



## **ARGUMENT**

The Commission agrees with, and supports, Missouri Valley's summary judgment arguments that Missouri Valley's § 251(f)(1)(A) exemption from § 251 (c) (2) interconnection duties is not waived, the Commission's Order is in accordance with the law, and Midcontinent's Complaint should be dismissed. The arguments presented by Missouri Valley on this issue, and the arguments already presented by the Commission to the court, will not be reiterated by the Commission here. The bottom line is this: the Commission considered the evidence on the record concerning the waiver issue, the issue of undue economic burden, and universal service, applied the applicable law, and determined that the rural exemption should not be terminated. The evidence presented by Midcontinent was not more persuasive than the evidence presented by Missouri Valley. Midcontinent did not prove what it needed to prove under the Act to justify the termination of the otherwise continuing rural exemption.

Missouri Valley has presented more than adequate arguments to the court supporting its Motion for Summary Judgment and refuting the Motion for Summary Judgment made by Midcontinent. Any additional arguments made by the Commission would simply be repetitive.

## **CONCLUSION**

The Commission's decision is in full accord with the Act, North Dakota's statutes affecting telecommunications, specifically North Dakota Century Code chapter 49-21, and the relevant case law. The Commission's Order was supported by substantial

evidence and was well-reasoned. Missouri Valley's Motion for Summary Judgment should be granted. Midcontinent's Motion for Summary Judgment should be denied.

Dated this 15<sup>th</sup> day of October, 2009.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

\_\_\_\_\_  
MIDCONTINENT COMMUNICATIONS, )  
A SOUTH DAKOTA PARTNERSHIP, )  
 )  
Plaintiff, )  
 )  
v. ) CERTIFICATE OF  
 ) SERVICE  
 )  
NORTH DAKOTA PUBLIC SERVICE )  
COMMISSION, KEVIN CRAMER, ) Civ. A. No. 1:09-CV-017  
TONY CLARK, AND BRIAN KALK, )  
in their official capacities as Commissioners )  
of the North Dakota Public Service Commission )  
 )  
and )  
 )  
MISSOURI VALLEY COMMUNICATIONS, INC., )  
 )  
Defendants. )  
\_\_\_\_\_

I certify that on the 15th day of October, 2009, I caused the following documents:

Reply to Missouri Valley's Motion for Summary Judgment and Response to  
Midcontinent's Opposition to Missouri Valley's Motion for Summary Judgment

to be filed electronically with the Clerk of Court through ECF, and the ECF will send a Notice of  
Electronic Filing (NEF) to the following:

John Olson ([olsonpc@midconetwork.com](mailto:olsonpc@midconetwork.com))  
J.G. Harrington ([jharrington@dowlohnes.com](mailto:jharrington@dowlohnes.com))  
David E. Mills ([dmills@dowlohnes.com](mailto:dmills@dowlohnes.com))  
David Hogue ([dhogue@srt.com](mailto:dhogue@srt.com))

I further certify that on the 15th day of October, 2009, a copy of the foregoing documents  
and the Notice of Electronic Filing will be mailed by first-class mail, postage paid, to the  
following non-ECF participants: None

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