

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

MIDCONTINENT COMMUNICATIONS, )  
A SOUTH DAKOTA PARTNERSHIP, )  
COMPLAINANT )

VS. )

MISSOURI VALLEY COMMUNICATIONS )  
INC., )  
RESPONDENT )

Case No. PU-08-61  
OAH No. 20080079

MISSOURI VALLEY COMMUNICATIONS )  
INC. )

APPLICATION FOR SUSPENSION OR )  
MODIFICATION PURSUANT TO )  
47 U.S.C. § 251(F)(2) )

Case No. PU-08-176  
OAH No. 20080079

**Testimony of W. Thomas Simmons**

**On Behalf Of**

**Midcontinent Communications**

July 2, 2008

1 **Q. PLEASE STATE YOUR NAME FOR THE RECORD.**

2 A. W. Thomas Simmons.

3 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

4 A. I am employed by Midcontinent Communications as Senior Vice President of  
5 Public Policy. I joined the Midcontinent family of companies in 1987 as the  
6 general manager of Midcontinent Media's South Dakota radio group. Before that,  
7 I worked in radio broadcasting as an engineer, producer, announcer, operations  
8 manager, and general manager. In 1995, I joined Midcontinent Communications  
9 as Vice President and General Manager. In my current capacity, I am responsible  
10 for public policy, public relations, public affairs, as well as community and  
11 government relations.

12 **Q. CAN YOU DESCRIBE YOUR EDUCATION?**

13 A. I holds BA and MS degrees in psychology from Concordia College in Moorhead,  
14 Minnesota and from North Dakota State University.

15  
16 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

17 A. I am providing this testimony to address certain issues relating to (1)  
18 Midcontinent and the services it offers; (2) Midcontinent's network; (3) The  
19 elements under Sections 251(b) and 251(c) of the federal Communications Act  
20 that are the subject of this consolidated proceeding; (4) Midcontinent's experience  
21 of the impact of facilities-based competition; and (5) Midcontinent's proposal for  
22 implementation of Section 251(c) following this proceeding. This testimony does  
23 not address any of the other issues in this proceeding.

1 **MIDCONTINENT AND ITS SERVICES**

2 **Q. CAN YOU DESCRIBE MIDCONTINENT AND THE SERVICES IT**  
3 **OFFERS?**

4 A. Midcontinent is the largest cable provider in the Dakotas. We offer cable service,  
5 high speed Internet and telephone service across North Dakota and South Dakota,  
6 and also serve some customers in Minnesota. Up until May of this year, we also  
7 had customers in Nebraska, but we have sold those systems. Our telephone  
8 service is a direct replacement for incumbent telephone company offerings,  
9 including local and long distance services; features like call waiting and call  
10 forwarding; and voice mail. Today, Midcontinent serves more than 80,000  
11 telephone customers and more than 250,000 customers for all of its services  
12 combined.

13 **Q. HOW DOES MIDCONTINENT PROVIDE ITS SERVICES?**

14 A. We use the Midcontinent cable platform to provide all of our services. All of our  
15 cable and high speed Internet services are provided over our own facilities. While  
16 we often begin providing telephone service on a resale basis when we first enter a  
17 market, our goal always is to transition to full facilities-based service as quickly  
18 as possible. Offering facilities-based service allows us to provide the best  
19 customer experience possible and to control all aspects of the service we provide,  
20 from the customer service representatives to the choice of technologies to  
21 maximize the quality of the service our customers receive. For these reasons, the  
22 overwhelming majority of our customers get their service through Midcontinent's  
23 facilities.

1 Midcontinent has been offering telephone service in the Dakotas for many  
2 years, including long distance telephone service since 1982 and local telephone  
3 service since 1999. Midcontinent provides all of its facilities-based telephone  
4 services through its own telephone switch. Most of Midcontinent's telephone  
5 service is standard circuit-switched service, but even service that uses Internet  
6 Protocol at the customer premises is converted to standard telephone protocols  
7 and routed through the switch before going to other carriers.

8 **Q. WITHIN NORTH DAKOTA, WHERE DOES MIDCONTINENT**  
9 **PROVIDE TELEPHONE SERVICE?**

10 A. Our service area includes both urban and rural communities. The largest  
11 communities where we provide telephone service are Bismarck and West Fargo.  
12 Some of the smaller communities include Devils Lake, Carrington, Mayville,  
13 Hillsboro, Casselton and Wahpeton. We currently provide service in Williston  
14 via resale of the services of Missouri Valley Communications.

15 ***MIDCONTINENT'S NETWORK***

16 **Q. CAN YOU DESCRIBE THE NETWORK ARCHITECTURE USED BY**  
17 **MIDCONTINENT?**

18 A. With rare exceptions, Midcontinent uses a hybrid fiber-coaxial cable network  
19 architecture to serve its telephone customers, and would use the same architecture  
20 in Williston. Traffic originating from a customer location travels over  
21 Midcontinent's coaxial cable to a local node, where it then is transferred to fiber.  
22 The fiber transport continues from the node to the local Midcontinent headend,  
23 which in this case would be located in Williston.

1           After traffic reaches the headend, it is handed off to Midcontinent's fiber  
2 ring network for transport to Midcontinent's switching facilities in Sioux Falls.  
3 From those facilities, it is routed as appropriate to another Midcontinent end user,  
4 to another local exchange carrier or to an interexchange carrier for termination.  
5 Midcontinent interconnects directly and indirectly with terminating carriers  
6 through meet points, collocation and other, mutually-agreed mechanisms.

7           To connect its network to Williston, Midcontinent Communications has  
8 leased a circuit from Bismarck to its Round Prairie Junction meet point in  
9 Williston and is in the process of implementing a second, diverse path, which we  
10 plan to begin installing once we have approval for facilities-based interconnection  
11 in Williston. The remainder of the long haul network that would be used to  
12 connect with the Williston headend already uses diverse routing and self-healing  
13 rings to maximize reliability.

14 **Q. IS MIDCONTINENT'S NETWORK RELIABLE?**

15 A. Yes. Reliability is an important part of what we offer our customers.

16 **Q. WHAT STEPS DOES MIDCONTINENT TAKE TO ENSURE NETWORK**  
17 **RELIABILITY?**

18 A. Midcontinent works constantly to improve and maintain the reliability of its  
19 telephone network. For instance, Midcontinent has undertaken a long-term plan  
20 to ensure that all of its transport is carried via self-healing fiber rings. The use of  
21 fiber rings nearly eliminates the possibility of service losses due to fiber cuts,  
22 which at one time were Midcontinent's most significant service issue.

1 Midcontinent also designs its systems for maximum redundancy. In  
2 Williston, we already have placed fiber optic cables for interconnection along  
3 diverse paths, and the gateway we plan to use in the Williston headend has  
4 redundant power outputs, protection switching ability and redundant gigabit  
5 Ethernet connections to the core routers for failover protection. Midcontinent's  
6 telephone switch, a Nortel DMS-500 with a CS-2000 add-on for digital and voice  
7 over IP services, also has significant redundancies that are intended to reduce the  
8 risk of outages.

9 **Q. MIDCONTINENT EXPERIENCED A SWITCHING ISSUE IN MAY. CAN**  
10 **YOU DESCRIBE THE CIRCUMSTANCES OF THIS ISSUE?**

11 A. The switching issue was an intermittent call setup failure. It did not affect all  
12 calls and, in fact, once a connection was established it would continue until the  
13 customer ended the call. Once Midcontinent became aware of the issue, we  
14 determined that it was caused by a software problem in the core billing and  
15 management system (the "CBM") of the switch. In essence, there was an  
16 overload of messaging between the CBM and the core of the switch, which  
17 caused call setup information to be lost intermittently.

18 While Nortel has not completed its investigation, it appears that the  
19 problem was caused by a mistake that one of Nortel's technicians made in  
20 February. When installing a patch to the software, the technician omitted one file  
21 on the primary CBM. The omission of this file caused the failure and, equally  
22 important, disabled the alarms and the trigger to use the backup CBM. The  
23 problem was not detected in February because the technician rebooted the backup

1           CBM unit first, and so the switch operated on the backup unit until it  
2           automatically switched back to the primary unit on May 26. The messaging issue  
3           began on that date, but did not affect service until May 28.

4           Once Midcontinent became aware of the issue, it immediately began  
5           diagnosis. After the issue was isolated to the CBM and the specific problem was  
6           identified, it took approximately 90 minutes to correct it and bring the switch back  
7           to normal operations. Overall, we estimate that customers experienced service  
8           issues for less than eight hours.

9           This was the first customer-affecting switch problem in the entire time that  
10          Midcontinent has offered facilities-based local telephone service in the Dakotas.  
11          We are continuing to work with Nortel to minimize any chance that this situation  
12          will be repeated or that there will be outages in the future.

13          ***SPECIFIC SECTION 251(C) AND 251(B) REQUIREMENTS***

14          **Q.     WHICH SECTION 251(C) REQUIREMENTS DOES MIDCONTINENT  
15          WANT TO HAVE APPLIED TO MISSOURI VALLEY?**

16          A.     Midcontinent’s current request includes the following items that fall under  
17          Section 251(c) of the Communications Act:

- 18           1.     Negotiation in good faith.
- 19           2.     Interconnection at any technically feasible point.
- 20           3.     Collocation
- 21           4.     Notices of network changes.

22          **Q.     WHICH SECTION 251(C) REQUIREMENTS ARE NOT INCLUDED IN  
23          MIDCONTINENT’S REQUEST FOR INTERCONNECTION?**

1 A. Midcontinent's request does not include the following items that fall under  
2 Section 251(c) of the Communications Act:

- 3 1. Access to unbundled network elements.
- 4 2. Wholesale resale.

5 **Q. WHY ISN'T MIDCONTINENT ASKING FOR ACCESS TO UNBUNDLED**  
6 **NETWORK ELEMENTS?**

7 A. Midcontinent has not requested access to unbundled network elements because it  
8 intends to serve its customers using its own network facilities, as I described  
9 earlier.

10 **Q. WHY ISN'T MIDCONTINENT ASKING FOR WHOLESALE RE SALE?**

11 Midcontinent already has obtained wholesale resale from Missouri Valley.  
12 Missouri Valley agreed not to assert its rural exemption and entered into a resale  
13 agreement with Midcontinent in 2004. That agreement was a replacement for the  
14 agreement that had been in place between Midcontinent and Citizens Telephone  
15 prior to the sale of the Williston exchange to Missouri Valley's current parent,  
16 Nemont.

17 **Q. CAN YOU DESCRIBE WHICH SECTION 251(B) REQUIREMENTS**  
18 **MISSOURI VALLEY SHOULD BE REQUIRED TO FULFILL?**

19 A. As I understand it, Section 251(b) requires all local exchange carriers to meet  
20 certain obligations. They are as follows:

- 21 1. Reciprocal compensation.
- 22 2. Number portability.
- 23 3. Dialing parity.

1 4. Access to rights of way.

2 5. Retail resale.

3 Based on the information that Missouri Valley has provided so far, I do not  
4 believe that it is asking the Commission to suspend its obligations under Section  
5 251(b).

6 **Q. DOES MIDCONTINENT WANT MISSOURI VALLEY TO MEET ALL**  
7 **OF THE SECTION 251(B) REQUIREMENTS?**

8 A. Yes. As I understand it, Missouri Valley is meeting most of them already,  
9 including providing number portability, dialing parity, access to rights of way and  
10 retail resale. I do not know if Missouri Valley is providing reciprocal  
11 compensation for termination of local traffic, but this is not a particularly  
12 burdensome obligation, and most current interconnection agreements do not  
13 require either carrier to pay for reciprocal compensation traffic.

14 **Q. HOW WILL MISSOURI VALLEY BE COMPENSATED FOR MEETING**  
15 **ITS SECTION 251(B) AND SECTION 251(C) OBLIGATIONS?**

16 A. It depends on the obligation. Carriers recover costs of number portability and  
17 dialing parity from their customers. The costs of other requirements, like  
18 interconnection, collocation, reciprocal compensation and access to rights of way,  
19 are subject to negotiation and, if the companies cannot agree, are set by regulators  
20 under FCC rules intended to make sure that incumbent carriers' costs of meeting  
21 those obligations are covered.

22 ***EFFECTS OF FACILITIES-BASED COMPETITION***

1 **Q. CAN YOU DESCRIBE SOME OF THE WAYS THAT FACILITIES-**  
2 **BASED COMPETITION FROM MIDCONTINENT MIGHT BENEFIT**  
3 **CONSUMERS IN WILLISTON?**

4 A. In Midcontinent's experience, the introduction of facilities-based competition has  
5 significant benefits for consumers. I would like to discuss two specific benefits:  
6 lower prices and increased innovation.

7 **Q. DOES COMPETITION LOWER PRICES?**

8 A. In our experience, it does. Midcontinent offers its customers a variety of  
9 discounted bundles with combinations of local and long distance telephone  
10 service, cable service and high speed Internet service. Those bundles can save a  
11 consumer as much as thirty-one dollars a month over the cost of purchasing the  
12 services separately. Even Midcontinent's standard phone service includes call  
13 waiting, three-way calling and other calling features at no charge, when many  
14 incumbent phone companies charge for those services. Midcontinent's telephone  
15 rates are set to compete with the services offered by incumbent phone companies,  
16 and so customers typically save money compared to what they would pay their  
17 old service providers.

18 **Q. HOW DOES COMPETITION SPUR INNOVATION?**

19 A. Midcontinent has found that companies that are competing with each other do not  
20 just rely on price. They add features to their services, improve reliability and  
21 customer service and try to find innovative ways to serve their customers. These  
22 improvements are necessary to attract and keep customers in a competitive  
23 environment. For example, Midcontinent has been increasing the speed of its

1 cable modem service since that service was introduced, and most Midcontinent  
2 customers can now purchase service with a download speed of 10 Mbps or more,  
3 in large part because many of its competitors have been increasing the speeds they  
4 offer as well. In comparison, I understand that Missouri Valley's DSL service is  
5 offered at only 1 Mbps or about 1/10<sup>th</sup> of the speed of Midcontinent's standard  
6 cable modem service.

7 **Q. DOES COMPETITION HURT RURAL TELEPHONE COMPANIES?**

8 A. Of course, any time competition begins, the incumbent telephone company is  
9 subject to reduced revenues and profits. However, Midcontinent has been  
10 competing against rural telephone companies in North Dakota and South Dakota  
11 since 2004 and to date none of those companies have sought regulatory relief  
12 from state or federal regulators as a result of competition from Midcontinent or  
13 even asked for permission to raise their rates. In most cases, it seems that  
14 competition, or even the prospect of competition, has caused rural telephone  
15 companies to try to broaden and improve the service they offer to their customers.  
16 I believe that is what Congress intended when it passed the Telecommunications  
17 Act of 1996.

18 ***IMPLEMENTATION OF INTERCONNECTION***

19 **Q. ONCE THE COMMISSION DECIDES TO GRANT MIDCONTINENT'S**  
20 **PETITION, HOW SHOULD IT IMPLEMENT THAT DECISION?**

21 A. Before Midcontinent can begin providing facilities-based service through Section  
22 251(c) interconnection, Midcontinent and Missouri Valley will need to enter into  
23 an interconnection agreement to govern their relationship, determine the specific

1 locations and types of interconnection that will be adopted and put those  
2 interconnection arrangements into place. The companies will not need to create  
3 new systems for creating orders because those systems already are in place under  
4 their existing resale agreement.

5 **Q. HOW SHOULD THE COMMISSION ADDRESS THE**  
6 **INTERCONNECTION AGREEMENT ISSUE?**

7 A. The best way to address that issue is to require the parties to adopt an interim  
8 interconnection agreement pending negotiation of a permanent agreement.  
9 Midcontinent is willing to accept any of its existing agreements in North Dakota  
10 for facilities-based interconnection and collocation as an interim agreement. The  
11 interim agreement would remain in place until Missouri Valley and Midcontinent  
12 entered into a permanent agreement. The pricing under any interim agreement  
13 would be subject to a true-up to the final pricing agreed to or arbitrated between  
14 Midcontinent and Missouri Valley.

15 **Q. HOW SHOULD THE COMMISSION ADDRESS THE**  
16 **IMPLEMENTATION OF INTERCONNECTION?**

17 A. Mr. Gates discusses this issue in his testimony.

18 **Q. WHAT SCHEDULE SHOULD THE COMMISSION SET?**

19 A. Midcontinent believes it is reasonable to require the parties to file the interim  
20 interconnection agreement no later than thirty days after the Commission releases  
21 its order. During that time, Midcontinent's and Missouri's technical staffs could  
22 begin discussions on the location and type of physical interconnection and on any

1 other technical or operational issues that have to be addressed before  
2 interconnection is put into place.

3 Based on Midcontinent's experience with other rural carriers, it is  
4 reasonable to expect that Midcontinent and Missouri Valley could complete their  
5 discussions concerning implementation of interconnection and any other technical  
6 issues within thirty days of a Commission order. Actual interconnection could be  
7 completed within sixty days of the time technical plans have been completed, and  
8 Midcontinent should be able to begin providing facilities-based service at that  
9 time.

10 Midcontinent also recognizes that it will take some time for Missouri  
11 Valley to transition wholesale resale customers to facilities-based service. We  
12 would propose to allow for a gradual transition, spread evenly over a six-month  
13 period from the time that facilities-based service begins.

14 Midcontinent believes that, with an interim agreement in place, it is  
15 reasonable to use the standard negotiation and arbitration periods under Section  
16 252 of the Communications Act for the permanent agreement, using the date of  
17 the Commission's order as the starting date. Under that schedule, a permanent  
18 interconnection agreement would be in place no more than about nine months  
19 after the Commission's order is released.

20 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

21 A. Yes.