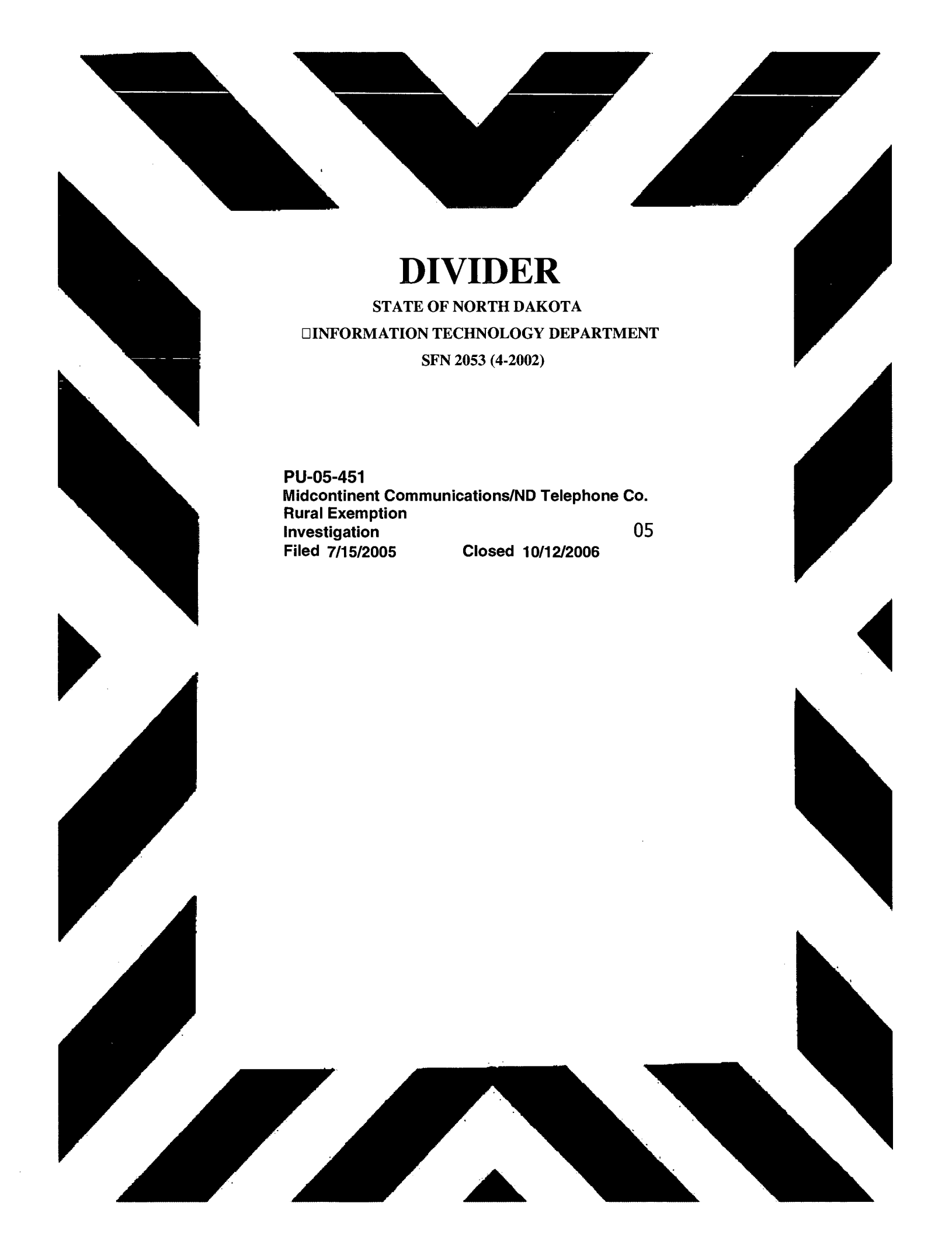




DIVIDER

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.



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.

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

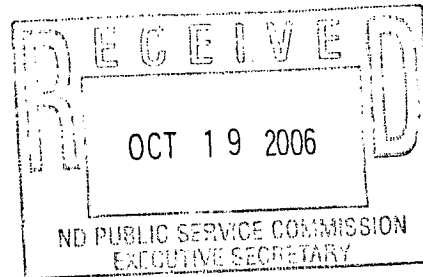
Allen C. Hoberg
DIRECTOR

October 18, 2006

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

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. 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

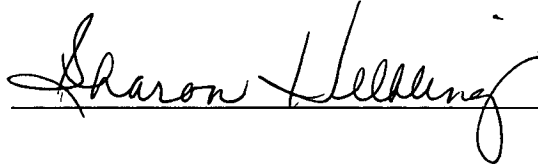
Sharon Helbling further deposes and says that on the **16th day of October, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular.

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.

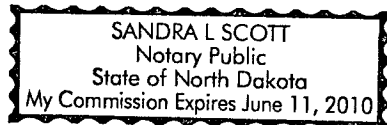
Subscribed and sworn to before me
this **16th day of October, 2006**.





Notary Public

SEAL



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:

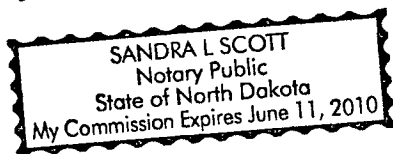
Order Approving Final Discount Rate

The envelopes were addressed as follows:

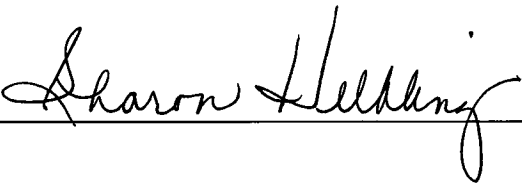
See Attached List

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

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



SEAL





Notary Public

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Marie Pierre-Paul

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Cheryl Robins

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shaneh@restel.net
Shane Hart
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Jeff Olson
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Pamela Harrington
Roberts County Telephone Coop Assoc

New Effington SD 57255

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Pleasanton CA 94558

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Diane C Browning
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OVERLAND PARK KS 66251-6100

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Tampa FL 33601-0110

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Bison SD 57620-0039

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Hazen ND 58545-0467

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Hazen ND 58545-0467

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Broomfield CO 80021

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Chicago IL 60631

paulihland@wtc-mail.net
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P O Box 270
Park River ND 58270-0270

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111 E Bdwy Ste 1000
Salt Lake City UT 84111

1 Plus Savings Inc
36072 Jefferson Ave
Harrison Township MI 48045

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

800 Response Information Services LLC
200 Church St
Burlington VT 05402

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

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

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

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

Alltel Communications Inc
1 Allied Dr
Little Rock AR 72202

Americatel Corporation
4045 NW 97th Ave

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

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

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

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

ACCXX Communications LLC
4035 Tampa Rd Ste 6000
Oldsmar FL 34677

Affinity Network Incorporated
4380 Boulder Hwy
Las Vegas NV 89121

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

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

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

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

Arch Paqing 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 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

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

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

Exerqy 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
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Lawrence Freedman
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FredonStarr 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 Ontario CA L4B 1B4

Granite Telecommunications LLC
100 Newport Ave Ext
Quincy MA 02171

Group Long Distance Inc
1 Cavalier Ct
Ringo 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

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Englewood CO 80112

Infone LLC
11200 Murray Scholls Place
Beaverton OR 97007-9702

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New York NY 10170

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Seattle WA 98119

International Telemanagement Group Inc
206 E Market St
Lima OH 45801

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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

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Law Offices of Thomas K Crowe PC
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Washington DC 20037

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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

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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
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Mandan ND 58554-1144

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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

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

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

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

OCMC Inc
801 Congressional Blvd
Carmel IN 46032

One Call Communications Inc
801 Congressional Blvd
Carmel IN 46032

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

Ozark Telecom Inc
1115 Mill St
Camden SC 29020

PAETEC Communications Inc
1 PaeTec Plaza
600 Willowbrook Office Pk

PNG Telecommunications Inc
100 Commercial Dr
Fairfield OH 45014

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

North Dakota Long Distance LLC
104 Eastwood Dr
Grafton ND 58237

NPCR Inc
4500 Carillon Pt
Kirkland WA 98033

OLS Inc
1030 Cambridge Sq Ste E
Alpharetta GA 30201

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

OU Connection Inc
13 E 4th Ave
Ada MN 56510

Pacific Centrex Services Inc
6855 Tujunga Ave
North Hollywood CA 91605

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

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 Manaqement 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 Paqing Inc
P O Box 2000
Alexandria MN 56308

Reduced Rate Long Distance LLC
1800 Pembroke 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
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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
KSOPHI0414
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

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

Teleconnect Long Dist Services & 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

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The Helein Law Group P C
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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

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

APPROVED

DATE: 10-12-06
[Signature]

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

**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.

170 PU-05-451

Pages: 5

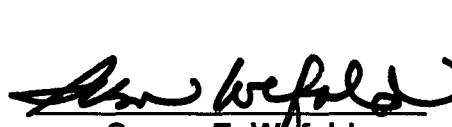
Order Approving Final Discount Rate

by Public Service Commission

10/12/2006 CC: Comm Legal Illona, Pat, Annette ALJ

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 Commissioner	Tony Clark President	Kevin Cramer Commissioner

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Midcontinent Communications, a
South Dakota Partnership,**

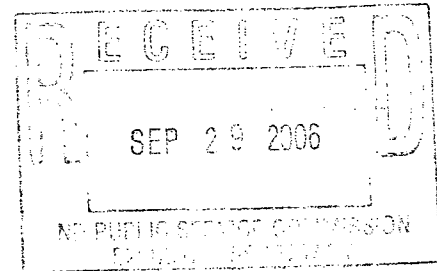
Case No. PU-06-345

Complainant,

vs.

North Dakota Telephone Company,

Respondent.



STIPULATION

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

WHEREAS, 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, THEREFORE, 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.

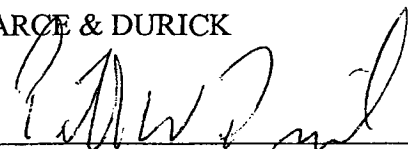
3. That either Party shall have the ability to seek the assistance of the Commission through mediation by a letter to Commission no sooner than 10 days following a letter to the other Party indicating that there is an impasse on an issue or issues.

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.

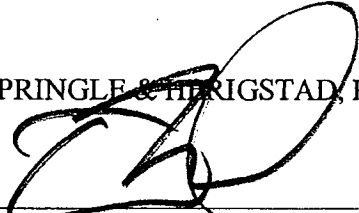
6. This Stipulation may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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
Jg
mp

PRINGLE & HIRIGSTAD, 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,**

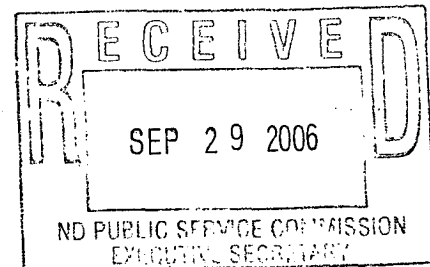
Case No. PU-06-345

Complainant,

vs.

North Dakota Telephone Company,

Respondent.



STIPULATION

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

WHEREAS, 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,

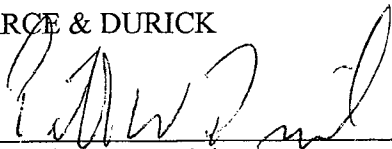
NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

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

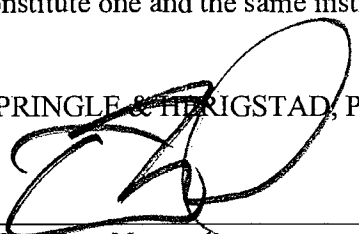
2. For purposes of establishing the time frames established in Section 252 of the Act for negotiation, arbitration and resolution of the request for interconnection made by Midcontinent to NDTC (the "Request"), the Parties agree that the Request from Midcontinent was received by NDTC on June 1, 2006, 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
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Dated: 8/22/06
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PRINGLE & HERIGSTAD, P.C.


By: Don Negaard
Attorneys for North Dakota Telephone
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Dated: August 21, 2006

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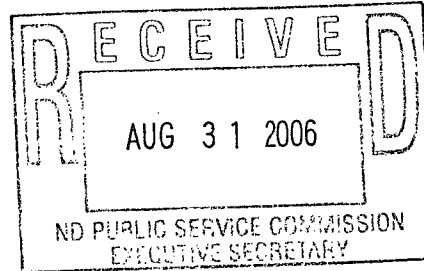
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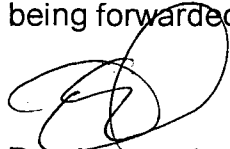
August 31, 2006



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**

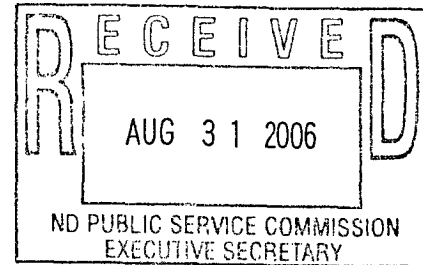
Enclosed for filing in the above proceeding is an agreement with an effective date of July 26, 2006, between North Dakota Telephone Company and Midcontinent Communications of North Dakota entitled General Terms and Conditions of Resale, including Attachments 1-3 (wholesale/resale to be effective on July 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



GENERAL TERMS AND CONDITIONS OF RESALE

BETWEEN

North Dakota Telephone Company

AND

Midcontinent Communications of North Dakota

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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 4th St, Sioux Falls, SD 57105 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."

WITNESSETH

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 (15th) 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 41 st 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

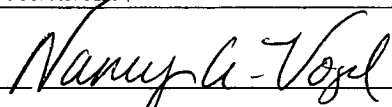
Each Parties Operations Manual will contain it's standard operating procedures. It will not supersede this Agreement and if contrary to the terms of the contract, the contract shall control.

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: <u>Dave Dircks</u>	Name: <u>Nancy Vogel</u>
Title: <u>General Manager</u>	Title: <u>Director of Revenue Assurance</u>
Date: <u>8/24/06</u>	Date: <u>8-21-06</u>

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

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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. Midcontinent 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's End User Customers with respect to resold services.
- 6.6 For purposes 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**

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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

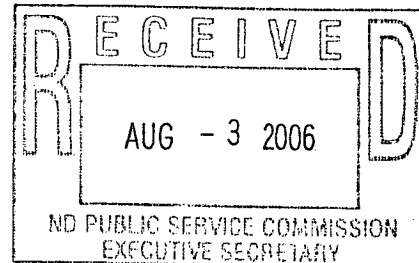
STATE OF NORTH DAKOTA
1707 North 9th Street
Bismarck, North Dakota 58501-1882

Allen C. Hoberg
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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



Public Service Commission

State of North Dakota

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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.

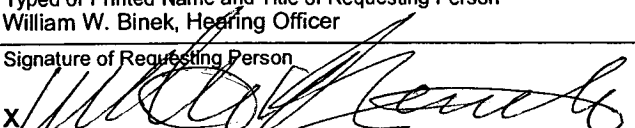
Please list parties, including the agency if it is a Party, and Representation [attorney (or other)] if known, or Agency Contact: (Attach separate list if necessary.)

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 	Telephone Number 328-4088

**Midcontinent Communications/
North Dakota Telephone Company
Rural Exemption
Investigation**

Case No. PU-05-451

List of Parties

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Attn: David Dircks
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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

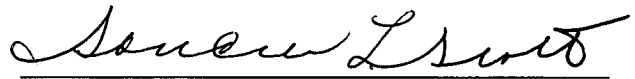
Scott M Knudsvig
Pringle & Herigstad
P O Box 1000
Minot ND 58702-1000
Cert. No. 7005 1820 0002 3243 4274

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.

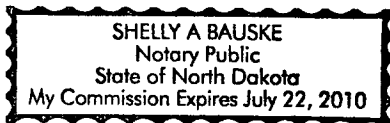
Mary Lohnes
Midcontinent Communications
410 S Phillips Ave
Sioux Falls SD 57104-6824

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

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


Notary Public

SEAL



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:

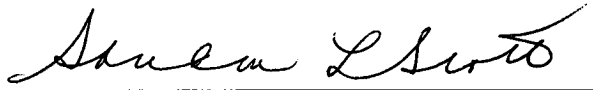
she is over the age of 18 years and not a party to this action and, on the **27th day of July, 2006**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and e-mailed, each containing a photocopy of:

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

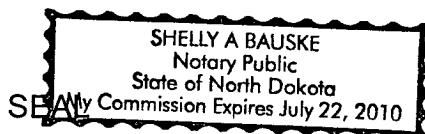
The envelopes were addressed as follows:

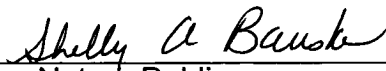
See Attached List

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



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





Notary Public

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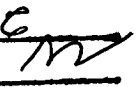
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MOTION

July 26, 2006

APPROVED

DATE: 7-26-06 

**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

**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 Dakota² 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.

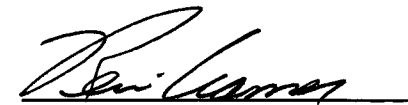
From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

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 Commissioner	Tony Clark President	Kevin Cramer Commissioner

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CAROL K. LARSON
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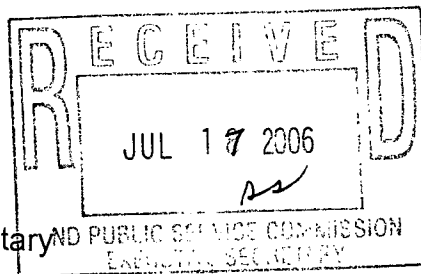
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July 17, 2006



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.

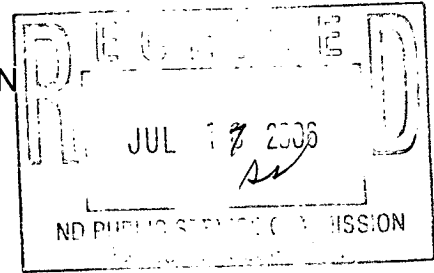
Don Negaard

jt

Enclosures

cc/enc: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission

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

**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").

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.

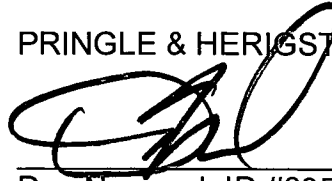
CONCLUSION

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.

A handwritten signature in black ink, appearing to be 'Don Negaard', written over a horizontal line.

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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:

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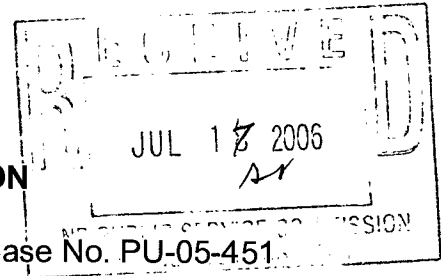
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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**



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.

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

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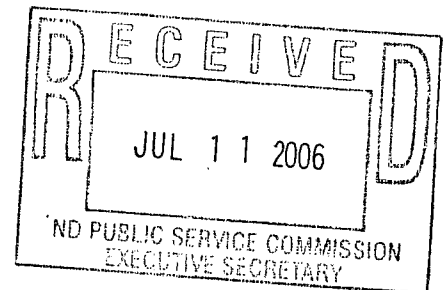
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July 11, 2006

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

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Pages: 1

Letter closing ALJ's file

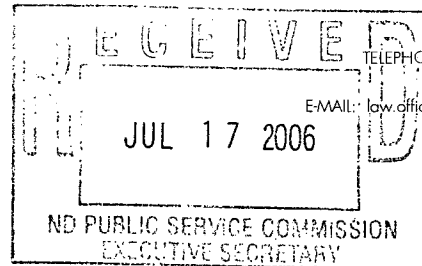
by Office of Administrative Hearings
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July 17, 2006



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VIA HAND DELIVERY

Re: Midcontinent Communications/North Dakota Telephone Company
Rural Exemption Investigation

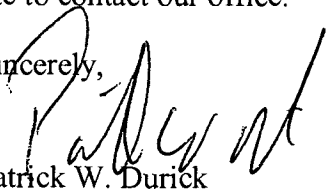
Case No. PU-05-451

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)
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156 PU-05-451

Pages: 2

*Admitted pro hac vice

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,

Complainant,

vs.

North Dakota Telephone Company,

Respondent.

Case No. PU-05-451

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

) ss.
)

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:

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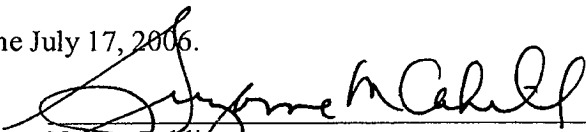
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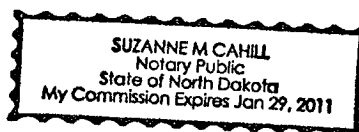


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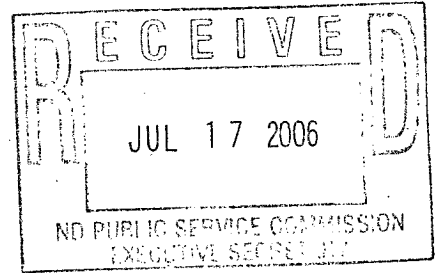
Subscribed and sworn to before me July 17, 2006.



Notary Public
Burleigh County, North Dakota



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION



MIDCONTINENT COMMUNICATIONS,
A SOUTH DAKOTA PARTNERSHIP,
COMPLAINANT

VS.

NORTH DAKOTA TELEPHONE COMPANY,
RESPONDENT

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) Case No. PU-05-451
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**BRIEF OF MIDCONTINENT COMMUNICATIONS
ON INTERIM RESALE DISCOUNT**

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July 17, 2006

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

MIDCONTINENT COMMUNICATIONS,
A SOUTH DAKOTA PARTNERSHIP,
COMPLAINANT

VS.

NORTH DAKOTA TELEPHONE COMPANY,
RESPONDENT

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) Case No. PU-05-451
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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 claiming 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 P19 at 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.

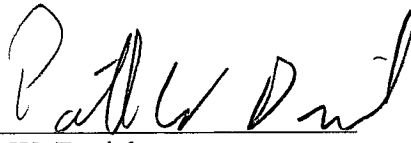
For all these reasons, the Commission should adopt an order consistent with Midcontinent's proposals in this proceeding.

⁶⁴ Meredith Direct at 3-4.

⁶⁵ Exhibit P17; Tr. at ___ (Meredith Direct cross-examination).

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By: 

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J.G. Harrington*

Its Attorneys

*Admitted pro hac vice

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July 17, 2006

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	<u>1,243,737</u>	<u>1,324,492</u>
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	<u>0.96%</u>	<u>1.48%</u>
11	Net Avoidable Cost Percentage	<u><u>9.37%</u></u>	<u><u>25.39%</u></u>

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Restatement of NDTC Avoidable Cost Discount
for Year Ended 12/31/05
by Midcontinent Communications
07/10/2006 CC: Corbin Legarona, Pat, Annette
Exhibit # P20

*EXHIBIT
P20*

**RESTATEMENT OF NDTC AVOIDABLE COST DISCOUNT
DIRECT AVOIDED COSTS
FOR THE YEAR ENDED 12/31/2005**

#	Item	Account	Per Study 12/31/05	PER NDTC			PER MIDCONTINENT	
				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	<u>8.42%</u>	<u>8.49%</u>	<u>8.97%</u>

#	Item	Account	Per Study 12/31/05	PER NDTC				RESTATED BY MIDCONTINENT	
				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		<u>\$ 2,719,009</u>		<u>\$ 229,002</u>		<u>\$ 230,959</u>		<u>\$ 243,871</u>

**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

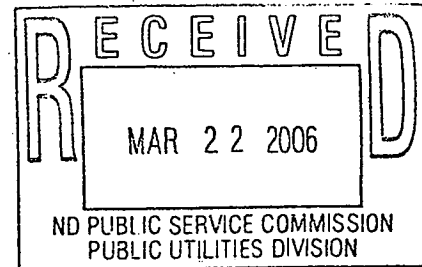
**North Dakota Telephone Company
Statement of Operating Revenue and Operating Expenses
For the Year December 31, 2005**

				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			<u><u>17,027,568</u></u>	
REVENUE SUBJECT TO RESALE			<u><u>\$ 4,927,959</u></u>	



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March 22, 2006

Mike Diller
North Dakota Public Service Commission
600 E Boulevard Ave, Dept. 408
Bismarck, ND 58505-0480

Mike,

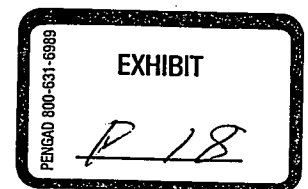
Enclosed is the 2005 Annual Report for North Dakota Telephone Company, the same information in the same format that was provided last year, including a Rate of Return calculation, Income Statement and Balance Sheet.

Please contact me if you have any questions.

Sincerely,

Shawna Senger
Accounting Manager

Enclosure



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Pages: 5

NDTC 2005 Annual Report

by Midcontinent Communications
07/10/2006 CC: Comm Legal Ilona, Pat, Annette . .
Exhibit # P18

1

PU-06-106

Pages: 5

2005 Annual Report

by North Dakota Telephone Company by
03/22/2006

**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	<u>0</u>

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	<u>129,177</u>

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	<u>0</u>

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	<u>129,177</u>

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	<u>(310,094)</u>

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	<u>0</u>

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	<u>0</u>

Total Other Assets 6,997,846

TELECOMMUNICATIONS PLANT

In Service	73,525,615
Under Construction	2,760,537
Plant Adjustment	2,937,596
Goodwill	<u>0</u>

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	<u>244,145</u>

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	<u>496,459</u>

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	<u>(1,477,360)</u>

Total Equities 31,918,249

TOTAL LIABILITIES AND EQUITIES 38,966,171

EXAMPLE OF TRUE UP CALCULATION

Formula:

$$\text{True up} = [\text{Wholesale Revenues Paid}/(1-\text{Interim discount})*(1-\text{Final discount})] - \text{Wholesale Revenues Paid}$$

Assumptions:

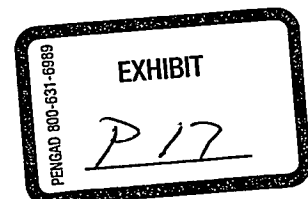
Wholesale Revenues Paid = \$90,000

Interim discount = 10%

Final discount = 15%

Calculation:

$$\begin{aligned}\text{True up} &= [\$90,000/(1-0.10)*(1-0.15)] - \$90,000 \\ &= [\$90,000/0.9*0.85] - \$90,000 \\ &= [\$100,000*0.85] - \$90,000 \\ &= \$85,000 - \$90,000 \\ &= -\$5,000 \text{ owed to Midcontinent}\end{aligned}$$



**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Midcontinent Communications,
A South Dakota Partnership,**

Complainant,

vs.

North Dakota Telephone Company,

Respondent.

)
)
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)
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)
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)

Case No. PU-05-451

**TESTIMONY
OF
DOUGLAS DUNCAN MEREDITH
ON BEHALF OF
NORTH DAKOTA TELEPHONE COMPANY**

July 10, 2006

150 PU-05-451

Pages: 18

Testimony of Douglas Duncan Meredith

by North Dakota Telephone Company

07/10/2006 CC: Comm. Legal Illona, Pat, Annette . . .
Exhibit # R21



1 Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND
2 BUSINESS ADDRESS.

3 A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis,
4 Inc. (JSI). JSI is a telecommunications consulting firm headquartered in
5 Greenbelt, Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah
6 84010.

7

8 Q: ARE YOU THE SAME MR. MEREDITH THAT TESTIFIED
9 PREVIOUSLY IN THIS PROCEEDING?

10 A: Yes. I previously testified in this matter on January 23, 2006, when the North
11 Dakota Public Service Commission (the "Commission") examined the rural
12 exemption issue in this matter.

13

14 Q: ON WHOSE BEHALF ARE YOU PRESENTING THIS PRE-FILED
15 DIRECT TESTIMONY?

16 A: I am testifying on behalf of North Dakota Telephone Company ("NDTC"), a rural
17 telephone company operating in North Dakota.

18

19 Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

20 A: The purpose of my testimony is to respond to the request by the Commission that
21 information be provided to assist the Commission in determining an appropriate
22 interim discount rate for NDTC to provide wholesale resold service in the Devils

1 Lake, North Dakota, exchange to Midcontinent Communications
2 ("Midcontinent") pursuant to 47 U.S.C. Section 251(c) of the Act.
3

4 **Q: WHAT IS YOUR UNDERSTANDING OF WHAT NEEDS TO BE DONE**
5 **IN THIS PROCEEDING?**

6 A: My understanding is that this hearing is being conducted to determine an
7 appropriate interim discount rate for retail services subject to being sold at a
8 wholesale discount under Section 251(c)(4) of the Act. This rate would be used
9 for an interim period, subject to true-up, until a final discount rate is approved by
10 the Commission. The Federal Communications Commission ("FCC") has
11 provided guidance in the form of Federal Regulations which are contained at 47
12 C.F.R. Section 51.607, *et seq.*, and its discussion of these regulations in Section 8
13 of its Local Competition Order, FCC 96-325.
14

15 **Q: HAVE YOU COMPUTED AN APPROPRIATE INTERIM DISCOUNT**
16 **RATE IN ACCORDANCE WITH THESE FCC GUIDELINES?**

17 A: Yes.
18

19 **Q: IS YOUR STUDY ATTACHED TO THIS TESTIMONY AS EXHIBIT**
20 **DDM-01?**

21 A: Yes. Exhibit DDM-01 contains 11 schedules. It provides a summary of the
22 avoidable cost rate and thereafter provides cost details for direct, indirect costs

1 and cost onsets, including specific evidence rebutting certain FCC presumptions
2 that are not appropriate for the NDTC contract with Midcontinent.

3
4 Exhibit DDM-01 is suitable for an interim wholesale rate. I am currently
5 evaluating certain other FCC presumptions and will be prepared to rebut these
6 other presumptions at a later hearing establishing a final wholesale discount for
7 NDTC.

8
9 **Q: BASED ON EXHIBIT DDM-01 WHAT INTERIM WHOLESALE**
10 **DISCOUNT RATE DO YOU RECOMMEND THE COMMISSION ADOPT**
11 **IN THIS PROCEEDING?**

12 **A:** I recommend the Commission adopt an interim wholesale discount of 9.36
13 percent, subject to true-up to a final discount rate approved by the Commission.
14 This rate is based on NDTC specific costs and the methodology establishing this
15 rate is consistent with FCC regulations and policies pertaining to the
16 establishment of this discount.

17
18 **Q: HOW WOULD YOU PROPOSE THAT THE COMMISSION "TRUE UP"**
19 **ANY DIFFERENCE IN THE INTERIM WHOLESALE DISCOUNT RATE**
20 **VERSUS THE FINAL WHOLESALE DISCOUNT RATE?**

21 **A:** From my perspective, it could be accomplished using a simple mathematical
22 calculation and payment method. Specifically, one would only need to take the
23 total amount of NDTC wholesale revenues (revenues for services subject to the

1 wholesale discount) received from Midcontinent during the interim period and
2 apply the following equation to calculate the true up payment:

3
4 *True up revenues due NDTC = [Wholesale Revenues Paid/(1-interim*
5 *discount)*(1-final discount)] - Wholesale Revenues Paid.*

6
7 This equation calculates the difference between what is due using the final
8 discount and subtracts the amount that has been paid using the interim discount.
9 If the final wholesale discount is less than 9.36 percent, this equation yields a
10 positive number representing the true up amount Midcontinent owes NDTC. In
11 the unlikely event the final wholesale discount were greater than 9.36 percent this
12 equation will yield a negative number representing the true up amount NDTC
13 owes Midcontinent. Any difference in the amount of money either due NDTC or
14 Midcontinent would be paid to the proper party within 30 days of the
15 establishment of the final wholesale discount rate by the Commission.

16
17 **Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY FOR THIS**
18 **HEARING?**

19 **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

<i>Current Customer Service Operations Workforce</i>	<i>Number</i>	<i>Loaded Labor Rate</i>
Supervisor	1	\$ 49.66
CSR (Business Office)	10	\$ 30.75
CSR (Marketing)	2	\$ 28.41

<i>Annual Work Hours 2005 Actual Activity)</i>	<i>Hours</i>
Supervisor	1,836
CSR (Business Office)	1,763

<i>Retained 6623 Local Order Processing Activities</i>	<i>2005 Contacts</i>	<i>Est. Time per Contact (Min.)</i>	<i>Est. Retained Activity Percentage</i>	<i>Est. Annual Wholesale Time (Min)</i>
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

<i>Retained 6623 - Local Order Processing Expenses</i>	<i>Number</i>	<i>Amount</i>
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
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

#	<i>Recurring Onsets</i>	<i>Amount</i>
1	Billing Wholesalers	\$90
2	Wholesaler Bill Inquiry	\$29,859
3	Customer Inquiry Referrals	\$19,906
4	Wholesaler Payment & Collection	\$111
5	Audit of Cross-Class Usage	\$3,500
6	Onset Indirect	\$4,495
7	Total Recurring Onsets	\$57,861

#	<i>Non-Recurring Onsets</i>	<i>Amount</i>
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

Schedule 6

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
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

Severance 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

Schedule 8

Cost of Avoided Investments

For Year Ended 12/31/2005

Date: 7/5/2006

[Reserved]

North Dakota Telephone Company
Account 6623: Time Study Summary

Schedule 9

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
Account 6627: Time Study Summary
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 10

#	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 Formula¹

$$1. \text{ Wholesale Price Discount} = 1 - \left(\frac{\text{Wholesale Service Revenue}}{\text{Total Operating Revenue}} \right)$$

$$2. \text{ Wholesale Service Revenue} = \frac{\text{Total Wholesale Expenses}}{(1 - \text{Base Margin})}$$

$$3. \text{ Total Wholesale Expenses} = \text{Total Operating Expenses} - \text{Total Avoided Costs}$$

$$4. \text{ Base Margin} = \frac{\text{Total Operating Revenue} - \text{Total Operating Expenses}}{\text{Total Operating Revenue}}$$

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

$$\text{Wholesale Price Discount} = 1 - \left[\frac{\text{Total Operating Expenses} - \text{Total Avoided Costs}}{\left(\frac{\text{Total Operating Expenses}}{\text{Total Operating Revenue}} \right)} \right]$$

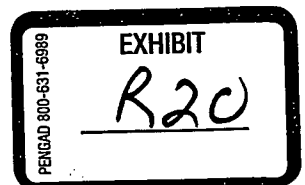
since

$$\frac{\frac{a}{\left(\frac{b}{c} \right)}}{c} = \frac{a}{b}$$

$$\Rightarrow \text{Wholesale Price Discount} = 1 - \frac{\text{Total Operating Expenses} - \text{Total Avoided Costs}}{\text{Total Operating Expenses}}$$

which reduces to :

$$5. \text{ Whole sale Price Discount} = \frac{\text{Total Avoided Costs}}{\text{Total Operating Expenses}}$$



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 Expenses (TOE)		\$12,048,268
Base Margin (BM)	$(\text{TOR} - \text{TOE}) / \text{TOR}$	29.03%
Total Avoided Costs (TAC)		\$1,243,737
Total Wholesale Expenses (TWE)	$\text{TOE} - \text{TAC}$	\$10,804,531
Wholesale Service Revenue (WSR)	$\text{TWE} / (1 - \text{BM})$	\$15,223,125
Wholesale Price Discount (WPD)	$1 - (\text{WSR} / \text{TOR})$	10.32%

This formula yields the exact result of the simplified model TAC/TOE

TAC/TOE	10.32%

$1 - (\text{WSR} / \text{TOR}) = \text{TAC} / \text{TOE}$	TRUE

Source: FCC, Local Competition Order, FCC 96-235, at 892 note 2147, See also paragraph 930.

Dakota Central 1 Telecommunications

Pricing Attachment

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Dakota Central 1 Telecommunications Pricing
Attachment

by North Dakota Telephone Company

07/10/2006 CC: Comm Legal Mona, Pat, Annette . .
Exhibit # R18

7/9/2006



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

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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

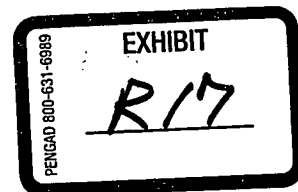
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by North Dakota Telephone Company by

07/10/2006 CC: Comm Legal Ilona, Pat, Annette . . .
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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.

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1.4 EXPLANATION OF TARIFF CHANGE SYMBOLS

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** - Obsolete Rate, Regulation or Text
- R** - Reduction in Rate
- T** - Text Change, but no change in Rate or Regulation

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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)

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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.

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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.

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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.

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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.

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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

		NDTC	
		<u>Monthly Rate</u>	
<u>Lineskeeper</u>			
Residence		\$1.75	(N)
Business		\$1.75	

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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.

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-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.

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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.

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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)

DEMARCATIION 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.

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DID – See Direct Inward Dialing

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.

DIRECT CONNECTION - Connection of terminal equipment to the telephone network by means other than acoustic or inductive coupling.

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).

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).

DIRECTORY LISTING - A publication in the Company's alphabetical directory of information relative to a customer's name or other identification and telephone number.

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."

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-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."

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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.

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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.

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.

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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.

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.

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.

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.

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-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.

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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.

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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".

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-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.

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(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.

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-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".

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-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.

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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.

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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

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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.

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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.

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:

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	

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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.

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

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.

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**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.

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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.

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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)

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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).

	Individual Line
<i>BUSINESS SERVICE</i>	
Individual Line	\$ 27.87
Business Trunk	\$ 43.75
Key Business Line	\$ 27.87
<i>RESIDENCE SERVICE</i>	
Individual Line	\$ 13.12
2-Party-Grandfathered	-----
<i>CUSTOMER OWNED PAY</i>	
<i>TELEPHONE SERVICE</i>	\$ 27.87

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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.

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4.7 RATES (CONT'D)

B. Extended Area of Service Component (Cont'd)

Originating Exchange Name	Business	Residential	Trunk	EAS Points
<u>NDTC East Exchanges</u>				
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
McVile	\$ 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	McVile, 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	McVile, Pekin
Warwick	\$ 8.40	\$ 4.20	\$ 8.40	Devils Lake, Ft. Totten
Webster	\$ 8.80	\$ 4.40	\$ 8.80	Devils Lake, Starkweather
<u>NDTC West Exchanges</u>				
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

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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.

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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).

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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:

	<u>NDTC*</u>	<u>Code</u>	<u>NDTC**</u>	<u>Code</u>	(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.

** NDTC Exchanges: Cando, Crary, Devils Lake, Fort Totten, Hampden, McVile, New Rockford, Oberon, Pekin, Penn, Sheyenne, Starkweather, Tolna, Warwick, Webster.

** NDTC Exchanges: Balta, Drake, Esmond, Fessenden, Harvey, Knox, Leeds, Maddock, Minnewaukan, Rugby, Velva.

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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

<u>Exchange With Tribal Land</u>	<u>Credit</u>
Fort Totten	\$0.00
Warwick	\$0.00
Sheyenne	\$0.00
Tolna	\$0.00
Oberon	\$0.00

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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.

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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.

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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 <u>Tribal Land</u>	Subscriber Has <u>Touch Tone</u>
Fort Totten	\$14.07
Warwick	\$14.57
Sheyenne	\$12.82
Tolna	\$12.52
Oberon	\$11.32

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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.

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⁽¹⁾ Semipublic Telephone Service is no longer offered by NDTC.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

NOTICE

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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

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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.

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5.9 EXCHANGE SERVICE EXTENSIONS (POINT TO POINT)

	<u>Monthly</u>	<u>NRC</u>
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.

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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
Circular

\$2.40
\$2.40

(N)

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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.

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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.

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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

	<u>Monthly Rate⁽¹⁾</u>	<u>NRC</u>
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.

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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)

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5.13 CUSTOM CALLING SERVICES (CONT'D)
A. General (Cont'd)

2. Description of Features (Cont'd)

f. 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.

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

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.

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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
	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
Speed Calling, 30 Codes	Business	\$2.00
	Residence	\$2.00

(N)

(N)

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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.

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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).

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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.

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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 is 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.

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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.

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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.

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5.16 CUSTOM LOCAL AREA SIGNALING SERVICES (CLASS) (CONT'D)

A. Rates and Charges

	<u>Per Line Monthly Rate*</u>
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.

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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.

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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.

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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.

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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

	<u>Per Line</u> <u>Monthly Rate</u>
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

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6. SERVICE CHARGES

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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.

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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.

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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.

	<u>Business</u>	<u>Residence</u>
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.

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7. MISCELLANEOUS SERVICE OFFERINGS

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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.

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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.

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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.

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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.

	<u>Monthly Rate</u>	<u>NCR *</u>
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

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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.

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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.).

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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:

<u>Counties</u>	<u>Monthly Charge</u>
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

1. Applies to all business, residence, trunk, public, and semi-public paystations.
2. Normally billed to access lines on a countywide basis.

(T)

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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

	<u>Monthly Rate</u>
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.

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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

	<u>Monthly Rate</u>
1. Each equipped line	\$1.00

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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

	<u>Monthly Rate</u>	
1. Remote Call Forward	\$16.00	(D)

⁽¹⁾ Remote Call Forward Service will be offered where facilities and operating conditions permit.

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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.

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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.

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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).

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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.

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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.

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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.

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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.

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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.

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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)

- 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.

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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.

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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.

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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.

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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.

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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.).

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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

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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

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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

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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

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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.

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7.11 CENTREX SERVICE (CONT'D)

D. Rates (Cont'd)

7. Features Associated with Groups of Lines

	<u>Monthly Charge</u>	<u>Non- Recurring Charge</u>
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	

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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

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8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN)
PRIMARY RATE INTERFACE (PRI)

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**8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN)
PRIMARY RATE INTERFACE (PRI)**

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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.

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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.

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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.

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PRIMARY RATE INTERFACE (PRI)**

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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.

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8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN)
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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)

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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.

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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.

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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)

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**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)

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**8. INTEGRATED SERVICES DIGITAL NETWORK SERVICE (ISDN)
PRIMARY RATE INTERFACE (PRI)**

(N)

8.6 RATES AND CHARGES

		Monthly Rate	Service Establishment
A.	<u>ISDN-PRI Access Facility</u>		
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.	<u>ISDN-PRI Service Arrangement Connections</u>		
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.

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8.6 RATES AND CHARGES (CONT'D)

	Monthly Rate	Service Establishment
B. <u>ISDN-PRI Service Arrangement</u> <u>Connections (Cont'd)</u>		

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.

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8.7 RATES AND CHARGES (CONT'D)

		<u>Monthly Rate</u>	<u>Service Establishment</u>
C.	<u>Circuit Switched Features</u>		
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.

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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)

(N)

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9. RESERVED FOR FUTURE USE

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10. RESERVED FOR FUTURE USE

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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.

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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.

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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:

	<u>Monthly Rate</u>
* 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:

	<u>Dial Station-To-Station</u>	
<u>Call Area</u>	<u>Initial Minute Rate</u>	<u>Each Additional Minute Rate</u>
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.

<u>Time Period</u>		<u>Discount</u>
*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%

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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.
- (3) Only applicable to NDTC West Exchanges.

(M)

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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.

	<u>S&E CODE</u>	<u>Monthly Rate</u> <u>Per 1/4 Mile or Fraction</u>
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.

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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

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-154C

05-457
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

☒ Agent
☐ Addressee

B. Received by (Printed Name)

Kathy 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-154C

- 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

☐ 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

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-154C

- 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

2. Article Number
(Transfer from service label)

7005 1820 0002 3243 4267

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154C

- 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
2124 L St NW Ste 520
Washington D C 20037

2. Article Number
(Transfer from service label)

7002 2410 0003 4912 1224

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

- 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
Row Lakes & Adventure PLLC
1205 New Hampshire Ave NW
Ste 800
Washington DC 20036

2. Article Number
(Transfer from service label)

7005 3110 0003 6265 6489

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154C

05-451

A. Signature ☒ Agent ☐ Addressee
X Cheryl Hanson

B. Received by (Printed Name) C. Date of Delivery
Cheryl Hanson 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

05-451

A. Signature ☐ Agent ☐ Addressee
X [Signature]

B. Received by (Printed Name) C. Date of Delivery
Spideman 8/2/06

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

S

A. Signature ☐ Agent ☐ Addressee
X [Signature]

B. Received by (Printed Name) C. Date of Delivery
Cecilia Day 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

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.

J G Harrington
Dow Lohnes & Albertson PLLC
1200 New Hampshire Ave NW Ste 800
Washington-D C 20036

A. Signature ☒ Agent ☐ Addressee
 B. Received by (Printed Name) *T 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

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

- 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 to Shaver Ave
Bernard ND 58502-0600

A. Signature ☒ Agent ☐ Addressee
 B. Received by (Printed Name)
 C. Date of Delivery *Oct 17 2006*

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 6458

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-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 Knudsen
Pearce & Knudsen
PO Box 1000
Minot ND 58702-1000

A. Signature ☒ 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

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 THIS SECTION ON DELIVERY	
- 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 ☒ 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 USPS 10/17/2006	
1. Article Addressed to: Don Regard Thrane & Herigstad PO Box 1000 Mint NO 58702-1000		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
2. Article Number (Transfer from service label) 7005 3110 0003 6265 6496		4. Restricted Delivery? (Extra Fee) ☐ Yes	

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.		A. Signature ☒ 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	
1. Article Addressed to: Dave Durck North Dakota Highway Company PO Box 180 Devils Lake ND 58301-0180		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
2. Article Number (Transfer from service label) 7005 3110 0003 6265 6526		4. Restricted Delivery? (Extra Fee) ☐ Yes	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

PU-05-451

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- 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 ☒ Thomas Norman ☐ Agent ☐ Addressee B. Received by (Printed Name) Thomas Norman C. Date of Delivery 10-18-06 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No USPS 10/18/2006	
1. Article Addressed to: Thomas J. Norman Kessler Norman & Cresson 2154 Wisconsin Ave NW Washington DC 20007		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
2. Article Number (Transfer from service label) 7005 3110 0003 6265 6472		4. Restricted Delivery? (Extra Fee) ☐ Yes	

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.

146 PU-05-451

Pages: 95

Draft Terms and Conditions for
 wholesale/resale in Devils Lake exchange
 by North Dakota Telephone Company by
 07/10/2006 CC: Comm Legal Mona, Pat, Annette
 Exhibit # R15



7/7/2006

GENERAL TERMS AND CONDITIONS OF RESALE

BETWEEN

North Dakota Telephone Company

AND

Midcontinent Communications of North Dakota

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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 (15th) 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 41 st 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

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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 may be 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

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:			
<u>Name</u>	<u>Address</u>	<u>Tel. No.</u>	
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:	<u>North Dakota Telephone Company</u>
Point of Contact:	<u>Rod Hoffmeyer</u>
Telephone Number:	<u>701.662.1100</u>
Fax Telephone Number:	<u>701.662.6446</u>
E-mail address:	<u>rodh@ndtel.com</u>

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 identification 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 correlating 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

TN: _____

End User
Name: _____

Address: _____

Building/Room
Number: _____

City, State, Zip
Code: _____

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

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:	

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

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:

Appendix F

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>U.S. Standard</u>	<u>Metric Format</u>
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.

Appendix G

PON:	
TN(s):	
STATUS:	☐ Confirmed ☐ Suspended ☐ Canceled ☐ Missed Due Date ☐ Held Order
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	<i>Name& Title</i>	Dave Dircks	
	<i>Address/Mail code</i>	211 22 nd St NW	
	<i>City, ST, ZIP</i>	Devils Lake, ND 58301	
	<i>Telephone</i>	701.662.6435	
	<i>Fax</i>	701.665.7435	
	<i>Email</i>	daved@ndtel.com	
Service Order Forecasting	<i>Name& Title</i>	Rod Hoffmeyer/Customer Service Manager	
	<i>Address/Mail code</i>	211 22 nd St NW	
	<i>City, ST, ZIP</i>	Devils Lake, ND 58301	
	<i>Telephone</i>	701.662.6443	
	<i>Fax</i>	701.662.6446	
	<i>Email</i>	rodh@ndtel.com	
Customer Support Center (CSC)	<i>Name& Title</i>	Kathy Young/Business Office Supervisor	
	<i>Address/Mail code</i>	211 22 nd St NW	
	<i>City, ST, ZIP</i>	Devils Lake, ND 58301	
	<i>Telephone</i>	701.662.6426	
	<i>Fax</i>	701.662-6444	
	<i>Email</i>	kathyy@ndtel.com	
Network Maintenance	<i>Name& Title</i>	Richard Ellison/Network Services Manager	
	<i>Address/Mail code</i>	211 22 nd St NW	
	<i>City, ST, ZIP</i>	Devils Lake, ND 58301	
	<i>Telephone</i>	701.662.6441	
	<i>Fax</i>	701.662.6446	
	<i>Email</i>	riche@ndtel.com	
Billing	<i>Name& Title</i>	Kathy Young/Business Office Supervisor	
	<i>Address/Mail code</i>	211 22 nd St NW	
	<i>City, ST, ZIP</i>	Devils Lake, ND 58301	
	<i>Telephone</i>	701.662.6424	
	<i>Fax</i>	701.662.6444	
	<i>Email</i>	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 NDTC for 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)

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

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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. Midcontinent 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's End User Customers with respect to resold services.
- 6.6 For purposes 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**

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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

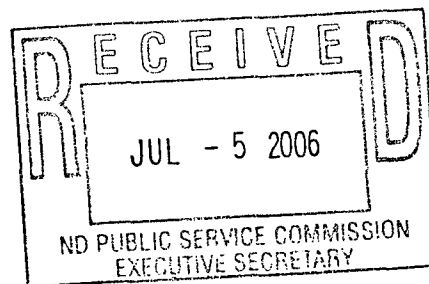
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MARK F. PURDY
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KENNETH G. PRINGLE
(1914-1983)
MITCHELL H. MAHONEY
(1929-1996)
ROGER O. HERIGSTAD
(1919-2003)

July 5, 2006



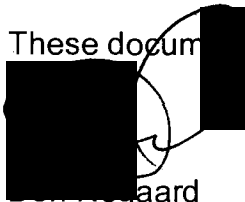
Illona A. Jeffcoat-Sacco, Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

**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.

Donald A. Negaard

jat

Enclosures

cc/encl: Pat Durick
J. G. Harrington
William W. Binek, Public Service Commission

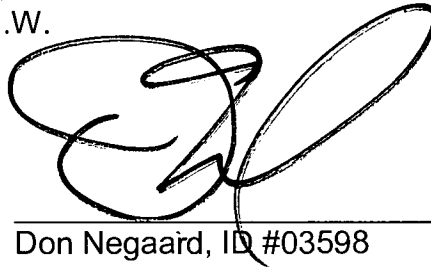
CERTIFICATE OF SERVICE

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

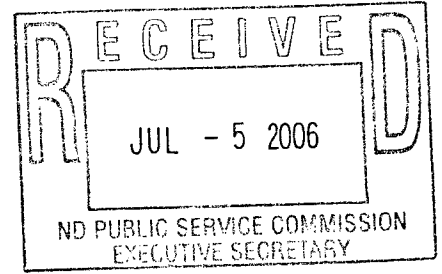
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Don Negaard, ID #03598

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**



**Midcontinent Communications,
A South Dakota Partnership,**

Complainant,

vs.

North Dakota Telephone Company,

Respondent.

)
)
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Case No. PU-05-451

**TESTIMONY
OF
DOUGLAS DUNCAN MEREDITH
ON BEHALF OF
NORTH DAKOTA TELEPHONE COMPANY**

July 10, 2006

1 **Q: PLEASE STATE YOUR FULL NAME, PLACE OF EMPLOYMENT AND**
2 **BUSINESS ADDRESS.**

3 A: My full name is Douglas Duncan Meredith. I am employed by John Staurulakis,
4 Inc. (JSI). JSI is a telecommunications consulting firm headquartered in
5 Greenbelt, Maryland. My office is located at 547 Oakview Lane, Bountiful, Utah
6 84010.

7

8 **Q: ARE YOU THE SAME MR. MEREDITH THAT TESTIFIED**
9 **PREVIOUSLY IN THIS PROCEEDING?**

10 A: Yes. I previously testified in this matter on January 23, 2006, when the North
11 Dakota Public Service Commission (the "Commission") examined the rural
12 exemption issue in this matter.

13

14 **Q: ON WHOSE BEHALF ARE YOU PRESENTING THIS PRE-FILED**
15 **DIRECT TESTIMONY?**

16 A: I am testifying on behalf of North Dakota Telephone Company ("NDTC"), a rural
17 telephone company operating in North Dakota.

18

19 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A: The purpose of my testimony is to respond to the request by the Commission that
21 information be provided to assist the Commission in determining an appropriate
22 interim discount rate for NDTC to provide wholesale resold service in the Devils

1 Lake, North Dakota, exchange to Midcontinent Communications
2 (“Midcontinent”) pursuant to 47 U.S.C. Section 251(c) of the Act.
3

4 **Q: WHAT IS YOUR UNDERSTANDING OF WHAT NEEDS TO BE DONE**
5 **IN THIS PROCEEDING?**

6 A: My understanding is that this hearing is being conducted to determine an
7 appropriate interim discount rate for retail services subject to being sold at a
8 wholesale discount under Section 251(c)(4) of the Act. This rate would be used
9 for an interim period, subject to true-up, until a final discount rate is approved by
10 the Commission. The Federal Communications Commission (“FCC”) has
11 provided guidance in the form of Federal Regulations which are contained at 47
12 C.F.R. Section 51.607, *et seq.*, and its discussion of these regulations in Section 8
13 of its Local Competition Order, FCC 96-325.
14

15 **Q: HAVE YOU COMPUTED AN APPROPRIATE INTERIM DISCOUNT**
16 **RATE IN ACCORDANCE WITH THESE FCC GUIDELINES?**

17 A: Yes.
18

19 **Q: IS YOUR STUDY ATTACHED TO THIS TESTIMONY AS EXHIBIT**
20 **DDM-01?**

21 A: Yes. Exhibit DDM-01 contains 11 schedules. It provides a summary of the
22 avoidable cost rate and thereafter provides cost details for direct, indirect costs

1 and cost onsets, including specific evidence rebutting certain FCC presumptions
2 that are not appropriate for the NDTC contract with Midcontinent.

3

4 Exhibit DDM-01 is suitable for an interim wholesale rate. I am currently
5 evaluating certain other FCC presumptions and will be prepared to rebut these
6 other presumptions at a later hearing establishing a final wholesale discount for
7 NDTC.

8

9 **Q: BASED ON EXHIBIT DDM-01 WHAT INTERIM WHOLESALE**
10 **DISCOUNT RATE DO YOU RECOMMEND THE COMMISSION ADOPT**
11 **IN THIS PROCEEDING?**

12 A: I recommend the Commission adopt an interim wholesale discount of 9.36
13 percent, subject to true-up to a final discount rate approved by the Commission.
14 This rate is based on NDTC specific costs and the methodology establishing this
15 rate is consistent with FCC regulations and policies pertaining to the
16 establishment of this discount.

17

18 **Q: HOW WOULD YOU PROPOSE THAT THE COMMISSION “TRUE UP”**
19 **ANY DIFFERENCE IN THE INTERIM WHOLESALE DISCOUNT RATE**
20 **VERSUS THE FINAL WHOLESALE DISCOUNT RATE?**

21 A: From my perspective, it could be accomplished using a simple mathematical
22 calculation and payment method. Specifically, one would only need to take the
23 total amount of NDTC wholesale revenues (revenues for services subject to the

1 wholesale discount) received from Midcontinent during the interim period and
2 apply the following equation to calculate the true up payment:

3
4
$$\text{True up revenues due NDTC} = [\text{Wholesale Revenues Paid}/(1 - \text{interim} \\ \text{discount}) * (1 - \text{final discount})] - \text{Wholesale Revenues Paid.}$$

5
6

7 This equation calculates the difference between what is due using the final
8 discount and subtracts the amount that has been paid using the interim discount.
9 If the final wholesale discount is less than 9.36 percent, this equation yields a
10 positive number representing the true up amount Midcontinent owes NDTC. In
11 the unlikely event the final wholesale discount were greater than 9.36 percent this
12 equation will yield a negative number representing the true up amount NDTC
13 owes Midcontinent. Any difference in the amount of money either due NDTC or
14 Midcontinent would be paid to the proper party within 30 days of the
15 establishment of the final wholesale discount rate by the Commission.
16

17 **Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY FOR THIS**
18 **HEARING?**

19 **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

<i>Current Customer Service Operations Workforce</i>	<i>Number</i>	<i>Loaded Labor Rate</i>
Supervisor	1	\$ 49.66
CSR (Business Office)	10	\$ 30.75
CSR (Marketing)	2	\$ 28.41

<i>Annual Work Hours 2005 Actual Activity)</i>	<i>Hours</i>
Supervisor	1,836
CSR (Business Office)	1,763

<i>Retained 6623 Local Order Processing Activities</i>	<i>2005 Contacts</i>	<i>Est. Time per Contact (Min.)</i>	<i>Est. Retained Activity Percentage</i>	<i>Est. Annual Wholesale Time (Min)</i>
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

<i>Retained 6623 - Local Order Processing Expenses</i>	<i>Number</i>	<i>Amount</i>
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
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 orset.
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

#	<i>Recurring Onsets</i>	<i>Amount</i>
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

#	<i>Non-Recurring Onsets</i>	<i>Amount</i>
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

Schedule 6

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
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

Schedule 6

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

Severance 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

Schedule 9

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
Account 6627: Time Study Summary
For Year Ended 12/31/2005
Date: 7/5/2006

Schedule 10

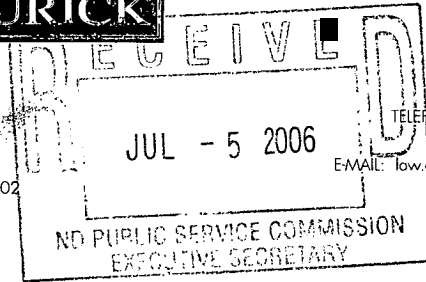
#	Item	Account	Time Study Percent	Allocate Per Study
1	Revenue Accounting Per Ledger			\$523,199
2	Less Deregulated Expense			\$0
3	Other Adjustments			\$0
4	Revenue Accounting Per Study			\$523,199
5	Rating	6627	8.1%	\$42,423
6	Message Processing	6627	12.2%	\$63,634
7	Other Billing & Collection	6627	25.6%	\$133,870
8	CABs Billing Expense	6627	54.1%	\$283,272
9	Total Revenue Accounting per Study		100.0%	\$523,199

WILLIAM P. PEARCE
PATRICK W. DURICK
B. TIMOTHY DURICK
GARY R. THUNE
JEROME C. KETTLESON
LARRY L. BOSCHEE ♦♦
LAWRENCE BENDER, PC ♦
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July 5, 2006



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Illona Jeffcoat-Sacco
Executive Director
North Dakota Public Service Commission
Capitol
600 East Boulevard, Ninth Floor
Bismarck, North Dakota 58505

VIA HAND DELIVERY

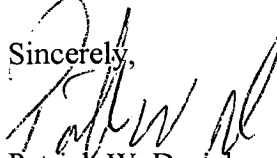
Re: Midcontinent Communications/North Dakota Telephone Company
Rural Exemption Investigation
Case No. PU-05-451

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)

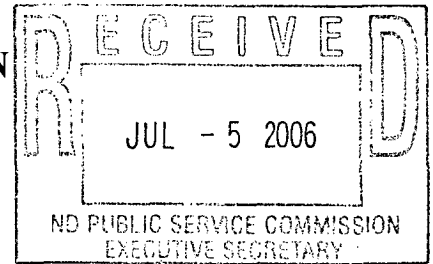
*Admitted pro hac vice

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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.

NORTH DAKOTA TELEPHONE COMPANY,
RESPONDENT

)
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)
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) Case No. PU-05-451
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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

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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.

23 Prior to joining MCI, I was employed as a Telephone Rate Analyst in the Engineering
24 Division at the Texas Public Utility Commission and earlier as an Economic Analyst at
25 the Oregon Public Utility Commission. I also worked at the Bonneville Power
26 Administration (United States Department of Energy) as a Financial Analyst doing total
27 electric use forecasts while I attended graduate school. Prior to doing my graduate work,
28 I worked for ten years as a reforestation forester in the Pacific Northwest for
29 multinational and government organizations. Exhibit TJG-1, attached hereto to this
30 testimony, is a summary of my work experience and education.

31 **Q. HAVE YOU EVER TESTIFIED BEFORE THE NORTH DAKOTA PUBLIC**
32 **SERVICE COMMISSION ("COMMISSION")?**

33 A. Yes. I have testified in North Dakota in the following dockets: PU-2320-90-183, PU-
34 2065-02-465, PU-2342-01-296 and the earlier phase of this proceeding. I have testified
35 more than 200 times in 44 states and I have filed comments with the FCC on various
36 public policy issues ranging from costing, pricing, local entry and universal service to
37 strategic planning, merger and network issues. As noted above, a list of proceedings in
38 which I have filed testimony or provided comments is attached hereto as Exhibit TJG-1.

39 **Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?**

40 A. This testimony was prepared on behalf of the Midcontinent Communications
41 ("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).

88 A. The Act imposes a duty upon ILECs to offer services for resale at wholesale rates.

89 Specifically, Section 251(c)(4) requires ILECs:

90 (A) to offer for resale at wholesale rates any telecommunications
91 service that the carrier provides at retail to subscribers who are not
92 telecommunications carriers; and

93
94 (B) not to prohibit, and not to impose unreasonable or discriminatory
95 conditions or limitations on, the resale of such telecommunications
96 services, except that a state commission may, consistent with
97 regulations prescribed by the Commission under this section,
98 prohibit a reseller that obtains at wholesale rates a
99 telecommunications service that is available at retail only to a
100 category of subscribers from offering such service to a different
101 category of subscribers.

102
103 NDTC is a rural carrier and would not normally be subject to this obligation. However,
104 this Commission has lifted the rural exemption as it applies to the wholesale resale
105 requirements in NDTC's Devils Lake exchange. In addition, this Commission has
106 required NDTC to provide support for an interim wholesale rate for the Devils Lake
107 exchange under an interconnection agreement no later than July 5, 2006. Further, NDTC
108 shall begin providing to Midcontinent retail services at wholesale prices for resale in the
109 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

419 calculations will be reasonable. In the past, however, the dispute with ILECs in general
420 has been over the percent of costs in any particular account that is avoided or ought to be
421 avoided. These percentages impact the resulting wholesale discount. I would hope and
422 expect that directly avoided costs would not be controversial, but NDTC and
423 Midcontinent may have a disagreement on the percentage of avoided costs for the
424 indirectly avoided cost categories.

425 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

426 **A.** Yes, it does.

427



**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 Its 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 on 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. 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. 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.



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.



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.



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 on 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.



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.

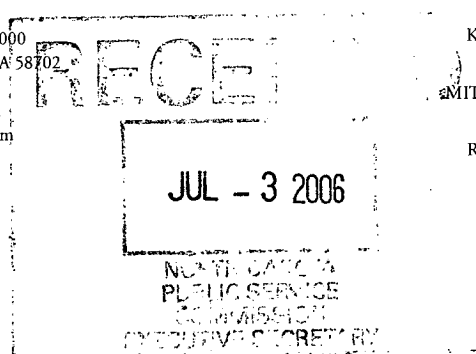
DONALD A. NEGAARD
JAMES E. NOSTDAHL
CAROL K. LARSON
DAVID J. HOGUE
REED A. SODERSTROM
BRENT M. OLSON
DEBRA L. HOFFARTH
SCOTT M. KNUDSVIG
RYAN D. SANDBERG
OF COUNSEL
HERBERT L. MESCHKE

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THOMAS A. WENTZ
MARK E. PURDY
JAN M. SEBBY

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



June 30, 2006

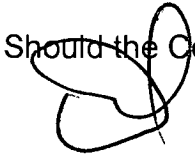
Illona A. Jeffcoat-Sacco, Executive Secretary
PUBLIC SERVICE COMMISSION
600 East Boulevard Avenue
Bismarck, ND 58505-0480

**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. Binék, Public Service Commission
David Dircks, North Dakota Telephone Company
Thomas J. Moorman, Woods & Aitken, LLP

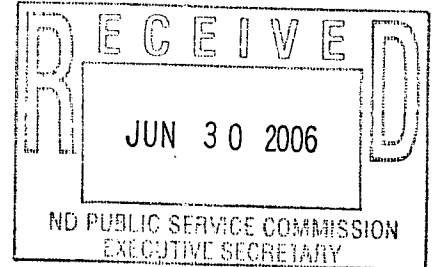
**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**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

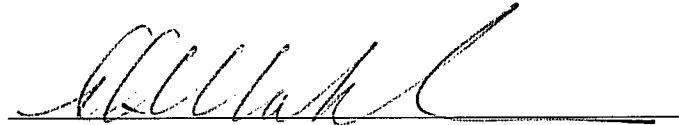
Ordered, that not later than July 5, 2006, Midcontinent Communications and North Dakota Telephone Company shall each serve upon the other and prefile with the Commission the anticipated direct testimony of each of the witnesses expected to testify on their behalf for the further hearing of July 10, 2006; 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

A handwritten signature in cursive script, appearing to read 'Al Wahl', is written over a horizontal line.

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

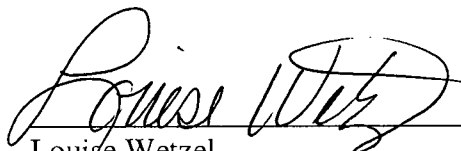
Mr. J. G. Harrington
Dow, Lohnes, PLLC
1200 New Hampshire Avenue NW
Suite 800
Washington, DC 20036

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



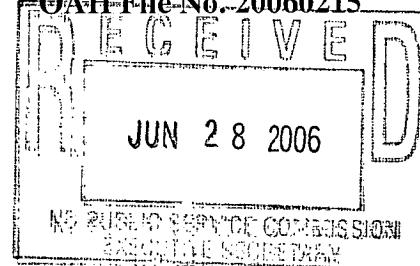
Louise Wetzel

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Midcontinent Communications/North Dakota
Telephone Company
Rural Exemption
Investigation**

Case No. PU-05-451

OA-H-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

A handwritten signature in black ink, appearing to read 'Al Wahl', is written over a horizontal line.

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

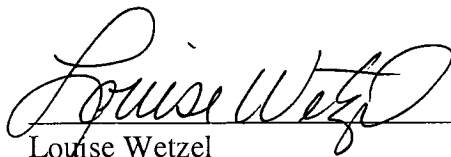
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Washington, DC 20036

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

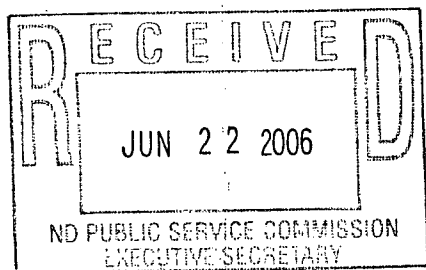
To: Patrick W. Durick, Pearce & Durick, and J. G. Harrington, Dow, Lohnes & Albertson, PLLC, counsel for Midcontinent Communications; Donald A. Negaard, Pringle & Herigstad, P.C., and Thomas A. Moorman, Kraskin, Moorman & Cosson, LLC, counsel for North Dakota Telephone Company; and William W. Binek, Chief Counsel, North Dakota Public Service Commission

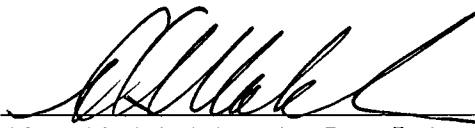
Please take notice that a prehearing conference will be held for this matter at 11:00 a.m. CDT, June 27, 2006. The prehearing conference will be conducted by telephone conference initiated by the administrative law judge. Mr. Harrington and Mr. Moorman are requested to advise the administrative law judge 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

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Midcontinent Communications/North Dakota
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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

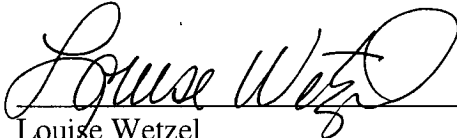
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Mr. William W. Binek
Chief Counsel
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

OFFICE OF ADMINISTRATIVE HEARINGS
Al Wahl, Administrative Law Judge


Louise Wetzel

Affidavit of Publication

Docket Sequence number 137 missing

NORTH DAKOTA LEGISLATIVE COUNCIL

Tentative Agenda

ADMINISTRATIVE RULES COMMITTEE

Thursday, March 8, 2007

Brynild Haugland Room, State Capitol
Bismarck, North Dakota

- 3:45 p.m. Call to order
 Roll call
 Consideration of the minutes of the previous meeting
- 3:50 p.m. Presentation by a representative of the State Department of Health regarding April 2007 rules of the department (pages 1-6)
- 4:05 p.m. Presentation by a representative of the State Board of Nursing regarding April 2007 rules of the board (pages 7-10)
- 4:20 p.m. Presentation by a representative of the State Board of Psychologist Examiners regarding April 2007 rules of the board (pages 11-32)
- 4:35 p.m. Presentation by a representative of the Public Service Commission regarding April 2007 rules of the board (pages 33-53)
- 4:50 p.m. Committee discussion and directives
- 5:00 p.m. Adjourn

Committee Members

Senators Jerry Klein (Vice Chairman), John M. Andrist, Tom Fischer, Layton W. Freborg, Gary A. Lee, Constance Triplett
Representatives Randy Boehning, Chuck Damschen, Duane L. DeKrey, David Drovdal, Mary Ekstrom, Rodney J. Froelich, Glen Froseth, Gil Herbel, Kim Koppelman, Jon Nelson, Blair Thoreson, Don Vigesaa, Dwight Wrangham

TITLE 69
PUBLIC SERVICE COMMISSION

APRIL 2007

CHAPTER 69-05.2-06

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.
2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

CHAPTER 69-05.2-10

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) ~~Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.~~
 - ~~(4)~~ Show the north point (if a map).
 - ~~(5)~~ (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.
 - c. The address of the commission, to whom written comments, objections, or requests for informal conferences on the application may be submitted.
 - d. If an applicant seeks a permit to conduct operations within one hundred feet [30.48 meters] of the outside right of way of a public road or to relocate a public road, a concise statement describing the road, the particular part to be relocated, where the relocation is to occur, and its duration.
2. The commission will distribute appropriate portions of the application to the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the committee shall forward their evaluation to the commission within forty-five days of receipt.
3. If the application contains prime farmlands to be mined, the commission will furnish the state conservationist of the natural resource conservation

service with the prime farmland reclamation plan submitted under section 69-05.2-09-15. The state conservationist shall provide review and comment on the proposed method of soil reconstruction and suggest remedial revisions if the plan is considered inadequate.

4. The applicant shall make a copy of the complete application available for the public to inspect and copy by filing it with the county auditor in the county where the mining is proposed. The applicant shall file the copy by the first date of the newspaper advertisement and any subsequent changes at the same time they are submitted to the commission.
5. In addition to the requirements of subsection 3 of section 38-14.1-18 of the North Dakota Century Code, the commission will notify all federal or state government agencies with authority to issue permits and licenses applicable to the proposed operations as part of the permit coordinating process and those with an interest in the proposed operations. These agencies include the soil conservation district office, the local United States army corps of engineers district engineer, the national park service, and the United States fish and wildlife service.
6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
 - a. Analysis of the chemical and physical properties of the coal to be mined, except information on coal components potentially toxic in the environment.
 - b. The nature and location of archaeological resources on public land and Indian land as required by the Archaeological Resources Protection Act of 1979.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

CHAPTER 69-05.2-12

69-05.2-12-12. Release of performance bond - Bond release application.

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:
 - a. For lands disturbed between July 1, 1975, and June 30, 1979, the application must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4. The criteria for release of all or part of the bond will be according to the reclamation requirements in effect at the time of the disturbance.
 - b. For lands disturbed after June 30, 1979, the application must comply with the requirements of this section and section 69-05.2-12-11.
2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations. Each application for bond release shall include a notarized statement by the permittee which certifies that all applicable reclamation activities have been accomplished in accordance with this article, North Dakota Century Code chapter 38-14.1, and the approved reclamation plan.
3. Within thirty days after filing a request for bond release, the permittee shall submit ~~proof of the publication~~ a copy of the newspaper advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.
4. Lands for which the permittee requests final bond release must be legally described and delineated on maps of the permit area. Lands requested for partial bond release may be either legally described or otherwise clearly depicted and identified on maps of the permit area so the bond release tracts can be distinguished from other lands.
5. When the permittee requests a partial release of bond after regrading under subdivision a of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must, unless waived by the commission, include surface profiles or topographic maps in accordance with section 69-05.2-21-06.
6. When the permittee requests a partial release of bond after resspreading suitable plant growth material under subdivision b of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include the thickness of the resspread first lift and second lift suitable plant growth materials.

7. When the permittee requests a partial release of bond after vegetation has been established under subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative demonstrating vegetation establishment as required by subsection 3 of section 69-05.2-22-07.
 - b. Documentation that the lands to which the release would be applicable are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04.
 - c. A discussion of how the provisions of a plan approved by the commission for the sound future management of any permanent impoundment by the permittee or landowner have been implemented.
8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.
9. When the permittee requests release of bond for any combination of release stages detailed in subsection 7 of North Dakota Century Code section 38-14.1-17, the application must contain all the information required at each bond release stage.
10. Requests for a reduction in bond amount for reclamation work performed according to subsection 4 of section 69-05.2-12-08 must include a detailed description of the work performed and a new reclamation cost estimate.

11. The commission may request any additional information necessary to evaluate the bond release application.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992; January 1, 1993; May 1, 2001; March 1, 2004; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

CHAPTER 69-05.2-16

69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

1. General requirements. Sedimentation ponds must be used individually or in series and:
 - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
 - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.
 - c. Meet all the criteria of this section.
2. Sediment storage volume. Sedimentation ponds must provide adequate sediment storage volume. Sediment storage volume must be determined using the universal soil loss equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.
3. Detention time. Sedimentation ponds must provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time must be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting materials must be included in the permit application.
4. Dewatering. The stored water must be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device may not be lower than the maximum elevation of the sediment storage volume.
5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures do not relieve the operator from compliance with applicable effluent limitations.
7. For sedimentation ponds designed to contain the runoff from a ten-year, twenty-four-hour precipitation event (design event), there must be no spillway outflow as a result of runoff from the design event or lesser runoff events, unless multiple runoff events occur before the pond can be dewatered in accordance with approved plans in the permit.

8. Sediment must be removed from sedimentation ponds on a periodic basis in order to maintain an adequate storage volume for the design event.
9. An appropriate combination of principal and emergency spillways or a single spillway must be provided to safely discharge the runoff from a twenty-five-year, six-hour precipitation event for a temporary impoundment, a fifty-year, six-hour precipitation event for a permanent impoundment, or a larger event specified by the commission. The spillways must be capable of safely discharging the required event when the impoundment is at high water elevation. Commission approval of open channel spillway grades and allowable velocities must be obtained and velocities must be nonerosive. Earth or grass lined spillways may be used only where sustained flows are not expected.
10. The minimum elevation at the top of the settled embankment must be one foot [30.48 centimeters] above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this minimum elevation requirement applies at all times.
11. The constructed height of the dam must be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against settlement.
12. The minimum top width of the embankment may not be less than the quotient of $(H+35)/5$, where H is the height, in feet, or $(H+10.7)/5$, where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The upstream side slope of the settled embankment may not be steeper than a horizontal to vertical ratio of 3:1 and the downstream side slope of the settled embankment may not be steeper than a horizontal to vertical ratio of 2:1.
14. The foundation area must be cleared of all organic matter, all surfaces sloped to no steeper than a horizontal to vertical ratio of 1:1, and the entire foundation surface scarified. Cutoff trenches must be installed if necessary to ensure stability.
15. The fill material must be free of sod, large roots, other large pieces of vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material must be started at the lowest point of the foundation. The fill must be brought up in horizontal layers in the thicknesses required to facilitate compaction and meet

the design requirements of this section. Fill adjacent to structures, pipe conduits, and drainfill or antiseep collars must be compacted to a density equal to that of the surrounding fill by hand tamping or by using manually directed power tampers or plate vibrators. Compaction must be conducted as specified in the approved design. In lieu of the specific design requirements of this subsection and subsections 11 through 14, the operator may demonstrate that the design of the structure has a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions.

17. If a proposed impoundment can meet the size and other criteria of 30 CFR 77.216, the following additional requirements must be met:
 - a. An appropriate combination of principal and emergency spillways must be provided to safely discharge the runoff from a one-hundred-year, six-hour precipitation event, or a larger event as specified by the commission.
 - b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
 - c. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.
 - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 must be met.
18. If an impoundment meets the class B or C criteria for dams (those located where failure would be expected to cause loss of life or serious property damage) in the United States department of agriculture, natural resource conservation service technical release no. 60 (TR-60), Earth Dams and Reservoirs, 1985, the following apply:
 - a. The emergency spillway must comply with freeboard hydrograph criteria found in the minimum emergency spillway hydrologic criteria table in TR-60, or greater event specified by the commission.
 - b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
 - c. Foundation testing, as well as any necessary laboratory testing of foundation material, must be performed to determine design requirements for foundation stability.

- d. Appropriate barriers must be provided to control seepage along conduits that extend through the embankment.

19. Impoundment inspections.

- a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under ~~subdivision~~ subdivisions b, c, and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.
- b. Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ Reports for each inspection during construction must be prepared and maintained at or near the minesite.
- c. ~~After each inspection impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability~~ a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.
- d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness, or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.
- e. A copy of the inspection reports must be maintained at or near the minesite.

20. The embankment, including the surrounding areas and diversion ditches disturbed or created by construction, must be stabilized with

respect to erosion and sudden drawdown by a vegetative cover or other means immediately after the embankment is completed. The active upstream face where water will be impounded may be riprapped or otherwise stabilized to protect the embankment from erosion and sudden drawdown. Areas where the reestablishment of vegetation is not successful or where rills and gullies develop must be repaired and revegetated according to section 69-05.2-15-06.

21. In addition to the requirements of subsection 19, all impoundments meeting the criteria of subsections 17 and 18 must be examined according to 30 CFR 77.216-3. Other impoundments must be examined at least quarterly by a qualified person for appearance of erosion, structural weakness, and other hazardous conditions. The annual inspection required by subsection 19 will be considered one of the examinations required by this subsection.
22. Plans for any enlargement, reduction, reconstruction, or other modification of dams or impoundments must be submitted to the commission. Commission approval of these plans is required before modification begins, unless a modification is necessary to eliminate a hazard to public health, safety, or the environment.
23. Sedimentation ponds or other sediment control measures may not be removed until authorized by the commission and the disturbed area has been stabilized and revegetated. The ponds or other measures may not be removed sooner than two years after the last augmented seeding unless the last augmented seeding is a supplemental seeding into an established vegetation stand that is effectively controlling erosion. When the pond is removed, the affected land must be reclaimed, unless the pond has been approved by the commission for retention. If the commission approves retention, the pond must meet all the requirements for permanent impoundments of section 69-05.2-16-12.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; May 1, 1999; March 1, 2004; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-22

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are contained in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years.
3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be determined for each postmining land use according to the following procedures:
 - a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.
 - b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.
 - c. For prime farmland, annual average crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for a minimum of three crop years.

- d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.
 - e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.
4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive growing seasons~~ any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive growing seasons~~ any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
 - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

- (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

- (a) Be healthy;
- (b) Be in place for at least two growing seasons; and
- (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period. If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and~~
- (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted toward meeting success standards; however, volunteer trees must be at least thirty inches [76 centimeters] in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding;

- (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
- (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.

- f. For shelterbelts, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted toward meeting success standards; however, volunteer trees must be at least thirty inches [76 centimeters] in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding;
 - (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
 - (3) Erosion must be adequately controlled.
9. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the last two consecutive years growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
 - h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years growing season of the last year of the responsibility period:
 - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.

(2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.

- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
- j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
- k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
- l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands. If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.~~

5. Throughout the liability period the permittee must:

- a. Maintain any necessary fences and use proper management practices; and
- b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997; May 1, 1999; May 1, 2001; March 1, 2004; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

CHAPTER 69-05.2-24

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection 92 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.
 - a. A primary road is any road which is:
 - (1) Used for transporting coal or spoil;
 - (2) Frequently used for access or other purposes for a period in excess of six months; or
 - (3) To be retained for an approved postmining land use.
 - b. An ancillary road is any road not classified as a primary road.
2. Each road must be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:
 - a. Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.
 - b. Control or prevent damage to fish, wildlife, or their habitat and related environmental values.
 - c. Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.
 - d. Neither cause nor contribute to, directly or indirectly, the violation of state or federal water quality standards applicable to receiving waters.
 - e. Refrain from seriously altering the normal flow of water in streambeds or drainage channels.
 - f. Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the national park system, the national wildlife refuge system, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including designated study rivers, and national recreation areas designated by act of Congress.

9. Use nonacid-forming and nontoxic-forming substances in road surfacing.
3. The design and construction or reconstruction of roads must incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the commission.
4. Roads must be located to minimize downstream sedimentation and flooding, but in no case may roads be located in the channel of an intermittent or perennial stream unless specifically approved by the commission under section 69-05.2-16-20, and all other applicable requirements of chapter 69-05.2-16 are met.
5. Roads must be maintained to meet the performance standards of this chapter and any additional criteria specified by the commission.
6. A road damaged by a catastrophic event, such as a flood or earthquake, must be repaired as soon as is practicable after the damage has occurred.

History: Effective August 1, 1980; amended effective May 1, 1992; April 1, 2007.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

APPROVED

DATE: 1-10-07
SJS

MOTION

January 10, 2007

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

Having received approval from the Attorney General and the federal Office of Surface Mining, I move the Commission adopt the proposed amendments to Article 69-05.2 of the North Dakota Administrative Code, and forward them to the Legislative Council for publication, Case No. RC-05-591.

JRD

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PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Clark, Wefald and Cramer
Illona A. Jeffcoat-Sacco
Bill Binek

FROM: 
Jim Deutsch

DATE: January 3, 2007

SUBJECT: Reclamation Rulemaking, Case No. RC-05-591

In November 2005, the Commission proposed a number of reclamation rules that were based on suggestions from the Lignite Energy Council and staff proposals. After receipt of the Attorney General's opinion in May 2006, the changes were submitted to the Office of Surface Mining as State Program Amendment XXXVI. OSM approved the changes on December 20, 2006 and the Commission can now adopt the changes and submit them to Legislative Council for review by the Legislative Rules Committee and publication in the Administrative Code. Attached is a motion for the January 10 Commission meeting and draft letter to the Legislative Council.

The most significant changes in this rulemaking case pertain to data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. These changes are very similar to those adopted by OSM this past August. The other changes relate to lease documents in mining permits; newspaper notices for permit applications; copies of advertisements and other information needed for bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and correcting a cross reference error in a rule on roads.

Attachments

Caselib\050591\3.doc



Public Service Commission

State of North Dakota

COMMISSIONERS

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January 10, 2007

John Walstad, Code Revisor
Legislative Council
State Capitol
Bismarck, North Dakota 58505

Re: Public Service Commission
Reclamation
Rulemaking
Case No. RC-05-591

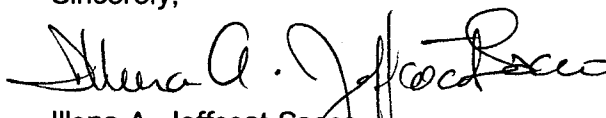
Dear Mr. Walstad:

Enclosed please find a copy of amendments to Article 69-05.2 concerning surface coal mining and reclamation rules. The Commission's April 12, 2006, order includes a summary of the comments and the written record of the agency's consideration of all comments. A copy of the order is attached.

By letter dated May 15, 2006, the Attorney General approved the proposed rules as to their legality. A copy of that letter is also attached. On December 20, 2006, these rule changes were also approved by the federal Office of Surface Mining as being consistent with counterpart federal regulations. On January 10, 2007, the Public Service Commission adopted the rules as approved, and is now submitting the rule changes for publication in the North Dakota Administrative Code.

Thank you for your attention to this matter.

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary

Attachments

(ii) *Conclusion.* The grant made on January 1, 2005, is treated as 100 shares until the determination date in 2008. The grant made on March 1, 2005, is not taken into account until the 2006 determination date and its present value on that date, along with the then present value of the grant made on December 31, 2005, is treated as a number of shares that are based on the \$8 per share value on the 2006 determination date, with the resulting number of shares continuing to apply until the determination date in 2008. On the January 1, 2008, determination date, the grant made on the preceding day is taken into account at its present value of \$3,000 on January 1, 2008 and the \$15 per share value on that date with the resulting number of shares (200) continuing to apply until the next determination date. In addition, on the January 1, 2008, determination date, the number of shares determined under other grants made between January 1, 2005 and December 31, 2007, must be revalued. Accordingly, the aggregate value of all nonqualified deferred compensation granted during that period is determined to be \$3750 on January 1, 2008, and the corresponding number of shares of synthetic equity based on the \$15 per share value is determined to be 250 shares on the 2008 determination date, with the resulting aggregate number of shares (450) continuing to apply until the determination date in 2011. On the January 1, 2011, determination date, the aggregate value of all nonqualified deferred compensation is determined to be \$7,600 and the corresponding number of shares of synthetic equity based on the \$20 per share value on the 2011 determination date is determined to be 380 shares (with the resulting number of shares continuing to apply until the day before the determination date in 2014, assuming no further grants are made).

(i) *Effective dates—(1) Statutory effective date.* (i) Except as otherwise provided in paragraph (i)(1)(ii) of this section, section 409(p) applies for plan years ending after March 14, 2001.

(ii) If an ESOP holding stock in an S corporation was established on or before March 14, 2001, and the election under section 1362(a) with respect to that S corporation was in effect on March 14, 2001, section 409(p) applies for plan years beginning on or after January 1, 2005.

(2) *Regulatory effective date.* This section applies for plan years beginning on or after January 1, 2006. For plan years beginning before January 1, 2006, § 1.409(p)–1T (as it appeared in the

April 1, 2005, edition of 26 CFR part 1) applies.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: November 30, 2006.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).
[FR Doc. E6–21669 Filed 12–19–06; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–049–FOR, Amendment No. XXXVI]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the North Dakota regulatory program (the “North Dakota program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act).

DATES: *Effective Date:* December 20, 2006.

FOR FURTHER INFORMATION CONTACT: Jeff Fleischman, Telephone: 307/261–6550, E-mail address: JFleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North

Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.10, 934.12, 934.13, 934.15 and 934.30.

II. Submission of the Proposed Amendment

By letter dated May 24, 2006, North Dakota sent us an amendment to its program (Amendment number XXXVI, Administrative Record No. ND–KK–01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise are: Rules about data requirements for proving reclamation success, and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. Other changes are minor, including provisions that relate to lease documents in mining permits; newspaper notices for permit applications; copies of advertisements and other information needed for bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and correcting a cross reference error in a rule on roads. With these minor changes, North Dakota proposes to revise its program to improve operational efficiency. Specifically, North Dakota proposes to:

Add language to NDAC 69–05.2–06–03 (right-of-entry requirements) to allow a permittee to delete coal leases from the permit when mining on a tract covered by a lease is completed and the lease is no longer needed to show a right-of-entry. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee the right of entry must be added to the permit.

Delete language to NDAC 69–05.2–10–01 that required the newspaper notice for permit applications include a reference to the U.S. Geological Survey map that contains the area; and add language that limits the listing of coal owners in the notice to those that will be affected by the mining activities.

Revise the bond release application requirements in North Dakota's coal rules at NDAC 69–05.2–12–12 to require the filing of a copy of the newspaper advertisement instead of requiring the submittal of affidavits of publication.

Revise sedimentation pond inspection requirements in North Dakota's coal rules at NDAC 69-05.2-16-09 to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer.

Revise revegetation success standards at NDAC 69-05.2-22-07 to allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language was also proposed for woodland and shelterbelt standards that addresses the replanting of trees and shrubs during the liability period and to allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. Finally, the North Dakota alternative to meeting the revegetation success standards for the last two consecutive growing seasons of the responsibility period was abolished.

Revise the coal rules to correct a reference to the road performance standards at NDAC 69-05.2-24-01.

We announced receipt of the proposed amendment in the July 31, 2006, *Federal Register* (71 FR 43085). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. ND-KK-04).

We did not receive any comments. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 30, 2006.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment, as described below.

A. Minor Revisions to North Dakota's Rules

North Dakota proposed minor changes to the following previously-approved rules:

NDAC 69-05.2-24-01, Performance Standards—Roads—General requirements.

NDAC 69-05.2-10-01(3) and (4), Permit applications—public notices of filing.

Because these changes are minor, we find that they will not make North Dakota's coal rules less effective than the corresponding Federal regulations.

B. Revisions to North Dakota's Rules Containing Language That Is the Same as or Similar to Corresponding Provisions of the Federal Regulations

North Dakota proposed revisions to the following rule containing language that is the same as or similar to the corresponding sections of the Federal regulations.

NDAC 69-05.2-22-07 (30 CFR 817.116), Revegetation—Standards for Success.

Because this proposed rule contains language that is the same as or similar to the corresponding Federal regulations, we find it is no less effective than the corresponding Federal regulations.

C. Revisions to North Dakota's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. NDAC 69-05.2-16-09.(19). Performance Standards—Hydrologic Balance—Sedimentation Ponds—Inspections

The proposed changes to North Dakota's rules on impoundment inspections are being made to clarify the inspection requirements that apply when ponds are being constructed, the requirements for certification by a registered professional engineer following construction, and the requirements for inspections by a registered professional engineer.

Because North Dakota's proposed rule is nearly identical and substantively similar to the corresponding Federal regulations at 30 CFR 816.49(a)(11)(ii) we find that it is no less effective than the corresponding Federal regulation.

2. NDAC 69-05.2-12-12. Release of Performance Bond—Bond Release Application

North Dakota proposed two changes to this rule involving bond release. The first involves the requirement to submit "proof of publication" of the announcement of the application for bond release.

Instead, North Dakota proposes that permittees will be required to submit a "copy of the newspaper advertisement that was published." This change is no less effective than the Federal rule at 30 CFR 800.40(a)(2) which requires submission of a copy of the newspaper advertisement within 30 days after an application for bond release has been filed with the regulatory authority.

The second change to this rule is a simple cross-reference to another North Dakota provision that enumerates the additional information that permittees must include in their application when a premine water delivery system will not be replaced. This provision is not found in the Federal rules but is consistent with them.

D. Revisions to North Dakota's Rules With No Corresponding Federal Regulations

NDAC 69-05.2-06-03. Permit Applications—Right of Entry and Operation Information

This addition to North Dakota's rules does not have a Federal counterpart. It simply requires the permit applicant to submit certified copies of documents showing the right-to-mine or to otherwise disturb the surface of lands within the proposed permit area. It is more stringent than the Federal rules since the Federal rules have no such requirement.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. ND-KK-03), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND-KK-03). We did not receive any.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

We note that none of the proposed changes relate to air or water quality standards. Nevertheless, under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. ND-KK-03). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that

may have an effect on historic properties. On June 1, 2006, we requested comments on North Dakota's amendment (Administrative Record No. ND-KK-03), but neither responded to our request.

V. OSM's Decision

Based on the above findings we approve North Dakota's May 24, 2006, amendment.

We approve the rules as proposed by North Dakota with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations

and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within

the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 22, 2006.

Allen D. Klein,
Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
May 24, 2006	December 20, 2006	NDAC 69-05.2-06-03 NDAC 69-05.2-10-01 NDAC 69-05.2-12-12 NDAC 69-05.2-16-09 NDAC 69-05.2-22-07 NDAC 69-05.2-24-01

[FR Doc. E6-21716 Filed 12-19-06; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE TREASURY

Monetary Offices

31 CFR Part 82

Prohibition on the Exportation, Melting, or Treatment of 5-Cent and One-Cent Coins

AGENCY: United States Mint, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: To protect the coinage of the United States, this interim rule prohibits the exportation, melting, and treatment of 5-cent and one-cent coins. This interim rule is issued pursuant to 31 U.S.C. 5111(d), which authorizes the Secretary of the Treasury to prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States. This interim rule is effective until April 14, 2007. The public is invited to comment until January 14, 2007. Thereafter, but prior to April 14, 2007, the Department of the Treasury will reevaluate the need for the rule in light of the public comments, and other relevant factors. Upon consideration of the public comments and other relevant factors, the Department of the Treasury may issue a final rule extending or modifying

the provisions of this interim rule, or may allow the interim rule to expire without extension.

DATES: *Effective Date:* This interim rule is effective December 20, 2006 through April 14, 2007.

Expiration Date: Unless extended by a further rulemaking document published in the **Federal Register**, this interim rule expires April 14, 2007.

Comment Due Date: January 19, 2007.

ADDRESSES: Send written comments to Daniel P. Shaver, Chief Counsel, Office of Chief Counsel, United States Mint, 801 9th Street, NW., Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Kristie Bowers, Attorney-Advisor, United States Mint at (202) 354-7631 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background

Section 5111(d) of title 31, United States Code, authorizes the Secretary of the Treasury to prohibit or limit the exportation, melting, or treatment of United States coins when the Secretary decides the prohibition or limitation is necessary to protect the coinage of the United States. In enacting 31 U.S.C. 5111(d), Congress has conferred upon the Secretary of the Treasury broad discretion to ensure that he can effectively carry out his statutory duties to protect the Nation's coinage and to ensure that sufficient quantities of coins are in circulation to meet the needs of the United States. Pursuant to this authority, the Secretary of the Treasury

has determined that, to protect the coinage of the United States, it is necessary to generally prohibit the exportation, melting, or treatment of 5-cent and one-cent coins minted and issued by the United States. The Secretary has made this determination because the values of the metal contents of 5-cent and one-cent coins are in excess of their respective face values, raising the likelihood that these coins will be the subject of recycling and speculation. In fact, the Department has received anecdotal reports suggesting that this activity may already be occurring. The prohibitions contained in this interim rule apply only to 5-cent and one-cent coins.

The primary reason for limiting the melting, exportation, and treatment of 5-cent and one-cent coins is to avoid a shortage of these coins in circulation. Under 31 U.S.C. 5111(a)(1), the core responsibility of the Secretary of the Treasury with respect to the Nation's coinage is to "mint and issue coins * * * in amounts the Secretary decides are necessary to meet the needs of the United States." In meeting the needs for low-value circulating coin denominations, the United States Mint estimates that it augments and replenishes only about four percent of the Nation's 5-cent coin supply, and only about eight percent of the one-cent coin supply, each year. Accordingly, the extraction of even relatively small amounts of these coins from circulation could have a significant impact on the United States Mint's ability to produce

SCANNED

Date 06

File OSM rept Htr 5-30-06

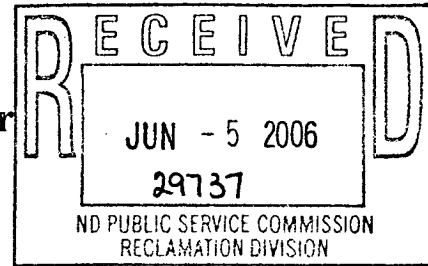
United States Department of the Interior



IN REPLY REFER TO:

OFFICE OF SURFACE MINING

Reclamation and Enforcement
Casper Field Office
150 East "B" Street, Rm 1018
Casper, Wyoming 82601



May 30, 2006

Mr. Jim Deutsch, Director
Reclamation Division
North Dakota Public Service Commission
600 E. Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480

FROM: Willis Gainer, Acting Director

Date: 6-5-06

Action: _____

Info: Copy _____

Int: _____

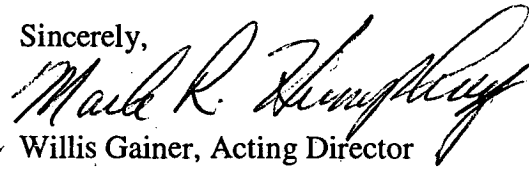
Dear Mr. Deutsch:

This letter is to acknowledge our receipt of your formal program amendment package (Amendment XXXVI) to North Dakota's approved reclamation program. These proposed changes to the North Dakota Administrative Code address data requirements for reclamation success and revegetation success standards among other things.

They will be distributed to our list of other interested parties and Federal agencies and our office will initiate the formal review process on the material submitted by you dated May 26, 2006.

If you have any questions or if we can be of further assistance in this matter, please feel free to contact this office again.

Sincerely,

for 
Willis Gainer, Acting Director
Casper Field Office

APPROVED

DATE: 5-24-06
AS

MOTION

May 24, 2006

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

I move the Commission submit the mining and reclamation rule changes proposed in Case No. RC-05-591 to the Office of Surface Mining as State Program Amendment XXXVI.

jrd

caselib\050591\1.doc

**NORTH DAKOTA
STATE
PROGRAM
AMENDMENT XXXVI**

**SUBMITTED BY:
PUBLIC SERVICE COMMISSION
STATE CAPITOL
BISMARCK, NORTH DAKOTA**

MAY 24, 2006

Table of Contents

North Dakota State Program Amendment XXXVI

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- D. Copy of the Attorney General's Opinion**
- E. Side by Side Comparison of State and Federal Rules**



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

Mr. Allen D. Klein
Western Regional Coordinating Center
Office of Surface Mining
1999 Broadway, Suite 3320
Denver, CO 80202-5733

Dear Mr. Klein:

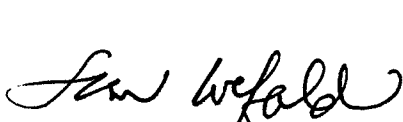
The Public Service Commission is submitting State Program Amendment XXXVI on behalf of the State of North Dakota in order to modify our approved coal regulatory program. The Amendment is submitted under the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) and 30 CFR Chapter VII.

State Program Amendment XXXVI contains several revised rules under North Dakota Administrative Code Article 69-5.2. The most significant changes pertain to data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. These changes are very similar to those proposed by OSM in March of 2005. We understand OSM will be soon issuing final revegetation rules that are based on the March 2005 proposals.

The other changes are more minor in nature. These include provisions that relate to lease documents in mining permits; newspaper notices for permit applications; copies of advertisements and other information needed for bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and correcting a cross reference error in a rule on roads.

The amendment contains a narrative, the proposed changes North Dakota Administrative Code Article 69-05.2, a copy of the Attorney General's opinion on the legality of the changes and a side-by-side comparison of the state rules to the counterpart federal rules. Please direct any questions you or your staff may have to the Commission's Reclamation Division.

Sincerely,


Susan E. Wefald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner

Narrative for North Dakota State Program Amendment XXXVI

State Program Amendment XXXVI contains revised rules in North Dakota Administrative Code Article 69-5.2, rules for surface coal mining and reclamation operations. The more significant changes pertain to revegetation success standards that are based on proposed federal rule changes and the others are more minor in nature.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the USGS map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes are proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by OSM in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. Currently, data from the last two consecutive years of the liability period, or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period), must be used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that addresses replanting of trees and shrubs during the liability period and to allow certain volunteer trees and shrubs to count towards meeting the revegetation standards.

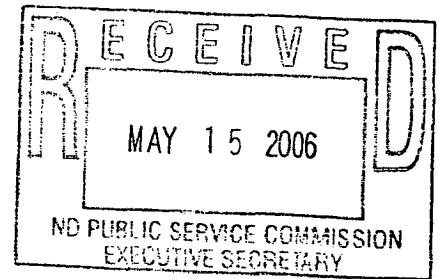
A minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.



Wayne Stenehjelm
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226



OPINION

May 15, 2006

Ms. Ilona Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 69-05.2 concerning reclamation, N.D.A.C. art. 69-06 concerning facilities siting, and N.D.A.C. art. 69-09 concerning the renewable electricity and recycled energy tracking system, telephone interconnection agreement filing, and telecommunications registration, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and economic impact statement were prepared, 5) a stringency justification was not prepared, and 6) the proposed rules are within the agency's statutory authority. Further, as required by federal law, the proposed reclamation rules in N.D.A.C. art. 69-05.2 do not conflict with any provisions of existing state law or rules.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjelm
Attorney General

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Opinion

by Attorney General

05/15/2006: Comm Legal, Wayne Pat, Jerry, Annette

**STATE PROGRAM AMENDMENT XXXVI
(PSC Case No. RC-05-591)**

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.
2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) ~~Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.~~
 - (4) Show the north point (if a map).
 - (5 4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

69-05.2-12-12. Release of performance bond - Bond release application.

3. Within thirty days after filing a request for bond release, the permittee shall submit ~~proof of the publication~~ a copy of the newspaper advertisement that was published as required by

North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.

8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds.

19. Impoundment inspections.

- a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.
- b. Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ Reports for each inspection during construction must be prepared and maintained at or near the mine site.
- c. ~~After each inspection impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability~~ a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.
- d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any

other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.

e. A copy of the inspection reports must be maintained at or near the mine site.

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
 - a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
 - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
 - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half shrub replanting has occurred during the last six years of~~

~~the revegetation responsibility period. If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and~~

- (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
 - (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
 - (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half shrub replanting has occurred during the last six years of the revegetation responsibility period. If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and~~
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
 - (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and

(3) Erosion must be adequately controlled.

- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the last two consecutive years growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years growing season of the last year of the responsibility period:
 - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
 - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.
- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
- j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
- k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
- l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands.~~ If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period ~~and with one year being the last year of the responsibility period~~. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
30 CFR Sec. 773.6 Public participation in permit processing. (a) Filing and public notice. (1) Upon submission of an administratively complete	69-05.2-06-03. Permit applications - Right of entry and operation information. 1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06. 2. <u>Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:</u> <u>a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or</u> <u>b. The lease has expired or has been terminated.</u> <u>If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.</u> 69-05.2-10-01. Permit applications - Public notices of filing. 1. The advertisement required by North Dakota Century Code section 38-14.1-18 must	There is no federal counterpart to the North Dakota rule that requires the permit applicant to submit certified copies of documents showing the right-to-mine or to otherwise disturb the surface of lands within the proposed permit area.

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
application, an applicant for a permit, significant revision of a permit under Sec. 774.13, or renewal of a permit under Sec. 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following: (i) The name and business address of the applicant. (ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction. 30 CFR Sec. 800.40 Requirement to release performance bonds.	also include: a. The applicant's name and business address. b. A map or description which must: (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area. (2) Clearly show or describe the exact location and boundaries of the permit area. (3) ~~Name the United States geological survey 7.5 minute quadrangle map which contains the area shown or described.~~ (4) Show the north point (if a map). (5) State the name of each owner of record of surface rights and, <u>if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights</u> within the permit boundaries. 69-05.2-12-12. Release of performance bond - Bond release application.	Changes are proposed to North Dakota's rule to delete the reference to the USGS quadrangle map that contains the proposed permit area. The counterpart provision was deleted from the OSM rule several years ago. North Dakota's rule on newspaper notices for new applications includes language that requires the applicant to list surface and coal owners within the proposed permit area. The proposed changes limit the listing of coal owners to tracts that will be mined and those where mining activities may impact future coal recovery. There is no federal counterpart to this specific provision.

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
(a) Bond release application. (2) Within 30 days after an application for bond release has been filed with the regulatory authority, the permittee shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation.	3. Within thirty days after filing a request for bond release, the permittee shall submit <u>proof of the publication a copy of the newspaper advertisement that was published</u> as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name. 8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include: <u>d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.</u> 69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds. 19. Impoundment inspections. a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision <u>b, c and d</u>. The registered professional engineer and specialist must be experienced in the construction of impoundments.	The North Dakota provision that currently requires the permittee to submit "proof of publication" for bond release advertisements is being changed to require a copy of the advertisement that was published in the newspaper. This is consistent with the current federal rule. A cross-reference to a provision not found in the federal rules is being added to North Dakota's rule that lists information that is needed in final bond release applications. This language is being added to help ensure permittees include the additional information when necessary. The proposed changes to North Dakota's rules on impoundment inspections are being made to clarify the inspection requirements that apply when ponds are being constructed, the post-construction certification by a registered professional engineer, and the annual inspection by a registered professional engineer.
30 CFR Sec. 816.49 Impoundments. (11) Inspections. Except as provided in paragraph (a)(11)(iv) of this section, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in paragraph (a)(11)(i) of this section. The professional engineer or specialist shall be experienced in the construction of impoundments.		

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond. (ii) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in paragraph (a)(11)(iv) of this section, shall promptly after each inspection required in paragraph (a)(11)(i) of this section provide to the regulatory authority a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearance of instability, structural weakness or other hazardous condition, depth and elevation of any impounded waters, existing	b. Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ <u>Reports for each inspection during construction must be prepared and maintained at or near the minesite.</u> c. ~~After each inspection~~ <u>impoundment construction is complete</u>, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been <u>inspected during construction on a regular basis and it has been</u> constructed ~~or maintained~~ as designed and according to the approved plan and this chapter. The report must include ~~discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability~~ <u>a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.</u> d. <u>After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered</u>	

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. (iii) A copy of the report shall be retained at or near the minesite. Sec. 817.116 Revegetation: Standards for success. (b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions: <i>(As proposed March 17, 2005)</i> (3) For areas to be developed for fish and wildlife habitat, recreation, undeveloped land, or forest products, success of vegetation shall be determined on the basis of tree and	<u>professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.</u> <u>e.</u> A copy of the inspection reports must be maintained at or near the minesite. 69-05.2-22-07. Performance standards - Revegetation - Standards for success. 4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following: a. For native grassland, the following must be achieved for ~~the last two consecutive~~ <u>any two years after year six</u> of the responsibility period: (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area	The proposed changes to North Dakota's rule containing revegetation success standards are very similar to some of those that were proposed by OSM in March of 2005. We understand OSM will issue a final rule based on these proposals. Assuming that OSM will adopt the proposed changes as final rules, North Dakota proposed some of the changes in order to expedite the rulemaking process. We hope this will result in some tracts receiving final bond release a year or two

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
shrub stocking and vegetative ground cover. * ** (i) *** (ii) *** The requirements of this section apply to trees and shrubs that have been seeded or transplanted and can be met when records of woody vegetation planted show that no woody plants were planted during the last 2 growing seasons of the responsibility period and, if any replanting of woody plants took place during the responsibility period, the total number planted during the last 60% of that period is less than 20% of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking. This final accounting may include volunteer trees and shrubs of approved species. Volunteer trees and shrubs of approved species shall be deemed equivalent to planted specimens 2 years of age or older and can be counted towards success. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding. ***** (c)(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4)	or standard with ninety percent statistical confidence; and (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard. b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive~~ <u>any two years after year six</u> of the responsibility period. c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive~~ <u>any two years after year six</u> of the responsibility period. d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed. e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ <u>growing season of the last year</u> of the responsibility period:	sooner. The North Dakota changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. In addition, only one year of vegetation data will be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language also addresses replanting trees and shrubs during the liability period and allowing certain volunteer trees and shrubs to be counted for meeting revegetation standards.

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
of this section. ***** (3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than: <i>(As proposed March 17, 2005)</i> (i) Ten full years, except as provided in paragraph (c)(3)(ii) of this section. The vegetation parameters identified in paragraph (b) of this section for grazingland, pastureland, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years after year 6 of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period. (ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.	(1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria: (a) Be healthy; (b) Be in place for at least two growing seasons; and (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period. If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and~~ (d) <u>Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards</u>	

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
	<u>meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.</u> (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates. f. For shelterbelts, the following must be achieved during the <u>last two consecutive years growing season of the last year</u> of the responsibility period: (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria: (a) Be healthy; (b) Be in place for at least two growing seasons; and	

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
	(c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period. If any replanting of woody plants took place took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and~~ (d) <u>Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.</u> (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and (3) Erosion must be adequately controlled. g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation	

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
	zones and dominant species must be equal to those of the approved standard <u>during the last two consecutive years growing season of the last year</u> of the responsibility period. In addition, wetland permanence and water quality must meet approved standards. h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the <u>last two consecutive years growing season of the last year</u> of the responsibility period: (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion. (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard. i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.	

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
	j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion. k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use. l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands. If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime~~	

Comparison of Federal and State Rules

Federal Rule	State Rule	Comments
	areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period ~~and with one year being the last year of the responsibility period~~. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract. 69-05.2-24-01. Performance standards - Roads - General requirements. 1. Each road, as defined in subsection ~~92~~ <u>93</u> of section 69-05.2-01-02, must be classified as either a primary or ancillary road.	The change to the general performance standards for roads corrects a cross reference error.

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Clark, Wefald and Cramer
Illona Jeffcoat-Sacco
Bill Binek

FROM:  Jim Deutsch, Reclamation Division

DATE: May 18, 2006

SUBJECT: Submittal of the rule changes in Case No. RC-05-591 to OSM as State Program Amendment No. XXXVI

On May 15th we received a favorable legal opinion from the Attorney General on the rule changes proposed in Case No. RC-05-591. Before the Commission can adopt these changes, we also need to receive the Office of Surface Mining's approval of the changes through the State Program Amendment process. The necessary documents have been prepared for the amendment and I recommend the rule changes be submitted to OSM as State Program Amendment No. XXXVI.

The most significant changes pertain to data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. These changes are very similar to those proposed by OSM in the spring of 2005. We understand OSM will soon be issuing a final rule with these changes.

The other changes are more minor in nature. These include provisions that will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United States Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; copies of newspaper advertisements and information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and correcting a cross reference error in the general requirements for roads.

The program amendment contains a cover letter to OSM, narrative describing the changes, the rule changes, a copy of the Attorney General's opinion, and a side-by-side comparison of our state rules to the counterpart federal rules.

Attached is a motion for the May 24th Commission meeting to submit the changes to OSM. Also attached is a copy of the materials that will be submitted as State Program Amendment No. XXXVI.

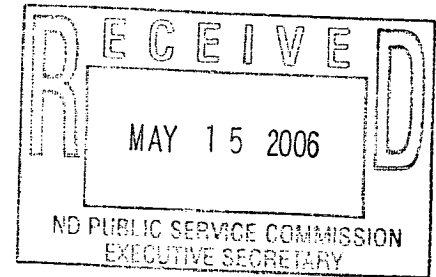
Attachments



Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
600 E BOULEVARD AVE DEPT 125
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226



OPINION

May 15, 2006

Ms. Illona Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 69-05.2 concerning reclamation, N.D.A.C. art. 69-06 concerning facilities siting, and N.D.A.C. art. 69-09 concerning the renewable electricity and recycled energy tracking system, telephone interconnection agreement filing, and telecommunications registration, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and economic impact statement were prepared, 5) a stringency justification was not prepared, and 6) the proposed rules are within the agency's statutory authority. Further, as required by federal law, the proposed reclamation rules in N.D.A.C. art. 69-05.2 do not conflict with any provisions of existing state law or rules.

These administrative rules are in substantial compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

46 PU-05-364

Pages: 1

Opinion

42 PU-05-575

Pages: 1

Opinion

by Attorney General

05/15/2006: Comm Legal, Illona Pat, Jerry, Annette

26 RC-05-591 ✓

Pages: 1

23 PU-05-602

Pages: 1

Opinion

by Attorney General

05/15/2006: Comm Legal, Illona Pat, Jerry, Annette



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

April 24, 2006

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The Honorable Wayne Stenehjem
Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0040

Re: Administrative Rule Making
Case Nos. PU-05-364, PU-05-575, RC-05-591 and PU-05-602

Dear Attorney General Stenehjem:

Enclosed please find the proposed new and amendments to N.D. Admin. Code articles 69-05.2, 69-06 and 69-09 by the North Dakota Public Service Commission. The proposed rules have been approved by the Public Service Commission. In accordance with N.D.C.C. § 28-32-14, Public Service Commission requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code. In the case of Reclamation rule changes, as a requirement of the Federal program under which we operate, we also request that the opinion include a statement indicating that the rules do not conflict with any provisions of existing state law or rules. The time for review of these rules should be recorded under 03-31 and 03-106.

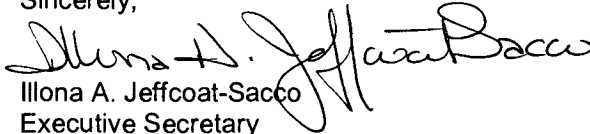
Copies of the following Commission documents are enclosed to assist your review:

1. Copy of Order Submitting Rules to Attorney General dated April 12, 2006. This order includes a discussion of the comments and the Commission's consideration of the comments;
2. Copy of proposed rules;
3. Copy of takings assessments, summaries and regulatory analyses, as applicable, and written comments;
4. Commission's Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated November 17, 2005, and abbreviated notice of intent to adopt;
5. Commission's Amended Notice of Intent to Amend Administrative Rules and Notice of Public Hearing dated November 22, 2005, and abbreviated notice of intent to adopt;
6. Proof of publication; and
7. Proof of filing with Legislative Council;

If you have any questions, do not hesitate to contact us.

Thank you.

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary

25 RC-05-591

Pages: 1

Letter to Attorney General requesting opinion
by Public Service Commission
04/24/2006

APPROVED

DATE: 4-12-06
KMF

MOTION

C-TCI

April 12, 2006

**Public Service Commission
Public Utilities - Electric
Rulemaking**

Case No. PU-05-364

**Public Service Commission
Public Utilities - Telephone
Rulemaking**

Case No. PU-05-575

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

**Public Service Commission
Public Utilities – Siting
Rulemaking**

Case No. PU-05-602

I move the Commission adopt the Order submitting rules to the Attorney General for an opinion as to legality and whether they conflict with any other state law or rule, Case Nos. PU-05-364, PU-05-575, RC-05-591, and PU-05-602.

Article 69-05.2

Amendments to Reclamation

Article 69-06

Amendments to Siting

Article 69-09

Amendments to Telecommunication and
Electric

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Public Utilities - Electric
Rulemaking**

Case No. PU-05-364

**Public Service Commission
Public Utilities - Telephone
Rulemaking**

Case No. PU-05-575

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

**Public Service Commission
Public Utilities – Siting
Rulemaking**

Case No. PU-05-602

ORDER

April 12, 2006

Appearances

Commissioners Tony Clark, Susan Wefald, and Kevin Cramer.

Preliminary Statement

On November 17, 2005, the North Dakota Public Service Commission (Commission) issued its notice of proposed rulemaking, and on November 22, 2005, the Commission issued an amended notice of proposed rulemaking proposing to revise several sections of the Administrative Code including the following:

Public Utilities – Electric: Case No. PU-05-364

Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

Public Utilities – Siting: Case No. PU-05-602

Proposed changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Public Utilities – Telephone: Case No. PU-05-575

Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings.

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

Proposed changes to North Dakota Administrative Code Section 69-09-05-12 concern the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier. These proposed changes are not being addressed in this order but will be addressed at a later time.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of adding a requirement for filing an informational cover sheet and formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Reclamation: Case No. RC-05-591

Several changes are proposed to rules that pertain to the coal mining and reclamation regulatory program. The changes will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United State Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; adding a cross reference to another rule for information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and modifying data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. A cross reference error is also being corrected in the general requirements for

roads. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Public Hearing

A public hearing on the proposed rule changes was noticed for and held at 1:00 p.m. January 4, 2006. The hearing was held in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The notice of rulemaking was published once in all official county newspapers as evidenced by the affidavit of publication on file with the Commission. The notice was also forwarded to the Legislative Council for publication at least 20 days in advance of the January hearing.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

The following discusses the comments that were received in each case listed above:

Public Utilities – Electric – Case No. PU-05-364

Commission staff presented testimony at the hearing explaining changes proposed to the Commission's administrative rules to create Chapter 69-09-08 of the North Dakota Administrative Code pertaining to the establishment of a renewable electricity and recycled energy tracking system.

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02-24 thru 49-02-26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

The proposed rules provide that the Commission may designate a tracking system administrator. The proposed rules set forth the responsibilities of the designated administrator and conditions under which the administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program.

HB 1314 was enacted with recognition that a Midwest Renewable Energy Tracking System (M-RETS) is being developed in our region. The goal is for MRETS to be operational by year-end 2006. Voluntary participation in MRETS is expected to be substantial across several Midwestern states. It is expected that a new regional market

will emerge for the trading of renewable energy certificates that can be used to demonstrate the "use of green power," regardless whether physical delivery of renewable energy actually occurs. For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to a renewable energy objective that 10% of electricity used in Minnesota be from renewable sources by 2015. The proposed rules would enable Minnesota utilities to meet their Minnesota renewable energy objective with renewable energy certificates from North Dakota sources.

During the hearing, Montana-Dakota Utilities Co. recommended minor clarifying language changes and these are incorporated into the proposed rules. The hearing record was left open for further comment and on January 17, 2006 Missouri River Energy Services (MRES) filed written comments recommending: 1) Master metering should be allowed for multiple generating units to make reporting requirements easier; and 2) The definition of a Renewable Energy Credit in subsection 69-09-08-02(8) should specify the amount of energy equal to a credit. The Commission agrees with MRES' recommendation for allowing master metering, and relevant language is incorporated into the proposed rules. The proposed rules already include a definition of renewable energy credit with the amount of energy set at one megawatt hour so MRES' recommendation to define the amount of energy equal to a credit was not necessary and no changes regarding that suggestion were made. No other comments have been received.

Public Utilities – Telephone – Case No. PU-05-575

Commission staff testified that proposed new section 69-09-05-14 of the North Dakota Administrative Code would add a requirement for filing an informational cover sheet and formalize existing procedure for processing of negotiated interconnection agreements filed for Commission approval under 47 U.S.C section 252(e). This existing procedure is detailed on the Commission's web site and has been working well for several months. Under this existing procedure interconnection agreements are posted on the Commission's web page when filed. The Commission accepts written comments on interconnection agreements for sixty days. Absent Commission action within 90 days, the agreement is deemed approved under 47 U.S.C. section 252(e)(4).

Written comments on the proposed rules were received from a group of North Dakota wireless carriers (Wireless Partnerships) in response to the public notice issued by the Commission in this proceeding on November 22, 2005. The Wireless Partnerships propose that the proposed rules should be modified to exclude the assignment, assumption or transfer of agreements. They contend that Commission approval of the assignment or transfer of an interconnection agreement is not required or authorized under 47 U.S.C. section 252(e) or under N.D.C.C. section 49-21-01.7(9). They further contend that requiring such approval is unnecessary and an impediment to any transaction in which an interconnection agreement is assigned.

Staff did not object to eliminating the requirement for Commission approval of assumptions, assignments or transfer of previously approved interconnection agreements. Staff noted that this requirement has been Commission practice all along and believes there is value in maintaining the existing database of interconnection

agreements and parties to them. Therefore, staff recommended modifying proposed new subsection 6 to require that a notification be filed with the Commission within thirty days after the assignment, assumption or transfer occurs. No other comments have been received.

There were no objections to the staff proposal and the proposed rules are modified accordingly.

Staff testified that the proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. Telecommunications companies that are not incumbent local exchange companies are no longer required to obtain a certificate of registration from the Commission. The companies now provide the required information via the internet.

The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

One written comment was received regarding these rules from the Rural Telephone Company Group, but that comment was directed at the need for an existing rule that was not proposed to be repealed. The comment noted no need for North Dakota Administrative Code section 69-06-05-04.1, concerning the identification of intraLATA interexchange carriers. However, the proposed rule package only proposed a change to that section to delete any reference to certificates of public convenience and necessity or registration certificates, since under the new statutory scheme, certificates will not be granted to any company except incumbent companies. The changes proposed to this section simply make this section consistent with the new law. The issue of the need for the section is not an issue before the Commission at this time. The Rural Telephone Company Group may petition the Commission for a repeal of this section at any time.

One comment was received at the hearing from Alltel requesting that a definition be included in these rules for the term "facilities-based." Although a follow-up written suggestion for such a definition was offered by Alltel, none was received. The Commission concludes that because the term "facilities-based" is used in the enabling legislation and has been used in the regulation of the industry for many years, no definition need be incorporated into the rules at this time. No other comments have been received.

Public Utilities – Siting – Case No. PU-05-602

Subsection 69-06-08-01(4) of the North Dakota Administrative Code sets forth policy criteria for the siting of energy conversion facilities and 69-06-08-02(4) sets forth policy criteria for the siting of energy transmission facilities. Both sections provide that the Commission may require, or give preference to an applicant that will maximize

benefits that result from, the policies and practices listed therein. The amendment being proposed is identical for both sections and states that the Commission may also give preference to an applicant that will maximize interstate benefits of proposed projects.

Commission staff testified that these amendments are being proposed to clarify the Commission's ability to consider interstate benefits of energy conversion and transmission facilities when determining whether to issue siting permits. This clarification is necessary to help ensure that the Commission's siting authority will not be federally pre-empted under the federal Energy Policies Act of 2005. Section 216 of that act provides that the U.S. Department of Energy is to designate national interest electric transmission corridors and authorizes the Department to issue construction permits within those designated corridors if, among other things, the state does not have authority to approve the siting of facilities or to consider the interstate benefits expected to be achieved from the facilities. No other comments have been received.

Reclamation – Case No. RC-05-591

The changes are proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be

prepared by a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by the Office of Surface Mining in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. Currently, data from the last two consecutive years of the liability period, or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period), must be used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. These changes should result in some reclaimed tracts being bond released sooner. OSM expects to issue its final rule by early 2006.

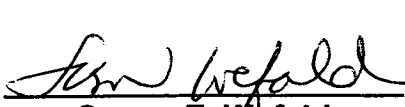
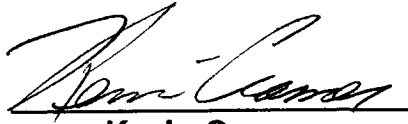
Also, a minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.

No comments were received as a result of the Commission's comment period ending January 17, 2006.

Order

The Commission orders that the proposed changes to several sections of the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are in compliance with North Dakota Century Code Section 28-32-14, do not conflict with any provisions of existing state law or rule, and are approved as to their legality.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner

PROPOSED RECLAMATION RULES

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.
2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) ~~Name the United States geological survey 7.5 minute quadrangle map which contains the area shown or described.~~
 - (4) Show the north point (if a map).

- (5 4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

69-05.2-12-12. Release of performance bond - Bond release application.

3. Within thirty days after filing a request for bond release, the permittee shall submit ~~proof of the publication~~ a copy of the newspaper advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.
8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
- The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds.

19. Impoundment inspections.

- A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.
- Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ Reports for each inspection during construction must be prepared and maintained at or near the minesite.
- ~~After each inspection~~ impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include ~~discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting~~

stability a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.

- d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.
- e. A copy of the inspection reports must be maintained at or near the minesite.

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

- 4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
 - a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
 - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
 - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved

standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

- (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
- (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
- (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the

total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and

- (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
- (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
- (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the last two consecutive years growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years growing season of the last year of the responsibility period:
 - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
 - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.
- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
- j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
- k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
- l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last~~

~~year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands.~~ If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period ~~and with one year being the last year of the responsibility period.~~ If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.

PROPOSED SITING RULES

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following

policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

AMENDED PROPOSED RULES

69-09-08 Renewable electricity and recycled energy tracking system.

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions.

1. Designated representative — A responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must

have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. Existing facilities — Renewable energy facilities placed in service before January 1, 2001.
3. New facilities — Renewable energy facilities placed in service on or after January 1, 2001.
4. Program administrator — The independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.
5. Renewable energy certificate — A document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.
6. Renewable energy certificate account — An account maintained by the program administrator for the purpose of tracking renewable energy certificates.

7. Renewable energy certificates tracking program — The process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.

8. Renewable energy credit — The intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour (MWh) of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in Section 69-09-08-04.

9. Renewable energy facility – A facility generating electricity from one or more generating units that exclusively rely on an energy source or fuel included in North Dakota Century Code Section 49-02-25.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program.

Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to

participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under North Dakota Administrative Code Section 69-09-08-07; and
2. Have output that is capable of being physically metered and verified by the program administrator. A renewable energy facility with more than one generating unit may be metered with a single meter.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;
2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;
3. Maintain public information on the program administrator's website that provides tracking program information to interested buyers and sellers of renewable energy certificates;
4. Facilitate private trading of renewable energy certificates;

5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate;
6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April 15 of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, (in megawatts) by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates.

The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.
3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. To be awarded renewable energy certificates, a designated representative must complete the registration process described in this section.

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code Section 49-02-25.
2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a

renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make on-site visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with applicable law and rules.

4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.

5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

Amended
Proposed Interconnection Agreement Filing Rules

69-09-05-14. Procedure for filing negotiated interconnection agreements. Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251, assignments, assumptions or transfers of interconnection agreements, amendments to interconnection agreements, and agreements for Qwest Platform Plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements.
2. Each filing must include a completed cover sheet in a form prescribed by the commission.
3. Filed interconnection agreements will be listed on the commission Internet site for comment by interested parties. The Internet listing will include the date each agreement was filed, and links to the agreement itself.

4. The commission will accept written comments on a listed agreement for 60 days from the date filed.
5. Absent commission action within 90 days of filing to disapprove an agreement (or portion thereof), the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).
6. Any assignment, assumption or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption or transfer occurs.
7. Any amendment to an interconnection agreement requires a new filing with a new 90-day review and comment period.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.7

Proposed Telecommunications Registration Rulemaking

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:
 - a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.
 - b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.
2. A utility may discontinue nonessential services:

- a. If the customer is delinquent in payment for nonessential services.
 - b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.
3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay

for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.

5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency.

The notice must:

- a. Be sent by first-class mail addressed to the billing name and address of the affected account.
- b. Show the amount of the delinquency.
- c. Include the telephone number of the public service commission.
- d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.
- e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

6.
 - a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.
 - b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.
 - c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.
 7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.
 8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:
 - a. Pays the fee for resuming service established in the utility's rate schedules;

- b. Makes a deposit under section 69-09-05-03 (if required by the company); and
 - c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued. Interexchange carriers are not required to resume long-distance service if local service is not connected.
- 9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
- 10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller

or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

11. a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.
 - b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement so long as the interconnection agreement is consistent with law and rules.
12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service

intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1, 1996; July 1, 1997, amendments voided by the Administrative Rules Committee effective, August 16, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

- a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).
- b. "Prepayment" means payments made by customers of a reseller in advance of receiving service. Prepayment includes a deposit and any customer payment for telecommunications service in advance of receiving the full amount of service for which payment is made.
- c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and

reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.

- d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include a cellular and personal communication service provider who resell-wireline resells cellular or other wireless service as part of their cellular or personal communication service.
- e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.
- f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:
- a. ~~Obtain a certificate of registration from~~ Register with the commission, on a form provided by the commission, ~~authorizing~~ indicating the provision of local resale or long-distance resale services in the state of North Dakota.
 - b. If a reseller requires prepayment for service, it shall:
 - (1) Submit a performance bond in an amount specified by the commission; or
 - (2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.
 - (3) ~~The requirements of paragraphs 1 and 2 are waived for any company that has ~~provided~~ cellular or personal communication service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest. Under North Dakota Century Code section 49-03.7-09(7) the bonding~~

requirement does not apply to a facility based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

4. The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card. The required amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or twenty-five thousand dollars, whichever is greater. The required amount of an escrow account is an amount equal to the prepayments at any given time but no less than twenty-five thousand dollars.
- (5) The requirements of paragraphs 1 and 2 are subject to a two thousand five hundred dollar minimum for resellers of any service other than the local service subject to paragraph 4. The amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or two thousand five hundred dollars, whichever is greater.

The amount of an escrow account is an amount equal to the prepayments (including prepaid calling cards) at any given time.

- ~~c. Forfeit its registration if it is voluntarily dissolved or involuntarily dissolved under North Dakota law. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution under North Dakota Century Code section 10-23-02.2.~~
3. A reseller may not be identified as an optional intrastate interexchange carrier without a certificate of registration from unless it is registered with the commission.
 4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.
 5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.
 6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to ~~reregulation by the commission~~, revocation of its certificate authority, and the penalties provided in North Dakota Century Code ~~chapter~~ chapters 49-03.1 and 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective ~~certificate of public convenience and necessity or a current certificate of registration~~ authorizing the provision of intrastate interexchange service.
2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that

the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

- a. "End user" means the person to whom operator service is provided.
- b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.
- c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

- a. ~~Obtain a certificate of registration from~~ Register with the commission authorizing the provision of operator services in the state of North Dakota.
- b. Provide written material for use in disclosing to the end user the name and toll free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.
- c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.
- d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.
- e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider

which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

- f. Not charge for incompleting calls.
- g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-10. ~~Certificate of registration~~ Registration - Procedure.

1. A reseller ~~applying for a certificate of registration or competitive facilities based provider desiring authority to provide service in North Dakota~~ shall ~~file an application~~ register on a form provided by the commission. The ~~application~~ registration shall include ~~evidence~~ identification of the applicant's authority to do business in North Dakota.
2. ~~An applicant for a certificate of registration as a~~ A reseller shall follow the procedure set forth in section 69-09-05-04.
3. When ~~the holder of a certificate of registration~~ a registered company intends to assign ~~the~~ its authority to provide telecommunications service in North Dakota to another entity, the

assignee must first ~~obtain a certificate of registration from~~ register
with the commission.

4. A reseller registered company may voluntarily, without commission approval, surrender its ~~certificate of registration~~ authority by notifying the commission in writing and updating its registration to reflect this surrender.
5. A competitive local exchange company intending to surrender its authority to provide local exchange service must provide twenty days' prior written notice to the company's customers.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company - Procedure.

1. An applicant for a certificate of public convenience and necessity as an incumbent local exchange company shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:
 - a. The type of service the applicant intends to provide.

- b. The service area or areas in which the applicant intends to provide service.
 - c. How the applicant meets the issues to be considered in the application.
- 2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:
 - a. A balance sheet of the form and style usually followed in the industry.
 - b. An income statement of the form and style usually followed in the industry.
 - c. If available, an independent accountant's financial opinion.
 - d. Any other information requested by the commission.
- 3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:
 - a. Fitness and ability of the applicant to provide service.
 - b. Adequacy of the proposed service.

- c. The technical, financial, and managerial ability of the applicant to provide service.
4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.
5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.
6. ~~Abandonment of a certificate of public convenience and necessity for a competitive local exchange company requires prior written notice to the commission and thirty days' prior written notice to the company's customers.~~ Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

**PUBLIC SERVICE COMMISSION
Reclamation Division**

Memorandum

TO: Case No. RC-05-591

FROM: Jim Deutsch, Reclamation Division

DATE: November 14, 2005

SUBJECT: Regulatory and Takings Assessment for mining and reclamation rule changes proposed in Case No. RC-05-591

The Reclamation Division has prepared Regulatory and Takings Assessments as required by North Dakota Century Code (NDCC) Sections 28-32-08.1 and 28-32-09 for the mining and reclamation rule changes proposed in Case No. RC-05-591. NDCC Section 28-32-08.1 requires an agency to prepare a regulatory analysis with regard to the impact of the proposed rules on small entities. NDCC Section 28-32-09 requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property.

NDAC 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The following addresses the provisions of subsection 2 of NDAC 28-32-08.1 with regard to the rule changes proposed in Case No. RC-05-591:

NDCC 28-32-08.1(2)(a) – Establishment of less stringent compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by the rule changes.

NDCC 28-32-08.1(2)(b) – Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by the rule changes.

NDCC 28-32-08.1(2)(c) – Consolidation or simplification of compliance or reporting requirements for small entities.

As previously noted, no additional compliance standards or reporting requirements are proposed by these rule changes. However, since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot

consolidate or simplify the requirements for small entities and maintain an approved state regulatory program for surface coal mining and reclamation operations.

NDCC 28-32-08.1(2)(d) – Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.

No additional performance standards are proposed by these rule changes. Since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot adopt special performance standards for small entities and maintain an approved state regulatory program for surface coal mining and reclamation operations.

NDCC 28-32-08.1(2)(e) – Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by these rule changes. Since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot exempt small entities from the rules that are being modified and maintain an approved state regulatory program for surface coal mining and reclamation operations.

While the proposed rule changes in Case No. RC-05-591 will not limit the use of private real property, the six items listed in NDCC 28-32-09 are addressed below:

NDCC 28-32-09(1)(a) – Assess the likelihood that the proposed rule may result in a taking or regulatory taking.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

NDCC 28-32-09(1)(b) - Clearly and specifically identify the purpose of the proposed rule.

The purpose of the proposed rule is to reduce some information that is currently required for permit and bond release applications, clarify impoundment inspection requirements, reduce some of the vegetation data needed for final bond release and to otherwise revise some for revegetation success standards to be consistent with changes to counterpart federal rules, and correct a cross reference.

NDCC 28-32-09(1)(c) - Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.

We do not expect any impact on private property owners as a result of the proposed rule changes. The changes involve information that must be provided in permit and bond release applications, modify the requirements for impoundment inspections, and revise revegetation success standards for final bond release. The changes may result in some reclaimed lands receiving final bond release a year or two sooner which will also allow the return of these lands to the full control of private property owners somewhat sooner as well.

NDCC 28-32-09(1)(d) - Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

NDCC 28-32-09(1)(e) - Identify the source of payment within the agency's budget for any compensation that may be ordered.

Not applicable, the proposed rule changes will not limit the use of private real property.

NDCC 28-32-09(1)(f) - Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Not applicable, the proposed rule changes will not limit the use of private real property.

Testimony for Case No. RC-05-591

Proposed Changes to NDAC Article 69-05.2 Surface Coal Mining and Reclamation Operations

January 4, 2006

I am Jim Deutsch, Director of the Public Service Commission's Reclamation Division. I will explain the rule changes in Case No. RC-05-591. The changes are proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

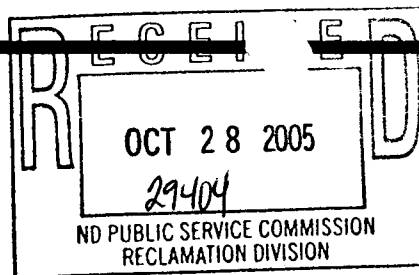
A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes are proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by the Office of Surface Mining in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. Currently, data from the last two consecutive years of the liability period, or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period), must be used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. These changes should result in some reclaimed tracts being bond released sooner. OSM expects to issue its final rule in early 2006.

Also, a minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.

Regulatory and takings assessments for these rule changes have been prepared and copies are available for review. This concludes my testimony on the mining and reclamation rule changes proposed in Case No. RC-05-591.



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October 27, 2005

SERVING:

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Minnkota Power Cooperative
Otter Tail Power Co.
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Basin Electric Power Cooperative
Montana-Dakota Utilities Co.
Otter Tail Power Co.
Xcel Energy

MONTANA

Basin Electric Power Cooperative
Dakota Westmoreland Corporation
Montana-Dakota Utilities Co.

CANADA

Luscar Ltd.
SaskPower

Mr. James R. Deutsch
Director, Reclamation Division
North Dakota Public Service Commission
State Capitol - 13th Floor
600 E. Boulevard Avenue - Dept. 408
Bismarck, ND 58505-0480

Dear Mr. Deutsch:

The Lignite Energy Council is providing comments to proposed draft regulations the Public Service Commission may be considering in the near future. This is a follow-up to the several meetings and discussions between your staff and LEC task force members over the past several months. Our comments address specific proposed rule changes.

Lignite Energy Council proposed changes (see Attachment 1):

1. NDAC 69-05.2-10-01. Permit applications – Public notices of filing.
The proposed rule changes would reduce unnecessary information in public notices. Based on our discussions, we understand our suggested rule changes would be acceptable to the PSC, and we submit them as is.
2. NDAC 69-05.2-12-12. Release of performance bond – Bond release information.
The current rule requires proof of publication within 30 days from filing a bond release application. Such proof of publication (affidavit of publication) is not created until all publications have been conducted, which is beyond the 30-day time limit in the rule. This makes compliance with the current rule virtually impossible. The proposed change is consistent with Federal rules, and fulfills the intent of the regulations. We understand the PSC will accept this change. Based on our discussions, we are not proposing a change to NDAC 69-05.2-12-12 (5), regarding topographic maps at this time.
3. NDAC 69-05.2-16-09. Performance standards – Hydrologic balance – Sedimentation ponds.
We are proposing a restructuring of these rules simply to clarify them. We understand the PSC will accept these, based on our previous discussions.
4. NDAC 69-05.2-16-14. Performance standards – Hydrologic balance – Groundwater monitoring.
Based on our discussions with you and your staff, we understand you will accept a reduced frequency of groundwater summary report submittals, from annual to biennial. We prefer the simple change that we've proposed. Your office has also recommended a change in reporting frequency. Our review of your proposed change to the same rule indicates there is no substantive difference between our two proposals. While we are not opposed to your proposed language, if the meaning and intent is the same as ours, we suggest the simplest, briefest change possible, as described by our submittal.

2 RC-05-591

Pages: 8

Lignite Coal: America's Abundant
www.lignite.com

Comments with suggested rule changes
by Lignite Energy Council
10/28/2005

Mr. James R. Deutsch
October 27, 2005
Page Two

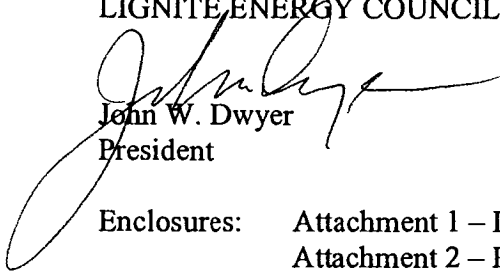
Public Service Commission proposed changes from July 7, 2005 (see Attachment 2):

1. NDAC 69-05.2-06-03 Permit applications – Right of entry and operation information.
Based on discussions between individual LEC task force members and you, we will agree with the change your office has proposed. This will eliminate the inclusion of expired or terminated leases from permits.
2. NDAC 69-05.2-12-12. Release of performance bond – Bond release application.
The PSC's proposal to add a clarifying paragraph to NDAC 69-05.2-16-05 (8) is acceptable to the LEC. This does not change current requirements.
3. NDAC 69-05.2-16-05. Performance standards – Hydrologic balance – Surface water monitoring
In a July 7 draft, your office proposed a rule to require a biennial summary report reviewing surface water conditions, in a manner similar to the current annual groundwater summary report. We do not support a regulation requiring submittal of a new report. While this may be useful information during bond release, and some companies may choose to conduct such a review and prepare a report, the LEC does not believe this should be mandated as a new requirement for all companies.
4. NDAC 69-05.2-24-01. Performance standards – Roads – General requirements
Your proposed change is for editing purposes and we support this change.

The Lignite Energy Council thanks you for your consideration of changes that would streamline the regulatory process while maintaining the nation's highest standards of environmental protection and land reclamation during surface mining operations. We look forward to your formal rulemaking.

Sincerely,

LIGNITE ENERGY COUNCIL



John W. Dwyer
President

Enclosures: Attachment 1 – LEC proposed changes
Attachment 2 – PSC proposed changes from July 7, 2005

cc: Joe Friedlander
Jim Melchior
Troy Leingang
Mike Altavilla
Dave Schouweiler

1.

NDAC 69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:

a. The applicant's name and business address.

b. A map or description which must:

(1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.

(2) Clearly show or describe the exact location and boundaries of the permit area.

(3) Show the north point (if a map).

Deleted: (3) Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.

(4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

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2.**NDAC 69-05.2-12-12. Release of performance bond - Bond release application.**

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:

a. For lands disturbed between July 1, 1975, and June 30, 1979, the application must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4. The criteria for release of all or part of the bond will be according to the reclamation requirements in effect at the time of the disturbance.

b. For lands disturbed after June 30, 1979, the application must comply with the requirements of this section and section 69-05.2-12-11.

2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations. Each application for bond release shall include a notarized statement by the permittee which certifies that all applicable reclamation activities have been accomplished in accordance with this article, North Dakota Century Code chapter 38-14.1, and the approved reclamation plan.

3. Within thirty days after filing a request for bond release, the permittee shall submit a copy of the advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.

Deleted: proof of the publication

3.

NDAC 69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

19. Impoundment inspections.

a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.

b. Inspections must be made regularly during construction. Inspection records during construction shall be maintained at or near the minesite.

Deleted: , upon completion of construction, and at least yearly until removal of the structure or release of the performance bond

c. After impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and has been constructed as designed and according to the approved plan and this chapter. The report must include a summary of construction inspections, a statement of final storage capacity, and, if applicable, a discussion of any deviations from the approved plan.

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Deleted: , any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability

d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment shall be noted separately.

e. A copy of the inspection reports must be maintained at or near the minesite.

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4.

(LEC Proposal)**NDAC 69-05.2-16-14. Performance standards - Hydrologic balance – Ground water monitoring.**

3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. The operator shall review the data ~~biennially~~ or more frequently if required by the commission. Changes observed in the monitored aquifers in the permit or adjacent areas must be described and interpreted in the monitoring report as to their significance and possible effect on any water supplies. When the analysis of any ground water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12.

Deleted: annually

(PSC Proposal)**NDAC 69-05.2-16-14. Performance standards - Hydrologic balance - Ground water monitoring.**

3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. The operator shall review the data ~~regularly annually or more frequently if required by the commission~~. When the analysis of any ground water elevation or quality sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12. The operator shall also submit a report biennially ~~shall review the data annually or more frequently if required by the commission~~ that reviews the condition of water resources in the permitted and adjacent areas. Changes observed in the potentiometric surfaces and quality of the monitored aquifers in the permitted or adjacent areas must be described and interpreted in the monitoring report as to their significance and possible effect on any water supplies.

DRAFT – JULY 7, 2005

1. (Revised 10/05)

NDAC 69-05.2-06-03. Permit applications – Right of entry and operation information.

2. Following completion of coal removal operations on the lands covered by a lease, the copy of the coal lease may be deleted from an approved permit if:

- a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
- b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

2. NDAC 69-05.2-12-12. Release of performance bond - Bond release application.

8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:

- a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
- b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
- c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
- d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

3.

NDAC 69-05.2-16-05. Performance standards - Hydrologic balance - Surface water monitoring.

1. Surface water monitoring must be conducted in accordance with the monitoring program and based on the probable hydrologic consequences determination submitted under section 69-05.2-08-04. The commission will approve the nature of data that relate to the hydrologic reclamation plan in section 69-05.2-09-12, frequency of collection, and determine reporting requirements. The operator shall also submit a report biennially or more frequently if required by the commission that reviews the condition of water resources in the permitted and adjacent areas. Changes observed in the flow, water levels and quality of the monitored streams, lakes and impoundments in the permitted or adjacent areas must be described and interpreted in the report as to their significance and possible effect on any water supplies.
 - a. For locations in surface water bodies, such as streams, lakes, and impoundments, monitoring must:
 - (1) Be adequate to measure accurately and record quantity and quality of discharges from the permit area and identify the extent to which mining affects water quality and quantity in the adjacent area. Water samples taken from all monitoring sites must be analyzed for the parameters specified in subdivision b of subsection 3 of section 69-05.2-08-07. Results must be submitted quarterly to the commission.
 - (2) Be conducted to assure reliable test data according to existing standard procedures and analytical methods.

4.

NDAC 69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.

**PUBLIC SERVICE COMMISSION
Reclamation Division**

Memorandum

TO: Commissioners Clark, Wefald and Cramer
Illona A. Jeffcoat-Sacco
Bill Binek

FROM: Jim Deutsch

DATE: October 31, 2005

SUBJECT: Proposed reclamation rule changes

Attached are the proposed changes that the Reclamation Division recommends be included as part of the Commission's next rulemaking proceeding. Some of the changes are based on suggestions from the Lignite Energy Council (see the LEC's October 27th letter that is also attached) and others are staff initiatives. We have had several discussions with LEC task members on these proposals over the past several months. The following is a summary of the proposed changes:

NDAC 69-05.2-06-03 – Additional language is being proposed that would allow a permittee to delete a coal lease from the permit when mining on the tract covered by the lease is completed and the lease is no longer needed to show surface right of entry or the lease has been terminated. However, if the coal lease no longer provides surface right of entry, other documents granting the permittee right of entry must be added to the permit. This change is being proposed due to concerns raised by Coteau and Falkirk on the time and cost of recordkeeping associated with outdated lease documents.

NDAC 69-05.2-10-01 – Changes recommended by the LEC are included that propose 1) to delete a provision that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and 2) limit the listing of coal owners in the notice to those that will be affected by the mining activities. The corresponding OSM rule has been revised to delete the reference to the USGS map. We believe the proposed change on the listing of coal owners is reasonable.

NDAC 69-05.2-12-12 – Changes to information required for bond release applications include a LEC proposal to change the requirement that the permittee submit proof (an affidavit) of publication within 30 days of submitting the application to submitting a copy of the advertisement that was published. This change is reasonable since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete. The change is also consistent with OSM rules. The Reclamation Division also recommends adding a cross-reference to information that is required by the "replacement of water supply" definition in another section of the rules.

NDAC 69-05.2-16-09 – Changes to sedimentation pond inspection requirements are based on the LEC proposal. The proposed changes made better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by registered professional engineer. The changes also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections would have to be prepared and maintained at or near the mine site.

NDAC 69-05.2-22-07 – Changes to revegetation success standards are recommended by the Reclamation Division that are similar to those proposed by OSM earlier this year. The changes will allow the use of data collected in any two years following year six of the ten-year revegetation liability period for native grassland, tame pastureland and cropland uses. Currently, data from the last two consecutive years of the liability period or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period) must be provided to demonstrate reclamation success. Also, for woodlands, shelterbelts and fish and wildlife habitat, only one year of data would be needed to prove reclamation success on these land uses. Additional language is proposed for woodland and shelterbelt standards that clearly allow the counting of volunteer trees and shrubs for meeting the standards. Similar changes should be approved by OSM within the next couple of months. These changes may result in some reclaimed tracts being bond released sooner.

NDAC 69-05.2-24-01 – A change to the road performance standards is proposed by the Reclamation Division to correct a cross reference error.

The LEC also recommended that we propose a change to NDAC 69-05.2-16-14 to change the annual ground water monitoring report to a biennial report. The LEC letter indicated the Reclamation Division would accept this proposal; however, this was tied to adding a similar requirement for a biennial surface water report. Industry opposes that requirement and we do not recommend any change to the ground water rule at this time. This matter will be discussed further with LEC task force members in the future.

An item will be added to the administrative agenda for the November 2 Commission meeting to discuss these proposed rule changes.

Attachments

**State of North Dakota
Public Service Commission**

**Public Service Commission
Public Utilities - Siting
Rulemaking**

Case No. PU-05-602

**Regulatory Analysis, Takings Assessment, and Small Entity Analysis
November 21, 2005**

The siting rule amendments propose changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) to add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Regulatory Analysis

The proposed changes merely add another factor that the Commission may use in evaluation energy conversion and transmission facility siting applications and are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.
- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

The purpose of the proposed rule is to add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

We do not expect any impact on private property owners as a result of the proposed rule changes.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities.
- b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
- c. Consolidation or simplification of compliance or reporting requirements for small entities.
- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by the rule changes.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Public Utilities – Siting
Rulemaking**

Case No. PU-05-602

**STAFF TESTIMONY
January 4, 2006**

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain changes proposed to the Commission's administrative rules to amend subsections 69-06-08-01(4) and 69-06-08-02(4) of the North Dakota Administrative Code pertaining to the siting of energy conversion and transmission facilities.

Subsection 69-06-08-01(4) sets forth policy criteria for the siting of energy conversion facilities and 69-06-08-02 sets forth policy criteria for the siting of energy transmission facilities. Both sections provide that the Commission may require, or give preference to an applicant that will maximize benefits that result from, the policies and practices listed therein. The amendment being proposed is identical for both sections and states that the Commission may also give preference to an applicant that will maximize interstate benefits of proposed projects.

These amendments are being proposed to clarify the Commission's ability to consider interstate benefits of transmission facilities when determining whether to issue siting permits. This clarification is necessary to help ensure that the Commission's siting authority will not be federally pre-empted under the federal Energy Policies Act of 2005. Section 216 of the Act provides that the U.S. Department of Energy is to designate national interest electric transmission corridors and authorizes the Department to issue construction permits within those designated corridors if, among other things, the state does not have authority to approve the siting of facilities or to consider the interstate benefits expected to be achieved from the facilities.

That concludes my testimony in Case No. PU-05-602. Thank you.

**State of North Dakota
Public service Commission**

**Public Service Commission
Public Utilities
Rulemaking**

Case No. PU-05-364

**Regulatory Analysis, Takings Assessment and Small Entities Analysis
November 21, 2005**

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02- 24 thru 26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

A tracking system administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program. It is expected that a new regional market will emerge for trading of the certificates, which will be used to demonstrate the use of "green power." For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to an objective that 10% of electricity be from renewable sources by 2015.

North Dakota Century Code Section 28-32-08(2) sets forth the requirements of a regulatory analysis.

Subsection a states: "A description of the classes of persons who will likely be affected by the proposed rule, including classes that will bear the cost of the proposed rule and classes that will benefit from the proposed rule."

Analysis: The classes affected will be producers of renewable and recycled waste energy that choose to participate in the tracking program and their customers that purchase renewable energy certificates. Customers in North Dakota will not be required to purchase the certificates, but may if they wish to demonstrate use of such energy.

Subsection b states: "A description of the probable impact, including the economic impact of the proposed rule."

Analysis: Renewable energy certificates are expected to have monetary value, with some estimates now ranging around \$2.00 per MWH. There is a Midwest Renewable Energy Tracking System (M-RETS) being developed in our region. Voluntary participation is expected to be substantial across several Midwestern states. M-RETS expects an initial annual operating budget of approximately \$300,000 or less. M-RETS anticipates funding entirely from user fees, but has not yet determined a

rate structure. For this analysis it is assumed that the MRETS rate structure will be a flat fee paid by the producer for each MWH tracked:

Assume: Total initial generating capacity enrolled in program = 3,000 MW with an average generating capacity factor of 25%. (Generators produce at rated output an average of 25% of the time)

Then: Total annual MWH tracked would be:

$$3,000 \text{ MW} \times .25 \times 365 \text{ days/year} \times 24 \text{ hours/day} \\ = 6,570,000 \text{ MWH per year.}$$

The resulting administrative cost to program participants would be:

$$\$300,000 / 6,570,000 = \$0.0457 \text{ or 4.6 cents per MWH.}$$

Subtracting these administrative costs from the expected value of the renewable energy certificates yields:

$$\$2.00 - \$0.046 = \$1.934 \text{ per MWH gain for participating producers.}$$

Thus a 20 MW wind farm with an average 25% capacity factor that chooses to participate in the tracking program could experience additional revenue of:

$$20 \text{ MW} \times .25 \times 24 \times 365 \times \$1.934 = \$84,709.20 \text{ per year.}$$

For ND customers choosing to purchase renewable energy certificates, the impact would be the market price of the certificates, estimated in this analysis to be \$2.00 per MWH. There would be no impact to ND customers choosing not to purchase renewable energy certificates.

Subsection c states: "The estimated cost to the agency of implementation and enforcement of the proposed rule and any anticipated effect on state revenues."

Analysis: There is no cost to the agency or the state expected. See fiscal note for House Bill 1314.

Subsection d states: "A description of any alternative methods of achieving the purpose of the proposed rule that were seriously considered by the agency and the reason why the methods were rejected in favor of the proposed rule."

Analysis: No alternative has been considered.

A takings assessment under North Dakota Century Code Section 28-32-09 is not required because the proposed rules will not limit the use of private real property.

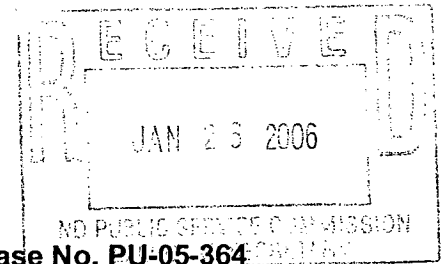
An economic impact analysis under North Dakota Century Code Section 28-32-08.1 is not required because the proposed rules will not have an adverse effect on small entities.

JRL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Public Utilities - Electric
Rulemaking

Case No. PU-05-364



STAFF MEMORANDUM

January 26, 2006

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02-24 thru 49-02-26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

The proposed rules provide that the Commission may designate a tracking system administrator. The proposed rules set forth the responsibilities of the designated administrator and conditions under which the administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program.

SUMMARY OF COMMENTS:

Montana-Dakota Utilities Co.

During the Hearing on January 4, 2006, MDU provided a handout with several recommended minor clarifying language changes. MDU's recommended changes were self-explanatory in nature and staff recommends they be incorporated into the proposed rules. There was one change recommended to proposed section 69-09-08-07 that may need further discussion to determine language changes to identify or narrow which law and rules generating units must comply with to avoid deregistration.

Missouri River Energy Services:

On January 17 MRES filed written comments recommending two changes:

1. The definition of a Renewable Energy Credit in subsection 69-09-08-02(8) should specify the amount of energy equal to a credit. The proposed definition states:

8. Renewable energy credit — The intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour (MWh) of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in Section 69-09-08-04.
2. The proposed rules should allow facilities with multiple generating units to be master metered to make reporting requirements easier. For example, 69-09-08-04 could be expanded to accommodate master metering.

JRL

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Public Utilities – Electric
Rulemaking**

Case No. PU-05-364

**STAFF TESTIMONY
January 4, 2006**

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain changes proposed to the Commission's administrative rules to establish a new Chapter 69-09-08 of the North Dakota Administrative Code pertaining to the establishment of a renewable electricity and recycled energy tracking system.

2005 House Bill 1314, now codified as North Dakota Century Code Sections 49-02-24 thru 49-02-26, authorizes that the Commission may by rule establish or participate in a program to track, record and verify the trading of credits for electricity generated from renewable and recycled heat sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states. The purpose of this rulemaking is to establish rules for participation in a renewable energy tracking system.

The proposed rules provide that the Commission may designate a tracking system administrator. The proposed rules set forth the responsibilities of the designated administrator and conditions under which the administrator would issue renewable energy certificates to certify renewable energy production by facilities registered in the program.

HB 1314 was enacted with recognition that a Midwest Renewable Energy Tracking System (M-RETS) is being developed in our region. The goal is for MRETS to be operational by year-end 2006. Voluntary participation in MRETS is expected to be substantial across several Midwestern states. It is expected that a new regional market will emerge for the trading of renewable energy certificates that can be used to demonstrate the "use of green power," regardless whether physical delivery of renewable energy actually occurs. For example, Minnesota will require utilities to submit renewable energy certificates demonstrating commitment to a renewable energy objective that 10% of electricity used in Minnesota be from renewable sources by 2015. The proposed rules would enable Minnesota utilities to meet their Minnesota renewable energy objective with renewable energy certificates from North Dakota sources.

That concludes my testimony in Case No. PU-05-364. Thank You.

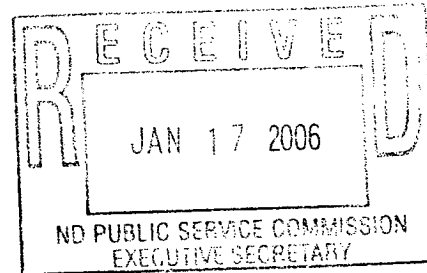


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PO Box 88920
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Fax: 605.978.9360
www.mrenergy.com

January 16, 2006

Via Overnight Mail

Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 East Boulevard Avenue
Department 408
Bismarck ND 58505-0480



Dear Ms. Jeffcoat-Sacco:

Please find enclosed for filing the Comments of Missouri River Energy Services (MRES) regarding the rulemaking docket PU-05-364. MRES appreciates the opportunity to comment on this matter.

If there are any questions or concerns, please feel free to contact me at 800.678.4042.
Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Birgen".

Deborah Birgen
Legislative Associate

enclosure

c: Thomas F. Kelsch

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

In Re: Proposed Rules 69-69-08
Renewable Electricity and Recycled
Energy Tracking System

CASE NO. PU-05-364

COMMENTS OF MISSOURI
RIVER ENERGY SERVICES

COMES NOW, Missouri River Energy Services (MRES) and hereby submits the following comments in response to the Amended Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing issued on November 22, 2005.

I. PROPOSED RULE 69-09-08-02(8) SHOULD DEFINE THE AMOUNT OF ENERGY EQUAL TO A CREDIT

Proposed rule 69-09-08-02(8) does appropriately define a renewable energy credit. However, this section does not define the amount of generation that is equal to a single renewable energy credit. For example, one renewable energy credit could be assigned to one megawatt-hour (MWh) of renewable energy generated. By clearly defining what constitutes a credit, there can be no dispute or misinterpretation of the rules by the Program Administrator, by the utilities, nor by independent renewable energy producers. Therefore, MRES would ask that the Public Service Commission (Commission) consider revising the proposed rules to include a clear definition as to what amount of generation or energy from a renewable facility would constitute a renewable energy credit.

II. PROPOSED RULES SHOULD ADDRESS MULTIPLE UNITS

While proposed rules 69-09-08-02 and 69-09-08-04 define renewable energy facilities and the related requirements to participate in the tracking program, the rules do not address renewable energy facilities consisting of more than one generating unit. MRES would ask the Commission to consider addressing multiple units, in particular, addressing the metering of the output. For example, 69-09-08-04 could be expanded to state that if an energy facility consists of more than one generating unit, the output can be master metered. Reporting generation from each individual turbine would be time consuming. Master metering is a more efficient method for the applicant plus it would reduce the amount of database administration for the administrator.

III. CONCLUSIONS

MRES appreciates the opportunity to file its comments with the Commission. The submission of these comments does not preclude any MRES members from filing their own comments.

Respectfully submitted,

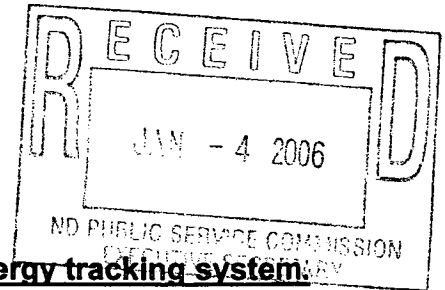
Missouri River Energy Services
January 16, 2006

By: 
Deborah Birgen

Public Service Commission
Public Utilities – Electric
Rulemaking

Case No. PU-05-364

PROPOSED RULES



69-09-08 Renewable electricity and recycled energy tracking system.

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions.

1. Designated representative — A responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must

have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. Existing facilities — Renewable energy facilities placed in service before January 1, 2001.

3. New facilities — Renewable energy facilities placed in service on or after January 1, 2001.

4. Program administrator — The independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.

5. Renewable energy certificate — A document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.

6. Renewable energy certificate account — An account maintained by the program administrator for the purpose of tracking renewable energy certificates ~~by a program participant.~~

7. Renewable energy certificates tracking program — The process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.

8. Renewable energy credit — The intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour (MWh) of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in Section 69-09-08-04.

9. Renewable energy facility – A facility generating electricity that exclusively relies on an energy source or fuel included in North Dakota Century Code Section 49-02-25.

~~10. Renewable energy resource — A resource that generates electricity derived from a renewable energy facility.~~



General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program.

Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under North Dakota Administrative Code Section 69-09-08-07; and
2. Have output that is capable of being physically metered and verified by the program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;
2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;
3. Maintain public information on the program administrator's website that provides tracking program information to interested buyers and sellers of renewable energy certificates;

4. Facilitate private trading of renewable energy certificates;
5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate;
6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April 15 of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, (in megawatts) by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates.

The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.
3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. *A designated representative*
To be awarded renewable energy certificates, ~~a power generator~~ must complete the registration process described in this section. ✓

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code Section 49-02-25.
2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a

renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make on-site visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with the law and rules.

*identify or
narrow the
reference*

4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.

5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

**State of North Dakota
Public Service Commission**

**Public Service Commission
Public Utilities – Telephone
Rulemaking**

Case No. PU-05-575

**Regulatory Analysis, Takings Assessment, and Small Entity Analysis
November 21, 2005**

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Regulatory Analysis

The proposed changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars because they merely codify existing Commission practice and do not enact additional procedures beyond what the Commission currently does.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.
- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

The purpose of the proposed rule is to formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

We do not expect any impact on private property owners as a result of the proposed rule changes.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities.
- b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
- c. Consolidation or simplification of compliance or reporting requirements for small entities.
- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by the rule changes.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Public Utilities - Telephone
Rulemaking**

Case No. PU-051-575

STAFF TESTIMONY
January 4, 2006

My name is Jerry Lein. I am a Public Utility Analyst in the Public Utility Division of the Public Service Commission. The purpose of my testimony is to explain changes proposed to the Commission's administrative rules to establish a new section 69-09-05-14 of the North Dakota Administrative Code pertaining to procedure for filing negotiated carrier-to-carrier interconnection agreements.

The proposed rules formalize an existing procedure for processing of negotiated interconnection agreements that are required to be filed for Commission approval under 47 U.S.C section 252(e). This existing procedure is detailed on the Commission's web site and has been working well for several months. Under this existing procedure interconnection agreements are posted on the Commission's web page when filed. The Commission accepts written comments on the agreements for sixty days. Absent Commission action within 90 days, the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).

Written Comments were received from a partnership of North Dakota wireless carriers (Wireless Partnership) in response to the public notice issued by the Commission in this proceeding on November 22, 2005. The Wireless Partnership propose that the proposed rules should be modified to exclude the assignment, assumption or transfer of agreements from its scope. They contend that Commission approval of the assignment or transfer of an interconnection agreement is not required or authorized under 47 U.S.C. section 252(e) or under N.D.C.C. section 49-21-01.7(9). They further contend that requiring such approval is unnecessary and an impediment to any transaction in which an interconnection agreement is assigned.

Staff does not object to eliminating the requirement for Commission approval of assumptions, assignments or transfer of previously approved interconnection agreements. Staff notes that this requirement has been Commission practice all along and believes there is value in maintaining the existing database of interconnection agreements and parties to them. Therefore, if the Commission discontinues its requirement for approval of agreement transfers, then Staff recommends modifying proposed new subsection 6 to require that a notification be filed with the Commission within thirty days after the assignment, assumption or transfer occurs:

69-09-05-14(6). Any assignment, assumption or transfer of an approved interconnection agreement requires notification to be filed with the commission within thirty days after the assignment, assumption or transfer occurs ~~a new filing with a new 90-day review and comment period.~~

That concludes my testimony in Case No. PU-05-575. Thank you.

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

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80 SOUTH EIGHTH STREET
MINNEAPOLIS, MINNESOTA 55402
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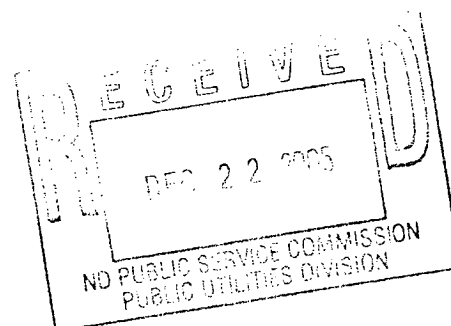
WRITER'S E-MAIL

mayotte@briggs.com

December 22, 2005

VIA FEDERAL EXPRESS

Illona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480



**Re: In the Matter of Public Service Commission Public Utilities - Telephone
Rulemaking
Case No. PU-05-575**

Dear Ms. Jeffcoat-Sacco:

Please find enclosed an original and seven (7) copies of the following:

- (1) Wireless Partnerships' Comments on Proposed Rules on Eligible Telecommunications Carrier Applications and Advertising; and
- (2) Wireless Partnerships' Comments on Proposed Interconnection Agreement Filing Rules.

An electronic copy of this filing has been sent by electronic mail to Sandy Scott.

If you should have any questions, please contact me.

Very truly yours,

Mark J. Ayotte

MJA/sjc
Enclosures

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	Case No. PU-05-575
Public Service Commission Public Utilities –	)	
Telephone Rulemaking	)	

**WIRELESS PARTNERSHIPS' COMMENTS ON
PROPOSED INTERCONNECTION AGREEMENT FILING RULES**

December 22, 2005

BRIGGS AND MORGAN, P.A.
Mark J. Ayotte
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Phone: (612) 977-8400
Facsimile: (612) 977-8650

Its Counsel

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of	)	
	)	
Public Service Commission Public Utilities –	)	Case No. PU-05-575
Telephone Rulemaking	)	

**WIRELESS PARTNERSHIPS' COMMENTS ON
PROPOSED INTERCONNECTION AGREEMENT FILING RULES**

I. INTRODUCTION AND SUMMARY

Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5 – Kidder Limited Partnership; and Bismarck MSA Limited Partnership (collectively, “Partnerships”), by and through their undersigned counsel, submit the following comments in response to the Commission’s November 22, 2005, Amended Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing (“*Public Notice*”)¹ relating to the Proposed Interconnection Agreement File Rules.

The proposed rule establishing procedures for filing and approving negotiated interconnection agreements and amendments is consistent with federal law and should be adopted. However, the rule should be modified to exclude the assignment, assumption or transfer of agreements from its scope. The Commission’s approval of assignments or transfers of an interconnection agreement is not required or authorized under 47 U.S.C. § 252(e) or N.D.

¹ As set forth in the *Public Notice*, the Commission invited interested parties to submit written comments and appear in person or through counsel at the Public Hearing scheduled for January 4, 2006. The *Public Notice* also provides that interested persons may submit supplemental data, views or oral argument until January 17, 2006.

Cent. Code § 49-21-01.7(9). Subjecting an approved interconnection agreement to further review and approval, simply because the agreement may be assigned, is also unnecessary. If the Commission imposes an additional 90-day review and approval process, it will only serve as an impediment to closing any transaction in which an interconnection agreement is assigned. The Partnerships' specific recommended language modifications to the proposed rule are set forth in the attached Exhibit A.

II. THE PROPOSED INTERCONNECTION AGREEMENT FILING RULES SHOULD BE MODIFIED TO EXCLUDE THE ASSIGNMENT AND TRANSFER OF AGREEMENTS

The portions of proposed Rule 69-09-05-14 setting forth procedures for the filing and Commission approval of negotiated interconnection agreements and amendments is appropriate. Section 252(a)(1) of the Telecommunications Act of 1996 (the "Act") requires incumbent carriers to negotiate interconnection agreements with competitive carriers.² Once finalized, the agreements must be submitted to a State commission for approval under Section 252(e).³ Section 252(e)(2) also prescribes the limited reasons a State commission may reject an interconnection agreement, including that the agreement discriminates against other telecommunications carriers, is contrary to the public interest, or fails to satisfy the requirements of Section 251 or the FCC's rules.⁴

As noted by the FCC, the filing of all interconnection agreements best promotes Congress' stated goals of opening local markets to competition and permitting interconnection

² 47 U.S.C. § 252(a)(1).

³ 47 U.S.C. § 252(e)(1) ("[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval by a State commission").

⁴ 47 U.S.C. § 252(e)(2).

on just, reasonable and nondiscriminatory terms.⁵ After an interconnection agreement is approved by the Commission, other carriers may adopt the terms, conditions and rates in the agreement pursuant to Section 252(i) and FCC Rule 51.809(a). The proposed rule setting forth a streamlined process for public filing and approval within 90 days absent Commission action to disapprove a negotiated agreement is consistent with 47 U.S.C. § 252(e)(4) and should be adopted.

However, the portion of proposed Rule 69-09-05-14 which would require Commission review and approval of the “assignments, assumptions or transfers of interconnection agreements” should be deleted as contrary to Section 252(e) and N.D. Cent. Code § 49-21-01.7. Section 252(e) of the Act does not require State commission approval for any assignment or transfer of an interconnection agreement. Similarly, Section 252(e) sets forth no standards governing the approval or rejection of any assignment of an interconnection agreement. Since all negotiated interconnection agreements are required to be approved by the Commission, it is logical to conclude that any proposed assignment or transfer would be of a previously approved interconnection agreement. As a result, the Commission need not again review or reapprove a previously approved agreement in the context of an assignment to another telecommunications carrier. Similarly, nothing in N.D. Cent. Code § 42-21-01.7(8)-(9) authorizes the Commission to approve or reject the assignment of a previously approved interconnection agreement.

Subjecting the assignment of an interconnection agreement to Commission review and approval will also serve as an unwarranted impediment to carriers. Most assignments or transfers will arise in the context of a transaction between telecommunications carriers. An

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15583, ¶ 167 (1996).

interconnection agreement is a contract. As such, it may be assigned and transferred to another party pursuant to its terms and conditions. In the case of an asset sale transaction, previously-approved interconnection agreements are often assigned to and assumed by the purchaser. To subject such a transaction to a 90-day Commission review and approval process is unnecessary and may likely serve as an obstacle to closing any transaction.

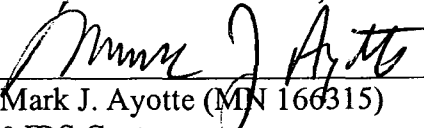
III. CONCLUSION

For the reasons set forth above, the Partnerships support the adoption of proposed Rule 69-09-05-14 as modified to exclude the assignment, assumption or transfer of interconnection agreements from the scope of the rule. The Partnerships' recommended modification to proposed Rule 69-09-05-14 are set forth in the attached Exhibit A.

Respectfully submitted,

BRIGGS AND MORGAN, P.A.

Dated: December 22, 2005

By 
Mark J. Ayotte (MN 166315)
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Phone: (612) 977-8400
Facsimile: (612) 977-8650

Its Counsel

1854810v2

EXHIBIT A

Proposed Interconnection Agreement Filing Rules

69-09-05-14 Procedure for filing negotiated interconnection agreements.

Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for Commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251, amendments to interconnection agreements, and agreements for Qwest Platform Plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements or the assignment, assumption or transfer of interconnection agreements.
2. Each filing must include a completed cover sheet in a form prescribed by the Commission.
3. Filed interconnection agreements will be listed on the commission Internet site for comment by interested parties. The Internet listing will include the date each agreement was filed, and links to the agreement itself.
4. The commission will accept written comments on a listed agreement for 60 days from the date filed.

5. Absent commission action within 90 days of filing to disapprove an agreement (or portion thereof), the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).
6. Any amendment to an interconnection agreement requires a new filing with a new 90-day review and comment period.

History: ?

General Authority: ?

Law Implemented: ?

1854675v2

**State of North Dakota
Public Service Commission**

**Public Service Commission
Public Utilities – Telephone
Rulemaking**

Case No. PU-05-575

**Regulatory Analysis, Takings Assessment, and Small Entity Analysis
November 25, 2005**

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

The proposed changes impose no new or additional burdens on any regulated entity. The bond requirement is not new, and the minimum bond amounts are not new. The bond requirement is now described in the proposed rule, and the statutory exception for facilities based wireless companies is spelled out. The existing minimum bond amounts are now codified in the proposed rules.

The changes are needed because a statute enacted in 2005 substitutes a streamlined self registration process for the previous requirement to obtain a registration certificate (applicable to for resellers) or a certificate of public convenience and necessity (applicable to facilities based carriers).

Regulatory Analysis

The proposed changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars because they lessen the regulatory burden on affected companies. There is no fee for registration.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.
- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.

- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of these proposed rule changes affects the use of private real property so they will not result in any taking and therefore, there should be no cost to the state and no impact on private property owners.

Subsection e is not applicable because the proposed rule changes will not limit the use of private real property.

Subsection f is not applicable because the proposed rule changes will not limit the use of private real property.

Small Entity Regulatory Analysis

An economic impact analysis under North Dakota Century Code Section 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. Subsection 2 states that the agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities.
- b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.
- c. Consolidation or simplification of compliance or reporting requirements for small entities.
- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

The new registration statute establishes a minimal compliance regime. The process is easy, accessible, and free. There is no waiting period and very little required information. The rules simply implement this new streamlined process enacted by law. The rules themselves impose no new or additional reporting or compliance requirements. The new process and the rules implementing it should benefit small entities because they can register to provide telecommunications services more easily and with fewer burdens than ever before.

No additional performance standards are proposed by these rule changes.

Small entities will not be exempt from any part of the requirements contained in the proposed rule because the rules and the law implemented by them make registration easily accessible and affordable for small entities.

**State of North Dakota
Public Service Commission**

**Public Service Commission
Public Utilities – Telephone
Rulemaking**

Case No. PU-05-575

**Commission Staff Comments on
Proposed Telecommunications Rulemaking
January 4, 2006**

I. Proposed Rules on Eligible Carrier Applications and Advertising

Section 214(e)(2) of the Telecommunications Act of 1996 provides states with the primary responsibility to designate carriers that will be eligible to receive federal universal service funding. State authority for the Public Service Commission power to designate those eligible telecommunications companies is provided under North Dakota Century Code Section 49-21-01.7 (12).

Under current Commission procedure, a telecommunications company seeking designation as an eligible telecommunications carrier (ETC) must file an application with the Commission. The proposed revisions to North Dakota Administrative Code Section 69-09-05-02 codify the application requirements and establish reporting requirements for ETCs, including ETCs previously designated by the Commission. The proposed rules also establish the criteria to be considered by the Commission in designating an eligible carrier.

The Commission's proposed rules largely mirror new ETC application and reporting requirements adopted by the Federal Communications Commission (FCC), codified at 47 C.F.R. §§ 54.202 and 54.209.¹ The FCC states that the reporting requirements are intended to improve the long term sustainability of the federal universal service fund and ensure that eligible carriers satisfy their obligations to provide universal services throughout their designated service areas.² While the FCC adopted its rules to apply to applicants for ETC for designation before the FCC, the FCC encouraged states to apply the FCC's analysis in determining whether to designate a carrier as an ETC³ and encouraged states to require the reporting requirements adopted by the FCC to be filled by all ETCs over which they have jurisdiction.⁴ The FCC also stated that "[w]e do not believe that different ETCs should be subject to different obligations,

¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 05-46, released March 17, 2005.

² *Id.* paragraph 5.

³ *Id.* paragraph 3.

⁴ *Id.* paragraph 4.

going forward, because of when they happened to first obtain ETC designation from the Commission or the state."⁵

The rules propose that ETCs file annual commitments for providing telecommunications service on a timely basis, that it can remain functional in emergency situation, that it will comply with consumer protection and service quality standards, that it offers a local usage plan comparable to the plan offered by the incumbent local exchange company, and that it may be required to provide equal access to long distance carriers. The proposed rules also require the annual filing of a five-year plan demonstrating how federal high-cost universal service support will be used to improve service coverage, service quality or capacity in each wire center for which it seeks to be or is designated as an ETC and expects to receive federal universal service support.

II. Proposed Telecommunications Registration Rulemaking

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

The proposed changes impose no new or additional burdens on any regulated entity. The bond requirement is not new, and the minimum bond amounts are not new. The bond requirement is now described in the proposed rule, and the statutory exception for facilities based wireless companies is spelled out. The existing minimum bond amounts are now codified in the proposed rules.

The changes are needed because a statute enacted in 2005 substitutes a streamlined self registration process for the previous requirement to obtain a registration certificate (applicable to for resellers) or a certificate of public convenience and necessity (applicable to facilities based carriers).

⁵ Id. paragraph 20.

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December 29, 2005

Illona A. Jeffcoat-Sacco, Executive Secretary
PUBLIC SERVICE COMMISSION
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

**PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES — TELEPHONE RULEMAKING
CASE NO. PU-05-575**

Enclosed for filing in the above-captioned matter are an original and seven copies of the comments of the Rural Telephone Company Group in regard to the proposed telecommunications registration rulemaking.



Don Negaard

jt

Enclosures

STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION

DEC 30 2005

**PUBLIC SERVICE COMMISSION
PUBLIC UTILITIES – TELEPHONE
RULEMAKING**

CASE NO. PU-05-575

Proposed Telecommunications Registration Rulemaking

The Rural Telephone Company Group (hereinafter RTCG), composed of those companies set forth in Exhibit A hereto, submit the following comments on proposed Telephone Rulemaking propounded by the North Dakota Public Service Commission.¹

69-09-05-02. Discontinuance of telecommunications services. The RTCG makes no comment on this proposed change.

69-09-05-04. Rules for resale of telecommunications services. The RTCG makes no comment on the proposed change.

69-09-05-04.1. Identification of intraLATA interexchange carriers. The RTCG does not, at this time, see any need for this regulation. It creates more unnecessary burden on local exchange companies because there is no similar requirement for interstate interexchange traffic. In the business world, there is no distinction between interstate and intrastate IXC carriers, and the distinction under this rule creates more administrative burdens for the local exchange carrier.

69-09-05-05. Rules for the provision of operator services. The RTCG makes no comment on the proposed changes.

¹ The RTCG does not, by comments submitted, agree to waive any legal rights they may have, including, but not limited to, their right to later challenge any administrative rule or regulation as contrary to legislative intent or any other basis upon which administrative regulations might be challenged.

69-09-05-10. Registration – Procedure. The RTCG makes no comment on this proposed change.

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company – Procedure. The RTCG makes no comment on the proposed change.

69-09-05-12. Eligible carrier applications and advertising. The RTCG does not, at this time, see the need for the proposed ETC rules. The RTCG could be in jeopardy of losing a significant portion of their USF funds for unintentional non-compliance whereas a carrier operating in a multitude of states or jurisdictions would face a less severe penalty, in terms of a percentage of revenue lost, for a finding of non-compliance at the North Dakota level. Further, without agreeing on the necessity of the proposed rules, the RTCG offers the following comments:

a. Subpart 3b requiring companies to submit a five-year plan. In competitive situations, this would require a company to lay its business plan out in a public document. There is no confidentiality for these documents, and it would require companies to disclose confidential information to competitors or potential competitors.

b. Subpart 4: The RTCG believes its members have met the commitment to use USF funds for network installation, maintenance, and upgrades through local managers who know their local service areas and have responded to local service quality issues. They did so long before the FCC, which created a huge funding problem by allowing new carriers to access USF funding, realized a problem existed with certain carriers using USF funds for purposes other than local support. As such, the RTCG sees no need for companies who are currently certified as ETCs to comply. It is a

solution for a problem that does not exist. The RTCG does not believe there is currently a problem other than the formulas used to disburse USF funds.

c. While there may be some need for a CMRS carrier to certify information on wire center basis, the RTCG believes a wire line carrier should be allowed to provide information required on a company-wide basis. Most of the RTCG companies do not calculate information on a wire center basis and providing this information could require costly studies to be conducted on an annual basis, all at an added cost to the end user, for most companies who do not segregate this data.

d. The RTCG believes the rules should address situations where the ETC in question is not receiving current funding. In some situations, companies designated as an ETC have not activated a business plan and being required to submit another annual report is another bookkeeping cost.

e. With no criticism intended, the RTCG also has practical questions about how the Commission will review, police, and enforce the new regulations. What procedure would the North Dakota Public Service Commission follow to enforce these regulations? What due process requirements and safeguards would there be for a company wishing to dispute a PSC finding of non-compliance? Does the PSC intend to revoke an ETC status? If so, what safeguards would then be to make sure USF funds are not lost pending a dispute process?

Dated this 29th day of December, 2005.

PRINGLE & HERIGSTAD, P.C.

A handwritten signature in black ink, appearing to be 'Don Negaard', is written over a horizontal line.

By: Don Negaard, ND Bar ID #03598
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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-05-341

**Public Service Commission
Public Utilities - Electric
Rulemaking**

Case No. PU-05-364

**Public Service Commission
Public Utilities - Telephone
Rulemaking**

Case No. PU-05-575

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

**Public Service Commission
Licensing – Grain Buyer
Rulemaking**

Case No. GE-05-594

**Public Service Commission
Public Utilities – Siting
Rulemaking**

Case No. PU-05-602

**AMENDED
NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

November 22, 2005

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to several articles of the North Dakota Administrative Code. The hearing will be held at 1:00 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The proposed revisions to the North Dakota Administrative Code are as follows:

Gas Pipeline Safety: Case No. GS-05-341

The Gas Pipeline Safety Federal rules to be adopted by reference will amend the state pipeline safety regulations to: require gas operators to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico

and its inlets in waters less than 15 feet deep; codify new program requirements concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method; amend the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs; revise all references to the former Research and Special Programs Administration in 49 CFR parts 190 through 199 to reflect the creation of Pipeline and Hazardous Materials Safety Administration.

Public Utilities – Electric: Case No. PU-05-364

Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

Public Utilities – Siting: Case No. PU-05-602

Proposed changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

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Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings.

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

Proposed changes to North Dakota Administrative Code Section 69-09-05-12 concern the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing

negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Reclamation: Case No. RC-05-591

Several changes are proposed to rules that pertain to the coal mining and reclamation regulatory program. The changes will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United State Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; adding a cross reference to another rule for information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and modifying data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. A cross reference error is also being corrected in the general requirements for roads. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Licensing – Grain Buyer: Case No. GE-05-594

On October 7, 2005, the North Dakota Dry Pea and Lentil Association formally asked the Commission to consider a change to North Dakota Administrative Code Section 69-07-01-14. The North Dakota Dry Pea and Lentil Association proposes to change the existing rule to exempt a grain buyer from the licensing requirement when the grain buyer purchases dry peas, lentils or chickpeas owned by a licensed entity. The current rule exempts a grain buyer from the licensing requirement when purchasing any grain that is owned by a licensed entity and also has been substantially altered by processing or blending, or cleaned and bagged for consumption.

The Notice of Intent to Adopt and Amend Administrative Rules and an abbreviated notice were issued on November 17, 2005. Late that afternoon the North Central Bean Dealers Association filed in support of the existing proposal and formally asked the Commission to consider an additional change in the proposed rule to exempt a grain buyer from the licensing requirement when the grain buyer purchases dry edible beans owned by a licensed entity. The proposed rule itself has not been revised at this time to incorporate this request, but this amended notice is being issued to notify interested parties of the possible inclusion of dry edible beans in the exemption. The abbreviated notice was also revised prior to publication to indicate the support of the North Central Bean Dealers Association.

All of the proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or

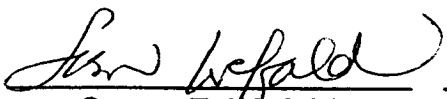
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Interested persons may submit written data, views, arguments, or appear in person or through counsel concerning the proposals. Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480.

The Commission will allow after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking will be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

If individuals 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 hearing. She can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

PUBLIC SERVICE COMMISSION


Susan E. Wefald
Commissioner


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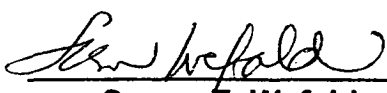
**AMENDED
NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

November 22, 2005

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers, at 1 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The proposed grain buyer rule change was formally requested by the North Dakota Dry Pea and Lentil Association, and is supported by the North Central Bean Dealers Association.

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at 701-328-2400, TDD 800-366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

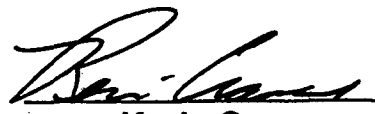
PUBLIC SERVICE COMMISSION



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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-05-341

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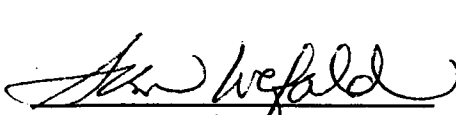
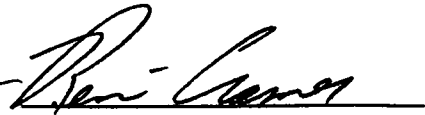
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PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner

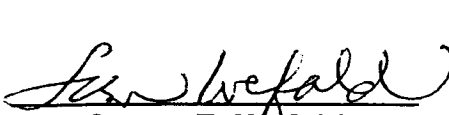
**NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

November 17, 2005

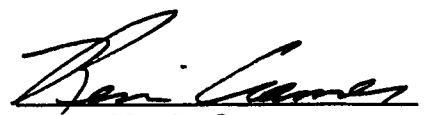
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PUBLIC SERVICE COMMISSION


Susan E. Wefald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner

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Scott

**NOTICE OF INTENT TO
ADOPT AND AMEND
ADMINISTRATIVE
RULES**

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**Public Service
Commission**

will hold a public hearing to address proposed amendments to the N.D. Admin. Code.

**Commission Hearing
Room**

**12th Floor
State Capitol
Bismarck**

**Wed., Jan. 4, 2006
1:00 p.m. CT**

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Susan E. Wefald Tony Clark Kevin Cramer
Commissioner President Commissioner

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11 **PU-05-575** Pages: 1

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13 **RC-05-591** Pages: 1

Display ad proof

by North Dakota Advertising Service, Inc.

11/18/2005

12 **GE-05-594** Pages: 1

Display ad proof

by North Dakota Advertising Service, Inc.

8 **PU-05-602** Pages: 1

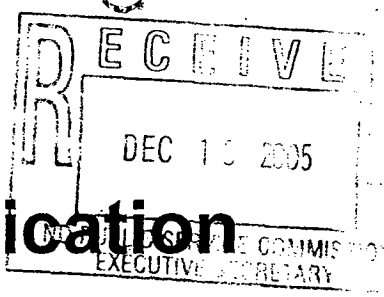
Display ad proof

by North Dakota Advertising Service, Inc.

11/18/2005

BT822102 :

ORDIN : 10025



Affidavit of Publication

Colleen Park

, being duly sworn, state as follows:

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.

The newspapers listed on the exhibits published the advertisement of:

PSC, Case Safety in Grain Buyers

1 time(s) as required by law or ordinance.

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.

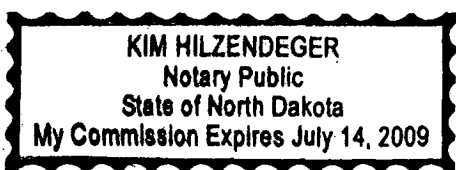
Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 15 day of December 20 05.

Kim Hilzendeger



GS-05-341 Pages: 1
Affidavit of Publication

PU-05-364 Pages: 1
Affidavit of Publication

by North Dakota Advertising Service, Inc.

20 PU-05-575 Pages: 1
Affidavit of Service

20 RC-05-591 Pages: 1

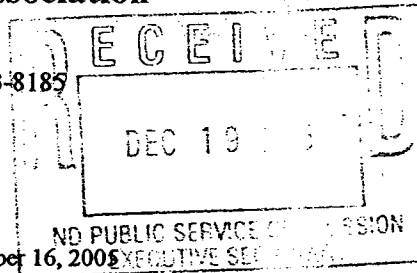
21 GE-05-594 Pages: 1
Affidavit of Service

16 PU-05-602 Pages: 11
Affidavit of Service
by Dakota Valley Electric Cooperative, Inc.
12/19/2005

North Dakota Newspaper Association

1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

INVOICE



Order 21339-05115PP0

Invoice # 64902

December 16, 2005

Advertiser: Public Service Commission

P.O.#:

Amount Due

\$1,540.00

Amount Paid

Attn: ILLONAA. JEFFCOAT-SACCO
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505

Voice: 701-328-4076

Please detach and return this portion with your payment

Public Service Commission Invoice # 21339-05115PP0-64902

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
COUNTY95							
Ashley Tribune (Ashley ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Beach Golden Valley News (Beach ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Bismarck Tribune (Bismarck ND)							
5.50	SPR1	10.00	55.00	0.00	Gas Safety - Grain Buy		11/25/05
Bottineau Courant (Bottineau ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/29/05
Bowbells Burke County Tribune (Bowbells ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Bowman County Pioneer (Bowman ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Cando Towner Co Record Herald (Cando ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
Carrington Foster Co Independent (Carrington ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Carson Press (Elgin ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Cavalier Chronicle (Cavalier ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Center Republican (Washburn ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Cooperstown Griggs Co. Sentinel-Courier (Cooperstown ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Crosby The Journal (Crosby ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Devils Lake Daily Journal (Devils Lake ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Dickinson Press (Dickinson ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Elgin Grant County News (Elgin ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05

	Rate	Total	Discount (%)	Caption	Page	Run Date
COUNTY95						
Ellendale ND)						
5.00 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Wargo ND)						
10.00 SPR1	10.00	55.00	0.00	Gas Safety - Grain Buy		11/28/05
Finley Press (Finley ND)						
5.00 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Garrison Co Independent (Garrison ND)						
6.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Grafton County Record (Grafton ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Grand Forks Herald (Grand Forks ND)						
5.50 SPR1	10.00	55.00	0.00	Gas Safety - Grain Buy		11/26/05
Harvey The Herald-Press (Harvey ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
Hazen Star (Hazen ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Hettinger Adams Co Record (Hettinger ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/29/05
Jamestown Sun (Jamestown ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
Killdeer Dunn County Herald (Killdeer ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Lakota American (Lakota ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
LaMoure Chronicle (LaMoure ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Langdon Cavalier Co Republican (Langdon ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Linton Emmons County Record (Linton ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Lisbon Ransom County Gazette (Lisbon ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Mandan News (Mandan ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Mayville * Traill County Tribune (Mayville ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
McClusky Gazette (McClusky ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Medora Billings County Pioneer (Beach ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Milnor The Teller (Milnor ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Minnewaukan Benson Co Farmers Press (Minnewaukan ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Minot Daily News (Minot ND)						
5.50 SPR1	10.00	55.00	0.00	Gas Safety - Grain Buy		11/25/05
Mohall Renville County Farmer (Mohall ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Napoleon Homestead (Napoleon ND)						
5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05

Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date

COUNTY95

And The Herald (New England ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/25/05
Rockford Transcript (New Rockford ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/28/05
Rolla Turtle Mountain Star (Rolla ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/28/05
Rugby Pierce County Tribune (Rugby ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/26/05
Stanley Mountrail Co Promoter (Stanley ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/23/05
Steele Ozone-Press (Steele ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/23/05
Towner Mouse River Journal (Towner ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/23/05
Valley City Times-Record (Valley City ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/28/05
Wahpeton Daily News (Wahpeton ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/25/05
Watford City McKenzie Co Farmer (Watford City ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/23/05
Williston Herald (Williston ND)	5.50 SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy	11/25/05

Gross Advertising	1,540.00	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	1,540.00	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	1,540.00

19 GS-05-341 Pages: 1

24 PU-05-364 Pages: 1

20 PU-05-575 Pages: 1

20 RC-05-591 Pages: 1

21 GE-05-594 Pages: 1

Affidavit of Service

16 PU-05-602 Pages: 11

Affidavit of Service

by Dakota Valley Electric Cooperative, Inc.
12/19/2005

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The thirty-day public comment period for the draft permit will begin December 2, 2005 and end on January 2, 2006. Public comments should be directed to Terry L. O'Clair, Director, Air Quality Division, 1200 Missouri Avenue, Room 304, Box 5520, Bismarck, North Dakota 58506-5520. All comments received will be considered in the final determination concerning issuance of the Title V Permit to Operate. A public hearing regarding issuance of the Title V Permit to Operate will be held if a significant degree of public interest exists as determined by the Department. Requests for a public hearing must be addressed, in writing, to the Department at the above-mentioned address before the end of the public comment period. The permit application, statement of basis and draft Title V Permit to Operate are available for inspection at the above address and at the McIntosh County Auditor's office in Ashley, North Dakota. A copy of the above-mentioned documents may be obtained by writing the aforementioned address or contacting Mr. Gary Helbling of the Department at (701) 328-5188 or email to ghelblin@state.nd.us. Dated this 21st day of November 2005.
Terry L. O'Clair, P.E.
Director, Air Quality Division

NOTICE OF MCINTOSH COUNTY COMMISSION MEETING

The regular monthly meeting of the McIntosh County Commissioners will be Tues., December 6, 2005, at 9 a.m. in the commission room at the courthouse. Also the Water Resource Board will meet on Tues., December 6, 2005 at 9 a.m. in the courthouse. The Disaster Emergency Manager, DeLons Rudolph, will have the Tier II chemical facility reports available for public review from 9 a.m. until 10 a.m. in the auditor's office.

NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES

relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers. The proposed grain buyer rule change was formally requested by the ND Dry Pea and Lentil Association, and is supported by the North Central Bean Dealers Association.

Public Service Commission

will hold a public hearing to address proposed amendments to the N.D. Admin. Code.

Commission Hearing Room

12th Floor
State Capitol
Bismarck

Wed., Jan. 4, 2006
1:00 p.m. CT

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at (701) 328-2400, TDD (800) 366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

Susan E. Wefald Tony Clark Kevin Cramer
Commissioner President Commissioner

got his limit again. Again he had dropped two with one shot from the 20 gauge Browning he had gone to in concession to the years. "He just couldn't miss with that gun," Tim says. He hadn't missed in getting his limit. His dog, Cutty, a 13-year-old Chesapeake Bay retriever, performed like a pup. She retrieved the last bird of the day. "He must have said it

Then he collapsed." "That was typical of Father," Tim says, smiling, tears welling, "shaking a guy's hand, telling him what a good dog he had." CPR started Tommy breathing again and in those frantic moments Cutty stood over him and barked. "Get up goddam it," Tim translates.

At the hospital, Dr. Mattson told Tim, "He might be able to hear you."

"I love you, Dad," Tim said to his father as he squeezed his hand. And in his darkness, Tommy heard. "He squeezed back... with his trigger finger," Tim says, choking back the tears.

It was his last signal to the world, but his heart beat on. "C'mon Dad, give it up," Tim implored as the days dragged on. "Goddam Dad, give it up!"

After Orma and Linda, Tim's sister, had arrived to say their goodbyes, the oxygen was turned off. And then, and only then, did that great heart stop beating. Now Tim continues the hunt but "I don't attack it with the same intensity. It's not that important for me to shoot anything." For his elk hunt in Wyoming, ten days removed from the funeral, Tim loaded up his father's Remington 30-06, the one with open sights. Tommy didn't use a scope and this year neither will Tim. Tim will be back for pheasant season in Hettinger next year. "Oh yeah. But I don't think I could do opening day... Too tough." He shakes his head slowly. "Too many memories..."

— 1994

Bender's mother and father in law in response to Tony's incredibly funny recent column exposing them as Williams and Ree groupies. They cannot take a joke. They gave Tony bad water and and burnt toast on Thanksgiving. Really.

Dear Tony,

Your column does insult us, we didn't think our son-in-law would offend us like that. We have never driven over 290 miles to see Williams and Ree. On our cruise to Cozumel they just happened to also be on the ship.

We are not geriatric groupies, in fact groupies are usually teenage teeny boppers. If you want to belittle us we will tell it like it is (Ashley Tribune's motto.)

Every town or city you have lived in or visited you have caused great loss, hardship, suffering. Ashley was glad to see you move many years ago but you were let back in when some residents had forgotten about your younger escapades and others thought that you had changed. Were they wrong!

Since you have returned, school board members get grouchy, police officials stay about 2 months and hunters are antagonized.

Ashley has a celebration everytime you go on vacation, you spent some time in Frederick, the law stated you could stay until you finished high school, then the town gave you a one way bus ticket to western South Dakota.

Frederick has been a nice town to live in ever since in spite of some Republicans living there.

You landed a radio job in South Carolina where after a hurricane devastated the town, they fired you.

and the Exxon Valdez went aground and spilled millions of gallons of oil to spread havoc among wildlife and Alaska's beaches. You moved to Sturgis, they wanted you out of there so bad they had a tar and feather Tony Bender Day.

When you lived in Hettinger, they had a record snowfall and ice storm that started there and covered all of eastern North Dakota and western Minnesota.

You visited Mexico one time now the United States is talking about putting a fence between the countries, not to keep illegal aliens out as you might read in the press, but just in case you go to Mexico again the fence will go up very quick.

You visited New York the week of Nov. 11-18. Let us all pray for New York.

Ashley citizens wanted you to visit us each month but we restricted you to three times a year and when you do come, we keep you locked up in an upstairs bedroom and only let you out one time a day for pumpkin bars.

After you disparaged us one time a year and will only be let out for bread and water.

Yes, we are mild Viking fans, we do not want lap dances from Fred Smoot but we might go on a cruise with the team. Poor Fred, you mention him in your "That's Life" and he suffers a broken collar bone and may be out for the season. Thanks Tony!!!

Now, you can get rid of Tice. Tony can you write something about Tice?

No more pumpkin bars for you for a long time.

Gary and Martyn Lovgren
Verona, ND

11/30 Ashley



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

22 November 2005

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, North Dakota 58505-0360

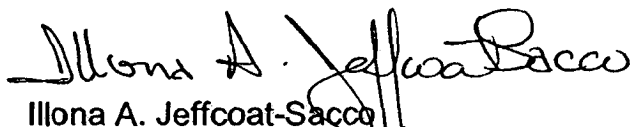
Re: Amended Notice of Intent to Adopt and Amend Administrative Rules
Case Nos. GS-05-341, PU-05-364, PU-05-575, RC-05-591,
GE-05-594 and PU-05-602

Dear Mr. Walstad:

Enclosed is an Amended Notice of Intent to Adopt and Amend Administrative Rules required by N.D.C.C. § 28-32-10(1), along with an amended abbreviated Notice of Hearing. The proposed rule changes were previously filed with your office on November 17, 2005.

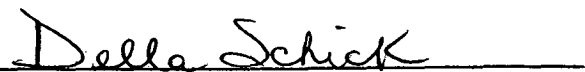
If you have any questions, please contact us. Thank you.

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary

Enclosure

Received in the office of Legislative Council this 22 day of November 2005.

By: 



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

NOV 17 2005

17 November 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

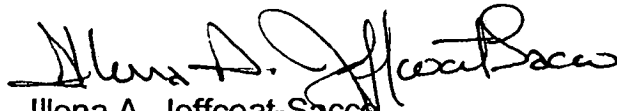
Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, North Dakota 58505-0360

Re: Notice of Intent to Adopt and Amend Administrative Rules
Case Nos. GS-05-341, PU-05-364, PU-05-575, RC-05-591,
GE-05-594 and PU-05-602

Dear Mr. Walstad:

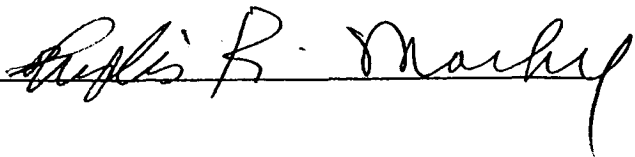
The Notice of Intent to Adopt and Amend Administrative Rules required by N.D.C.C. § 28-32-10(1), along with an abbreviated Notice of Hearing and a copy of the proposed rule changes are enclosed.

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary

Enclosure

Received in the office of Legislative Council this _____ day of November 2005.

By: 

Testimony for Case No. RC-05-591

Proposed Changes to NDAC Article 69-05.2 Surface Coal Mining and Reclamation Operations

January 4, 2006

I am Jim Deutsch, Director of the Public Service Commission's Reclamation Division. I will explain the rule changes in Case No. RC-05-591. The changes are proposed to North Dakota Administrative Code Article 69-05.2, rules for surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives.

Additional language is proposed to NDAC 69-05.2-06-03 containing right of entry requirements to allow a permittee to delete coal leases from the permit when mining on the tract covered by a lease is completed and the lease is no longer needed to show surface right of entry, or when a coal lease has been otherwise terminated. However, if the coal lease no longer provides the surface right of entry, other documents granting the permittee right of entry must be added to the permit.

One of the changes proposed to NDAC 69-05.2-10-01 deletes language that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and the other limits the listing of coal owners in the notice to those that will be affected by the mining activities.

A change to the bond release application requirements under NDAC 69-05.2-12-12 will require the filing of a copy of the newspaper advertisement within 30 days of submitting the application instead of requiring the submittal of affidavits of publication within 30 days of submittal of the application. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete, which is almost always later than 30 days after the bond release application is filed. Another change adds a cross-reference to another rule that requires additional information if a final bond release application involves an area that contained a premine water supply that is not being replaced.

Changes are proposed to NDAC 69-05.2-16-09 on sedimentation pond inspection requirements to make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by a registered professional engineer. The changes will also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections will still have to be prepared and maintained at or near the mine site.

The proposed changes to the revegetation success standards under NDAC 69-05.2-22-07 are similar to those proposed by the Office of Surface Mining in March of 2005 to the counterpart federal rule. The changes will allow data collected from native grassland, tame pastureland and cropland in any two years after year six of the ten-year revegetation liability period to be used for final bond release purposes. Currently, data from the last two consecutive years of the liability period, or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period), must be used to demonstrate reclamation success. In addition, only one year of vegetation data would be needed to prove reclamation success on reclaimed woodlands, shelterbelts, and fish and wildlife habitat. New language is also proposed for woodland and shelterbelt standards that allow certain volunteer trees and shrubs to count towards meeting the revegetation standards. These changes should result in some reclaimed tracts being bond released sooner. OSM expects to issue its final rule in early 2006.

Also, a minor change is proposed to the road performance standards under NDAC 69-05.2-24-01 to correct a cross reference error.

Regulatory and takings assessments for these rule changes have been prepared and copies are available for review. This concludes my testimony on the mining and reclamation rule changes proposed in Case No. RC-05-591.

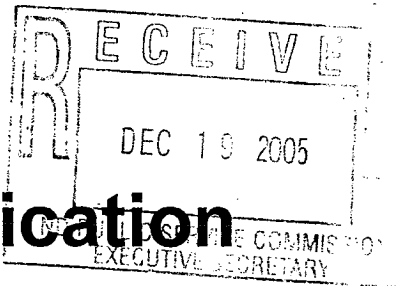


ATTENDANCE SHEET
PUBLIC SERVICE COMMISSION
ADMINISTRATION DIVISION
 SFN 19730 (1-94)

Date	January 4, 2006
Case Number	GS-05-341, PU-05-364, PU-05-575, RC-05-591, GE-05-594 PU-05-602

Attendance At	Administrative Rules Hearing
Location	Public Service Commission, Commission Hearing Room, Bismarck, ND

NAME	ADDRESS	REPRESENTING
Don Ball		MDU
DIANE STEEN		MDU
JIM MELCHIOR		COTEAU
DAVID CROTHERS		ND Assoc of Ten Co-ops
Ilona Jeffcoat Bicus		PSC
Rick F. Hbrandt		PSC
Sue Richter		PSC
Eric Bartsch	1710 Burnt Bow Drive Bismarck ND 58503	ND Dry Pea and Lentil Assoc
Mick Glosz	Hazen	WRT
Justin M. Muntal		Quest
Kent Blickensderfer		Quest
JOAN C PETERSON	200 South 5th St. #2200 Minneapolis MN 55402	Quest
Keith Larson		Dakota Contract
Don Negard	Mino +	NDAFC/RTCG
Dave Schowweiler	Center Mine	BSI Coac Ltd.
Alan G Moch		
	21 GS-05-341	Pages: 1
	25 PU-05-364	Pages: 1
	33 PU-05-575	Pages: 1
	21 RC-05-591 ✓	Pages: 1
	25 GE-05-594	Pages: 1
	17 PU-05-602	Pages: 1
	Hearing Attendance Sheet	
	by Public Service Commission	
	01/04/2006	



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:

PSC, Case Safety in Brain Buyers

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

15

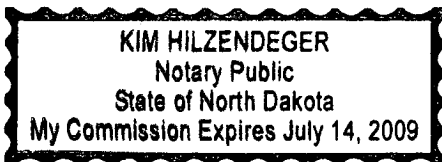
day of

December

20

05

Kim Hilzenegger



19 GS-05-341

Pages: 1

Affidavit of Publication

24 PU-05-364

Pages: 1

Affidavit of Publication

by North Dakota Advertising Service, Inc.

12/19/2005

CC: Comm Legal Illona

20 PU-05-575

Pages: 1

Affidavit of Service

20 RC-05-591

Pages: 1

21 GE-05-594

Pages: 1

Affidavit of Service

16 PU-05-602

Pages: 11

Affidavit of Service

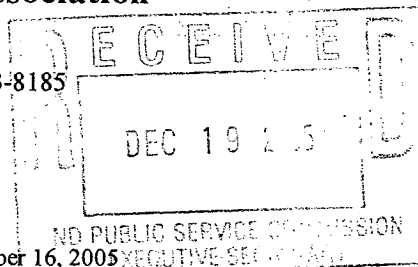
by Dakota Valley Electric Cooperative, Inc.

12/19/2005

North Dakota Newspaper Association

1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

INVOICE



Order **21339-05115PP0**

Invoice # **64902**

December 16, 2005

Attn: **ILLONAA. JEFFCOAT-SACCO**
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505

Voice: 701-328-4076

Advertiser: **Public Service Commission**

P.O.#:

Amount Due

\$1,540.00

Amount Paid

Please detach and return this portion with your payment

Public Service Commission Invoice # 21339-05115PP0-64902

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date
COUNTY95							
Ashley Tribune (Ashley ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Beach Golden Valley News (Beach ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Bismarck Tribune (Bismarck ND)							
5.50	SPR1	10.00	55.00	0.00	Gas Safety - Grain Buy		11/25/05
Bottineau Courant (Bottineau ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/29/05
Bowbells Burke County Tribune (Bowbells ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Bowman County Pioneer (Bowman ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Cando Towner Co Record Herald (Cando ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
Carrington Foster Co Independent (Carrington ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Carson Press (Elgin ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Cavalier Chronicle (Cavalier ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Center Republican (Washburn ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Cooperstown Griggs Co. Sentinel-Courier (Cooperstown ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Crosby The Journal (Crosby ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Devils Lake Daily Journal (Devils Lake ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Dickinson Press (Dickinson ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Elgin Grant County News (Elgin ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05

<i>Ad Size</i>	<i>Rate Type</i>	<i>Rate</i>	<i>Total</i>	<i>Discount (%)</i>	<i>Caption</i>	<i>Page</i>	<i>Run Date</i>
COUNTY95							
Ellendale Dickey Co Leader (Ellendale ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Fargo, The Forum (Fargo ND)							
5.50	SPR1	10.00	55.00	0.00	Gas Safety - Grain Buy		11/28/05
Finley Steele County Press (Finley ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Garrison McLean Co Independent (Garrison ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Grafton * Walsh County Record (Grafton ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Grand Forks Herald (Grand Forks ND)							
5.50	SPR1	10.00	55.00	0.00	Gas Safety - Grain Buy		11/26/05
Harvey The Herald-Press (Harvey ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
Hazen Star (Hazen ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Hettinger Adams Co Record (Hettinger ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/29/05
Jamestown Sun (Jamestown ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
Killdeer Dunn County Herald (Killdeer ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Lakota American (Lakota ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
LaMoure Chronicle (LaMoure ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Langdon Cavalier Co Republican (Langdon ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Linton Emmons County Record (Linton ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Lisbon Ransom County Gazette (Lisbon ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Mandan News (Mandan ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Mayville * Traill County Tribune (Mayville ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
McClusky Gazette (McClusky ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Medora Billings County Pioneer (Beach ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/24/05
Milnor The Teller (Milnor ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Minnewaukan Benson Co Farmers Press (Minnewaukan ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Minot Daily News (Minot ND)							
5.50	SPR1	10.00	55.00	0.00	Gas Safety - Grain Buy		11/25/05
Mohall Renville County Farmer (Mohall ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Napoleon Homestead (Napoleon ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05

Ad Size	Rate Type	Rate	Total	Discount (%)	Caption	Page	Run Date

COUNTY95

New England The Herald (New England ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
New Rockford Transcript (New Rockford ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Rolla Turtle Mountain Star (Rolla ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Rugby Pierce County Tribune (Rugby ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/26/05
Stanley Mountrail Co Promoter (Stanley ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Steele Ozone-Press (Steele ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Towner Mouse River Journal (Towner ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Valley City Times-Record (Valley City ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/28/05
Wahpeton Daily News (Wahpeton ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05
Watford City McKenzie Co Farmer (Watford City ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/23/05
Williston Herald (Williston ND)							
5.50	SPR1	5.00	27.50	0.00	Gas Safety - Grain Buy		11/25/05

Gross Advertising	1,540.00	Total Misc	0.00	Amount Paid	0.00
Agency Discount		Tax	0.00	Adjustments	0.00
Other Discount	0.00	Total Billed	1,540.00	Payment Date	
Service Charge	0.00	Unbilled	0.00	Balance Due	1,540.00

19 GS-05-341 Pages: 1

24 PU-05-364 Pages: 1

20 PU-05-575 Pages: 1

20 RC-05-591 Pages: 1

21 GE-05-594 Pages: 1

Affidavit of Service

16 PU-05-602 Pages: 11

Affidavit of Service

by Dakota Valley Electric Cooperative, Inc.
12/19/2005

APPROVED

DATE: 11-30-05
KMF

MOTION

November 30, 2005

**Public Service Commission
Gas Safety
Rulemaking**

Case No. GS-05-341

**Public Service Commission
Public Utilities – Electric
Rulemaking**

Case No. PU-05-364

**Public Service Commission
Public Utilities – Telephone
Rulemaking**

Case No. PU-05-575

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

**Public Service Commission
Licensing – Grain Buyer
Rulemaking**

Case No. GE-05-594

**Public Service Commission
Public Utilities – Siting
Rulemaking**

Case No. PU-05-602

I move the Commission acknowledge the issuance of an Amended Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing, and the amended abbreviated Notice of Hearing, in Case Nos. GS-05-341, PU-05-364, PU-05-575, RC-05-591, GE-05-594 and PU-05-602.

18 GS-05-341 Pages: 1

Motion to acknowledge issuance of Amended
Notice
by Public Service Commission
11/30/2005

22 PU-05-364 Pages: 1

Motion to acknowledge issuance of Amended
Notice
by Public Service Commission
11/30/2005

18 PU-05-575 Pages: 1

Motion to acknowledge issuance of Amended
Notice
by Public Service Commission
11/30/2005 CC: Comm Legal Illona

19 RC-05-591 ✓ Pages: 1

Motion to acknowledge issuance of Amended
Notice
by Public Service Commission

17 GE-05-594 Pages: 1

Motion to acknowledge issuance of Amended
Notice
by Public Service Commission

15 PU-05-602 Pages: 1

Motion to acknowledge issuance of Amended
Notice
by Public Service Commission
11/30/2005



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

22 November 2005

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, North Dakota 58505-0360

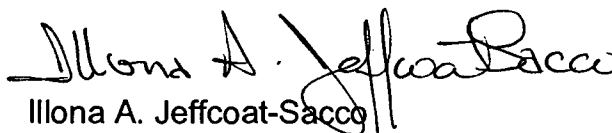
Re: Amended Notice of Intent to Adopt and Amend Administrative Rules
Case Nos. GS-05-341, PU-05-364, PU-05-575, RC-05-591,
GE-05-594 and PU-05-602

Dear Mr. Walstad:

Enclosed is an Amended Notice of Intent to Adopt and Amend Administrative Rules required by N.D.C.C. § 28-32-10(1), along with an amended abbreviated Notice of Hearing. The proposed rule changes were previously filed with your office on November 17, 2005.

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

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary

Enclosure

Received in the office of Legislative Council this 22 day of November 2005.

By: Della Schick



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

22 November 2005

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, North Dakota 58505-0360

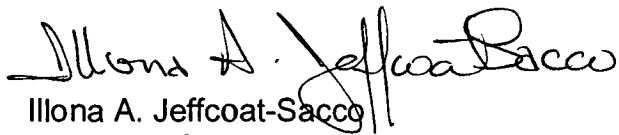
Re: Amended Notice of Intent to Adopt and Amend Administrative Rules
Case Nos. GS-05-341, PU-05-364, PU-05-575, RC-05-591,
GE-05-594 and PU-05-602

Dear Mr. Walstad:

Enclosed is an Amended Notice of Intent to Adopt and Amend Administrative Rules required by N.D.C.C. § 28-32-10(1), along with an amended abbreviated Notice of Hearing. The proposed rule changes were previously filed with your office on November 17, 2005.

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

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary

Enclosure

Received in the office of Legislative Council this _____ day of November 2005.

By: _____

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-05-341

**Public Service Commission
Public Utilities - Electric
Rulemaking**

Case No. PU-05-364

**Public Service Commission
Public Utilities - Telephone
Rulemaking**

Case No. PU-05-575

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

**Public Service Commission
Licensing – Grain Buyer
Rulemaking**

Case No. GE-05-594

**Public Service Commission
Public Utilities – Siting
Rulemaking**

Case No. PU-05-602

**AMENDED
NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

November 22, 2005

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to several articles of the North Dakota Administrative Code. The hearing will be held **at 1:00 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

Gas Pipeline Safety: Case No. GS-05-341

The Gas Pipeline Safety Federal rules to be adopted by reference will amend the state pipeline safety regulations to: require gas operators to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico

and its inlets in waters less than 15 feet deep; codify new program requirements concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method; amend the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs; revise all references to the former Research and Special Programs Administration in 49 CFR parts 190 through 199 to reflect the creation of Pipeline and Hazardous Materials Safety Administration.

Public Utilities – Electric: Case No. PU-05-364

Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

Public Utilities – Siting: Case No. PU-05-602

Proposed changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Public Utilities – Telephone: Case No. PU-05-575

Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings.

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

Proposed changes to North Dakota Administrative Code Section 69-09-05-12 concern the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing

negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Reclamation: Case No. RC-05-591

Several changes are proposed to rules that pertain to the coal mining and reclamation regulatory program. The changes will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United State Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; adding a cross reference to another rule for information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and modifying data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. A cross reference error is also being corrected in the general requirements for roads. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Licensing – Grain Buyer: Case No. GE-05-594

On October 7, 2005, the North Dakota Dry Pea and Lentil Association formally asked the Commission to consider a change to North Dakota Administrative Code Section 69-07-01-14. The North Dakota Dry Pea and Lentil Association proposes to change the existing rule to exempt a grain buyer from the licensing requirement when the grain buyer purchases dry peas, lentils or chickpeas owned by a licensed entity. The current rule exempts a grain buyer from the licensing requirement when purchasing any grain that is owned by a licensed entity and also has been substantially altered by processing or blending, or cleaned and bagged for consumption.

The Notice of Intent to Adopt and Amend Administrative Rules and an abbreviated notice were issued on November 17, 2005. Late that afternoon the North Central Bean Dealers Association filed in support of the existing proposal and formally asked the Commission to consider an additional change in the proposed rule to exempt a grain buyer from the licensing requirement when the grain buyer purchases dry edible beans owned by a licensed entity. The proposed rule itself has not been revised at this time to incorporate this request, but this amended notice is being issued to notify interested parties of the possible inclusion of dry edible beans in the exemption. The abbreviated notice was also revised prior to publication to indicate the support of the North Central Bean Dealers Association.

All of the proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or

any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses, contact the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400. The proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be viewed at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Interested persons may submit written data, views, arguments, or appear in person or through counsel concerning the proposals. Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480.

The Commission will allow after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking will be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

If individuals 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 hearing. She can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

PUBLIC SERVICE COMMISSION


Susan E. Wefald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner

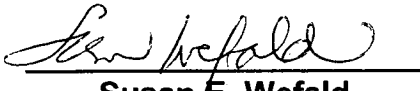
**AMENDED
NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

November 22, 2005

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers, at 1 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The proposed grain buyer rule change was formally requested by the North Dakota Dry Pea and Lentil Association, and is supported by the North Central Bean Dealers Association.

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at 701-328-2400, TDD 800-366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

PUBLIC SERVICE COMMISSION


Susan E. Wefald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner



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

Memorandum

TO: Mine Operators and Other Interested Parties

FROM: Jim Deutsch, Reclamation Division

DATE: November 18, 2005

SUBJECT: Proposed mining and reclamation rule changes, Case No. RC-05-591

Enclosed are copies of the hearing notice and proposed rule changes affecting surface coal mining and reclamation operations. Some of the changes are based on suggestions from the Lignite Energy Council and others are staff initiatives. The following is a summary of the proposed changes:

NDAC 69-05.2-06-03 – Additional language is being proposed that would allow a permittee to delete a coal lease from the permit when mining on the tract covered by the lease is completed and the lease is no longer needed to show surface right of entry or the lease has been otherwise terminated. However, if the coal lease no longer provides surface right of entry, other documents granting the permittee right of entry must be added to the permit.

NDAC 69-05.2-10-01 – Changes are proposed to 1) delete a provision that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and 2) limit the listing of coal owners in the notice to those that will be affected by the mining activities.

NDAC 69-05.2-12-12 – Changes are proposed to change the existing requirement that the permittee submit proof (an affidavit) of publication within 30 days of submitting the application to submitting a copy of the advertisement that was published. This change is proposed since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete. Another change adds a cross-reference to information that is required in certain final bond release applications by the "replacement of water supply" definition.

NDAC 69-05.2-16-09 – The proposed changes to sedimentation pond inspection requirements make a better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by registered professional engineer. The changes also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections would have to be prepared and maintained at or near the mine site.

NDAC 69-05.2-22-07 – Proposed changes to revegetation success standards are similar to those proposed by the Office of Surface Mining to the counterpart federal rules earlier this year. The changes will allow the use of data collected in any two years following year six of the ten-year revegetation liability period for native grassland, tame pastureland and cropland uses. Currently, data from the last two consecutive years of the liability period or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period) must be provided to demonstrate reclamation success. Also, for woodlands, shelterbelts and fish and wildlife habitat, only one year of data would be needed to prove reclamation success on these land uses. Additional language is proposed for woodland and shelterbelt standards to allow the counting of volunteer trees and shrubs for meeting the standards. These changes may result in some reclaimed tracts being bond released sooner.

NDAC 69-05.2-24-01 – A change to the road performance standards is proposed to correct an existing cross reference error.

The hearing on these proposed rule changes will be held at 1:00 p.m. on January 4, 2006 in the Commission Hearing Room at the State Capitol. The deadline for submitting written comments is January 17, 2006. If you have any questions, please contact the Reclamation Division.

Attachments

jrd\2005 bonding rule changes\MemoProposedRules.doc

Saudi
Scott

**NOTICE OF INTENT TO
ADOPT AND AMEND
ADMINISTRATIVE
RULES**

relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers. The proposed grain buyer rule change was formally requested by the ND Dry Pea and Lentil Association, and is supported by the North Central Bean Dealers Association.

**Public Service
Commission**

will hold a public hearing to address proposed amendments to the N.D. Admin. Code.

**Commission Hearing
Room**

**12th Floor
State Capitol
Bismarck**

**Wed., Jan. 4, 2006
1:00 p.m. CT**

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at (701) 328-2400, TDD (800) 366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

Susan E. Wefald Tony Clark Kevin Cramer
Commissioner President Commissioner

- 13 **GS-05-341** Pages: 1
Display ad proof
by North Dakota Advertising Service, Inc.
11/18/2005 CC: Comm Legal Illona
- 16 **PU-05-364** Pages: 1
Display ad proof
by North Dakota Advertising Service, Inc.
11/18/2005 CC: Comm Legal Illona
- 11 **PU-05-575** Pages: 1
Display ad proof
by North Dakota Advertising Service, Inc.
11/18/2005
- 13 **RC-05-591** Pages: 1
Display ad proof
by North Dakota Advertising Service, Inc.
11/18/2005

- 12 **GE-05-594** Pages: 1
Display ad proof
by North Dakota Advertising Service, Inc.
11/18/2005
- 8 **PU-05-602** Pages: 1
Display ad proof
by North Dakota Advertising Service, Inc.
11/18/2005



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

NOV 17 2005

17 November 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. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, North Dakota 58505-0360

Re: Notice of Intent to Adopt and Amend Administrative Rules
Case Nos. GS-05-341, PU-05-364, PU-05-575, RC-05-591,
GE-05-594 and PU-05-602

Dear Mr. Walstad:

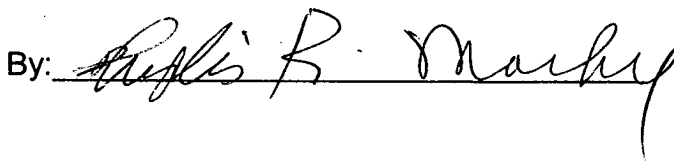
The Notice of Intent to Adopt and Amend Administrative Rules required by N.D.C.C. § 28-32-10(1), along with an abbreviated Notice of Hearing and a copy of the proposed rule changes are enclosed.

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary

Enclosure

Received in the office of Legislative Council this _____ day of November 2005.

By: 

Scott, Sandi L.

From: Colleen Park [colleenp@ndna.com]

Sent: Thursday, November 17, 2005 11:25 AM

To: Scott, Sandi L.

Subject: RE: Abbreviated Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing

Received. I will schedule the notice to run from November 23 - 29 on the paper's various publishing days.
I will fax a proof to you by Friday morning at the latest.

Thanks!

Colleen

From: Scott, Sandi L. [mailto:slscott@state.nd.us]

Sent: Thursday, November 17, 2005 10:56 AM

To: colleenp@ndna.com

Cc: Scott, Sandi L.

Subject: Abbreviated Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing

Colleen:

Please send the enclosed public notice to each official county newspaper for publication ^{one} ~~on~~ time as soon as possible. Note that the publication of the notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of [between three inches [7.62 centimeters] and four inches [10.16 centimeters]]. Please also note that the notice must include a headline describing the general topic of the proposed rules.

Please send the billing along with the Affidavit of Publication and tear sheets to the Public Service Commission, 600 East Boulevard Avenue, Dept. 408, Bismarck, ND 58505-0480. If you have any questions, please contact me at 328-4081. Thank you.

Sandi Scott

ND Public Service Commission

600 E Blvd. Ave., Dept 408

Bismarck, ND 58505-0480

Telephone; 701-328-4081

Fax; 701-328-2410

E-Mail Address: slscott@state.nd.us



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

17 November 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. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
Bismarck, North Dakota 58505-0360

Re: Notice of Intent to Adopt and Amend Administrative Rules
Case Nos. GS-05-341, PU-05-364, PU-05-575, RC-05-591,
GE-05-594 and PU-05-602

Dear Mr. Walstad:

The Notice of Intent to Adopt and Amend Administrative Rules required by N.D.C.C. § 28-32-10(1), along with an abbreviated Notice of Hearing and a copy of the proposed rule changes are enclosed.

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary

Enclosure

Received in the office of Legislative Council this _____ day of November 2005.

By: _____

APPROVED

DATE: 11-17-05
Kmf

MOTION

November 17, 2005

**Public Service Commission
Gas Safety
Rulemaking**

Case No. GS-05-341

**Public Service Commission
Public Utilities – Electric
Rulemaking**

Case No. PU-05-364

**Public Service Commission
Public Utilities – Telephone
Rulemaking**

Case No. PU-05-575

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

**Public Service Commission
Licensing – Grain Buyer
Rulemaking**

Case No. GE-05-594

**Public Service Commission
Public Utilities – Siting
Rulemaking**

Case No. PU-05-602

I move the Commission propose the following amendments to the North Dakota Administrative Code, schedule a hearing for 1 p.m., CST, January 4, 2006, issue a Notice of Proposed Rules and Public Hearing, and issue an abbreviated Notice of Hearing for publication in each official county newspaper throughout the state as required by law.

Article 69-05.2

Amendments to Reclamation Rules

Article 69-06

Amendments to Siting Rules

Article 69-07

Amendments to Grain Buyers Rules

Article 69-09

Amendments to Gas Safety, Electric and
Telecommunications Rules

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-05-341

**Public Service Commission
Public Utilities - Electric
Rulemaking**

Case No. PU-05-364

**Public Service Commission
Public Utilities - Telephone
Rulemaking**

Case No. PU-05-575

**Public Service Commission
Reclamation
Rulemaking**

Case No. RC-05-591

**Public Service Commission
Licensing – Grain Buyer
Rulemaking**

Case No. GE-05-594

**Public Service Commission
Public Utilities – Siting
Rulemaking**

Case No. PU-05-602

**NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

November 17, 2005

PLEASE TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to several articles of the North Dakota Administrative Code. The hearing will be held at **1:00 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

Gas Pipeline Safety: Case No. GS-05-341

The Gas Pipeline Safety Federal rules to be adopted by reference will amend the state pipeline safety regulations to: require gas operators to prepare and follow procedures for periodic inspections of pipeline facilities located in the Gulf of Mexico and its inlets in waters less than 15 feet deep; codify new program requirements

concerning personnel training, notice of program changes, government review and verification of programs, and use of on-the-job performance as a qualification method; amend the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs; revise all references to the former Research and Special Programs Administration in 49 CFR parts 190 through 199 to reflect the creation of Pipeline and Hazardous Materials Safety Administration.

Public Utilities – Electric: Case No. PU-05-364

Proposed rules for establishing or participating in a program to track, record and verify the trading of credits for electricity generated from renewable electricity sources among electric generators, utilities, and other interested entities within this state and with similar entities in other states as authorized and defined by newly-enacted North Dakota Century Code Sections 49-02-24 through 26.

Public Utilities – Siting: Case No. PU-05-602

Proposed changes to North Dakota Administrative Code Subsections 69-06-08-01(4) and 69-06-08-02(4) add to the policy criteria used in evaluating energy conversion and transmission facility siting applications an indication that the Commission may give preference to applicants that maximize the interstate benefits of proposed projects.

Public Utilities – Telephone: Case No. PU-05-575

Case No. PU-05-575 consists of proposals concerning telecommunications registration, eligible carrier applications and advertising, and interconnection agreement filings.

Proposed changes to North Dakota Administrative Code Section 69-09-05-02 implement new North Dakota Century Code Section 49-03.1-09 which was designed to streamline the regulatory process for telecommunications companies that are not incumbent local exchange companies. The proposed changes also clarify the definition of prepayment, and set forth the performance bond and escrow account requirements for resellers.

Proposed changes to North Dakota Administrative Code Section 69-09-05-12 concern the application requirements for a telecommunications company seeking designation as an eligible carrier for purposes of receiving federal universal service funding, annual reporting requirements of designated eligible carriers, and the criteria to be considered by the Commission in designating an eligible carrier.

New North Dakota Administrative Code Section 69-09-05-14 is being proposed for the purpose of formalizing existing Commission procedures for processing negotiated telecommunications carrier to carrier interconnection agreements filed for Commission approval under 47 USC Section 252(e).

Reclamation: Case No. RC-05-591

Several changes are proposed to rules that pertain to the coal mining and reclamation regulatory program. The changes will allow some lease documents to be deleted from a mining permit once mining is completed or when a lease is otherwise terminated; dropping the name of the United State Geological Survey map containing the permit area and not listing the names of subsurface owners who are not affected by mining activities in newspaper notices for permit applications; adding a cross reference to another rule for information that must be submitted with bond release applications; clarifying inspection requirements for sedimentation ponds and other impoundments; and modifying data requirements for proving reclamation success and adding new language to revegetation success standards on the counting of volunteer trees and shrubs. A cross reference error is also being corrected in the general requirements for roads. These proposed rule changes are not expected to have an impact on the regulated community in excess of fifty thousand dollars.

Licensing – Grain Buyer: Case No. GE-05-594

On October 7, 2005, the North Dakota Dry Pea and Lentil Association formally asked the Commission to consider a change to North Dakota Administrative Code Section 69-07-01-14. The North Dakota Dry Pea and Lentil Association proposes to change the existing rule to exempt a grain buyer from the licensing requirement when the grain buyer purchases dry peas, lentils or chickpeas owned by a licensed entity. The current rule exempts a grain buyer from the licensing requirement when purchasing any grain that is owned by a licensed entity and also has been substantially altered by processing or blending, or cleaned and bagged for consumption.

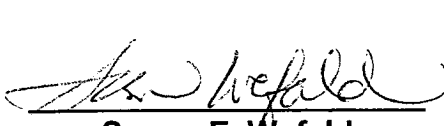
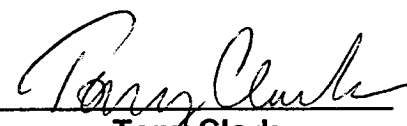
All of the proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes, or any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses, contact the Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, 701-328-2400. The proposed rule changes and any statements concerning Regulatory Analyses and Takings Assessments, and Small Entity Regulatory Analyses may be viewed at <http://www.psc.state.nd.us> (see Formal Actions: Notices).

Interested persons may submit written data, views, arguments, or appear in person or through counsel concerning the proposals. Written comments should be filed with Illona A. Jeffcoat-Sacco, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480.

The Commission will allow after the conclusion of the rulemaking hearing, a comment period until January 17, 2006, during which data, views, or oral arguments concerning the proposed rulemaking will be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

If individuals 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 hearing. She can be contacted at the following numbers: 701-328-2400 and Relay North Dakota TTY: 1-800-366-6888.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner

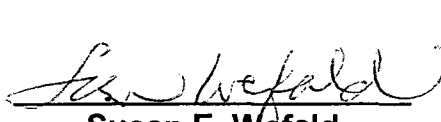
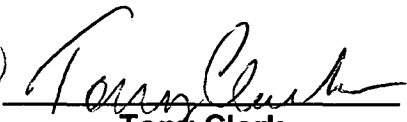
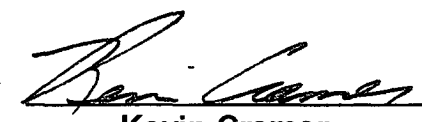
**NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES
AND NOTICE OF PUBLIC HEARING**

November 17, 2005

TAKE NOTICE that the Public Service Commission will hold a public hearing to address proposed amendments to the N.D. Admin. Code, relating to gas safety, electric, telecommunications, siting, reclamation and grain buyers, at 1 p.m., CST, January 4, 2006, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota. The proposed grain buyer rule change was formally requested by the North Dakota Dry Pea and Lentil Association.

A copy of the proposed rule changes may be obtained by calling the Public Service Commission at 701-328-2400, TDD 800-366-6888, or view at www.psc.state.nd.us (see Formal Notices). Also, written comments may be submitted to the Public Service Commission, 600 East Boulevard Ave., Bismarck, ND 58505-0480 until 5:00 PM CST, January 17, 2006. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Public Service Commission at the above telephone number or address at least 24 hours prior to the public hearing.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner

PROPOSED RECLAMATION RULES

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.
2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) ~~Name the United States geological survey 7.5 minute quadrangle map which contains the area shown or described.~~
 - (4) Show the north point (if a map).

- (5 4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

69-05.2-12-12. Release of performance bond - Bond release application.

3. Within thirty days after filing a request for bond release, the permittee shall submit ~~proof of the publication~~ a copy of the newspaper advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.
8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds.

19. Impoundment inspections.
 - a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.
 - b. Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ Reports for each inspection during construction must be prepared and maintained at or near the minesite.
 - c. ~~After each inspection~~ impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed ~~or maintained~~ as designed and according to the approved plan and this chapter. The report must include ~~discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting~~

stability a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.

- d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.
- e. A copy of the inspection reports must be maintained at or near the minesite.

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

- 4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
 - a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
 - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
 - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved

standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

- (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
- (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
- (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the last two consecutive years growing season of the last year of the responsibility period:
- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the

total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and

- (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
- (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
- (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the last two consecutive years growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years growing season of the last year of the responsibility period:
 - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
 - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.
- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
- j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
- k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
- l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last~~

~~year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands.~~ If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period ~~and with one year being the last year of the responsibility period.~~ If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.

PROPOSED SITING RULES

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria shall guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point shall such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following

policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

Proposed Rule on Grain Buyer License

69-07-01-14. Grain buyers license –~~Processed grain.~~ A grain buyers license is not required if a purchaser is acquiring grain dry peas, lentils, or chickpeas that is owned by the licensed entity ~~and that has been:~~

- ~~1. Substantially altered by processing or blending with a nongrain product; or~~
- ~~2. Cleaned and bagged and made ready for consumption.~~

Any processed commodity will, however, be considered grain and thereby made an asset that is available to the commission in an insolvency proceeding.

History: Effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

GAS SAFETY PROPOSED RULES FOR 2005

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~August 1, 2004~~ October 1, 2005, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural Gas and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas; Liquefied Natural Gas and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

**Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480**

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002, November 1, 2003; May 1, 2005.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

PROPOSED RULES

69-09-08 Renewable electricity and recycled energy tracking system.

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording and verifying the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-02. Definitions.

1. Designated representative — A responsible individual authorized by the owner or operator of a renewable energy facility or purchaser of energy produced from a renewable resource to register that resource with the program administrator. The designated representative must

have the authority to represent and legally bind the owner, operator, or purchaser in all matters pertaining to the renewable energy certificates tracking program.

2. Existing facilities — Renewable energy facilities placed in service before January 1, 2001.
3. New facilities — Renewable energy facilities placed in service on or after January 1, 2001.
4. Program administrator — The independent entity designated by commission order to carry out the administrative responsibilities related to the renewable energy certificates tracking program as set forth in this chapter.
5. Renewable energy certificate — A document recording one or more renewable energy credits that have been certified by the program administrator as representing electricity generated by a renewable energy facility registered with the tracking system or a certificate imported from a compatible certificates tracking system.
6. Renewable energy certificate account — An account maintained by the program administrator for the purpose of tracking renewable energy certificates by a program participant.

7. Renewable energy certificates tracking program — The process of tracking renewable energy certificates as a means of meeting the requirements set forth in section 69-09-08-04.
8. Renewable energy credit — The intangible, generally perceived environmental benefits and attributes associated with generating one megawatt hour (MWh) of renewable electricity or recycled energy that is physically metered and meets the requirements set forth in Section 69-09-08-04.
9. Renewable energy facility – A facility generating electricity that exclusively relies on an energy source or fuel included in North Dakota Century Code Section 49-02-25.
10. Renewable energy resource — A resource that generates electricity derived from a renewable energy facility.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-03. Renewable energy certificates tracking program.

Renewable energy certificates may be recorded, transferred, and retired as set forth in this chapter. Except where specifically stated, the provisions of this section apply uniformly to all participants in the tracking program.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-04. Facilities eligible for participation in the renewable energy certificates tracking program. For a renewable energy facility to be eligible to participate in the tracking program, the facility must be either a new facility or existing facility as defined in section 69-09-08-02 and must also:

1. Register under North Dakota Administrative Code Section 69-09-08-07; and
2. Have output that is capable of being physically metered and verified by the program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-05. Responsibilities of program administrator. At a minimum, the program administrator shall perform the following functions:

1. Create accounts that track renewable energy certificates for each participant in the tracking program;
2. Award renewable energy certificates to registered renewable energy facilities based on verified meter reads;
3. Maintain public information on the program administrator's website that provides tracking program information to interested buyers and sellers of renewable energy certificates;

4. Facilitate private trading of renewable energy certificates;
5. Verify the accuracy of metered production data and other information identified in the renewable energy certificate;
6. Provide an annual report to the commission. Beginning in the year following commission designation of the program administrator, the program administrator shall submit a report to the commission on or before April 15 of each year. At a minimum, the report must contain the amount of registered existing and new generating capacity from a renewable energy facility installed in the state, (in megawatts) by technology type, the owner or operator of each facility or the facility's certificates, the date each facility began to produce electricity, and the total number of renewable energy credits certified by the program administrator during each month of the reporting period.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-06. Production and transfer of renewable energy certificates.

The program administrator shall administer a tracking program for renewable energy certificates in accordance with the requirements of this chapter.

1. The transfer of renewable energy certificates between parties is effective only when the transfer is recorded by the program administrator.

2. The program administrator shall require that renewable energy certificates be adequately identified prior to recording a transfer and shall issue a confirmation of the transaction to parties when the transfer is recorded.
3. The program administrator shall establish a procedure to ensure that the award, transfer, and retirement of certificates are accurately recorded.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

69-09-08-07. Registration and certification of renewable energy facilities. To be awarded renewable energy certificates, a power generator must complete the registration process described in this section.

1. The designated representative shall register with the program administrator each renewable energy generation unit. At a minimum, the registration must include the location, owner, technology, rated capacity of the facility, and evidence that the facility meets the resource eligibility criteria in North Dakota Century Code Section 49-02-25.
2. After verifying the information required in the registration process for renewable facilities, the program administrator shall create a

renewable energy certificate account for the designated representative of the renewable energy resource.

3. The commission or its program administrator may make on-site visits to any registered unit of a renewable energy resource and may revoke the registration of any unit not in compliance with the law and rules.
4. A renewable energy facility may not be awarded renewable energy certificates under this program if it is not registered.
5. Any disputes will be resolved using dispute resolution procedures established by the commission or its program administrator.

General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-22-26

Law Implemented: NDCC 49-02-24, 49-02-25, 49-22-26

Proposed Telecommunications Registration Rulemaking

69-09-05-02. Discontinuance of telecommunications services. A utility may not discontinue telecommunications services, except as provided in this section.

1. A utility may discontinue the essential services it provides:
 - a. If the customer is delinquent in payment for essential services, then essential services may be discontinued even though discontinuing the services results in the discontinuance of all telecommunications services.
 - b. If the customer is delinquent in payment for long-distance services rendered by a local exchange company or another company and billed by the local exchange company, but is not delinquent in payment for essential services rendered by the local exchange company, the local exchange company may discontinue the customer's local exchange services only at central offices lacking the technical ability to discontinue long-distance services while continuing to provide local exchange services.
2. A utility may discontinue nonessential services:

- a. If the customer is delinquent in payment for nonessential services.
 - b. If the customer is delinquent in payment for long-distance telecommunications services rendered by another company and billed by the local exchange company, then the local exchange company may deny the customer all forms of access to the network of the telecommunications company to which the customer is delinquent in payment. However, if due to technical limitations, a local exchange company must also deny the customer all forms of access to the long-distance networks of all telecommunications companies, including its own, in order to deny the customer access to the network of the company to which the customer is delinquent, the local exchange company may do so.
3. A utility may discontinue service to a customer for failure to comply with regulations of the utility on file with the commission pertaining to installation and use of equipment, or for use of equipment which interferes with or adversely affects the service to other customers, provided the customer has first been notified and afforded reasonable opportunity to change or disconnect such equipment.
4. A utility may not discontinue service to a customer for failure of the customer to pay for merchandise purchased from the utility, to pay

for a different class of service furnished by the utility, to pay for service rendered to a previous occupant of the premises, or to pay the bill of another customer as guarantor thereof.

5. A utility may not discontinue service to a customer for failure to pay for service until the utility first gives the customer notice of its intention to discontinue such service on account of delinquency.

The notice must:

- a. Be sent by first-class mail addressed to the billing name and address of the affected account.
- b. Show the amount of the delinquency.
- c. Include the telephone number of the public service commission.
- d. Advise the customer of the customer's rights and remedies, including the customer's right to work out a satisfactory deferred installment agreement for delinquent accounts.
- e. Inform the customer that service will be discontinued if the delinquent account is not paid within ten calendar days from the date of mailing or personal delivery of the notice, or if a satisfactory installment agreement is not made with the utility for payment of the delinquent bill. The utility may discontinue service without further notice if the customer fails to pay the delinquent account by the due date.

6.
 - a. A deferred installment agreement for essential services may not be combined with a deferred installment agreement for any other services.
 - b. A utility may not discontinue essential services if the utility and the customer make a mutually agreed upon deferred installment agreement for essential services. A utility may discontinue essential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.
 - c. A utility may not discontinue nonessential services if the utility and the customer make a mutually agreed upon deferred installment agreement for nonessential services. A utility may discontinue nonessential services without further notice if the customer fails to pay the delinquent account in accordance with the deferred installment agreement.
 7. The customer may pay the delinquent account at any time prior to the actual discontinuance of service.
 8. Whenever service has been discontinued for nonpayment of a bill, service must be resumed if the customer:
 - a. Pays the fee for resuming service established in the utility's rate schedules;

- b. Makes a deposit under section 69-09-05-03 (if required by the company); and
 - c. Makes a satisfactory settlement for the delinquent bill and for the service rendered to the date the service was discontinued. Interexchange carriers are not required to resume long-distance service if local service is not connected.
- 9. If the customer disputes the amount of a bill for service, the customer may, to prevent discontinuance for nonpayment, pay the disputed bill under protest to the utility. Alternatively, the customer may request a formal hearing pursuant to section 69-02-02-02 in which case the utility may not discontinue service for nonpayment of the disputed bill until a final decision has been issued by the commission. The utility shall immediately give the commission notice of the dispute and the commission may investigate the dispute. The utility shall refund to the customer any part of such payment made under protest found by the commission to be excessive.
- 10. The commission may order the discontinuance of services where a reseller or operator services provider violates commission rules. The commission will provide ten days' notice of a deficiency or violation and provide an opportunity for the noncomplying reseller

or operator services provider to respond or correct the deficiency. A reseller or operator services provider disputing the alleged violation or discontinuance may request a formal hearing under section 69-02-02-02, in which case the discontinuance will be stayed until final decision by the commission.

11. a. Except for discontinuance due to delinquency, a competitive local exchange company may not discontinue service to a customer without first providing the customer with twenty days' written notice of the intent to discontinue service. The notice of intent to discontinue service shall inform the customer of its right to choose between local exchange companies, if more than one local exchange company is providing essential services.
 - b. A telecommunications company may not interfere with a competitive local exchange company's obligation to provide notice to a customer; provided that a telecommunications company may disconnect service to a competitive local exchange company under the terms of a resale or interconnection agreement so long as the interconnection agreement is consistent with law and rules.
12. Except in the case of discontinuance for nonpayment, if a telecommunications company providing interexchange service

intends to discontinue service or is forced to discontinue service due to abandonment, acquisition, bankruptcy, or for other reasons, the company must provide reasonable advance notice of the discontinuance to each customer. The notice must inform the customer that the customer must choose another primary interexchange carrier or use an alternative service.

History: Effective April 1, 1985; amended effective January 1, 1993; May 1, 1996; July 1, 1997, amendments voided by the Administrative Rules Committee effective, August 16, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.4, 49-21-01.7, 49-21-07

69-09-05-04. Rules for resale of telecommunications services.

1. Definitions.

- a. "Premise cable" means telecommunications cable or channels on the reseller's side of the point of connection to the local exchange company (demarcation point).
- b. "Prepayment" means payments made by customers of a reseller in advance of receiving service. Prepayment includes a deposit and any customer payment for telecommunications service in advance of receiving the full amount of service for which payment is made.
- c. "Resale" means the subscription to local or long-distance telecommunications services and facilities by one entity, and

reoffered for profit or with markup to others with or without enhancements. Where reoffered service is part of a package, and the package is offered for profit or markup, it is resale.

- d. "Reseller" means a person reselling local or long-distance telecommunications services. The definition does not include pay telephone providers, but does include a cellular and personal communication service provider who resell-wireline resells cellular or other wireless service as part of their cellular or personal communication service.
- e. "Same continuous property" is contiguous real estate owned by the same individual, group of individuals, or other legal entity having title to the property. The property may be traversed by streets, ditches, or other similar manmade or natural terrain features provided that, but for terrain features, the property would be contiguous and provided that such terrain features are of a nature and dimension that it is reasonable to treat the property as contiguous.
- f. "Shared tenant service provider" means a person reselling telecommunications services to the tenants of a building complex on the same continuous property or to parties with a community of interest.

2. A reseller may not operate in North Dakota except in compliance with applicable laws and rules. A reseller shall:

a. ~~Obtain a certificate of registration from~~ Register with the commission, on a form provided by the commission, ~~authorizing~~ indicating the provision of local resale or long-distance resale services in the state of North Dakota.

b. If a reseller requires prepayment for service, it shall:

(1) Submit a performance bond in an amount specified by the commission; or

(2) Establish an escrow account in a North Dakota bank containing an amount equal to the prepayments collected at any given time, and file monthly reports showing escrow account activities and call completion data.

(3) ~~The requirements of paragraphs 1 and 2 are waived for any company that has provided cellular or personal communication service in North Dakota for one year without a formal complaint having been filed against it. The commission may revoke the waiver after notice and opportunity for hearing if necessary to protect the public interest. Under North Dakota Century Code section 49-03.7-09(7) the bonding~~

requirement does not apply to a facility based company providing commercial mobile radio service, as defined in title 47, Code of Federal Regulations, part 20, section 20.3.

4. The requirements of paragraphs 1 and 2 are subject to a twenty-five thousand dollar minimum for resellers of local service other than by means of a prepaid calling card. The required amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or twenty-five thousand dollars, whichever is greater. The required amount of an escrow account is an amount equal to the prepayments at any given time but no less than twenty-five thousand dollars.

- (5) The requirements of paragraphs 1 and 2 are subject to a two thousand five hundred dollar minimum for resellers of any service other than the local service subject to paragraph 4. The amount of a performance bond is the product of the estimated level of customers after three years of operation, times the amount of required customer prepayments, or two thousand five hundred dollars, whichever is greater.

The amount of an escrow account is an amount equal to the prepayments (including prepaid calling cards) at any given time.

- e. ~~Forfeit its registration if it is voluntarily dissolved or involuntarily dissolved under North Dakota law. A reseller may not operate and its registration certificate is void on the effective date of involuntary dissolution under North Dakota Century Code section 10-23-02.2.~~
3. A reseller may not be identified as an optional intrastate interexchange carrier ~~without a certificate of registration from~~ unless it is registered with the commission.
 4. Except for residents of dormitories or residence halls of schools, colleges, or universities, the end user has the unrestricted right to choose service from the incumbent local exchange company.
 5. A shared tenant service provider shall allow the tenant to use the shared tenant service provider's premise cable and wire in the event an end user wants to receive service from the local exchange company.
 6. The reseller is responsible for the charges incurred for telecommunications services to which it subscribes for serving its end users.

7. A reseller is subject to ~~reregulation by the commission~~, revocation of its certificate authority, and the penalties provided in North Dakota Century Code ~~chapter~~ chapters 49-03.1 and 49-07 for violation of any applicable law or rule.

History: Effective March 1, 1989; amended effective August 1, 1991; December 1, 1993; February 1, 1995; July 1, 1997; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-04.1. Identification of intraLATA interexchange carriers.

1. A local exchange carrier shall not identify a telecommunications company as an optional intrastate interexchange carrier unless the telecommunications company provides the local exchange company with evidence of an effective ~~certificate of public convenience and necessity or a current certificate of registration~~ authorizing the provision of intrastate interexchange service.
2. A telecommunications company shall immediately notify in writing all local exchange companies for which it has requested identification as an optional intrastate interexchange carrier if the telecommunications company's authority to provide interexchange service is revoked or abandoned. A local exchange company shall cease to identify a telecommunications company as an optional intrastate interexchange carrier upon receipt of a written notice that

the telecommunications company's authority to provide interexchange service has been revoked or abandoned.

History: Effective February 1, 1995; amended effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-05. Rules for the provision of operator services.

1. Definitions.

- a. "End user" means the person to whom operator service is provided.
- b. "Operator service" means service provided to assist in the completion or billing of telephone calls through the use of a live operator or automated equipment. "Operator service" does not include completion of calls through an 800 number or an access code when billed to an account previously established with the carrier by the end user, or the automated operator services provided by pay telephone sets with built-in automated operator messages.
- c. "Operator service provider" means the person providing operator service.

2. Operator service providers shall:

- a. ~~Obtain a certificate of registration from~~ Register with the commission authorizing the provision of operator services in the state of North Dakota.
- b. Provide written material for use in disclosing to the end user the name and toll free telephone number of the operator service provider. This material must be provided to all coin telephone operators, motels, hospitals, and any other locations where end users may use telephone service not billable to their home or business telephones without operator service.
- c. Require operators to clearly identify the operator service provider to all end users and when requested, provide rate information.
- d. Provide emergency call service that is equal to that provided by the local exchange telephone company and, if unable to meet this requirement, provide emergency call service by immediate transfer of such calls to the local exchange company.
- e. For billing purposes, itemize, identify, and rate calls from the point of origination to the point of termination. No call may be transferred to another carrier by an operator service provider

which cannot or will not complete the call, unless the call can be billed in accordance with this subsection.

- f. Not charge for incompleting calls.
- g. Disclose their names on bills which include charges for services they provided.

History: Effective March 1, 1989; amended effective August 1, 1991; May 1, 1996; January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7, 49-21-07

69-09-05-10. ~~Certificate of registration~~ Registration - Procedure.

1. A reseller ~~applying for a certificate of registration or competitive facilities based provider desiring authority to provide service in North Dakota~~ shall ~~file an application~~ register on a form provided by the commission. The application registration shall include ~~evidence~~ identification of the applicant's authority to do business in North Dakota.
2. ~~An applicant for a certificate of registration as a~~ A reseller shall follow the procedure set forth in section 69-09-05-04.
3. ~~When the holder of a certificate of registration~~ a registered company intends to assign the its authority to provide telecommunications service in North Dakota to another entity, the

assignee must first ~~obtain a certificate of registration from~~ register
with the commission.

4. A reseller registered company may voluntarily, without commission approval, surrender its ~~certificate of registration~~ authority by notifying the commission in writing and updating its registration to reflect this surrender.

5. A competitive local exchange company intending to surrender its authority to provide local exchange service must provide twenty days' prior written notice to the company's customers.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21

69-09-05-11. Certificate of public convenience and necessity for incumbent local telecommunications company - Procedure.

1. An applicant for a certificate of public convenience and necessity as an incumbent local exchange company shall file an application with the commission which includes evidence of the applicant's authority to do business in North Dakota, conforms to the commission's rules of practice and procedure under article 69-02, and which identifies:
 - a. The type of service the applicant intends to provide.

- b. The service area or areas in which the applicant intends to provide service.
 - c. How the applicant meets the issues to be considered in the application.
- 2. An applicant for a certificate of public convenience and necessity must also file consolidated financial statements for the most recent year available, including:
 - a. A balance sheet of the form and style usually followed in the industry.
 - b. An income statement of the form and style usually followed in the industry.
 - c. If available, an independent accountant's financial opinion.
 - d. Any other information requested by the commission.
- 3. In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:
 - a. Fitness and ability of the applicant to provide service.
 - b. Adequacy of the proposed service.

- c. The technical, financial, and managerial ability of the applicant to provide service.
- 4. If the application is to be decided on a notice of opportunity for hearing, the applicant shall file affidavits sufficient to meet the applicant's burden of proof on the issues.
- 5. When the holder of a certificate of public convenience and necessity intends to assign the authority to provide telecommunications service in North Dakota to another entity, the assignee must first obtain a certificate of public convenience and necessity from the commission.
- 6. ~~Abandonment of a certificate of public convenience and necessity for a competitive local exchange company requires prior written notice to the commission and thirty days' prior written notice to the company's customers.~~ Abandonment of a certificate of public convenience and necessity for an incumbent local exchange company requires prior commission approval.

History: Effective January 1, 2001.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-03.1-01, 49-03.1-03, 49-21, 49-21-01.7(7)

Proposed Rules on Eligible Carrier Applications and Advertising

69-09-05-12. Eligible carrier applications and advertising.

1. ~~Eligible carrier applications:~~

~~a.~~ A telecommunications company that desires designation as an eligible carrier as that term is defined in the Telecommunications Act of 1996 shall make application for such designation with the commission.

~~b.~~ 2. An application for designation as an eligible carrier must specifically identify:

(~~1~~) a. The applicant's service area;

(~~2~~) b. How the applicant meets the requirements for designation as an eligible carrier;

(~~3~~) c. Whether the applicant requires a waiver of any eligible carrier requirement; and

(~~4~~) d. If a waiver is required, the specific reasons for the waiver and the length of time for which the waiver is required.

3. Any common carrier in its application must:

a. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(1) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(2) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(a) Modifying or replacing the requesting customer's equipment;

(b) Deploying a roof-mounted antenna or other equipment;

(c) Adjusting the nearest cell tower;

(d) Adjusting network or customer facilities;

(e) Reselling services from another carrier's facilities to provide service; or

(f) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment;

b. Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

c. Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

- d. Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
 - e. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.
 - f. Certify that the carrier acknowledges that the commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.
4. Any common carrier that has been designated as an eligible telecommunications carrier or that has submitted its application for designation before the effective date of these rules must submit the information required by paragraph (3) of this section no later than October 1, 2006, as part of its annual reporting requirements.
5. Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. In doing so, the commission shall consider the benefits of increased consumer choice.

and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct an analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its analysis, the commission shall consider other factors, such as disaggregation of support by the incumbent local exchange carrier.

6. A common carrier seeking designation as an eligible telecommunications carrier for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the federal communications commission. In addition, the commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.

27. Eligible carrier advertising. The following forms of advertising of the availability of universal service are required of an eligible carrier:

- a. A full description of available services in the eligible carrier's official telephone directory, including the process to be used by customers to qualify for lifeline and link-up service.
- b. Advertising of the availability of universal services in media of general circulation in each eligible carrier's service areas. Availability may be advertised in newspapers, company newsletters, company or civic internet sites, bill stuffers, direct mailings, or other means intended to convey availability throughout the service area.

History: Effective January 1, 2001

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

69-09-05-12.1. Annual reporting requirements for designated eligible telecommunications carriers.

A common carrier designated as an eligible telecommunications carrier shall provide:

1. A progress report on its five-year service quality improvement plan, including maps detailing its progress toward meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;

2. Detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least thirty minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected.
3. The number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers;
4. The number of complaints per one thousand handsets or lines;
5. Certification that it is complying with applicable service quality standards and consumer protection rules;
6. Certification that the carrier is able to function in emergency situations;

7. Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
8. Certification that the carrier acknowledges that the commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.7, 49-21-07

Proposed Interconnection Agreement Filing Rules

69-09-05-14. Procedure for filing negotiated interconnection agreements. Carrier-to-carrier interconnection agreements adopted by negotiation must be filed for commission approval under 47 U.S.C. section 252(e), following the procedure set out in this section.

1. The requirements of this section apply to interconnection agreements negotiated under 47 U.S.C. section 251, assignments, assumptions or transfers of interconnection agreements, amendments to interconnection agreements, and agreements for Qwest Platform Plus (QPP) services. The requirements of this section do not apply to commercial line sharing agreements.
2. Each filing must include a completed cover sheet in a form prescribed by the commission.
3. Filed interconnection agreements will be listed on the commission Internet site for comment by interested parties. The Internet listing will include the date each agreement was filed, and links to the agreement itself.
4. The commission will accept written comments on a listed agreement for 60 days from the date filed.

5. Absent commission action within 90 days of filing to disapprove an agreement (or portion thereof), the agreement will be deemed approved under 47 U.S.C. section 252(e)(4).
6. Any assignment, assumption or transfer of an approved interconnection agreement requires a new filing with a new 90-day review and comment period.
7. Any amendment to an interconnection agreement requires a new filing with a new 90-day review and comment period.

General Authority: NDCC 28-32-02, 49-21-01.7

Law Implemented: NDCC 49-21, 49-21-01.7

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Case No. RC-05-591

FROM: Jim Deutsch, Reclamation Division

DATE: November 14, 2005

SUBJECT: Regulatory and Takings Assessment for mining and reclamation rule changes proposed in Case No. RC-05-591

The Reclamation Division has prepared Regulatory and Takings Assessments as required by North Dakota Century Code (NDCC) Sections 28-32-08.1 and 28-32-09 for the mining and reclamation rule changes proposed in Case No. RC-05-591. NDCC Section 28-32-08.1 requires an agency to prepare a regulatory analysis with regard to the impact of the proposed rules on small entities. NDCC Section 28-32-09 requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property.

NDAC 28-32-08.1 requires a regulatory analysis which considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The following addresses the provisions of subsection 2 of NDAC 28-32-08.1 with regard to the rule changes proposed in Case No. RC-05-591:

NDCC 28-32-08.1(2)(a) – Establishment of less stringent compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by the rule changes.

NDCC 28-32-08.1(2)(b) – Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities.

No additional compliance standards or reporting requirements are proposed by the rule changes.

NDCC 28-32-08.1(2)(c) – Consolidation or simplification of compliance or reporting requirements for small entities.

As previously noted, no additional compliance standards or reporting requirements are proposed by these rule changes. However, since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot

consolidate or simplify the requirements for small entities and maintain an approved state regulatory program for surface coal mining and reclamation operations.

NDCC 28-32-08.1(2)(d) – Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule.

No additional performance standards are proposed by these rule changes. Since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot adopt special performance standards for small entities and maintain an approved state regulatory program for surface coal mining and reclamation operations.

NDCC 28-32-08.1(2)(e) – Exemption of small entities from all or any part of the requirements contained in the proposed rule.

No additional compliance standards or reporting requirements are proposed by these rule changes. Since the Commission's mining and reclamation rules must be consistent with and as effective as counterpart federal rules, we cannot exempt small entities from the rules that are being modified and maintain an approved state regulatory program for surface coal mining and reclamation operations.

While the proposed rule changes in Case No. RC-05-591 will not limit the use of private real property, the six items listed in NDCC 28-32-09 are addressed below:

NDCC 28-32-09(1)(a) – Assess the likelihood that the proposed rule may result in a taking or regulatory taking.

None of these proposed rule changes affect the use of private real property so they will not result in any taking.

NDCC 28-32-09(1)(b) - Clearly and specifically identify the purpose of the proposed rule.

The purpose of the proposed rule is to reduce some information that is currently required for permit and bond release applications, clarify impoundment inspection requirements, reduce some of the vegetation data needed for final bond release and to otherwise revise some for revegetation success standards to be consistent with changes to counterpart federal rules, and correct a cross reference.

NDCC 28-32-09(1)(c) - Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.

We do not expect any impact on private property owners as a result of the proposed rule changes. The changes involve information that must be provided in permit and bond release applications, modify the requirements for impoundment inspections, and revise revegetation success standards for final bond release. The changes may result in some reclaimed lands receiving final bond release a year or two sooner which will also allow the return of these lands to the full control of private property owners somewhat sooner as well.

NDCC 28-32-09(1)(d) - Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.

We do not expect the proposed rules to constitute a taking; therefore, there should be no cost to the state.

NDCC 28-32-09(1)(e) - Identify the source of payment within the agency's budget for any compensation that may be ordered.

Not applicable, the proposed rule changes will not limit the use of private real property.

NDCC 28-32-09(1)(f) - Certify that the benefits of the proposed rule exceed the estimated compensation costs.

Not applicable, the proposed rule changes will not limit the use of private real property.

PROPOSED RECLAMATION RULES

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.
2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) ~~Name the United States geological survey 7.5 minute quadrangle map which contains the area shown or described.~~
 - (4) Show the north point (if a map).

- (5 4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

69-05.2-12-12. Release of performance bond - Bond release application.

3. Within thirty days after filing a request for bond release, the permittee shall submit ~~proof of the publication~~ a copy of the newspaper advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.
8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
- The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds.

19. Impoundment inspections.
- A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.
 - Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ Reports for each inspection during construction must be prepared and maintained at or near the minesite.
 - ~~After each inspection~~ impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include ~~discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting~~

stability a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.

- d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.
- e. A copy of the inspection reports must be maintained at or near the minesite.

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

- 4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
 - a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
 - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
 - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved

standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

- (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and
 - (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
- (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
- (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) ~~At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half shrub replanting has occurred during the last six years of the revegetation responsibility period.~~ If any replanting of woody plants took place took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the

total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and

- (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards; however, volunteer trees must be at least thirty inches (76 centimeters) in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.
- (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
- (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the last two consecutive years growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
- h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last two consecutive years growing season of the last year of the responsibility period:
 - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
 - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.
- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
- j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
- k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
- l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last~~

~~year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands.~~ If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period ~~and with one year being the last year of the responsibility period.~~ If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Clark, Wefald and Cramer
Illona A. Jeffcoat-Sacco
Bill Binek

FROM: Jim Deutsch

DATE: October 31, 2005

SUBJECT: Proposed reclamation rule changes

Attached are the proposed changes that the Reclamation Division recommends be included as part of the Commission's next rulemaking proceeding. Some of the changes are based on suggestions from the Lignite Energy Council (see the LEC's October 27th letter that is also attached) and others are staff initiatives. We have had several discussions with LEC task members on these proposals over the past several months. The following is a summary of the proposed changes:

NDAC 69-05.2-06-03 – Additional language is being proposed that would allow a permittee to delete a coal lease from the permit when mining on the tract covered by the lease is completed and the lease is no longer needed to show surface right of entry or the lease has been terminated. However, if the coal lease no longer provides surface right of entry, other documents granting the permittee right of entry must be added to the permit. This change is being proposed due to concerns raised by Coteau and Falkirk on the time and cost of recordkeeping associated with outdated lease documents.

NDAC 69-05.2-10-01 – Changes recommended by the LEC are included that propose 1) to delete a provision that requires the newspaper notice for permit applications include a reference to the United States Geological Survey (USGS) map that contains the area and 2) limit the listing of coal owners in the notice to those that will be affected by the mining activities. The corresponding OSM rule has been revised to delete the reference to the USGS map. We believe the proposed change on the listing of coal owners is reasonable.

NDAC 69-05.2-12-12 – Changes to information required for bond release applications include a LEC proposal to change the requirement that the permittee submit proof (an affidavit) of publication within 30 days of submitting the application to submitting a copy of the advertisement that was published. This change is reasonable since an affidavit cannot be provided until all publications (once a week for 4 consecutive weeks) are complete. The change is also consistent with OSM rules. The Reclamation Division also recommends adding a cross-reference to information that is required by the "replacement of water supply" definition in another section of the rules.

NDAC 69-05.2-16-09 – Changes to sedimentation pond inspection requirements are based on the LEC proposal. The proposed changes made better distinction between inspections that must be conducted while a pond is being constructed versus annual inspection reports that must be prepared by registered professional engineer. The changes also eliminate the requirement that inspection reports prepared during pond construction be submitted to the Commission. However, reports for each of these inspections would have to be prepared and maintained at or near the mine site.

NDAC 69-05.2-22-07 – Changes to revegetation success standards are recommended by the Reclamation Division that are similar to those proposed by OSM earlier this year. The changes will allow the use of data collected in any two years following year six of the ten-year revegetation liability period for native grassland, tame pastureland and cropland uses. Currently, data from the last two consecutive years of the liability period or any three years starting no sooner than year six of the liability period (with one being the last year of the liability period) must be provided to demonstrate reclamation success. Also, for woodlands, shelterbelts and fish and wildlife habitat, only one year of data would be needed to prove reclamation success on these land uses. Additional language is proposed for woodland and shelterbelt standards that clearly allow the counting of volunteer trees and shrubs for meeting the standards. Similar changes should be approved by OSM within the next couple of months. These changes may result in some reclaimed tracts being bond released sooner.

NDAC 69-05.2-24-01 – A change to the road performance standards is proposed by the Reclamation Division to correct a cross reference error.

The LEC also recommended that we propose a change to NDAC 69-05.2-16-14 to change the annual ground water monitoring report to a biennial report. The LEC letter indicated the Reclamation Division would accept this proposal; however, this was tied to adding a similar requirement for a biennial surface water report. Industry opposes that requirement and we do not recommend any change to the ground water rule at this time. This matter will be discussed further with LEC task force members in the future.

An item will be added to the administrative agenda for the November 2 Commission meeting to discuss these proposed rule changes.

Attachments

DRAFT – November 2005

69-05.2-06-03. Permit applications - Right of entry and operation information.

1. In addition to satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the application must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the applicant has complied with North Dakota Century Code section 38-18-06.
2. Following completion of coal removal operations on the lands covered by a coal lease, the copy of the lease may be deleted from an approved permit if:
 - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
 - b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) ~~Name the United States geological survey 7.5 minute quadrangle map which contains the area shown or described.~~
 - (4) Show the north point (if a map).
 - (5 4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

69-05.2-12-12. Release of performance bond - Bond release application.

3. Within thirty days after filing a request for bond release, the permittee shall submit proof of the publication a copy of the newspaper advertisement that was published as required by

North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.

8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:
 - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
 - b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
 - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
 - d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

69-05.2-16-09. Performance standards - Hydrologic balance -Sedimentation ponds.

19. Impoundment inspections.

- a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.
- b. Inspections must be made regularly during construction, ~~upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.~~ Reports for each inspection during construction must be prepared and maintained at or near the minesite.
- c. ~~After each inspection impoundment construction is complete,~~ the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and it has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include ~~discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability~~ a summary of the construction inspections, final storage capacity, and if applicable, a discussion of any deviations from the approved plan.
- d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall promptly provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any

other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment must be noted separately.

- e. A copy of the inspection reports must be maintained at or near the minesite.

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
 - a. For native grassland, the following must be achieved for ~~the last two consecutive~~ any two years after year six of the responsibility period:
 - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
 - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.
 - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for ~~the last two consecutive~~ any two years after year six of the responsibility period.
 - d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.
 - e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:
 - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
 - (a) Be healthy;
 - (b) Be in place for at least two growing seasons; and
 - (c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that

no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period; and

- (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

- (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and

- (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.

f. For shelterbelts, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

- (a) Be healthy;

- (b) Be in place for at least two growing seasons; ~~and~~

- (c) At least eighty percent of those counted must have been in place at least six years. This provision will be deemed satisfied if the operator demonstrates that no tree, shrub, or half-shrub replanting has occurred during the last six years of the revegetation responsibility period; and

- (d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted towards meeting success standards. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding.

- (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and

- (3) Erosion must be adequately controlled.

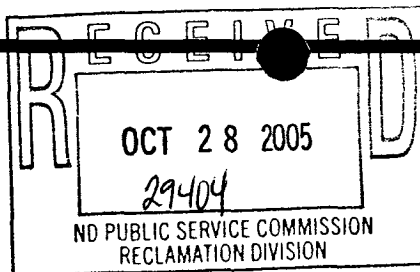
g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the last two consecutive years growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.

h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the ~~last two consecutive years~~ growing season of the last year of the responsibility period:

- (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
 - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.
- i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
 - j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.
 - k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.
 - l. ~~As an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. This alternative does not pertain to success standards for prime farmlands unless a reclaimed tract contains both prime and nonprime farmlands. If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period and with one year being the last year of the responsibility period. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.~~

69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection ~~92~~ 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.



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October 27, 2005

SERVING:

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Montana-Dakota Utilities Co.
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Xcel Energy

MONTANA

Basin Electric Power Cooperative
Dakota Westmoreland Corporation
Montana-Dakota Utilities Co.

CANADA

Luscar Ltd.
SaskPower

Mr. James R. Deutsch
Director, Reclamation Division
North Dakota Public Service Commission
State Capitol - 13th Floor
600 E. Boulevard Avenue - Dept. 408
Bismarck, ND 58505-0480

Dear Mr. Deutsch:

The Lignite Energy Council is providing comments to proposed draft regulations the Public Service Commission may be considering in the near future. This is a follow-up to the several meetings and discussions between your staff and LEC task force members over the past several months. Our comments address specific proposed rule changes.

Lignite Energy Council proposed changes (see Attachment 1):

1. NDAC 69-05.2-10-01. Permit applications – Public notices of filing.
The proposed rule changes would reduce unnecessary information in public notices. Based on our discussions, we understand our suggested rule changes would be acceptable to the PSC, and we submit them as is.
2. NDAC 69-05.2-12-12. Release of performance bond – Bond release information.
The current rule requires proof of publication within 30 days from filing a bond release application. Such proof of publication (affidavit of publication) is not created until all publications have been conducted, which is beyond the 30-day time limit in the rule. This makes compliance with the current rule virtually impossible. The proposed change is consistent with Federal rules, and fulfills the intent of the regulations. We understand the PSC will accept this change. Based on our discussions, we are not proposing a change to NDAC 69-05.2-12-12 (5), regarding topographic maps at this time.
3. NDAC 69-05.2-16-09. Performance standards – Hydrologic balance – Sedimentation ponds.
We are proposing a restructuring of these rules simply to clarify them. We understand the PSC will accept these, based on our previous discussions.
4. NDAC 69-05.2-16-14. Performance standards – Hydrologic balance – Groundwater monitoring.
Based on our discussions with you and your staff, we understand you will accept a reduced frequency of groundwater summary report submittals, from annual to biennial. We prefer the simple change that we've proposed. Your office has also recommended a change in reporting frequency. Our review of your proposed change to the same rule indicates there is no substantive difference between our two proposals. While we are not opposed to your proposed language, if the meaning and intent is the same as ours, we suggest the simplest, briefest change possible, as described by our submittal.

Mr. James R. Deutsch
October 27, 2005
Page Two

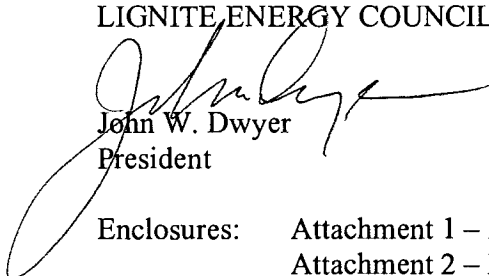
Public Service Commission proposed changes from July 7, 2005 (see Attachment 2):

1. NDAC 69-05.2-06-03 Permit applications – Right of entry and operation information.
Based on discussions between individual LEC task force members and you, we will agree with the change your office has proposed. This will eliminate the inclusion of expired or terminated leases from permits.
2. NDAC 69-05.2-12-12. Release of performance bond – Bond release application.
The PSC's proposal to add a clarifying paragraph to NDAC 69-05.2-16-05 (8) is acceptable to the LEC. This does not change current requirements.
3. NDAC 69-05.2-16-05. Performance standards – Hydrologic balance – Surface water monitoring
In a July 7 draft, your office proposed a rule to require a biennial summary report reviewing surface water conditions, in a manner similar to the current annual groundwater summary report. We do not support a regulation requiring submittal of a new report. While this may be useful information during bond release, and some companies may choose to conduct such a review and prepare a report, the LEC does not believe this should be mandated as a new requirement for all companies.
4. NDAC 69-05.2-24-01. Performance standards – Roads – General requirements
Your proposed change is for editing purposes and we support this change.

The Lignite Energy Council thanks you for your consideration of changes that would streamline the regulatory process while maintaining the nation's highest standards of environmental protection and land reclamation during surface mining operations. We look forward to your formal rulemaking.

Sincerely,

LIGNITE ENERGY COUNCIL



John W. Dwyer
President

Enclosures: Attachment 1 – LEC proposed changes
Attachment 2 – PSC proposed changes from July 7, 2005

cc: Joe Friedlander
Jim Melchior
Troy Leingang
Mike Altavilla
Dave Schouweiler

1.

NDAC 69-05.2-10-01. Permit applications - Public notices of filing.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:

a. The applicant's name and business address.

b. A map or description which must:

(1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.

(2) Clearly show or describe the exact location and boundaries of the permit area.

(3) Show the north point (if a map).

(4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

Deleted: (3) Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.

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2.**NDAC 69-05.2-12-12. Release of performance bond - Bond release application.**

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:

a. For lands disturbed between July 1, 1975, and June 30, 1979, the application must comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4. The criteria for release of all or part of the bond will be according to the reclamation requirements in effect at the time of the disturbance.

b. For lands disturbed after June 30, 1979, the application must comply with the requirements of this section and section 69-05.2-12-11.

2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations. Each application for bond release shall include a notarized statement by the permittee which certifies that all applicable reclamation activities have been accomplished in accordance with this article, North Dakota Century Code chapter 38-14.1, and the approved reclamation plan.

3. Within thirty days after filing a request for bond release, the permittee shall submit a copy of the advertisement that was published as required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.

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3.

NDAC 69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

19. Impoundment inspections.

a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b, c and d. The registered professional engineer and specialist must be experienced in the construction of impoundments.

b. Inspections must be made regularly during construction. Inspection records during construction shall be maintained at or near the minesite.

Deleted: , upon completion of construction, and at least yearly until removal of the structure or release of the performance bond

c. After impoundment construction is complete, the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been inspected during construction on a regular basis and has been constructed as designed and according to the approved plan and this chapter. The report must include a summary of construction inspections, a statement of final storage capacity, and, if applicable, a discussion of any deviations from the approved plan.

Deleted: each inspection

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d. After impoundments are operational, they shall be inspected at least yearly until removal of the structure or release of the performance bond. A registered professional engineer shall provide the commission with an annual impoundment inspection report addressing any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability. A single report can address more than one impoundment; however, the condition of each impoundment shall be noted separately.

Deleted: , any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability

e. A copy of the inspection reports must be maintained at or near the minesite.

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4.

(LEC Proposal)**NDAC 69-05.2-16-14. Performance standards - Hydrologic balance – Ground water monitoring.**

3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. The operator shall review the data biennially or more frequently if required by the commission. Changes observed in the monitored aquifers in the permit or adjacent areas must be described and interpreted in the monitoring report as to their significance and possible effect on any water supplies. When the analysis of any ground water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12.

Deleted: annually

(PSC Proposal)**NDAC 69-05.2-16-14. Performance standards - Hydrologic balance - Ground water monitoring.**

3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. The operator shall review the data regularly ~~annually or more frequently if required by the commission~~. When the analysis of any ground water elevation or quality sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12. The operator shall also submit a report biennially ~~shall review the data annually or more frequently if required by the commission that reviews the condition of water resources in the permitted and adjacent areas~~. Changes observed in the potentiometric surfaces and quality of the monitored aquifers in the permitted or adjacent areas must be described and interpreted in the ~~monitoring~~ report as to their significance and possible effect on any water supplies.

DRAFT – JULY 7, 2005

1. (Revised 10/05)

NDAC 69-05.2-06-03. Permit applications – Right of entry and operation information.

2. Following completion of coal removal operations on the lands covered by a lease, the copy of the coal lease may be deleted from an approved permit if:

- a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
- b. The lease has expired or has been terminated.

If a coal lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

2. NDAC 69-05.2-12-12. Release of performance bond - Bond release application.

8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application must include:

- a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
- b. The history of initial and subsequent seedings and fertilization, including mixtures and rates, appropriate soil tests, supplemental irrigation, or other management practices employed.
- c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
- d. If a premine water delivery system will not be replaced, the bond release application must address the requirements of subdivision b of subsection 90 of section 69-05.2-01-02.

3.

NDAC 69-05.2-16-05. Performance standards - Hydrologic balance - Surface water monitoring.

1. Surface water monitoring must be conducted in accordance with the monitoring program and based on the probable hydrologic consequences determination submitted under section 69-05.2-08-04. The commission will approve the nature of data that relate to the hydrologic reclamation plan in section 69-05.2-09-12, frequency of collection, and determine reporting requirements. The operator shall also submit a report biennially or more frequently if required by the commission that reviews the condition of water resources in the permitted and adjacent areas. Changes observed in the flow, water levels and quality of the monitored streams, lakes and impoundments in the permitted or adjacent areas must be described and interpreted in the report as to their significance and possible effect on any water supplies.
 - a. For locations in surface water bodies, such as streams, lakes, and impoundments, monitoring must:
 - (1) Be adequate to measure accurately and record quantity and quality of discharges from the permit area and identify the extent to which mining affects water quality and quantity in the adjacent area. Water samples taken from all monitoring sites must be analyzed for the parameters specified in subdivision b of subsection 3 of section 69-05.2-08-07. Results must be submitted quarterly to the commission.
 - (2) Be conducted to assure reliable test data according to existing standard procedures and analytical methods.

4.

NDAC 69-05.2-24-01. Performance standards - Roads - General requirements.

1. Each road, as defined in subsection 92 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.