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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
Midcontinent Communications/Missouri)
Valley Communications, Inc.)
Rural Exemption)
Investigation)
Case No. PU-08-61)

PREHEARING CONFERENCE
SUMMARY AND
SCHEDULING ORDER

OAH File No. 20080079

PREHEARING CONFERENCE SUMMARY

On March 27, 2008, Midcontinent Communications (“Midcontinent”) filed a Petition for Scheduling Order and Authorization for Discovery (“Petition”). A prehearing conference was held on April 9, 2008, attended by counsel for the parties and counsel for the Public Service Commission staff (“PSC staff”), conducted by the hearing officer (“ALJ”).

At the prehearing conference, the ALJ noted that under N.D.C.C. § 28-32-33(1) a party may undertake discovery in accordance with the North Dakota Rules of Civil Procedure without first obtaining the approval of the ALJ, and that it was appropriate for Midcontinent to have done so. The ALJ’s prior authorization is, therefore, not necessary.

Midcontinent proposed a scheduling order in its brief in support of its Petition. In its brief, Midcontinent notes that there is a 120-day statutory deadline for the Public Service Commission (“the Commission”) to act on its Notice of Bona Fide Request for Services and Interconnection and Petition to Find Rural Exemption Waived (“Rural Exemption Petition”). However, Midcontinent proposed a scheduling order which allows the Commission until June 30, 2008, to issue its order on the Rural Exemption Petition. The statutory deadline is

approximately June 7, 2008 (the Rural Exemption Petition was filed February 8, 2008). At the prehearing conference, Missouri Valley Communications, Inc. ("Missouri Valley") agreed to waive the statutory deadline. Midcontinent also agreed to waive the statutory deadline but, initially, said that its waiver was conditional upon an expeditious handling of its Rural Exemption Petition (also noted in its Petition to the ALJ). Midcontinent did not state that its waiver was conditional upon the ALJ accepting the proposed scheduling order. PSC staff requested that the parties put their waiver statements in writing. In writing, Midcontinent later agreed to waive the statutory deadline but not to extend the time for a decision beyond July 31, 2008.

At the prehearing conference, Missouri Valley said that it would be making another filing with the Commission related to this matter. There seemed to be consensus that this filing would be consolidated with Midcontinent's Rural Exemption Petition. Missouri Valley noted that this filing would have a different statutory deadline, extending beyond the Midcontinent Rural Exemption Petition's statutory deadline.

The parties also discussed the extent of possible discovery required and noted possible conflict dates for a hearing. The ALJ asked that the parties and the PSC staff provide the ALJ with conflict dates extending from June to mid-July.

The parties have provided their waiver statements and they and the PSC staff have provided the ALJ with conflict dates.

On April 9, 2008, Missouri Valley filed with the Commission an Application for Suspension on Modification Pursuant to 47 USC § 251(f)(2). This is apparently the filing Missouri Valley spoke of at the prehearing conference.

Although the ALJ can not assume that the two filings will be consolidated, he notes that both parties have waived the statutory deadline for the Commission to issue an order. Although Midcontinent's waiver is conditional, the nature of its waiver at the prehearing conference and in writing was not firm and was dependent on an expeditious disposition of this matter by a certain date. But, with the possibility of a new filing with a new deadline that will likely be consolidated with the older filing, and the necessity for the ALJ to schedule this matter to avoid conflicts not only with his own schedule but also the schedules of the Commission and its staff and the schedules of counsel for the parties, a schedule that is "expeditious" is relative. The ALJ has done his best to schedule this matter as expeditiously as possible and, accordingly, makes the following:

SCHEDULING ORDER


1. **Discovery deadline** - May 31, 2008.
2. **Hearing date** - July 9-10, 2008.
3. **Deadline for filing post-hearing briefs** - seven days from the last date of hearing.
4. **Deadline for the Commission to enter its order in Midcontinent's Rural Exemption Petition** – August 8, 2008.
5. **Deadline for the Commission to enter its order in Missouri Valley's April 9, 2008, filing** - The later of the statutory period for the Commission to enter an order on Missouri Valley's application or the date of the ALJ's deadline for the Commission to enter its order in the Midcontinent Rural Exemption Petition (August 8, 2008), at the discretion of the Commission.

The Commission will issue the appropriate notice of hearing for Midcontinent's

Rural Exemption Petition hearing on July 9-10, 2008, and, at its discretion, may consolidate that notice with the notice for Missouri Valley's application.

Dated at Bismarck, North Dakota, this 14th day of April, 2008.

State of North Dakota
Public Service Commission

By: 
Allen C. Hoberg, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

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CERTIFICATE OF SERVICE
OAH File No. 20080079

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The undersigned certifies that a true and correct copy of the **PREHEARING CONFERENCE SUMMARY AND SCHEDULING ORDER** was mailed, inside mail, at the State Capitol, on the 14th day of April, 2008, to:

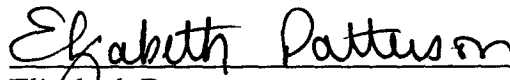
Mr. William W. Binek
Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

and that a true and correct copy of the above document was mailed, regular mail, on the 14th day of April, 2008, to:

Mr. John M. Olson
John M. Olson, P.C.
418 East Broadway Avenue – Suite 9
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Mr. David J. Hogue
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OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge



Elizabeth Patterson