.

Q. HOW IS THE AVOIDED COST DISCOUNT DETERMINED?

A. Total avoided or avoidable retail costs are divided by total revenue subject to resale for the incumbent LEC. This requires identifying services that are subject to resale under the FCC's rules. As noted previously, 47-U.S.C. § 251(c)(4)(A) requires an incumbent LEC to offer any carrier any telecommunications service that it offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates. This requirement excludes services such as switched and special access, billing and collection and other miscellaneous service that are not sold to retail customers. The resulting percentage is applied to retail rates charged by the incumbent LEC to determine the wholesale price to be paid by the CLEC for resold services. I discuss how the resale of services using an avoided cost discount might impact NDTC in Section IV of my testimony.

IV. THE ESTIMATED FINANCIAL IMPACT OF RESALE ON NDTC

Q. WERE YOU ABLE TO ESTIMATE THE FINANCIAL IMPACT OF MIDCONTINENT'S ENTRY INTO NDTC'S MARKET IN THE DEVILS LAKE EXCHANGES THROUGH RESALE?

A. Yes. I estimated this impact by using NDTC's revenue data for these exchanges, as well as company-wide accounting data provided in response to discovery. My

---

[2] See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15509 ("Local Competition First Report and Order.")

analysis included several scenarios based on different levels of an assumed resale discount rate offered by NDTC, as well as different assumptions about Midcontinent's market penetration. These financial analyses are contained in Exhibits WRF-2, WRF-3 and WRF-4.

Q. WHAT ARE THE MAIN CONCLUSIONS FROM YOUR ANALYSES?

A. I reached two conclusions. First, the financial impact of such entry would be minimal even under optimistic (from the standpoint of my client) assumptions about Midcontinent's penetration into NDTC's Devils Lake market. This conclusion is driven by several factors:

- Only the Devils Lake area would be affected;
- A significant portion of NDTC's revenue in these exchanges, such as from switched and special access and billing & collection services, would not be subject to resale;
- NDTC would continue to receive revenue on resold services; and
- NDTC should be able to realize cost savings on resold services because the retail costs associated with resale-based customers would be borne by Midcontinent.

Second, it is possible that NDTC would experience a net gain, rather than a net loss, from Midcontinent's entry. A net gain would happen if the resale discount governing the resale arrangement between NDTC and Midcontinent is lower than the

actual cost saving that NDTC would experience due to the reduction of its retail operations costs associated with resold services. I discuss the loss of revenue NDTC can expect to experience as well as the offsetting cost reductions that should occur in a resale environment below.

Q. HOW DID YOU DETERMINE WHAT PORTION OF NDTC'S REVENUE WOULD BE SUBJECT TO RESALE?

A. I estimated NDTC's revenue that would be subject to resale by subtracting wholesale revenue from NDTC's total operating revenue in the Devils Lake exchanges. NDTC provided Devils Lake-specific revenue information in its November 23, 2005 Response to Request for Disclosure of Information. Midcontinent made its bona fide request under 47 U.S.C. § 251(c), which specifies that the incumbent LECs have a duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers[.]"[3] Federal rules also specify that exchange access services "shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers."[4] In other words, Midcontinent's request concerns only NDTC's services offered to retail customers and only retail revenue constitute revenue that would potentially be subject to resale.

[3] See 47 U.S.C. § 251(c), subsection 4 (A).

[4] See 47 CFR § 51.605. In addition, section §51.617 explains that the incumbent LEC should assess end user common line charges on the requesting telecommunications carriers.

Using federal rules on the 47 C.F.R. Part 32 accounts for telecommunications companies, I identified NDTC's revenue groups that are likely to contain non-retail revenue. As I discussed above, one obvious class of non-retail revenue are those classified as Network Access Revenue.[5] Other revenue accounts that likely contain non-retail revenue are Directory and Rent, Carrier Billing and Collection, and a portion of Other Miscellaneous Revenue[6] that relates to intercarrier compensation and services to non-retail customers. All three are collectively grouped under the Miscellaneous Services category on NDTC's financial statements.

Q. DID YOU MAKE ANY ASSUMPTIONS WHEN CALCULATING NDTC'S REVENUES SUBJECT TO RESALE?

A. Yes. In regard to Miscellaneous Services, NDTC's financial data for the Devils Lake exchanges lacked the necessary account-level detail (were not split between Directory, Rent and Other Miscellaneous Revenue[7]) required to identify revenue from specific services that would be subject to resale. Because I assumed that a portion of Other Miscellaneous Revenue might constitute retail revenue, I needed to separate Rent and Directory revenue from Other Miscellaneous Revenue. I apportioned Devils Lake Miscellaneous Service revenue between the three accounts using proportions observed in the company-wide financial data. In addition, I made

5 Accounts of 508X series.

6 Account 5260.

7 Accounts 5230, 5240 and 5260 correspondingly.

an assumption about the portion of Other Miscellaneous Revenue that represents wholesale services.[8]

The following Table 1 compares NDTC's per line total revenue in the Devils Lake exchanges to per line revenue that would be subject to resale. As the table shows, revenue subject to resale constitutes approximately one third of NDTC's total per line revenue in this exchange, and the difference between the two numbers is driven largely by network access revenue.

TABLE 1

NDTC's Revenue in the Devils Lake Exchanges Subject to Resale (Per Line Per Year)

Revenue Account	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale
Local Network Access	$ 308.71	$ 308.71
Network Access Services	$ 529.09	$ -
Long Distance Network Services	$ 0.75	$ 0.75
Billing and Collection Revenue	$ 18.55	$ -
Miscellaneous Revenue	$ 32.14	$ 9.86
TOTAL DEVILS LAKE PER LINE PER YEAR	$ 889.24	$ 319.32
% of Total Revenues in Devils Lake		36%

Q. HOW DID YOU ESTIMATE THE POTENTIAL REVENUE LOSS FROM RESALE?

A. In essence, NDTC would lose revenue in the amount equal to the resale discount on each customer acquired by Midcontinent through resale from NDTC. Therefore, the

[8] This is a user-adjustable assumption that in the absence of any specific information I set at 50%.

potential revenue loss would depend on two factors –the resale discount governing the resale arrangement between NDTC and Midcontinent and Midcontinent's market penetration rate.

According to FCC rules, the resale discount should be based on the retail cost that is avoided or is reasonably avoidable through the resale process.[9] The rules state that state commissions may establish (absent of an avoided cost study) an interim wholesale discount in the range between 17 and 25%.[10] Another illustration of the typical level of resale discount is the discount currently offered by Qwest in North Dakota, which is 16.15%.[11] It is reasonable to assume that NDTC's resale discount would be somewhere close to the industry standards. As an illustration, I assumed that NDTC would adopt the Qwest's discount, and calculated the total annual revenue loss per resale-based customer. The following Table 2 depicts the results of this exercise:

9 See 47 CFR § 51.607.

10 See 47 CFR § 51.611.

11 Exhibit A to *Qwest's Statements of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services and Resale of Telecommunications Services in North Dakota*, Section 6.

220

TABLE 2

NDTC's Annual Per Line Revenue Loss On Resale-Based Customers at 16.15% Resale Discount

Revenue Account	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale	Potential Revenue Loss via Resale
Local Network Access	$ 308.71	$ 308.71	$ 49.86
Network Access Services	$ 529.09	$ -	$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.12
Billing and Collection Revenue	$ 18.55	$ -	$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 1.59
TOTAL DEVILS LAKE PER LINE PER YEAR	**$ 889.24**	**$ 319.32**	**$ 51.57**
% of Total Revenues in Devils Lake		36%	*5.8%*

221

222

223 As Table 2 demonstrates, if NDTC offers the same resale discount as Qwest's
224 discount in North Dakota, NDTC would lose only 5.8% of its revenue per line on
225 each customer that switches service to Midcontinent.

226

227 **Q. DOES TABLE 2 ABOVE ACCOUNT FOR THE POTENTIAL MARKET**
228 **PENETRATION OF MIDCONTINENT?**

229 A. No, it does not. Table 2 depicts the revenue loss on an average customer who
230 switches to Midcontinent. In other words, NDTC's actual loss of revenue in the
231 Devils Lake exchanges would be significantly less than 5.9% (the last row in Table
232 2) because only a portion of total customers would switch to Midcontinent. Industry
233 experience shows that the market penetration for resale-based CLECs is modest. For
234 example, according to data reported by Qwest on its Form 477 filed with the FCC,[12]
235 the portion of resale lines provided by Qwest in North Dakota constitutes only 1.6%

[12] Form 477 *Local Competition and Broadband Reporting.*

of its total end-user and wholesale lines.[13] On a nationwide basis for all reporting LECs this percentage is even smaller – 0.9%.[14]

Recognizing that Midcontinent may be able to achieve higher resale-based penetration than the industry average through its ability to offer bundled services,[15] I estimated the total revenue loss from resale for a number of scenarios where assumed penetration rates range from 2 to 30%.[16] Table 3 summarizes this analysis.

TABLE 3

Devils Lake Gross Revenue Loss Under Different Penetration Scenarios and 16.15% Resale Discount

Devils Lake Total Annual Operating Revenue (2004)	$ 5,040,579			
NDTC Total Annual Operating Revenue (2004)	$ 16,977,056			
PENETRATION RATE SCENARIOS	**2%**	**10%**	**20%**	**30%**
Lines Lost to Resale	113	567	1,134	1,701
Estimated Annual Gross Revenue Loss	**$ 5,846**	**$ 29,232**	**$ 58,465**	**$ 87,697**
Gross Revenue Loss as % of Devils Lake Total Revenue	0.116%	0.580%	1.160%	1.740%
Gross Revenue Loss as % of NDTC Total Revenue	0.034%	0.172%	0.344%	0.517%

[13] Based on the most recent FCC data, which is December 2004 available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/RBOC_Local_Telephone_Dec_2004.xls.

[14] Based on Table 4 of the FCC *Local Telephone Competition: Status as of December 31, 2004* released in July 2005 (ratio of columns "Resold Lines" and "Total Lines" for December 2004).

[15] Note that business customers are not a likely target for video and voice bundles. According to NDTC's data, 37% of NDTC's lines in Devils Lake exchange are business lines (Exhibit 3A to May 31, 2005 Tariff Filing).

[16] The upper boundary is in line with the publicly available cable companies' penetration rates in the telecommunications market cited in the recent FCC WC Docket No. 04-223 *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*. Specifically, the FCC *Memorandum Opinion and Order* in this case released on December 2, 2005 reported that Cox's national cable modem subscribership penetration rate was 24.6% (¶30). Qwest's June 21, 2004 *Petition for Forbearance* that initiated this docket reported that Cox's residential telephony market share in the Omaha market was estimated to be 26.5% (footnote 28).

As the last row of Table 3 demonstrates, NDTC's revenue loss from Midcontinent's entry through resale is negligible compared to NDTC's total revenue. It is less than 1% even if we assume an optimistic 30% penetration rate for Midcontinent.

Q. HOW DOES THE LEVEL OF RESALE DISCOUNT AFFECT THE NDTC'S GROSS REVENUE LOSSES FROM RESALE?

A. As the level of the resale discount decreases, so does the NDTC's gross revenue loss from resale. This fact is illustrated in Table 4 below, from Exhibit WRF-3 that compares the scenario depicted in Table 3 above (16.15% resale discount) with another scenario where the resale discount is 10%:

TABLE 4

Devils Lake Gross Revenue Loss Under Different Penetration Scenarios and 16.15% Resale Discount

Devils Lake Total Annual Operating Revenue (2004)	$ 5,040,579			
NDTC Total Annual Operating Revenue (2004)	$ 16,977,056			
PENETRATION RATE SCENARIOS	2%	10%	20%	30%
Lines Lost to Resale	113	567	1,134	1,701
Estimated Annual Gross Revenue Loss:				
At a 10% Resale Discount	$ 3,620	$ 18,101	$ 36,201	$ 54,302
At a 16.15 % Resale Discount	$ 5,846	$ 29,232	$ 58,465	$ 87,697
Gross Revenue Loss as % of NDTC Total Revenue:				
At a 10% Resale Discount	0.021%	0.107%	0.213%	0.320%
At a 16.15 % Resale Discount	0.034%	0.172%	0.344%	0.517%

As evident from this table, the gross revenue loss is smaller for the scenario where the resale discount is smaller.

Q. YOU MENTIONED ABOVE THAT ACCORDING TO 47 CFR § 51.607, THE RESALE DISCOUNT SHOULD BE BASED ON THE AVOIDED COSTS.

WHAT ARE THE AVOIDED COSTS?

A. The avoided costs are costs that "reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier."[17] Some costs would be avoided because the retail costs associated with the resold service are borne not by the incumbent, but by a carrier that purchases the services from the incumbent through wholesale. Federal rules[18] list the expense accounts[19] that would likely contain avoided costs. These accounts include product management and sales,[20] product advertising,[21] services (call completion, number services and customer operations),[22] a portion of general support expenses,[23] corporate operations,[24] as well as uncollectible revenue.[25] In addition, the rules specify that plant specific expenses other than general support expenses, as well as plant non-specific expenses, [26] may also be included in the avoided cost calculation to the extent a party proves to the state commission that these costs can reasonably be avoided.

---

17 See 47 CFR § 51.609(b).

18 See 47 CFR § 51.609.

19 For companies that record information in summary accounts (Class B companies) the rules suggest that the entire summary accounts, rather than specific accounts may be used in the determination of avoided cost (47 CFR § 51.609(e)).

20 Account 6611.

21 Account 6613.

22 Account 6620.

23 Accounts 6121-6124.

24 Account 6720.

25 Account 5300.

26 Accounts 6112-6114 and 6211-6560.

As I discussed above, the federal pricing standard for the provision of telecommunications service for resale at wholesale rates is to set the resale rates equal to retail rates minus the avoided retail costs.[27] In other words, the resale discount on prices reflects the avoided retail costs.

Q. HOW DOES THE FEDERAL REQUIREMENT THAT THE RESALE DISCOUNT BE BASED ON AVOIDED COST AFFECT YOUR ANALYSIS?

A. The pricing standard ensures that the incumbent's loss of revenue is offset by the retail cost savings when providing a service for resale at wholesale rates. In terms of the aforementioned financial analysis, it means that NDTC's expense savings need to also be considered. In other words, we need to calculate the *net* impact of Midcontinent's resale entry as the difference between NDTC's lost revenue and cost savings.

Q. WOULD THE AVOIDED COSTS PERFECTLY OFFSET REVENUE LOST FROM RESALE?

A. It is unlikely that the offset would be perfect (resulting in a zero net impact) because the calculated resale discount captures the average potential cost savings, rather than savings associated with the specific customers who actually migrated to the resale-based competitor. Certain services, such as calling features, typically contain a larger mark up over costs than the average service. Application of the (average)

[27] See 47 CFR § 51.607.

avoided cost discount to these services would result in a greater loss of revenue than the corresponding savings of retail expenses.

To recognize this fact, I separated from NDTC's total revenue in Devils Lake a portion of revenue that corresponds to features[28] and assumed that no cost savings would be realized on this revenue in case of resale. I calculated cost savings on a dollar-for-dollar basis for the remaining services subject to resale by applying the avoided cost discount to the 2004 revenue in each account. Finally, I calculated the net per line impact ("net income") of Midcontinent's resale entry by subtracting NDTC's cost savings from lost revenue. Table 5 below summarizes this analysis from Exhibit WRF-2.

TABLE 5

NDTC's Annual Per Line Net Income Loss On Resale-Based Customers at 16.15% Resale Discount

Revenue Account	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale	Potential Revenue Loss via Resale	Potential Avoided Cost	Net Loss via Resale
Local Network Access	$ 308.71	$ 308.71	$ 49.86	$ 45.72	$ 4.13
Network Access Services	$ 529.09	$ -	$ -	$ -	$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.12	$ 0.12	$ -
Billing and Collection Revenue	$ 18.55	$ -	$ -	$ -	$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 1.59	$ 1.59	$ -
TOTAL DEVILS LAKE PER LINE PER YEAR	$ 889.24	$ 319.32	$ 51.57	$ 47.44	$ 4.13

As the last column in Table 5 demonstrates, NDTC's net income loss would be only $4.13 on each customer who migrates to Midcontinent. Table 6 from Exhibit WRF-2

[28] Features revenue is available at the company-wide level only. This data was provided in Exhibit 8A to NDTC's May 31, 2005 Tariff Filing. I used the company-wide percentage of feature revenue in total local access revenue to estimate NDTC's features revenue in the Devils Lake exchanges.

below expands this analysis to estimate the NDTC's total net income loss under different market penetration rates:

TABLE 6

Devils Lake Net Income Loss Under Different Penetration Scenarios and 16.15% Resale Discount

NDTC Net Operating Income (2004)	$ 2,736,472			
PENETRATION RATE SCENARIOS	2%	10%	20%	30%
Lines Lost to Resale	113	567	1,134	1,701
Estimated Annual Net Income Loss	$ 469	$ 2,344	$ 4,688	$ 7,031
Net Income Loss as % of NDTC Net Operating Income	0.017%	0.086%	0.171%	0.257%

Table 6 shows that the total annual net income loss is minimal in both absolute and percentage terms compared to NDTC's overall net income under all penetration scenarios. In fact, the relative loss of net income in the last column in Table 6 (0.257% of total NDTC net income) is lower than the relative loss of gross revenue in the last column of Table 3 (0.517% of total NDTC operating revenue).[29]

Q. IS IT POSSIBLE THAT THE NET IMPACT OF MIDCONTINENT'S RESALE-BASED ENTRY INTO NDTC'S DEVILS LAKE MARKET WOULD RESULT IN A NET GAIN (RATHER THAN NET LOSS) TO NDTC?

A. Yes. NDTC may experience a net gain, rather than a net loss in income if the resale discount is set at a level that is lower than the avoided retail costs. Because of the asymmetric nature of information necessary to determine the avoided cost

[29] This table does not report the net income loss relative to Devils Lake net income because the latter information is not available.

(information that concerns NDTC's own operations and is available to NDTC but not Midco), it is possible that a resale discount rate negotiated between parties in a settlement agreement or the discount approved by a commission based upon an interim cost estimate or another carrier's avoided cost discount could be lower than the retail costs actually avoided by NDTC. As an illustration I estimated a scenario where the resale discount is set at 14%, which is only marginally lower than the actual avoided costs (the 16.15% as assumed in the above analysis) experienced by the incumbent LEC. It turns out that even such a small discrepancy between the resale discount and avoided cost may create a net gain for NDTC:

TABLE 7[30]

NDTC's Annual Per Line Net Income Loss (Gain) On Resale-Based Customers:
Resale Discount (at 14%) is Lower than Avoided Costs (at 16.15%)

Revenue	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale	Potential Revenue Loss via Resale	Potential Avoided Cost	Net Loss (Gain) via Resale
Local Network Access	$ 308.71	$ 308.71	$ 43.22	$ 45.72	$ (2.50)
Network Access Services	$ 529.09	$ -	$ -	$ -	$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.10	$ 0.12	$ (0.02)
Billing and Collection Revenue	$ 18.55	$ -	$ -	$ -	$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 1.38	$ 1.59	$ (0.21)
TOTAL DEVIL'S LAKE PER LINE PER YEAR	$ 889.24	$ 319.32	$ 44.71	$ 47.44	$ (2.73)

In this table the net loss is negative, indicating a net gain on each customer who migrates from NDTC to Midcontinent's resale-based service. Even if a NDTC-specific discount is used, the differential could also occur if the proportion of avoided costs to revenue subject to resale changes in future years while the effective discount rate remains static.

[30] Based on Exhibit WRF-4.

Q. BASED UPON THE VARIOUS ANALYSES YOU HAVE PERFORMED, WHAT IS YOUR CONCLUSION REGARDING THE FINANCIAL IMPACT OF RESALE ON NDTC?

A. The financial impact of resale on NDTC's Devils Lake operation will be *de minimus* and in no way will be unduly economically burdensome. I therefore recommend that the Commission approve Midcontinent's request to terminate NDTC's exemption under 47 U.S.C. § 251(f).

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

DIRECT TESTIMONY OF

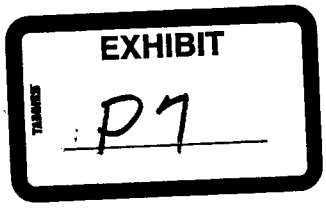
WARREN R. FISCHER

On Behalf Of

MIDCONTINENT COMMUNICATIONS

EXHIBIT WRF-1

December 21, 2005



Case No. PU-05-451
Direct Testimony of Warren Fischer
Exhibit WRF-1

Warren R. Fischer, CPA

Director of Business Services and Research
QSI Consulting, Inc.

2500 Cherry Creek Drive South
Suite 319
Denver, Colorado, 80209-3279
(303) 722-2684 voice
(303) 883-9014 mobile
(303) 733-3016 facsimile
WFischer@QSIconsulting.com

Biography

Mr. Fischer is a QSI partner and currently serves as Director of Business Services and Research in QSI's Telecommunications Division. Mr. Fischer has over ten years of experience in the telecommunications industry and joined QSI after five years of service within AT&T's Local Service & Access Management and Wireless Services divisions. During his telecommunications career, Mr. Fischer has focused his attention largely on TELRIC pricing, local market entry, Section 271 compliance, access and universal service reform issues and damages assessment.

Mr. Fischer is an experienced and effective expert witness and has provided expert testimony before 14 state utility commissions and other administrative agencies. Mr. Fischer is an active Certified Public Accountant who is licensed in the States of Colorado and California. Mr. Fischer's professional experience as a C.P.A. includes two years in public practice with Deloitte and Touche LLP and over 17 years of managing financial analysis, reporting and forecasting processes for various multi-national corporations.

Educational Background

Bachelor of Science, Business Administration (emphasis in Accounting)
University of Colorado at Boulder, Boulder, Colorado 1984

QSI consulting, inc.

Professional Experience

QSI Consulting, Inc.
2000 - Current
Director of Business Services and Research

AT&T Corp.
1997 - 2000
Financial Manager
1996 - 1997
Supervisor
Network Services Division

AT&T Wireless Services
1995 - 1996
Marketing Analyst / Planner
Cellular Division

E. & J. Gallo Winery
1994 - 1995
Senior Financial Analyst
1991 - 1994
Operations Accountant

Century 21 Real Estate Corporation
1987 - 1991
Financial Analyst

Deloitte & Touche LLP
1985 - 1987
Audit-in-Charge

Expert Testimony – Profile

The information below is Mr. Fischer's best effort to identify all proceedings wherein he has either provided pre-filed written testimony, an expert report or provided live testimony.

Before the Federal Communications Commission
File Nos. EB-01-MD-001 and EB-01-MD-002
In the matter of the formal complaints of AT&T corp. and Sprint Communications Company L.P., vs. Business Telecom, Inc.
On behalf of Business Telecom, Inc.
Affidavit — February 23, 2001

Before the Public Utilities Commission of the State of Colorado
Docket No. 99A-161T
In the matter of the application of U S WEST Communications, Inc., to reduce business basic exchange and long-distance revenues upon receipt of the Colorado high-cost support mechanism in accordance with Decision No. C 99-222
On behalf of AT&T Communications of the Mountain States, Inc.
Direct — August 6, 1999

Before the Public Utilities Commission of the State of Colorado
Docket No. 98A-068T
In the matter of the application of U S WEST Communications, Inc., to restructure and reduce switched access rates pursuant to the stipulation in Docket No. 97A-540T
On behalf of AT&T Communications of the Mountain States, Inc.
Amended Direct — May 17, 1999
Supplemental — June 9, 1999

Before the Public Service Commission of Florida
Docket No. 041464-TP
Petition of Sprint–Florida, Inc. for Arbitration of an Interconnection Agreement with Florida Digital Network, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996
On Behalf of Florida Digital Network, Inc. D/B/A FDN Communications
Direct — May 27, 2005

Before the Public Service Commission of Florida
Docket No. 990649B-TP
In re: investigation into pricing of unbundled network elements
On Behalf of AT&T Communications of the Southern States, Inc., MCImetro Access Transmission Services, LLC & MCI WorldCom Communications, Inc., and Florida Digital Network, Inc. (collectively called the "ALEC Coalition")
Rebuttal — January 30, 2002

Before the Illinois Commerce Commission
Docket No. 02-0864
Illinois Bell Telephone Company: Filing to increase unbundled loop and nonrecurring rates (tariffs filed December 24, 2002)
On Behalf of AT&T Communications of Illinois, Inc., WorldCom, Inc. ("MCI"), McLeodUSA Telecommunications Services, Inc., Covad Communications Company, TDS Metrocom, LLC, Allegiance Telecom of Illinois, Inc., RCN Telecom Services of Illinois, LLC, Globalcom, Inc., Z-Tel Communications, Inc., XO Illinois, Inc., Forte Communications, Inc., and CIMCO Communications, Inc.
Direct — May 6, 2003
Rebuttal — January 20, 2004
Surrebuttal — February 20, 2004
Supplemental Surrebuttal — May 5, 2004

Before the Indiana Utility Regulatory Commission
Cause No. 42393
In the matter of the commission investigation and generic proceeding of rates and unbundled network elements and collocation for Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana pursuant to the Telecommunications Act of 1996 and related Indiana statutes
On behalf of AT&T Communications of Indiana, G.P. and TCG Indianapolis ("AT&T), WorldCom, Inc. ("MCI"), McLeodUSA Telecommunications Services, Inc., Covad Communications Company, and Z-Tel Communications, Inc.
Response — August 15, 2003

Before the Public Service Commission of Maryland
Case No. 8879
In the matter of the investigation into rates for unbundled network elements pursuant to the Telecommunications Act of 1996
On Behalf of the Staff of the Public Service Commission of Maryland
Rebuttal — September 5, 2001
Supplemental Rebuttal — October 4, 2001
Surrebuttal — October 15, 2001

Before the Massachusetts Department of Telecommunications and Energy
Docket DTE 01-20
Investigation by the department on its own motion into the appropriate pricing, based upon total element long-run incremental costs, for unbundled network elements and combinations of unbundled network elements, and the appropriate avoided cost discount for Verizon New England Inc., d/b/a Verizon Massachusetts' resale services
On Behalf of the CLEC Coalition
Rebuttal July 17, 2001

Before the Michigan Public Service Commission
Case No. U-13531
In the matter, on the commission's own motion, to review the costs of telecommunications services provided by SBC Michigan
On behalf of AT&T Communications of Michigan, Inc., and TCG Detroit ("AT&T")
Initial January 20, 2004
Final Reply May 10, 2004

Before the Michigan Public Service Commission
Case No. U-11756
In the matter of the complaint of Michigan Pay Telephone Association et al. Against Ameritech Michigan and Verizon North Inc., f/k/a GTE North Incorporated
On behalf of Michigan Pay Telephone Association and the other payphone service provider Complainants
Direct February 10, 2003

Before the Public Service Commission of the State of Montana
Docket No. D97.5.87
IN THE MATTER OF the Investigation into U S WEST Communications, Inc.'s Compliance with Section 271(c) of the Telecommunications Act of 1996
On behalf of AT&T Communications of the Mountain States
Direct June 1998
Rebuttal June 1998
Supplemental Rebuttal November 1998

Before the Public Service Commission of the State of Montana
Docket No. D96.12.220
IN THE MATTER of the Application of U S WEST Communications, Inc. to Restructure its Prices for Regulated Telecommunications Service.
On behalf of AT&T Communications of the Mountain States, Inc.
Direct October 1997

Before the Nebraska Public Service Commission
Application No. C-1628
In the matter of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform and intrastate universal service fund
On behalf of AT&T Communications of the Midwest, Inc.
Direct October 20, 1998

Before the Nebraska Public Service Commission
Application No. C-1830
In the Matter of US West Communications, Inc., filing its notice of intention to file Section 271(c) application with the FCC and request for Commission to verify US West compliance with Section 271(c)
On behalf of AT&T Communications of the Midwest, Inc.
Direct and rebuttal — August 1998

Before the Nebraska Public Service Commission
Docket No. C-1519
In the matter of the emergency petition of MCI Telecommunications Corporation and AT&T Communications of the Midwest, Inc. to investigate compliance of Nebraska LECs with FCC payphone orders
On behalf of AT&T Communications of the Midwest, Inc.
Direct — January 20, 1998

Before the New Mexico State Corporation Commission
Docket No. 96-310-TC and Docket No. 97-334-TC
In the matter of the consideration of the adoption of a rule concerning costing methodologies and In the matter of the implementation of new rules related to the rural, high-cost, and low-income components of the New Mexico universal service fund
On behalf of AT&T Communications of the Mountain States, Inc.
Direct — July 8, 1998
Rebuttal — August 5, 1998

Before the New Mexico State Corporation Commission
Docket No. 97-106-TC
In The Matter Of Qwest Corporation's Section 271 Application And Motion For Alternative Procedure To Manage The Section 271 Process
On behalf of AT&T Communications of the Mountain States, Inc.
Direct — July 1998
Rebuttal — July 1998
Reply — September 1998

Before the New Mexico State Corporation Commission
Docket No. 97-69-TC
On behalf of AT&T Communications of the Mountain States, Inc.
Direct — March 20, 1997

Before the North Carolina Utilities Commission
Docket No. P-100, Sub 133d, Phase I
In the matter of general proceeding to determine permanent pricing for unbundled network elements
On Behalf of New Entrants
Direct — August 11, 2000

Before the Public Service Commission of the State of North Dakota
Docket No. PU-314-97-465
In the matter of U S WEST Communications, Inc., universal service costs investigation
On behalf of AT&T Communications of the Midwest, Inc.
Rebuttal — February 27, 1998

Before the Public Service Commission of Wisconsin
Docket No. 6720-TI-187
Petition of SBC Wisconsin to determine rates and costs for unbundled network elements
On behalf of AT&T Communications of Wisconsin, L.P. and TCG Milwaukee ("AT&T"), and MCI, Inc.
Rebuttal June 15, 2004

Before the Wyoming Public Service Commission
Docket No. 70000-TA-98-442
In the matter of the second application of U S WEST Communications, Inc., for a finding that its interexchange telecommunications services are subject to competition
On behalf of AT&T Communications of the Mountain States, Inc.
Direct January 6, 1999

Before the Wyoming Public Service Commission
Docket No. 70000-TR-98-420
In the matter of the application of U S WEST Communications, Inc., for authority to implement price ceiling in conjunction with its proposed Wyoming price regulation plan for essential and noncompetitive telecommunication services
On behalf of AT&T Communications of the Mountain States, Inc.
Direct September 9, 1998

Before the Wyoming Public Service Commission
General Order No. 81
In the matter of the investigation by the Commission of the feasibility of developing its own costing model for use in determining federal universal service fund support obligations in Wyoming
On behalf of AT&T Communications of the Mountain States, Inc.
Direct November 1997
Amended Direct January 23, 1998
Rebuttal February 6, 1998

Before the Wyoming Public Service Commission
Docket No. 72000-TI-97-107 and Docket No. 70000 TI-97-352
In the matter of the petition of AT&T for the Commission to initiate investigation of U S WEST Communications, Inc.'s compliance with Section 271 of the Telecommunications Act of 1996
On behalf of AT&T Communications of the Mountain States, Inc.
Direct 1998

Before the Wyoming Public Service Commission
Docket No. 72000-TC-97-99
On behalf of AT&T Communications of the Mountain States, Inc.
Direct May 15, 1997

Before the Wyoming Public Service Commission
Docket No. 70007-TR-95-15
On behalf of AT&T Communications of the Mountain States, Inc.
Adopted Pre-filed Direct October 1996

Selected Reports, Presentations and Publications

QSI Final Report to the Hawaii Public Utilities Commission "Analysis and Recommendations Related to Docket No. 04-0140 *Merger Application Of Paradise Mergersub, Inc. (n/k/a Hawaiian telecom Mergersub, Inc.), Verizon Hawaii, Inc. and Related Companies*" February 7, 2005

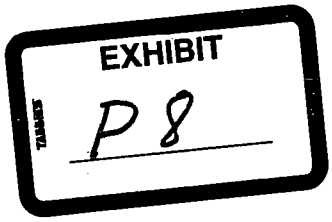
QSI Technical Report No. 012605A "IP-Enabled Voice Services: Impact of Applying Switched Access Charges to IP-PSTN Voice Services"
Ex Parte filing in FCC dockets WC Dockets No. 04-36 (In the Matter of IP-Enabled Services), 03-266 (In the Matter of Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b); IP Enabled Services)
Washington DC, January 27, 2005

QSI Report to the Wyoming Legislature "The Wyoming Universal Service Fund. *An Evaluation of the Basis and Qualifications for Funding*" December 3, 2004

QSI Audit Report to the Wyoming Public Service Commission on the "Wyoming Universal Service Fund from October 28, 1999 through December 31, 2001" May 15, 2002

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	



DIRECT TESTIMONY OF

WARREN R. FISCHER

On Behalf Of

MIDCONTINENT COMMUNICATIONS

EXHBIT WRF-2

December 21, 2005

Table 1

NDTC's Revenue in the Devils Lake Exchanges Subject to Resale (Per Line Per Year)

Revenue Account	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale
Local Network Access	$ 308.71	$ 308.71
Network Access Services	$ 529.09	$ -
Long Distance Network Services	$ 0.75	$ 0.75
Billing and Collection Revenue	$ 18.55	$ -
Miscellaneous Revenue	$ 32.14	$ 9.86
TOTAL DEVILS LAKE PER LINE PER YEAR	**$ 889.24**	**$ 319.32**
% of Total Revenues in Devils Lake		36%

Table 2

NDTC's Annual Per Line Revenue Loss On Resale-Based Customers at 16.15% Resale Discount

Revenue Account	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale	Potential Revenue Loss via Resale
Local Network Access	$ 308.71	$ 308.71	$ 49.86
Network Access Services	$ 529.09	$ -	$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.12
Billing and Collection Revenue	$ 18.55	$ -	$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 1.59
TOTAL DEVILS LAKE PER LINE PER YEAR	**$ 889.24**	**$ 319.32**	**$ 51.57**
% of Total Revenues in Devils Lake		36%	*5.8%*

Table 3.

Devils Lake Gross Revenue Loss Under Different Penetration Scenarios and 16.15% Resale Discount

Devils Lake Total Annual Operating Revenue (2004)	$ 5,040,579
NDTC Total Annual Operating Revenue (2004)	$ 16,977,056

PENETRATION RATE SCENARIOS	2%	10%	20%	30%
Lines Lost to Resale	113	567	1,134	1,701
Estimated Annual Gross Revenue Loss	**$ 5,846**	**$ 29,232**	**$ 58,465**	**$ 87,697**
Gross Revenue Loss as % of Devils Lake Total Revenue	0.116%	0.580%	1.160%	1.740%
Gross Revenue Loss as % of NDTC Total Revenue	0.034%	0.172%	0.344%	0.517%

Table 5.

NDTC's Annual Per Line Net Income Loss On Resale-Based Customers at 16.15% Resale Discount

Revenue Account	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale	Potential Revenue Loss via Resale	Potential Avoided Cost	Net Loss via Resale
Local Network Access	$ 308.71	$ 308.71	$ 49.86	$ *45.72*	$ 4.13
Network Access Services	$ 529.09	$ -	$ -	$ -	$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.12	$ *0.12*	$ -
Billing and Collection Revenue	$ 18.55	$ -	$ -	$ -	$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 1.59	$ *1.59*	$ -
TOTAL DEVILS LAKE PER LINE PER YEAR	**$ 889.24**	**$ 319.32**	**$ 51.57**	**$ 47.44**	$ 4.13

Table 6.

Devils Lake Net Income Loss Under Different Penetration Scenarios and 16.15% Resale Discount

NDTC Net Operating Income (2004)	$ 2,736,472

PENETRATION RATE SCENARIOS	2%	10%	20%	30%
Lines Lost to Resale	113	567	1,134	1,701
Estimated Annual Net Income Loss	**$ 469**	**$ 2,344**	**$ 4,688**	**$ 7,031**
Net Income Loss as % of NDTC Net Operating Income	0.017%	0.086%	0.171%	0.257%

NORTH DAKOTA TELEPHONE COMPANY
DEVILS LAKE PER LINE IMPACT OF RESALE ENTRY

Assumed Resale Discount			16.15%			
Assumed Avoided Cost Percent				16.15%		
Features Revenue as % of Local Network Access				8.3%		
Revenue	**2004 Revenue Per Line**	**2004 Revenue Per Line Subject to Resale**	**Potential Revenue Loss via Resale**	**Potential Avoided Cost**	**Note**	**Net Loss via Resale**
Local Network Access	$ 308.71	$ 308.71	$ 49.86	$ *45.72*	Assuming no cost savings on features.	$ 4.13
Network Access Services	$ 529.09	$ -	$ -	$ -		$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.12	$ *0.12*		$ -
Billing and Collection Revenue	$ 18.55	$ -	$ -	$ -		$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 1.59	$ *1.59*		$ -
TOTAL PER LINE PER YEAR	**$ 889.24**	**$ 319.32**	**$ 51.57**	**$ 47.44**		**$ 4.13**

DEVILS LAKE TOTAL IMPACT UNDER DIFFERENT PENETRATION SCENARIOS

Devils Lake Total Lines	**5,668**
Devils Lake Total Annual Operating Revenue (2004)	**$ 5,040,579**
NDTC Total Annual Operating Revenue (2004)	**$ 16,977,056**
NDTC Net Operating Income (2004)	**$ 2,736,472**

PENETRATION RATE SCENARIOS	**2%**	**5%**	**10%**	**15%**	**20%**	**25%**	**30%**
LINES LOST TO RESALE	**113**	**283**	**567**	**850**	**1,134**	**1,417**	**1,701**
ESTIMATED ANNUAL TOTAL GROSS REVENUE LOSS	$ 5,846	$ 14,616	$ 29,232	$ 43,849	$ 58,465	$ 73,081	$ 87,697
ESTIMATED ANNUAL TOTAL NET PROFIT LOSS	$ 469	$ 1,172	$ 2,344	$ 3,516	$ 4,688	$ 5,859	$ 7,031
ESTIMATED NET PROFIT LOSS AS A % OF DEVILS LAKE TOTAL REVENUE	0.0093%	0.0232%	0.0465%	0.0697%	0.0930%	0.1162%	0.1395%
ESTIMATED NET PROFIT LOSS AS A % OF NDTC TOTAL REVENUE	0.0028%	0.0069%	0.0138%	0.0207%	0.0276%	0.0345%	0.0414%
ESTIMATED NET PROFIT LOSS AS A % OF NDTC NET OPERATING REVENUE	0.0171%	0.0428%	0.0856%	0.1285%	0.1713%	0.2141%	0.2569%

ILEC Provided Lines (FCC data compiled from Form 477)

http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/RBOC_Local_Telephone_Dec_2004.xls

As of December 2004

	Qwest ND	Nationwide
Total lines and channels provided to end users	134,368	122,094,383
Lines and channels that are provided to unaffiliated carriers under a Total Service Resale arrangement	2,856	1,112,918
Lines and channels that are provided to unaffiliated carriers under other resale arrangements, such as resold centrex	190	138,709
Lines and channels that are provided to unaffiliated carriers under a UNE loop arrangement, where switching is not provided	22,493	3,955,383
Lines and channels that are provided to unaffiliated carriers under a UNE loop arrangement, where switching is also provided	26,480	16,369,009
Total Lines	**186,387**	**143,670,402**
% Lines Provided Via Resale	**1.6%**	**0.9%**
% Lines Provided Via Resale, UNE-L and UNE-P	28%	15%

NORTH DAKOTA TELEPHONE COMPANY
DETERMINATION OF REVENUES SUBJECT TO RESALE IN DEVILS LAKE EXCHANGE

													Assumed Resale Discount	
														16.15%
ACCOUNT		NDTC TOTAL COMPANY			DEVILS LAKE									
		By Account	By Account Group	% of Account Group	By Account	By Account Group	Per Line Annual	Assumed % Revenues Subject to Resale	Note			Per Line Revenue Subject to Resale		Potential Revenue Loss via Resale
Source:		Discovery [1]	Discovery [1]	Calculated	Projected Based on NDTC totals	Discovery [2]								
Local Service														
1.5001.	Local Service	$ 4,941,869		100%	$ 1,749,911		$ 308.71	100%				$ 308.71	$	49.86
	Total Local Service Revenues		$ 4,941,869			$ 1,749,911								
5060	Other basic area revenue								Per 47 CFR 32.5060 include features revenue. We are assuming NDTC reports features revenue under 5001					
Network Access														
1.5081.	End User Revenue	$ 1,620,841		15%	$ 448,994		$ 79.21	0%	Per 47 CFR 51.605			$ -	$	-
1.5082.	Interstate Switched Access Revenue	$ 3,603,707		33%	$ 998,273		$ 176.11	0%	Per 47 CFR 51.605			$ -	$	-
1.5083.	Special Access Revenue	$ 2,057,108		19%	$ 569,845		$ 100.53	0%	Per 47 CFR 51.605			$ -	$	-
1.5086.	Intrastate Switched Access Revenue	$ 3,545,005		33%	$ 982,011		$ 173.24	0%	Per 47 CFR 51.605			$ -	$	-
	Total Network Access Revenues		$ 10,826,661			$ 2,999,123								
Long Distance Message Revenue														
1.5100.	Long Distance Message Revenue	$ 11,763		88%	$ 3,718		$ 0.66	100%				$ 0.66	$	0.11
1.5160.	Other Long Distance Revenue	$ 1,655		12%	$ 523		$ 0.09	100%				$ 0.09	$	0.01
	Total Long Distance Network Services		$ 13,418			$ 4,241								
Billing and Collection Revenue														
1.5270.	Carrier Billing and Collection Revenue	$ 332,557		100%	$ 105,121		$ 18.55	0%	Not a retail service			$ -	$	-
	Total Billing and Collection Revenue		$ 332,557			$ 105,121								
Miscellaneous Revenue														
1.5230.	Directory Revenue	$ 282,476		33%	$ 59,663		$ 10.53	0%	Not a retail service			$ -	$	-
1.5240.	Rent Revenue	$ 50,673		6%	$ 10,703		$ 1.89	0%	Not a retail service			$ -	$	-
									Per 47 CFR 32.5200: Includes "wholesale" services to other companies, contract services to others such as maintenance of plant, settlement payments, UNE, local interconnection. Also include revenues that might be partially "retail:" late payments, unclaimed refunds, and provision of special billing info to customers.			$ 9.86		
1.5260.	Miscellaneous Revenue	$ 529,402		61%	$ 111,817		$ 19.73	50%					$	1.59
	Total Miscellaneous Revenue		$ 862,551			$ 182,183								
	TOTAL OPERATING REVENUES	**$ 16,977,056**	**$ 16,977,056**		**$ 5,040,579**	**$ 5,040,579**	**$ 889.24**					**$ 319.32**	**$**	**51.57**

[1] NDTC provided its 2004 Part 32 revenue and expenses in response to discovery issued on December 6, 2005.

[2] NDTC provided operating revenue by account for Devil's Lake in its November 23, 2005 Response to Request for Disclosure of Information.

NORTH DAKOTA TELEPHONE COMPANY
FINANCIAL AND LINE COUNT DATA FOR DEVILS LAKE EXCHANGES

	NDTC	DEVILS LAKE	SOURCE
AVERAGE ACCESS LINES			
Grand Total per Exhibit 3A Divided by 12 months	18,405	5,668	Exhibit 3A to NDTC EAS filing
% of Total NDTC		30.8%	
2004 OPERATING REVENUE			
Local Network Access	4,941,869	$ 1,749,911	11/23/05 Discovery Response
Network Access Services		$ 2,999,123	11/23/05 Discovery Response
Long Distance Network Services		$ 4,241	11/23/05 Discovery Response
Billing and Collection Revenue		$ 105,121	11/23/05 Discovery Response
Miscellaneous Revenue		$ 182,183	11/23/05 Discovery Response
TOTAL REVENUE	**16,977,056**	**$ 5,040,579**	
Features Revenue	$ 409,845		Exhibit 8A to NDTC EAS filing
Features Revenue as % of Local Network Access	8.3%		

Source: NDTC Response to Alternative Discovery dated 12/6/5

North Dakota Telephone Company
Statement of Operating Revenue and Operating Expenses
For the Year December 31, 2004

OPERATING REVENUES

Local Service			
1.5001.	Local Service	4,941,869	
	Total Local Service Revenues		4,941,869
Network Access			
1.5081.	End User Revenue	1,620,841	
1.5082.	Interstate Switched Access Revenue	3,603,707	
1.5083.	Special Access Revenue	2,057,108	
1.5086.	Intrastate Switched Access Revenue	3,545,005	
	Total Network Access Revenues		10,826,661
Long Distance Message Revenue			
1.5100.	Long Distance Message Revenue	11,763	
1.5160.	Other Long Distance Revenue	1,655	
	Total Long Distance Network Services		13,418
Billing and Collection Revenue			
1.5270.	Carrier Billing and Collection Revenue	332,557	
	Total Billing and Collection Revenue		332,557
Miscellaneous Revenue			
1.5230.	Directory Revenue	282,476	
1.5240.	Rent Revenue	50,673	
1.5260.	Miscellaneous Revenue	529,402	
	Total Miscellaneous Revenue		862,551
	TOTAL OPERATING REVENUES		16,977,056

OPERATING EXPENSES

Plant Specific Expense			
1.6120.	General Support Expense		
1.6121.	Land and Buildings	223,755	
1.6122.	Furniture and Artwork	2,605	
1.6123.	Office Equipment	122,275	
1.6124.	General Purpose Computers	285,243	
1.6210.	Central Office Switching Equipment		
1.6212.	Digital Electronics Expense	1,050,405	
1.6230.	Central Office Transmission Equip		
1.6231.	Radio Systems Expense	62,906	
1.6232.	Circuit Equipment Expense	268,018	
1.6410.	Cable and Wire Facilities Expense		
1.6411.	Poles Expense	(1,295)	
1.6421.	Aerial Cable Expense	35,396	
1.6422.	Underground Cable Expense	1,248	
1.6423.	Buried Cable Expense	907,393	
1.6424.	Submarine Cable Expense	124	
	Total Plant Specific Expenses		2,958,072
Plant NonSpecific			

Source: NDTC Response to Alternative Discovery dated 12/6/5

North Dakota Telephone Company
Statement of Operating Revenue and Operating Expenses
For the Year December 31, 2004

1.6530.	Network Operations Expense		
1.6531.	Power Expense	117,657	
1.6532.	Network Administration Expense	34,406	
1.6533.	Testing Expense	54,264	
1.6534.	Plant Operations Expense	516,157	
1.6535.	Engineering Expense	363,575	
1.6540.	Access Expense	321,104	
	Total Plant NonSpecific Expenses		1,407,163
Depreciation Expense			
1.6561.	Depreciation Expense	4,595,524	
	Total Depreciation Expense		4,595,524
Customer Operations			
1.6610.	Marketing	166,748	
1.6620.	Services		
1.6622.	Number Services Expense	125,077	
1.6623.	Customer Service Expense	832,329	
1.6627.	Customer Service - Revenue Acctg	447,876	
	Total Customer Operations Expense		1,572,030
Corporate Operations			
1.6710.	Executive and Planning		
1.6711.	Executive	567,464	
1.6720.	General and Administrative		
1.6721.	Accounting and Finance	509,669	
1.6722.	External Relations	276,973	
1.6723.	Human Resources/Personnel	160,834	
1.6724.	Information Management	77,290	
1.6725.	Legal	40,507	
1.6728.	General and Administrative	294,035	
	Total Corporate Operations Expense		1,926,772
Operating Taxes, Other			
1.7200.	Operating Taxes Property	117,807	
1.7240.	Operating Taxes Other	5,140	
	Total Operating Taxes, Other		122,947
	TOTAL OPERATING EXPENSES		12,582,508
Operating Income Taxes			
1.7220.	Oper Taxes-Fed Inc	1,658,076	
	Total Operating Income Taxes		1,658,076
	TOTAL OPERATING NET INCOME		**2,736,472**

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

DIRECT TESTIMONY OF

WARREN R. FISCHER

On Behalf Of

MIDCONTINENT COMMUNICATIONS

EXHBIT WRF-3

December 21, 2005

Table 4.

Devils Lake Gross Revenue Loss Under Different Penetration Scenarios and 16.15% Resale Discount

Devils Lake Total Annual Operating Revenue (2004)	$ 5,040,579			
NDTC Total Annual Operating Revenue (2004)	$ 16,977,056			
PENETRATION RATE SCENARIOS	**2%**	**10%**	**20%**	**30%**
Lines Lost to Resale	113	567	1,134	1,701
Estimated Annual Gross Revenue Loss:				
At a 10% Resale Discount	**$ 3,620**	**$ 18,101**	**$ 36,201**	**$ 54,302**
At a 16.15 % Resale Discount	**$ 5,846**	**$ 29,232**	**$ 58,465**	**$ 87,697**
Gross Revenue Loss as % of NDTC Total Revenue:				
At a 10% Resale Discount	**0.021%**	**0.107%**	**0.213%**	**0.320%**
At a 16.15 % Resale Discount	**0.034%**	**0.172%**	**0.344%**	**0.517%**

NORTH DAKOTA TELEPHONE COMPANY
DEVILS LAKE PER LINE IMPACT OF RESALE ENTRY

Assumed Resale Discount			**10.00%**			
Assumed Avoided Cost Percent				**10.00%**		
Features Revenue as % of Local Network Access				**8.3%**		
Revenue	**2004 Revenue Per Line**	**2004 Revenue Per Line Subject to Resale**	**Potential Revenue Loss via Resale**	**Potential Avoided Cost**	**Note**	**Net Loss via Resale**
Local Network Access	$ 308.71	$ 308.71	$ 30.87	$ *28.31*	Assuming no cost savings on features.	$ 2.56
Network Access Services	$ 529.09	$ -	$ -	$ -		$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.07	$ *0.07*		$ -
Billing and Collection Revenue	$ 18.55	$ -	$ -	$ -		$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 0.99	$ *0.99*		$ -
TOTAL PER LINE PER YEAR	**$ 889.24**	**$ 319.32**	**$ 31.93**	**$ 29.37**		**$ 2.56**

DEVILS LAKE TOTAL IMPACT UNDER DIFFERENT PENETRATION SCENARIOS

Devils Lake Total Lines	**5,668**
Devils Lake Total Annual Operating Revenue (2004)	**$ 5,040,579**
NDTC Total Annual Operating Revenue (2004)	**$ 16,977,056**
NDTC Net Operating Income (2004)	**$ 2,736,472**

PENETRATION RATE SCENARIOS	**2%**	**5%**	**10%**	**15%**	**20%**	**25%**	**30%**
LINES LOST TO RESALE	**113**	**283**	**567**	**850**	**1,134**	**1,417**	**1,701**
ESTIMATED ANNUAL TOTAL GROSS REVENUE LOSS	$ 3,620	$ 9,050	$ 18,101	$ 27,151	$ 36,201	$ 45,252	$ 54,302
ESTIMATED ANNUAL TOTAL NET PROFIT LOSS	$ 290	$ 726	$ 1,451	$ 2,177	$ 2,903	$ 3,628	$ 4,354
ESTIMATED NET PROFIT LOSS AS A % OF DEVILS LAKE TOTAL REVENUE	0.0058%	0.0144%	0.0288%	0.0432%	0.0576%	0.0720%	0.0864%
ESTIMATED NET PROFIT LOSS AS A % OF NDTC TOTAL REVENUE	0.0017%	0.0043%	0.0085%	0.0128%	0.0171%	0.0214%	0.0256%
ESTIMATED NET PROFIT LOSS AS A % OF NDTC NET OPERATING REVENUE	0.0106%	0.0265%	0.0530%	0.0796%	0.1061%	0.1326%	0.1591%

ILEC Provided Lines (FCC data compiled from Form 477)

http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/RBOC_Local_Telephone_Dec_2004.xls

As of December 2004

	Qwest ND	Nationwide
Total lines and channels provided to end users	134,368	122,094,383
Lines and channels that are provided to unaffiliated carriers under a Total Service Resale arrangement	2,856	1,112,918
Lines and channels that are provided to unaffiliated carriers under other resale arrangements, such as resold centrex	190	138,709
Lines and channels that are provided to unaffiliated carriers under a UNE loop arrangement, where switching is not provided	22,493	3,955,383
Lines and channels that are provided to unaffiliated carriers under a UNE loop arrangement, where switching is also provided	26,480	16,369,009
Total Lines	**186,387**	**143,670,402**
% Lines Provided Via Resale	**1.6%**	**0.9%**
% Lines Provided Via Resale, UNE-L and UNE-P	28%	15%

NORTH DAKOTA TELEPHONE COMPANY
DETERMINATION OF REVENUES SUBJECT TO RESALE IN DEVILS LAKE EXCHANGE

													Assumed Resale Discount
													10.00%
	ACCOUNT	NDTC TOTAL COMPANY			DEVILS LAKE								
		By Account	By Account Group	% of Account Group	By Account	By Account Group	Per Line Annual	Assumed % Revenues Subject to Resale	Note		Per Line Revenue Subject to Resale		Potential Revenue Loss via Resale
	Source:	Discovery [1]	Discovery [1]	Calculated	Projected Based on NDTC totals	Discovery [2]							
Local Service													
1.5001.	Local Service	$ 4,941,869		100%	$ 1,749,911		$ 308.71	100%			$ 308.71	$	30.87
	Total Local Service Revenues		$ 4,941,869			$ 1,749,911							
5060	Other basic area revenue								Per 47 CFR 32.5060 include features revenue. We are assuming NDTC reports features revenue under 5001				
Network Access													
1.5081.	End User Revenue	$ 1,620,841		15%	$ 448,994		$ 79.21	0%	Per 47 CFR 51.605		$ -	$	-
1.5082.	Interstate Switched Access Revenue	$ 3,603,707		33%	$ 998,273		$ 176.11	0%	Per 47 CFR 51.605		$ -	$	-
1.5083.	Special Access Revenue	$ 2,057,108		19%	$ 569,845		$ 100.53	0%	Per 47 CFR 51.605		$ -	$	-
1.5086.	Intrastate Switched Access Revenue	$ 3,545,005		33%	$ 982,011		$ 173.24	0%	Per 47 CFR 51.605		$ -	$	-
	Total Network Access Revenues		$ 10,826,661			$ 2,999,123							
Long Distance Message Revenue													
1.5100.	Long Distance Message Revenue	$ 11,763		88%	$ 3,718		$ 0.66	100%			$ 0.66	$	0.07
1.5160.	Other Long Distance Revenue	$ 1,655		12%	$ 523		$ 0.09	100%			$ 0.09	$	0.01
	Total Long Distance Network Services		$ 13,418			$ 4,241							
Billing and Collection Revenue													
1.5270.	Carrier Billing and Collection Revenue	$ 332,557		100%	$ 105,121		$ 18.55	0%	Not a retail service		$ -	$	-
	Total Billing and Collection Revenue		$ 332,557			$ 105,121							
Miscellaneous Revenue													
1.5230.	Directory Revenue	$ 282,476		33%	$ 59,663		$ 10.53	0%	Not a retail service		$ -	$	-
1.5240.	Rent Revenue	$ 50,673		6%	$ 10,703		$ 1.89	0%	Not a retail service		$ -	$	-
									Per 47 CFR 32.5200: Includes "wholesale" services to other companies, contract services to others such as maintenance of plant, settlement payments, UNE, local interconnection. Also include revenues that might be partially "retail:" late payments, unclaimed refunds, and provision of special billing info to customers.		$ 9.86		
1.5260.	Miscellaneous Revenue	$ 529,402		61%	$ 111,817		$ 19.73	50%				$	0.99
	Total Miscellaneous Revenue		$ 862,551			$ 182,183							
	TOTAL OPERATING REVENUES	**$ 16,977,056**	**$ 16,977,056**		**$ 5,040,579**	**$ 5,040,579**	**$ 889.24**				**$ 319.32**	**$**	**31.93**

[1] NDTC provided its 2004 Part 32 revenue and expenses in response to discovery issued on December 6, 2005.

[2] NDTC provided operating revenue by account for Devil's Lake in its November 23, 2005 Response to Request for Disclosure of Information.

NORTH DAKOTA TELEPHONE COMPANY
FINANCIAL AND LINE COUNT DATA FOR DEVILS LAKE EXCHANGES

	NDTC	DEVILS LAKE	SOURCE
AVERAGE ACCESS LINES			
Grand Total per Exhibit 3A Divided by 12 months	18,405	5,668	Exhibit 3A to NDTC EAS filing
% of Total NDTC		30.8%	
2004 OPERATING REVENUE			
Local Network Access	4,941,869	$ 1,749,911	11/23/05 Discovery Response
Network Access Services		$ 2,999,123	11/23/05 Discovery Response
Long Distance Network Services		$ 4,241	11/23/05 Discovery Response
Billing and Collection Revenue		$ 105,121	11/23/05 Discovery Response
Miscellaneous Revenue		$ 182,183	11/23/05 Discovery Response
TOTAL REVENUE	**16,977,056**	**$ 5,040,579**	
Features Revenue	$ 409,845		Exhibit 8A to NDTC EAS filing
Features Revenue as % of Local Network Access	8.3%		

Source: NDTC Response to Alternative Discovery dated 12/6/5

North Dakota Telephone Company
Statement of Operating Revenue and Operating Expenses
For the Year December 31, 2004

OPERATING REVENUES

Local Service			
1.5001.	Local Service	4,941,869	
	Total Local Service Revenues		4,941,869
Network Access			
1.5081.	End User Revenue	1,620,841	
1.5082.	Interstate Switched Access Revenue	3,603,707	
1.5083.	Special Access Revenue	2,057,108	
1.5086.	Intrastate Switched Access Revenue	3,545,005	
	Total Network Access Revenues		10,826,661
Long Distance Message Revenue			
1.5100.	Long Distance Message Revenue	11,763	
1.5160.	Other Long Distance Revenue	1,655	
	Total Long Distance Network Services		13,418
Billing and Collection Revenue			
1.5270.	Carrier Billing and Collection Revenue	332,557	
	Total Billing and Collection Revenue		332,557
Miscellaneous Revenue			
1.5230.	Directory Revenue	282,476	
1.5240.	Rent Revenue	50,673	
1.5260.	Miscellaneous Revenue	529,402	
	Total Miscellaneous Revenue		862,551
	TOTAL OPERATING REVENUES		16,977,056

OPERATING EXPENSES

Plant Specific Expense			
1.6120.	General Support Expense		
1.6121.	Land and Buildings	223,755	
1.6122.	Furniture and Artwork	2,605	
1.6123.	Office Equipment	122,275	
1.6124.	General Purpose Computers	285,243	
1.6210.	Central Office Switching Equipment		
1.6212.	Digital Electronics Expense	1,050,405	
1.6230.	Central Office Transmission Equip		
1.6231.	Radio Systems Expense	62,906	
1.6232.	Circuit Equipment Expense	268,018	
1.6410.	Cable and Wire Facilities Expense		
1.6411.	Poles Expense	(1,295)	
1.6421.	Aerial Cable Expense	35,396	
1.6422.	Underground Cable Expense	1,248	
1.6423.	Buried Cable Expense	907,393	
1.6424.	Submarine Cable Expense	124	
	Total Plant Specific Expenses		2,958,072

Plant NonSpecific

Source: NDTC Response to Alternative Discovery dated 12/6/5

North Dakota Telephone Company
Statement of Operating Revenue and Operating Expenses
For the Year December 31, 2004

1.6530.	Network Operations Expense		
1.6531.	Power Expense	117,657	
1.6532.	Network Administration Expense	34,406	
1.6533.	Testing Expense	54,264	
1.6534.	Plant Operations Expense	516,157	
1.6535.	Engineering Expense	363,575	
1.6540.	Access Expense	321,104	
	Total Plant NonSpecific Expenses		1,407,163
Depreciation Expense			
1.6561.	Depreciation Expense	4,595,524	
	Total Depreciation Expense		4,595,524
Customer Operations			
1.6610.	Marketing	166,748	
1.6620.	Services		
1.6622.	Number Services Expense	125,077	
1.6623.	Customer Service Expense	832,329	
1.6627.	Customer Service - Revenue Acctg	447,876	
	Total Customer Operations Expense		1,572,030
Corporate Operations			
1.6710.	Executive and Planning		
1.6711.	Executive	567,464	
1.6720.	General and Administrative		
1.6721.	Accounting and Finance	509,669	
1.6722.	External Relations	276,973	
1.6723.	Human Resources/Personnel	160,834	
1.6724.	Information Management	77,290	
1.6725.	Legal	40,507	
1.6728.	General and Administrative	294,035	
	Total Corporate Operations Expense		1,926,772
Operating Taxes, Other			
1.7200.	Operating Taxes Property	117,807	
1.7240.	Operating Taxes Other	5,140	
	Total Operating Taxes, Other		122,947
	TOTAL OPERATING EXPENSES		12,582,508
Operating Income Taxes			
1.7220.	Oper Taxes-Fed Inc	1,658,076	
	Total Operating Income Taxes		1,658,076
	TOTAL OPERATING NET INCOME		**2,736,472**

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

DIRECT TESTIMONY OF

WARREN R. FISCHER

On Behalf Of

MIDCONTINENT COMMUNICATIONS

EXHBIT WRF-4

December 21, 2005

Table 7.

NDTC's Annual Per Line Net Income Loss (Gain) On Resale-Based Customers:
Resale Discount (at 14%) is Lower than Avoided Costs (at 16.15%)

Revenue	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale	Potential Revenue Loss via Resale	Potential Avoided Cost	Net Loss (Gain) via Resale
Local Network Access	$ 308.71	$ 308.71	$ 43.22	$ 45.72	$ (2.50)
Network Access Services	$ 529.09	$ -	$ -	$ -	$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.10	$ 0.12	$ (0.02)
Billing and Collection Revenue	$ 18.55	$ -	$ -	$ -	$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 1.38	$ 1.59	$ (0.21)
TOTAL DEVIL'S LAKE PER LINE PER YEAR	**$ 889.24**	**$ 319.32**	**$ 44.71**	**$ 47.44**	**$ (2.73)**

NORTH DAKOTA TELEPHONE COMPANY
DEVILS LAKE PER LINE IMPACT OF RESALE ENTRY

Assumed Resale Discount	14.00%
Assumed Avoided Cost Percent	16.15%
Features Revenue as % of Local Network Access	8.3%

Revenue	2004 Revenue Per Line	2004 Revenue Per Line Subject to Resale	Potential Revenue Loss via Resale	Potential Avoided Cost	Note	Net Loss Gain) via Resale
Local Network Access	$ 308.71	$ 308.71	$ 43.22	$ *45.72*	Assuming no cost savings on features.	$ (2.50)
Network Access Services	$ 529.09	$ -	$ -	$ -		$ -
Long Distance Network Services	$ 0.75	$ 0.75	$ 0.10	$ *0.12*		$ (0.02)
Billing and Collection Revenue	$ 18.55	$ -	$ -	$ -		$ -
Miscellaneous Revenue	$ 32.14	$ 9.86	$ 1.38	$ *1.59*		$ (0.21)
TOTAL PER LINE PER YEAR	**$ 889.24**	**$ 319.32**	**$ 44.71**	**$ 47.44**		**$ (2.73)**

DEVILS LAKE TOTAL IMPACT UNDER DIFFERENT PENETRATION SCENARIOS

Devils Lake Total Lines	**5,668**
Devils Lake Total Annual Operating Revenue (2004)	**$ 5,040,579**
NDTC Total Annual Operating Revenue (2004)	**$ 16,977,056**
NDTC Net Operating Income (2004)	**$ 2,736,472**

PENETRATION RATE SCENARIOS	2%	5%	10%	15%	20%	25%	30%
LINES LOST TO RESALE	**113**	**283**	**567**	**850**	**1,134**	**1,417**	**1,701**
ESTIMATED ANNUAL TOTAL GROSS REVENUE LOSS	$ 5,068	$ 12,670	$ 25,341	$ 38,011	$ 50,682	$ 63,352	$ 76,023
ESTIMATED ANNUAL TOTAL NET PROFIT LOSS	$ (310)	$ (774)	$ (1,548)	$ (2,322)	$ (3,096)	$ (3,870)	$ (4,644)
ESTIMATED NET PROFIT LOSS AS A % OF DEVILS LAKE TOTAL REVENUE	-0.0061%	-0.0154%	-0.0307%	-0.0461%	-0.0614%	-0.0768%	-0.0921%
ESTIMATED NET PROFIT LOSS AS A % OF NDTC TOTAL REVENUE	-0.0018%	-0.0046%	-0.0091%	-0.0137%	-0.0182%	-0.0228%	-0.0274%
ESTIMATED NET PROFIT LOSS AS A % OF NDTC NET OPERATING REVENUE	-0.0113%	-0.0283%	-0.0566%	-0.0848%	-0.1131%	-0.1414%	-0.1697%

ILEC Provided Lines (FCC data compiled from Form 477)

http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/RBOC_Local_Telephone_Dec_2004.xls

As of December 2004

	Qwest ND	Nationwide
Total lines and channels provided to end users	134,368	122,094,383
Lines and channels that are provided to unaffiliated carriers under a Total Service Resale arrangement	2,856	1,112,918
Lines and channels that are provided to unaffiliated carriers under other resale arrangements, such as resold centrex	190	138,709
Lines and channels that are provided to unaffiliated carriers under a UNE loop arrangement, where switching is not provided	22,493	3,955,383
Lines and channels that are provided to unaffiliated carriers under a UNE loop arrangement, where switching is also provided	26,480	16,369,009
Total Lines	**186,387**	**143,670,402**
% Lines Provided Via Resale	**1.6%**	**0.9%**
% Lines Provided Via Resale, UNE-L and UNE-P	28%	15%

NORTH DAKOTA TELEPHONE COMPANY
DETERMINATION OF REVENUES SUBJECT TO RESALE IN DEVILS LAKE EXCHANGE

												Assumed Resale Discount	
													14.00%
ACCOUNT		NDTC TOTAL COMPANY			DEVILS LAKE								
		By Account	By Account Group	% of Account Group	By Account	By Account Group	Per Line Annual	Assumed % Revenues Subject to Resale	Note		Per Line Revenue Subject to Resale		Potential Revenue Loss via Resale
Source:		Discovery [1]	Discovery [1]	Calculated	Projected Based on NDTC totals	Discovery [2]							
Local Service													
1.5001.	Local Service	$ 4,941,869		100%	$ 1,749,911		$ 308.71	100%			$ 308.71	$	43.22
	Total Local Service Revenues		$ 4,941,869			$ 1,749,911							
5060	Other basic area revenue								Per 47 CFR 32.5060 include features revenue. We are assuming NDTC reports features revenue under 5001				
Network Access													
1.5081.	End User Revenue	$ 1,620,841		15%	$ 448,994		$ 79.21	0%	Per 47 CFR 51.605		$ -	$	-
1.5082.	Interstate Switched Access Revenue	$ 3,603,707		33%	$ 998,273		$ 176.11	0%	Per 47 CFR 51.605		$ -	$	-
1.5083.	Special Access Revenue	$ 2,057,108		19%	$ 569,845		$ 100.53	0%	Per 47 CFR 51.605		$ -	$	-
1.5086.	Intrastate Switched Access Revenue	$ 3,545,005		33%	$ 982,011		$ 173.24	0%	Per 47 CFR 51.605		$ -	$	-
	Total Network Access Revenues		$ 10,826,661			$ 2,999,123							
Long Distance Message Revenue													
1.5100.	Long Distance Message Revenue	$ 11,763		88%	$ 3,718		$ 0.66	100%			$ 0.66	$	0.09
1.5160.	Other Long Distance Revenue	$ 1,655		12%	$ 523		$ 0.09	100%			$ 0.09	$	0.01
	Total Long Distance Network Services		$ 13,418			$ 4,241							
Billing and Collection Revenue													
1.5270.	Carrier Billing and Collection Revenue	$ 332,557		100%	$ 105,121		$ 18.55	0%	Not a retail service		$ -	$	-
	Total Billing and Collection Revenue		$ 332,557			$ 105,121							
Miscellaneous Revenue													
1.5230.	Directory Revenue	$ 282,476		33%	$ 59,663		$ 10.53	0%	Not a retail service		$ -	$	-
1.5240.	Rent Revenue	$ 50,673		6%	$ 10,703		$ 1.89	0%	Not a retail service		$ -	$	-
									Per 47 CFR 32.5200: Includes "wholesale" services to other companies, contract services to others such as maintenance of plant, settlement payments, UNE, local interconnection. Also include revenues that might be partially "retail:" late payments, unclaimed refunds, and provision of special billing info to customers.		$ 9.86		
1.5260.	Miscellaneous Revenue	$ 529,402		61%	$ 111,817		$ 19.73	50%				$	1.38
	Total Miscellaneous Revenue		$ 862,551			$ 182,183							
	TOTAL OPERATING REVENUES	**$ 16,977,056**	**$ 16,977,056**		**$ 5,040,579**	**$ 5,040,579**	**$ 889.24**				**$ 319.32**	**$**	**44.71**

[1] NDTC provided its 2004 Part 32 revenue and expenses in response to discovery issued on December 6, 2005.

[2] NDTC provided operating revenue by account for Devil's Lake in its November 23, 2005 Response to Request for Disclosure of Information.

NORTH DAKOTA TELEPHONE COMPANY
FINANCIAL AND LINE COUNT DATA FOR DEVILS LAKE EXCHANGES

	NDTC	DEVILS LAKE	SOURCE
AVERAGE ACCESS LINES			
Grand Total per Exhibit 3A Divided by 12 months	18,405	5,668	Exhibit 3A to NDTC EAS filing
% of Total NDTC		30.8%	
2004 OPERATING REVENUE			
Local Network Access	4,941,869	$ 1,749,911	11/23/05 Discovery Response
Network Access Services		$ 2,999,123	11/23/05 Discovery Response
Long Distance Network Services		$ 4,241	11/23/05 Discovery Response
Billing and Collection Revenue		$ 105,121	11/23/05 Discovery Response
Miscellaneous Revenue		$ 182,183	11/23/05 Discovery Response
TOTAL REVENUE	**16,977,056**	**$ 5,040,579**	
Features Revenue	$ 409,845		Exhibit 8A to NDTC EAS filing
Features Revenue as % of Local Network Access	8.3%		

Source: NDTC Response to Alternative Discovery dated 12/6/5

North Dakota Telephone Company
Statement of Operating Revenue and Operating Expenses
For the Year December 31, 2004

OPERATING REVENUES

Local Service			
1.5001.	Local Service	4,941,869	
	Total Local Service Revenues		4,941,869
Network Access			
1.5081.	End User Revenue	1,620,841	
1.5082.	Interstate Switched Access Revenue	3,603,707	
1.5083.	Special Access Revenue	2,057,108	
1.5086.	Intrastate Switched Access Revenue	3,545,005	
	Total Network Access Revenues		10,826,661
Long Distance Message Revenue			
1.5100.	Long Distance Message Revenue	11,763	
1.5160.	Other Long Distance Revenue	1,655	
	Total Long Distance Network Services		13,418
Billing and Collection Revenue			
1.5270.	Carrier Billing and Collection Revenue	332,557	
	Total Billing and Collection Revenue		332,557
Miscellaneous Revenue			
1.5230.	Directory Revenue	282,476	
1.5240.	Rent Revenue	50,673	
1.5260.	Miscellaneous Revenue	529,402	
	Total Miscellaneous Revenue		862,551
	TOTAL OPERATING REVENUES		16,977,056

OPERATING EXPENSES

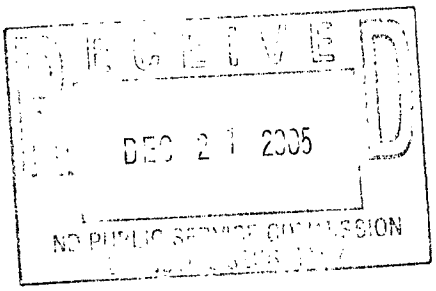
Plant Specific Expense			
1.6120.	General Support Expense		
1.6121.	Land and Buildings	223,755	
1.6122.	Furniture and Artwork	2,605	
1.6123.	Office Equipment	122,275	
1.6124.	General Purpose Computers	285,243	
1.6210.	Central Office Switching Equipment		
1.6212.	Digital Electronics Expense	1,050,405	
1.6230.	Central Office Transmission Equip		
1.6231.	Radio Systems Expense	62,906	
1.6232.	Circuit Equipment Expense	268,018	
1.6410.	Cable and Wire Facilities Expense		
1.6411.	Poles Expense	(1,296)	
1.6421.	Aerial Cable Expense	35,396	
1.6422.	Underground Cable Expense	1,248	
1.6423.	Buried Cable Expense	907,393	
1.6424.	Submarine Cable Expense	124	
	Total Plant Specific Expenses		2,958,072
Plant NonSpecific			

Source: NDTC Response to Alternative Discovery dated 12/6/5

North Dakota Telephone Company
Statement of Operating Revenue and Operating Expenses
For the Year December 31, 2004

1.6530.	Network Operations Expense		
1.6531.	Power Expense	117,657	
1.6532.	Network Administration Expense	34,406	
1.6533.	Testing Expense	54,264	
1.6534.	Plant Operations Expense	516,157	
1.6535.	Engineering Expense	363,575	
1.6540.	Access Expense	321,104	
	Total Plant NonSpecific Expenses		1,407,163
Depreciation Expense			
1.6561.	Depreciation Expense	4,595,524	
	Total Depreciation Expense		4,595,524
Customer Operations			
1.6610.	Marketing	166,748	
1.6620.	Services		
1.6622.	Number Services Expense	125,077	
1.6623.	Customer Service Expense	832,329	
1.6627.	Customer Service - Revenue Acctg	447,876	
	Total Customer Operations Expense		1,572,030
Corporate Operations			
1.6710.	Executive and Planning		
1.6711.	Executive	567,464	
1.6720.	General and Administrative		
1.6721.	Accounting and Finance	509,669	
1.6722.	External Relations	276,973	
1.6723.	Human Resources/Personnel	160,834	
1.6724.	Information Management	77,290	
1.6725.	Legal	40,507	
1.6728.	General and Administrative	294,035	
	Total Corporate Operations Expense		1,926,772
Operating Taxes, Other			
1.7200.	Operating Taxes Property	117,807	
1.7240.	Operating Taxes Other	5,140	
	Total Operating Taxes, Other		122,947
	TOTAL OPERATING EXPENSES		12,582,508
Operating Income Taxes			
1.7220.	Oper Taxes-Fed Inc	1,658,076	
	Total Operating Income Taxes		1,658,076
	TOTAL OPERATING NET INCOME		**2,736,472**

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

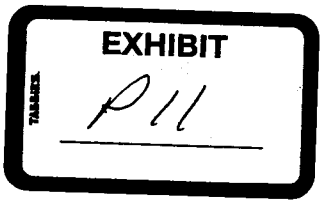


MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

DIRECT TESTIMONY OF TIMOTHY J GATES

On Behalf Of

MIDCONTINENT COMMUNICATIONS



December 21, 2005

51 PU-05-451 Pages: 27
Direct Testimony of Timothy J. Gates
by Midcontinent Communications by Patrick Durick, Atto
12/21/2005 CC: Comm Legal Ilona, Pat, Annette . .
Exhibit # P11

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PURPOSE OF TESTIMONY 3

III. OVERVIEW OF THE TWO COMPANIES AND THE DISPUTE 3

IV. WHETHER THE REQUEST OF MIDCONTINENT IS UNDULY ECONOMICALLY BURDENSOME 9

V. WHETHER THE REQUEST OF MIDCONTINENT IS TECHNICALLY FEASIBLE 16

VI. WHETHER THE REQUEST OF MIDCONTINENT IS CONSISTENT WITH SECTION 254 18

VII. LIMITATION ON EXEMPTION 22

VIII. IMPLEMENTATION SCHEDULE 24

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

A. My name is Timothy J Gates. My business address is QSI Consulting, 819 Huntington Drive, Highlands Ranch, Colorado 80126.

Q. WHAT IS QSI CONSULTING, INC. AND WHAT IS YOUR POSITION WITH THE FIRM?

A. QSI Consulting, Inc. ("QSI") is a consulting firm specializing in regulated industries, econometric analysis and computer aided modeling. I currently serve as Senior Vice President and Partner.

Q. PLEASE PROVIDE A SYNOPSIS OF YOUR EDUCATIONAL BACKGROUND AND RELEVANT WORK EXPERIENCE.

A. I received a Bachelor of Science degree from Oregon State University and a Master of Management degree in Finance and Quantitative Methods from Willamette University's Atkinson Graduate School of Management. Since I received my Masters, I have taken additional graduate-level courses in statistics and econometrics. I also have attended numerous courses and seminars specific to the telecommunications industry, including both the NARUC Annual and NARUC Advanced Regulatory Studies Programs.

Prior to joining QSI, I was a Senior Executive Staff Member at MCI. I was employed by MCI and/or MCI/WorldCom for 15 years in various public policy positions. While at MCI I managed various functions, including tariffing,

economic and financial analysis, competitive analysis, witness training and MCI's use of external consultants. Prior to joining MCI, I was employed as a Telephone Rate Analyst in the Engineering Division at the Texas Public Utility Commission and earlier as an Economic Analyst at the Oregon Public Utility Commission. I also worked at the Bonneville Power Administration (United States Department of Energy) as a Financial Analyst doing total electric use forecasts while I attended graduate school. Prior to doing my graduate work, I worked for ten years as a reforestation forester in the Pacific Northwest for multinational and government organizations. Exhibit TJG-1, attached hereto to this testimony, is a summary of my work experience and education.

Q. HAVE YOU EVER TESTIFIED BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION ("COMMISSION")?

A. Yes. I have testified in North Dakota in the following dockets: PU-2320-90-183, PU-2065-02-465, and PU-2342-01-296. I have testified more than 200 times in 44 states and filed comments with the FCC on various public policy issues ranging from costing, pricing, local entry and universal service to strategic planning, merger and network issues. As noted above, a list of proceedings in which I have filed testimony or provided comments is attached hereto as Exhibit TJG-1.

Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?

A. This testimony was prepared on behalf of the Midcontinent Communications ("Midcontinent").

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to support Midcontinent's bona fide request under 47 U.S.C. § 251(c) for wholesale resold service for the Devils Lake, North Dakota exchange within North Dakota Telephone Company's ("NDTC's") serving territory. This testimony, combined with that of my partner, Mr. Warren Fischer, will show that Midcontinent's provisioning of resold services in Devils Lake will have only a *de minimis* impact on NDTC and actually will benefit the public interest. Finally, this testimony addresses the issues identified by the Commission in its Notice of Hearing issued July 28, 2005.

III. OVERVIEW OF THE TWO COMPANIES AND THE DISPUTE

Q. PLEASE PROVIDE AN OVERVIEW OF MIDCONTINENT.

A. Midcontinent is a diversified company that provides data, voice and video in more than 200 communities in North and South Dakota, northern Nebraska and western Minnesota. The company is over 60 years old and is growing through acquisitions and organic expansion.

A summary of some of Midcontinent services is found below:

MidcoNet Broadband	Web Hosting
Local and Long Distance Telephony	800 Services

Classic, Digital and HD Cable	Digital Music
Television Advertising Services	

Q. PLEASE PROVIDE AN OVERVIEW OF NDTC.

A. According to its website, NDTC is a wholly owned subsidiary of TPC, Inc. and is a consortium formed by United Telephone Mutual Aid Corporation (Langdon, ND); Dakota Central Rural Telephone Coop. (Carrington, ND); and Polar Communications (Park River, ND). The company has grown dramatically, primarily through the purchase of exchanges from US West and Contel. NDTC provides local and long distance telephone services, Internet, business equipment (phones and phone systems), paging equipment, and wireless service with Verizon.

A sample of NDTC's services is provided below:

Dialup and Broadband Internet	Video on the Planning Board
Web Hosting	Local and Long Distance Telephony
800 Services	Digital White and Yellow Pages

Q. IS THERE ANY DISPUTE AS TO WHETHER NDTC IS A RURAL TELEPHONE COMPANY AS DEFINED IN THE FCC'S RULES (§ 51.5)?

A. No. NDTC is a rural telephone company.

Q. PLEASE BRIEFLY DESCRIBE THE DISPUTE.

A. Midcontinent would like to resell telephone services of NDTC in the Devil's Lake exchange. To that end, Midcontinent filed a bona fide request under 47 U.S.C. § 251(c) for wholesale services. NDTC does not want the competition from Midcontinent and has suggested that the "rural exemption" under 47 U.S.C. § 251(f) protects NDTC from competition. In response to NDTC's refusal to allow resale, Midcontinent asked the Commission to conduct an inquiry to determine whether to terminate NDTC's rural exemption. [1]

Q. HAS THE COMMISSION IDENTIFIED ISSUES TO BE ADDRESSED IN THIS PROCEEDING?

A. Yes. In the Notice of Hearing, the Commission identified four issues:

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.[2]

Q. THESE ISSUES APPEAR TO COME FROM THE TELECOMMUNICATIONS ACT.[3] PLEASE DESCRIBE THE "RURAL EXEMPTION" AS YOU UNDERSTAND IT.

---

[1] *See* Commission's **Notice of Hearing** dated July 28, 2005, at page one.

A. First of all, I am not a lawyer, so I will leave the legal interpretations to the lawyers. I can provide the pertinent language and my economic interpretation of the intent of the exemption within the context of The Act.

The purpose of the 1996 Act was to encourage competition and to remove barriers to competition. Indeed, in the first paragraph of the FCC's *Local Competition Order* it states,

> The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress.[4]

In the FCC's Triennial Review Order[5] the goals of The Act were again repeated,

> Seven years ago, Congress enacted the Telecommunications Act of 1996 (1996 Act) for the benefit of the American consumer. This watershed legislation was partially designed to remove the decades-old system of legal monopoly in the local exchange and open that market to competition. The 1996 Act did so by establishing broad interconnection, resale and network access requirements, designed to facilitate multiple modes of entry into the market by intermodal and intramodal service providers.

Q. WHAT WERE THE MARKET OPENING MECHANISMS THAT THE FCC REQUIRED FOR ILECS?

---

2 *Id.*

3 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. (1996 Act).

4 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499 (1996) (*Local Competition Order).*

5 Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Report and*

A. The requirements varied. Congress recognized the importance of interconnection by requiring all telecommunications providers to interconnect, directly or indirectly, in Section 251(a)(1) of the Act. But Congress also recognized that the ILECs were and would remain the overwhelmingly largest networks and the dominant carriers in any given area for the foreseeable future (and, nearly 10 years after the passage of the Act, this remains true). This situation gives the ILECs powerful economic leverage over CLECs: an ILEC will be strongly motivated to use its control over access to its large base of subscribers either to out-and-out destroy its competitors (by not allowing interconnection at all) or hamper their growth by only permitting interconnection on expensive or inefficient terms. So, Congress — quite rationally from an economic standpoint — imposed special interconnection duties on ILECs.

Q. WHAT WERE THOSE SPECIAL INTERCONNECTION DUTIES IMPOSED ON ILECS?

A. The FCC and state commissions have recognized that the various subsections of section 251 impose escalating duties and obligations on carriers depending upon their classifications (*i.e.*, telecommunications carrier, LEC, ILEC). These classifications are based upon their market power and economic position (e.g. monopoly) and attendant public obligations (e.g., common carrier obligations). Section 251(a) of the Act requires all telecommunications carriers to

---

Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978. ("*TRO*")

"interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[6] Section 251(b) imposes additional duties on local exchange carriers ("LECs") and section 251(c) imposes further obligations and specific interconnection duties on ILECs, such as Qwest. Those obligations include the duty to negotiate, interconnect, provide unbundled network elements at TELRIC[7] rates, provide various types of collocation and to allow resale at an appropriately calculated discount.

Q. DOES THE "RURAL EXEMPTION" EXEMPT THE RURAL CARRIERS FROM THE 251(C)(2) REQUIREMENTS?

A. Generally yes, although there is a limitation on the exemption that I will discuss later in this testimony. The facts and law on the issues identified for this proceeding will help to show why the Commission should terminate the rural exemption for NDTC.

Q. WHAT IS THE RURAL EXEMPTION?

A. Section 251(f)(1) states,

> (1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES
>
> (A) EXEMPTION – Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

6 47 USC § 251(a)(1).

7 *Local Competition Order* at ¶ 672.

Q. CAN THIS COMMISSION TERMINATE THE RURAL EXEMPTION FOR NDTC?

A. Yes. While I am not an attorney, Section 251(f)(2) states that, after an inquiry, such as this proceeding, "the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof)."

IV. WHETHER THE REQUEST OF MIDCONTINENT IS UNDULY ECONOMICALLY BURDENSOME

Q. WHAT DOES IT MEAN TO BE "UNDULY ECONOMICALLY BURDENSOME"?

A. We can break down this phrase using standard definitions. "Unduly" means "exceeding or violating propriety or fitness – excessive." "Economically" is defined as "of, relating to, or based on the production, distribution, and consumption of goods and services." "Burdensome" means "oppressive" or "onerous." These are standard definitions taken from a Merriam Webster's Collegiate Dictionary. Based on my experience in the industry, however, I believe this test relates to the financial and operational impact of competition on NDTC. More specifically, if the competition harmed NDTC to the point where it was damaging its ability to operate efficiently or to continue to offer services, then the exemption would apply. Based on our analysis of the potential impact of

Midcontinent's participation in the Devils Lake area, however, the impact is certainly not unduly economically burdensome.

Q. WOULD YOU AGREE THAT INDIVIDUALS MAY INTERPRET THIS STANDARD DIFFERENTLY?

A. I would expect a healthy debate on the impact of Midcontinent's entry into NDTC's serving territory in Devils Lake, but there are limits in the statutory language. Congress wanted and expected competition, so it is not enough for a rural ILEC to show that complying with Section 251(c) will impose some costs.

Since entry has not yet occurred, both parties will need to estimate the impact. But given the Act's goal of opening markets to competition, the impact would need to be truly onerous on NDTC, which it is not. This is true because Midcontinent is proposing to resell NDTC's services. Total service resale has never been considered effective competition, and certainly not economically burdensome.

Q. PLEASE EXPLAIN THE CONTINUUM OF ENTRY STRATEGIES THAT CLECS EMPLOY AND THEIR RELATIVE COMPETITIVE SIGNIFICANCE.

A. The continuum would be from total service resale ("TSR", as proposed by Midcontinent) to CLEC-owned loop with the following strategies in increasing order of competitive significance – TSR – UNE-platform ("UNE-"P") – UNE-

loop ("UNE-L") – CLEC-Owned Loop. In other words, TSR has the least impact on the incumbent and a CLEC that builds its own loops has the greatest competitive impact on the incumbent. However, both UNE strategies require more of the incumbent's resources than resale or a CLEC-owned loop.

Q. ARE YOU SUGGESTING THAT THE COMMISSION SHOULD FOCUS EXCLUSIVELY ON NON-RESALE COMPETITION IN DETERMINING WHETHER EFFECTIVE COMPETITION IS PRESENT AND WHETHER THE IMPACT OF SUCH ENTRY IS UNDULY ECONOMICALLY BURDENSOME?

A. Yes. Resellers cannot independently produce the service they offer their customers, so they purchase services from carriers such as NDTC to provide their service to customers. The continued viability of resellers is dependent upon the maintenance of a sufficient margin between the wholesale price they pay to NDTC and the retail price they charge their customers.

Q. HOW DO RESELLERS COMPETE?

A. A reseller would purchase NDTC's services at the same rates, terms and conditions that NDTC offers those services, less a discount that reflects NDTC's avoided retailing costs. Resale has always been seen as a "speed to market" strategy with only limited benefits to the reseller.

Q. BUT ISN'T RESALE ONE OF THE THREE ENTRY STRATEGIES DISCUSSED AND ANTICIPATED BY THE FCC'S *LOCAL COMPETITION ORDER*?

A. Yes. The Act and the FCC's *Local Competition Order* "...contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale."[8] Resale was expected to be one of the ways in which companies would gain access to the market quickly. Generally, it was thought that, over time, CLECs utilizing resale would develop the critical mass of customer density and capital to make it economically viable for them to build their own facilities and eventually diminish their reliance upon resale and/or the purchase of UNEs. As an example, I understand from Midcontinent employees that the company entered the markets in Aberdeen and Sioux Falls on a resale basis and then later built out its own facilities. This is the type of behavior one would expect when entering a market.

Q. **ARE YOU SUGGESTING THAT RESALE IS A SHORT-TERM ENTRY STRATEGY?**

A. Yes. Resale is generally not thought of as a long-term solution because of the reliance upon the incumbent provider and the inability to distinguish the resold service from that of the underlying carrier. In addition, the CLEC reseller has no ability to cut its cost of telecommunications services relative to the retail rates of

[8] *Local Competition Order,* at ¶ 12.

the incumbent from which it purchases services. No matter how well the CLEC manages its own business, and how efficient it becomes, it will still have the same narrow margin upon which to meet its own costs and earn a profit. For that reason, the reseller has only a very limited ability to impose any competitive threat or pressure on the underlying provider and, as such, cannot be considered effective competition. It is only with facilities-based competition that new entrants can gain their independence from the incumbent and truly differentiate their services from those of the incumbent. Thus, when considering competitive impact, the Commission should give no weight to resale-based entry.[9]

Q. WHY IS FACILITIES-BASED COMPETITION IMPORTANT TO THE DEVELOPMENT OF EFFECTIVE COMPETITION IN TELECOMMUNICATIONS?

A. Without a network of its own, a carrier is relegated to a "resale" role in the market. Successful marketing normally requires product differentiation and price competition. It is difficult, if not impossible, for a carrier to differentiate its product when it is reselling all or part of the incumbent's product. The reseller is dependent upon the underlying carrier for quality of service, features, speed to market, and facilities. Just as important, the reseller is dependent upon the underlying carrier for its cost of service. In other words, the cost that the reseller pays NDTC becomes the most important cost for Midcontinent, and is probably

[9] As noted herein, resale is the most prevalent way to test a market. Facilities-based competition, in areas where the market is show to justify the investment, provides additional benefits by virtue of the

294 the only cost over which the Midcontinent has no control or influence
295 whatsoever.
296
297 **Q. ARE YOU SUGGESTING THAT MIDCONTINENT'S USE OF RESOLD**
298 **NDTC SERVICES DOES NOT RESULT IN SIGNIFICANT HARM TO**
299 **NDTC?**
300 A. That's correct. As discussed above, total service resale is simply Midcontinent
301 doing marketing for NDTC. In fact, Midcontinent will be dependent upon NDTC
302 for the timing of service delivery, quality of service and features. As such, it is
303 NDTC making these finished services "available," albeit on behalf of
304 Midcontinent. Mr. Fischer's analysis shows that even with a significant share of
305 the market in Devils Lake, the impact on NDTC is minimal.
306
307 **Q. IF MIDCONTINENT BUILDS ITS OWN FACILITIES IN NDTC'S**
308 **SERVING TERRITORY, WOULD SERVICES OFFERED OVER THOSE**
309 **FACILITIES BE CONSIDERED EFFECTIVE COMPETITION?**
310 A. Yes, if Midcontinent offered services that were comparable in terms of rates,
311 terms and conditions. Simply overbuilding the NDTC network is not sufficient to
312 result in effective competition unless that network can provide "competitive"
313 alternative services.
314

unique features and economies that a company can develop with its own facilities.

Q. BASED ON YOUR STATEMENTS ABOVE, ARE YOU SUGGESTING THAT RESALE PROVIDES NO BENEFITS TO CONSUMERS?

A. No. To the consumer, it appears that the resold offering is an alternative to NDTC's service. To that end, if the service is priced competitively and well marketed, resellers can attract customers. Consumers also benefit from "one-stop shopping" if a service provider like Midcontinent can offer multiple or bundled services. As such, resale can provide some limited competition for NDTC. The potential for success, however, is tempered by the cost that Midcontinent must pay NDTC for the underlying service. These assumptions are discussed at length in the testimony of Mr. Fischer.

Q. CAN YOU BRIEFLY SUMMARIZE THE FINANCIAL IMPACT THAT MR. FISCHER CALCULATED?

A. Yes. Below I have reproduced Table 4 from Mr. Fischer's testimony.

Devils Lake Gross Revenue Loss Under Different Penetration Scenarios and 16.15% Resale Discount

Devils Lake Total Annual Operating Revenue (2004)	$ 5,040,579			
NDTC Total Annual Operating Revenue (2004)	$ 16,977,056			
PENETRATION RATE SCENARIOS	**2%**	**10%**	**20%**	**30%**
Lines Lost to Resale	113	567	1,134	1,701
Estimated Annual Gross Revenue Loss:				
At a 10% Resale Discount	**$ 3,620**	**$ 18,101**	**$ 36,201**	**$ 54,302**
At a 16.15 % Resale Discount	**$ 5,846**	**$ 29,232**	**$ 58,465**	**$ 87,697**
Gross Revenue Loss as % of NDTC Total Revenue:				
At a 10% Resale Discount	**0.021%**	**0.107%**	**0.213%**	**0.320%**
At a 16.15 % Resale Discount	**0.034%**	**0.172%**	**0.344%**	**0.517%**

As you can see, the gross revenue loss as a percentage of NDTC's total revenue is small even at aggressive assumptions. For instance, assuming 30 percent

penetration in Devils Lake and a 16.15 percent discount, NDTC's gross revenue loss is only 0.517 percent.

Q. BASED ON YOUR ANALYSIS AND THAT OF MR. FISCHER, WOULD RESOLD SERVICES BY MIDCONTINENT IN DEVILS LAKE BE UNDULY ECONOMICALLY BURDENSOME?

A. No. Table 6 in Mr. Fischer's testimony shows that the total annual net income loss is minimal in both absolute and percentage terms compared to NDTC's overall net income under all penetration scenarios. In fact, the relative loss of net income in the last column in Table 6 (0.257% of total NDTC net income) is lower than the relative loss of gross revenue in the last column of Table 3 (0.517% of total NDTC operating revenue). Given these small impacts and the potential benefits from competition, it is clear that Midcontinent's entry will not be unduly economically burdensome.

V. WHETHER THE REQUEST OF MIDCONTINENT IS TECHNICALLY FEASIBLE

Q. IS MIDCONTINENT'S REQUEST TO RESELL NDTC'S TELEPHONE SERVICES TECHNICALLY FEASIBLE?

A. Yes. Resale is very easy to accomplish in telecommunications. This is one of the reasons why resale is generally the first entry method used when testing a market.

If resale is successful then companies generally move to unbundled network elements or build out facilities of their own.

Q. DURING THE DEPOSITION OF MR. DIRCKS, DID NDTC CONFIRM THAT THERE ARE NO TECHNICAL REASONS WHY NDTC COULD NOT PROVIDE RESOLD SERVICES TO MIDCONTINENT?

A. Yes. The following exchange occurred during the deposition of Mr. Dave Dircks of NDTC at page 35 of the transcript:

> Q. And while I'm on that, in a resale agreement, there certainly are no technical reasons why you could not offer resold services to Midco. Is that true?
>
> A. To the best of my knowledge, that is true.

Q. HAS MIDCONTINENT RESOLD SERVICES OF OTHER CARRIERS IN THE PAST?

A. Yes. Midcontinent has resold the services of Qwest and Missouri Valley. Midcontinent's experience with resale should make the same experience with NDTC relatively easy.

Q. WOULD YOU ANTICIPATE ANY TECHNICAL OR OPERATIONAL PROBLEMS WITH RESELLING NDTC SERVICE?

A. At this time, we do not anticipate any problems with reselling NDTC service in Devils Lake. This assumes of course that NDTC cooperates and works with Midcontinent in setting up the exchange of information required for resale. Again, to the extent NDTC does not have any experience with resale,

Midcontinent is willing to share its experience and knowledge with resale to expedite the process.

VI. WHETHER THE REQUEST OF MIDCONTINENT IS CONSISTENT WITH SECTION 254

Q. WHAT IS SECTION 254 OF THE ACT?

A. Section 254 is the Universal Service portion of the Act. Section 254(b) lays out the universal service principles to include, (1) quality services available at just, reasonable and affordable rates, (2) access to advanced services in all regions of the Nation, (3) access to services in rural and high cost areas that are reasonably comparable to those services provided in urban areas, (4) equitable and nondiscriminatory contributions to the preservation and advancement of universal service, (5) specific and predictable support mechanisms, (6) access the advanced telecommunications services for schools, health care and libraries, and (7) additional principles as the Joint Board and the FCC determine are necessary. Section 254(b)(7) is not applicable to this investigation.

Q. WHY IS SECTION 254 A CONSIDERATION WITH RESPECT TO THE RURAL EXEMPTION?

A. One of the goals of the Act is to preserve and advance universal service. If Midcontinent's entry, even through resale, was shown to harm the ability of NDTC to provide the services as described in Section 254(b), then the

Commission would have to weigh that consideration carefully. In other words, the desire for competition does not override the federal goal for the preservation and advancement of universal service. Nevertheless, the ultimate goal would be to have both. In fact, over time, we have seen that competition is consistent with universal service objectives.

Q. BASED ON YOUR ANALYSIS AND THAT OF MR. FISCHER, WOULD MIDCONTINENT'S PRESENCE IN THE DEVILS LAKE EXCHANGE HARM UNIVERSAL SERVICE?

A. No. It is clear, based on even the most conservative estimates, that Midcontinent's resold services will have only a very minimal impact on NDTC's revenues and will certainly not harm universal service. For instance, to harm universal service, one would expect people or businesses to be dropping off the network. Nothing about Midcontinent's resale of NDTC's services would cause people or businesses to drop off the network. In fact, increased efficiencies, new services and reduced rates actually may increase penetration. As such, Midcontinent's presence will benefit consumers and the public interest.

Q. HOW WILL MIDCONTINENT'S PRESENCE BENEFIT CONSUMERS AND THE PUBLIC INTEREST?

A. The benefits of competition are well known. The most obvious benefit of competition – even from resale – is the availability of alternative offerings for

consumers. The ability to choose among providers heightens the consumers' sensitivity to features, service quality and price. Moreoever, based on Midcontinent's experience, it is able to bring additional offerings, great customer service and attractive pricing even in a resale environment.

Q. IF NDTC HAS A COMPETITOR, WILL THAT AFFECT ITS OPERATIONS?

A. Yes. Some economists argue that even the threat or possibility of competition is sufficient to create incentives for the incumbent to become more efficient. While I don't necessarily agree with the contestable market theory, I do know that competition will provide incentives for NDTC to offer new and better services and to operate more efficiently. The most obvious impact occurs when the incumbent feels the need to reduce prices to maintain customers.

In a competitive environment, all providers have an incentive to differentiate their services from their competitors' services. Competitors also compete on the basis of price. All of these activities – introducing new or different services, operating more efficiently to gain a cost advantage, reducing prices to retain or gain customers, etc. – will benefit consumers.

Q. IS IT POSSIBLE THAT NDTC COULD ACTUALLY MAKE MONEY WHILE PROVIDING ITS SERVICES TO MIDCONTINENT FOR RESALE?

A. Yes. As noted in Mr. Fischer's testimony if the avoided cost discount does not accurately represent NDTC's retailing costs, then the incumbent may lose or gain in the transaction. For instance, NDTC may experience a net gain, rather than a net loss in income if the resale discount is set at a level that is lower than the avoided retail costs. As Mr. Fischer noted, because of the asymmetric nature of information necessary to determine the avoided cost (information that concerns NDTC's own operations and is available to NDTC but not Midcontinent), it is possible that the approved resale discount could be lower than the retail costs actually avoided by NDTC.

Q. IS THE CONVERSE TRUE? IN OTHER WORDS, COULD NDTC ACTUALLY LOSE MORE MONEY THAN ESTIMATED IF THE AVOIDED COST DISCOUNT IS TOO HIGH?

A. Yes. Rarely are such estimates precise so there is a chance that the avoided cost discount will be too high or too low. With NDTC's assistance, however, and oversight by this Commission, the parties should be able to develop an accurate avoided cost discount for NDTC.

Q. BASED ON YOUR ANALYSIS AND THAT OF MR. FISCHER, WHAT IS THE FINANCIAL IMPACT ON NDTC ASSOCIATED WITH RESOLD SERVICES BY MIDCONTINENT?

A. The financial impact of resale on NDTC's Devil's Lake operation will be minimal and would not harm universal service.

Q. DURING THE DEPOSITION OF MR. DIRCK'S DID HE OPINE ON WHETHER RESALE WOULD HARM UNIVERSAL SERVICE?

A. Yes.

Q. WHAT WAS HIS OPINION?

A. The question and answer at page 36 of the deposition were as follows:

> **Q.** Can, can you see any impact on Universal Service Requirements as they're applicable to Devils Lake by a resale agreement?
>
> **A.** The way the rules are today, I would have to say no, --

Based on this exchange, and on commonly held opinions in the industry, Midcontinent's offering of resold services in Devils Lake will not harm universal service.

VII. LIMITATION ON EXEMPTION

Q. YOU STATED EARLIER IN THIS TESTIMONY THAT THERE IS A LIMITATION ON THE RURAL EXEMPTION. PLEASE DESCRIBE THAT LIMITATION.

A. Section 251(f)(1)(C) is the "Limitation on Exemption". That limitation reads as follows:

> (C) LIMITATION ON EXEMPTION – The exemption provided by this paragraph shall not apply with respect to a request under subsection (c) from a cable operator providing video programming, and seeking to provide any telecommunications service, in the area in which the rural telephone company provides video programming. The limitation contained in this subparagraph shall not apply to a rural telephone company that is providing video programming on the date of enactment of the Telecommunications Act of 1996.

Q. IS MIDCONTINENT A CABLE OPERATOR?

A. Yes.

Q. IS NDTC PROVIDING VIDEO?

A. During the deposition of Mr. Dircks, he indicated that NDTC plans to offer video services in the future.[10]

Q. IN YOUR OPINION, BASED ON THE FACTS IN THIS CASE, DOES THE LIMITATION ON THE EXEMPTION COME INTO PLAY?

A. Not directly. However, if NDTC follows through on its plans to offer video, the exemption will terminate automatically. That means that any possible negative effects on NDTC from termination of the exemption in this proceeding would be only of limited duration. That is another reason to conclude that termination of the exemption is unlikely to be unduly economically burdensome.

[10] *See* Deposition of Dave Dircks at page 17.

VIII. IMPLEMENTATION SCHEDULE

Q. IF THIS COMMISSION TERMINATES NDTC'S RURAL EXEMPTION, WHAT SHOULD BE THE IMPLEMENTATION SCHEDULE FOR MIDCONTINENT?

A. NDTC may need some time to set up some guidelines and internal procedures that would allow Midcontinent to order services. This would not take months and could be done quickly. The two companies would not need to establish an interconnection agreement similar to those entered into with Qwest and other RBOCs for all 251(c) services and functionalities, so this agreement and technical details could be worked out in a relatively short period of time. The Commission should require NDTC to develop such an agreement with Midcontinent within 30 days and to provide resale within 60 days later, that is within a total of 90 days after the Commission's order in this proceeding.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. NDTC's rural exemption should be terminated. Midcontinent's request is not unduly economically burdensome to NDTC as Mr. Fischer's analysis shows. There is not dispute as to whether resale is technically feasible – it is. Finally, as shown above, Midcontinent's resale of NDTC's services is not a threat to the preservation and advancement of universal service. Indeed, the benefits of competition – even through resale – will inure to consumers in Devils Lake and will ultimately make both companies more efficient in delivering services and more responsive to consumer demands.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

RECEIVED
DEC 21 2005
ND PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS, A SOUTH DAKOTA PARTNERSHIP, COMPLAINTANT	)	
VS.	)	Case No. PU-05-451
NORTH DAKOTA TELEPHONE COMPANY, RESPONDENT	)	

Direct Testimony of Mary Lohnes

On Behalf Of

Midcontinent Communications

December 21, 2005

EXHIBIT
P1

50 PU-05-451 Pages: 7
Direct Testimony of Mary Lohnes
by Midcontinent Communications by Patrick Durick, Atto
12/21/2005 CC: Comm Legal Illona, Pat, Annette . .
Exhibit # P1

INTRODUCTION

Q. PLEASE STATE YOUR NAME FOR THE RECORD:

A. Mary Lohnes

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Midcontinent Communications as Manager Regulatory Affairs.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

A. I hold a B.S. in Organizational Behavior and Management from Sioux Falls College, Sioux Falls, SD. My employment with Midcontinent began in June of 1991 in sales support and in 1993 I was promoted to Product Manager of Long Distance. With the passage of the 1996 Telecommunications Act, I was part of the team that negotiated an agreement with Qwest (then USWEST) to provide local exchange services in South Dakota. I managed the team that submitted orders and worked trouble calls. Beginning in the fall of 1999 I managed the telephone customer service department and handled regulatory affairs responsibilities. In 2000 I became Regulatory Affairs Manager.

My responsibilities include managing all aspects of regulatory affairs, including but not limited to: regulatory review, monitoring, and communications of telecommunications updates/changes, and communicating with government officials, attorneys, other telecommunication companies' representatives, customers, management, and employees regarding regulatory issues.

Q. WHAT IS MIDCONTINENT COMMUNICATIONS?

A. Midcontinent Communications provides cable television, broadband Internet, and telephone services. Midcontinent's headquarters are located in Minneapolis, Minnesota, and our main operations center is located in Sioux Falls, South Dakota. Midcontinent serves over 200 communities in North and South Dakota, as well as northern Nebraska and western Minnesota. The company has been in business for over 60 years and has served the community of Devils Lake with cable television since 1979. Midcontinent has been certified as a competitive local exchange carrier ("CLEC") in North Dakota since 1998 and provides service in 23 North Dakota communities. Additional information on Midcontinent's services can be found on the web at www.midcocomm.com

Q. IS MIDCONTINENT SPONSORING OTHER TESTIMONY IN THIS PROCEEDING?

A. Yes. Mr. Timothy Gates and Mr. Warren Fischer of QSI Consulting are providing testimony on the specific issues identified in the Commission's Notice of Hearing. Those two pieces of testimony in combination with my testimony constitute Midcontinent's direct testimony in this proceeding.

TESTIMONY

Q. PLEASE PROVIDE AN OVERVIEW OF WHY WE ARE HERE TODAY.

A. On May 12, 2005, Midcontinent sent a letter, by way of its attorney, Patrick Durick, to Mr. Dave Dircks, General Manager of North Dakota Telephone Company ("NDTC") requesting a Resale Agreement between the companies. Midcontinent

included a proposed agreement with that letter. A copy of this letter is attached to this testimony as Attachment 1. On June 10, 2005, Mr. Dircks responded that our request was not specific enough and he questioned if Midcontinent's request was under section 251(b) or 251(c). On July 15, 2005, Midcontinent filed a Bona Fide request for services with the ND PSC and provided a copy of that request to NDTC.

Midcontinent's request asks that the company be granted authority under Section 251(c) of the federal Communications Act to receive wholesale telephone services from NDTC in the Devils Lake exchange. NDTC, on the other hand seeks to remain protected by the rural exemption in Section 251(f) of the act. We are before the Commission now asking that the rural exemption be lifted.

Midcontinent Communications is the video incumbent. We welcome competition and would expect that our competitor, the telephone incumbent, also would welcome competition as it makes our companies stronger in providing quality services to consumers.

Q. WHY IS IT IMPORTANT THAT MIDCONTINENT PROVIDE TELEPHONE SERVICES IN DEVILS LAKE?

A. NDTC has made it clear through its advertising, newsletters and a help wanted ad, that it plans to offer video services in Devils Lake. Midcontinent has provided video service in Devils Lake since 1979 and in order to remain competitive in the market, Midcontinent must be able to provide telephone service.

Early entry into a market is crucial before the incumbent is able to lock in its monopoly customer base with long term agreements. Midcontinent's experience

shows that entering a market quickly with wholesale resold services allows the company to determine the needs of the consumers. When, and if, it makes economic sense we can determine how best to invest in the building of our own facilities. Building our own facilities enables us to offer the consumer a variety of choices in our offerings. But that takes time, so it is very important that Midcontinent be able to enter a new market with wholesale resold services. Delay hurts Midcontinent because it increases NDTC's ability to cherry pick the customer base before we can offer a comparable product.

Q. HOW DO CONSUMERS BENEFIT WHEN MIDCONTINENT BEGINS PROVIDING LOCAL TELEHPONE SERVICE?

A. Consumers benefit in several ways when Midcontinent enters a new market. First, when there is competition, consumers generally find that prices go down, even in a resale environment. To compete successfully, Midcontinent has to offer an attractive product at an attractive price and with superior customer service. If Midcontinent is successful, the incumbent has to react with a more competitive offering.

Second, consumers benefit from one-stop shopping, that is, from the ability to get all of the services from a single provider. This gives customers a single point of contact, and lets them pay for multiple services on a single bill. Midcontinent has found that this convenience is appealing to consumers.

One other way to see that consumers benefit is to consider how they react to competition. It is Midcontinent's experience that consumers react very well. We have found that once sale orders can be made, the take rate for Midcontinent telephone services has averaged 15 to 20% within the first year of providing service.

Q. HOW LONG SHOULD IT TAKE TO START RESALE ONCE THE COMMISSION ACTS IN THIS PROCEEDING?

A. Midcontinent's experience in other resale markets is that an implementation time of less than three months is typical. Because Midcontinent has gone through the process of implementing resale with other rural carriers, we have developed processes that can help smooth the way and shorten the time to market.

Q. PLEASE SUMMARIZE YOUR TESTIMONY

A. Midcontinent Communications is a diverse company serving the Dakotas with cable, broadband internet and telephone services. Consumers today want to be able to choose their providers of services. Consumers also like one-stop shopping that allows them to receive all their telecommunication, information, and video entertainment services from a single provider. Through bundled packages, Midcontinent is able to meet the needs of consumers and provide competitive pricing and a single bill for the consumers. NDTC has made it clear that it intends to add video services, and compete directly with Midcontinent. Midcontinent must be able to compete effectively in the market and the only way is to be able to add telephone to its list of products in the Devils Lake exchange.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
BONNIE L. CHRISTNER •

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

May 12, 2005

Mr. Dave Dircks, General Manager
North Dakota Telephone Company
P.O. Box 180
Devils Lake, ND 58301-0180

Re: Resale Agreement
Midcontinent Communications

Dear Sir:

We represent Midcontinent Communications and the purpose of this letter is to propose a Resale Agreement between North Dakota Telephone Company and Midcontinent Communications. A copy of a proposed agreement is enclosed for your review and comment.

Please review the enclosed agreement and contact me with any suggested revisions to the agreement. I look forward to working with you to reach an agreement.

Thank you for your anticipated cooperation.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosure.
cc: Mary Lohnes

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of December, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Rescheduled Hearing

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7003 2260 0001 3516 1386

Dave Dircks Manager
North Dakota Telephone Company
P O Box 180
Devils Lake ND 58301-0180
Cert. No. 7003 2260 0001 3516 1393

Thomas J Moorman
Kraskin Moorman& Cosson LLC
2120 L St NW Ste 520
Washington D C 20037
Cert. No. 7003 2260 0001 3516 1409

J G Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington D C 20036
Cert. No. 7003 2260 0001 3516 1416

Sharon Helbling further deposes and says that on the **15th day of December, 2005,** she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **15th day of December, 2005**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of December, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of:

Notice of Rescheduled Hearing

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

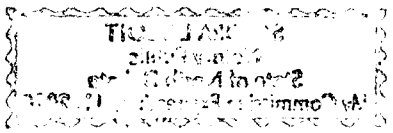
Sharon Helbling

Subscribed and sworn to before me
this **15th day of December, 2005**.

Sandra L. Scott
Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010



wbrudvik@ohnstadlaw.com
William Brudvik

mariep@telcogroupinc.com
Marie Pierre-Paul

dennis.kelley@reconex.com
Dennis Kelley
1-800-Reconex Inc
2500 Industrial Ave
Hubbard OR 97032

ffarm@wtc-mail.net
Ann Faught
Absaraka Co-op Tele Co
Absaraka ND 58002

jlchapman@acomminc.com
Jerry Chapman
Acomm Inc
510 1st Ave N Ste 203
Minneapolis MN 55403-0343

judy.messenger@paetec.com
Judy Messenger
American Long Lines Inc
1 PaeTec Plaza
600 Willowbrook Office Pk
Fairport NY 14450

jcremer@bantzlaw.com
James Cremer
Bantz Gosh & Cremer LLC
305 6th Ave SE
Aberdeen SD 57402-0970

rharper@bepc.com
Ron Harper
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

jtmgr@bektel.com
Jerome Tishmack
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

dan.meldazis@broadwing.com
Dan Meldazis
Broadwing Communications LLC
200 N LaSalle 10th Fl
Chicago IL 60601

sheba.chacko@btna.com
A Sheba Chacko
BT Communications Sales LLC
11440 Commerce Park Dr
Reston VA 20191

diane.peters@globalcrossing.com
Diane Peters
Budget Call Long Distance Inc
1080 Pittsford Victor Rd
Pittsford NY 14534

camurray@eschelon.com
Catherine A Murray
Business Productivity Solutions Inc
730 2nd Ave S Ste 900
Minneapolis MN 55402

jean.houck@btitelecom.net
Jean Houck
Business Telecom Inc
7037 Old Madison Pike Ste 400
Huntsville AL 35806

consumer_affairs@frontiercorp.com
Scott Bohler
Citizens Telecomm Co of Minnesota
3 High Ridge Park
Stamford CT 06905

gtaylor@matrixvalue.com
Greg Taylor
Claricom Networks Inc
300 N Meridian Ste 200-N
Oklahoma City OK 73107

michael_nelson@cable.comcast.com
Michael Nelson
Comcast Business Communications Inc
183 Inverness Dr W
Englewood CO 80112

pamela.hintz@ctcnet.com

Computer Telephone Corp
220 Bear Hill Rd
Waltham MA 02451-1101

mannawiz@pacbell.net
Larry Manna
Compuwiz
1012 Industrial Blvd
South Lake Tahoe CA 96150

sheba.chacko@btna.com
Sheba Chacko
Concert Communications Sales LLC
11440 Commerce Park Dr
Reston VA 20191

bryan@consolidatedtelcom.com
Bryan W Personne
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

ken@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

paul@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

keithl@daktel.com
Keith Larson
Dakota Central Tele Coop
PO Box 299
Carrington ND 58421-0299

mjrasher@msn.com
Mary Jane Rasher
DCI Group

tschilling@drtel.com
Troy Schilling
Dickey Rural Communications Inc
PO Box 69
Ellendale ND 58436-0069

tschilling@drtel.com
Troy Schilling
Dickey Rural Services Inc
P O Box 69
Ellendale ND 58436

tschilling@drtel.com
Troy Schilling
Dickey Rural Telephone Cooperative
PO Box 69
Ellendale ND 58436-0069

lhankins@covad.com
Lynn Hankins
DIECA Communications Inc
3420 Central Expy
Santa Clara CA 95051-0703

chopfinger @securustech.net
Curtis Hopfinger
Evercom Systems Inc
14651 Dallas Pkwy Ste 600
Dallas TX 75254-7476

bgipson@vartec.net
Becky Gipson
Excel Telecommunications Inc
2440 Marsh Lane
Carrollton TX 75006

consumer_affairs@frontiercorp.com

Frontier Communications of America Inc
4 Triad Ctr Ste 200
Salt Lake City UT 84180

glenn.richards@shawpittman.com
Glenn Richards
Glenn Richards
ShawPittman
2300 N St NW

petra.malik@globalcrossing.com
Petra Malik
Global Crossing North American Networks
1080 Pittsford Victor Rd
Pittsford NY 14534

petra.malik@globalcrossing.com
Petra Malik
Global Crossing Telecommunications Inc
1080 Pittsford Victor Rd
Pittsford NY 14534

cooperstown@mlgc.com
Ray Brown
Griggs County Telephone Co
P O Box 506
Cooperstown ND 58425-0506

rlaqua@rrv.net
Ronald Laqua
Halstad Telephone Company
PO Box 55
Halstad MN 56548-0055

cstein@dominionbusinessgroup.com
Chris Stein
Horizon Telecom Inc
3993 Howard Hughes Pkwy Ste 250
Las Vegas NV 89109

rlaqua@rrv.net

HTC Services Inc
P O Box 55
Halstad MN 56548

bjohnson@ideaone.com
Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

carl.billek@corp.idt.net
Carl Wolf Billek
IDT America Corp
520 Broad St
Newark NJ 07102-3111

jamie@ignus.com
Jamie Kubik
Ignus Inc
855 45th St SW Ste 11
Fargo ND 58103-1036

gene.curtis@integratelecom.com
Gene Curtis
Integra Telecom of North Dakota Inc
745 45th St SW Ste C
Fargo ND 59103

marsha.pokorny@ildmail.com
Marsha Pokorny
Intellicall Operator Services

kander@ictc.com
Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

dave_read@inter-tel.com
Dave Read
Inter-Tel NetSolutions Inc
885 Trademark Dr
Reno NV 89511

jamesval@jamesvalley.com

James Valley Coop Telephone Co
P O Box 260
Groton SD 57445

sales@kmavradio.com

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

francie@talk.com
Francie McComb
LDMI Telecommunications Inc
6805 Route 202
New Hoee PA 18938

loretel@loretel.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

gtaylor@matrixvalue.com
Greg Taylor
Matrix Telecom Inc
300 N Meridian Ste 200-North
Oklahoma City OK 73107

foss@btinet.net
Marilyn Foss
MCI
P O Box 2216
Bismarck ND 58502-2216

michel.singer_nelson@mci.com
Michel Singer-Nelson
MCI
P O Box 2216
Bismarck ND 58502-2216

gerrya@midrivers.com
Gerry Anderson
Mid-Rivers Telephone Coop Inc
PO Box 280
Circle MT 59215-0280

carols@midstatetel.com
Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

carols@midstatetel.com
Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

2kathyg@nemontel.net
Kathy Greenwood
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

karen.collins@mdu.com; tamie.aberle@mdu.com
Karen Collins
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

sbunn@mlgc.com
Shelie Bunn
Moore & Liberty Telephone Co
Enderlin ND 58027

dhill@ndarec.com
Dennis Hill
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

pschaner@ndarec.com
Patti Schaner
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

2kathyg@nemontel.net
Kathy Greenwood
Nemont Telephone Cooperative Inc
Scobey MT 59263

jsilveira@netlojix.com
Janet Medeiros-Silveira
NetLoqix Telecom Inc
104 W Anapamu St Ste C
Santa Barbara CA 93101

abussmann@newaccess.cc
Amy Bussmann
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

prieck@newaccess.cc
Pam Rieck
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

rer@norlight.com
Robert E Rogers
NorLight Inc
275 N Corporate Dr
Brookfield WI 53045

laurie.willman@nbne.info
Laurie Willman
North By NortheastCom LLC

kathyy@ndtel.com
Kathy Young
North Dakota Long Distance
P O Box 180
Devils Lake ND 58301-0180

stevedl@srttel.com
Steven Lysne
North Dakota Network Co
P O Box 2027
Minot ND 58702-2027

pat@ndta.net
Patricia Gisinger
North Dakota Telephone Assoc
PO Box 2614
Bismarck ND 58502-2614

kathyy@ndtel.com
Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

dwights@nccray.com
Dwight Schmitt
Northwest Communications Coop
PO Box 38
Ray ND 58849-0038

njureidini@noslv.com
Naz Jureidini
NOS Communications
4380 Boulder Hwy
Las Vegas NV 89121

mary.buley@onvoy.com
Mary Buley
Onvoy Inc
300 South Highway 169, Ste 700
Minneapolis MN 55426

jill.froman@excellsvcs.com
Jill Froman
Operator Service Company LLC
5302 Avenue Q
Lubbock TX 79412

ddunning@polarcomm.com
David Dunning
Polar Commun Mut Aid Corp
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telcom Inc
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telecommunications Inc
PO Box T
Park River ND 58270

donn@srt.com
Don Negaard
Pringle and Herigstad P C
PO Box 1000
Minot ND 58702-1000

jbrown@vcomsolutions.com
Jenna Brown
QuantumShift Communications Inc
12657 Alcosta Blvd Ste 418
San Ramon CA 945830

sschwan@qwest.com
Suzy Schwandt
Qwest Corporation

kblicke@qwest.com
Kent Blickensderfer
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

melvin.kambeitz@qwest.com
Mel Kambeitz
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

smacint@qwest.com
Scott Macintosh
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

karen.titzer@qwest.com
Karen Titzer
Qwest Corporation
1801 California St Ste 900
Denver CO 80202

areyes@telfile.com
Ayanery Reyes
QX Telecom LLC
230 5th Ave Ste 800
New York NY 10001

pam@tnics.com
Pamela Harrington
RC Communications Inc
PO Box 197
New Effington SD 57255-0197

jeffolson@rrt.net
Jeff Olson
Red River Rural Tele Assoc
PO Box 136
Abercrombie ND 58001-0136

jeffolson@rrt.net
Jeff Olson
Red River Telecom Inc
PO Box 136
Abercrombie ND 58001-0136

royce@restel.net
Royce Aslakson
Reservation Telephone Cooperative
Parshall ND 58770

mbrestel@ndak.net
Marcia Burckhard
Reservation Telephone Cooperative
Parshall ND 58770

shaneh@restel.net
Shane Hart
Reservation Telephone Cooperative
Parshall ND 58770

pam@tnics.com
Pamela Harrington
Roberts County Telephone Coop Assoc
New Effington SD 57255

aimeed@nemontel.net

Sagebrush Cellular Inc

kb9534@sbcld.com
Karen Brinkman
SBC Long Distance LLC
5850 W Las Positas Blvd
Pleasanton CA 94558

diane.c.browning@mail.sprint.com
Diane C Browning
Sprint
6450 Sprint Pkwy
MAILSTOP: KSOPHN0212-2A511
Overland Park KS 66251

julieel@srttel.com
Julie Lizotte
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

christm@srttel.com
Chris Morsefield
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

johnar@srttel.com
John Reiser
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

mdickerson@state.nd.us
Marcy Dickerson
State Tax Department
State Capitol
Bismarck ND 58505

lwh@thlglaw.com
Loubna W Haddad
The Helein Law Group LLP
8180 Greensboro Dr Ste 700
McLean VA 22102

gary.barlow@flyingj.com
D Brett Sanford
Ton Services Inc
4185 Harrison Blvd Ste 301
Ogden UT 84403

cdr-agency-relations@mci.com
Dan Hernandez
TTI National Inc
P O Box 3187
Cedar Rapids IA 52406-3187

suelh@srttel.com
Sue Hamilton
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

stevedl@srttel.com
Steve Lysne
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

janehp@srttel.com
Jane Petersen
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

kimrw@srttel.com
Kim Weydahl
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

francie@talk.com
Francie McComb
Talk America Inc
6805 Route 202
New Hope PA 18938

chopfinger@securustech.net
Curtis Hopfinger
T-Netix Inc
14651 Dallas Pkwy Ste 600
Dallas TX 75254-7476

compliance@epowerc.com
Lourdes Vinas
TransWorld Network Corp
7702 Woodland Ctr Blvd Ste 50
Tampa FL 33614-2411

kcarlson@utma.com
Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

lahall@usgs.gov
Lenora Hall
U S Geological Survey

kjvannin@usgs.gov
K Vannin
U S Geological Survey

jennifer.arnold@tdsmetro.com
Jennifer Arnold
U S Link Inc dba TDS Metrocom
P O Box 327
Pequot Lakes MN 56472-0327

kimm.partridge@ucn.net
Kimm Partridge
UCN Inc
14870 S Pony Express Rd
Bluffdale UT 84065

kcarlson@utma.com
Kenneth Carlson
United Telephone Mut Aid Corp
P O Box 729
Langdon ND 58249-0729

mspead@universalservice.org
Michael Spead
USAC
2120 L St NW Ste 600
Washington DC 20037

kander@ictc.com
Keith Anderson
Valley Communications Inc
P O Box 8
Nome ND 58062

bgipson@vartec.net
Becky Gipson
VarTec Solutions Inc
2440 Marsh Lane
Carrollton TX 75006

bgipson@vartec.net
Becky Gipson
VarTec Telecom Inc
2440 Marsh Lane
Carrollton TX 75006

rhoudek@venturecomm.net
Randy Houdek
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

anthony.gillman@verizon.com
Anthony Gillman
Verizon Select Services Inc
P O Box 110
Mailcode: FLTC0007
Tampa FL 33601-0110

anthony.gillman@verizon.com
Anthony Gillman
Verizon Select Services Inc
P O Box 110
Tampa FL 33601-0110

westriver@sdplains.com
West River Coop Telephone Co
801 Coleman Ave PO Box 39
Bison SD 57620-0039

bonniek@westriv.com
Bonnie Krause
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

mickg@westriv.com
Mick Grosz
West River Telecommunications Cooperati
PO Box 467
Hazen ND 58545-0467

kathy.hough@wiltel.com
Kathy Hough
WilTel Communications LLC
1 Technology Ctr
Tulsa OK 74103

windfall_resources@sbcglobal.net
Robert K Lock
Windfall Resources International LLC
7144 BN Harlem Ave Ste 323
Chicago IL 60631

paulihland@wtc-mail.net
Paul Ihland
Wolverton Telephone Company
P O Box 270
Park River ND 58270-0270

rex.knowles@xo.com
Rex Knowles
XO Communications Services Inc
111 E Bdwy Ste 1000
Salt Lake City UT 84111

Diana Stevens
One Verizon Place
Alpharetta GA 30004-8511

1 Plus Savings Inc
36072 Jefferson Ave
Harrison Township MI 48045

Jennifer Sikes
1-800 Reconex
2500 Industrial Ave
Hubbard OR 97032

Patrick Summers
360networks (USA) Inc.
867 Coal Creek Cir Ste 160
Louisville CO 80027-4670

3U Telecom Inc
1802 N Carson St Ste 212-2683
Carson City NV 89701

800 Response Information Services LLC
200 Church St
Burlington VT 05402

Acceris Communications Corp
9775 Business Park Ave
San Diego CA 92131

Access Point Inc
1100 Crescent Green Ste 10 9
Cary NC 27511

Accessline Communications Corporation
11201 SE 8th St Ste 200
Bellevue WA 98004

ACCXX Communications LLC
4035 Tampa Rd Ste 6000
Oldsmar FL 34677

ACN Communications Services Inc
32991 Hamilton Ct
Farmington Hills MI 48334

Acomm Inc
5701 Shingle Crk Pkwy Ste 550
Brooklyn Center MN 55430-2467

Affinity Network Incorporated
4380 Boulder Hwy
Las Vegas NV 89121

Airespring Inc
6060 Sepulveda Blvd Ste 220
Van Nuys CA 91411-2512

Airnex Communications Inc
3000 Executive Pkwy Ste 230
San Ramon CA 94583

Alliance Group Services Inc
1221 Post Rd E
Westport CT 06880-5430

All-Star Acquisition Corporation
7361 Calhoun Pl Ste 650
Derwood MD 20855-2775

Alltel Communications Inc
1 Allied Dr
Little Rock AR 72202

Alternate Communications Technology Inc
1398 N Shadeland Ave Ste 2233
Indianapolis IN 46219

American Global Voice Mart Inc
8180 Greensboro Dr Ste 775
McLean VA 22102

Americatel Corporation
4045 NW 97th Ave
Miami FL 33178

Kelly Franks
Amerivision Communications Inc
201 NW 63rd St Ste 200
Oklahoma City OK 73116

Arch Communications Enterprises LLC
6910 Richmond Hwy #80
Alexandria VA 22306-1801

Arch Paging Inc
1800 W Park Dr
Westborough MA 01581

Arch Wireless Inc
6910 Richmond Hwy #80
Alexandria VA 22306-1801

ASC Telecom Inc
6391 Sprint Pkwy
Overland Park KS 66251-6100

Associated Network Partners Inc
3130 Pleasant Run
Springfield IL 61707-6347

Association Administrators Inc
180 E Main St
Smithtown NY 11787

Kimberly Nielsen
AT&T Wireless
7277 164th Ave NE RTC-1
Redmond WA 98052

ATX Telecommunications Services Ltd
50 Monument Rd
Bala Cynwyd PA 19004

BAK Communications LLC
1108 E 17th St
Santa Ana CA 92701

Basin Telecommunications Inc
1717 E Interstate Ave
Bismarck ND 58503-0564

BCN Telecom Inc
550 Route 202-206 2nd Fl
Bedminster NJ 07921

Bell Atlantic Communications Inc
1320 N Courthouse Rd 9th Fl
Arlington VA 22201

John Broten
Bell Atlantic Communications Inc
1320 N Court House Rd 9th Fl
Arlington VA 22201

Robin H Taylor
BellSouth Long Distance Inc
400 Perimeter Ctr Terr Ste 350
Atlanta GA 30346

Better World Telecom Inc
11921 Freedom Dr Ste 550
Reston VA 20194

Angel Sotomayer
Bismarck MSA LImited Partnership
180 Washington Valley Rd
Bedminster NJ 07921-2120

Blackstone Communications Company
11600 NW 34th St
Miami FL 33178

Broadwing Communications LLC
1122 Capital of Texas Highway S
Austin TX 78746

Budget Phone, Inc.
6901 W 70th St
Shreveport IL 71129

BullsEye Telecom, Inc.
25900 Greenfield Rd Ste 330
Oak Park MI 48237

Craig Konrad
Business Discount Plan Inc
1 World Trade Ctr Ste 800
Long Beach CA 90831

Business Network Long Distance Inc
1400 16th St Ste 400
Denver CO 80202

Buzz Telecom Corporation
8380 Louisiana St
Merrillville IN 46410

Scott Geston
Cable One of Fargo
P O Box 10757
Fargo ND 58106-0757

Century Telecommunications Inc
P O Box 4065
Monroe LA 71211-5065

Cincinnati Bell Any Distance Inc
201 E 4th St
Cincinnati OH 46202

Clear World Communications Corporation
3601 S Harbor Blvd
Santa Ana CA 92704

Robert Fallan
Coast International Inc
14303 W 95th St
Lenexa KS 66215-5210

Cognigen Networks Inc
6405 218th St SW Ste 305
Mountlake Terrace WA 98043-2180

Coleman Enterprises Inc
6053 Hudson Rd #110
Woodbury MN 55125

Beth Choroser
Comcast Business Communications Inc
1500 Market St
Philadelphia PA 19102

CommPartners LLC
3291 N Buffalo Dr Ste 8
Las Vegas NV 89129

Courtney Maroon
Communications Billing Inc
P O Box 40149
Bay Village OH 44140-0149

C Hurley Cox
Communications Network Billing Inc
6701 Democracy Blvd Ste 300
Bethesda MD 20817

CommuniGroup of K C Inc
6950 W 56th St
Mission KS 66202

Computer Integrated Communications In
8502 Bells Mill Rd
Potomac MD 20854-4071

Computer Network Technology Corp
6000 Nathan Ln N
Minneapolis MN 55442

Comtech 21 LLC
1 Barnes Park S
Wallingford CT 06492

Consolidated Billing Provider LLC
7 Shingle Oak Dr
Voorhees NJ 08043

Scott Kitchen
Consolidated Comm Operator Services I
350 S Loop 336 W
Conroe TX 77304

Consolidated Comm Telecom Services Inc
121 S 17th St
Mattoon IL 61938

Consolidated Communications Corp
P O Box 1408
Dickinson ND 58602-1408

Consolidated Communications Networks Inc
507 S Main
Dickinson ND 58601

Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

Contact Communications
937 W Main St
Riverton WY 82501

Convergia Inc
237 Hymus Blvd
Point-Claire Quebec CA H9R 5C7

Corporate Calling Services Inc
3960 Howard Hughes Pk
5th Fl #5001F
Las Vegas NV 89109-5972

Corporate Communications Inc
2150 32nd Ave S
Grand Forks ND 58201

Anthony Barrett
Covista Inc
4803 Hwy 58 N
Chatanooga TN 37416

Custom Teleconnect Inc
3111 S Valley View Ste E-120
Las Vegas NV 89102

Cybertel Communications Corp
9444 Waples ST Ste 290
San Diego CA 92121-2985

D D D Calling Inc
2400 Augusta Ste 255
Houston TX 77057

Keith Larson
Dakota Central Telecom I
PO Box 299
Carrington ND 58421-0299

William Jackson
Dakota Justice
38 8th Ave W
Dickinson ND 58601

Daktel Communications LLC
P O Box 299
Carrington ND 58421-0299

Dave Dircks
DCN LLC
P O Box 180
Devils Lake ND 58301-0180

DelTel Inc
27071 Aliso Creek Rd Ste 150
Aliso Viejo CA 92656-5323

Dialaround Enterprises Inc
30-50 Whitestone Expwy 1st Fl Ste 102
Flushing NY 11354

Dial-Thru Inc
17383 Sunset Blvd Ste 350
Pacific Palisades CA 90272-4195

Digital Telecommunications Inc
111 Riverfront Ste 305
Winona MN 55987

DSLnet Communications LLC
545 Long Wharf Dr
New Haven CT 06511

Eagle Telecom Inc
614 S 8th St Ste 335
Philadelphia PA 19147

Easton Telecom Services Inc
3046 Brecksville Rd #A
Richfield OH 44286-9399

Easton Telecom Services LLC
Summit II Unit A
3406 Brecksville Rd
Richfield OH 44286

ECI Communications Inc
575 E Locust Ave Ste 201
Fresno CA 93720-2928

Encompass Communications LLC
119 W Tyler Ste 260
Longview TX 75601

Enhanced Communications Group LLC
312 E Delaware Ave
Bartlesville OK 74003-3630

Enhanced Communications Network Inc
1031 S Glendora Ave
West Covina CA 91790

Entrix Telecom Inc
520 Broad St
Newark NJ 07102

Epixtar Communications Corp
11900 Biscayne Blvd Ste 262
Miami FL 33181

erbia Network Inc
7901 Ariel Way
McLean VA 22102

Ernest Communications Inc
5275 Triangle Pkwy Ste 150
Norcross GA 30092

Exergy Group LLC
1550 W 84th St Ste 50
Hialeah FL 33014

Chere Heintzmann
Extend America Inc
1101 E Front Ave
Bismarck ND 58504-5654

Farstad Oil Inc
P O Box 1842
Minot ND 58701

Lawrence Freedman
Fleischman & Walsh
1919 Pennsylvania Ave NW Ste 600
Washington DC 20006-3420

France Telecom Corporate Solutions LLC
2300 Corporate Park Dr Mailstop SPO606
Herndon VA 20171

FreedonStarr Communications Inc
7985 Santa Monica Blvd #7
West Hollywood CA 90046

Funding Our Future LLC
1900 Wellesley Ave
St Paul MN 55105

Gates Communications Inc
1100 Olive Way #951
Seattle WA 98101

Gerlach Enterprises Inc
3002 Fiechtner Dr S Ste 1
Fargo ND 58103-2387

Global Communications Consulting Corp
2 Greenwood Sq Ste 110
3331 St Rd
Bensalem PA 19020-2052

Global Tel*Link Corporation
2609 Cameron St
Mobile AL 36607-3104

Globalcom Inc
333 West Wacker Ste 1500
Chicago IL 60606

GLOBCOM INCORPORATED
2100 Sanders Rd Ste 150
Northbrook IL 60062

Go Solo Technologies Inc
5053 Ocean Blvd #54
Sarasota FL 34242

Gold Line Telemanagement Inc
180 W Beaver Creek Rd
Richmond Hill Ontari CA L4B 1B4

Granite Telecommunications LLC
234 Copeland St
Quincy MA 02169

Group Long Distance Inc
1 Cavalier Ct
Ringoes NJ 08551-0534

GTC Telecom
3151 Airway Ave Ste p_3
Costa Mesa CA 92626

Houlton Enterprises Inc
2201 W Bdwy Ste 1
Council Bluffs IA 51501

IBFA Acquisition Company LLC
1850 Howard St Unit C
Elk Grove Village IL 60007

Julia Waysdorf
ICG Telecom Group Inc
161 Inverness Dr W
Englewood CO 80112

Infone LLC
601 S Figueroa St 40th Fl
Los Angeles CA 90017-5758

Inmate Calling Solutions LLC
5883 Rue Ferrari
San Jose CA 95138

Intelecall Communications Inc
11900 Biscayne Blvd Ste 201
Miami FL 33181

Intercontinental Communicatiosn Group Inc
420 Lexington Ave Ste 518
New York NY 10170

Ken Hanks
International Telcom Ltd
417 2nd Ave W
Seattle WA 98119

International Telemanagement Group Inc
206 E Market St
Lima OH 45801

David A. Huberman
Intrado Communications Inc
1601 Dry Creek Dr
Longmont CO 80503-6493

Ionex Communications North Inc
2300 Main St Fl 6
Kansas City MO 64108-2415

IPVoice Communications Inc
14860 Montfort Dr Ste 210
Dallas TX 75254

Nanette Edwards
ITC DeltaCom Communications Inc
7037 Old Madison Pike NW #400
Huntsville AL 35806-2107

KDDI America Inc
375 Park Ave 7th Fl
New York NY 10152

KMC Data LLC
1545 Route 206
Bedminster NJ 07921

KMC Telecom V Inc
1545 Rt 206
Bedminster NJ 07921

Myer Shark
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

Thomas K Crowe
Law Offices of Thomas K Crowe PC
1250 24th St NW Ste 300
Washington DC 20037

LCI Telemanagement Corp
4650 Lakehurst Ct
Dublin OH 43017

LCR Telecommunications LLC
100 West Big Beaver Rd Ste 200
Troy MI 48084

LDC Telecommunications Inc
10012 N Dale Mabry Hwy
Tampa FL 33618

Kathleen Kerr Lawrence
Least Cost Routing Inc
1700 Old Meadow Rd
McLean VA 22102

Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021

Lightyear Network Solutions LLC
201 E Main St Ste 1000
Lexington KY 40507

Local Telcom Holdings LLC
485 Madison Ave 15th Fl
New York NY 10022-5803

Jan Lowe
Long Dist Consolidated Billing Co
7411 Dixie Hwy Ste 211
Clarkston MI 48346

Long Distance Billing Services Inc
436 Lynchburg Ave
Brookneal VA 24528

Main Street Telephone Company
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Maxcess Inc
P O Box 951419
Lake Mary FL 32795-1419

McGraw Communications Inc
228 E 45th St 12th Fl
New York NY 10017

MCI Worldcom Network Services Inc
22001 Loudoun Cty Pkwy
Ashburn VA 20147-6105

MCImetro Access Transmission Services
22001 Loudoun County Pkwy
Ashburn VA 20147-6105

McKenzie Consolidated Telecom LLC
P O Box 1408
Dickinson ND 58602-1408

McLeodUSA
P O Box 3177
Cedar Rapids IA 52406-3177

Mercury Long Distance INc
2288 Gunbarrel Rd Stte 111-269
Chattanooga TN 37421

Metropolitan Telecomm of ND Inc
44 Wall St 6th Fl
New York NY 10005

MGEN Services Corp
2510 N Red Hill Ave
Santa Ana CA 92705

Micro-Comm Inc
2612 Cameron
Mobile AL 36670-0461

Midcontinent Communications
410 South Phillips Ave
Sioux Falls SD 57104

Mid-Rivers Long Distance Inc
106 2nd Ave S
Circle MT 59215

Minnesota Independent Equal Access Corp
300 S Hwy 169 Ste 700
Minneapolis MN 55426

Miracle Communications Inc
725 Lakefield Rd Ste G
Westlake Village CA 91361-5915

Mike Strand
MITS
PO Box 5237
Helena MT 59604-5237

National Access Long Distance Inc
2055 Gateway Place Ste 400
San Jose CA 95110

National Directory Assistance LLC
12700 Shelbyville Rd Danville Bldg
Louisville KY 40243

Jim Arbury
National Multi Housing Council
1850 M St NW Ste 540
Washington DC 20036

National Professional Teleservices LLC
14001 63rd Way N
Clearwater FL 33760

National Telecom Inc
2235 E Flamingo Rd Ste 405
Las Vegas NV 89119

Dave Crothers
NDATC
Box 1144
Mandan ND 58554-1144

NECC Telecom Inc
605 N Shore Dr Unit 101-103
Jeffersonville IN 47130

Nemont Communications Inc
P O Box 600
Scobey MT 59263

Net One International Inc
4037 Metric Dr
Winter Park FL 32792-6808

Netlojix Telecom Inc
104 W Anapamu St Ste C
Santa Barbara CA 93101

Network Billing Systems LLC
155 Willowbrook Blvd
Wayne NJ 07470

Network Communications International Corp
606 E Magrill St
Longview TX 75601

Network Enhanced Technologies Inc
700 S Flower St Ste 420
Los Angeles CA 90017-4106

Network Operator Services Inc
119 West Tyler Ste 260
Longview TX 75601

Network PTS Inc
14472 Wicks Blvd
San Leandro CA 94577

Network Service Billing Inc
7251 W Lake Mead Blvd Ste 300
Las Vegas NV 89128

Network US Inc
1842 Centre Point Dr Ste 128
Naperville IL 60563-4851

NetworkIP LLC
119 West Tyler St Ste 168
Longview TX 75601

New Century Telecom Inc
8180 Greensboro Dr #700
McLean VA 22102

New Edge Network Inc
3000 Columbia House Blvd Ste 106
Vancouver WA 98661

Bob Edgerly
Nextel West Corp
2001 Edmund Halley Dr
Reston VA 20191

NobelTel LLC
5759 Fleet St
Carlsbad CA 92008

Norlight Inc
13935 Bishops Dr
Brookfield WI 53005-6605

Cheryl Jung
Norstan Network Services Inc
5101 Shady Oak Rd
Minnetonka MN 55343

Angel Sotomayor
North Dakota 5-Kidder Ltd Ptnshp
180 Washington Valley Rd
Bedminster NJ 07921-2120

Carmine Russo
North Dakota Big Sky Telecom
374 Ansin Blvd
Hallandale FL 33009

Dave Dircks
North Dakota Long Distance Inc
P O Box 180
Devils Lake ND 58301-0180

North Dakota Long Distance LLC
104 Eastwood Dr
Grafton ND 58237

Nosva Limited Partnership
4380 Boulder Hwy
Las Vegas NV 89121-3002

NPCR Inc
4500 Carillon Pt
Kirkland WA 98033

OCMC Inc
801 Congressional Blvd
Carmel IN 46032

OLS Inc
1030 Cambridge Sq Ste E
Alpharetta GA 30201

One Call Communications Inc
801 Congressional Blvd
Carmel IN 46032

Opcom Inc
512 N 29th St
Billings MT 59101-1128

Brad Van Leur
OrbitCom Inc
1701 N Louise Ave
Sioux Falls SD 57107

OU Connection Inc
13 E 4th Ave
Ada MN 56510

Ozark Telecom Inc
1115 Mill St
Camden SC 29020

Pacific Centrex Services Inc
6855 Tujunga Ave
North Hollywood CA 91605

PAETEC Communications Inc
1 PaeTec Plaza
600 Willowbrook Office Pk
Fairport NY 14450

Phone1 Inc
100 N Biscayne Blvd 25th FL
Miami FL 33132

PNG Telecommunications Inc
100 Commercial Dr
Fairfield OH 45014

POPP Telcom Inc
620 Mendelssohn Ave N
Golden Valley MN 55427

Powercom Corporation
1807 N Center St
Beaver Dam WI 53916-1031

Preimiercom Inc
500 E Higgins Rd Ste 200
Elk Grove Village IL 60007

Premiere Network Services Inc
1510 N Hampton Rd Ste 120
DeSoto TX 75115

Kathleen Kerr-Lawrence
Primus Telecommunications Inc
7901 Jones Branch Dr #900
McLean VA 22102-3338

Professional Comm Management Serv Inc
RR 3 Box 69G
Bruceton Mills WV 26525-9611

Scott Lee
Protel Advantage Inc
1308 Medora Rd
St. Paul MN 55118-1734

PT-1 Long Distance Inc
30-50 Whitestone Expressway
Flushing NY 11354

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90026

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90025

Quasar Communications Corporation
15610 Boulder Oaks Dr
Houston TX 77084

Quick Tel Inc
3822 Ironwood Pl
Landover MD 20785

Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Kristin L Smith
Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Melissa Thompson
Qwest Corporation
1801 California St Ste 900
Denver CO 80202

Qwest Interprise America Inc
1801 California St Ste 5100
Denver CO 80202

Qwest LD Corp
1801 California St Ste 5100
Denver CO 80202

QX Telecom LLC
230 5th Ave
New York NY 10001

R2C Communications Inc
9532 Mission Rd #25
Overland Park KS 66206

Radiant Telecom Inc
1020 NW 163 Dr
Miami FL 33169

RCC Network Inc
3905 Dakota St SW
Alexandria MN 56308-2000

Dean Polkow
RCC Network Inc
PO Box 2000
Alexandria MN 56308-2000

RCC Paging Inc
P O Box 2000
Alexandria MN 56308

Red River Networks LLC
201 Robert S Kerr Ste 500
Oklahoma City OK 73102

Reduced Rate Long Distance LLC
1800 Pembrooke Dr Ste 300
Orlando FL 32810

Reliance Telephone Systems Inc
118 Gateway Dr
East Grand Forks ND 56721

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary FL 32746

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary` FL 32746

Ridley Telephone Company LLC
470 Norristown Rd Ste 201
Blue Bell PA 19422-2322

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

Smartnet Inc
649 4th Ave SW
Dickinson ND 58601

Smartstop Inc
333 SW Taylor St
Portland OR 97204-2446

Arthur H Paquette
SNET America Inc
310 Orange St
North Haven CT 06510-1719

Snip Link LLC
100-A Twinbridge Dr
Pennsauken NJ 08110

Souris River Telecommunications Company
P O Box 2027
Minot ND 58702-2027

Andrew Jones
Sprint Communications Company
6391 Print Pkwy
Overland Park KS 66251-6100

Sprint Spectrum LP
6160 Sprint Pkwy 4th Fl
KSOPHIO414
Overland Park KS 66251

Startec Global Licensing Company
1151 Seven Locks Rd
Potomac MD 20854-2968

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

TalkNow Inc
9775 Business Park Ave
San Diego CA 92313

TCPB Marketing Company Ltd
P O Box 40149
Bay Village OH 44140-0149

William Staycoff
Telcom Billing Services Inc
9243 E River Rd NW
Coon Rapids MN 55433-5722

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

Donald Roudebush
Telecare Incorporated
444 Lafayette Rd
Noblesville IN 46060

TeleCents Communications Inc
8615 Richardson Rd Ste 200
Walled Lake MI 48390

Telecom Management Inc
563 Warren Ave
Portland ME 04103

Sue Weiske
Telecom Resources Inc
2020 Baltimore
Kansas City MO 64108-1914

Teleconnect Long Dist Sevices & Syste
Co
500 2nd Ave SE
Cedar Rapids IA 52401

Telefyne Incorporated
4286 Woodbine Rd Ste B
Pace FL 32571

Telenational Communications Inc
7310 Woolworth Ave
Omaha NE 68124

Telera Communications Inc
910 E Hamilton Ave Ste 200
Campbell CA 95008

Telliss LLC
10142 Brooks School Rd Ste 198
Fishers IN 46038

Telnet of Dickinson Inc
25 21st St W
Dickinson ND 58601

Telrite Corporation
14500 Lochridge Blvd Ste D
Covington GA 30014-4941

TelVue Corporation
16000 Horizon Way
Mt Laurel NJ 08054

The Farm Bureau Connection
600 Maryland Ave SW Ste 800
Washington DC 20024-2520

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

Total Call International Inc
707 Wilshire Blvd 9th Fl
Los Angeles CA 90017-3501

Touch I Communications Inc
100 Brookwood Rd
Atmore AL 36504-5751

Touchtone Communications Inc
16 S Jefferson Rd
Whippany NJ 07981

Trans National Comm Internat'l Inc
2 Charlesgate West
Boston MA 02215

Transcom Communications Inc
1925 W John Carpenter Frwy Ste 500
Irving TX 75063

Tri-M Communications Inc
125 E DeLaGuerra Ste 203
Santa Barbara CA 93101

Trinsic Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

U S South Communications Inc
250 Williams St Ste M-100
Atlanta GA 30303-1032

Christina Tygielski
Universal Access Inc
Sears Tower 233 S Wacker Dr Ste 600
Chicago IL 60606-6307

USA Digital Communications Inc
1603 SE 19th St Ste 120
Edmond OK 73013-6621

Rick Cantu
Value-Added Communications Inc
3801 E Plano Pkwy Ste 100
Plano TX 75074-1808

VCI Company
3875 Steilacoom Blvd #A
Lakewood WA 98498

Virgin Mobile USA LLC
10 Independence Blvd
Warren NJ 07059-6747

WDT World Discount Tele Co
13644 Neuton Rd
Dallas TX 75244

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

Carolyn Fodor
Winstar Communications
520 Broad St
Newark NJ 07102

Working Assets Funding Services
101 Market St #700
San Francisco CA 94105-1533

Uni-Tel Communications Group Inc
47 E Chicago Ave Ste 328
Naperville IL 60540

US LEC Communications Inc
6801 Morrison Blvd Morrocroft III
Charlotte NC 28211

Val-Ed Joint Venture LLP/702
702 Main Ave
Moorhead MN 56560

Value-Tel Inc
1841 Centre Point Dr Ste 135
Naperville IL 60563-1446

David Armey
Verizon Communications
750 SH121 Bypass Ste 100
Louisville TX 75067

W2Com International LLC
3500 Park Ctr Dr
Dayton OH 45414

WebNet Communications Inc
20904 Winola Ter
Ashburn VA 20147-6482

Wholesale Carrier Services Inc
7200 W Camino Real Ste 303
Boca Raton FL 33433

Wireless Alliance LLC
P O Box 2000
Alexandria MN 56308-2000

WTC Competitive Services Inc
P O Box 270
Park River ND 58270-0270

X2Comm Inc
270 S Main St
Flemington NJ 08822

XO Communications Services Inc
11111 Sunset Hills Rd
Reston VA 20190

Yak Communications (America) Inc
300 Consilium Pl Ste 500
Toronto Ontario CA M1H 3G2

Jill Papenhausen
Zone Telecom Inc
3 Executive Campus Ste 520
Cherry Hill NJ 08002

APPROVED
DATE: 12-14-05
KMF

MOTION

December 14, 2005

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission issue a Notice of Rescheduled Hearing in this proceeding.

PJF/sdh

48 **PU-05-451** Pages: 1

Motion for Notice of Rescheduled Hearing

by Public Service Commission

12/14/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

NOTICE OF RESCHEDULED HEARING

December 14, 2005

On May 12, 2005 Midcontinent Communications (Midcontinent) made a bona fide request under 47 U.S.C. § 251(c) for wholesale resold services for the Devils Lake, North Dakota exchange from North Dakota Telephone Company (NDTC). By its filing of July 15, 2005 Midcontinent notified the Commission of its bona fide request.

NDTC claims that under 47 U.S.C. § 251(f) it is exempt from the requirement that incumbent local exchange carriers must offer for resale the telecommunications services that it provides to retail subscribers.

Midcontinent requests that the Commission conduct an inquiry to determine whether to terminate NDTC's exemption from providing its services for resale.

A public hearing has been scheduled beginning **January 23, 2006, at 10 a.m. in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.**

The issues to be considered in this matter are:

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.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Illona A. Jeffcoat-Sacco, Executive Secretary at least 24 hours in advance.

PUBLIC SERVICE COMMISSION

Susan E. Wefald
Commissioner

Tony Clark
President

Kevin Cramer
Commissioner

Notice of Rescheduled Hearing

by Public Service Commission
12/14/2005 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

PREHEARING ORDER

December 13, 2005

Upon a prehearing conference held December 9, 2005, Patrick W. Durick, Pearce & Durick, and J. G. Harrington, Dow, Lohnes & Albertson, PLLC, appearing for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, P.C., and Thomas A. Moorman, Kraskin, Moorman & Cosson, LLC, appearing for North Dakota Telephone Company; and William W. Binek, Chief Counsel, and Patrick J. Fahn, Utilities Analysist, appearing for the North Dakota Public Service Commission, and pursuant to a stipulation by and among counsel for Midcontinent Communications and North Dakota Telephone Company, without objection by counsel for the North Dakota Public Service Commission, it is

ORDERED, that upon the completion of all pending discovery (whether "formal" or "informal"), expected to be done December 9, 2005, no further discovery shall be undertaken by Midcontinent Communication (for convenience, sometimes referred to as "Midco") or North Dakota Telephone Company (for convenience, sometimes referred to as "NDTC") except upon motion to the Commission's designated and acting hearing officer and in accordance with an order upon such motion, or otherwise as the Commission may allow; and it is further

ORDERED, that Midco shall serve and file its direct testimony and exhibits for the hearing not later than 4:30 p.m. C.S.T., December 21, 2005; and it is further

ORDERED, that NDTC shall serve and file its direct testimony and exhibits for the hearing not later than 4:30 p.m. C.S.T., January 9, 2006; and it is further

ORDERED, that Midco shall serve and file any rebuttal testimony and exhibits for the hearing not later than 4:30 p.m. C.S.T., January 16, 2006; and it is further

ORDERED, that no other or further filing of testimony or exhibits prior to the hearing shall be permitted except as the Commission may allow; and it is further

ORDERED, that all testimony and exhibits served and filed for the hearing pursuant to this order shall be served and filed electronically, provided, however, that if service and filing electronically cannot reasonably be accomplished service and filing shall be made by facsimile transmission upon advance notice given by telephone to the office of the person upon whom service electronically was attempted and to the offices of the North Dakota Public Service Commission for the attention of Illona A. Jeffcoat-Sacco, Executive Secretary; and it is further

ORDERED, that the hearing of this matter shall commence at 10:00 a.m. C.S.T., January 23, 2006, in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.

Dated at Bismarck, North Dakota this 13th day of December, 2005.

State of North Dakota
Public Service Commission

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **PREHEARING ORDER** was mailed, regular maul, on the 13 day of December, 2005, to:

Mr. Patrick W. Durick
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502-0400

Mr. Don Negaard
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Mr. J. G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue NW
Suite 800
Washington, DC 20036

Mr. Thomas J. Moorman
Kraskin, Moorman & Cosson, LLC
2120 L Street NW - Suite 520
Washington, DC 20037

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 13 day of December, 2005, to:

Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge

Louise Wetzel

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
DEC 12 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

December 9, 2005

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for filing on behalf of the respondent in the above proceeding are an original and seven copies of a Confirmation as to a Revised Procedural Schedule

Thank you.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

45 PU-05-451 Pages: 1

Cover letter re Confirmation as to a Revised Procedural Schedule
by North Dakota Telephone Company by Don Negaard,
12/12/2005 CC: Comm Legal Illona, Pat, Annette ALJ

RECEIVED
DEC 12 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**CONFIRMATION AS TO A REVISED PROCEDURAL SCHEDULE**
North Dakota Telephone Company,	)	
Respondent.	)	

Pursuant to and based on the December 9, 2005, conference held in this proceeding, North Dakota Telephone Company ("NDTC") hereby confirms the following procedural schedule for this proceeding.

1. Discovery shall end in this matter on December 9, 2005;

2. Midcontinent Communications ("Midco") shall prefile its testimony and hearing exhibits by no later than December 21, 2005;

3. NDTC shall file its responsive testimony and responsive exhibits to the December 21, 2005, Midco submission by no later than January 9, 2006;

4. Midco shall be permitted to file rebuttal testimony solely with respect to the matters raised by the January 9, 2006, NDTC submission by no later than January 16, 2006;

5. The hearing will commence at 10:00 a.m. on January 23, 2006.

Moreover, as indicated during the hearing this morning, all filings (including any Exhibits thereto) are to be served electronically on the parties and the Commission Staff in this matter, or that if such electronic service cannot be accomplished, advance notice

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

Confirmation as to a Revised Procedural Schedule
by North Dakota Telephone Company by Don Negaard,
12/12/2005 CC: Comm Legal Illona, Pat, Annette ALJ

of facsimile service be provided, and that all service of documents shall occur by no later than 4:30 p.m. CST on the due date of the filing. Finally, simultaneous post-hearing submissions (including but not limited to briefs and/or proposed orders) be addressed at the end of the hearing in this matter.

While NDTC attempted to confirm this filing with counsel for Midco in an effort to make this a joint filing/stipulation, those efforts were unsuccessful. Accordingly, NDTC makes this filing on its own in order to confirm the agreement of the parties made this morning during the hearing.

Dated at Minot, North Dakota, this 9th day of December, 2005.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com
Attorney for Respondent

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

NOTICE OF THIRD PREHEARING CONFERENCE

December 6, 2005

To: Patrick W. Durick, Pearce & Durick, and J. G. Harrington, Dow, Lohnes & Albertson, PLLC, counsel for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, P.C., and Thomas A. Moorman, Kraskin, Moorman & Cosson, LLC, counsel for North Dakota Telephone Company; and William W. Binek, Chief Counsel, North Dakota Public Service Commisson

Please take notice that a prehearing conference will be held for this matter at 8:30 a.m. CST, December 9, 2005. The prehearing conference will be conducted by telephone conference initiated by the administrative law judge. Mr. Harrington and Mr. Moorman are requested to advise the administrative law judge not later than 5:00 p.m. CST, on December 8, 2005, if they will participate in the prehearing conference.

The purpose of the prehearing conference is to consider the request of North Dakota Telephone Company to establish a schedule for the completion of discovery and for filing of preheating testimony and exhibits for the hearing, and to consider a recommendation to the Commission for the scheduling of the hearing. The parties may also request a determination concerning any question or problem regarding preparation for or the conduct of the hearing.

Dated at Bismarck, North Dakota this 6th day of December, 2005.

State of North Dakota
Public Service Commission

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

Notice of Third Prehearing Conference
by Office of Administrative Hearings by Al Wahl, ALJ
12/07/2005 CC: Comm Legal Illona, Pat, Annette

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **NOTICE OF THIRD PREHEARING CONFERENCE** was mailed, regular maul, on the 6 day of December, 2005, to:

Mr. Patrick W. Durick
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502-0400

Mr. Don Negaard
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Mr. J. G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue NW
Suite 800
Washington, DC 20036

Mr. Thomas J. Moorman
Kraskin, Moorman & Cosson, LLC
2120 L Street NW - Suite 520
Washington, DC 20037

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 6 day of December, 2005, to:

Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge

Louise Wetzel

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

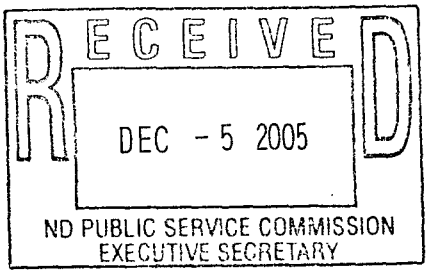
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

December 2, 2005



Honorable Al Wahl
Office of Administrative Hearings
1707 North 9th Street
Bismarck, ND 58501-1882

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed is an Expedited Request for Further Procedural Conference and Establishment of Procedural Schedule, which we are filing on behalf of North Dakota Telephone Company, the respondent herein. We would like an expedited hearing after 2 p.m. CST on Wednesday, December 7, or on December 8 or 9, 2005.

Thank you for your cooperation and assistance with this matter.

Don Negaard

Don Negaard

jt

Enclosure

cc: Pat Durick
William W. Binek, Public Service Commission

42 **PU-05-451** Pages: 1

Copy of letter to ALJ for Expedited Request

by North Dakota Telephone Company
12/05/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK E. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

FAX TRANSMITTAL FORM

DATE: December 5, 2005

TO: Bill Binek
NORTH DAKOTA PUBLIC SERVICE COMMISSION

FAX NO.: 701-328-2410

FROM: Jo Thompson, Secretary to Don Negaard
PRINGLE & HERIGSTAD, P.C.

FAX NO.: (701) 857-1361

CONFIRMATION NO.: (701) 852-0381

3 PAGE(S) INCLUDING THIS PAGE. IF YOU DO NOT RECEIVE ALL STATED PAGES, PLEASE CALL IMMEDIATELY.

RE: Midcontinent Communications v. North Dakota Telephone, Case No. PU-05-451

MESSAGE: The attached letter was to be included in the December 2 mailing concerning the Expedited Request in this matter; you may or may not have received it. Please accept my apologies for any inconvenience caused by this.

This information contained in this message is attorney/client privileged and intended for use of the individual named above. If the receiver of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please immediately notify us by calling (701) 852-0381 collect and return the original message to us. Thank you.

ORIGINALS: ✓ Not Mailed
___ Mailed
___ Sent via Overnight Delivery

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

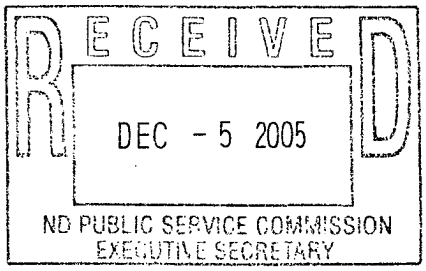
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

December 2, 2005



Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for filing on behalf of the respondent in the above proceeding are an original and seven copies of an Expedited Request for Further Procedural Conference and Establishment of Procedural Schedule, including Certificate of Service.

Thank you.

Don Negaard

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

41 **PU-05-451** Pages: 1

Cover letter re Expedited Request

by North Dakota Telephone Company by Don Negaard, 12/05/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

RECEIVED
DEC - 5 2005
ND PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**EXPEDITED REQUEST FOR FURTHER PROCEDURAL CONFERENCE AND ESTABLISHMENT OF PROCEDURAL SCHEDULE**
North Dakota Telephone Company,	)	
Respondent.	)	

North Dakota Telephone Company ("NDTC") hereby respectfully submits this "Expedited Request, for Further Procedural Conference and Establishment of Procedural Schedule" (the "Request") in the above-captioned proceeding. As explained below, NDTC respectfully submits that intervening events since the November 15, 2005, Second Prehearing Conference in this proceeding (the "November 15th Prehearing") necessitate the Hearing Officer's intervention to establish the filing dates for prefiled direct testimony and exhibits of Midcontinent Communication ("Midco"), prefiled responsive testimony and exhibits of NDTC, and prefiled rebuttal testimony and exhibits of Midco. The intervening events since the November 15th Prehearing also require the imposition of a discovery cut-off date and, potentially, a new hearing date based on Midco's preparedness, or the lack thereof, for a hearing.

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

Expedited Request for Further Proc Conf & Establish Procedural Schedule
by North Dakota Telephone Company by Don Negaard,
12/05/2005 CC: Comm Legal Illona, Pat, Annette ALJ

I. BACKGROUND

During the November 15th Prehearing Conference, the Hearing Officer and the parties agreed that a hearing in this matter would be scheduled for January 23, 2006. That date, in NDTC's view, was established to accommodate Midco's expressed desire to resolve this matter as quickly as possible and its assurances that this case was quite simple. However, NDTC's agreement to the January 26, 2006, hearing date was with the understanding that such date would also require the development of a reasonable procedural schedule to accommodate both parties' rights to present and reply to prefiled testimony of the other. To that end, the Hearing Officer requested the parties to meet in order to create a mutually agreed-to procedural schedule.

As the Hearing Office is also aware, adherence to a schedule that incorporated the January 23, 2006, hearing date was complicated by the fact that Midco had issued discovery, responses to which would not be due until November 28, 2005. Accordingly, the Hearing Officer encouraged NDTC, to the extent it could, to respond to such discovery prior to November 28, 2005. In response to the Hearing Officer's suggestion, NDTC undertook such efforts and facsimiled its discovery responses to Midco on Wednesday, November 23, 2005. (*See* Exhibit 1.)

With respect to scheduling issues, counsel for NDTC initiated discussion with Midco counsel in an effort to reach agreed-to time frames for the various pre-hearing submissions. As part of the communications between the parties, Midco issued additional discovery on November 29, 2005. (*See* Exhibit 2.) In the discussions, Midco also has made clear that, regardless of its initial testimony date, Midco wishes to

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

somehow claim a right to introduce new direct testimony within its rebuttal testimony based on the NDTC responses to Midco's November 29, 2005, discovery (responses to which would not be due until December 29, 2005). As explained in the exchange of emails between NDTC and Midco, NDTC indicated to Midco that such gamesmanship is improper. (*See* Exhibit 3.)

II. COMMISSION ACTION IS NOW REQUIRED

NDTC's actions speak for themselves. NDTC has attempted to comply with all reasonable requests made of it by Midco and the Hearing Officer. In light of the events that have occurred since the November 15th Prehearing, however, Midco's actions have raised doubts as to whether it is similarly committed. Accordingly, NDTC respectfully seeks the Hearing Officer's intervention to resolve the issues surrounding the procedural schedule and respectfully submits that such intervention be made on an expedited basis.

Whether intentional or not, Midco's actions since the November 15th Prehearing provides Midco with the opportunity (albeit improper opportunity) to introduce new evidence at the hearing to which NDTC could not have had a chance to respond. Equally problematic is the possibility that Midco's actions of issuing November 29, 2005, is but the first of subsequent discovery requests which would only further complicate the fair and rational introduction of prefiled testimony and exhibits in this proceeding. Alternatively, Midco's actions give rise to question the appearance provided by it during the November 15th Prehearing that Midco was ready for an expedited hearing date. Midco has now had over three months to propound discovery to NDTC and the need for

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

further discovery was never mentioned by Midco during the November 15th Prehearing (even though discovery was one of the very basis upon which the need for the November 15th Prehearing was called).

While NDTC continues it commitment to respond reasonably to any requests in this proceeding and to enter into discussions on a rational procedural schedule, those commitments are based on the concept of fundamental fairness and NDTC's expectation that it not be subjected to surprise and unfair demands. In light of the events since November 15th Prehearing, NDTC is properly concerned that the avoidance of such unfairness and surprise can only be accomplished though the intervention of the Hearing Officer in this matter.

Accordingly, NDTC requests an expedited further procedural conference and establishment of procedural schedule in this matter. At this conference, NDTC requests that the Hearing Officer establish the date for: (1) the filing of prefiled direct testimony and exhibits of Midco; (2) the filing of prefiled responsive testimony and exhibits of NDTC; (3) the filing of prefiled rebuttal testimony and exhibits of Midco; and (4) the cut-off of discovery. In addition, NDTC requests that the Commission and the Hearing Officer either affirm the January 23, 2006, hearing date or, based on the discussions at the conference, decide upon other possible hearing dates that accommodates the interests of the parties in this matter and fundamental fairness in the orderly and proper submission of prefiled testimony. After determining other possible dates, the Commission could set a new date at its December 14 hearing. To this end, counsel for

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

NDTC is available for such an expedited conference at any time after 2:00 p.m. CST, Wednesday December 7, 2005, or Thursday or Friday, December 8 or 9, 2005.

Dated at Minot, North Dakota, this 2nd day of December, 2005.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
donn@srt.com
Attorney for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Expedited Request for Further Procedural Conference and Establishment of Procedural Schedule was served by mail on the 2nd day of December, 2005, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Don Negaard, ND Bar ID #03598

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

EXHIBIT 1

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**RESPONSE TO REQUEST FOR DISCLOSURE OF INFORMATION**
North Dakota Telephone Company,	)	
Respondent.	)	

COMES NOW the Respondent, North Dakota Telephone Company (hereinafter NDTC), and for its response to the request for information interposed by Midcontinent Communications in its "Request for Disclosure of Information" dated October 24, 2005, which is treated as an interrogatory based on the agreement on the record dated November 15, 2005, states as follows:

OBJECTIONS

NDTC hereby objects to the request for DSL information for Devils Lake, North Dakota, on the grounds that:

1. It is not relevant or likely to lead to the discovery of relevant information.

2. It is proprietary and confidential information.

3. It is not sought for proper purposes but for the improper purpose of giving competitive information.

4. It is trade secret information and proprietary to NDTC.

Without waiving the foregoing, the information sought for the year 2004 is as follows:

Operating Revenues 2004	Devils Lake
Local Network Access	1,749,910.92
Network Access Services	2,999,122.51
Long Distance Network Services	4,241.38
Billing and Collection Revenue	105,121.24
Miscellaneous Revenue	182,182.76
Access Lines	5,637

Dated this 23rd day of November, 2005.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net
Attorney for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response to Request for Disclosure of Information was served by fax transmission and regular mail on the 23rd day of November, 2005, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Don Negaard, ND Bar ID #03598

EXHIBIT 2

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

MIDCONTINENT'S INTERROGATORIES AND REQUESTS FOR PRODUCTION TO NORTH DAKOTA TELEPHONE COMPANY

TO: Mr. Donald Negaard, Pringle & Herigstad, P. O. Box 1000, Minot, ND 58702-100

Pursuant to and in accordance with Rules 33 and 34, North Dakota Rules of Civil procedure Midcontinent Communications requests answers under oath to the following interrogatories and responses to the following requests for production:

REQUESTS FOR PRODUCTION

Request for Production No. 1: Please provide a copy of all analyses performed by, or on behalf of, North Dakota Telephone Company calculating the costs the company would avoid by providing wholesale local exchange service via total service resale in the Devils Lake service area. Such costs would include product management, advertising, customer service and billing to retail customers as well as indirect general support and corporate operations expenses. To the extent such analyses exist in electronic spreadsheet form such as Microsoft Excel, please provide the requested information in the native software format with all formulas intact.

Request for Production No. 2: Based on Mr. Dirck's testimony during his deposition on October 11, 2005, he asserted that North Dakota Telephone Company had the ability to identify the revenue and expense attributable to its Devils Lake service

...ea. Devils Lake operating revenue for 2004 was provided in North Dakota Telephone Company's November 23, 2005 Response to Request for Disclosure of Information. Please provide the company's corresponding operating expenses by income statement expense account for the Devils Lake service area. To the extent such analyses exist in electronic spreadsheet form such as Microsoft Excel, please provide the requested information in the native software format with all formulas intact.

INTERROGATORIES

Interrogatory No. 1: Please identify all services that comprise the net income recorded in the following accounts on the North Dakota Telephone Company Statement of Income in its 2004 Annual Report filed with the Commission:

a. Nonregulated Net Income

b. Internet Net Income

c. Net Income from LLC

Interrogatory No. 2: Please provide the following for all Custom Calling Services as defined in Section 5.13 of the Company's Exchange and Network Services Tariff. The account where revenue is recorded for these services in the North Dakota Telephone Company Statement of Income in its 2004 Annual Report filed with the Commission.

d. The amount of revenue recorded for these services in the North Dakota Telephone Company Statement of Income in its 2004 Annual Report filed with the Commission.

Dated this *29* day of November, 2005.

PEARCE & DURICK

PATRICK W. DURICK *ND #03141*
Individually and as a Member of the Firm
314 E. Thayer Avenue
P. O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890

Attorneys for Midcontinent Communications, Inc.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Tara Erickson hereby certifies that on November *29*, 2005, she served a copy of the foregoing:

MIDCONTINENT'S INTERROGATORIES AND REQUESTS FOR PRODUCTION TO NORTH DAKOTA TELEPHONE COMPANY

by facsimile and by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. addressed to the following:

Mr. Donald Negaard
Pringle & Herigstad
P. O. Box 1000
Minot, ND 58702-100
*via facsimile 701-*857-1361

William W. Binek
Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505
via facsimile 328-2410

Mr. Al Wahl
Administrative Law Judge
1707 North Ninth Street
Bismarck, ND 58501-1882
via facsimile 328-3254

Tara Erickson

Subscribed and sworn to before me this *29* day of November, 2005.

Notary Public

My commission expires:

JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007

EXHIBIT 3

Don Negaard

From: "Patrick W. Durick" <pwd@pearce-durick.com>
To: "Don Negaard" <donn@srt.com>
Sent: Friday, December 02, 2005 6:22 AM
Subject: RE: Midcontinent - NDTC

Don:

I am out of the office today so won't be able to respond by Noon. I will agree to the in hands deadline for delivering pleadings. I will discuss you other proposals with Midcontinent. I don't see how you can object to furnishing information that is exclusively in your clients possession and which can be furnished in little time. If you want to make sure that no new information is presented, furnish the information if time for Midcontinent to consider it. We will be asking the hearing officer to shorten the time for response as a remedy. I don't hear any claim that it would be onerous to respond to the discovery in less than thirty days.

Pat

-----Original Message-----
From: Don Negaard [mailto:donn@srt.com]
Sent: Thu 12/1/2005 1:13 PM
To: Patrick W. Durick
Cc:
Subject: Fw: Midcontinent - NDTC

Pat,

I've reviewed your proposal. I think we may be at an impasse in light of your November 29th discovery requests in this matter.

While we can agree with your suggestion that Midco file its direct testimony on December 21, 2005, that agreement is subject to both of our understanding that the testimony and any attachments (exhibits, etc) would also be delivered to me (either by fax or electronically) by 5:00 p.m. CST on that date. In fact, we would agree that all dates in the procedural schedule would be subject to this similar "in-hand" of counsel requirement. Let me know if you agree.

In light of the November 29th discovery you served and your email, you suggest that Midco be allowed to reserve the right to introduce new information in your rebuttal testimony since any responses on your recent discovery would be due December 29, 2005. We think that result is improper. Since Midco has had more than sufficient time to promulgate discovery, it appears to us that Midco is only now determining its approach to a hearing. If you need more time then you should go back to the Hearing Officer and ask for a later hearing date such as one in February, 2006.

In any event, we also are concerned that your recent discovery may be the first of similar requests which would only complicate the matter further. Please let me know whether you will agree to include a discovery cut-off, with no more new discovery, in any proposal schedule presented to the Hearing Officer.

We would appreciate knowing your position on the schedule and this email by noon tomorrow. Absent hearing from you, we will assume that we are, in fact, at an impasse and we will proceed to present this issue to the Hearing Officer.

Don

----- Original Message -----

From: Patrick W. Durick <mailto:pwd@pearce-durick.com>

To: Don Negaard <mailto:donn@srt.com>

Cc: wbinek@state.nd.us ; awahl@state.nd.us ; jgharrington@dowlohnes.com ; mary_lohnes@mmi.net

Sent: Tuesday, November 29, 2005 2:30 PM

Subject: Midcontinent - NDTC

Don:

I have your Request for Revised Procedural Schedule. I have discussed the schedule with Midcontinent's consultants and I would suggest that Midcontinent's initial prefiled testimony and exhibits be due no later than December 21st and the other dates suggested remain the same, NDTC's responsive testimony and exhibits by January 9, 2006 and Midcontinent's rebuttal testimony on or before January 16th. The hearing to take place on January 23, 2006. Midcontinent will be filing a request for additional information from NDTC requested by its consultants. Depending upon when the information is provided, Midcontinent's rebuttal testimony may include testimony based on the additional information provided by NDTC.

Patrick W. Durick
P.O. Box 400
314 East Thayer Avenue
Bismarck, ND 58502-0400
(701) 333-0102 - Direct Dial

(701) 333-0126 - Fax
(701) 220-3290 - Cell
pwd@pearce-durick.com

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
NOV 25 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

November 23, 2005

Honorable Al Wahl
Office of Administrative Hearings
1707 North 9th Street
Bismarck, ND 58501-1882

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

I spoke to Midcontinent yesterday and proposed the enclosed scheduling stipulation. I have not had a response from them so, in keeping with your directions to us, I am filing this with your office as a proposed schedule.

Thank you.

Don Negaard

jt

Enclosure

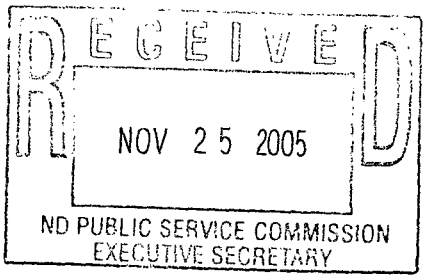
cc/enc: Pat Durick
William W. Binek, Public Service Commission

39 **PU-05-451** Pages: 3

Proposed Request to ALJ for Revised Procedural Schedule
by North Dakota Telephone Company by Don Negaard.
11/25/2005 CC: Comm Legal Illona, Pat, Annette ALJ

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**REQUEST FOR REVISED PROCEDURAL SCHEDULE**
North Dakota Telephone Company,	)	
Respondent.	)	

Pursuant to the November 15, 2005, Second Prehearing Conference in this proceeding, Midcontinent Communications ("Midco") and North Dakota Telephone Company ("NDTC") hereby move the Commission, through its Hearing Officer, to adopt the following procedural schedule for this proceeding. As noted herein, the procedural schedule is premised upon the initiation of the hearing in this matter on January 23, 2006. Based on this date, the parties agree as follows:

1. Midco shall prefile its testimony and hearing exhibits by no later than December 16, 2005;

2. NDTC shall file its responsive testimony and responsive exhibits to the December 16, 2005, Midco submission by no later than January 9, 2006;

3. Midco shall be permitted to file rebuttal testimony solely with respect to the matters raised by the January 9, 2006, NDTC submission by no later than January 16, 2006.

4. The hearing will commence at 10:00 a.m. on January 23, 2006.

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

The parties further agree, and request the Hearing Officer to so order, that all filings (including and Exhibits thereto) are to be served electronically on the parties and the Commission Staff in this matter, or that if such electronic service cannot be accomplished, advance notice of facsimile service be provided, and that all service of documents shall occur by no later than 4:30 CST on the due date of the filing.

The Parties further agree, and request the Hearing Officer to so order, that simultaneous post-hearing submissions (including but not limited to briefs and/or proposed orders) be addressed at the end of the hearing in this matter.

Dated this _____ day of November, 2005.

PEARCE & DURICK

Patrick W. Durick, ND Bar #03141
314 E. Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
Telephone: (701) 223-2890
Fax (701) 223-7865
Attorney for Complainant

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
Attorney for Respondent

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.

2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
NOV 25 2005

November 23, 2005

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH FILE NO. 20050316

Enclosed for filing on behalf of the respondent in the above proceeding are an original and seven copies of a Response to Request for Disclosure of Information, including Certificate of Service.

Thank you.

Don Negaard

jt

Enclosures

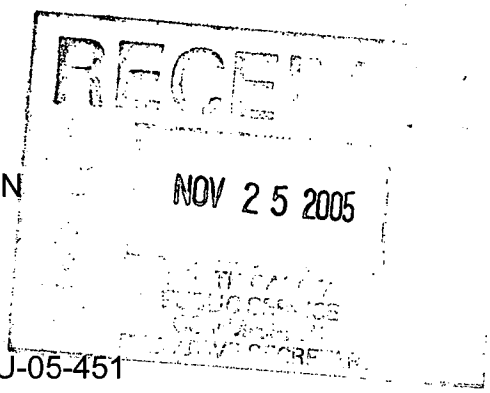
cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge

38 **PU-05-451** Pages: 1

Cover letter re Response to Request for Disclosure of Information
by North Dakota Telephone Company by Don Negaard,
11/25/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION



Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**RESPONSE TO REQUEST FOR DISCLOSURE OF INFORMATION**
North Dakota Telephone Company,	)	
Respondent.	)	

COMES NOW the Respondent, North Dakota Telephone Company (hereinafter NDTC), and for its response to the request for information interposed by Midcontinent Communications in its "Request for Disclosure of Information" dated October 24, 2005, which is treated as an interrogatory based on the agreement on the record dated November 15, 2005, states as follows:

OBJECTIONS

NDTC hereby objects to the request for DSL information for Devils Lake, North Dakota, on the grounds that:

1. It is not relevant or likely to lead to the discovery of relevant information.

2. It is proprietary and confidential information.

3. It is not sought for proper purposes but for the improper purpose of giving competitive information.

4. It is trade secret information and proprietary to NDTC.

Without waiving the foregoing, the information sought for the year 2004 is as follows:

Operating Revenues 2004	Devils Lake
Local Network Access	1,749,910.92
Network Access Services	2,999,122.51
Long Distance Network Services	4,241.38
Billing and Collection Revenue	105,121.24
Miscellaneous Revenue	182,182.76
Access Lines	5,637

Dated this 23rd day of November, 2005.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net
Attorney for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response to Request for Disclosure of Information was served by fax transmission and regular mail on the 23rd day of November, 2005, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Don Negaard, ND Bar ID #03598

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

November 18, 2005

Mr. Patrick W. Durick
Pearce & Durick
P. O. Box 400
Bismarck, ND 58502

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

Dear Mr. Durick:

Enclosed is a copy of the Commission's Motion granting the request for J. G. Harrington to practice before the Commission.

Thank you.

Sincerely,

William W. Binek
Chief Counsel

sls

Enclosure

cc/enc: Don Negaard, Attorney
Al Wahl, Administrative Law Judge (OAH No. 20050316)

36 PU-05-451 Pages: 2

Letter re approval of request to practice before the Commission
by Public Service Commission
11/18/2005 CC: Comm Legal Illona, Pat, Annette ALJ

APPROVED
DATE: 11-17-05
KMF

MOTION

November 17, 2005

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission admit attorney J. G. Harrington to practice before the Commission in Case No. PU-05-451, Midcontinent Communications/North Dakota Telephone Company, Rural Exemption Investigation.

wwb

APPROVED
DATE: 11-17-05
KMF

MOTION

November 17, 2005

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission admit attorney J. G. Harrington to practice before the Commission in Case No. PU-05-451, Midcontinent Communications/North Dakota Telephone Company, Rural Exemption Investigation.

wwb

35 PU-05-451 Pages: 1

Motion admitting J G Harrington to practice before the Commission by Public Service Commission

11/17/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

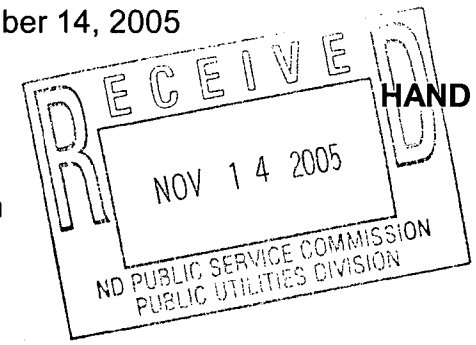
PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ♦♦
LAWRENCE BENDER, PC ♦
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

November 14, 2005



HAND DELIVERED

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: *Midcontinent Communications v. North Dakota Telephone Company*
Case No. PU-05-451

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1) MEMORANDUM IN SUPPORT OF REQUEST FOR DISCLOSURE OF INFORMATION; and

2) Affidavit of Service.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosures.
cc w/enc: Mr. Don Negaard
Mr. William W. Binek
Mr. Al Wahl

34 **PU-05-451** Pages: 1

Cover letter re Memorandum

by Midcontinent Communications by Patrick Durick, Atto
11/14/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

RECEIVED
NOV 14 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

MEMORANDUM IN SUPPORT OF REQUEST FOR DISCLOSURE OF INFORMATION

PRELIMINARY STATEMENT

This is an action pursuant to 47 U.S.C. §251(f)(1)(A) to determine whether Midcontinent's request for wholesale resold services from North Dakota Telephone Company ("NDTC") for Devils Lake, N.D. under 47 U.S.C. §251(c) is unduly economically burdensome, is technically feasible, and is consistent with section 254 of Title 47 U.S.C. (other than subsections (b)(7) and (c)(1)(D) of Section 254 of that Title). Midcontinent made a bona fide request to NDTC for wholesale resold services for Devils Lake, ND and NDTC refused Midcontinent's request and claimed the rural exemption status provided in 47 U.S.C. §251(f)(1)(A). The Commission entered its Order setting a hearing on October 13th, 2005 to determine whether the rural exemption was justified. 47 U.S.C. §251(f)(1)(B) sets a time limit of 120 days from the date the Commission receives notice of a request for the Commission to make a determination concerning the rural exemption. By stipulation of the parties, the hearing date was continued.

FACTS

On October 5, 2005 Midcontinent served a Rule 30(b)(6) Notice to take the deposition of NDTC, requesting that NDTC produce,

1. Individual(s) knowledgeable on the financial condition of NDTC, including the

balance sheet and results of operations of NDTC for the last five years and financial projections for the next three years.

and

4. Copies of any studies done by NDTC or by consultants retained by NDTC on the potential impact of competition in the market for telephone services in the Devils Lake market.

NDTC objected to producing items 4. above on the basis that the requested material was confidential trade secret information, that the requested information was irrelevant to any issues in the instant proceeding and further, was not calculated to lead to the discovery of relevant information and finally, that the requested information was developed in anticipation of litigation and was therefore privileged.

Pursuant to the notice, the deposition of NDTC was taken on October 11, 2005 in Devils Lake, ND. Mr. Dave Dircks was produced as the witness to respond to the notice on behalf of NDTC. In response to the request for financial information for NDTC, Mr. Dircks produced audited statements for TPC, Inc., a holding company that owned all of the stock in NDTC. NDTC has operations In cities other than Devils Lake and the audited statements for TPC contained results of the operations of all of the cities. Results for Devils Lake were not broken out in the financial statements produced, although Mr. Dircks stated that he assumed that such information could be provided. (Depo. Dave Dircks 30:1 and 2 and 38:4 through 16).

With respect to reports of consultants, Mr. Negaard stated that NDTC had a consultant's study based on competition from a facilities based competitor. Mr. Negaard advised that NDTC would not produce such study.

DATE OF HEARING

It is clear from the 120 day time limit on proceedings for the determination of the rural exemption placed on state commissions by 47 U.S.C. §251(f)(1)(B), that Congress intended prompt action on such proceedings. While the parties have stipulated to an extension of the 120 day time limitation, the intent was not to make the instant proceeding a drawn out process. Especially since the issues are simple and no extended period of time is necessary to address those issues. The only issue remaining in this proceeding is whether competition from a resale agreement with Midcontinent would be economically burdensome to NDTC. At his deposition, Mr. Dircks admitted that it was technically feasible to enter into a resale agreement and that Universal Service requirements did not present a problem.

Q. [Mr. Durick] And while I'm on that, in a resale agreement, there certainly are no reasons why you could not offer resold services to Midcontinent. Is that true?

A. [Mr. Dircks] To the best of my knowledge, that is true.

(Depo. Dircks 35:8-13.)

Q. [Mr. Durick] Can, can you see any impact on Universal Service Requirements as they're applicable to Devils Lake by a resale agreement

A. [Mr. Dircks] The way the rules are today, I would have to say no, --

Q. Okay.

A. -- but I'm not sure of what's going to happen in the future with, with the FCC regulations, which concerns

Q. But at least for now, Devils Lake -- the Devils Lake market has access to all those items that are listed as Universal Service Requirements under the Act, do

they not?

A. Yes.

(Depo. Dircks 36:2-17.)

NDTC is presently competing with Midcontinent in Devils Lake in the area of high speed access to the internet. Midcontinent offers high speed access through cable and NDTC offers high speed access through DSL lines. (Depo. Dircks 30:21-23.) NDTC is constructing a fiber to the home network in Devils Lake at a cost of $11.5 million and intends to offer video services in competition with Midcontinent. (Depo. Dircks 24:18-21 and 17:19-22.)

In the context of the competitive market in Devils Lake, It is interesting to note that in the First Report and Order of the Federal Communications Commission on Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, adopted on August 1, 1996, the Commission observed at paragraph 1262 that,

> We believe that Congress intended exemption, suspension, or modification of section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemptions, suspension, or modification.

Almost ten years have passed since this observation by the FCC and it is obvious that NDTC's business plan is to compete with Midcontinent in video and high speed internet access, but to use the rural exemption to shield itself from competition by Midcontinent in telephone service.

When questioned about the financial condition of NDTC, Mr. Dircks admitted that the company was in a strong financial position.

Q. [Mr. Durick] Okay. I, I think we talked little bit at the break, and I told you, as I look over these financial statements, it looks to me like it's a pretty healthy company. Do you have some reason to, to think otherwise?

A. [Mr. Dircks) No.

(Depo. Dircks 49:17-22.)

Midcontinent would suggest that while the rural exemption was meant to be used as a shield to protect rural carriers from unwarranted competition, the exemption in this case is being used to protect NDTC from competition in the area of telephone services while NDTC works to gain a competitive advantage in other areas of telecommunications services.

Midcontinent has suggested the week of December 29th, 2005 for a hearing and as will be discussed later, a schedule can be worked out that provides ample time for the parties to address the remaining issue of whether competition in the telephone services area would place an undue economic burden on NDTC.

DISCOVERY ISSUES

As pointed out above, the only issue remaining in this proceeding is whether the economic impact of an agreement for resale of telephone services in the Devils Lake market between NDTC and Midcontinent would place an undue economic burden on NDTC. NDTC has access to the financial and operational information that is necessary for the Commission to make this determination. NDTC has furnished financial information to Midcontinent for its entire system and as discussed above, it has the ability to segregate this information for the Devils Lake market. Since a consultant has done a study on the potential effects of facilities based competition in the Devils Lake market, one would

assume that the information has already been compiled. Also, NDTC has not claimed that it would be difficult or time consuming to provide this information. Since this proceeding is addressed to the Devils Lake market and since NDTC is the only source for this information, it stands to reason that the information should be made available to Midcontinent and to the Commission.

The North Dakota Rules of Civil Procedure are applicable to the instant proceeding. §28-32-33(1.), N.D.C.C. Rule 1, North Dakota Rules of Civil Procedure provides in relevant part as follows:

> They [the Rules] shall be construed and administered to secure the just, speedy and inexpensive determination of every action.

Rule 1, North Dakota Rules of Civil Procedure. Under Rule 26, North Dakota Rules of Civil Procedure, all relevant information is discoverable. There can be no doubt that financial and operational information is relevant to the question of whether competition would place an undue financial burden on NDTC. NDTC has not claimed otherwise. Instead, NDTC makes the unsupported and unsupportable argument that disclosure of such information is premature. See page 2 of RESPONSE TO REQUEST FOR AN ORDER SETTING DATES FOR DISCLOSURE OF INFORMATION AND HEARING. Midcontinent has requested segregated financial information. Midcontinent's notice to take the corporate deposition of NDTC was addressed to the instant action, which is addressed to the Devils Lake market. It is disingenuous to suggest that NDTC was surprised that Midcontinent was requesting financial and operational information for the Devils Lake market when this proceeding is addressed to NDTC's claimed rural exemption for that market.

Under Rule 34, North Dakota Rules of Civil Procedure, the Commission has the power to shorten the time for production of relevant information and under Rule 37, North Dakota Rules of Civil Procedure, the Court has the power to order production of relevant information.

Midcontinent requests that the Hearing Officer make inquiry as to whether the segregated financial and operation information requested by Midcontinent for the Devils Lake market is presently available and if it is available, that the information be produced as soon as possible. In the event the information is not presently available, that a reasonable time should be allowed for NDTC to compile and provide the information to Midcontinent. As stated above, NDTC is the only source for the information and the information is the essence of this action. In the interest of the just, speedy and inexpensive determination of this action, NDTC should be required to produce the requested financial and operational information within a reasonable time frame.

With respect to the consultant's study on the effects of facilities based competition, NDTC has claimed that the information is proprietary and confidential. Midcontinent has suggested that a protective order be entered providing that the information in the study be used for purposes of this proceeding and no other use. (See Depo. of Dircks, page 11.) Rule 26(c), North Dakota Rules of Civil Procedure concerning protective orders and Chapter 62-02-09, North Dakota Administrative Code concerning trade secrets, provide the means to protect confidential information.

The consultant's report is certainly relevant to the instant action. The study is addressed to competition and the financial implications of competition is the issue in this action. It makes no difference whether the competition results from a resale agreement

or from a facilities based competition. The issue is whether competition places an undue financial burden on NDTC. Midcontinent requests that NDTC be ordered to produce the subject consultant's study under an appropriate protective order.

NDTC's arguments that the study was developed in anticipation of litigation or is not relevant to the instant action is not supportable. Apparently, the study was done prior to the filing of the instant action and NDTC plans on using the study in the instant action. NDTC has not objected to the study on the grounds that it is the basis for an expert opinion that will not be used in the instant action.

In response to the inquiry concerning the Hearing Officer's authority to enter discovery orders, §28-32-33(3.), N.D.C.C. provides such authority. This section in relevant part provides,

> In any adjudicative proceeding, upon the request or motion of any party to the proceeding . . .a hearing officer may issue . . .discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or an other motion relating to . . . discovery, or protective orders must be made to the hearing officer."

CONCLUSION

For the above and foregoing reasons, Midcontinent requests that NDTC be required to produce financial and operation information for the Devils Lake market. Additionally, NDTC be required to produce, under an appropriate protective order, the consultant's study effect of competition to NDTC in the Devils Lake market by a facilities based competitor. Finally, that a hearing be scheduled on this matter at the earliest practicable time.

Dated this 14 day of November, 2005.

PEARCE & DURICK

PATRICK W. DURICK ***ND #03141***
Individually and as a Member of the Firm
314 E. Thayer Avenue
P. O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890

Attorneys for Midcontinent Communications, Inc.

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

DEPOSITION OF DAVE DIRCKS

October 11, 2005

Appearances:

For the Complainant:

PEARCE & DURICK
P. O. Box 400
Bismarck, North Dakota 58502-0400
By: PATRICK W. DURICK, ESQ.

For the Respondent:

PRINGLE & HERIGSTAD, P. C.
P. O. Box 1000
Minot, North Dakota 58702-1000
By: DONALD A. NEGAARD, ESQ.

Taken By: Joy Filipski, Court Reporter

INDEX

DEPONENT: PAGE NO.

DAVE DIRCKS

Examination by . . . Mr. Durick 5
Examination by . . . Mr. Negaard 52

EXHIBITS MARKED OFFERED

No. 1 -- Financial Statements 9
No. 2 -- Job Description 9
No. 3 -- Newspaper Article 15
No. 4 -- Minot Daily News Newspaper Article 16
No. 5 -- Outlook Summer, 2005 23

. . . The following is the Deposition of DAVE DIRCKS, taken at the request of the Complainant in the above-entitled cause, pending in the State of North Dakota, before the Public Service Commission, pursuant to Notice and the Federal Rules of Civil Procedure, before Joy Filipski, Court Reporter, a Notary Public within and for the State of North Dakota, at the RAMSEY COUNTY COURTHOUSE, Third-Floor Juryroom, Devils Lake, North Dakota, on Tuesday, October 11, 2005, at 9:00 o'clock a.m., at which time counsel appeared as hereinbefore set forth . . .

DAVE DIRCKS,

of Devils Lake, North Dakota, called as a witness by the Complainant, being first duly sworn by Joy Filipski, Court Reporter, a Notary Public within and for the State of North Dakota, was examined and deposed on his oath as follows:

MR. DURICK: Let the record reflect that this is the time and the place set for the deposition of the North Dakota Telephone Company.

There's been a Rule 30(b)(6) Notice sent out, identifying some particular areas that I want to inquire about this morning.

And I understand that the witness is Mr. Dircks?

THE DEPONENT: Uh-huh.

MR. DURICK: Okay.

THE DEPONENT: Yes.

MR. DURICK: This is the only witness we're going to have, Don?

MR. NEGAARD: Yes, sir.

9

Q. Okay.
Reports to the marketing manager, I see.
A. Right.
Q. And the job title's account executive?
A. Yes.
Q. Okay.
MR. DURICK: Why don't we mark, mark these items.
(Whereupon, there was discussion off the record.)
(Whereupon, Deposition Exhibit Nos. 1 and 2, Dircks, were marked for identification.)
Q. (By Mr. Durick) Okay, I've marked as Exhibit 1, then, the excerpts from the, from the audited financial statement of TPC, Inc., the three years, 2000-2001, 2002-2003 and 2003-2004.
That's marked as Exhibit 1.
And that includes the balance sheets and the operating statements for those years. Is that correct?
A. Yes.

10

Q. And the second thing we've marked as Exhibit No. 2, is the job description that was -- that I mentioned for an account executive.
I asked for some other items and I have received an objection.
But I asked for studies done by North Dakota Telephone Company or consultants retained by NDTC on the potential impact of competition in the market for telephone services in the Devils Lake market.
Item number four.
Is there such a study, and it's not just being produced, or are there no such studies?
MR. NEGAARD: For the, for the record, there is a study on facilities based competition, not on wholesale resale. And we believe it's highly proprietary, confidential. Especially in this context where we have a competitor asking to provide telecommunication services in the same community.
And it's just highly, highly proprietary and confidential and we don't intend to produce that, we don't think it's

11

proper and my objections have been noted in writing.
MR. DURICK: Okay.
And on behalf of Midcontinent Communications, it is highly relevant. We have suggested that we take the step of entering into a Protective Order so that the information can be used in just this proceeding and no other proceeding.
What it seems to us is that this goes to the heart of what the issue is here, and that's the claim by North Dakota Telephone Company of a rule exemption.
And the primary area of inquiry in that, is the financial -- whether it's -- whether it would be an undue financial burden on North Dakota Telephone Company to have competition.
So we'll leave that for a future time, I just wanted to make a record of it.
Q. (By Mr. Durick) The fifth item is a copy of any studies done by North Dakota Telephone Company or consultants on the subject of NDTC providing video programming in competition with Midcontinent.

12

Again, I'd ask the same question, is, is there no such study or, or is there a study that you're not producing?
MR. NEGAARD: And again, --
THE DEPONENT: Whoops.
MR. NEGAARD: -- there, there is such a study.
Again, for the reasons I previously noted, that the study measures the impact, not only in Devils Lake, but in at least one other community, and it's, it's highly proprietary, confidential, and to give that to a competitor places North Dakota Tel in an undue advantage.
What we're prepared to provide, financial information, that any expert could calculate and measure the impact on North Dakota Tel and/or on North Dakota Tel from Midcontinent's entering the market as a wholesale resale competitor.
But we don't think we're under any duty to do the work for such an expert.
And so we're prepared to provide that information and we're providing financial information today, but we're not going to provide the expert with, with his own

29

access to the -- to your network?
A. To our network, yeah.
Q. Okay. Where would Internet services come in in this operating statement?
A. I'm going to have to look at that.
Well, I believe they would have to come out of the local network access, then, because --
MR. NEGAARD: That's interest, I'm sorry.
Q. (By Mr. Durick) You believe that it would come out of the first part, local network access?
A. I believe so, yes.
Q. Okay. Now we're showing here gross revenue figures. I'm still looking. And that's for your entire system. Is that correct?
A. Yes.
Q. Do you have that broken down so you can tell me what Devils Lake does with respect to these various categories?
A. No, I don't.
Q. Do you have that broken down somewhere in your company?

30

A. We don't nor -- we don't normally break it down, but I'm assuming that we could.
Q. Do you -- can you give me any sense of what percentage Devils Lake would be out of the total revenues?
A. Well, we have approximately 18,500 lines in our company.
And somewhere around, I believe 53 to 5500 of those are Devils Lake, so whatever percentage that is, is the --
Q. That would be a rough estimate?
A. Rough. I'm sure there's other factors involved in there, but could be a rough estimate, yes.
Q. So that's a little over a third, is it?
A. (No verbal response.)
Q. Do you have any idea what percentage of your revenues per line would be Internet versus basic telephone services?
A. No, I don't. We, we have approximately, I think it's 2500 DSL lines, or high-speed Internet, is what that is.
But we offer that in all of our towns, so I -- I could find out how many we

31

have in Devils Lake, but right now I don't know.
Q. And DSL lines, what, what is the revenue per DSL line? Is it about 40 bucks, is it? Or is it --
A. I think, I think our -- 34.95, I believe is what --
Q. Okay.
A. -- we charge.
Q. And what is a phone?
A. (No verbal response.)
Q. Your basic service. I saw it somewhere, is it $14, or something?
A. 14.12 or -- I believe.
But they vary by, by towns.
Q. Uh-huh.
But I guess the point I'm making -- or -- is that -- not the point, but the, the fact is that the DSL lines generate more revenue than a phone line does?
A. (No verbal response.)
Q. Just the local service.
A. I'm not positive about that.
Q. But the only thing I'm talking about now, it's $14 for a phone and -- for --

32

A. Yeah.
Q. -- basic local service --
A. Yeah.
Q. -- and 35 for, for a DSL line.
The, the line -- the local service, obviously there's going to be access fees and other things --
A. Uh-huh.
Q. -- that can be attributed to that line, I take it.
Do you, do you have any idea, is, is there a -- well, let me --
Do you have any figure of an average revenue generated per line?
A. We may have somewhere that we've done internally, but I, I am not sure what, what it would be.
Q. Okay. Have you made any determination of what the effect would be of offering resold services to Midcontinent Communications?
A. No.
Q. You have not?
A. No.
Q. Okay. Well, just kind of back in

33

the envelope type calculations, do you have any idea how many telephone subscribers would take Midcontinent's telephone service if it was offered and take lines away from you?

A. I, I have no idea, other than making an assumption, and I, I don't know what that would be, but -- I, I don't know how many they would take.

Q. Okay. Have your consultants given you any estimates of what you could expect by way of a resold agreement with Midcontinent?

A. No.

Q. So, as we sit here today, you can't provide me with any quantifiable data that would suggest what the result would be of Midcontinent coming into competition with you in the resold area in the Devils Lake market?

A. Well, I think Don had mentioned, we have looked at it, if, if we lost those lines on a facility based -- you know, if you -- if someone actually came in and took those lines away from us.

Q. Okay. You have a study on that?

MR. NEGAARD: I, I think we said we do.

34

A. Yeah.

MR. DURICK: No, I understand, I'm just --

A. Yeah.

Q. (By Mr. Durick) Does that study include assumptions as to the level of lines that would be taken away?

A. I --

MR. NEGAARD: Okay, for the record, it, it does. I think that's as far as we would go. I mean, --

MR. DURICK: It'd make it a lot easier if you'd bring that out, so I could --

MR. NEGAARD: And, for the record, I, I think the consultants we're working with probably have a better feel of what kind of penetration rates market customer loss there are in, in these types of situations. And, and we'll be providing you information when our testimony's due.

Q. (By Mr. Durick) But, but I guess my question now is: have, have you been made aware of any of that, so that you have any idea, as the manager, what you'd be faced with if, in fact, Midcontinent did get a resale

35

agreement?

A. I think what we're saying is it's based on facility based loss, not, not resale.

Q. Okay. And facilities based is somewhat different than the resale agreement. Is that correct?

A. Yes.

Q. And while I'm on that, in a resale agreement, there certainly are no technical reasons why you could not offer resold services to Midcontinent. Is that true?

A. To the best of my knowledge, that is true.

Q. All right.

And you're familiar with the section, I think it's 254 of the Telecommunications Act having to do with Universal Service Requirements. Is that correct?

A. I wouldn't say I'm an expert, I, I --

Q. I'm not sure anybody --

A. I don't know anybody that is, but I'm somewhat familiar with them, yes.

Q. Familiar with them?

36

A. Yeah.

Q. Can, can you see any impact on Universal Service Requirements as they're applicable to Devils Lake by a resale agreement?

A. The way the rules are today, I would have to say no, --

Q. Okay.

A. -- but I'm not sure of what's going to happen in the future with, with the FCC regulations, which concerns me.

Q. But at least for now, Devils Lake -- the Devils Lake market has access to all those items that are listed as Universal Service Requirements under the Act, do they not?

A. Yes.

Q. Okay. And that wouldn't change if you offered resold services to Midcontinent, I take it?

A. Today it wouldn't, no, but as I mentioned before, it's the future that I'm concerned about.

Q. And what about the future concerns you?

37

A. If the rules were changed, --
Q. Okay.
A. -- where that would affect the company financially.
MR. NEGAARD: And, and for the record, to make sure you're not misled, either.
Mr. Dircks and I talked about this quite a bit yesterday, and he's not aware of any impacts, but we are still working with the consultants.
As you know, Section 254's about four pages long, there's several hundred pages of federal regulations that neither Mr. Dircks or I are intimately familiar with.
And we do want to work with our consultants on what are the impacts under 254. And we're still looking at that.
As of today, we're not aware at this point there are any, but we still want to keep looking at that and, and, and looking at the policies that are, are being promoted under 254 and what impact a resale agreement could have on those.
Q. (By Mr. Durick) Okay. Now --
A. I'm not sure which one that came

38

out of.
Q. Okay. Let's see what that is.
That's here -- yeah.
But your account -- as I understand it, you're telling me that your accounting system is such that you could segregate operating revenues from Devils Lake as opposed to other parts of your telecommunications plant?
A. I believe we could, if, if we had to.
Q. Okay. And, and how is that with respect to operating expenses? Is there any way to segregate those?
A. I, I think that we probably could, yes.
Q. Generally, what is the most profitable part of your, of your business?
A. I would have to say our -- probably our local service revenues is a major part of it. And then our -- as you can see from the financial report there, our network access is quite large, as far as net income.
Q. And on the operating side -- well, let's look. Plant specific operations, what's

39

included in that?
A. That's all your time for your technicians and training and that type of thing.
Q. Plant nonspecific operations?
A. I believe that would be your -- you know, I'm not, I'm not sure about that, I -- I'd have to find out.
Q. Depreciation, obviously.
Customer operations?
A. (No verbal response.)
Q. That, that your customer service type things?
A. Yes. Customer service reps and --
Q. And then --
A. -- repair clerks.
Q. -- corporate operations, what's the distinction there?
A. Corporate operations would be like your board of directors and corporate-level people that are in our operation.
Q. So corporate operations, the almost 2 million, you're saying that's basically your overhead for the corporate part.
Does, does any -- none of that

40

includes --
Well, let me start over.
Does any of that include payments to any of the three shareholders?
A. I don't believe so.
Q. The only thing they get is the dividends?
A. (No verbal response.)
Q. All right.
A. Uh-huh.
Yes.
Q. Is any of your debt payable to any of the three shareholders? Do you have any debt to the three shareholders?
A. No.
Q. Did you at one time?
A. No.
Q. So they've never been a source of capital for you?
A. Only the down payment to buy the, the original property from GTE.
Q. Okay. There's no leaseback of any of your plant, you own it, you lease it from any of the three or --
A. There may be some services we

49

that would take and --
A. Uh-huh.
Somewhat.
Q. And you don't lose the total revenue from the line, you just discount, --
A. Yes.
Q. -- so --
Okay. Have you given any thought to what a discount rate would be when --
A. No.
Q. Have you asked any of your consultants to specifically de -- address the resale aspect of competition versus the facilities that you talked about earlier?
A. The facilities based information is the only thing that we have from them.
Q. Okay. I, I think we talked a little bit at the break, and I told you, as I look over these financial statements, it looks to me like it's a pretty healthy company. Do you have some reason to, to think otherwise?
A. No.
Q. How long have you been with the company?
A. Since it started.

50

Q. And that was in 1993, --
A. 1993.
Q. -- was it.
And that -- and I do note that, that the retained earnings have certainly increased over that period of time.
Is there pressure now to, to pay more dividends to the shareholders or --
A. (No verbal response.)
Q. Are you able to finance a good part of your growth through your retained earnings?
A. We finance everything through retained earnings.
Q. I see you've got, 2004, it looks like $8 million of, of long-term debt. And that's with the CoBank that you were talking about?
A. Yes.
Q. Is that a -- what, what kind of an institution is that? I'm not familiar with it.
A. It's -- maybe Don knows better. It's a cooperative, mainly ag -- mainly do ag loans.
Q. Okay.
MR. NEGAARD: Used to be Farm

51

Credit Services.
MR. DURICK: Okay.
MR. NEGAARD: And it was the St. Paul Bank of Cooperatives and they were combined with some other similar types of bank in the western United States and formed a bigger entity called CoBank.
Q. (By Mr. Durick) Okay. Because as, as I note on the long-term debt, back in 2000, it started at 18 million, and in 2004, it's 8 million; so you've knocked almost $10 million off your long-term debt in three -- four years. Is that right?
A. The original loan for the GTE property was $20 million and it was a ten-year loan, which was paid off in 1993.
The remaining balance is from the U.S. WEST acquisition in 1996.
Q. Okay. That's the one that was financed through CoBank?
A. Yes.
Q. And it's gone, say, say, from 18 million in 2000, down to, it looks like 8 million in 2004. Does that sound right?
A. That sounds right.

52

Q. Okay.
MR. DURICK: All right, I don't have anything further for you today.
I, I would, again, give you a chance to produce that study so that I can look at that and ask some relevant questions, but apparently we're not going to get that done today.
MR. NEGAARD: Well, -- and, and we can discuss that some more.
MR. DURICK: Okay.
MR. NEGAARD: I do have one or two --
MR. DURICK: Yeah, whatever.
MR. NEGAARD: -- questions, so --

EXAMINATION

BY MR. NEGAARD:
Q. Mr. Dircks, earlier, Mr. Durick spoke of this concept of bundling services. And in the telecommunication business, does -- the term, bundle service, can that also include something that doesn't include video?
A. I think I answered that as being company specific, because some companies bundle

FCC 96-325

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

FIRST REPORT AND ORDER

Adopted: August 1, 1996 Released: August 8, 1996

By the Commission: Chairman Hundt and Commissioners Quello, Ness, and Chong issuing separate statements.

Table of Contents

I. INTRODUCTION, OVERVIEW, AND EXECUTIVE SUMMARY 1
- A. The Telecommunications Act of 1996 - A New Direction 1
- B. The Competition Trilogy: Section 251, Universal Service Reform and Access Charge Reform 6
- C. Economic Barriers 10
- D. Operational Barriers 16
- E. Transition 21
- F. Executive Summary 24

II. SCOPE OF THE COMMISSION'S RULES 41
- A. Advantages and Disadvantages of National Rules 44
- B. Suggested Approaches for FCC Rules 63

1262. Congress generally intended the requirements in section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies.[3103] We believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension, or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension, or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.

1263. Given the pro-competitive focus of the 1996 Act, we find that rural LECs must prove to the state commission that they should continue to be exempt pursuant to section 251(f)(1) from requirements of section 251(c), once a bona-fide request has been made, and that smaller companies must prove to the state commission, pursuant to section 251(f)(2), that a suspension or modification of requirements of sections 251(b) or (c) should be granted. We conclude that it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements. Moreover, the party seeking exemption, suspension, or modification is in control of the relevant information necessary for the state to make a determination regarding the request. A rural company that falls within section 251(f)(1) is not required to make any showing until it receives a bona fide request for interconnection, services, or network elements. We decline at this time to establish guidelines regarding what constitutes a bona fide request. We also decline in this Report and Order to adopt national rules or guidelines regarding other aspects of section 251(f). For example, we will not rule in this proceeding on the universal service duties of requesting carriers that seek to compete with rural LECs. We may offer guidance on these matters at a later date, if we believe it is necessary and appropriate.

1264. We find that Congress intended section 251(f)(2) only to apply to companies that, at the holding company level, have fewer than two percent of subscriber lines nationwide. This is consistent with the fact that the standard is based on the percent of subscriber lines that a carrier has "*in the aggregate nationwide*."[3104] Moreover, any other interpretation would permit almost any company, including Bell Atlantic, Ameritech, and GTE affiliates, to take advantage of the suspension and modification provisions in section 251(f)(2). Such a conclusion would render the two percent limitation virtually meaningless.

[3103] 47 U.S.C. § 251(f).

[3104] 47 U.S.C. 251(f)(2) (emphasis added).

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF MAILING

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

Belinda Dickson hereby certifies that on November *14*, 2005, she served a copy of the foregoing MEMORANDUM IN SUPPORT OF REQUEST FOR DISCLOSURE OF INFORMATION by placing a true and correct copy thereof in an envelope and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota. addressed to the following:

Mr. Donald Negaard
Pringle & Herigstad
P. O. Box 1000
Minot, ND 58702-100
via facsimile 701-857-1361

William W. Binek
Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505
via facsimile 328-2410

Mr. Al Wahl
Administrative Law Judge
1707 North Ninth Street
Bismarck, ND 58501-1882
via facsimile 328-3254

Belinda Dickson

Subscribed and sworn to before me this *14* day of November, 2005.

Jeanne Feist
Notary Public

My commission expires:

JEANNE A. FEIST
Notary Public State of North Dakota
My Commission Expires MARCH 7, 2007

PEARCE & DURICK

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ••
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

RECEIVED
NOV 14 2005
ND PUBLIC SERVICE COMMISSION

October 17, 2005

RECEIVED

Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: *Midcontinent Communications v. North Dakota Telephone Company*
Case No. PU-05-451

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1) MOTION FOR THE ADMISSION PRO HAC VICE OF J. G. HARRINGTON and Certificate of Service; and
2) AFFIDAVIT OF J. G. HARRINGTON

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosures.
cc w/enc: Don Negaard (North Dakota Telephone Company)
State Board of Law Examiners

32 PU-05-451 Pages: 1

Cover letter re Motion for Admission

by Midcontinent Communications by Patrick Durick. Atto
11/14/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

• ALSO LICENSED IN MONTANA • ALSO LICENSED IN

RECEIVED
NOV 14 2005
ND PUBLIC SERVICE COMMISSION
BY: LAW SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Case No. PU-05-451

Midcontinent Communications, a South Dakota Partnership,

Complainant,

vs.

North Dakota Telephone Company,

Respondent.

MOTION FOR THE ADMISSION PRO HAC VICE OF J. G. HARRINGTON

COMES NOW the undersigned Patrick W. Durick, pursuant to § 69-02-01-06, N.D.A.C. and requests permission for J. G. Harrington to appear before the Commission in the entitled matter. An Affidavit of Mr. Harrington in support of this motion is attached hereto.

Dated this 10th day of November, 2005.

PEARCE & DURICK

PATRICK W. DURICK *ND #03141*
Individually and as a Member of the Firm
314 E. Thayer Avenue
P. O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890

Attorneys for Midcontinent Communications, Inc.

31 **PU-05-451** Pages: 4

Motion for the Admission Pro Hac Vice of JG Harrington & Affidavit
by Midcontinent Communications by Patrick Durick, Atto
11/14/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION FOR THE ADMISSION PRO HAC VICE OF J. G. HARRINGTON**. was on the 10 day November, mailed to the following:

DON NEGAARD
PRINGLE & HERIGSTAD, P.C.
P. O. BOX 1000
MINOT, ND 58702-1000

Patrick W. Durick

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

AFFIDAVIT OF J.G. HARRINGTON

DISTRICT OF COLUMBIA) ss

The undersigned J.G. HARRINGTON being first duly sworn upon oath states from personal knowledge as follows:

1. That I am admitted to practice law in the following jurisdictions:

Jurisdiction	Years admitted
New York	1987
District of Columbia	1991
United States Court of Appeals for the District of Columbia Circuit	1992
United States Court of Appeals for The Fifth Circuit	1998

2. That I am not presently subject to disciplinary proceedings in any jurisdiction in which I am admitted to practice law.

3. That I am not presently under any restrictions or probation in the practice of law in any jurisdiction in which I am admitted.

4. That I am not now nor have I ever been suspended or disbarred from a court in any jurisdiction.

5. That I have appeared in one action in North Dakota during the prior three years and that I have never registered under Rule 3(B), Admission to Practice Rules of the State of North Dakota.

Dated this 9th day of November, 2005.

J.G. HARRINGTON

Subscribed and sworn to before me this 9th day of November, 2005.

Notary Public

Sandra A. Dallas
Notary Public District of Columbia
My Commission Expires 10/31/09

My commission expires: 10/31/09

NOV

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
NOV - 3 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

November 3, 2005

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing on behalf of the respondent in the above proceeding are an original and seven copies of a Response to Request for an Order Setting Dates for Disclosure of Information and Hearing.

Thank you.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
William W. Binek, Public Service Commission
Al Wahl, Administrative Law Judge (OAH File No. 20050316)

30 PU-05-451 Pages: 2
Cover letter re Response
by North Dakota Telephone Company by Don Negaard
11/03/2005 CC: Comm Legal Illona, Pat, Annette ALJ

cc/enc: Jerome Tishmack, Manager - BEK Communications Cooperative
Paul Schuetzler, Manager - Consolidated Telcom
Keith Larson, Manager - Dakota Central Telecommunications Cooperative and
Dakota Central Telecom I, Inc.
Jeff Wilson, Manager - Dickey Rural Telephone Cooperative
and Dickey Rural Communications, Inc.
Ray G. Brown, Manager - Griggs County Telephone Company
and Moore and Liberty Telephone Company
Keith Andersen, Manager - Inter-Community Telephone Company, LLC
and Inter-Community Telephone Company II, LLC
Mark Wilhelmi, Manager - Midstate Telephone Company and Midstate Communications, Inc.
Shawn Hanson, Manager - Nemont Telephone Cooperative, Inc.
Dave Dircks, Manager - North Dakota Telephone Company
David L. Dunning, Manager - Polar Communications Mutual Aid Corporation
and Polar Telecommunications, Inc.
Jeffrey J. Olson, Manager - Red River Telephone Association and Red River Telecom, Inc.
Royce Aslakson, Manager - Reservation Telephone Cooperative
Kenneth Carlson, Manager - United Telephone Mutual Aid Corporation
and Turtle Mountain Communications, Inc.
Albert R. Grosz, Manager - West River Telecommunications Cooperative

RECEIVED
NOV - 3 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	Case No. PU-05-451
Complainant,	)	RESPONSE TO REQUEST FOR AN ORDER SETTING DATES FOR DISCLOSURE OF INFORMATION AND HEARING
vs.	)	
North Dakota Telephone Company,	)	
Respondent.	)	

COMES NOW North Dakota Telephone Company (hereinafter "NDTC") and, for its response to the "Request for an Order Setting Dates for Disclosure of Information and Hearing" dated October 24, 2005, (the "Motion") from Midcontinent Communications (hereinafter "Midco"), states as follows:

1. Request for Hearing Date. NDTC is amenable to working with the Commission, the Administrative Law Judge (hereinafter "ALJ"), and Midco to set a hearing date in this matter. An indispensable aspect of the hearing date, however, is the necessary precedent dates that must be established for the filing by Midco of its pre-filed testimony and the filing of rebuttal testimony by NDTC.

The issues in this case are of paramount importance to NDTC and, presumably, the same is true for Midco. It is, therefore, vitally important that NDTC be allowed time to review Midco's proposed testimony, develop and plan rebuttal testimony, and appear at the hearing. NDTC respectfully submits that such an approach is not only logical, but ensures NDTC the opportunity to develop the record upon which the issues in this proceeding can be resolved by your Honor and the Commission.

29 PU-05-451 Pages: 18
Response to Request for Order Setting Dates for Disclosure of Info and Hearing by North Dakota Telephone Company by Don Negaard
11/03/2005 CC: Comm Legal Illona, Pat, Annette ALJ

NDTC believes that any proposed procedural schedule must allow NDTC at least four weeks to review and analyze testimony proffered by Midco. NDTC has retained associate counsel from Washington, D.C., and may call upon expert witnesses from Utah and/or Maryland to testify about policy and other issues raised in this proceeding, including, but not limited to, the implementation of resale at wholesale rates of retail end user telecommunications services provided by NDTC to an entity of the breadth and size of Midco and its parent. Thus, in order to provide NDTC the ability to present effectively its position in this case, coordination of schedules and travel arrangements by those that will assist NDTC will also need to be undertaken. If some proposed dates for a schedule and a hearing are known, then the undersigned can coordinate these issues.

Accordingly, a hearing the week of December 29, 2005, as suggested by Midco (see Motion at 1) is inappropriate, especially considering the unresolved prefiling dates for testimony and the outstanding discovery issues discussed below.

2. Discovery Issues. Midco requests two types of discovery information. As to the request for Devils Lake-specific information, NDTC respectfully submits that the request is premature and it should be denied or held in abeyance. As to the Midco request for a highly confidential and proprietary study prepared at the request of NDTC that is otherwise wholly unrelated to the issues in this proceeding, that Midco's request too should be denied or held in abeyance.

a. NDTC Financial Information. It was only with the receipt of Midco's Motion on October 25, 2005, that NDTC first became aware that Midco officially sought Devils Lake-specific financial information. While NDTC recognizes that the matter was informally discussed during the October 13, 2005, deposition of NDTC by Midco, no formal request for the information was made at that time or since by Midco.

Under the North Dakota Rules of Civil Procedure, whether by interrogatory or for production, the minimum time for objection or compliance is 30 days. These requirements, however, only apply when a request has been made for information pursuant to applicable discovery rules or agreement by the parties. Neither has occurred. Midco's effort to circumvent these requirements by requesting a directive from the Commission for disclosure is, therefore, premature at best. Midco should not be allowed to circumvent the Commission's practice and the North Dakota Rules of Civil Procedure through its Motion. Accordingly, this aspect of the Motion should be denied outright.

At the very least and assuming the Motion can be construed as a formal request for production, NDTC respectfully submits that this aspect of the Motion be held in abeyance until the timing requirements of the rules are met, and NDTC is provided the opportunity to either respond or provide its objections with respect to the requested production. That time, however, runs through November 28, 2005, 30 days from the date of the

request plus 3 days for service, as allowed in the North Dakota Rules of Civil Procedure.

b. The Study. In 2004, NDTC conducted a study on the impact of a facilities-based provider providing telephone service in Devils Lake and Rugby, North Dakota. (In general, a facilities-based provider is a competitor who has built the plant and installed necessary equipment to compete with an existing telephone company.) Midco seeks a copy of this study. Midco's request should be denied or, like above, held in abeyance.

In your Honor's letter dated October 27, 2005, you provided the opportunity for Midco to provide a brief in support of its contention that the study should be provided. To date, no brief has been submitted. Midco's failure to make such submission and provide its legal basis for the disclosure of the study demands that its request be denied. At the very least, this matter should be held in abeyance until and unless such submission is made, and, pursuant to applicable North Dakota Rules of Civil Procedure, NDTC is provided ample opportunity to respond to Midco's position. (North Dakota Rules of Court provide a minimum of ten days for such a response.) Only in this matter would your Honor have the legal positions and arguments of the parties before you and only then can you determine, as you properly noted in your October 27, 2005, letter to counsel, whether there is a basis in law to "order the disclosure of information under the Commission's rules . . . ."

Should you proceed to address this matter at the scheduled November 15, 2005, prehearing conference, however, and without waiver of its position and right to respond to any late filed submission by Midco on the point of law you have requested, NDTC initially notes that this study is not relevant to the instant matter because Midco is **only** requesting the resale of the **tariffed retail end user services** that NDTC provides in its service territory. No facilities-based competition is proposed by Midco. Thus, the absolute scope of this proceeding that Midco has defined by its request makes the information irrelevant.

Even if the information was relevant, Midco has made no showing of the need for this information. The information is highly confidential and proprietary to NDTC. The potential abuse of this information by a huge cable company now entering a competitive market for provision of competitive services is obvious, particularly where the request at hand is solely without legal basis.

Midco has a website, www.midcocomm.com, in which it advertises that it can provide a customer with the convenience of one bill for their telephone, cable TV, and internet needs. Midco is obviously a sophisticated entrant into telephony and does not need the help of NDTC to develop testimony on the issues which are germane to this action.

The ACS of Alaska case cited by Midco (copy attached) does nothing more than recite the powers of a Public Utility Commission to order that a party cooperate in reasonable discovery requests. Contrary

to any inference left by Midco, the case does not create a presumption of any disclosure nor does it stand for the proposition that a telephone company is required to turn over highly proprietary information to a competitor that may very well allow that competitor to gain insights into the inner workings, plans, and/or strategies of the entity against which the competitor may compete.

Accordingly, for the reasons stated herein, NDTC requests that the ALJ provide the parties the opportunity to work through or propose an entire procedural schedule for this matter at the November 15, 2005, second prehearing conference. With respect to the information requests contained in the Midco Motion, NDTC respectfully subjects that the Midco requests be denied or held in abeyance for the reasons stated herein.

Dated at Minot, North Dakota, this 3rd day of November, 2005.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net
Attorney for Respondent

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response to Request for an Order Setting Dates for Disclosure of Information and Hearing was served by mail on the 3rd day of November, 2005, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Don Negaard, ND Bar ID #03598

Westlaw.

81 P.3d 292

(Cite as: 81 P.3d 292)

C

Briefs and Other Related Documents

Supreme Court of Alaska.
ACS OF ALASKA, INC., ACS of The Northland, Inc., and ACS of Fairbanks, Inc., Appellants,
v.
REGULATORY COMMISSION OF ALASKA, and GCI Communication Corp., d/b/a General Communication, Inc., Appellees.
No. S-10466.

Dec. 12, 2003.

Background: Competitive local exchange carrier (CLEC) sought to terminate certain rural exemptions of incumbent local exchange carrier (ILEC). The Public Utilities Commission (PUC) continued ILEC's rural exception. CLEC sought judicial review. After finding that PUC erroneously placed burden of proof on CLEC, the Superior Court remanded to PUC for another hearing. On remand, PUC granted CLEC's petition to terminate ILEC's rural exemptions. ILEC petitioned PUC's successor, Regulatory Commission of Alaska (RCA), for review of decision to terminate ILEC's rural exemption. On grant of ILEC's motion for reconsideration, RCA affirmed termination of exemptions. ILEC sought judicial review. The Superior Court, Third Judicial District, Anchorage, John Reese, J., affirmed the RCA. ILEC appealed.

Holdings: The Supreme Court, Fabe, C.J., held that:
(1) CLECs, rather than ILECs, must bear burden of proof in rural exemption proceedings;
(2) RCA's error in placing burden of proof on ILEC was not harmless error and, thus, remand was required for additional proceedings before RCA with CLEC shouldering burden of proof; and
(3) RCA could not terminate ILEC') rural exemption for entire study area, where CLEC's underlying request was limited and did not covering entire study area.
Reversed and remanded.

West Headnotes

[1] Appeal and Error ⚿1082(1)
30k1082(1) Most Cited Cases
Supreme Court does not defer to a superior court decision when that court acts as an intermediate court of appeal.

[2] Administrative Law and Procedure ⚿796
15Ak796 Most Cited Cases

[2] Statutes ⚿219(1)
361k219(1) Most Cited Cases
Supreme Court applies the substitution of judgment standard when reviewing legal questions that do not require administrative agency expertise or where the agency's specialized knowledge and experience would not be particularly probative as to the meaning of the statute.

[3] Appeal and Error ⚿1195(1)
30k1195(1) Most Cited Cases
The "doctrine of law of the case" requires a lower court to follow an appellate court's prior decision and prohibits reconsideration of issues which have been adjudicated in an appeal of the case.

[4] Telecommunications ⚿870
372k870 Most Cited Cases
(Formerly 372k267)
Competitive local exchange carriers (CLECs), rather than incumbent local exchange carriers (ILECs), must bear burden of proof in rural exemption proceedings, administrative proceedings in front of Regulatory Commission of Alaska (RCA) to terminate a rural ILEC's exemption from competition under federal Telecommunications Act.

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Communications Act of 1934, § 251(f)(1), as amended, 47 U.S.C.A. § 251(f)(1).

[5] Telecommunications ⚿911
372k911 Most Cited Cases
(Formerly 372k267)
Regulatory Commission's (RC's) error in placing burden of proof on incumbent local exchange carrier (ILEC), rather than on competitive local exchange carrier (CLEC), in rural exemption proceedings, was not harmless error and, thus, remand was required for additional proceedings before RCA with CLEC shouldering burden of proof, although, on judicial review, the Superior Court implicitly found that RCA's decision was based on weight of the evidence, rather than on unmet burden of proof, where examination of RCA's reasoning revealed that it based some of its conclusions either on unmet burden of proof or on general lack of proof. Communications Act of 1934, § 251(f)(1), as amended, 47 U.S.C.A. § 251(f)(1).

[6] Telecommunications ⚿867
372k867 Most Cited Cases
(Formerly 372k267)
Regulatory Commission of Alaska (RCA) could not terminate incumbent local exchange carrier's (ILEC's) rural exemption for entire study area, where competitive local exchange carrier (CLEC), which sought termination of ILEC's rural exemption, made only a limited request not covering entire study area; although RCA argued that it could not grant a partial or divisible termination of exemption under applicable Telecommunications Act (TA), such interpretation of TA would have resulted in anomalous consequences, for it could open broad areas to competition based on artificially constructed evidence. Communications Act of 1934, § 251(f)(1), as amended, 47 U.S.C.A. § 251(f)(1).

West Codenotes
Recognized as Invalid

47 C.F.R. § 51.405(a).

*293 S. Lynn Erwin, Alaska Communications Systems, Anchorage, and Elizabeth H. Ross, Birch, Horton, Bittner & Cherot, Washington, D.C., for Appellants.

Ron Zobel, Assistant Attorney General, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee Regulatory Commission of Alaska.

Martin M. Weinstein, General Communication, Inc., Anchorage, for Appellee GCI.

Before: FABE, Chief Justice, MATTHEWS, EASTAUGH, and BRYNER, Justices.

OPINION

FABE, Chief Justice.

I. INTRODUCTION

This case arises under the local telephone competition provisions of the federal Telecommunications Act of 1996. GCI petitioned the Regulatory Commission of Alaska (RCA) to terminate the rural exemptions of three Alaska Communication Systems (ACS) subsidiaries so that GCI could compete with these companies in rural Alaska. The RCA terminated ACS's rural exemptions, and ACS appeals that decision. Because the RCA erred in allocating the burden of proof to ACS, we reverse and remand for additional proceedings before the RCA with GCI shouldering the burden of proof. Additionally, because the RCA erred in terminating ACS's rural exemption for its Glacier State Study Area, we reverse that decision.

II. FACTS AND PROCEEDINGS

A. The Telecommunications Act of 1996

The federal Telecommunications Act significantly changed the delivery of telephone service in this country. [FN1] At the heart of the Act, and at issue in this case, are the provisions designed to promote local telephone competition. [FN2] These provisions eliminate state-imposed barriers to competition and force incumbent local exchange

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

carriers to cooperate with their potential competitors. [FN3] These competitors are referred to as competitive local exchange carriers. [FN4] The Act facilitates***294** competition in a number of ways. [FN5] First, the Act requires incumbents to allow competitors to interconnect with the incumbent's existing local network. [FN6] This provision, referred to as interconnection, allows new entrants to use the incumbent's existing network to provide competing local telephone service. [FN7] Second, the unbundled access provision of the Act requires incumbents to provide competitors with access to elements of the incumbent's network on an unbundled basis. [FN8] The unbundling provision permits new entrants "that have not completely built out their own networks to offer services over a combination of their own facilities and those leased from incumbents." [FN9] Third, the Act requires incumbents to sell to competitors, at wholesale prices, any telecommunications services it sells to its customers at retail rates. [FN10] This provision, referred to as the resale provision, allows competitors to resell to customers at retail prices the telecommunications services they purchase from the incumbent at wholesale. [FN11] These competitive provisions are found in section 251(c) of the Telecommunications Act.

FN1. *See, e.g.,* STUART MINOR BENJAMIN ET AL., TELECOMMUNICATIONS LAW AND POLICY 717 (2001); Salvatore Massa et al., *Pricing Network Elements Under the Telecommunications Act of 1996: Back to the Future,* 23 HASTINGS COMM. & ENT. L.J. 751, 752 (2001) (noting Act is "revolutionary piece of legislation"); Aimee M. Adler, Notes and Comment, *Competition in Telephony: Perception or Reality? Current Barriers to the Telecommunications Act of 1996,* 7 J.L. & Pol'y 571, 571 (1999).

FN2. BENJAMIN ET AL., *supra* TELECOMMUNICATIONS LAW AND POLICY, at 716.

FN3. *Id.*

FN4. *Id.* at 1047.

FN5. 47 U.S.C. § 251(c) (2001); Michael Glover & Donna Epps, *Is the Telecommunications Act of 1996 Working?,* 52 ADMIN. L.REV. 1013, 1014 (2000).

FN6. 47 U.S.C. § 251(c)(2) (2001).

FN7. *Id.*

FN8. 47 U.S.C. § 251(c)(3) (2001).

FN9. Glover and Epps, *supra* at 1014.

FN10. 47 U.S.C. § 251(c)(4) (2001).

FN11. *Id.*

Despite the Act's general theme favoring competition, [FN12] Congress, in the interest of promoting universal service, exempted rural telephone companies from the duty to compete. Congress defined "rural telephone company" as

FN12. BENJAMIN ET AL., *supra* n. 1.

> a local exchange carrier operating entity to the extent that such entity--
> (A) provides common carrier service to any local exchange carrier study area that does not include either--
> (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
> (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
> (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
> (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.[[FN13]]

FN13. 47 U.S.C. § 153(37) (2001).

Because these rural telephone companies are free from the competitive obligations imposed by the Act, these ILECs remain monopolist providers of local telephone service in their areas. The rural exemption is contained in section 251(f)(1) of the Act and provides, in pertinent part:

Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).[[FN14]]

FN14. 47 U.S.C. § 251(f)(1)(A) (2001).

Until a state commission makes the requisite findings under these three elements, rural telephone companies are exempt from competition. [FN15]

FN15. *Id.*

B. The Rural Exemption Proceedings

In April 1997 GCI requested interconnection with three rural telephone companies. These companies were PTI Communications of Alaska, Inc., Telephone Utilities of Alaska, ***295** Inc., and Telephone Utilities of the Northland, Inc. These companies are now subsidiaries of ACS and we refer to them collectively as ACS.

The Alaska Public Utilities Commission (APUC) [FN16] held public hearings in December 1997 to determine whether to terminate ACS's rural exemptions. In an order issued January 8, 1998, APUC continued ACS's rural exemptions reasoning that (1) the evidence in the record did not support an affirmative finding that the utility would not suffer an undue economic burden if the exemptions were terminated and (2) support mechanisms had not yet been reformed to accommodate competition in local service.

FN16. APUC is the forerunner to the RCA. On July 1, 1999, APUC ceased to exist and the RCA assumed its duties. Ch. 25, SLA 1999.

GCI appealed APUC's decision to the superior court. Finding that APUC had erroneously placed the burden of proof on GCI, the superior court remanded the case to APUC for another hearing. APUC held a second hearing in June of 1999. On June 30, 1999, APUC granted GCI's petition to terminate ACS's rural exemptions. APUC reasoned that adequate mechanisms were in place to preserve and further universal service such that terminating ACS's exemptions would not frustrate these goals.

ACS petitioned APUC's successor, the RCA, for review of the decision to terminate ACS's rural exemptions. ACS asserted that APUC's revocation of the exemptions "exposed high cost rural consumers to the detriments of competition without establishing the basis for offsetting competitive benefits." Because the RCA found that APUC's decision lacked an adequate analysis of the disputed legal, factual, and policy issues, it granted ACS's motion for reconsideration. However, after reviewing the record, the RCA affirmed APUC's termination of the utility's rural exemptions. ACS appealed to the superior court, Judge John E. Reese presiding. The superior court affirmed the RCA, and ACS appeals the RCA's decision to this court.

III. STANDARD OF REVIEW

[1][2] We do not defer to a superior court decision when that court acts as an intermediate court of appeal. [FN17] We apply the substitution of judgment standard when reviewing legal questions that do not require agency expertise "or where the agency's specialized knowledge and experience would not be particularly probative as to the meaning of the statute." [FN18]

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

FN17. *Tlingit-Haida Reg'l Elec. Auth. v. State,* 15 P.3d 754, 761 (Alaska 2001); *United Utils., Inc. v. Alaska Pub. Utils. Comm'n,* 935 P.2d 811, 814 (Alaska 1997).

FN18. *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.,* 746 P.2d 896, 903 (Alaska 1987); *see also id.* (" '[This] standard is appropriate where the knowledge and experience of the agency is of little guidance to the court *or* where the case concerns statutory interpretation or other analysis of legal relationships about which the courts have specialized knowledge and experience.' ") (quoting *Earth Res. Co. of Alaska v. State, Dep't of Revenue,* 665 P.2d 960, 965 (Alaska 1983) (internal quotations omitted)).

IV. DISCUSSION

A. Progression of Federal and State Litigation Over 47 U.S.C. § 251(f)(1) Rural Exemption Proceedings

The central issue on appeal is whether the RCA erred in allocating the burden of proof to ACS in the rural exemption proceeding. Because telecommunications regulation is primarily federal, it is important to view the history of the present controversy in the context of significant federal litigation that was proceeding simultaneously.

1. *Iowa I*

Shortly before GCI sought to compete with ACS, the Federal Communications Commission (FCC) promulgated a rule allocating the burden of proof in rural exemption proceedings to the incumbent local exchange carrier. [FN19] The regulation provided: "Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled ***296** ... to continued exemption" from the Telecommunications Act's interconnection requirements. [FN20]

FN19. 47 C.F.R. § 51.405(a) (2002).

FN20. *Id.*

Three months before APUC held the initial hearing in this case, the United States Court of Appeals for the Eighth Circuit vacated this rule in *Iowa Utilities Board v. Federal Communications Commission* (*Iowa I*), reasoning that the FCC exceeded its jurisdiction in promulgating the regulation. [FN21] The court noted: "The plain meaning of subsection [ ] 251(f)(1) (governing exemptions) ... indicates that the state commissions have the exclusive authority to make these determinations, and nothing in [this provision], or in the Act generally, provides the FCC with the power to prescribe the governing standards for such determinations." [FN22] The Eighth Circuit also looked to the legislative history of the Telecommunications Act to support its conclusion that the FCC exceeded its authority in promulgating 47 C.F.R. § 51.405(a):

FN21. 120 F.3d 753, 802 (8th Cir.1997), *aff'd in part, rev'd in part,* 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

FN22. *Id.*

> Congress rejected both a Senate bill and a House bill that gave the FCC concurrent jurisdiction with state commissions to administer the exemption and waiver provisions. It would be unreasonable to infer from subsection 251(d) or the other general rulemaking provisions cited by the FCC that Congress intended to put the Commission--the agency it decided to exclude from the exemption process--in a position to dictate the substantive standards governing the exemption process.[[FN23]]

FN23. *Id.* (citing S.Rep. No. 104-23, 1995 WL 142161 at *206-07 (§ 251(i)(3)) (1995); H.R. 1555, 104th Cong. § 242(e) (1995)).

The clear guidance that the FCC had provided through its regulation 47 C.F.R. § 51.405(a) therefore no longer existed when APUC first

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

addressed this case.

In the first hearing, APUC assigned the burden of proof to GCI. APUC denied GCI's petition to terminate ACS's rural exemptions on January 8, 1998, and GCI appealed APUC's decision to the superior court.

2. United States Supreme Court's review of *Iowa I* and state superior court's response

Prior to the superior court decision, the United States Supreme Court reversed the Eighth Circuit's *Iowa I* ruling, concluding that the FCC had "jurisdiction to promulgate rules ... regarding rural exemptions...." [FN24] The Court remanded the case to the Eighth Circuit to consider the substantive challenges to the regulation. [FN25] The superior court had the benefit of the Supreme Court's decision in deciding GCI's appeal from APUC. The superior court concluded that APUC erred in allocating the burden of proof to GCI and remanded for another agency hearing, noting that "fairness concerns prescribe the conclusion that the party in control of the evidence, in this case [ACS], bears the burden of proving that evidence."

FN24. *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

FN25. *Id.* at 385, 397, 119 S.Ct. 721.

After the superior court remanded the case to APUC, APUC held a second hearing in June 1999, with ACS shouldering the burden of proof. APUC issued its decision terminating the rural exemptions on June 30, 1999. In its brief order, APUC determined that ACS would not face an undue economic burden, were it required to interconnect with GCI. Additionally, APUC noted that GCI's request for interconnection was technically feasible. Thus, APUC turned to consider whether interconnection would be consistent with the goals of universal service. APUC concluded that federal and state universal service funds would adequately preserve and advance universal service. APUC emphasized the importance of competition in its order:

> Without removal of [ACS's] rural exemption, it is questionable whether the rural portions of Alaska that are the subject of GCI's petition will ever have competitive local exchange service. Therefore, the Commission has determined that it is appropriate ***297** to remove that roadblock and proceed down the path to competition.

The RCA reconsidered APUC's decision and affirmed on October 11, 1999. ACS appealed to the superior court.

3. Eighth Circuit's decision on remand–*Iowa II*

In the midst of ACS's administrative appeal to the superior court, the Eighth Circuit decided *Iowa Utilities Board v. Federal Communications Commission* [FN26] (*Iowa II*). This time, the federal court vacated on substantive grounds the FCC's rule that, under the Telecommunications Act, a rural incumbent telephone company must bear the burden of proof in demonstrating to a state commission that it is entitled to a continued exemption from competition. [FN27] The court reasoned that "[t]he plain meaning of the statute requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption." [FN28]

FN26. 219 F.3d 744 (8th Cir.2000), *reversed in part on other grounds by Verizon Communications, Inc. v. Fed'l Communications Comm'n,* 535 U.S. 467, 122 S.Ct. 1646, 152 L.Ed.2d 701 (2002).

FN27. *Id.* at 762.

FN28. *Id.*

In reviewing ACS's administrative appeal, Judge Reese acknowledged the Eighth Circuit's authority but concluded that any error in the burden of proof allocation was harmless, even in light of *Iowa II.* Judge Reese noted: "This [c]ourt recognizes the authority of the Eighth Circuit in this matter, but does not find the *Iowa Utilities Bd. II* decision decisive on the outcome of the current appeal."

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Judge Reese emphasized that the RCA based its decision on the evidence presented at the hearings and not on a consideration of the burden of proof. Judge Reese concluded:

> "This [c]ourt must determine the applicability of *Iowa Utilities Bd. II* to the current appeal. The APUC used a record created in two separate hearings in its decision to terminate ACS['s] rural exemption. Both ACS and GCI were responsible for bearing the burden of proof at one of the hearings. Both ACS and GCI presented evidence and created a record accordingly. The RCA found that the record from both hearings justified termination of the rural exemption. The RCA's [decision to terminate ACS's rural exemptions] clearly shows that the Commission made its findings based on the weight of the evidence and not because of an unmet burden of proof[.]"

Implicit in Judge Reese's statement is an apparent determination that any error in the allocation of proof to ACS in light of *Iowa II* was harmless. Accordingly, the superior court affirmed the RCA's termination of ACS's rural exemptions.

B. The RCA Erred in Placing the Burden of Proof on ACS, the Incumbent Local Exchange Carrier.

On appeal, ACS argues that the RCA erred in placing the burden of proof on ACS because this is contrary to federal law as announced in the Eighth Circuit's *Iowa II* decision. In *Iowa II,* the Eighth Circuit concluded that the plain meaning of 47 U.S.C. § 251(f)(1)(A) and (B) "requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption." [FN29] Given the Eighth Circuit's holding, ACS asserts that "federal law squarely places the burden of proof on GCI rather than [ACS]."

FN29. *Id.*

[3] GCI responds to ACS's contentions with a number of policy reasons for placing the burden of proof on ACS; two of these reasons have some strength. [FN30] First, GCI *298 notes that ACS, as the incumbent local exchange carrier, controls relevant information on issues including: its financial health and status, its ability to withstand the expected competitive pressures exerted by competition, its ability to withstand the costs of providing the services requested by the competitor, and its network design and ability to facilitate the competitor's requests. GCI asserts that because ACS has superior access to this information, ACS should bear the burden of proof because it is "in the best position to produce the relevant information and to explain how competitive pressures could harm the incumbent or service to rural customers." Second, GCI argues that placing the burden of proof on ACS is consistent with the Telecommunications Act's statutory scheme for rural exemption proceedings. This is true, according to GCI, because under 47 U.S.C. § 251(c) , after a competitor files notice with the state commission that it seeks to compete with an incumbent, the state commission has 120 days to gather the necessary information to determine whether to terminate the incumbent's rural exemption. [FN31] GCI argues that this short time frame "does not permit rounds of discovery, delay and associated costs frequently tolerated in the traditional model of civil litigation." GCI concludes that the limited time frame and ACS's superior access to information relevant to the continuation of its rural exemption weigh in favor of ACS's shouldering the burden of proof.

FN30. In addition to the policy reasons put forward by GCI, the RCA argues that after the first appeal from APUC to the superior court, the superior court's allocation of the burden of proof to ACS became the law of the case. "The doctrine of law of the case requires a lower court to follow an appellate court's prior decision and prohibits reconsideration of issues which have been adjudicated in an appeal of the case." *Bauman v. Day,* 942 P.2d 1130, 1132 n. 1 (Alaska 1997). To the extent that APUC was bound by the superior court's decision on remand, the superior court's allocation of the burden of proof to ACS was the law of the case. We, however, are not bound by the superior

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

court's allocation of the burden of proof, as this issue has not been brought to this court before. *See, e.g., Denuptiis v. Unocal Corp.*, 63 P.3d 272, 277 (Alaska 2003).

FN31. 47 U.S.C. § 251(f)(1)(A), (B) (2001).

While we see the logic in GCI's arguments, policy arguments cannot control the outcome in this case. A number of developments suggest to us that we should be guided by the Eighth Circuit's decision in *Iowa II.*

[4] The United States Supreme Court has held that the FCC, a federal agency, has jurisdiction to promulgate regulations under the Telecommunications Act to guide state commissions. [FN32] After the FCC promulgated regulations under the Telecommunications Act, in its *First Report and Order,* [FN33] numerous parties challenged those regulations. [FN34] Under the Hobbs Act, the federal circuit courts of appeal have exclusive jurisdiction over those challenges. The Hobbs Act provides:

FN32. *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

FN33. *See GTE South, Inc. v. Morrison,* 199 F.3d 733, 737 (4th Cir.1999) (citing *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order,* 11 F.C.C.R. 15499, 1996 WL 452885 (1996)).

FN34. *MCI Telecommunications Corp. v. U.S. West Communications,* 204 F.3d 1262, 1267 (9th Cir.2000).

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of--
(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47.[[FN35]]

FN35. 28 U.S.C. § 2342 (1994).

The parties challenging the FCC regulations brought suits in various federal appellate courts. [FN36] When agency regulations are challenged in multiple circuits, the panel on multidistrict litigation, acting under 28 U.S.C. § 2112, consolidates the petitions and assigns them to a single court of appeal. [FN37] The panel assigned the challenges concerning the FCC's Telecommunications Act regulations to the Eighth Circuit. [FN38] Thus, the Eighth Circuit became the only forum to consider the challenges to the FCC regulations following the FCC's *First Decision and Order.* [FN39]

FN36. *MCI,* 204 F.3d at 1267.

FN37. *Id.*

FN38. *Id.*

FN39. *GTE South, Inc. v. Morrison,* 199 F.3d 733, 743 (4th Cir.1999).

In addition to the FCC's jurisdiction to promulgate regulations under the Telecommunications Act and the federal appellate courts' (in this case, Eighth Circuit's) exclusive ***299** jurisdiction to hear challenges to those regulations, the United States Supreme Court has recognized the need for a national standard for telecommunications regulation under the 1996 Act, noting that the federal government has unquestionably "taken local telecommunications competition regulation away from the States [ ][w]ith regard to the matters addressed by the 1996 Act," and that "a federal program administered by 50 independent state agencies [would be] strange." [FN40] All of these factors suggest that we should look to the only available federal guidance in deciding which party shoulders the burden of proof in a rural exemption proceeding: the Eighth Circuit's decision in *Iowa II.* The Eighth Circuit is the only federal court to speak to the issue of the burden of proof allocation

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

in rural exemption proceedings under 47 U.S.C. § 251(f)(1). We adopt the Eighth Circuit's holding that the competitor must bear the burden of proof. Therefore, we now turn to the question whether the RCA's error in placing the burden of proof on ACS was harmless.

FN40. *AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n. 6, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999).

1. Harmless error analysis

[5] As discussed above, the superior court implicitly found that any error in the RCA's allocation of the burden of proof to ACS was harmless, noting: "The RCA's conclusion [to terminate ACS's rural exemptions] clearly shows that the Commission made its findings based on the weight of the evidence and not because of an unmet burden of proof[.]" Despite the superior court's assertion, an examination of the RCA's analysis reveals that the RCA did indeed base a number of its conclusions either on ACS's failure to satisfy the burden of proof or on a general lack of proof. For example, when discussing the economic burden element of section 251(f)(1)(a), the RCA explicitly based its finding in favor of GCI on the fact that "[t]he Commission finds that [ACS] did not meet [its] burden of proving undue economic burden." Similarly, with regard to one aspect of universal service, the RCA based its decision in favor of GCI on the fact that "[t]here was no showing by [ACS] that customers would have any less access to advanced services than they do now if the rural exemption [were] terminated." The RCA's repeated dependence upon the burden of proof allocation in reaching its decision suggests that this error affected ACS's substantial rights. [FN41] Because we cannot conclude that the RCA's error was harmless, we remand this case for the RCA to analyze the rural exemption issue with GCI shouldering the burden of proof on the three elements of 47 U.S.C. § 251(f)(1)(A): undue economic burden, technical feasibility, and universal service.

FN41. Alaska R. Civ. P. 61; *see, e.g., Sloan v. Atlantic Richfield Co.*, 541 P.2d 717, 722 (Alaska 1975) (noting appellant must show substantial prejudice to demonstrate error not harmless).

2. Proceedings on remand

On remand, the RCA may elect to hold a supplemental evidentiary hearing on one or more of the issues, as it sees fit. The RCA is free to consider the current state of the evidence and is not bound by the record before it in 1999 when it issued its last order in these proceedings. As noted above, GCI has expressed concern about its ability to amass the relevant information to shoulder its burden of proof. Specifically, it noted ACS's superior access to information and the short 120-day time frame for the RCA to gather information before making its decision. These concerns can be relieved by the RCA's control and management of the discovery process in the remand proceedings. Generally, "the conduct and extent of discovery is left to the sound discretion of the agency...." [FN42] The RCA may order discovery and require ACS's active participation in assisting GCI to analyze and organize the information, including ordering ACS to produce summaries of information and provide analyses to accompany documents it produces. [FN43]

FN42. CHARLES H. KOCH, ADMINISTRATIVE LAW AND PRACTICE § 5.40 (2d ed.1997).

FN43. The legislature has accorded to the RCA authority to "issue subpoenas, subpoenas duces tecum, and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts, and documents in a[ ] ... hearing.... The commission may petition a court of this state to enforce its subpoenas, subpoenas duces tecum, or other process." AS 42.05.151(c).

***300** Moreover, because we are remanding this case to the RCA, there will be a period of time between this decision and the RCA's determination on remand. Thus, we must consider how the parties

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

should proceed during that interim period. ACS asks us to roll the clock back and reinstate APUC's original 1998 order in this case, in which APUC denied GCI's request to terminate ACS's rural exemption. GCI responds that reinstating the 1998 order would not be in the public interest, asserting that if the 1998 order were reinstated, service to its customers in the areas covered by the order would be disrupted. GCI also points out that "[s]uch harm and confusion to the public might be entirely unnecessary if the RCA were to subsequently terminate the rural exemption again on remand." We decline to reinstate APUC's original order and instead leave it to the RCA's discretion whether to continue the status quo and allow ACS and GCI to provide service to these areas simultaneously.

C. The RCA Erred in Terminating ACS's Glacier State Study Area Exemptions.

[6] Initially, GCI sought to compete with ACS throughout the Glacier State Study Area. A "study area" is the designated geographic area that a carrier serves. [FN44] The Glacier State Study Area encompasses areas near Fairbanks, on Kodiak Island, and cities on the Kenai Peninsula. GCI formally withdrew its request to compete with ACS throughout the entire Glacier State Study Area, however. Thereafter, GCI maintained that its request was limited to only one exchange in the Glacier State Study Area. As Gene Strid, GCI witness and Vice President and General Manager of Local Services at GCI, explained at the first hearing: "GCI at the present time seeks an interconnection for the termination and transport of local traffic, only at [ACS's] North Pole exchange." On remand, in May of 1999, Strid gave identical testimony. He testified explicitly that GCI had not requested interconnection at any other location in the Glacier State Study Area. "At the present time no interconnection other than at the North Pole wire center is contemplated." At the June 1999 remand hearing before APUC, Strid testified on cross-examination that GCI was only seeking collocation at the North Pole exchange office. The RCA appeared to understand the limited nature of GCI's request, recognizing that "GCI's request as modified during the hearing process is for interconnection at one location and resale throughout the balance of [ACS's] service area."

> FN44. 47 U.S.C. § 214(e)(5) (2001). ACS-N has two study areas, the Glacier State Study Area and the Sitka Study Area.

Ultimately, however, the RCA terminated ACS's exemptions for the entire Glacier State Study Area. ACS appealed this decision, arguing primarily that by terminating ACS's exemption for the entire study area, despite GCI's limited request, the RCA acted contrary to the plain language of section 251(f)(1)(A) of the Telecommunications Act. The superior court affirmed the RCA's decision without discussing the scope of the Glacier State termination. ACS then filed a motion for clarification with the RCA, requesting that the RCA specify whether the scope of the termination was limited to the parameters of GCI's request. The RCA denied this motion.

ACS argues that the RCA erred by terminating its rural exemption for the entire Glacier State Study Area when GCI made only a limited request. The RCA responds that a "partial" or "divisible" exemption cannot be granted under section 251(f) and that, once a bona fide request--even a narrow, localized request--is made, and once evidence supporting that request is presented, the Act requires the RCA to terminate the areawide exemption completely. But we find this response unpersuasive. The RCA cites no authority to support its reading of section 251(f). Moreover, nothing in section 251(f)'s language precludes localized termination or requires areawide termination when, as here, a request is specifically limited to one exchange among many included in an exempted study area. Indeed, the RCA's proposed ***301** reading of section 251(f) would invite anomalous consequences, for it would open broad areas to competition based on artificially constricted evidence and findings concerning the economic and technical hardships that a competitor's presence might create in an isolated segment of the exempted area. We thus agree with ACS's argument and hold that, even if the burden of proof had been properly allocated, the RCA would have erred in terminating

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

81 P.3d 292

(Cite as: 81 P.3d 292)

the Glacier State Study Area exemption, except as it applied to the North Pole exchange.

V. CONCLUSION

Because the RCA erred in allocating the burden of proof to ACS, we REVERSE and REMAND the RCA's decision. Additionally, we REVERSE the RCA's decision with regard to the Glacier State Study Area.

CARPENETI, Justice, not participating.

81 P.3d 292

Briefs and Other Related Documents (Back to top)

- 2002 WL 32829714 (Appellate Brief) Supplemental Brief of Appellee Gci Communication Corp. d/b/a General Communication, Inc. d/b/a GCI (Nov. 18, 2002)

- 2002 WL 32829715 (Appellate Brief) Supplemental Brief of Appellee Regulatory Commission of Alaska (Nov. 18, 2002)

- 2002 WL 32829713 (Appellate Brief) Reply Brief of Appellants (Sep. 09, 2002)

- 2002 WL 32829711 (Appellate Brief) Brief of Appellee Gci Communication Corp. d/b/a General Communication, Inc. d/b/a Gci (Jul. 03, 2002)

- 2002 WL 32829712 (Appellate Brief) Brief of Appellee Regulatory Commission of Alaska (Jul. 03, 2002)

- 2002 WL 32829710 (Appellate Brief) Opening Brief of Appellants (Apr. 18, 2002)

END OF DOCUMENT

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AMENDED NOTICE OF SECOND PREHEARING CONFERENCE

November 1, 2005

To: Patrick W. Durick, Pearce & Durick, counsel for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, counsel for North Dakota Telephone Company; and William W. Binek, Chief Counsel, North Dakota Public Service Commisson

Please take notice that a prehearing conference will be held for this matter at **9:30 a.m.**, **November 15, 2005**. The prehearing conference will be conducted by telephone conference initiated by the administrative law judge.

The purpose of the prehearing conference is to consider Midcontinent Communications request for an order for disclosure of information. The parties may also request a determination concerning any question or problem regarding preparation for or the conduct of the hearing.

Dated at Bismarck, North Dakota this 1st day of November, 2005.

State of North Dakota
Public Service Commission

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

Amended Notice of Second Prehearing Conference (11/15/05 @ 9:30 am) by Office of Administrative Hearings
11/03/2005 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **AMENDED NOTICE OF SECOND PREHEARING CONFERENCE** was mailed, regular maul, on the 2 day of November, 2005, to:

Mr. Patrick W. Durick
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502-0400

Mr. Don Negaard
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 2 day of November, 2005, to:

Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge

Louise Wetzel

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

NOTICE OF SECOND PREHEARING CONFERENCE

November 1, 2005

To: Patrick W. Durick, Pearce & Durick, counsel for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, counsel for North Dakota Telephone Company; and William W. Binek, Chief Counsel, North Dakota Public Service Commisson

Please take notice that a prehearing conference will be held for this matter at 9:30 a.m., November 1, 2005. The prehearing conference will be conducted by telephone conference initiated by the administrative law judge.

The purpose of the prehearing conference is to consider Midcontinent Communications request for an order for disclosure of information. The parties may also request a determination concerning any question or problem regarding preparation for or the conduct of the hearing.

Dated at Bismarck, North Dakota this 1st day of November, 2005.

State of North Dakota
Public Service Commission

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **NOTICE OF SECOND PREHEARING CONFERENCE** was mailed, regular maul, on the 1st day of November, 2005, to:

Mr. Patrick W. Durick
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502-0400

Mr. Don Negaard
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

and that a true and correct copy of the above document was mailed, inside mail, at the State Capitol on the 1st day of November, 2005, to:

Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge

Louise Wetzel

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.state.nd.us/oah

RECEIVED
OCT 28 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

October 27, 2005

Mr. Patrick W. Durick
Pearce & Durick
P.O. Box 400
Bismarck, ND 58502-0400

Mr. Donald A. Negaard
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Re: Midcontinent Communications v.
North Dakota Telephone Company
North Dakota Public Service Commission
Case No. PU-05-451
OAH File No. 20050316

Dear Counsel:

I have Midcontinent's request for an order setting dates for disclosure of information and hearing dated October 24, 2005. I offer the following advice with the thought that I can expedite the processing of Midcontinent's request with an informal response. Setting the hearing is, of course, a matter for the commissioners, and I expect that the Commission will process that request. An order for the disclosure of information is, I think, a matter for me as the hearing officer designated for the hearing, and Midcontinent's further specific request for a prehearing conference is also a matter for me unless the Commission would specially act to conduct a conference pursuant to N.D.C.C. § 69-02-03-01.

Perhaps I am missing something, but notwithstanding the Alaska Supreme Court's decision in *ACS of Alaska* referenced by Midcontinent, I note that neither 69-02-03-01 nor 69-02-04-07 appears to provide authority for me to order the disclosure of information under the Commission's rules, and otherwise such authority does not come to mind upon any provision of N.D. Admin. Code ar. 98-02 or N.D.C.C. ch. 28-32. I am unwilling to issue the order for disclosure of information requested by Midcontinent without a memorandum of law and argument addressing the question whether I may make such an order on behalf of the Commission for this hearing. (If counsel will offer any brief or memorandum, I ask, please, for a copy of the entire report of the decision for any case relied upon other than a decision of the North Dakota Supreme Court and a copy of the Westlaw KeyCite Citing References for the case.)

In the context of Midcontinent's request, I take its request for a prehearing conference as a request for a conference pursuant to N.D. Admin. Code § 69-02-03-01. Generally, I assume good cause for a prehearing conference and will schedule a prehearing conference upon the request of

Letter to parties re case
by Office of Administrative Hearings by Al Wahl, ALJ
10/28/2005 CC: Comm Legal Illona, Pat, Annette ALJ

any party. Certainly, a prehearing conference would be helpful in this instance to address Mid-continent's requests (other than setting a date for the hearing) and, in the words of 69-02-03-01, "expedite the orderly conduct and disposition of the hearing."

I will have our administrative assistant call each of you to schedule a prehearing conference as soon as counsel can be heard. I am assuming that the conference can be conducted by telephone conference, but upon any party's request I will conduct the conference in person at the offices of the Commission.

Sincerely,

Al. Wahl
Administrative Law Judge

AW/eap

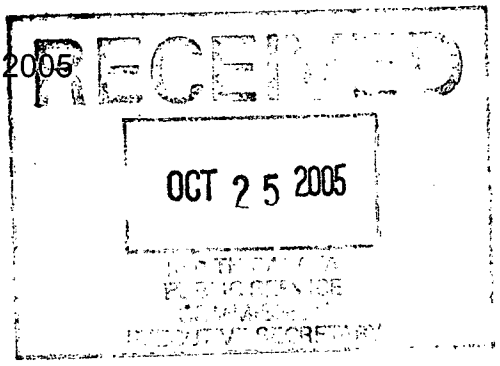
PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE • •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
TIFFANY L. JOHNSON

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

October 24, 2005



Jon H. Mielke, Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Midcontinent Communications v. North Dakota Telephone Company
Case No. PU-05-451

Dear Mr. Mielke:

Enclosed for filing are an original and seven copies of the following:

1) REQUEST FOR AN ORDER SETTING DATES FOR DISCLOSURE OF INFORMATION AND HEARING; and

2) Certificate of Service.

Please do not hesitate to contact our office if you have any questions.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Mr. Don Negaard
Mr. Al Wahl
Mr. William Binek
Ms. Mary Lohnes

• ALSO LICENSED IN MONTANA • ALSO LICENSED IN SO

RECEIVED
OCT 25 2005

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption Investigation

Case No. PU-05-451

REQUEST FOR AN ORDER SETTING DATES FOR DISCLOSURE OF INFORMATION AND HEARING

Midcontinent Communications ("Midcontinent") respectfully requests that the Commission set dates for disclosure of information relevant to this proceeding by North Dakota Telephone Company and for a hearing on the merits of this matter. The hearing in this matter was originally scheduled for October 13, 2005. The parties, by stipulation, agreed to a rescheduling of that hearing date and waived the 120 day time limitation for a determination on the merits as imposed by 47 U.S.C. § 251(f)(1)(B). A new hearing date is necessary and Midcontinent suggests a date during the week of December 29, 2005, if that time period fits with the Commission's schedule.

This matter concerns the rural exemption granted to NDTC by 47 U.S.C. § 251(f)(1)(A). Midcontinent made a bona fide request for a resale agreement from NDTC and NDTC claimed the rural exemption under 47 U.S.C. § 251(f)(1)(B). This proceeding is to determine whether the exemption should be terminated because the "[T]he request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title [47 U.S.C.] . . . " 47 U.S.C. § 251(f)(1)(B).

In this proceeding, Midcontinent has the burden of proving that its request is not economically burdensome, technically feasible and is consistent with the Universal Service Requirements. The information necessary to prove these elements is mostly within the

Request for an order setting dates for disclosure of information and hearing by Pearce & Durick by Patrick W. Durick
10/25/2005 CC: Comm Legal Illona, Pat, Annette ALJ

control of NDTC. In ACS of ALASKA, INC. et al vs. REGULATORY COMMISSION OF ALASKA, et al, 81 P.3d 292 (Alaska Sup. Ct.), in a proceeding to consider the rural exemption, the Supreme Court of Alaska recognized this fact and by way of remedy suggested,

> The RCA [Regulatory Commission of Alaska] may order discovery and require ACS's active participation in assisting GCI to analyze and organize the information, including ordering ACS to produce summaries of information and provide analyses to accompany documents if produced. (Footnote Omitted).

ACS of Alaska, supra, at page 299.

In seeking to gather information to prove the above mentioned elements, Midcontinent took the deposition of Mr. Dave Dircks, the manager of North Dakota Telephone Company ("NDTC"), on October 11, 2005. During the deposition, Midcontinent requested information on NDTC's operation's in Devils Lake, North Dakota. NDTC has operations other than those in Devils Lake, North Dakota and although Mr. Dircks had system wide financial information, he did not have that information broken down and isolated for Devils Lake operations. Midcontinent needs the information isolated for Devils Lake. Mr. Dircks indicated that such information could be provided.

Q. [Mr. Durick] Okay. Now we're showing here gross revenue figures. And that's for your entire system. Is that correct?

A. [Mr. Dircks] Yes.

Q. Do you have that broken down so you can tell me what Devils Lake does with respect to these various categories

A. No, I don't.

Q. Do you have that broken down somewhere in your company?

A. We don't nor -- we don't normally break it down, but I'm assuming that we could. Depo. Dircks, p. 29, Ln. 15 through p. 30, Ln 2. (Attached hereto as Exhibit A)

Midcontinent requests that the Commission order NDTC to provide information specific to Devils Lake for:

1. Operating Revenues

   Local Network Access

   Network access services

   Long distance network services

   Billing and collection revenue

   Miscellaneous revenue

2. System

   Number of telephone lines in Devils Lake

   Number of telephone lines in system

   Number of DSL lines in Devils Lake

   Number of DSL lines in system

During Mr. Dircks' deposition, it was also discovered that NDTC has a study by James Howard Jr., a consultant, on the impact of competition by a facilities based competitor. Such information would be very relevant to the proceeding and Midcontinent requests that the Commission order that NDTC provide Midcontinent with a copy of the study.

The parties earlier stipulated to a schedule for disclosure of testimony to be presented at the hearing on this matter. As pointed out above, Midcontinent does not have the information from NDTC necessary to determine the testimony it will present at a

hearing on this matter. Midcontinent suggests that another pre-hearing conference be scheduled to set reasonable dates for disclosure of information by NDTC and disclosure of proposed testimony and rebuttal by the parties.

Wherefore, Midcontinent requests that the Commission:

1. Set a date for hearing this matter,

2. Order NDTC to provide information as set out above, and

3. Set a date for a pre-hearing conference to establish dates for NDTC to produce the requested information and for disclosure of direct and rebuttal testimony.

Dated this 24th day of October, 2005.

RESPECTFULLY SUBMITTED,

PEARCE & DURICK

PATRICK W. DURICK *ND #03141*
Individually and as a Member of the Firm
314 E. Thayer Avenue
P. O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890

Attorneys for Midcontinent Communications, Inc.

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

DEPOSITION OF DAVE DIRCKS

October 11, 2005

A p p e a r a n c e s:

For the Complainant:

PEARCE & DURICK
P. O. Box 400
Bismarck, North Dakota 58502-0400
By: PATRICK W. DURICK, ESQ.

For the Respondent:

PRINGLE & HERIGSTAD, P. C.
P. O. Box 1000
Minot, North Dakota 58702-1000
By: DONALD A. NEGAARD, ESQ.

Taken By: Joy Filipski, Court Reporter

. . . The following is the Deposition of DAVE DIRCKS, taken at the request of the Complainant in the above-entitled cause, pending in the State of North Dakota, before the Public Service Commission, pursuant to Notice and the Federal Rules of Civil Procedure, before Joy Filipski, Court Reporter, a Notary Public within and for the State of North Dakota, at the RAMSEY COUNTY COURTHOUSE, Third-Floor Juryroom, Devils Lake, North Dakota, on Tuesday, October 11, 2005, at 9:00 o'clock a.m., at which time counsel appeared as hereinbefore set forth . . .

I N D E X

DEPONENT:	PAGE NO.
DAVE DIRCKS	
Examination by . . . Mr. Durick	5
Examination by . . . Mr. Negaard	52

EXHIBITS	MARKED	OFFERED
No. 1 -- Financial Statements	9	
No. 2 -- Job Description	9	
No. 3 -- Newspaper Article	15	
No. 4 -- Minot Daily News Newspaper Article	16	
No. 5 -- Outlook Summer, 2005	23	

D A V E D I R C K S,
of Devils Lake, North Dakota, called as a witness by the Complainant, being first duly sworn by Joy Filipski, Court Reporter, a Notar Public within and for the State of North Dakota, was examined and deposed on his oath a follows:

MR. DURICK: Let the record reflect that this is the time and the place set for the deposition of the North Dakota Telephone Company.

There's been a Rule 30(b)(6) Notice sent out, identifying some particular areas that I want to inquire about this morning.

And I understand that the witness is Mr. Dircks?

THE DEPONENT: Uh-huh.

MR. DURICK: Okay.

THE DEPONENT: Yes.

MR. DURICK: This is the only witness we're going to have, Don?

MR. NEGAARD: Yes, sir.

29

access to the -- to your network?
A. To our network, yeah.
Q. Okay. Where would Internet services come in in this operating statement?
A. I'm going to have to look at that.
Well, I believe they would have to come out of the local network access, then, because --
MR. NEGAARD: That's interest, I'm sorry.
Q. (By Mr. Durick) You believe that it would come out of the first part, local network access?
A. I believe so, yes.
Q. Okay. Now we're showing here gross revenue figures. I'm still looking. And that's for your entire system. Is that correct?
A. Yes.
Q. Do you have that broken down so you can tell me what Devils Lake does with respect to these various categories?
A. No, I don't.
Q. Do you have that broken down somewhere in your company?

30

A. We don't nor -- we don't normally break it down, but I'm assuming that we could.
Q. Do you -- can you give me any sense of what percentage Devils Lake would be out of the total revenues?
A. Well, we have approximately 18,500 lines in our company.
And somewhere around, I believe 53 to 5500 of those are Devils Lake, so whatever percentage that is, is the --
Q. That would be a rough estimate?
A. Rough. I'm sure there's other factors involved in there, but could be a rough estimate, yes.
Q. So that's a little over a third, is it?
A. (No verbal response.)
Q. Do you have any idea what percentage of your revenues per line would be Internet versus basic telephone services?
A. No, I don't. We, we have approximately, I think it's 2500 DSL lines, or high-speed Internet, is what that is.
But we offer that in all of our towns, so I -- I could find out how many we have in Devils Lake, but right now I don't know.
Q. And DSL lines, what, what is the revenue per DSL line? Is it about 40 bucks, it? Or is it --
A. I think, I think our -- 34.95, I believe is what --
Q. Okay.
A. -- we charge.
Q. And what is a phone?
A. (No verbal response.)
Q. Your basic service. I saw it somewhere, is it $14, or something?
A. 14.12 or -- I believe.
But they vary by, by towns.
Q. Uh-huh.
But I guess the point I'm making -- or -- is that -- not the point, but the, th fact is that the DSL lines generate more revenue than a phone line does?
A. (No verbal response.)
Q. Just the local service.
A. I'm not positive about that.
Q. But the only thing I'm talking about now, it's $14 for a phone and -- for
A. Yeah.
Q. -- basic local service --
A. Yeah.
Q. -- and 35 for, for a DSL line.
The, the line -- the local service obviously there's going to be access fees a other things --
A. Uh-huh.
Q. -- that can be attributed to that line, I take it.
Do you, do you have any idea, is, is there a -- well, let me --
Do you have any figure of an average revenue generated per line?
A. We may have somewhere that we've done internally, but I, I am not sure what, what it would be.
Q. Okay. Have you made any determination of what the effect would be offering resold services to Midcontinent Communications?
A. No.
Q. You have not?
A. No.
Q. Okay. Well, just kind of back in

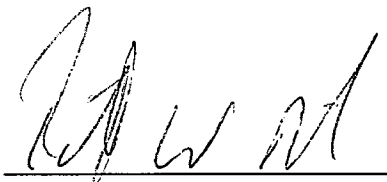
CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document, REQUEST FOR AN ORDER SETTING DATES FOR DISCLOSURE OF INFORMATION AND HEARING, was on the *24* day of October, 2005, was mailed to

Mr. Donald Negaard
Pringle & Herigstad
P. O. Box 1000
Minot, ND 58702-1000

Mr. Al Wahl
Administrative Law Judge
1707 North Ninth Street
Bismarck, ND 58501-1882
OAH File No. 20050316

William C. Binek
Public Service Commission
Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505



Patrick W. Durick

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

October 6, 2005

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

Mr. Don Negaard
Pringle & Herigstad, P. C.
P. O. Box 1000
Minot, ND 58702

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

Dear Mr. Negaard

Enclosed is a copy of the Commission's Motion granting the request for Thomas J. Moorman to practice before the Commission.

Thank you.

Sincerely,

William W. Binek
Chief Counsel

sls

Enclosure

cc/enc: Thomas J. Moorman, Attorney
Pat Durick, Attorney
Al Wahl, Administrative Law Judge (OAH No. 20050316)

23 **PU-05-451** Pages: 1

Letter re Motion granting request to practice

by Public Service Commission
10/06/2005 CC: Comm Legal Illona, Pat, Annette ALJ

APPROVED
DATE: 10-5-05
KME

MOTION

October 5, 2005

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission admit attorney Thomas J. Moorman to practice before the Commission in Case No. PU-05-451, Midcontinent Communications/North Dakota Telephone Company, Rural Exemption Investigation.

wwb

22 **PU-05-451** Pages: 1

Motion approving request for Thomas J Moorman to practice before the Commission by Public Service Commission

10/05/2005 CC: Comm Legal Illona, Pat, Annette ALJ

MOTION

APPROVED
DATE: 10-5-05
KMF

October 5, 2005

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission acknowledge the stipulation filed by Midcontinent Communications and North Dakota Telephone Company in this proceeding, and postpone the hearing scheduled for October 13, 2005.

PJF/sdh

21 PU-05-451 Pages: 1

Motion to acknowledge Stipulation and postpone hearing
by Public Service Commission
10/05/2005 CC: Comm Legal Illona, Pat, Annette ALJ

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
SEP 29 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

September 28, 2005

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding are an original and seven copies of a Motion for Admission to Practice and a supporting Affidavit of Thomas J. Moorman along with an Affidavit of Service by Mailing. We have also included a proposed Order.

Thank you.

Don Negaard

jt

Enclosures

cc/enc: Pat Durick
Al Wahl, Administrative Law Judge (OAH File No. 20050316)

20 PU-05-451 Pages: 6
Motion for Admission to Practice & supporting Affidavit of Thomas J Moorman by North Dakota Telephone Company by Don Negaard
09/29/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

RECEIVED
SEP 29 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**MOTION FOR ADMISSION TO PRACTICE**
North Dakota Telephone Company,	)	
Respondent.	)	

The undersigned attorney of record in the above-entitled matter moves the North Dakota Public Service Commission (PSC), pursuant to Rule 11.1 of the North Dakota Rules of Court, and based on the attached Affidavit of Thomas J. Moorman, a nonresident attorney of good standing in the District of Columbia, for permission to appear before the PSC on behalf of the Respondent, North Dakota Telephone Company, and to practice before the PSC in the above-pending matter. Thomas J. Moorman designates as his associate, Attorney Don Negaard (ID number 03598).

Pursuant to Rule 11.1 of the North Dakota Rules of Court, Thomas J. Moorman's Affidavit is attached hereto in support of this Motion for Admission to Practice.

Dated this 26th day of September, 2005.

Thomas J. Moorman
KRASKIN, MOORMAN & COSSON, LLC
Attorneys for Respondent
2120 L Street NW, Suite 520
Washington, D.C. 20037
Telephone (202) 296-8890
Fax (202) 296-8893

Don Negaard, State Bar ID #03598
PRINGLE & HERIGSTAD, P.C.
Attorneys for Respondent
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone (701) 852-0381
Fax (701) 857-1361

RECEIVED
SEP 29 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**AFFIDAVIT OF THOMAS J. MOORMAN**
North Dakota Telephone Company,	)	
Respondent.	)	

DISTRICT OF COLUMBIA) ss.

Thomas Moorman, being first duly sworn on oath, deposes and states as follows:

1. I am currently a member in good standing to practice law in the District of Columbia.

2. I am currently not subject to any public disciplinary proceedings with respect to my law license in any state.

3. I am not under any restriction or probation in the practice of law in any jurisdiction in which I am licensed.

4. I am not now nor have I ever been suspended or disbarred from a court in any jurisdiction relating to the practice of law.

5. Prior to the subject action, I have not appeared in a North Dakota state court in the past three years.

Further, affiant sayeth not.

Dated this 26 day of September, 2005.

Thomas J. Moorman

Thomas J. Moorman

Subscribed and sworn to before me this 26th day of September, 2005.

Notary Public
For the District of Columbia
My commission expires:

Chang Ho Choi
Notary Public District of Columbia
My Commission Expires 6/14/09

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF WARD)

Jo Thompson, being first duly sworn, deposes and says:

She is a citizen of the United States of America, of legal age and not a party to nor interested in the matter; on the 28th day of September, 2005, this affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following documents:

MOTION FOR ADMISSION TO PRACTICE
AFFIDAVIT OF THOMAS J. MOORMAN

Said envelope was addressed to the following person at his known address as follows:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.

Jo Thompson

Subscribed and sworn to before me this 28th day of September, 2005.

JUDITH A. TOSSETT
Notary Public
State of North Dakota
My Commission Expires Jan. 8, 2010

Judith A. Tossett

Judith A. Tossett, Notary Public
For the State of North Dakota
My commission expires: 01/08/10

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 **ORDER**

Attorney Thomas J. Moorman filed a motion for his admission to practice law before the North Dakota Public Service Commission in the above-captioned action. After reviewing his Motion for Admission to Practice and supporting Affidavit attached thereto, the Motion is hereby granted and it is ordered that Thomas J. Moorman be permitted to appear on behalf of the Respondent, North Dakota Telephone Company, in this matter.

Dated this _____ day of _____, 2005.

PUBLIC SERVICE COMMISSION

Susan E. Wefald Commissioner	Tony Clark Commissioner	Kevin Cramer Commissioner

RECEIVED
SEP 20 2005
ND PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES DIVISION

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

Midcontinent Communications (Midco) and North Dakota Telephone Company (NDTC) hereby agree to the following:

1. The parties agree that they agree a hearing and determination by the North Dakota Public Service Commission (Commission) in this matter may be held at a time beyond the 120 days directed by 47 U.S.C. 251(f)(1)(3) and agree the extension of time for a determination shall not have any effect on the merits of the request for a determination on the status of the rural exemption of NDTC in Devils Lake, North Dakota, by Midco.

2. These parties further agree:

   a. The testimony and exhibits of Midco's witnesses in this matter shall be filed on or before October 24, 2005.

   b. The testimony and exhibits of NDTC's witnesses in this matter shall be filed on or before November 18, 2005.

   c. The Commission may schedule a hearing sometime after the 25th day of November, 2005.

19 PU-05-451 Pages: 2
Stipulation
by Midcontinent and ND Telephone Co
09/20/2005 CC: Comm Legal Illona, Pat, Annette ALJ

Dated this 20th day of September, 2005.

MIDCONTINENT COMMUNICATIONS

By: Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400
Attorneys for Complainant

NORTH DAKOTA TELEPHONE COMPANY

By: Don Negaard
PRINGLE & HERIGSTAD, P.C.
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Attorneys for Respondent

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
SEP 15 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

September 14, 2005

Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

Enclosed for filing in the above proceeding are an original and seven copies of a Notice of Representation. Accordingly, would you please add me to the service list in this matter on behalf of the respondent, North Dakota Telephone Company.

Thank you.

Don Negaard

jt

Enclosures

cc: Pat Durick
Al Wahl, Administrative Law Judge (OAH File No. 20050316)

18 **PU-05-451** Pages: 1

Cover letter re Notice of Representation

by North Dakota Telephone Company by Don Negaard, 09/15/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

RECEIVED
SEP 15 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

TO: NORTH DAKOTA PUBLIC SERVICE COMMISSION

PLEASE TAKE NOTICE that the undersigned appears for the Respondent, North Dakota Telephone Company, in the above-captioned action.

Dated at Minot, North Dakota, this 14th day of September, 2005.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net
Attorney for Respondent

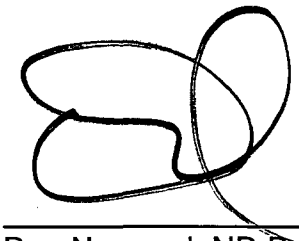
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

17 **PU-05-451** Pages: 2
Notice of Representation by Don Negaard
by North Dakota Telephone Company by
09/15/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Notice of Representation was served by regular mail on the 14th day of September, 2005, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400



Don Negaard, ND Bar ID #03598

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

RECEIVED
SEP 14 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

NOTICE OF PREHEARING CONFERENCE

September 14, 2005

To: Patrick W. Durick, Pearce & Durick, counsel for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, counsel for North Dakota Telephone Company; and William W. Binek, Chief Counsel, North Dakota Public Service Commisson

Please take notice that a prehearing conference will be held for this matter at 10:30 a.m., September 16, 2005. The prehearing conference will be conducted by telephone conference initiated by the administrative law judge.

The purpose of the prehearing conference is to consider and decide whether to proceed with the scheduled hearing of this matter on October 13, 2005, upon a prehearing order which requires that the pre-filed testimony and exhibits of Midcontinent Communications (Midco) shall be filed on or before September 23, 2005, and pre-filed testimony and exhibits of North Dakota Telephone Company (NDTC) shall be filed before October 7, 2005; or, alternatively, that the hearing of this matter shall be continued to October 27, 2005, upon a prehearing order which requires that pre-filed testimony and exhibits of Midco shall be filed on or before September 30, 2005, and pre-filed testimony and exhibits of NDTC shall be filed on or before October 14, 2005. The parties may also request of determination concerning any question or problem regarding preparation for or the conduct of the hearing.

Dated at Bismarck, North Dakota this 14th day of September, 2005.

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the **NOTICE OF PREHEARING CONFERENCE** was served by facsimile transmission on the 14th day of September, 2005, to:

Mr. Patrick W. Durick
Pearce & Durick
FAX No. (701) 223-7865
Bismarck, ND

Mr. Don Negaard
Pringle & Herigstad, P.C.
FAX No. (701) 857-1361
Minot, ND

Mr. William W. Binek
Chief Counsel
Public Service Commission
FAX No. (701) 328-2410
Bismarck, ND

OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge

Louise Wetzel

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

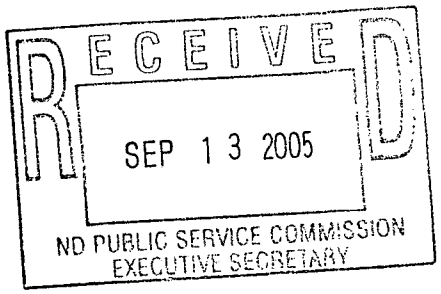
LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

September 13, 2005



Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451
OAH NO. 20050316

Enclosed for filing in the above proceeding are an original and seven copies of a Request for Rescheduling of Hearing and Prehearing Schedule together with a Brief in Support of Request for Rescheduling of Hearing and Prehearing Schedule. Please note that we are filing this request on behalf of the respondent, North Dakota Telephone Company.

Thank you.

Jo Thompson
Secretary to Don Negaard

Enclosures

cc: Pat Durick
Al Wahl, Administrative Law Judge (OAH File No. 20050316)

15 PU-05-451 Pages: 1
Cover to Commission re filings
by North Dakota Telephone Company by
09/13/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
ERIKA L. SLEGER
RYAN D. SANDBERG

LAW OFFICES OF
PRINGLE & HERIGSTAD, P.C.
2525 ELK DRIVE
POST OFFICE BOX 1000
MINOT, NORTH DAKOTA 58702
(701) 852-0381
FAX (701) 857-1361
E-mail: pringle@srt.com

OF COUNSEL
HERBERT L. MESCHKE

RETIRED
THOMAS A. WENTZ
MARK F. PURDY
JAN M. SEBBY

KENNETH G. PRINGLE
(1914-1983)
ROGER O. HERIGSTAD
(1919-2003)

RECEIVED
SEP 13 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

September 13, 2005

Honorable Al Wahl
Office of Administrative Hearings
1707 North 9th Street
Bismarck, ND 58501-1882

VIA FAX TRANSMISSION

MIDCONTINENT COMMUNICATIONS V. NORTH DAKOTA TELEPHONE COMPANY
CASE NO. PU-05-451

On behalf of North Dakota Telephone Company, we are filing a request for a prehearing conference along with a proposed request for rescheduling of hearing. I believe it would be helpful to hold this prehearing conference as soon as possible.

We have spoken to Attorney Pat Durick and he also believes a prehearing conference would be helpful. We are forwarding a copy of this request to Mr. Durick and to Bill Binek at the Public Service Commission by fax.

Mr. Durick has indicated that he is available the next couple days for a telephone conference on this prehearing matter. I am available after 10:30 a.m. on Wednesday, September 14, and I am also available anytime during the day on the 16th.

Thank you.

Don Negaard

jt

cc: Pat Durick (via fax transmission)
Bill Binek, Public Service Commission (via fax transmission)

14 **PU-05-451** Pages: 1

Cover letterto ALJ re prehearing conference & rescheduling hearing
by North Dakota Telephone Company by Don Negaard.
09/13/2005 CC: Comm Legal Illona, Pat, Annette ALJ .

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

RECEIVE
SEP 13 2005
ND PUBLIC SERVICE COMMISSIC
EXECUTIVE SECRETARY

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**REQUEST FOR RESCHEDULING OF HEARING AND PREHEARING SCHEDULE**
North Dakota Telephone Company,	)	
Respondent.	)	

Pursuant to North Dakota Administrative Code section 69-02-02-08, North Dakota Telephone Company (NDTC) hereby moves the Commission, through its hearing officer, to proceed with one of the following two alternatives:

1. Continue with the scheduled hearing on October 13, 2005, and adopt a prehearing order which requires the following:

   a. Pre-filed testimony and exhibits of Midcontinent Communications (Midco) shall be filed on or before September 23, 2005.

   b. Pre-filed testimony and exhibits of NDTC shall be filed on or before October 7, 2005.

OR

2 Reschedule the hearing in this matter from October 13, 2005, to October 27, 2005, and adopt a prehearing order which requires the following:

   a. Pre-filed testimony and exhibits of Midco shall be filed on or before September 30, 2005.

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

13 **PU-05-451** Pages: 2
Request for Rescheduling of Hearing & Prehearing Schedule
by North Dakota Telephone Company
09/13/2005 CC: Comm Legal Illona, Pat, Annette ALJ

b. Pre-filed testimony and exhibits of NDTC shall be filed on or before October 14, 2005.

This request is supported by a Brief attached hereto. Accordingly, NDTC respectfully submits that the public interest would be advanced by a grant of this request.

Dated at Minot, North Dakota, this 13th day of September, 2005.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net
Attorney for Complainants

RECEIVED
SEP 13 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a South Dakota Partnership,	)	
Complainant,	)	Case No. PU-05-451
vs.	)	**BRIEF IN SUPPORT OF A REQUEST FOR RESCHEDULING OF HEARING AND PREHEARING SCHEDULE**
North Dakota Telephone Company,	)	
Respondent.	)	

North Dakota Telephone Company (NDTC) has moved the Commission, through its hearing officer, to proceed with one of the following two alternatives:

1. Continue with the scheduled hearing on October 13, 2005, and adopt a prehearing order which requires the following:

   a. Pre-filed testimony and exhibits of Midcontinent Communications (Midco) shall be filed on or before September 23, 2005.

   b. Pre-filed testimony and exhibits of NDTC shall be filed on or before October 7, 2005.

OR

2. Reschedule the hearing in this matter from October 13, 2005, to October 27, 2005, and adopt a prehearing order which requires the following:

   a. Pre-filed testimony and exhibits of Midco shall be filed on or before September 30, 2005.

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

12 PU-05-451 Pages: 4
Brief in Support of a Request for Rescheduling Hearing & Prehearing Schedule by North Dakota Telephone Company by Don Negaard, 09/13/2005 CC: Comm Legal Illona, Pat, Annette ALJ

b. Pre-filed testimony and exhibits of NDTC shall be filed on or before October 14, 2005.

LAW AND ARGUMENT

NDTC respectfully submits that this rescheduling request is in the public interest and should be granted. The instant proceeding involves a request for interconnection that triggers the requirements of section 251(f)(1) of the Communications Act of 1934, as amended. On information and belief, NDTC notes that this is one of the first occasions that the Commission has been requested to consider the removal of the exemption provided to a rural telephone company (such as NDTC). As the party bearing the burden of proof in this matter, Midco should, as a matter of fundamental fairness and procedural due process, be required to make its submissions sufficiently in advance in order to provide NDTC the opportunity to respond to the statutory factors that Midco will, presumably, be suggesting it meets. The use of traditional administrative hearing procedures will help ensure the development of a complete record upon which the Commission can reach its decision. These results, NDTC notes, are not achievable since no prehearing filing schedule has been addressed or established by the Commission.

Although it recognizes that its second alternative will reduce the amount of time within which the Commission must resolve this matter, NDTC has offered the second alternative in order to provide the Commission with a choice as to how best it would like to proceed toward resolution of this matter. Thus, NDTC would be willing to proceed along

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

the second alternative should the Commission determine that this alternative schedule would best achieve its resolution of the issues raised in this proceeding.

Accordingly, NDTC respectfully submits that the public interest would be advanced by a grant of this request for a procedural schedule and will defer to the Commission's judgment as to which of the two alternatives presented herein should be adopted.

Dated at Minot, North Dakota, this 13th day of September, 2005.

PRINGLE & HERIGSTAD, P.C.

Don Negaard, ND Bar ID #03598
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
Telephone: (701) 852-0381
Fax: (701) 857-1361
pringle@ndak.net
Attorney for Complainants

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Request for Rescheduling of Hearing and Prehearing Schedule and Brief in Support of a Request for Rescheduling of Hearing and Prehearing Schedule was served by regular mail on the 13th day of September, 2005, on the following:

Patrick W. Durick
PEARCE & DURICK
314 East Thayer Avenue
P.O. Box 400
Bismarck, ND 58502-0400

Don Negaard, ND Bar ID #03598

Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000
701-852-0381

RECEIVED
AUG 15 2005
PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.

2. The newspapers listed on the exhibits published the advertisement of:

Public Service Commission, Midcontinent - North Dakota,

1 time(s) as required by law or ordinance.

3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 11 day of August 20 05.

Kim Hilzendeger

KIM HILZENDEGER
Notary Public
State of North Dakota
My Commission Expires July 14, 2009

11 PU-05-451 Pages: 1

Affidavit of Publication

by North Dakota Advertising Service, Inc.
08/15/2005 CC: Comm Legal Illona, Pat, Annette ALJ

Case No: PU-05-451

Notice of hearing

Published in:

8/5 – Devils Lake

8/5 – Jamestown

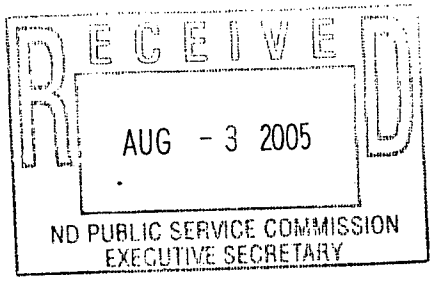
OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
DIRECTOR

701-328-3260
Fax 701-328-3254
oah@state.nd.us
www.state.nd.us/oah

August 2, 2005



Mr. William W. Binek
Hearing Administrator
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

Dear Mr. Binek:

Thank you for your August 1, 2005, request of the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of Midcontinent Communications/North Dakota Telephone Company, Rural Exemption Investigation, PU-05-451. I hereby designate Al Wahl to be assigned as an administrative law judge to conduct the hearing in regard to this matter. Because the administrative law judge will not be making recommended findings of fact and conclusions of law, or issuing a recommended order, the person or persons who will be making the final administrative decision in regard to this matter (*i.e.*, agency head, deputy, board, commission) must be in attendance at the hearing.

Please send all additional relevant documents (correspondence, and other pleadings and documents) to the designated administrative law judge in care of the Office of Administrative Hearings, 1707 North 9th Street, Bismarck, North Dakota 58501-1882. I understand the hearing is scheduled for October 13, 2005, beginning at 9:00 am, in the Commission Hearing Room, 12th Floor, State Capitol. Because the administrative law judge is requested to conduct the hearing only, the agency must give proper notice of the hearing.

Your request has been assigned OAH File No. 20050316. Please include this number on all future documents and correspondence filed for this matter with the Office of Administrative Hearings.

Sincerely,

Allen C. Hoberg
Director

ACH/lmw

cc: Patrick W. Durick
Dave Dircks

10 **PU-05-451** Pages: 1

Al Wahl assigned as ALJ

by Office of Administrative Hearings
08/03/2005 CC: Comm Legal Illona, Pat, Annette

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

August 1, 2005

Mr. Patrick W. Durick
Pearce & Durick
P. O. Box 400
Bismarck, ND 58502-0400

Mr. Dave Dircks
North Dakota Telephone Company
P. O. Box 180
Devils Lake, ND 58301-0180

Re: Request for Court Reporter
Case No. PU-05-451
Midcontinent Communications
North Dakota Telephone Company
Rural Exemption
Investigation

Dear Mr. Durick and Mr. Dircks:

The hearing in the above case has been scheduled for October 13, 2005, beginning at 9 a.m., in the Commission Hearing Room. The Commission will tape record the hearing. If parties would like a court reporter present at the hearing they may do so, and may make their own arrangements. However, if parties would like the Commission to arrange for a court reporter please notify the Commission in writing within ten days of receipt of this letter and our office will make the necessary arrangements.

Parties will pay all costs associated with the court-reporting service.

If you have any questions, please contact us.

Sincerely,

William W. Binek
Hearing Administrator

9 **PU-05-451** Pages: 1

Letter to parties re court reporter service for hearing
by Public Service Commission
08/01/2005 CC: Comm Legal Illona, Pat, Annette . .

Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

August 1, 2005

Mr. Allen C. Hoberg
Office of Administrative Hearings
1707 North 9th Street, Lower Level
Bismarck, ND 58501

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

Dear Mr. Hoberg:

Enclosed is a request for an administrative law judge in the above case. The Commission has scheduled a hearing for October 13, 2005, beginning at 9 a.m. in the Commission's Hearing Room, 12th Floor, State Capitol, Bismarck. The administrative law judge will serve as a procedural law judge, and the hearing will be tape recorded. A copy of the case is enclosed.

Please provide the Commission with a copy of any filings issued by your office in this matter.

If you have any questions, please contact me. Thank you.

Sincerely,

William W. Binek
Hearing Administrator

/sls
Enclosure

c: Patrick W. Durick, Attorney
Dave Dircks

8 **PU-05-451** Pages: 1

Letter re Request for Administrative Law Judge

by Public Service Commission
08/01/2005 CC: Comm Legal Illona, Pat, Annette . .

REQUEST FOR ADMINISTRATIVE LAW JUDGE--COMPLAINT

NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS

SFN 17818 (Rev. 03-2001)

Name of Agency, Board, or Commission		
Public Service Commission		
Name of Respondent(s)	Address	Telephone Number
North Dakota Telephone Company	P. O. Box 180, Devils Lake, ND 58301-0180	701-662-1100

The above named agency, board, or commission has taken administrative action pursuant to its authority found in Title 49 (North Dakota Century Code and/or North Dakota Administrative Code).

The administrative action is more fully described as follows:
Case No. PU-05-451, Midcontinent Communications/North Dakota Telephone Company, Rural Exemption, Investigation. Hearing
is set for October 13, 2005 beginning at 9 a. m., Commission Hearing Room, 12th Floor, Bismarck, ND.

Has the respondent been provided a copy of the complaint? ☑ Yes ☐ No

Attached is a copy of the complaint, related documents and correspondence, and certificate, affidavit or admission of service. If the respondent has otherwise been notified about this administrative action, please explain in the comments section below.

It requests designation of an administrative law judge (please check one):

☐ To conduct the hearing and issue **recommended findings of fact, conclusions of law, and order.**

☑ **To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).**

☐ **To conduct the hearing, issue findings of fact, conclusions of law, and a final order.**

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Agency Contact Person(s)	Telephone Number
William W. Binek, Chief Counsel	328-4088

Representation [attorney (or other)] if known:

Agency	Telephone Number
William W. Binek, Chief Counsel, Public Service Commission, 600 E Blvd. Ave., Dept. 408, Bismarck, ND	328-4088
Party	Telephone Number
Patrick W. Durick, Counsel for Midcontinent Communications, P. O. Box 400, Bismarck, ND 58502-0400	223-2890
Party	Telephone Number
Dave Dircks, General Manager, North Dakota Telephone Company, P. O. Box 180, Devils Lake, ND	662-1100

Additional Comments
Hearing will be tape recorded.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person	Date
William W. Binek, Hearing Administrator	August 1, 2005
Signature of Requesting Person	Telephone Number
X	328-4088

Request for Administrative Law Judge for
10/13/05 hearing
by Public Service Commission

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company
Rural Exemption
Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY CERTIFIED AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of August, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Hearing

The envelopes were addressed as follows:

Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400
Cert. No. 7004 2510 0004 8815 5323

Dave Dircks Manager
North Dakota Telephone Company
P O Box 180
Devils Lake ND 58301-0180
Cert. No. 7004 2510 0004 8815 5347

Sharon Helbling further deposes and says that on the **1st day of August, 2005,** she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **1st day of August, 2005**.

Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2016

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of August, 2005**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of:

Notice of Hearing

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

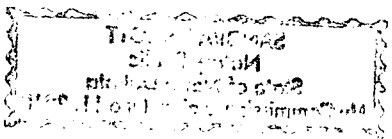
Sharon Helbling

Subscribed and sworn to before me
this **1st day of August, 2005**.

Sandra L Scott
Notary Public

SEAL

SANDRA L SCOTT
Notary Public
State of North Dakota
My Commission Expires June 11, 2010



wbrudvik@ohnstadlaw.com
William Brudvik

mariep@telcogroupinc.com
Marie Pierre-Paul

dennis.kelley@reconex.com
Dennis Kelley
1-800-Reconex Inc
2500 Industrial Ave
Hubbard OR 97032

ffarm@wtc-mail.net
Ann Faught
Absaraka Co-op Tele Co
Absaraka ND 58002

jlchapman@acomminc.com
Jerry Chapman
Acomm Inc
510 1st Ave N Ste 203
Minneapolis MN 55403-0343

jcremer@bantzlaw.com
James Cremer
Bantz Gosh & Cremer LLC
305 6th Ave SE
Aberdeen SD 57402-0970

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

jtmgr@bektel.com
Jerome Tishmack
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

dan.meldazis@broadwing.com
Dan Meldazis
Broadwing Communications LLC
200 N LaSalle 10th Fl
Chicago IL 60601

camurray@eschelon.com
Catherine A Murray
Business Productivity Solutions Inc
730 2nd Ave S Ste 900
Minneapolis MN 55402

consumer_affairs@frontiercorp.com
Scott Bohler
Citizens Telecomm Co of Minnesota
3 High Ridge Park
Stamford CT 06905

mannawiz@pacbell.net
Larry Manna
Compuwiz
1012 Industrial Blvd
South Lake Tahoe CA 96150

sheba.chacko@btna.com
Sheba Chacko
Concert Communications Sales LLC
11440 Commerce Park Dr
Reston VA 20191

bryan@consolidatedtelcom.com
Bryan W Personne
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

paul@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

ken@consolidatedtelcom.com
Paul Schuetzler
Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

keithl@daktel.com
Keith Larson
Dakota Central Tele Coop
PO Box 299
Carrington ND 58421-0299

mjrasher@msn.com
Mary Jane Rasher
DCI Group

tschilling@drtel.com
Troy Schilling
Dickey Rural Communications Inc
PO Box 69
Ellendale ND 58436-0069

tschilling@drtel.com
Troy Schilling
Dickey Rural Services Inc
P O Box 69
Ellendale ND 58436

tschilling@drtel.com
Troy Schilling
Dickey Rural Telephone Cooperative
PO Box 69
Ellendale ND 58436-0069

lhankins@covad.com
Lynn Hankins
DIECA Communications Inc
3420 Central Expy
Santa Clara CA 95051-0703

kcallen@vartec.net
Kevin Allen
Excel Telecommunications Inc
2440 Marsh Lane
Carrollton TX 75006

glenn.richards@shawpittman.com
Glenn Richards
Glenn Richards
ShawPittman
2300 N St NW

cooperstown@mlgc.com
Ray Brown
Griggs County Telephone Co
P O Box 506
Cooperstown ND 58425-0506

rlaqua@rrv.net
Ronald Laqua
Halstad Telephone Company
PO Box 55
Halstad MN 56548-0055

rlaqua@rrv.net

HTC Services Inc
P O Box 55
Halstad MN 56548

bjohnson@ideaone.com
Robert K Johnson
IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

carl.billek@corp.idt.net
Carl Wolf Billek
IDT America Corp
520 Broad St
Newark NJ 07102-3111

jamie@ignus.com
Jamie Kubik
Ignus Inc
P O Box 9202
Fargo ND 58106-9202

kdawson@integratel.com
Ken Dawson
Integra Telecom of North Dakota Inc
5883 Rueferrari
San Jose CA 95138

kander@ictc.com
Keith Anderson
Inter-Community Telephone Company LLC
PO Box 8
Nome ND 58062-0008

jamesval@jamesvalley.com

James Valley Coop Telephone Co
235 E 1st Ave
Groton SD 57445

sales@kmavradio.com

KMAV AM/FM RADIO
PO Box 216
Mayville ND 58257-0216

susan.p.green@lmco.com
Susan Green
Lockheed Martin Global Telecomm
12506 Lake Underhill Rd MP 836
Orlando FL 32825

loretel@loretel.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

gtaylor@matrixvalue.com
Greg Taylor
Matrix Telecom Inc
300 N Meridian Ste 200-North
Oklahoma City OK 73107

foss@btinet.net
Marilyn Foss
MCI
707 17th St Ste 3600
Denver CO 80202

michel.singer_nelson@mci.com
Michel Singer-Nelson
MCI
707 17th St Ste 3600
Denver CO 80202

gerrya@midrivers.com
Gerry Anderson
Mid-Rivers Telephone Coop Inc
PO Box 280
Circle MT 59215-0280

carols@midstatetel.com
Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

carols@midstatetel.com
Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

2kathyg@nemontel.net
Kathy Greenwood
Missouri Valley Communications Inc
P O Box 600
Scobey MT 59263-0600

karen.collins@mdu.com; tamie.aberle@mdu.com
Karen Collins
Montana-Dakota Utilities Co
400 N 4th St
Bismarck ND 58501

sbunn@mlgc.com
Shelie Bunn
Moore & Liberty Telephone Co
Enderlin ND 58027

dhill@ndarec.com
Dennis Hill
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

pschaner@ndarec.com
Patti Schaner
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

2kathyg@nemontel.net
Kathy Greenwood
Nemont Telephone Cooperative Inc
Scobey MT 59263

jsilveira@netlojix.com
Janet Medeiros-Silveira
NetLoqix Telecom Inc
501 Bath St
Santa Barbara CA 93101

abussmann@newaccess.cc
Amy Bussmann
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

prieck@newaccess.cc
Pam Rieck
New Access Communications LLC
801 Nicollet Ave Ste 350
Minneapolis MN 55402-2519

lclemens@nft.net
Larry Clemens
Noonan Farmers Tele Co
Noonan ND 58765

rer@norlight.com
Robert E Rogers
NorLight Inc
275 N Corporate Dr
Brookfield WI 53045

laurie.willman@nbne.info
Laurie Willman
North By NortheastCom LLC

stevedl@srttel.com
Steven Lysne
North Dakota Network Co
P O Box 2027
Minot ND 58702-2027

pat@ndta.net
Patricia Gisinger
North Dakota Telephone Assoc
PO Box 2614
Bismarck ND 58502-2614

kathyy@ndtel.com
Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

dwights@nccray.com
Dwight Schmitt
Northwest Communications Coop
PO Box 38
Ray ND 58849-0038

mary.buley@onvoy.com
Mary Buley
Onvoy Inc
300 South Highway 169
Minneapolis MN 55426

ddunning@polarcomm.com
David Dunning
Polar Commun Mut Aid Corp
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telcom Inc
PO Box 270
Park River ND 58270-0270

ddunning@polarcomm.com
David Dunning
Polar Telecommunications Inc
PO Box T
Park River ND 58270

donn@srt.com
Don Negaard
Pringle and Herigstad P C
PO Box 1000
Minot ND 58702-1000

jbrown@vcomsolutions.com
Jenna Brown
QuantumShift Communications Inc
12657 Alcosta Blvd Ste 418
San Ramon CA 945830

sschwan@qwest.com
Suzy Schwandt
Qwest Corporation

kblicke@qwest.com
Kent Blickensderfer
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

melvin.kambeitz@qwest.com
Mel Kambeitz
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

smacint@qwest.com
Scott Macintosh
Qwest Corporation
220 N 5th St
PO Box 5508
Bismarck ND 58502-5508

karen.titzer@qwest.com
Karen Titzer
Qwest Corporation
1005 17th St Ste 200
Denver CO 80202

areyes@telfile.com
Ayanery Reyes
QX Telecom LLC
230 5th Ave Ste 800
New York NY 10001

pam@tnics.com
Pamela Harrington
RC Communications Inc
PO Box 197
New Effington SD 57255-0197

jeffolson@rrt.net
Jeff Olson
Red River Rural Tele Assoc
PO Box 136
Abercrombie ND 58001-0136

jeffolson@rrt.net
Jeff Olson
Red River Telecom Inc
PO Box 136
Abercrombie ND 58001-0136

royce@restel.net
Royce Aslakson
Reservation Telephone Cooperative
Parshall ND 58770

mbrestel@ndak.net
Marcia Burckhard
Reservation Telephone Cooperative
Parshall ND 58770

shaneh@restel.net
Shane Hart
Reservation Telephone Cooperative
Parshall ND 58770

pam@tnics.com
Pamela Harrington
Roberts County Telephone Coop Assoc
New Effington SD 57255

kb9534@sbcld.com
Karen Brinkman
SBC Long Distance LLC
5850 W Las Positas Blvd
Pleasanton CA 94558

ann.c.pongracz@mail.sprint.com
Ann Pongracz
Sprint
330 SValley View Blvd
MAILSTOP: NVLSVB 0207
Las Vegas NV 89107-4357

randyab@srttel.com
Randy Burckhard
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

suelh@srttel.com
Sue Hamilton
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

stevedl@srttel.com
Steve Lysne
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

christm@srttel.com
Chris Morsefield
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

janehp@srttel.com
Jane Petersen
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

johnar@srttel.com
John Reiser
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

kimrw@srttel.com
Kim Weydahl
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027

mdickerson@state.nd.us
Marcy Dickerson
State Tax Department
State Capitol
Bismarck ND 58505

francie@talk.com
Francie McComb
Talk America Inc
6805 Route 202
New Hope PA 18938

lwh@thlglaw.com
Loubna W Haddad
The Helein Law Group LLP
8180 Greensboro Dr Ste 700
McLean VA 22102

cdziuban@securustech.net
Colleen Dziuban
T-Netix Inc
14651 Dallas Pkwy STe 600
Dallas TX 75254-7476

kcarlson@utma.com
Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

lahall@usgs.gov
Lenora Hall
U S Geological Survey

kjvannin@usgs.gov
K Vannin
U S Geological Survey

jennifer.arnold@uslink.com
Jennifer Arnold
U S Link Inc dba TDS Metrocom
P O Box 327
Pequot Lakes MN 56472-0327

kimm.partridge@ucn.net
Kimm Partridge
UCN Inc
14870 S Pony Express Rd
Bluffdale UT 84065

kcarlson@utma.com
Kenneth Carlson
United Telephone Mut Aid Corp
P O Box 729
Langdon ND 58249-0729

mspead@universalservice.org
Michael Spead
USAC
2120 L St NW Ste 600
Washington DC 20037

kander@ictc.com
Keith Anderson
Valley Communications Inc
P O Box 8
Nome ND 58062

kcallen@vartec.net
Kevin Allen
VarTec Solutions Inc
2440 Marsh Lane
Carrollton TX 75006

kcallen@vartec.net
Kevin Allen
VarTec Telecom Inc
2440 Marsh Lane
Carrollton TX 75006

rhoudek@venturecomm.net
Randy Houdek
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

anthony.gillman@verizon.com
Anthony Gillman
Verizon Select Services Inc
P O Box 110
Tampa FL 33601-0110

westriver@sdplains.com
West River Coop Telephone Co
801 Coleman Ave PO Box 39
Bison SD 57620-0039

bonniek@westriv.com
Bonnie Krause
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

mickg@westriv.com
Mick Grosz
West River Telecommunications Cooperati
PO Box 467
Hazen ND 58545-0467

windfall_resources@sbcglobal.net
Robert K Lock
Windfall Resources International LLC
7144 BN Harlem Ave Ste 323
Chicago IL 60631

paulihland@wtc-mail.net
Paul Ihland
Wolverton Telephone Company
P O Box 270
Park River ND 58270-0270

Diana Stevens
One Verizon Place
Alpharetta GA 30004-8511

Jennifer Sikes
1-800 Reconex
2500 Industrial Ave
Hubbard OR 97032

Patrick Summers
360networks (USA) Inc.
867 Coal Creek Cir Ste 160
Louisville CO 80027-4670

Acceris Communications Corp
9775 Business Park Ave
San Diego CA 92131

ACN Communications Services Inc
32991 Hamilton Ct
Farmington Hills MI 48334

Arch Paging
11437 Valley View Rd
Eden Prairie MN 55344

Kimberly Nielsen
AT&T Wireless
7277 164th Ave NE RTC-1
Redmond WA 98052

John Broten
Bell Atlantic Communications Inc
1320 N Court House Rd 9th Fl
Arlington VA 22201

Budget Phone, Inc.
6901 W 70th St
Shreveport IL 71129

BullsEye Telecom, Inc.
25900 Greenfield Rd Ste 330
Oak Park MI 48237

C12 Inc
200 Galleria Pkwy Ste 1200
Atlanta GA 30339

Scott Geston
Cable One of Fargo
P O Box 10757
Fargo ND 58106-0757

Robert Fallan
Coast International
14303 W 95th St
Lenexa KS 66215-5210

Beth Choroser
Comcast Business Communications Inc
1500 Market St
Philadelphia PA 19102

Computer Integrated Communications Inc
8502 Bells Mill Rd
Potomac MD 20854-4071

Computer Network Technology Corp
6000 Nathan Ln N
Minneapolis MN 55442

Comtech 21 LLC
1 Barnes Park S
Wallingford CT 06492

Consolidated Communications Corp
P O Box 1408
Dickinson ND 58602-1408

Consolidated Communications Networks Inc
507 S Main
Dickinson ND 58601

Consolidated Telcom
PO Box 1077
Dickinson ND 58601-1077

Contact Communications
937 W Main St
Riverton WY 82501

Anthony Barrett
Covista Inc
4803 Hwy 58 N
Chatanooga TN 37416

D D D Calling Inc
6300 Richmond Ave Ste 304
Houston TX 77057

Keith Larson
Dakota Central Telecom I
PO Box 299
Carrington ND 58421-0299

William Jackson
Dakota Justice
38 8th Ave W
Dickinson ND 58601

Daktel Communications LLC
P O Box 299
Carrington ND 58421-0299

Dave Dircks
DCN LLC
P O Box 180
Devils Lake ND 58301-0180

DSLnet Communications LLC
545 Long Wharf Dr
New Haven CT 06511

Easton Telecom Services Inc
3046 Brecksville Rd #A
Richfield OH 44286-9399

Ernest Communications Inc
5275 Triangle Pkwy Ste 150
Norcross GA 30092

Colleen Dziuban
Evercom Systems Inc
14651 Dallas Pkwy Ste 600
Dallas TX 75254-7476

Chere Heintzmann
Extend America Inc
1101 E Front Ave
Bismarck ND 58504-5654

Lawrence Freedman
Fleischman & Walsh
1919 Pennsylvania Ave NW Ste 600
Washington DC 20006-3420

France Telecom Corporate Solutions LL
2300 Corporate Park Dr Mailstop SPO60
Herndon VA 20171

Global Tel*Link Corporation
2609 Cameron St
Mobile AL 36607-3104

GLOBCOM INCORPORATED
2100 Sanders Rd Ste 150
Northbrook IL 60062

Granite Telecommunications LLC
234 Copeland St
Quincy MA 02169

Houlton Enterprises Inc
2201 W Bdwy Ste 1
Council Bluffs IA 51501

Julia Waysdorf
ICG Telecom Group Inc
161 Inverness Dr W
Englewood CO 80112

Ignus Inc
1535 27th Ave S #201
Fargo ND 58103

Ken Hanks
International Telcom Ltd
417 2nd Ave W
Seattle WA 98119

David A. Huberman
Intrado Communications Inc
1601 Dry Creek Dr
Longmont CO 80503-6493

Ionex Communicatins North Inc
15305 Dallas Pkwy Ste 1500
Addiston TX 75001

IPVoice Communications Inc
14860 Montfort Dr Ste 210
Dallas TX 75254

Nanette Edwards
ITC DeltaCom Communications Inc
7037 Old Madison Pike NW #400
Huntsville AL 35806-2107

KMC Data LLC
1545 Route 206
Bedminster NJ 07921

KMC Telecom V Inc
1545 Rt 206
Bedminster NJ 07921

Myer Shark
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

Thomas K Crowe
Law Offices of Thomas K Crowe PC
1250 24th St NW Ste 300
Washington DC 20037

Level 3 Communications LLC
1025 Eldorado Blvd
Broomfield CO 80021

Local Telcom Holdings LLC
485 Madison Ave 15th Fl
New York NY 10022-5803

Jan Lowe
Long Dist Consolidated Billing Co
145 S Livernois Rd #199
Rochester MI 48307-1837

Maxcess Inc
P O Box 951419
Lake Mary FL 32795-1419

Michel Murray
MCI
707 17th St Ste 3600
Denver CO 80202

MCImetro Access Transmission Services
707 17th ST Ste 3600
Denver CO 80202

McKenzie Consolidated Telecom LLC
P O Box 1408
Dickinson ND 58602-1408

McLeodUSA
P O Box 3177
Cedar Rapids IA 52406-3177

Metropolitan Telecomm of ND Inc
44 Wall St 6th Fl
New York NY 10005

Midcontinent Communications
410 South Phillips Ave
Sioux Falls SD 57104

Minnesota Independent Equal Access Co:
300 S Hwy 169
Minneapolis MN 55426

Mike Strand
MITS
PO Box 5237
Helena MT 59604-5237

Jim Arbury
National Multi Housing Council
1850 M St NW Ste 540
Washington DC 20036

Dave Crothers
NDATC
Box 1144
Mandan ND 58554-1144

New Edge Network Inc
3000 Columbia House Blvd Ste 106
Vancouver WA 98661

Bob Edgerly
Nextel West Corp
2001 Edmund Halley Dr
Reston VA 20191

Carmine Russo
North Dakota Big Sky Telecom
374 Ansin Blvd
Hallandale FL 33009

NOW Communications Inc
711 S Tejon St Ste 201
Colorado Springs CO 80903

Brad Van Leur
OrbitCom Inc
1701 N Louise Ave
Sioux Falls SD 57107

Premiere Network Services Inc
1510 N Hampton Rd Ste 120
DeSoto TX 75115

Scott Lee
Protel Advantage Inc
1308 Medora Rd
St. Paul MN 55118-1734

Public Communications Services Inc
11859 Wilshire Blvd Ste 600
Los Angeles CA 90025

Qwest Corporation
1005 17th St Ste 200
Denver CO 80202

Kristin L Smith
Qwest Corporation
1005 17th St Ste 200
Denver CO 80202

Melissa Thompson
Qwest Corporation
1005 17th St Ste 200
Denver CO 80202

Dean Polkow
RCC Network Inc
PO Box 2000
Alexandria MN 56308-2000

Reliant Communications Inc
801 International Pkwy 5th Fl
Lake Mary FL 32746

Kimberly Nielson
RTC-1
Legal & External Affairs
7277 164th Ave NE
Redmond WA 98052

Arthur H Paquette
SNET America Inc
310 Orange St
North Haven CT 06510-1719

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

Jack Medaris
Telco Partners Inc
P O Box 807
Conshohocken PA 19428-0807

William Staycoff
Telcom Billing Services Inc
2989 Brookdale Dr
Brooklyn Park MN 55444

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

Telera Communications Inc
910 E Hamilton Ave Ste 200
Campbell CA 95008

Jonathan Marashlian
The Helein Law Group P C
8180 Greensboro Dr Ste 700
McLean VA 22102

Trans National Comm Internat'l Inc
2 Charlesgate West
Boston MA 02215

Trinsic Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

Christina Tygielski
Universal Access Inc
Sears Tower 233 S Wacker Dr Ste 600
Chicago IL 60606-6307

Val-Ed Joint Venture LLP/702
702 Main Ave
Moorhead MN 56560

VCI Company
3875 Steilacoom Blvd #A
Lakewood WA 98498

David Armey
Verizon Communications
750 SH121 Bypass Ste 100
Louisville TX 75067

Western CLEC Corporation
3650 131st Ave SE #400
Bellevue WA 98006

Carolyn Fodor
Winstar Communications
520 Broad St
Newark NJ 07102

WTC Competitive Services Inc
P O Box 270
Park River ND 58270-0270

XO Communications Services Inc
11111 Sunset Hills Rd
Reston VA 20190

Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Monday, August 01, 2005 9:38 AM
To: ndna
Subject: Notice of Hearing PU-05-451

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the attached Notice of Hearing published as a legal publication in the next issue of the Devils Lake Daily Journal, and run it as a News Item Only article as well.

Send the bill to the Public Service Commission along with a tear sheet for billing purposes.

If you have any questions, let me know.

Thank you.

Sharon Helbling
Public Utilities Division

7-28-05
of hearing

5 **PU-05-451** Pages: 1

1 Notice e-mailed to NDNA requesting publication
by Public Service Commission
08/01/2005 CC: Comm Legal Illona, Pat, Annette . .

APPROVED
DATE: 7/28/05

MOTION

July 28, 2005

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

I move the Commission issue a Notice of Hearing in this proceeding.

PJF/sdh

4 **PU-05-451** Pages: 1

Motion

by Public Service Commission
07/28/2005 CC: Comm Legal Illona, Pat, Annette . .

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/North Dakota Telephone Company Rural Exemption Investigation

Case No. PU-05-451

NOTICE OF HEARING

July 28, 2005

On May 12, 2005 Midcontinent Communications (Midcontinent) made a bona fide request under 47 U.S.C. § 251(c) for wholesale resold services for the Devils Lake, North Dakota exchange from North Dakota Telephone Company (NDTC). By its filing of July 15, 2005 Midcontinent notified the Commission of its bona fide request.

NDTC claims that under 47 U.S.C. § 251(f) it is exempt from the requirement that incumbent local exchange carriers must offer for resale the telecommunications services that it provides to retail subscribers.

Midcontinent requests that the Commission conduct an inquiry under for the purpose of determining whether to terminate the NDTC's exemption from providing its services for resale. Under 47 U.S.C. § 251(f) the Commission must conduct an inquiry within 120 days after the Commission received notice of the bona fide request.

A public hearing has been scheduled for **October 13, 2005, at 9 a.m. in the Commission Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.**

The issues to be considered in this matter are:

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.

Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Illona A. Jeffcoat-Sacco, Executive Secretary at least 24 hours in advance.

PUBLIC SERVICE COMMISSION

Susan E. Wefald	Tony Clark	Kevin Cramer
Commissioner	**President**	**Commissioner**

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE ♦
LAWRENCE BENDER, PC ♦
JONATHAN P. SANSTEAD
BONNIE L. CHRISTNER •

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL law.office@pearce-durick.com

July 15, 2005

RECEIVED
JUL 15 2005
ND PUBLIC SERVICE COMMISSION
EXECUTIVE SECRETARY

HAND DELIVERED

Executive Secretary
Public Service Commission
600 East Boulevard Avenue-Dept. 408
Bismarck, North Dakota 58505-0480

RE: NOTICE OF BONA FIDE REQUEST FOR SERVICES

Dear Sir:

Enclosed for filing is the original and seven copies of the following:

1) NOTICE OF BONA FIDE REQUEST FOR SERVICES

This document is also being transmitted electronically to your office. Also enclosed is an extra copy of the Notice to be filed stamped and returned in the self-addresed, stamped envelope.

Thank you for your attention to this matter.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf
Enclosures.
cc w/enc: Ms. Mary Lohnes
NDTC

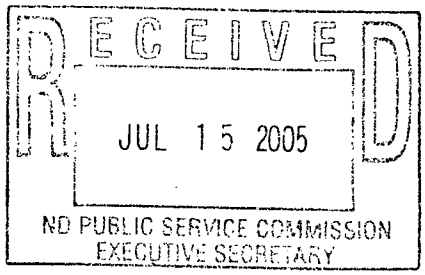
• ALSO LICENSED IN MINNESOTA ♦ ALSO LICEN

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Case No. _____

Midcontinent Communications, a South Dakota Partnership,	)
Complainant,	)
vs.	)
North Dakota Telephone Company.	)
Respondent.	)



NOTICE OF BONA FIDE REQUEST FOR SERVICES

Pursuant to 47 U.S.C. §251f(1)(B),Midcontinent hereby provides notice that by letter dated May 12, 2005, a copy of which is marked as Exhibit "A" and attached hereto, it made a bona fide request under the provisions of 47 U.S.C. §251(c) for wholesale resold services for the Devils Lake, ND exchange from The North Dakota Telephone Company ("NDTC"), the incumbent local exchange carrier for Devils Lake. By letter dated June 10, 2005, marked as Exhibit B and attached hereto, NDTC claimed the rural exemption status provided in 47 U.S.C. §251(f)(1)(A) and refused Midcontinent's 47 U.S.C. §251(c) bona fide request for wholesale resold services.

WHEREFORE, Midcontinent requests that pursuant to the provisions of 47 U.S.C. §251(f)(1)(A),this agency conduct an inquiry for the purpose of determining whether Midcontinent's request for wholesale resold services from NDTC under 47 U.S.C. §251(c) is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of Title 47 U.S.C. (other than subsections (b)(7) and (c)(1)(D) of Section 254 of that Title).

Dated this *15* day of July, 2005.

PEARCE & DURICK

PATRICK W. DURICK *ND #03141*
Individually and as a Member of the Firm
314 E. Thayer Avenue
P. O. Box 400
Bismarck, ND 58502-0400
(701) 223-2890

Attorneys for Midcontinent Communications, Inc.

PEARCE & DURICK

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
DAVID E. REICH
JEROME C. KETTLESON
LARRY L. BOSCHEE •
LAWRENCE BENDER, PC •
JONATHAN P. SANSTEAD
BONNIE L. CHRISTNER •

ATTORNEYS AT LAW
314 EAST THAYER AVENUE
P.O. BOX 400
BISMARCK, NORTH DAKOTA 58502

TELEPHONE (701) 223-2890
FAX (701) 223-7865
E-MAIL: law.office@pearce-durick.com

May 12, 2005

Mr. Dave Dircks, General Manager
North Dakota Telephone Company
P.O. Box 180
Devils Lake, ND 58301-0180

Re: Resale Agreement
Midcontinent Communications

Dear Sir:

We represent Midcontinent Communications and the purpose of this letter is to propose a Resale Agreement between North Dakota Telephone Company and Midcontinent Communications. A copy of a proposed agreement is enclosed for your review and comment.

Please review the enclosed agreement and contact me with any suggested revisions to the agreement. I look forward to working with you to reach an agreement.

Thank you for your anticipated cooperation.

Sincerely,

PEARCE & DURICK

PATRICK W. DURICK

PWD/jf

Enclosure.
cc: Mary Lohnes

EXHIBIT A

RESALE AGREEMENT

Between

NORTH DAKOTA TELEPHONE COMPANY

AND

MIDCONTINENT COMMUNICATIONS

IN THE STATE OF

NORTH DAKOTA

_____, 2005

TABLE OF CONTENTS

SECTION 1.0 – GENERAL TERMS	3
SECTION 2.0 – TERMS AND CONDITIONS	3
2.1 - GENERAL PROVISIONS	3
2.2 - TERM OF AGREEMENT	3
2.3 - PROOF OF AUTHORIZATION	4
2.4 - PERFORMANCE	4
2.5 - TAXES	6
2.6 - INSURANCE	6
2.7 - FORCE MAJEURE.	6
2.8 - LIMITATION OF LIABILITY.	7
2.9 - INDEMNITY	7
2.10 - WARRANTIES	8
2.11 - ASSIGNMENT	8
2.12 - DISCLAIMER OF AGENCY	9
2.13 - SEVERABILITY	9
2.14 - NONDISCLOSURE	9
2.15 - SURVIVAL	10
2.16 - CONTROLLING LAW	10
2.17 - NOTICES	10
2.18 - RESPONSIBILITY OF EACH PARTY	11
2.19 - NO THIRD PARTY BENEFICIARIES	11
2.20 - PUBLICITY	12
2.21 - EXECUTED IN COUNTERPARTS	12
2.22 - COMPLIANCE	12
2.23 - COMPLIANCE WITH THE COMMUNICATIONS ASSISTANCE LAW ENFORCEMENT ACT OF 1994	12
2.24 - COOPERATION	12
2.25 - AMENDMENTS	13
2.26 - ENTIRE AGREEMENT	13
2.27 - DISPUTE RESOLUTION	13
SECTION 3.0 - RESALE	16
3.1 - DESCRIPTION	16
3.2 - GENERAL PROVISIONS	16
3.3 - RESELLER RESPONSIBILITIES	19
3.4 - ESTABLISHMENT OF SERVICE	20
3.5 - MAINTENANCE OF SERVICE	22
3.6 - DISCONTINUANCE OF SERVICE	23
3.7 - BILLING AND PAYMENTS	24
3.8 - CUSTOMER BILLING DATA	25
SECTION 4.0 – DEFINITIONS	25
SECTION 5.0 – SIGNATURE PAGE	27
APPENDIX A	28

Section 1.0 - GENERAL TERMS

1.1 This Agreement must be filed with the North Dakota Public Service Commission (Commission). Absent Commission action within 90 days of the filing the Agreement will be deemed approved. The Agreement is between North Dakota Telephone Company (NDTC), a North Dakota cooperative and Midcontinent Communications (Midcontinent), a South Dakota General Partnership.

1.2 This Agreement sets forth the terms, conditions and pricing under which NDTC will offer and provide to Midcontinent, telecommunications services available for resale within the Devils Lake, ND exchange and for which NDTC is the incumbent local exchange carrier with the State of North Dakota for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.

Section 2.0 - TERMS AND CONDITIONS

2.1 General Provisions

2.1.1 Each Party is solely responsible for the services it provides to its end users and to other telecommunications carriers. This provision does not limit the liability of either Party for its failure to perform under this agreement.

2.1.2 The Parties shall work cooperatively to minimize third party fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement. Blocking of these services may be necessary to minimize fraud.

2.2 Term of Agreement

2.2.1 This Agreement shall become effective in accordance with the time frame set by North Dakota Statute. This Agreement shall be binding upon the Parties for a term of two (2) years unless terminated earlier pursuant to Section 2.2.3. It shall remain effective following the initial term on a month-to-month basis until the Parties enter into a successor agreement or the Agreement is terminated pursuant to Section 2.2.3.

2.2.2 Any Party may request negotiation for a successor Agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the initial term and at any time thereafter.

2.2.3 This Agreement shall terminate:

2.2.3.1 Following the expiration of the initial term upon one hundred sixty

(160) days prior notice from one Party to the other, provided that the Agreement shall continue in effect until a successor agreement becomes effective.

2.2.3.2 Pursuant to the terms of Section 2.4.2 hereof.

2.2.3.3 Except as otherwise provided in this Agreement, upon fifteen (15) days written notice from one Party, if that Party previously notified the other Party in writing that the other Party was in breach of a material provision of this Agreements, and the other Party failed to correct the breach within thirty (30) days from receipt of written notice and to notify the first Party in writing that the breach has been corrected. If a Party fails to exercise its right to terminate the agreement pursuant to this Section 2.2.3.3 within sixty (60) days of a notice of breach, it shall be required to provide a new notice of breach in accordance with this section 2.2.3.3 before it can terminate the Agreement.

2.3 Proof of Authorization (POA)

2.3.1 Each Party shall be responsible of obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

2.4 Performance

2.4.1 Amounts payable under this Agreement are due and payable within twenty (20) calendar days after bill date. If the payment due date is not a business day, the payment shall be due the next business day.

2.4.2 Except for amounts disputed pursuant to Section 2.4.5 herein, the following shall apply:

2.4.2.1 If payment is not received thirty (30) days from the bill date, NDTC may provide written notice to Midcontinent that additional applications for service will be refused, and that any pending orders for service will not be completed if payment is not received by the fifteenth (15th) day following the date of the notice. If NDTC does not refuse additional applications for service on the date specified in the notice, and Midcontinent's noncompliance continues, nothing contained herein shall preclude NDTC's right to refuse additional applications for service without further notice.

2.4.2.2 If Midcontinent fails to make any payment following the notice under Section 2.4.2.1, NDTC may, on thirty (30) days written notice to Midcontinent's designated representative, discontinue the provision of

existing services to Midcontinent at any time thereafter. Such notice will be sent by certified mail, return receipt requested. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If NDTC does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and Midcontinent's noncompliance continues, nothing contained herein shall preclude NDTC's right to discontinue the provision of the services to Midcontinent without further notice.

2.4.2.3 If payment is not received within sixty (60) days of the notice under Section 2.4.2.1, NDTC may terminate this Agreement.

2.4.3 After disconnect procedures have begun, NDTC shall not accept service orders from Midcontinent until all unpaid charges are paid in full in immediately available funds. NDTC shall have the right to require a deposit equal to two month's charges (based on the highest previous month of service from NDTC) prior to resuming service to Midcontinent after disconnect for nonpayment has occurred.

2.4.4 In the event NDTC properly terminates the provisioning of any resold services to Midcontinent for any reason, and subject to the requirements of the Commission and the FCC, Midcontinent shall be responsible for providing any and all necessary notice to its end users of the termination. NDTC shall not be responsible for providing such notice to Midcontinent's end users unless required by the Commission or the FCC.

2.4.5 Disputes: Midcontinent shall, in writing, advise NDTC of any disputes with respect to billing within forty-five (45) calendar days of the receipt of the invoice and include the specific amount (the "Disputed Amount"), details and reasons for disputing each item. If Midcontinent provides written notice of such dispute within thirty (30) days of receipt of an invoice, it shall not be required to pay the Disputed Amount and the provisions of Sections 2.4.2 shall not apply to the Disputed Amount during the pendency of this dispute. The Parties agree to expedite the investigation of any Disputed Amount in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be resolved in favor of NDTC, Midcontinent shall thereafter pay to NDTC any unpaid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute. Should the dispute be resolved in favor of Midcontinent, NDTC shall pay to Midcontinent any paid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute, and shall remove any unpaid Disputed Amount resolved in favor of Midcontinent from Midcontinent's invoices. If a Disputed Amount remains unpaid thirty (30) days after final resolution of such dispute, NDTC may disconnect service to Midcontinent upon providing ten

(10) days' written notice.

2.5 Taxes

2.5.1 Any federal, state or local taxes including but not limited to sales, use, excise, franchise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges, from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever required by law, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to qualify for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

2.6 Insurance

2.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain all insurance required by law and Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage and contractual liability with respect to the liability assumed by that Party hereunder. The limits of insurance shall not be less than $1,000,000 each occurrence and $2,000,000 general aggregate limit. Each Party will provide a certificate of insurance evidencing coverage within 90 days of execution of this Agreement and every year thereafter that this Agreement is in effect.

2.7 Force Majeure

2.7.1 Neither party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work

stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions (collectively, a Force Majeure Event). Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without the Party's fault or negligence. If affected by a Force Majeure Event, a Party shall give prompt notice to the other Party, and shall be excused from performance of its obligations hereunder on a Day to Day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the affected Party agrees to provide service to the other Party at a level equivalent to the level the affected Party provides itself.

2.8 Limitation of Liability

2.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to the other Party under this Agreement during the contract year in which the cause accrues or arises.

2.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

2.8.3 Nothing contained in this Section shall limit either Party's liability to the other for (I) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of a Party's respective agents, subcontractors, or employees.

2.8.4 Nothing contained in this Section shall limit either Party's indemnification obligations pursuant to Section 2.9 of this Agreement, nor shall this Section limit a Party's liability for failing to make any payment due under this Agreement.

2.9 Indemnity

2.9.1 Each Party (the Indemnifying Party) agrees to release, indemnify, defend

and hold harmless the other Party (the Indemnified Party) and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any person or entity, for invasion of privacy, bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

2.9.2 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

2.9.3 If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

2.9.4 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party.

2.10 Warranties

NDTC HEREBY STATES AND MIDCONTINENT HEREBY ACKNOWLEDGES THERE DOES NOT EXIST ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

2.11 Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other party, except that either Party may assign or transfer this agreement in connection with the acquisition of all or substantially all of the Party by another entity with sixty (60) days written notice to the other Party. Any attempted assignment or transfer that is not permitted is void ab initio.

2.12 Disclaimer of Agency

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute designation of either Party as a legal representative or agent of the other Party, nor shall either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted in writing by other Party. Except as otherwise expressly provided in this Agreement, neither Party undertakes to perform any obligation of the other Party, whether regulatory or contractual.

2.13 Severability

In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

2.14 Nondisclosure

2.14.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (I) furnished by one Party to the other Party dealing with business or marketing plans end user customer specific, facility specific, or usage specific information, other than end user customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the other Party at the time of delivery, or by written within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Confidential Information"), shall remain

the property of disclosing Party.

2.14.2 Upon termination of this agreement or any time during this Agreement upon request by the disclosing Party, the other Party shall return all tangible copies of Confidential Information, whether written graphic or otherwise.

2.14.3 The receiving Party shall keep the disclosing Party's Confidential Information confidential. In no case shall retail marketing, sales personnel, or strategic planning have access to such Confidential Information. Each Party shall use the other Party's Confidential Information only in connection with this Agreement.

2.14.4 Each Party agrees that the other Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement and that a disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

2.15 Survival

Any liabilities or obligations by a Party for acts or omissions prior to the termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

2.16 Controlling Law

This Agreement is made in accordance with applicable federal law and the state law of North Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of North Dakota.

2.17 Notices

Any notices required by or concerning this Agreement shall be in writing sent by certified mail, return receipt requested to NDTC and Midcontinent at the addresses shown below:

North Dakota Telephone Company:

North Dakota Telephone Company
P.O. Box 180
Devils Lake, ND 58301-0180

With copy to:

And to Midcontinent at the address shown below:

Midcontinent Communications
Mary Lohnes, Regulatory Affairs Manager
5001 W 41st Street
Sioux Falls, SD 57106
Phone (605) 357-5459
Fax (605) 339-4419

Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section.

2.18 Responsibility of Each Party

Each Party is an independent contractor with respect to the other party, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (I) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations, and (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (I) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

2.19 No Third Party Beneficiaries

The provisions of this Agreement are for the benefit of the Parties and not for any other person. This Agreement will not provide any person not a Party to this Agreement with any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

2.20 Publicity

Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Neither Party may use the other Party's logo or any other symbol or language for which the other Party has trademark or copyright protection.

2.21 Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

2.22 Compliance

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, each Party agrees to keep and maintain in full force and in effect all permits, licenses, certificates, and other authorizations needed to perform obligations hereunder.

2.23 Compliance with the Communications Assistance Law Enforcement Act of 1994.

Each Party represents and warrants that any equipment, facilities or services provided under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance.

2.24 Cooperation

The Parties agree that this Agreement involves the provision of NDTC services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, and provisioning.

2.25 Amendments

Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing the desired amendment and proposed language changes. This Agreement can only be amended in writing, executed by duly authorized representatives of the Parties.

2.26 Entire Agreement

This Agreement constitutes the entire agreement between NDTC and Midcontinent and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

2.27 Dispute Resolution

2.27.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 2.27 shall be the preferred, but not the exclusive remedy for all disputes between NDTC and Midcontinent arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 2.27 shall limit the right of either Party, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 2.27. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

2.27.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar Days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted on an informal basis. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

2.27.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar Days after the date of the Resolution Request, then either Party may request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar Days after the Resolution Request pursuant to the terms of Section 2.27.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million ($5,000,000) in which case the proceeding shall be conducted by a panel of three (3) arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 2.27. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute.

The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in a mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).

2.27.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its end user customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar Days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 2.27.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

2.27.3.2 There shall be no discovery except for the exchange of

documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. NDTC and Midcontinent shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either NDTC or Midcontinent may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between NDTC and Midcontinent, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

2.27.4 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

2.27.5 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any injunction ordered by the Arbitrator shall remain in effect, but the enjoined Party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review, a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

2.27.6 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 2.14 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide prior written notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

2.27.7 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the

court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

2.27.8 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

2.27.9 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

2.27.10 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

2.27.11 This Section does not apply to any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, trade name, trade dress or service mark of a Party.

Section 3.0 - RESALE

3.1 Description

3.1.1 NDTC shall offer to Midcontinent for resale at wholesale rates any Telecommunications Services tariffed with the Commission that it provides at retail to subscribers who are not telecommunications carriers, subject to the terms and conditions of this Agreement. Appendix A lists services which are available for resale under this Agreement and the applicable discounts, and is attached and incorporated herein by this reference.

3.1.2 Upon request by NDTC, Midcontinent shall make its Telecommunications Services available to NDTC for resale pursuant to the applicable provisions of the Telecommunications Act of 1996, the FCC's relevant orders and rules, and the Commission's relevant orders and rules.

3.2 General Provisions

3.2.1 Residential services and Lifeline/Link-up services are available only to the same class of end user eligible to purchase these services from NDTC. Universal emergency number service is not available for resale.

3.2.2 Non-Telecommunications Services, including but not limited to inside

wiring and maintenance, CPE, ADSL, and directory listing charges are not available for resale under this Agreement unless NDTC in its sole discretion decides to make the services available. If NDTC at its sole discretion provides non-regulated services to Midcontinent for resale, said services shall be resold to Midcontinent according to terms and conditions established by NDTC.

3.2.3 Telecommunications Services provided directly to Midcontinent for its own use and not resold to end users must be identified by Midcontinent as such, and Midcontinent will pay NDTC retail prices for such services.

3.2.4 Resold services are available only where adequate facilities currently exist that are capable of providing such services without construction of additional facilities or enhancement of existing facilities, except to the extent that NDTC would provide such additional construction or enhancement had the end user chosen not to move service to Midcontinent and that Midcontinent pays NDTC's standard charges for such construction or enhancement.

3.2.5 Midcontinent has no right to the telephone number or any other call number designation associated with services furnished by NDTC. NDTC reserves the right to change telephone numbers if necessary as a result of regulatory requirements or safety concerns.

3.2.6 Discontinuance of end user service for cause.

3.2.6.1 The service is furnished subject to the condition it will not be used for an unlawful purpose. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advices that such service is being used or will be used in violation of law. If NDTC receives other evidence giving reasonable cause to believe that such service is being used or will be so used, it will either discontinue or deny the service or refer the matter to the appropriate law enforcement agency.

3.2.6.2 NDTC reserves the right to suspend or discontinue service to an end user in the event of prohibited, unlawful or improper use of facilities or service, abuse of facilities, or any other violation or noncompliance of the rules and regulations of the NDTC Local Exchange Tariff.

If NDTC discontinues, suspends or denies service pursuant to this Section 3.2.6, NDTC will provide notice to Midcontinent of such discontinuance or denial.

3.2.7 NDTC accepts no responsibility for any unlawful act committed by Midcontinent or its end users as part of providing service to Midcontinent for purposes of resale or otherwise.

3.2.8 NDTC is authorized, but not required to cooperate with law enforcement agencies with respect to their investigation of any alleged unlawful activity of Midcontinent or its end users. Law enforcement agency subpoenas and court orders regarding the end users of Midcontinent will be directed to Midcontinent. NDTC shall be entitled to bill Midcontinent for any cost associated with complying with any requests by law enforcement agencies regarding Midcontinent or Midcontinent's end users that NDTC does not recover from law enforcement agencies. NDTC will determine whom to bill for these costs. If NDTC provides such assistance in response to a request from Midcontinent, it shall be entitled to bill Midcontinent for any cost associated with providing such assistance.

3.2.9 NDTC will accept at no charge one primary listing for each main telephone number belonging to Midcontinent's end user customer based on end user information provided to NDTC by Midcontinent. NDTC will place Midcontinent's listings in the NDTC directory and will make listings available to directory publishers and other third parties. NDTC reserves the right to charge Midcontinent for subsequent changes to directory listing information at NDTC's Tariffed rates.

3.2.10 Interexchange carried traffic (e.g. sent-paid, information services and alternate operator services messages) received by NDTC with respect to Midcontinent end-user accounts will be returned to the IXC as unbillable, and will not be passed on to Midcontinent for billing. An unbillable code returned with those messages to the carrier will indicate that the messages originated from a resold account and will not be billed by NDTC.

3.2.11 NDTC shall continue to have the right to serve and market directly to any end user within NDTC's service area, including but not limited to Midcontinent's end users. NDTC shall have the right to continue to directly market its own telecommunications products and services, and in doing so may establish independent relationships with Midcontinent's end users.

3.2.12 The circuits, facilities or equipment provided by any person or entity other than NDTC and use, operation, maintenance or installation thereof shall not:

3.2.12.1 interfere with or impair NDTC's business operations including but not limited to providing service over NDTC's facilities or those of NDTC's affiliates, or connecting and concurring carriers;

3.2.12.2 cause damage to NDTC's plant;

3.2.12.3 impair the privacy of any communications of NDTC or its

customers; or

3.2.12.4 create hazards to any NDTC employees or the general public.

3.2.13 Facilities and/or equipment utilized by NDTC to provide service to Midcontinent shall remain the property of NDTC.

3.2.14 All costs incurred by NDTC for providing services to Midcontinent that are not covered in the NDTC tariffs or in this Agreement shall be recovered from Midcontinent. NDTC shall attempt to provide advance written notice to Midcontinent if NDTC expects costs to exceed $500. NDTC may not always be able to provide such notice in the event of unexpected expenses.

3.2.15 The rates applicable to Midcontinent for purchase of services from NDTC for resale shall be the retail rate for the telecommunications services as provided in NDTC's applicable Local Exchange Tariff less the wholesale discount listed in Appendix A.

3.2.16 Directory assistance and operator handled service are available through a third party provider. These services are not directly provided by NDTC and will not be discounted.

3.2.17 Prior to placing any orders for services under this Agreement, the Parties will jointly complete NDTC'S "New Customer Questionnaire."

3.2.18 NDTC shall provide to Midcontinent, for Midcontinent's end users, E911/911 call routing to the appropriate public safety answering point (PSAP). NDTC shall not be responsible for any failure of Midcontinent to provide accurate end user information for listings in any databases in which NDTC is required to retain and/or maintain such information. NDTC shall provide Midcontinent's end user information to the Automatic Location Identification/Database Management System (ALI/DMS).

3.3 Reseller Responsibilities

3.3.1 Midcontinent will be the customer of record for all services purchased hereunder from NDTC. NDTC will take service orders from, bill and collect payment from Midcontinent for all services purchased pursuant to this Agreement. Midcontinent alone, not Midcontinent's agents or third parties hired by Midcontinent will be NDTC's single point of contact for all services purchased pursuant to this Agreement. NDTC will accept a request from another local service provider for conversion of the end user's service from Midcontinent to the other local service provider in accordance with applicable requirements of the FCC and the Commission.

3.3.2 Midcontinent shall resell telecommunications services only to the same class of customers to which NDTC sells the services; e.g. residential service may not be resold to business customers. Except where explicitly provided in the NDTC Local Exchange Tariff or where NDTC otherwise permits such use, Midcontinent shall not permit the sharing of a service by multiple end users or the aggregation of traffic from multiple end users onto a single line service.

3.3.3 Midcontinent shall not use resold local exchange telephone service to provide access services to interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunication service providers.

3.3.4 All necessary information with respect to an end-user, including telephone number, requested service dates, and products and services desired will be provided to NDTC by Midcontinent in accordance with the practices and procedures established by NDTC.

3.3.5 Midcontinent shall not interfere with the right of any person or entity to obtain service directly from NDTC.

3.3.6 If NDTC determines that an unauthorized change in local service by a local service provider has occurred, NDTC will reestablish service with the appropriate local service provider, and will assess against the local service provider an unauthorized change charge. Appropriate nonrecurring charges, as set forth in the Local Exchange Tariff as applicable, will also be assessed to the local service provider.

3.3.7 To the extent allowable by law, Midcontinent shall be responsible for primary interexchange carrier (PIC) change charges associated with such local exchange line and trunks. Midcontinent shall pay for PIC changes at the tariffed rate.

3.3.8 Midcontinent is solely responsible for the payment of charges for all services furnished under this Agreement.

3.3.9 NDTC shall not be responsible for the manner in which the use of Telecommunications Services or the associated charges are billed to others by Midcontinent.

3.3.10 If Midcontinent does not wish to be responsible for toll, collect, third number billed, 900 calls, last call return, caller originated trace, directory assistance inquiries, operator assistance charges Midcontinent must order blocking services as outlined in the NDTC Local Exchange Tariff and pay any applicable charges.

3.3.11 Midcontinent shall be responsible for providing to its end users, and to NDTC a telephone number or numbers that Midcontinent end users can use to contact Midcontinent in the event of service or repair requests.

3.4 Establishment of Service

3.4.1 Midcontinent will provide NDTC with the necessary documentation to enable NDTC to establish a master account for Midcontinent.

3.4.2 Service orders will be submitted in the format designated by NDTC. The format shall conform to the formats adopted by the Ordering and Billing Forum or shall require only the information necessary for NDTC to process an order, including customer-identifying information, services requested and the date on which service is to commence, be changed or be discontinued.

3.4.3 When NDTC receives a properly completed service order from Midcontinent that a customer is subscribing to Midcontinent's services, standard service order intervals for the appropriate class of service will apply.

3.4.4 Except as required by applicable laws or rules, NDTC will not require end user confirmation prior to establishing service for Midcontinent's end user customers. Midcontinent must, however, be able to demonstrate lawful end user authorization upon request.

3.4.5 At Midcontinent's request, NDTC will provide to Midcontinent's customers per customer, blocking of calls (e.g., toll, 900, international calls, and third party or collect calls) by line or trunk, to the extent that NDTC provides such blocking capabilities to its customers and to the extent required by law. A nonrecurring charge will apply for any changes.

3.4.6 When ordering Telecommunications Services via a service order, Midcontinent may order from NDTC separate InterLATA and IntraLATA service providers (i.e., two PICs) on a line or trunk basis. NDTC will accept PIC change orders from Midcontinent for Midcontinent's end users. PIC change fees will not be discounted.

3.4.7 NDTC based on a credit check, may require Midcontinent to provide NDTC a security deposit to ensure payment of Midcontinent's account.

3.4.7.1 Such security deposit shall be a cash deposit or other form of security acceptable to NDTC. Any such security deposit may be held during the continuance of the service as security for the payment of any and all amounts accruing for the service.

3.4.7.2 If NDTC determines that a security deposit is required prior to the activation of service, it shall provide notice to Midcontinent within fifteen (15) days following Commission approval of this agreement.

3.4.7.3 The provision of a security deposit does not relieve Midcontinent from complying with NDTC's regulations as to prompt payment of bills on presentation and does not constitute a waiver or modification of the provisions of Section 2.4.2.

3.4.7.4 NDTC reserves the right to increase the security deposit requirements when, in its sole judgment, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the security deposit. In no event shall the deposit exceed twice the highest amount of any previous invoice. NDTC shall reduce or eliminate any deposit in accordance with its standard policies governing such deposits after satisfactory credit is established, and shall refund the excess deposit including interest accrued within forty-five (45) days after determining that the deposit should be reduced or eliminated.

3.4.7.5 In the event this Agreement is terminated by NDTC any security deposits will be applied to Midcontinent's account and NDTC may pursue any other remedies available by law. To the extent the security deposit exceeds the amounts owed by Midcontinent, NDTC will refund the excess including any interest accrued within one hundred and twenty (120) days after termination of the Agreement.

3.4.7.6 In the case of a cash deposit, interest at a rate as set forth in the appropriate NDTC tariff shall be paid to Midcontinent during the possession of the security deposit by NDTC. Interest on a security deposit shall accrue annually and, if requested, shall be annually credited to Midcontinent by the accrual date.

3.5 Maintenance of Service

3.5.1 NDTC's facilities and equipment provided by NDTC shall be maintained solely by NDTC or its agent.

3.5.2 Midcontinent or its end users may not rearrange, move, disconnect, remove or attempt to repair any facilities owned by NDTC without the written consent of NDTC.

3.5.3 Midcontinent shall promptly notify NDTC of any situations that arise that may result in a service problem.

3.5.4 Midcontinent will be NDTC's single point of contact for all repair calls on

behalf of Midcontinent's end users with respect to Telecommunications Services.

3.5.5 Midcontinent will contact NDTC's repair center in accordance with procedures established by NDTC. Midcontinent will refer repair calls to NDTC by telephone.

3.5.6 For all repair requests, Midcontinent shall adhere to NDTC's prescreening guidelines mutually agreed upon prior to referring the trouble to NDTC.

3.5.7 For purposes of this Section, Telecommunications Services is considered restored or a trouble resolved when the quality of Telecommunications Services is equal to that provided before the outage or the trouble occurred.

3.5.8 NDTC will bill Midcontinent for handling troubles that are found not to be in NDTC's network pursuant to its standard time and material charges. The standard time and material charges will be no more than what NDTC charges to its retail customers for the same services.

3.5.9 NDTC Maintenance of Service Charges, when applicable, will be billed by NDTC to Midcontinent, and not to Midcontinent's end-user customers.

3.5.10 NDTC technicians will be dispatched to Midcontinent customer premises pursuant to a repair request being received from Midcontinent.

3.5.11 If trouble cannot be cleared without access to Midcontinent local customer's premises and the customer is not at home, the NDTC technician will leave at the customer's premises a "no access" card requesting the customer to call "their local service provider" for rescheduling of repair.

3.5.12 NDTC will perform testing (including trouble shooting to isolate any problems) of Telecommunications Services purchased by Midcontinent in order to identify any new circuit failure performance problems.

3.5.13 NDTC reserves the right to contact Midcontinent's end users, if deemed necessary, for maintenance purposes.

3.6 Discontinuance of Service

3.6.1 End User Disconnect Procedures

3.6.1.1 At the request of Midcontinent, NDTC will disconnect a

Midcontinent end user customer.

3.6.1.2 All requests by Midcontinent for denial or disconnection of an end user for nonpayment must be provided to NDTC in writing in the manner and format prescribed by NDTC.

3.6.1.3 Midcontinent will be solely responsible for notifying the end user of the proposed disconnection of service.

3.6.1.4 Upon restoration of the end user's service, restoral charges will apply and will be the responsibility of Midcontinent.

3.6.1.5 NDTC may report annoyance calls to Midcontinent when it is determined that annoyance calls are originated from one of Midcontinent's end user's locations. NDTC shall be indemnified, defended and held harmless by Midcontinent against any claim, loss or damage arising from providing this information to Midcontinent. It is the responsibility of Midcontinent to take the corrective action necessary with its customers who make annoying calls. Failure to do so may result in NDTC's disconnecting the end user's service. If either party disconnects a customer pursuant to this Section 3.6.1.5 (Midcontinent via instructions to NDTC to disconnect service or NDTC acting without instructions from Midcontinent), the other Party shall be indemnified, defended and held harmless by the disconnecting Party against any claim, loss or damage arising from a claim of wrongful disconnection.

3.7 Billing and Payments

3.7.1 Pursuant to this Agreement, NDTC shall bill Midcontinent those charges, which Midcontinent incurs as a result of Midcontinent purchasing Telecommunications Services from NDTC.

3.7.2 NDTC shall provide Midcontinent a monthly bill including all charges incurred by and credits and/or adjustments due to Midcontinent for the Telecommunications Services ordered, established, utilized, discontinued or performed pursuant to this Agreement. Each bill provided by NDTC to Midcontinent will include:

3.7.2.1 All non-usage sensitive charges which are billed in advance and usage sensitive charges which are billed in arrears;

3.7.2.2 Any previously unbilled non-usage and usage sensitive charges for prior periods; and

3.7.2.4 NDTC will also bill to Midcontinent all other charges, including

but not limited to 911 and E911fees, telecommunications relay charges, subscriber line charges, local number portability charges and applicable taxes.

3.7.3 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due NDTC from the Interexchange Carrier.

3.7.4 All end user common line (EUCL) charges, subscriber line charges (SLC), Local Number Portability (LNP) or other similar charges will continue to apply for each local exchange line resold under this Agreement. All applicable federal and state rules, tariffs and regulations associated with such charges shall be applicable, as may be amended from time to time.

3.7.5 Each Party will provide the other Party at no charge a contact person for the handling of any Resale Billing questions or problems.

3.7.6 NDTC will render bills each month on established bill days

3.7.7 If Midcontinent requests an additional copy(ies) of a bill, Midcontinent will pay NDTC a reasonable fee per additional bill copy, unless such copy(ies) was requested due to errors, omissions, or corrections, or the failure of the original transmission to comply with the specifications set forth in this Agreement.

3.7.8 Payment of all charges will be the responsibility of Midcontinent. NDTC is not responsible for payments not received by Midcontinent from Midcontinent's customer. NDTC will not become involved in billing disputes that arise between Midcontinent and its customer. Payments made to NDTC, as payment on account, will be credited to an accounts receivable master account and not to an end user's account. NDTC will not accept payments from Midcontinent's customers to apply on Midcontinent's account.

3.8 Customer Billing Data

3.8.1 End user billing data will be provided according to NDTC practices and procedures. Usage data with respect to end users who have subscribed to a local measured service will be provided by NDTC to Midcontinent when the end user has been transferred to Midcontinent, and Midcontinent purchases Telecommunications Services from NDTC.

3.8.2 NDTC will bill and Midcontinent will pay the applicable charges for usage data set forth in this Agreement. Billing and payment will be in accordance with the applicable terms and conditions set forth in this Agreement.

Section 4.0 - DEFINITIONS

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms maybe defined elsewhere in this Agreement, as well as terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the Effective Date of this Agreement.

"**Agreement**" refers to the resale agreement signed by both parties.

"**Commission**" means the North Dakota Public Service Commission.
"**Confidential Information**" has the meaning set forth in Section 2.14 of this Agreement.

"**Parties**" means NDTC or Midcontinent collectively.

"**Party**" means either NDTC or Midcontinent as applicable.

"**Tariff**" as used throughout this Agreement refers to the NDTC North Dakota tariff filed with the Commission.

"**Telecommunications Service(s)**" means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. As used in this definition, "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

"**Work Locations**" means any real estate that NDTC or Midcontinent owns, leases or licenses or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Section 5.0 -SIGNATURE PAGE

By Signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Resale Agreement.

Midcontinent Communications	North Dakota Telephone Company
_____	_____
Signature	Signature
_____	_____
Name Printed/Typed	Name Printed/Typed
_____	_____
Title	Title
_____	_____
Date	Date

NDTC™
North Dakota Telephone Company

More Than a Telephone Company!

211 22nd St NW, PO Box 180
Devils Lake, ND 58301-0180
701-662-1100 or 1-800-880-4213
Fax 701-662-6446
www.goNDTC.com

June 10, 2005

Patrick W. Durick
Pearce & Durick
314 East Thayer Avenue
PO Box 400
Bismarck ND 58502

Dear Mr. Durick:

North Dakota Telephone Company (NDTC) has received your request for a resale agreement. The request letter is not specific on the exact nature of the request. I would like to clarify the exact nature of Midco's request.

Is the request a 251(b) request for resale of NDTC telecommunications services or is it a 251(c) request for resale at discounted rates? The proposed agreement seems to indicate a 251(c) request.

NDTC will certainly fulfill all of its obligations under the Telecommunications Act. However; currently NDTC has a rural exemption from 251(c) requirements.

Please clarify the nature of the request so NDTC can more forward appropriately.

Sincerely,

Dave Dircks
General Manager
NDTC

DD/plm

EXHIBIT B

APPENDIX A – NORTH DAKOTA
LOCAL EXCHANGE SERVICES
RESALE OF SERVICES

The Parties agree the following charges apply to the Resale of Local Service:

1. Nonrecurring Charges

a. Customer Transfer Charge (CTC): The following nonrecurring charges apply when converting a NDTC account to a Reseller account or when changing an end user from one reseller to another.

Residence and Business $22.20

b. Product Specific Nonrecurring Charge: As set forth in NDTC tariffs, the product specific nonrecurring charges, without discount, will apply when additional lines or trunks are added or when the end user adds features or services to existing lines or trunks.

2. NDTC shall offer to Midcontinent for resale at wholesale rates from the tariffed pricing Telecommunications Services tariffed with the Commission that NDTC provides at retail to subscribers who are not telecommunications carriers, subject to the terms and conditions of this Agreement. Except as qualified below, NDTC telecommunications services shall be available for resale at a 16.15% discount from the tariffed prices.

a. The services not available for resale include but are not limited to the following services:

Customer Premises Equipment
Inside Wire
Dedicated or Switched Access Service
Promotions of 90 days or less in length
Non Tariffed items
Voice Mail
Toll services
ADSL
Operator Services*
Directory Listing charges
Nonregulated services
Directory Assistance Services*

Services marked with an * are available for resale, but not at discounted rates.

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dave Durcks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Angela Herda ☒ Agent ☐ Addressee

B. Received by (Printed Name) Angela Herda
C. Date of Delivery 8-2-05

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 5347

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-05-450; PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patrick Durick
Pearce Durick
314 E Thayer Ave
Bismarck ND 58502-0400

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)
C. Date of Delivery 8-2-5

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7004 2510 0004 8815 5323

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PU-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dave Durcks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Pat M Lear
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1393

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Patrick W Durick
Pearce & Durick
314 E Thayer Ave
Bismarck ND 58502-0400

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Paul W Durick ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
12-16-05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1386

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Thomas J Morrman
Krashin Morrman & Cisson LLC
2120 L St NW Ste 520
Washington DC 20037

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
D. Priscilla Dec 19/05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1409

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PY-05-451

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
J. E. Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington DC 20036

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X A. Cole ☑ Agent ☐ Addressee

B. Received by (Printed Name) A. COLE | C. Date of Delivery 12/19/05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 2260 0001 3516 1416

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Public Input

TPC, INC. AND SUBSIDIARY
DEVILS LAKE, NORTH DAKOTA
CONSOLIDATED BALANCE SHEETS
DECEMBER 31, 2004 AND 2003

	2004	2003
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	**$ 6,443,420**	$ 5,033,878
Accounts receivable		
Telecommunications, net of allowances of $40,987 and $42,831 in 2004 and 2003	**484,574**	509,528
Other	**1,750,849**	1,526,312
Interest receivable	**1,927**	2,006
Materials and supplies	**299,270**	317,434
Prepayments	**321,979**	332,259
Total current assets	**9,302,019**	7,721,417
NONCURRENT ASSETS		
Intangible assets, net of amortization	**3,219,007**	4,058,755
Other investments	**4,781,147**	4,834,551
Equity investments	**3,664,490**	2,870,922
Nonregulated investments	**474,479**	502,568
Other noncurrent asset	**10,119**	11,696
Total noncurrent assets	**12,149,242**	12,278,492
TELECOMMUNICATIONS PLANT		
In service	**68,726,493**	66,021,825
Under construction	**1,383,219**	125,142
Plant adjustment	**8,134,878**	8,134,878
	78,244,590	74,281,845
Less accumulated depreciation and amortization	**56,692,243**	51,902,910
Net plant	**21,552,347**	22,378,935
	$ 43,003,608	$ 42,378,844

See Notes to Consolidated Financial Statements

PENGAD 800-631-6989
DEPOSITION EXHIBIT
1
10-11-05

	2004	2003
LIABILITIES AND EQUITIES		
CURRENT LIABILITIES		
Accounts payable	**$ 1,047,389**	$ 1,258,496
Current maturities of long-term debt	**1,504,536**	1,504,536
Advance billing and customer deposits	**288,298**	292,084
Accrued taxes - income	**124,632**	12,055
Accrued taxes - other	**124,285**	124,127
Other current liabilities	**165,755**	12,527
Total current liabilities	**3,254,895**	3,203,825
LONG-TERM DEBT, LESS CURRENT MATURITIES	**8,149,530**	9,654,066
OTHER LIABILITIES		
Accumulated postretirement benefit obligation	**1,542,833**	1,330,259
Deferred income taxes	**787,485**	1,040,454
Total other liabilities	**2,330,318**	2,370,713
EQUITIES		
Common stock, par value $1,000, authorized 10,000 shares; issued and outstanding 9,200 shares	**9,200,000**	9,200,000
Retained earnings	**20,068,865**	17,950,240
Total equities	**29,268,865**	27,150,240
	$ 43,003,608	$ 42,378,844

TPC, INC. AND SUBSIDIARY
DEVILS LAKE, NORTH DAKOTA
CONSOLIDATED STATEMENTS OF INCOME AND RETAINED EARNINGS
YEARS ENDED DECEMBER 31, 2004 AND 2003

	2004	2003
OPERATING REVENUES		
Local network access	$ 4,941,869	$ 4,955,963
Network access services	10,826,661	10,703,483
Long distance network services	13,418	8,655
Billing and collection revenue	332,557	336,078
Miscellaneous revenue	862,551	796,415
Total operating revenues	16,977,056	16,800,594
OPERATING EXPENSES		
Plant specific operations	2,958,072	2,698,879
Plant nonspecific operations	1,407,163	1,229,305
Depreciation	4,595,524	4,332,134
Customer operations	1,572,030	1,458,724
Corporate operations	1,934,980	1,759,813
Operating taxes, other	122,947	127,945
Total operating expenses	12,590,716	11,606,800
NET OPERATING INCOME	4,386,340	5,193,794
NONOPERATING INCOME (EXPENSE)		
Interest income	60,066	28,015
Dividend income	140,295	98,194
Other nonoperating (expense)	(63,663)	(50,962)
Nonoperating equity investment income	474,780	408,074
Nonregulated net income	597,877	680,503
Amortization of debt issuance	(1,577)	(3,911)
Amortization of intangibles	(839,748)	(839,748)
Amortization of plant adjustment	(542,325)	(542,325)
Total nonoperating expense, net	(174,295)	(222,160)
NET INCOME BEFORE INTEREST EXPENSE AND INCOME TAXES	4,212,045	4,971,634
INTEREST EXPENSE ON LONG-TERM DEBT	601,024	674,416
NET INCOME BEFORE INCOME TAXES	3,611,021	4,297,218
INCOME TAX	1,363,317	1,715,647
NET INCOME	2,247,704	2,581,571
RETAINED EARNINGS		
Beginning of year	17,950,240	15,368,669
Dividends paid	(129,079)	-
End of year	$ 20,068,865	$ 17,950,240

See Notes to Consolidated Financial Statements

TPC, INC. AND SUBSIDIARY
DEVILS LAKE, NORTH DAKOTA

CONSOLIDATED BALANCE SHEETS
DECEMBER 31, 2001 AND 2000

ASSETS	2001	2000
CURRENT ASSETS		
Cash and cash equivalents	**$ 3,929,905**	$ 2,810,109
Accounts receivable		
Telecommunications	**842,974**	782,989
Other	**2,698,004**	1,792,462
Interest receivable	**1,384**	1,427
Materials and supplies	**380,082**	427,952
Prepayments	**74,784**	147,906
Total current assets	**7,927,133**	5,962,845
NONCURRENT ASSETS		
Goodwill, net of amortization	**5,738,251**	6,577,999
Other investments	**4,674,982**	4,550,886
Equity investments	**1,871,377**	1,113,415
Nonregulated investments	**758,399**	388,471
Other noncurrent assets	**19,983**	32,842
Total investments and noncurrent assets	**13,062,992**	12,663,613
TELECOMMUNICATIONS PLANT		
In service	**60,727,770**	60,421,147
Under construction	**66,304**	107,458
Plant adjustment	**8,134,878**	8,134,878
	68,928,952	68,663,483
Less accumulated depreciation and amortization	**42,865,387**	39,547,504
Net plant	**26,063,565**	29,115,979
	$ 47,053,690	$ 47,742,437

See Notes to Consolidated Financial Statements

LIABILITIES AND EQUITIES	2001	2000
CURRENT LIABILITIES		
Accounts payable	$ 772,682	$ 1,137,794
Current maturities of long-term debt	3,966,000	3,966,000
Advance billing and customer deposits	305,625	305,940
Accrued taxes - income	467,101	78,254
Accrued taxes - other	128,100	159,032
Other current liabilities	5,568	4,542
Total current liabilities	5,645,076	5,651,562
LONG-TERM DEBT, LESS CURRENT MATURITIES	14,684,000	18,650,492
OTHER LIABILITIES		
Accumulated postretirement benefit obligation	871,295	658,265
Deferred income taxes	1,267,378	1,135,202
Total other liabilities	2,138,673	1,793,467
EQUITIES		
Common stock, par value $1,000, authorized 10,000 shares; issued and outstanding 9,200 shares	9,200,000	9,200,000
Retained earnings	15,385,941	12,446,916
Total equities	24,585,941	21,646,916
	$ 47,053,690	$ 47,742,437

TPC, INC. AND SUBSIDIARY
DEVILS LAKE, NORTH DAKOTA

CONSOLIDATED STATEMENTS OF INCOME AND RETAINED EARNINGS
FOR THE YEARS ENDED DECEMBER 31, 2001 AND 2000

	2001	2000
OPERATING REVENUES		
Local network access	$ 5,090,821	$ 5,089,170
Network access services	11,492,478	10,019,774
Long distance network services	29,206	7,658
Billing and collection revenue	364,244	418,893
Miscellaneous revenue	650,054	544,131
Total operating revenues	17,626,803	16,079,626
OPERATING EXPENSES		
Plant specific operations	2,463,017	2,380,688
Plant nonspecific operations	1,140,025	1,036,360
Depreciation	3,921,502	3,631,325
Customer operations	1,361,025	1,302,895
Corporate operations	1,487,595	1,374,459
Operating taxes, income	2,377,892	1,841,664
Operating taxes, other	97,454	159,764
Total operating expenses	12,848,510	11,727,155
NET OPERATING INCOME	4,778,293	4,352,471
NONOPERATING INCOME (EXPENSE)		
Interest income	160,956	127,082
Dividend income - RTB	127,094	131,758
Other nonoperating (expense)	(34,554)	(59,958)
Nonoperating equity investment loss	(204,738)	(530,170)
Nonregulated net income	724,264	535,932
Amortization of debt issuance	(4,377)	(4,376)
Amortization of goodwill	(839,748)	(839,748)
Amortization of plant adjustment	(542,325)	(542,325)
Nonoperating income taxes	250,193	484,483
Total nonoperating expense	(363,235)	(697,322)
NET INCOME BEFORE INTEREST EXPENSE	4,415,058	3,655,149
INTEREST EXPENSE ON LONG-TERM DEBT	1,326,033	1,712,605
NET INCOME	3,089,025	1,942,544
RETAINED EARNINGS		
Beginning of year	12,446,916	10,604,372
Dividends paid	(150,000)	(100,000)
End of year	$ 15,385,941	$ 12,446,916

See Notes to Consolidated Financial Statements

TPC, INC. AND SUBSIDIARY
DEVILS LAKE, NORTH DAKOTA
CONSOLIDATED BALANCE SHEETS
DECEMBER 31, 2003 AND 2002

	2003	2002
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$ 5,033,878	$ 1,345,616
Accounts receivable		
Telecommunications	509,528	647,582
Other	1,526,312	1,964,347
Income taxes receivable	-	823,378
Interest receivable	2,006	2,024
Materials and supplies	317,434	367,216
Prepayments	332,259	234,530
Total current assets	7,721,417	5,384,693
NONCURRENT ASSETS		
Intangible assets, net of amortization	4,058,755	4,898,503
Other investments	4,834,551	4,746,038
Equity investments	2,870,922	2,255,770
Nonregulated investments	502,568	890,972
Other noncurrent assets	11,696	15,606
Total noncurrent assets	12,278,492	12,806,889
TELECOMMUNICATIONS PLANT		
In service	66,021,825	63,642,139
Under construction	125,142	9,305
Plant adjustment	8,134,878	8,134,878
	74,281,845	71,786,322
Less accumulated depreciation and amortization	51,902,910	47,084,176
Net plant	22,378,935	24,702,146
	$ 42,378,844	$ 42,893,728

See Notes to Consolidated Financial Statements

	2003	2002
LIABILITIES AND EQUITIES		
CURRENT LIABILITIES		
Accounts payable	**$ 1,258,496**	$ 850,007
Current maturities of long-term debt	**1,504,536**	3,525,000
Advance billing and customer deposits	**292,084**	304,317
Accrued taxes - income	**12,055**	-
Accrued taxes - other	**124,127**	126,896
Other current liabilities	**12,527**	5,861
Total current liabilities	**3,203,825**	4,812,081
LONG-TERM DEBT, LESS CURRENT MATURITIES	**9,654,066**	11,158,508
OTHER LIABILITIES		
Accumulated postretirement benefit obligation	**1,330,259**	1,104,229
Deferred income taxes	**1,040,454**	1,250,241
Total other liabilities	**2,370,713**	2,354,470
EQUITIES		
Common stock, par value $1,000, authorized 10,000 shares; issued and outstanding 9,200 shares	**9,200,000**	9,200,000
Retained earnings	**17,950,240**	15,368,669
Total equities	**27,150,240**	24,568,669
	$ 42,378,844	$ 42,893,728

TPC, INC. AND SUBSIDIARY
DEVILS LAKE, NORTH DAKOTA
CONSOLIDATED STATEMENTS OF INCOME AND RETAINED EARNINGS
FOR THE YEARS ENDED DECEMBER 31, 2003 AND 2002

	2003	2002
OPERATING REVENUES		
Local network access	$ 4,955,963	$ 5,058,491
Network access services	10,703,483	10,607,808
Long distance network services	8,655	15,419
Billing and collection revenue	336,078	339,945
Miscellaneous revenue	796,415	723,930
Uncollectible revenue	-	(249,619)
Total operating revenues	16,800,594	16,495,974
OPERATING EXPENSES		
Plant specific operations	2,698,879	2,664,950
Plant nonspecific operations	1,229,305	1,185,240
Depreciation	4,332,134	3,934,615
Customer operations	1,458,724	1,382,616
Corporate operations	1,759,813	1,584,582
Operating taxes, income	1,803,689	1,852,089
Operating taxes, other	127,945	128,464
Total operating expenses	13,410,489	12,732,556
NET OPERATING INCOME	3,390,105	3,763,418
NONOPERATING INCOME (EXPENSE)		
Interest income	28,015	65,615
Dividend income - RTB	98,194	97,944
Other nonoperating (expense)	(50,962)	(44,480)
Nonoperating equity investment income	408,074	150,369
Nonregulated net income	680,503	639,430
Amortization of debt issuance	(3,911)	(4,377)
Amortization of intangibles	(839,748)	(839,748)
Amortization of plant adjustment	(542,325)	(542,325)
Nonoperating income taxes	88,042	190,706
Total nonoperating expense	(134,118)	(286,866)
NET INCOME BEFORE INTEREST EXPENSE	3,255,987	3,476,552
INTEREST EXPENSE ON LONG-TERM DEBT	674,416	993,824
NET INCOME	2,581,571	2,482,728
RETAINED EARNINGS		
Beginning of year	15,368,669	15,385,941
Dividends paid	-	(2,500,000)
End of year	$ 17,950,240	$ 15,368,669

See Notes to Consolidated Financial Statements

North Dakota Telephone Company
Job Description

Job Title: Account Executive
Department: Marketing Department
Reports To: Marketing Manager
FLSA Status: Exempt
Prepared By: Marketing Manager
Prepared Date: Revised 05/05
Approved By: General Manager
Approved Date: 05/05

SUMMARY: This position is responsible for contacting residential, commercial, and industrial telephone customers to provide state-of-the-art telecommunications services and equipment solutions, which will provide the company with increased revenues and superior customer service for customers in our area. This position is also responsible for managing the accounts after the sale to ensure customer satisfaction with NDTC.

ESSENTIAL DUTIES AND RESPONSIBILITIES include the following. Other duties may be assigned.

Develop leads and maintains positive, productive relationship with residential and business customers to attract and retain desired sales volume to increase usage and knowledge of telecommunications services, and to expand awareness of new and enhanced service offerings.

Analyzes business customers telecommunication needs. Prepares and presents proposals for new and/or additional products and services. Proposals should include a detailed network, hardware or Internet solution to business customers as well as product demonstrations when applicable. (Business Customer telecommunications needs are defined as both regulated and non-regulated services.)

Prepares sales contracts and all associated documents required in the completion of a sale. Sales are to include but are not conclusive of the following: Regulated services such as features, lines and trunks, small business systems, key systems, PBXs, DSL, computer networks and surveillance camera systems.

Responsible for gathering information, preparing the database and detailed layouts for the installation of systems.

Develops and maintains good working relationships with other NDTC departments in order to provide timely implementation of products and services by which to ensure customer satisfaction.

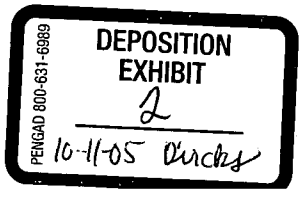
Provides assistance and proficient direction on sales of services and products to business customers.

Develops good client relationships by representing NDTC with a positive and enthusiastic attitude.

Maintains customer relationships with periodic telephone and premise visits to ensure ongoing customer satisfaction with all services purchased from NDTC. This includes keeping customers informed of current upgrade offerings or changes to their telecommunication services.

Responsible for customer training required for phone systems and follow-up as needed.

Provides monthly reports of sales and/or losses to the Sales and Marketing Director.



Assists management in determining company product needs and requests by staying current with changes and developments in the telecommunications industry. This includes gathering competitive information on products and services, maintaining market awareness, and sharing this information with the sales team.

Presents a professional manner, personally, and as an image of the company.

SUPERVISORY RESPONSIBILITIES
This job has no supervisory responsibilities.

QUALIFICATIONS
To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

EDUCATION and/or EXPERIENCE
Associate's degree (A. A.) or equivalent from two-year college or technical school; or two years experience in sales/marketing field; or equivalent combination of both. Proficient knowledge and use of computers is required.

LANGUAGE SKILLS
Ability to read, analyze, and interpret general business periodicals, professional journals, technical procedures, or governmental regulations. Ability to write reports, business correspondence, and procedure manuals. Ability to effectively present information and respond to questions from groups of managers, clients, customers, and the general public.

MATHEMATICAL SKILLS
Ability to calculate figures and amounts such as discounts, interest, commissions, proportions, and percentages.

REASONING ABILITY
Ability to solve practical problems and ability to interpret a variety of instructions furnished in written, oral, diagram, or schedule form.

CERTIFICATES, LICENSES, REGISTRATIONS
Valid Driver's License Required.

PHYSICAL DEMANDS
The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to use hands to finger, handle, or feel, talk, hear, stand walk, sit, reach with hands and arms; lift and/or move up to 25 pounds. The employee is occasionally required to climb or balance; stoop, kneel, crouch, or crawl; and lift and/or move up to 100 pounds. Specific vision abilities required by this job include close vision, and color vision.

WORK ENVIRONMENT
The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently exposed to outside weather conditions. The noise level in the work environment is usually moderate.

Minot Daily News 8/22/05

Phone company customers facing rate increases

BISMARCK (AP) — North Dakota Telephone Co. has dropped plans to boost residential rates by $4.54 monthly to allow unlimited long-distance calling within its northwestern North Dakota service area, the company's manager said.

However, the Devils Lake company is going ahead with a separate proposal to charge the same monthly residential and business rates for the 26 communities it serves, Dave Dircks said. The "rebalancing" initiative would boost telephone bills for many residential customers by more than $2 monthly.

North Dakota Telephone now has about 20,000 customers and an assortment of rates, depending on each customer's location and service type. The state Public Service Commission is reviewing the company's proposal, and held an informal hearing last week with Dircks and James Howard Jr., a consultant.

"This is not intended to bring us more revenue," Dircks said in an interview. "What we are trying to do is to treat all of our customers the same."

Telephone rate hearings are rare for the PSC. It has no jurisdiction over cellular telephone companies, rural telephone cooperatives and small independent companies.

Qwest, which serves most of North Dakota's largest cities, is limited by state law to charging $18 monthly for basic telephone service.

"This is the last true rate-regulated phone company in North Dakota," Commissioner Kevin Cramer said. "We have the final say in exactly what their rates will look like."

North Dakota Telephone is asking to charge its residential phone customers $13.12 monthly. In Devils Lake, that represents a 27-cent increase. For Cando customers, the phone bill would rise by 82 cents, regulatory filings say.

For 11 communities, including McVille, Starkweather, Tolna and Warwick, the increase would be $1.12, the company's proposal says. For another dozen, including Rugby, Velva, Esmond, Fessenden and Balta, monthly phone bills would go up by $2.23.

The proposal would also cut costs for some ratepayers. Monthly "combo" rates charged to farm customers would fall by more than $4 monthly for most exchanges, while multiline rates extended to some small businesses would also drop.

> This is not intended to bring us more revenue. What we are trying to do is to treat all of our customers the same.
>
> **— Dave Dircks, manager, North Dakota Telephone Co.**

North Dakota Telephone had also proposed charging an additional $4.54 monthly for all of its residential customers to call anywhere within the company's territory without long-distance charges. For business customers, the increases would have been much steeper.

Customers in Rugby, Velva and other communities on the western border of North Dakota Telephone's service territory balked at the idea.

The Public Service Commission got dozens of messages from customers saying they seldom made long-distance calls within North Dakota Telephone's service area, and that the proposal would make them pay for a service they wouldn't use.

The idea "would be of no benefit for most people in the area," Duane Veach of Rugby told the commission. "It will only mean increased rates that would benefit maybe one of 100 people."

Another customer, Dan Humble of Rugby, said he and his wife "don't call Devils Lake often enough to receive any benefit from such a large increase."

North Dakota Telephone is owned by three rural cooperatives — United Telephone Mutual Aid Corp. of Langdon, Dakota Central Telecommunications Cooperative of Carrington and Polar Communications Corp. of Park River.

The company purchased Devils Lake and 14 rural phone exchanges from the Contel phone company in 1993. Three years later, it bought 11 rural exchanges from Qwest, which was then known as U S West, as part of a U S West divestment of its rural North Dakota telephone properties.

Dircks said the different rates are a lingering remnant of those acquisitions. The company intends to survey its customers about the extended area service charges to see what other options they might prefer, he said.

"I think most of the customers probably perceived it as a general overall rate increase," he said. "They didn't like it."

DEPOSITION EXHIBIT 3
10-11-05 Dircks
PENGAD 800-631-6989

Phone

Continued from Page B1

rates will enable the company to bundle services and compete with cable providers.

The lack of toll-free calling within the s[illegible] hamper bundling, but the company continues to look at its options, Dircks said the company plans to survey its subscribers to get a better idea of a direction to take.

The PSC has yet to set a hearing on the rate equaliza-

Commissioner Tony Clark said the PSC received numerous comments about the toll-free long distance.

Clark said the use of cell phones has reduced people's use of land lines for long distance, creating less interest in seeing those rates reduced.

"It's having a significant impact on the phone industry," he said. "It's also one of the reasons that they would want to move to a company-wide toll-free calling. They are seeing so much less long distance due to cell-phone bypass."

Received Time Sep.19. 3:21PM

Minot Daily News

REGION

:sday, August 23, 2005 • Section B

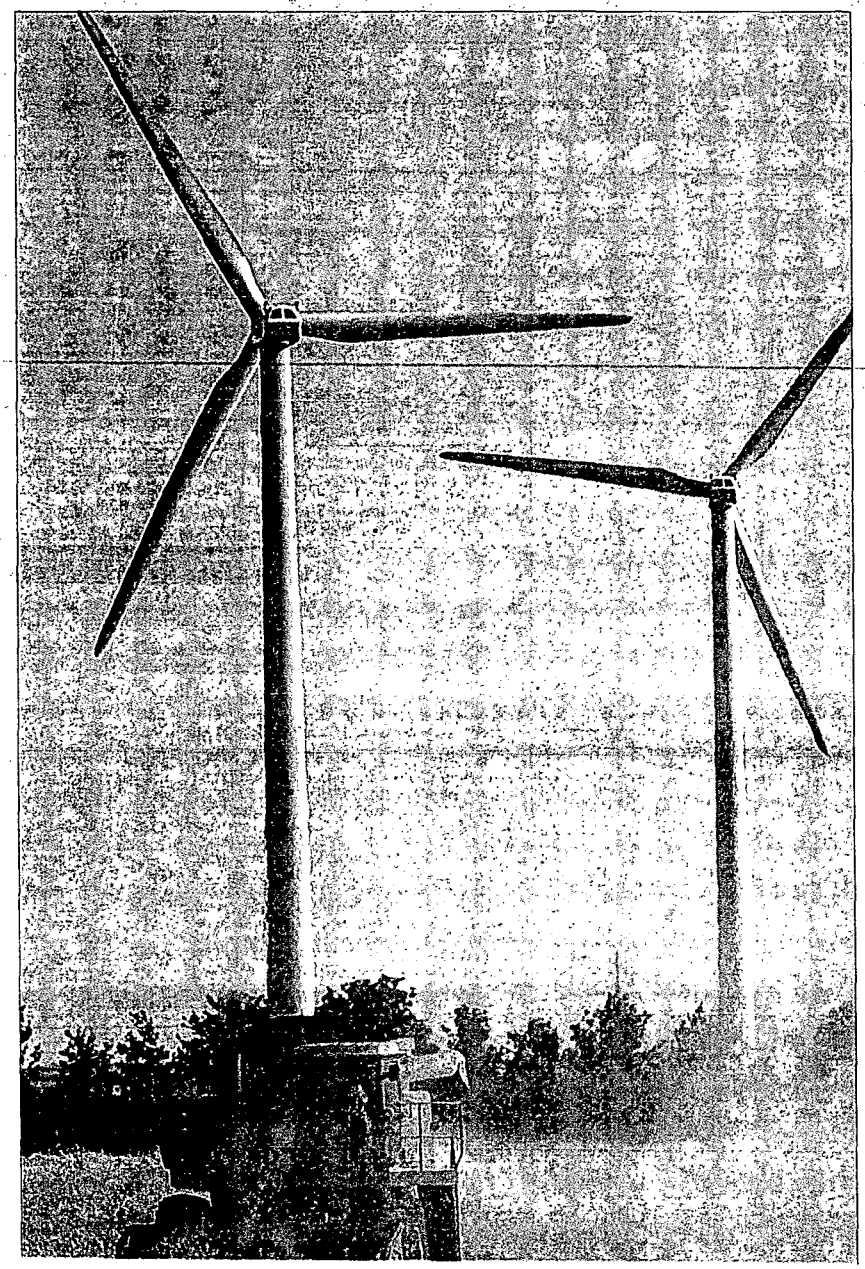
STOCK MARKET

The Dow Jones average rose 10.66 to 10,569.89

INSIDE: ▶ Markets, B2 ▶ Obituaries, B3

Managing Editor: Kent Olson 857-1939 or 1-800-735-3229; e-mail kolson@ndweb.com

Hearty harvest



NORTH DAKOTA TELEPHONE CO.

Company keeps equalization plan, cans long-distance offer

By JILL SCHRAMM
Staff Writer
jschramm@ndweb.com

DEVILS LAKE – Protests from subscribers have led North Dakota Telephone Co. to withdraw a proposal to offer toll-free, long-distance calling within its service area.

The phone company's plan to raise local rates by about $4.50 a month in exchange for toll-free long distance drew objections from its more western communities, particularly Velva, general manager Dave Dircks, Devils Lake, said. Residents of communities within Minot's trade area reported they wouldn't benefit because few of their long-distance calls go to Devils Lake or other eastern towns in the service area.

North Dakota Telephone Co. serves 26 towns in an area from Velva to McVille, including Devils Lake, Rugby and Harvey.

The company is going forward with a separate proposal to the North Dakota Public Service Commission to equalize rates among cities served. The equalization would result in no change in company revenue, Dircks said.

Rates differ now because North Dakota Telephone Co. left existing rates in place at the time it added cities formerly served by other providers. The equalization plan also proposes a rate reduction for about 1,200 farm subscribers by reclassifying them as residential customers. They currently pay a rate that falls between residential and the higher commercial rate.

Dircks said equalizing

See PHONE — Page B4

LOCAL ARTIST VERN SKAUG

Mural nears completion

By KATINA TENGESDAL
Staff Writer
ktengesdal@ndweb.com

Minot artist Vern Skaug has been working on a mural at Joe's Smoke Shop, located on Burdick Expressway E., for about three weeks now. Weather permitting, he hopes to have it finished in another week or so.

Rain has been just one of

Skaug has been an artist for 40 years, and has painted several murals in the last eight years. He helped with a mural in Rolla, painted a mural for Rolette's centennial celebration, and painted the mural near the Herberger's in Dakota Square Mall, among others.

"I started with Herberger's and that was commissioned. I do murals for people in towns with centennials or if they have a big blank wall," Skaug

PENGAD 800-631-6989
DEPOSITION EXHIBIT 4
10-11-05 Davies

Phone

Continued from Page B1

rates will enable the company to bundle services and compete with cable providers.

The lack of toll-free calling within the service area will hamper bundling, but the company continues to look at its options. Dircks said the company plans to survey its subscribers to get a better idea of a direction to take.

The PSC has yet to set a hearing on the rate equalization.

Commissioner Tony Clark said the PSC received numerous comments about the toll-free long distance.

Clark said the use of cell phones has reduced people's use of land lines for long distance, creating less interest in seeing those rates reduced.

"It's having a significant impact on the phone industry," he said. "It's also one of the reasons that they would want to move to a company-wide toll-free calling. They are seeing so much less long distance due to cell-phone bypass."

FEMA

Continued from Page B1

special meeting Monday afternoon to see if anything had come up in the meantime, but was told by township officials that their attorney had told them to come to the county for the money.

There was a suggestion that maybe the money could be transferred from the county special assessment district fund to the general fund and then the county could lend Surrey Township the money. Commissioner Jim Lee said that would go against the county's policy on special assessment districts and as a precedent could cause problems down the line.

It was decided that another special meeting might be necessary. The township officials said in the meantime they would check with the state bonding agency to see if they could come up with the money there.

The county commissioners said they would do some pencil pushing, too, to see if a solution to the problem could be found before the deadline for certifying to FEMA that the township has the money in hand for the match.

Four of the five commissioners were present for the special meeting Monday. Commissioner Darlene Watne was absent.

In other action, the commissioners voted to keep the 45 mph speed limit on portions of Ward County Road 12 until turnout lanes can be established for heavy traffic areas.

That portion of Ward County 12 runs from the area of Gravel Products, near 27th Street Northwest, to Surrey. There are several industrial developments along part of the road and more are planned. Owners of those properties asked for a reduction in speed near their businesses because of heavy truck traffic.

Speeds adjacent to those properties were reduced on a temporary basis until the improvements can be made.

Shooting

Continued from Page B1

cise that was terrorist-related. That sort of gets you thinking in another mode rather than just a natural disaster mode. So I think that's helped somewhat."

Authorities said the rampage began after officers tried to serve Thorlakson with a protection order about 4 p.m. Friday. They said Thorlakson, who was armed with a pistol, shot at the officers, then drove about 10 miles to the county courthouse in Cavalier and started a fire in the law enforcement center and courthouse. He allegedly returned to the courthouse while firefighters were trying to extinguish the flames and shot Wolf.

State Insurance Commissioner Jim Poolman said Sunday that damage to both buildings may top $1 million.

Kissner, Antler, ND; Leonard Kissner, Ephrata, WA; Terry (Janet) Kissner, Westhope, ND; sister-in-law, Donna (Gabe) Thompson, Antler, ND; and many nieces and nephews.

Jean was preceded in death by her husband, Lyle; brother, Jack Ingalls; and sister-in-law, Darlene Elven.

Memorial Service: Wednesday at 2:00 p.m. at the Antler Community Church.

Interment: Antler Community Cemetery

Visitation: There will be no reviewal, but friends may sign the register book Tuesday from Noon to 4:00 p.m. at Anderson-Nelson Funeral Home, Mohall.

Memorials: Memorials are preferred to the Mohall Ambulance Service, Mohall American Legion Post #52, the Humane Society, Hospice or the donor's choice.

Melvin Reule

June 19, 1929-Aug. 21, 2005

McCLUSKY – Melvin Reule, 76, McClusky, died Sunday, Aug. 21, 2005, in his

into North Dakota from the states without a health inspection, the state veterinarian said.

The viral illness, called vesicular stomatitis, or VS for short, mostly affects cattle, horses and hogs. It can cause sores and lesions on an animal's mouth, nostrils and hooves. It can cause animals to lose weight, because the sores inhibit eating.

North Dakota has not had a confirmed case of the illness since 1995, Keller said. Sixteen cases recently reported in Montana were the first in the state since 1982. It resembles foot-and-mouth disease, which is much more serious.

BIRTHDAY

Engene

Doris (Field) Engene of Garrison, formerly of Douglas, will celebrate her 75th birthday at an open house Sunday, Aug. 28, from 2 to 5 p.m. in the Douglas Senior Citizens Center. Her family will host the event. She requests no gifts.

IF YOU HAVEN'T DECIDED HOW TO HANDLE YOUR ESTATE...

You should before someone else does. Contact me today to develop an estate plan with a Financial Advisor who listens to your needs.

RAYMOND JAMES FINANCIAL SERVICES, INC.

KELLY NEHRING
FINANCIAL ADVISOR

Renaissance Center, #7 3rd St. SE, Suite 107
Minot, ND 58701
(701) 852-3090 • (800) 549-3090

FAMILY HAIR CARE
Tiffani's Classic Cuts
Located In Ek Hair 721-5532

Brian Walz
Asst. Vice President
Consumer Lender

Loans for your lifestyle made easier!
Call 852-1200 today!
DACOTAH BANK
Here for you.
1121 South Broadway • 852-1200
2401 North Broadway • 857-6020
dacotahbank.com • Member FDIC

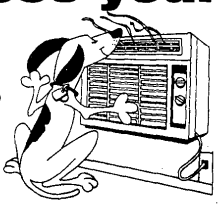
Muus Lumber & Hardware
We Doit Best!
852-4038

Larry Lovelace
Project Manager

Lauri Hopwood
Loan Officer

ONE MORTGAGE INCORPORATED
ALL CREDIT SITUATIONS WELCOME
www.mortgageoneinc.com
1020 North Broadway • 852-8338

Don't lose your COOL!



INSTALLATION & REPAIR SPECIALISTS

AAA Heating & Sheet Metal Inc.
Heating, Air Conditioning, Heat Pumps, Venting and Sheet Metal
701-839-6505
aaaheating@srt.com
3451 55th St. SE, Minot
Licensed & Insured

Outlook
North Dakota Telephone Company

PENGAD 800-631-6989
DEPOSITION EXHIBIT
5
10-11-05 Bucks

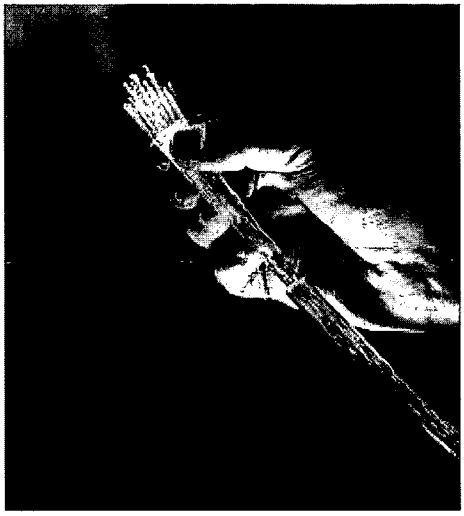
Inside this issue:

Fiber Optic Project Begins
NDTC Awards '05 Scholarships
Relax with NDTC Lineskeeper Service

Summer 2005

NDTC Lights Up Devils Lake

Devils Lake Soon to Boast of City-Wide Fiber Optic Network



Devils Lake, North Dakota, has been known for being one of the "Best Small Towns in America," but in the near future this small town will be able to claim the status of "technology giant" in America. Taking that step into the limelight will happen due to the newest NDTC project, Fiber-to-the-Premises.

The Fiber-to-the-Premises project will upgrade NDTC's current copper cable facilities to a fiber optic cable destined to reach every home and business within the city limits and some outlying areas. Few towns in the nation, just over 200 as of a report last fall, can lay claim to having a fiber optic network right to the customers' premises. NDTC is proud to be able to make this type of investment in the community and be able to offer this advanced technology.

With this $11.5 million fiber optic network, NDTC will be able to offer you improved quality telephone service, availability of advanced Internet and data networking services, as well as plan for futuristic telecommunication products.

Construction for Phase I of this state of the art project is scheduled to begin this fall with initial plans for Phase II construction to take place in 2006.

NDTC "Measures Up" Service at Community Events and Shows

NDTC played up the "Measure Up Your Telecommunications" theme at the area expos and home shows this spring. We enjoy being involved and meeting so many of our customers face to face. We are proud to serve you with the best telecommunications available to the area. Remember, you can always count on us!

Here are a few pictures we were able to take at the Towner County Ag-Technology Expo and the Harvey Spring Home and Garden Show.

If you ever have questions or comments about any NDTC service, you don't have to wait for a community event to tell us, just contact us at:

662-1100
800-880-4213
www.goNDTC.com

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

Notes from NDTC's General Manager

New Project Expected to Keep NDTC Employees Extremely Busy

Now that summertime is in full swing, everyone should be enjoying the benefit of our beautiful summertime weather. However, the employees of NDTC will be extremely busy.

Beginning in August of this year, NDTC will be embarking on one of our most extensive projects in the history of our company. A project so technologically advanced, that as of last October, just over 200 communities in the nation can boast its relevance.

Over the next two construction seasons, we will be placing fiber optic cable throughout the city of Devils Lake and portions of some outlying areas. As a result, every home and business will be served by state of the art fiber optic technology.

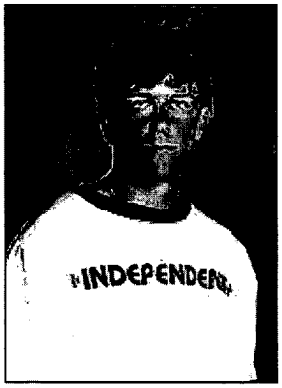
By the time you have received this newsletter, those of you who reside or have a business located in Devils Lake will have received an informational letter from us regarding the construction. We will do our best to keep you informed of our progress on this exciting project. Should you have any questions, please call us at 662-1100 or 800-880-4213. We will also be posting updated information on our web site and in future issues of the Outlook. We will also be submitting periodic news releases to the area newspapers, radio, and television stations.

We are extremely proud to be able to bring this technology to you and are excited about breaking new ground with this fiber-to-the-premises network.

Youth Tour 2005

NDTC Sponsors Ulrich

Daniel Ulrich, Devils Lake, represented the area by attending the 11th annual Foundation for Rural Service (FRS) Youth Tour this month. Ulrich, sponsored by North Dakota Telephone Company (NDTC), received a first-hand look at the telecommunications industry and was educated on the legislative and governmental processes.



Ulrich, along with over 100 high school students from throughout rural communities in the United States, also toured many of the historical sites in the nation's capital.

Ulrich is the son of Mark and Wendy Ulrich of Webster and attends high school in Starkweather, North Dakota.

Going on Summer Vacation?

Save on long distance calls with the North Dakota Long Distance Travel Calling Card

- ***Just 25¢/minute anytime in the USA.***
  -50¢ surcharge applies per completed call.
- ***Use it internationally.***
- ***Calls are billed on your local phone bill.***

Call 662-1100 or 800-880-4213

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

Scholarships Total *$5000*

NDTC Announces '05 Recipients

Sarah Boone
Steve & Barb Boone
Devils Lake High School

Amanda Nelson
Dale & Joan Nelson
Dakota Prairie High School

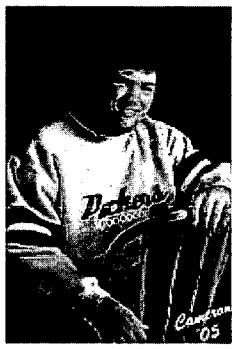
NDTC is excited to announce the winners of this year's NDTC College Scholarship Program.

Fifty-seven graduating seniors applied for the scholarships this year. A scholarship committee comprised of NDTC employees reviewed the application packets and judged the students on community and school activities, achievements, grades and the appearance of their application.

Congratulations to these ten students who were chosen as recipients of the NDTC College Scholarship Program! Each student will receive $500 to be used for continuing their education through an accredited college, university or vocational school.

NDTC is proud to show it's commitment to our service area by investing in the future of our youth. Since the NDTC College Scholarship Program began in 2000, the company has awarded a total of $27,000 to area graduating seniors.

Congratulations to the NDTC College scholarship winners and every 2005 high school graduate!



Cameron Halverson
Stanley & Judy Halverson
Cando High School

Jayme Fiesel
Darrell & Marcia Fiesel
Harvey High School

Kristina Sieg
Tom & Lorie Sieg
Anamoose High School

Valerie Moller
Thomas & Marzocita Moller
Rugby High School

Katie Henschel
Robert & Cathy Henschel
Starkweather High School

Jeffrey Wald
Gary & Rebecca Wald
Maddock High School & Our Lady of Good Counsel Home Study School

Danielle Krahler
Kelly & Lee Ann Krahler
Fessenden-Bowdon High School

Laura Odland
John & Mary Odland
Velva High School

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

Win $25 Credit from NDTC!

Just return this coupon to NDTC to be eligible for the drawing!

Name:_____

Telephone Number:_____

Congratulations to Elizabeth Berthold of McVille! Winner of the NDTC Credit from the ***Outlook*** spring *2005* issue!

Heart of America Medical Center Receives New Phone System

Jim Frueh, Director of Plant Operations, and John Skwiera, Director of Pharmacy, observe as Harris Saele, NDTC Marketing Manager, demonstrates the new phone system installed recently at the Heart of America Medical Center in Rugby.

When it comes to repairing inside wiring, some people are afraid of what they might find

Order Lineskeeper & RELAX

Did you know that if you rent or own a home, have rental property or a commercial building, you are responsible for the telephone wiring inside the walls? Sometimes that can come as a shock - if you find an exposed wire the hard way; or receive an unexpected repair bill.

That's why NDTC offers Lineskeeper Service. It's a valuable insurance policy that provides fast, reliable repairs with nothing to be afraid of.

NDTC North Dakota Telephone Company

Sign and return to NDTC to receive 2 months free Lineskeeper service!

Name:_____

Telephone Number:_____

Return to NDTC, PO Box 180, Devils Lake, ND 58301. Offer valid through June 30, 2005. Some restrictions may apply. Call NDTC for details and monthly pricing of Lineskeeper Service. Upon completion of 2 months free offer, Lineskeeper Service will be included on your monthly NDTC statement.

The *Outlook* is published by NDTC
211 22nd St NW
PO Box 180
Devils Lake, ND 58301
701-662-1100 or 800-880-4213
Fax: 701-662-6444

Payment Drop-off Points
-NDTC office in Devils Lake
-Ramsey Bank in Cando,
Rugby, Esmond, Maddock,
and three Devils Lake locations

Office Hours
Weekdays 8:00 A.M. - 5:00 P.M.
Repair Center also available
Saturdays 8:00 A.M. - 5:00 P.M.
To report trouble after hours call 662-1100
and follow prompts for repair.

w w w . g o N D T C . c o m

NDTC™ North Dakota Telephone Company

211 22nd St NW, PO Box 180, Devils Lake, ND 58301

PRSRT STD
U.S. POSTAGE
PAID
PERMIT NO. 55
DEVILS LAKE, ND 58301

PDF created with FinePrint pdfFactory trial version http://www.fineprint.com

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

ORIGINAL

DEPOSITION OF DAVE DIRCKS

October 11, 2005

Appearances:

For the Complainant:

PEARCE & DURICK
P. O. Box 400
Bismarck, North Dakota 58502-0400
By: PATRICK W. DURICK, ESQ.

For the Respondent:

PRINGLE & HERIGSTAD, P. C.
P. O. Box 1000
Minot, North Dakota 58702-1000
By: DONALD A. NEGAARD, ESQ.

Taken By: Joy Filipski, Court Reporter

I N D E X

DEPONENT:	PAGE NO.
DAVE DIRCKS	
Examination by . . . Mr. Durick	5
Examination by . . . Mr. Negaard	52

EXHIBITS	MARKED	OFFERED
No. 1 -- Financial Statements	9	
No. 2 -- Job Description	9	
No. 3 -- Newspaper Article	15	
No. 4 -- Minot Daily News Newspaper Article	16	
No. 5 -- Outlook Summer, 2005	23	

. . . The following is the Deposition of DAVE DIRCKS, taken at the request of the Complainant in the above-entitled cause, pending in the State of North Dakota, before the Public Service Commission, pursuant to Notice and the Federal Rules of Civil Procedure, before Joy Filipski, Court Reporter, a Notary Public within and for the State of North Dakota, at the RAMSEY COUNTY COURTHOUSE, Third-Floor Juryroom, Devils Lake, North Dakota, on Tuesday, October 11, 2005, at 9:00 o'clock a.m., at which time counsel appeared as hereinbefore set forth . . .

D A V E D I R C K S,

of Devils Lake, North Dakota, called as a witness by the Complainant, being first duly sworn by Joy Filipski, Court Reporter, a Notary Public within and for the State of North Dakota, was examined and deposed on his oath as follows:

MR. DURICK: Let the record reflect that this is the time and the place set for the deposition of the North Dakota Telephone Company.

There's been a Rule 30(b)(6) Notice sent out, identifying some particular areas that I want to inquire about this morning.

And I understand that the witness is Mr. Dircks?

THE DEPONENT: Uh-huh.

MR. DURICK: Okay.

THE DEPONENT: Yes.

MR. DURICK: This is the only witness we're going to have, Don?

MR. NEGAARD: Yes, sir.

EXAMINATION

BY MR. DURICK:

Q. Okay. Can you give your name and address for the court reporter, please?

A. Name is Dave Dircks.

Do you want the company address or --

Q. Company's fine, sure.

A. I can't remember what it is.

Q. Well, Devils Lake is fine, we can find it.

A. Yes.

Q. Okay.

A. 221 22nd Street Northwest.

Q. And you are the general manager for North Dakota Telephone Company, as I understand it?

A. Yes.

Q. Okay. And you've read the Notice to Take Deposition, which I had served in this case, I --

A. Yes, I have.

Q. Okay. And that Notice identified some areas of inquiry and also identified some documents for production.

And I have, before me, some documents that have been produced by Mr. Negaard this morning.

That looks like, what I have, are some pages out of an audited statement for North Dakota Telephone Company for the years 2000 through 2004.

Is that generally correct, that, that --

A. Yes.

Q. It looks like I've got a balance sheet and an operating statement for each of those years.

MR. NEGAARD: And just to clarify for the record, I, I wasn't aware of it until yesterday, there's actually a holding company, TPC, Inc., and for whatever reason, the, the accountants --

MR. DURICK: Uhm.

MR. NEGAARD: -- have set up North Dakota Tel as a holding -- underneath a holding company, TPC, Inc., so the financials are combined for both companies.

And --

MR. DURICK: Okay. Let me --

MR. NEGAARD: So they don't, they don't prepare a separate balance sheet for the -- for North Dakota Tel, it's combined with the parent company, TPC, Inc.

And there are no other subsidiaries, there are -- the TPC, Inc., really doesn't own any assets other than North Dakota Tel, is what, is what my understanding is.

MR. DURICK: Okay.

MR. NEGAARD: Is -- correct?

THE DEPONENT: Correct.

Q. (By Mr. Durick) You've heard your counsel's explanation of the relationship between TPC and North Dakota Telephone Company. Is that right?

A. Yes.

Q. That's, that's your understanding?

A. Yes.

Q. So does TPC have employees?

A. No.

Q. It's just a shell holding company?

A. That's the way I understand it, yes.

Q. Okay. And, and North Dakota

Telephone Company's a wholly-owned subsidiary, then, of TPC?

A. Correct.

Q. TPC is the one that's owned by the three cooperatives?

A. Three other companies, correct, yep.

Q. And that's Polar Communications, Dakota Central Telecom -- and what's that third one? Is --

A. United.

Q. United, okay.

And these are, are -- your financial pages are audited, the pages that I have are audited by someone?

A. Yeah, we have -- Eide Bailly does our audit work.

Q. Okay.

A. Out of Sioux Falls.

Q. Okay. All right.

And the other item that I have produced here, looks like a job description for the marketing manager. Is that correct?

A. It wouldn't be the marketing manager, it's, it's an account rep, we call it.

Q. Okay.

Reports to the marketing manager, I see.

A. Right.

Q. And the job title's account executive?

A. Yes.

Q. Okay.

MR. DURICK: Why don't we mark, mark these items.

(Whereupon, there was discussion off the record.)

(Whereupon, Deposition Exhibit Nos. 1 and 2, Dircks, were marked for identification.)

Q. (By Mr. Durick) Okay, I've marked as Exhibit 1, then, the excerpts from the, from the audited financial statement of TPC, Inc., the three years, 2000-2001, 2002-2003 and 2003-2004.

That's marked as Exhibit 1.

And that includes the balance sheets and the operating statements for those years. Is that correct?

A. Yes.

Q. And the second thing we've marked as Exhibit No. 2, is the job description that was -- that I mentioned for an account executive.

I asked for some other items and I have received an objection.

But I asked for studies done by North Dakota Telephone Company or consultants retained by NDTC on the potential impact of competition in the market for telephone services in the Devils Lake market.

Item number four.

Is there such a study, and it's not just being produced, or are there no such studies?

MR. NEGAARD: For the, for the record, there is a study on facilities based competition, not on wholesale resale. And we believe it's highly proprietary, confidential. Especially in this context where we have a competitor asking to provide telecommunication services in the same community.

And it's just highly, highly proprietary and confidential and we don't intend to produce that, we don't think it's

proper and my objections have been noted in writing.

MR. DURICK: Okay.

And on behalf of Midcontinent Communications, it is highly relevant. We have suggested that we take the step of entering into a Protective Order so that the information can be used in just this proceeding and no other proceeding.

What it seems to us is that this goes to the heart of what the issue is here, and that's the claim by North Dakota Telephone Company of a rule exemption.

And the primary area of inquiry in that, is the financial -- whether it's -- whether it would be an undue financial burden on North Dakota Telephone Company to have competition.

So we'll leave that for a future time, I just wanted to make a record of it.

Q. (By Mr. Durick) The fifth item is a copy of any studies done by North Dakota Telephone Company or consultants on the subject of NDTC providing video programming in competition with Midcontinent.

Again, I'd ask the same question, is, is there no such study or, or is there a study that you're not producing?

MR. NEGAARD: And again, --

THE DEPONENT: Whoops.

MR. NEGAARD: -- there, there is such a study.

Again, for the reasons I previously noted, that the study measures the impact, not only in Devils Lake, but in at least one other community, and it's, it's highly proprietary, confidential, and to give that to a competitor places North Dakota Tel in an undue advantage.

What we're prepared to provide, financial information, that any expert could calculate and measure the impact on North Dakota Tel and/or on North Dakota Tel from Midcontinent's entering the market as a wholesale resale competitor.

But we don't think we're under any duty to do the work for such an expert.

And so we're prepared to provide that information and we're providing financial information today, but we're not going to provide the expert with, with his own

testimony.

MR. DURICK: Okay. And we've made the same offer, with respect to the item listed in number paragraph five of our Requests for Production, and that is, to enter into a Protective Order that provides -- so we can use the information for this proceeding and no other.

MR. NEGAARD: And we're willing to consider that with some reasonable restraints on that information.

But we don't believe there's any reason why the people in Midcontinent Communications need to see that information.

MR. DURICK: Well, we're talking about the second item now, video programming?

MR. NEGAARD: Or the other one, as well.

I mean, we're, we're willing to discuss some reasonable limitations on how that information is used if it were provided, but it's confidential, it's trade secrets, proprietary.

And we're willing to discuss that further, but we do not believe that that

information should be given to employees of Midcontinent Communication.

MR. DURICK: As I said, we're willing to enter into a Protective Order saying it's, it's restrict -- it's -- it will be restricted, as to who gets it. And it will be used for the purposes of this litigation and this litigation only. And it'll be returned at the end of the litigation.

I have to be able to provide it to some level of Midcontinent employees, since they're my client and they're the ones that are making decisions, but I certainly have no problem with restricting its -- the, the people who would get it, to, to the people who would be controlling this litigation and provide that they cannot give it to anyone else or consultants. I have no problem with that.

MR. NEGAARD: Okay. I -- I'm not sure that we're going to be able to work that out today.

MR. DURICK: Okay.

MR. NEGAARD: I, I suggest that we work on getting something drafted that, that we can possibly live with and discuss that

further --

MR. DURICK: Okay.

MR. NEGAARD: -- on --

MR. DURICK: I wonder if you could mark this as Exhibit No. 3.

(Whereupon, Deposition Exhibit No. 3, Dircks, was marked for identification.)

Q. (By Mr. Durick) I'm showing you what I've marked as Exhibit No. 3, which is just a -- an excerpt from an article out of Minot Daily News.

And for now, the only reason I'm introducing it, is the third paragraph down, the last sentence there, it says: the state Public Service Commission is reviewing the company's proposal, and held an informal hearing last week with Dircks and James Howard, Jr., a consultant.

A. Wait a minute. Where, where, where is that?

Q. I'm sorry. It's --

A. Okay.

Q. -- about the third paragraph down.

This -- the last sentence. That, that mentions James Howard, Jr., as a

consultant.

And I'm asking you: is that the consultant that prepared the reports that we've been talking about so far?

A. Yes.

Q. Okay. And had those reports been made available to the Public Service Commission?

A. For this particular thing, yes, they have.

Q. Okay. Is there information in the reports that have been made that have been given to the Public Service Commission regarding competition from cable companies in the area of telephone service?

A. For this, here, no.

Q. So none of that has been provided to the Public Service Commission?

A. No.

MR. DURICK: Mark that as . . .

(Whereupon, Deposition Exhibit No. 4, Dircks, was marked for identification.)

Q. (By Mr. Durick) I've now marked, as Exhibit 4, again, these are just articles out of the Minot Daily News, in the upper

right-hand corner, there's, there's an article that's headlined: North Dakota Telephone Company.

And if you go down to the -- just above where it says: see phone, Page B4, where it starts: Dircks -- am I pronouncing that right?

A. Yes.

Q. Dircks.

Dircks said equalizing -- and then you have to go -- turn to the next page -- rates will enable the company to bundle services and compete with cable providers.

Do you see that?

A. Uh-huh.

Q. Okay. Is -- am I to conclude from that, that North Dakota Telephone Company is making plans to compete with cable providers?

A. At some time in the future, yes, we do plan on offering video.

Q. Okay. Offering video?

A. Uh-huh.

Q. Okay. And competing with the cable company in both video and what other services a cable provider would provide, I would think?

A. We're, we're already competing with cable companies for high-speed Internet.

Q. Okay.

And as I understand it, in the telecommunications area, one of the places that people are going is bundled services. Is that a true statement?

A. Yes, it is.

Q. And what do you mean by bundled services?

A. Well, the, the -- I guess, the -- everything you hear at all the training or seminars is, is video, voice and data.

Q. Video, voice and data?

A. Uh-huh.

Q. Okay. And the, the voice would include local telephone service?

A. Yes.

Q. Long distance telephone service?

A. Yes.

Q. Cell phone service?

A. No.

Q. What does cell phone service come under then?

A. You could put that in your package,

but we don't, we don't own any cellular RASs, they call them. We, we just resell for Verizon.

Q. But, but you do offer cell phone service? If -- I, I looked at your website this morning, and there's --

A. Yes.

Q. -- apparently some deal with Verizon, where you offer cell phone service?

A. Yes, we do.

Q. Okay. So when we're talking about bundled service, the voice would include, as, as I said, the long distance, the local cell phone, through some arrangement if you don't have your own facilities?

A. I, I, I think that can be company specific, some, some may include cell phone service --

Q. Okay.

A. -- in their bundling package.

Q. And the video, what do you consider to be video?

A. Television.

Q. Okay.

A. TV.

Q. So programming much as you'd get on cable now?

A. I'm not sure I understand the question.

Q. Okay. There -- there's a wide variety of programming available on cable television now, and you're looking at competing with the cable company, at least in some of the programming that's provided?

A. I guess we haven't looked at any programming or content, that, that --

Q. Okay.

A. -- I'm aware of.

Q. And the, the Internet is the, the data service, or part of the data service, I guess, is the Internet, high-speed Internet?

A. Yes.

Q. Okay. And right now, you're offering pretty much all of the bundled services except for the video programming. Is that correct?

A. We don't bundle anything yet, we offer all the services except --

Q. Okay.

A. -- video, yes.

Q. And you're looking at bundling those into packages?

A. Yes.

Q. Okay. How -- I'll come back to that particular area, but I'd just like to look for a moment at some of these financial -- financials that have been made available to me.

And let's -- have we only -- you -- have we got a couple copies of these or are we going to have to go from one?

A. We have to go from one, I, I didn't bring any --

Q. Okay.

As I look -- just some general observations, I guess, as, as I look across, and I'm looking at the balance sheet now for TPC, which, as I understand it, is a consolidated financial statement, I see that the, the total current assets have grown from about, close to 6 million in the year 2000 to about 9.3 million in 2004.

Is that generally true?

A. That's what it says.

Q. Yep, okay.

The liabilities have -- actually,

that was the current assets.

The, the, the total assets, looks like they've gone from 47 million in, in 2000, down to 43 in, in 2004.

The equity is what?

A. (No verbal response.)

Q. The equity in, in the year 2000 was about twenty -- $21,646,916?

A. Yeah.

Q. Approximately.

And in 2004, it's 29,268,865.

So the, the equity has grown over those years. Is that correct?

A. Yes.

Q. The result of operations for the year 2004 shows a, shows an increase in retained -- let's see.

Net income before interest, expenses and income taxes is about 4,212,045 in 2004, so it's a profitable operation. Is that correct?

A. Yes.

Q. And it's been profitable during that entire period, from 2000?

A. Yes, it has.

Q. And I would -- just looking at the dividends. I see you paid some dividends over the years. A hundred thousand in 2000. 150,000 in 2001.

2,500,000 in 2002.

None in 2003. And 129,000 in 2004. Is that right?

A. That's correct.

Q. So you have had some return to your shareholders.

Do you -- is that the only return your shareholders get, is the dividend?

A. To the best of my knowledge it is.

Q. Do you have any long-term contracts with either of the three shareholders, or they provide any services for you?

A. Not that I'm aware of.

Q. Okay.

Now I'm --

MR. DURICK: Well, let's mark this. That's fine.

(Whereupon, Deposition Exhibit No. 5, Dircks, was marked for identification.)

Q. (By Mr. Durick) I'm showing you what's -- I've marked as, as Exhibit 2005 -- as

Exhibit No. 5.

And this is an excerpt from Outlook, which is your company magazine, is it?

A. It's a quarterly thing we send to our customers, --

Q. Okay.

A. -- yes.

Q. This is for the summer of 2005.

And this talks about your fiber optic network that's being installed?

A. Uh-huh.

Q. And it's pretty self-explanatory.

It talks about Devils Lake being a technological giant in America.

In the third paragraph, it talks about an 11.5 million fiber optic network?

A. Uh-huh.

Q. What would that 11.5 million -- that's the estimate of the cost to, to construct that particular project?

A. Yes.

Q. Is that just in the Devils Lake area?

A. City of Devils Lake, yeah, and some rural parts of Devils Lake.

Q. Okay. And, and where does 11.5 million come from? Are you going to use debt or retained earnings or how are you going about --

A. Would be both -- some, some will be -- retained earnings will be used. And then, I don't believe next year, but the following year, then we would take on some debt.

Q. And what is the source of your debt, do you know that yet?

A. The source?

Q. Yeah. Who are you getting the money from?

A. We're investigating that now. We -- currently, CoBank, out of Denver, is our -- who we've been borrowing money from, but we're also looking at RTFC and RUS.

Q. What is RTFC?

A. Rural Telephone Finance Corporation.

Q. And that's a, that's a governmental institution?

A. Yes.

Q. And that provides below market rate financing for rural telephone companies?

A. I don't believe it's below market rate, but I -- I guess I'm not sure about that.

Q. And what was the other one you mentioned: RTC?

A. Rural Utility Service, RUS. That's a government entity.

Q. And you're eligible for financing from them, also?

A. Yes.

Q. Okay. Is that a below market financing?

A. I don't know what the rates are.

Q. Is, is -- are you getting any grants from any of the governmental agencies?

A. No.

Q. It would all be debt?

A. Yes.

Q. And have you -- do you have any debt now, that you have specifically for constructing this fiber optic network?

A. No.

Q. The, the information that I've read here, I think, talks about 2006 -- well, if you look at paragraph four there, of Exhibit No. 5, it talks about phase-two construction to take

place in 2006?

A. Uh-huh.

Yes.

Q. Are you going to bring this on line as it's constructed piecemeal, are you going to have the whole network brought on at once or what are your plans in that regard?

A. Our plans are to do about a third of Devils Lake this year. We started construction in August. Next, we're -- we would do the remainder of Devils Lake, the remaining, remaining two-thirds. And do not intend to do -- put anything into service until the entire project was completed.

Q. Okay.

I'd like to direct your attention to the, to the operating statement.

Now looking at specifically the year 2004.

The operating revenues are broken down. The first item, there's local network access, approximately $5 million.

What is included in local network access?

A. That's just your basic telephone

service, you know, residential, business.

Q. So that's telephone.

And is, is that all that's in there, the 4,900,000, that's all telephone service?

A. Basically that's what it is, I'm, I'm not real sure of what else is in there, but --

Q. Okay. Then the second item there is network access services, that's 10.8 million approximately. And what is included in that?

A. That would be for -- well, your long-distance carriers paying access to your customers.

For long-distance service.

Q. Well, the third item is listed as long-distance network service.

A. I believe that would be because we're part of a long-distance company, North Dakota Long Distance. There's ten other companies -- or nine others in the state, besides us, and, and that would be revenue from that, I believe.

Q. Okay. But the 10.8, that's what you're paid by the long-distance carriers for

access to the -- to your network?

A. To our network, yeah.

Q. Okay. Where would Internet services come in in this operating statement?

A. I'm going to have to look at that.

Well, I believe they would have to come out of the local network access, then, because --

MR. NEGAARD: That's interest, I'm sorry.

Q. (By Mr. Durick) You believe that it would come out of the first part, local network access?

A. I believe so, yes.

Q. Okay. Now we're showing here gross revenue figures. I'm still looking. And that's for your entire system. Is that correct?

A. Yes.

Q. Do you have that broken down so you can tell me what Devils Lake does with respect to these various categories?

A. No, I don't.

Q. Do you have that broken down somewhere in your company?

A. We don't nor -- we don't normally break it down, but I'm assuming that we could.

Q. Do you -- can you give me any sense of what percentage Devils Lake would be out of the total revenues?

A. Well, we have approximately 18,500 lines in our company.

And somewhere around, I believe 53 to 5500 of those are Devils Lake, so whatever percentage that is, is the --

Q. That would be a rough estimate?

A. Rough. I'm sure there's other factors involved in there, but could be a rough estimate, yes.

Q. So that's a little over a third, is it?

A. (No verbal response.)

Q. Do you have any idea what percentage of your revenues per line would be Internet versus basic telephone services?

A. No, I don't. We, we have approximately, I think it's 2500 DSL lines, or high-speed Internet, is what that is.

But we offer that in all of our towns, so I -- I could find out how many we

have in Devils Lake, but right now I don't know.

Q. And DSL lines, what, what is the revenue per DSL line? Is it about 40 bucks, is it? Or is it --

A. I think, I think our -- 34.95, I believe is what --

Q. Okay.

A. -- we charge.

Q. And what is a phone?

A. (No verbal response.)

Q. Your basic service. I saw it somewhere, is it $14, or something?

A. 14.12 or -- I believe.

But they vary by, by towns.

Q. Uh-huh.

But I guess the point I'm making -- or -- is that -- not the point, but the, the fact is that the DSL lines generate more revenue than a phone line does?

A. (No verbal response.)

Q. Just the local service.

A. I'm not positive about that.

Q. But the only thing I'm talking about now, it's $14 for a phone and -- for --

A. Yeah.
Q. -- basic local service --
A. Yeah.
Q. -- and 35 for, for a DSL line.
The, the line -- the local service, obviously there's going to be access fees and other things --
A. Uh-huh.
Q. -- that can be attributed to that line, I take it.
Do you, do you have any idea, is, is there a -- well, let me --
Do you have any figure of an average revenue generated per line?
A. We may have somewhere that we've done internally, but I, I am not sure what, what it would be.
Q. Okay. Have you made any determination of what the effect would be of offering resold services to Midcontinent Communications?
A. No.
Q. You have not?
A. No.
Q. Okay. Well, just kind of back in

the envelope type calculations, do you have any idea how many telephone subscribers would take Midcontinent's telephone service if it was offered and take lines away from you?

A. I, I have no idea, other than making an assumption, and I, I don't know what that would be, but -- I, I don't know how many they would take.

Q. Okay. Have your consultants given you any estimates of what you could expect by way of a resold agreement with Midcontinent?

A. No.

Q. So, as we sit here today, you can't provide me with any quantifiable data that would suggest what the result would be of Midcontinent coming into competition with you in the resold area in the Devils Lake market?

A. Well, I think Don had mentioned, we have looked at it, if, if we lost those lines on a facility based -- you know, if you -- if someone actually came in and took those lines away from us.

Q. Okay. You have a study on that?

MR. NEGAARD: I, I think we said we do.

A. Yeah.

MR. DURICK: No, I understand, I'm just --

A. Yeah.

Q. (By Mr. Durick) Does that study include assumptions as to the level of lines that would be taken away?

A. I --

MR. NEGAARD: Okay, for the record, it, it does. I think that's as far as we would go. I mean, --

MR. DURICK: It'd make it a lot easier if you'd bring that out, so I could --

MR. NEGAARD: And, for the record, I, I think the consultants we're working with probably have a better feel of what kind of penetration rates market customer loss there are in, in these types of situations. And, and we'll be providing you information when our testimony's due.

Q. (By Mr. Durick) But, but I guess my question now is: have, have you been made aware of any of that, so that you have any idea, as the manager, what you'd be faced with if, in fact, Midcontinent did get a resale

agreement?

A. I think what we're saying is it's based on facility based loss, not, not resale.

Q. Okay. And facilities based is somewhat different than the resale agreement. Is that correct?

A. Yes.

Q. And while I'm on that, in a resale agreement, there certainly are no technical reasons why you could not offer resold services to Midcontinent. Is that true?

A. To the best of my knowledge, that is true.

Q. All right.

And you're familiar with the section, I think it's 254 of the Telecommunications Act having to do with Universal Service Requirements. Is that correct?

A. I wouldn't say I'm an expert, I, I --

Q. I'm not sure anybody --

A. I don't know anybody that is, but I'm somewhat familiar with them, yes.

Q. Familiar with them?

A. Yeah.

Q. Can, can you see any impact on Universal Service Requirements as they're applicable to Devils Lake by a resale agreement?

A. The way the rules are today, I would have to say no, --

Q. Okay.

A. -- but I'm not sure of what's going to happen in the future with, with the FCC regulations, which concerns me.

Q. But at least for now, Devils Lake -- the Devils Lake market has access to all those items that are listed as Universal Service Requirements under the Act, do they not?

A. Yes.

Q. Okay. And that wouldn't change if you offered resold services to Midcontinent, I take it?

A. Today it wouldn't, no, but as I mentioned before, it's the future that I'm concerned about.

Q. And what about the future concerns you?

A. If the rules were changed, --

Q. Okay.

A. -- where that would affect the company financially.

MR. NEGAARD: And, and for the record, to make sure you're not misled, either.

Mr. Dircks and I talked about this quite a bit yesterday, and he's not aware of any impacts, but we are still working with the consultants.

As you know, Section 254's about four pages long, there's several hundred pages of federal regulations that neither Mr. Dircks or I are intimately familiar with.

And we do want to work with our consultants on what are the impacts under 254. And we're still looking at that.

As of today, we're not aware at this point there are any, but we still want to keep looking at that and, and, and looking at the policies that are, are being promoted under 254 and what impact a resale agreement could have on those.

Q. (By Mr. Durick) Okay. Now --

A. I'm not sure which one that came

out of.

Q. Okay. Let's see what that is.

That's here -- yeah.

But your account -- as I understand it, you're telling me that your accounting system is such that you could segregate operating revenues from Devils Lake as opposed to other parts of your telecommunications plant?

A. I believe we could, if, if we had to.

Q. Okay. And, and how is that with respect to operating expenses? Is there any way to segregate those?

A. I, I think that we probably could, yes.

Q. Generally, what is the most profitable part of your, of your business?

A. I would have to say our -- probably our local service revenues is a major part of it. And then our -- as you can see from the financial report there, our network access is quite large, as far as net income.

Q. And on the operating side -- well, let's look. Plant specific operations, what's

included in that?

A. That's all your time for your technicians and training and that type of thing.

Q. Plant nonspecific operations?

A. I believe that would be your -- you know, I'm not, I'm not sure about that, I -- I'd have to find out.

Q. Depreciation, obviously.

Customer operations?

A. (No verbal response.)

Q. That, that your customer service type things?

A. Yes. Customer service reps and --

Q. And then --

A. -- repair clerks.

Q. -- corporate operations, what's the distinction there?

A. Corporate operations would be like your board of directors and corporate-level people that are in our operation.

Q. So corporate operations, the almost 2 million, you're saying that's basically your overhead for the corporate part.

Does, does any -- none of that

includes --

Well, let me start over.

Does any of that include payments to any of the three shareholders?

A. I don't believe so.

Q. The only thing they get is the dividends?

A. (No verbal response.)

Q. All right.

A. Uh-huh.

Yes.

Q. Is any of your debt payable to any of the three shareholders? Do you have any debt to the three shareholders?

A. No.

Q. Did you at one time?

A. No.

Q. So they've never been a source of capital for you?

A. Only the down payment to buy the, the original property from GTE.

Q. Okay. There's no leaseback of any of your plant, you own it, you lease it from any of the three or --

A. There may be some services we

share, but, but not -- no, no leasebacks between any of the companies.

Q. Who's on your board of directors?

A. Do you want me to name the directors or --

Q. Yeah. How, how many are there, first?

A. There are four directors from Polar, four directors from United and two directors from Dakota Central. And that's, that's based on their capital investment --

Q. Okay.

A. -- originally.

Q. And --

A. And four --

Q. -- that's the total board, four, four and two, is ten?

A. Four, four and two, yes.

Q. Okay.

I want to take a minute and look at these, ask you a few more questions, but we'll go on.

I believe you told me you have 18,500 lines and about 5300 of those are Devils Lake. Is that right?

A. Approximately, yes.

Q. Okay. And that -- that's total lines, residential and business; --

A. Yes.

Q. -- is that right.

Okay. I assume that the business -- the ratio of residential and business, would be higher in Devils Lake than it would be in your other areas?

A. Yes, it is.

Q. Okay. Who's your largest customer?

A. Don and I were just talking about that this morning, and I think probably the school system in Devils Lake, and then the casino, would be one or two, in that order.

Q. And that's the, the Spirit Lake --

A. Spirit Lake Casino.

Q. -- Casino?

A. Yes.

Q. And that's considered Devils Lake, part of Devils Lake?

A. No, it's considered part of Ft. Totten, --

Q. Okay.

A. -- as far as our record keeping,

it's not in Devils Lake.

Q. Okay.

What's the status of the, the rate equalization proceeding that you had going before the PSC now?

A. The staff has studied our request and determined that it's revenue neutral to the company.

The staff has recommended to the Commission that it be approved.

And there's a hearing October 24 in Bismarck.

Q. And this is the one, as I read in the paper somewhere, Devils Lake would get a 27-cent increase in the residential rate?

A. Uh-huh. Yes.

Q. Okay. And the business rate is not then affected by that, is it?

A. All the rates are affected.

The biggest, the biggest one is, we had an agri business rate, which is a combination of our residential rate and our business rate, and we -- you know, it was basically the farming community, and we decided to call them residential customers, so their

rate went down 5 or $6, but -- (no further response.)

Q. Okay.

MR. DURICK: Okay, why don't we take a few minutes, I want to look at these, --

MR. NEGAARD: Okay.

MR. DURICK: -- these things.

(Whereupon, a thirty-minute recess was taken.)

MR. DURICK: I don't have a whole lot left, so let's see if I can ask some general questions.

Q. (By Mr. Durick) As you look forward, where do you see the growth in North Dakota Telephone Company? Is it going to be from selling more services to your existing base or, or taking on new areas, physical areas?

A. We've taken on a lot of new areas since the company was formed, and, yeah, grow, grow our revenue, that's, that's our goal.

Q. Is to grow your revenue from your existing base?

A. That's part of it, yes.

Q. Okay. Historically, what has the

growth in revenue resulted from? From taking on more physical plant or from, from selling more services to the existing base?

A. We've, we've gotten into some new endeavors, but I, I would say that we've done an excellent job of growing our existing customer base with the services that we already had available.

Q. What are the, the projections for the, for the area here, the Devils Lake area, where your main physical plant is? Has it been forecasted or suggested that you're going to grow here?

A. I don't know as we have a specific forecast, I think we're in the same position as some of the other rural tele cos, we're losing our customer base and we're doing whatever we can to make the company successful.

Q. Are you mainly agricultural in this area or is there some light industry or --

A. There's some light industry, but basically base -- agricultural base.

Q. Do you have any competition in the telephone area for any of your area?

A. We have competition in the long

distance, we have competition in systems that we would sell to the courthouse, for example, we have competition in high-speed Internet.

Q. What is your competition in high-speed Internet?

A. Midco.

Q. Midco?

A. Yep.

Q. Do you have any idea what percentage in the market you have?

A. I believe we discussed that before. Are you talking about Devils Lake specific or --

Q. Yeah, I'm talking about --

A. I --

Q. -- Devils Lake specifically.

A. I don't know specifically how many DSL customers we have in Devils Lake. We have approximately 2500 total.

Q. You don't know what the total market is for that?

A. I'm not sure I understand the question.

Q. Well, do you -- is your sense, that you do more Internet than Midcontinent or that

Midcontinent does more than you?

A. I have no idea what they do, but --

Q. Okay.

A. -- we're -- (no further response.)

Q. You're using -- right now your Internet is a DSL, a twisted copper pair. And what kind of speeds are you getting out of that?

A. Depending on the distance from the central office, it can, you know, be anywhere from 256K, up to a meg.

Q. 256 to one meg?

A. Uh-huh.

Q. Okay. Do you, do you have any sense for the voice-over Internet protocol, as far as telephone service, is that in this market?

A. Not that I'm aware of today.

Q. Okay. Do you see any particular problems with offering resold service to Midcontinent?

A. Technical problems?

Q. Technical problems, I think we -- I think we've talked about that and there are no technical problems.

On the con -- on the -- the competitive edge, if, if Midcontinent comes in and takes -- assumes some level, 5, 10 percent of the -- of your telephone lines away, is that, that going to decrease your, your costs in any way? Is there any savings associated with someone else taking the lines?

A. No.

Q. Not at all?

A. My understanding of an interconnection agreement, is we still program the telephone number into the switch and do the repair and send Midco a, a bill for whatever the discount rate is on that line.

So we're doing the same work.

Q. You wouldn't do the billing, for instance?

A. We wouldn't do the billing, no.

Q. Do you --

A. We would, we would bill Midco.

Q. Right.

You'd bill one customer, rather than --

A. Correct.

Q. So that's somewhat of a savings

that would take and --

A. Uh-huh.

Somewhat.

Q. And you don't lose the total revenue from the line, you just discount, --

A. Yes.

Q. -- so --

Okay. Have you given any thought to what a discount rate would be when --

A. No.

Q. Have you asked any of your consultants to specifically de -- address the resale aspect of competition versus the facilities that you talked about earlier?

A. The facilities based information is the only thing that we have from them.

Q. Okay. I, I think we talked a little bit at the break, and I told you, as I look over these financial statements, it looks to me like it's a pretty healthy company. Do you have some reason to, to think otherwise?

A. No.

Q. How long have you been with the company?

A. Since it started.

Q. And that was in 1993, --
A. 1993.
Q. -- was it.
And that -- and I do note that, that the retained earnings have certainly increased over that period of time.
Is there pressure now to, to pay more dividends to the shareholders or --
A. (No verbal response.)
Q. Are you able to finance a good part of your growth through your retained earnings?
A. We finance everything through retained earnings.
Q. I see you've got, 2004, it looks like $8 million of, of long-term debt. And that's with the CoBank that you were talking about?
A. Yes.
Q. Is that a -- what, what kind of an institution is that? I'm not familiar with it.
A. It's -- maybe Don knows better. It's a cooperative, mainly ag -- mainly do ag loans.
Q. Okay.
MR. NEGAARD: Used to be Farm

Credit Services.

MR. DURICK: Okay.

MR. NEGAARD: And it was the St. Paul Bank of Cooperatives and they were combined with some other similar types of bank in the western United States and formed a bigger entity called CoBank.

Q. (By Mr. Durick) Okay. Because as, as I note on the long-term debt, back in 2000, it started at 18 million, and in 2004, it's 8 million; so you've knocked almost $10 million off your long-term debt in three -- four years. Is that right?

A. The original loan for the GTE property was $20 million and it was a ten-year loan, which was paid off in 1993.

The remaining balance is from the U.S. WEST acquisition in 1996.

Q. Okay. That's the one that was financed through CoBank?

A. Yes.

Q. And it's gone, say, say, from 18 million in 2000, down to, it looks like 8 million in 2004. Does that sound right?

A. That sounds right.

Q. Okay.

MR. DURICK: All right, I don't have anything further for you today.

I, I would, again, give you a chance to produce that study so that I can look at that and ask some relevant questions, but apparently we're not going to get that done today.

MR. NEGAARD: Well, -- and, and we can discuss that some more.

MR. DURICK: Okay.

MR. NEGAARD: I do have one or two --

MR. DURICK: Yeah, whatever.

MR. NEGAARD: -- questions, so --

EXAMINATION

BY MR. NEGAARD:

Q. Mr. Dircks, earlier, Mr. Durick spoke of this concept of bundling services. And in the telecommunication business, does -- the term, bundle service, can that also include something that doesn't include video?

A. I think I answered that as being company specific, because some companies bundle

long distance, cellular. Qwest bundles DirecTV in that package, so --

It does not necessarily mean that includes video.

Q. So the term bundle just is a reference to the ability to bundle more than one service together and sell it as a package?

A. Yes.

Q. Okay.

MR. NEGAARD: I don't have anything further.

Mr. Dircks, you have the right to read and sign your deposition. And I'm going to suggest that you not waive that, that you -- the court reporter will provide you with a copy of your deposition and you'll have a chance to look through it, make sure it's correct.

So we'll --

THE DEPONENT: Okay.

MR. NEGAARD: -- we'd, we'd like to do that.

MR. DURICK: We're hoping she will anyhow.

COURT REPORTER: You will get one.

(Whereupon, the deposition was concluded at 10:28 o'clock a.m.)

NOTARY-REPORTER'S CERTIFICATE

STATE OF NORTH DAKOTA)
) ss
COUNTY OF GRAND FORKS)

I, JOY FILIPSKI, a Notary Public within and for the County of Grand Forks and State of North Dakota, do hereby certify:

That prior to being examined the afore-named witness was by me sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition, consisting of 54 pages of typewritten materials, was taken down by me in Stenotype at the time and place therein named, and was thereafter reduced to typewriting under my direction.

I further certify that I am neither related to any of the parties or counsel nor interested in this matter directly or indirectly.

WITNESS my hand and seal this 16th day of October, 2005

JOY FILIPSKI
Notary Public, State of North Dakota
My Commission Expires October 30, 2008
STATE OF NORTH DAKOTA
NOTARY PUBLIC SEAL

Joy Filipski
Notary Public
Grand Forks County, North Dakota

My Commission expires October 30, 2008.

HARD COPY OF Tapes

DOCKET SEQUENCE NO. _____

EXHIBIT _____

CASE NO. PU-05-451

ON FILE IN

STATE ARCHIVES

CONTROL NUMBER: 80051