

Fahn, Patrick J.

From: Binek, William W.
Sent: Monday, June 02, 2008 11:52 AM
To: Fahn, Patrick J.
Cc: Binek, William W.
Subject: FW: Midcontinent - Telcom
Attachments: Contract.doc; Scheduling Order.doc

RECEIVED

MAY 27 2008

PUBLIC SERVICE COMMISSION

William W. Binek
Chief Counsel
ND Public Service Commission
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From: Patrick Ward [mailto:pward@zkslaw.com]
Sent: Tuesday, May 27, 2008 10:36 AM
To: Binek, William W.
Subject: FW: Midcontinent - Telcom

Hi Bill:

Here is the attached scheduling order sent to counsel. As we discussed, you will provide a room and court reporter and send out notice of hearing. Thanks.

Patrick Ward
Zuger Kirmis & Smith
PO Box 1695
Bismarck ND 58502
701-223-2711
FAX 701-223-9619

From: Patrick Ward
Sent: Wednesday, May 21, 2008 11:39 AM
To: Patrick W. Durick; 'Michael Maus'; Harrington, J.G.; Valerie Wimer
Cc: Val Leapaldt
Subject: FW: Midcontinent - Telcom

Counsel:

Pursuant to our telephone conference yesterday, attached is the arbitration agreement and scheduling order as promised. Please sign and return one copy of the arbitration agreement. The signed scheduling order will go in the mail today.

Patrick Ward
Zuger Kirmis & Smith
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8 **PU-08-97** Filed: 5/27/2008 Pages: 6
Email re Arbitrator's Scheduling Order / Contract for
Voluntary Bidding Arbitration

**IN THE MATTER OF THE ARBITRATION OF MIDCONTINENT COMMUNICATIONS
AND CONSOLIDATED TELECOM INTERCONNECTION**

SCHEDULING ORDER

The parties participated in a telephone pretrial conference on Tuesday, May 20, 2008, for purposes of scheduling dates in which to complete the arbitration of the above matter. Midcontinent was represented by attorney Pat Durick and J.G. Harrington. Consolidated Telecom was represented by Michael Maus, Valerie Wilmar, and Paul Schuetzler.

The following issues were agreed upon and a timetable was set:

1. Type of arbitration. The parties have agreed that the procedure for arbitration will be as outlined in Chapter 69-02-10 of the North Dakota Administrative Practices Act. The procedure will be issue-by-issue modified final offer arbitration. The parties will agree on a list of issues by **May 27, 2008**, and provide an agreed upon list of issues to the arbitrator by **May 28, 2008**.

2. Written discovery requests. The parties believe that written discovery will likely be adequate. **June 3, 2008**, is the final date for each party to submit written discovery requests to the other without further permission from the arbitrator. Discovery requests are to be reasonable in scope and number.

3. Objections to discovery requests. The parties will file objections to discovery requests by **June 17, 2008**.

4. Disclosure of expert witnesses. The parties will each disclose their expert witnesses by **July 3, 2008**, in the form to comply with Rule 26(c) of the Federal Rules of Civil Procedure.

5. Position statements. Each party will file position statements on the issues by **July 11, 2008**.

6. Expert witness deposition. If either party determines the need to take deposition testimony of any expert witness identified by the other party, they will do so no later than **July 17, 2008**.

7. Direct testimony. Direct testimony of witnesses will be filed in written form by **July 21, 2008**. The parties will be permitted to cross examine or do redirect on subjects of cross examination at the time of the hearing.

8. Final pretrial conference. If any party deems a need for a final pretrial conference with the arbitrator, it is set for **July 28, 2008**, at 3:00 p.m. by telephone conference.

9. Hearing. The hearing of this matter, which will consist primarily of cross examination and redirect of witnesses whose testimony has been pre-filed, will take place commencing at 10:00 a.m. (CDT) on August 1, 2008, in Bismarck at a place to be arranged. The parties will agree on exhibits and numbering of exhibits prior to the hearing. A court reporter will be provided for the hearing.

10. Post hearing briefs. Each side will submit post hearing briefs no later than **August 12, 2008.**

11. Final decision. A final decision on each of the issues will be issued by the arbitrator on **August 21, 2008.**

Dated this ____ day of June, 2008.

Patrick J. Ward
Arbitrator
ZUGER KIRMIS & SMITH
PO Box 1695
Bismarck, ND 58502-1695
701-223-2711

**IN THE MATTER OF THE ARBITRATION OF
MIDCONTINENT COMMUNICATIONS AND CONSOLIDATED TELECOM
INTERCONNECTION DISPUTE**

CONTRACT FOR VOLUNTARY BINDING ARBITRATION

The parties hereby agree and contract with one another that all of the disputes in the matter of Midcontinent Communications and Consolidated Telecom interconnection dispute will be resolved by binding arbitration rather than by litigation. It is agreed that issue-by-issue Modified Final Order arbitration will be the procedure.

The Arbitrator shall be Patrick J. Ward of Zuger Kirmis & Smith. The parties agree to pay to Zuger Kirmis & Smith a fee of \$180 per hour for all outside preparation time, deliberation time, and drafting time as well conduct of the arbitration hearing, \$90 per hour travel time, and reimbursement of actual expenses incurred plus mileage reimbursement for related automobile travel at the IRS approved rate. The fees and expenses of the Arbitrator will be borne equally, pro rata, by each of the parties, without regard to the outcome of the arbitration and will be billed quarterly. Each party waives any claim of conflict of interest or impropriety in Patrick Ward acting as Arbitrator herein.

Any pleadings and discovery proceedings from any pending civil action will pertain to this arbitration. At this time the parties anticipate further discovery only in the form approved in attached scheduling order. Arbitrator Patrick Ward will resolve any disputes regarding further discovery.

Arbitrator Patrick Ward is hereby empowered to make a final and binding decision regarding all issues between the parties from which there shall be no appeal. The Arbitrator shall be the sole judge of all issues of law and fact. The parties have the right to request clarification from the Arbitrator of any perceived mathematical or clerical errors in the Award. However, there can be no appeal from any decision made by the Arbitrator except for a claim of fraud or that one of the provisions of this Agreement was violated.

Arbitrator Patrick Ward shall use the Arbitration Rules in 69-01-10, N.D. Administrative Code; N.D. Administrative Practices Act, Chapter 32-28, N.D. Cent. Code; Uniform Arbitration Act 39-29.3, N.D. Cent Code; and N.D. Rules of Civil Procedure and Evidence as a basis for resolving any substantive or procedural issues which may arise during the proceeding.

The parties and Arbitrator anticipate that the Arbitration Award will be rendered August 21, 2008, based on adherence to the Scheduling Order.

The parties will exchange copies of any exhibits either intends to offer at the arbitration hearing and will attempt to work together in advance of the hearing to present

the Arbitrator with a single jointly offered set of exhibits, subject to either party reserving the right to state on the arbitration hearing record objection to any of the exhibits.

There will be a final prehearing telephone conference at 3:00 p.m. (CDT) on July 28, 2008, to resolve any last minute issues prior to the arbitration hearing. The arbitration hearing will commence at 10:00 a.m. (CDT), on August 1, 2008. The parties anticipate completing the hearing within one day which shall be reserved for that purpose.

Each party will submit to the Arbitrator in advance of the prehearing teleconference a written position statement to be filed by July 11, 2008, in lieu of an opening oral statement at the hearing. Such writing shall be furnished to the other party in advance thereof. It is anticipated also that each party will by August 20, 2008, subsequent to the hearing, submit to the Arbitrator the proposed award that each would have the Arbitrator enter, the proposed award to be in a form sufficient simply to be signed by the Arbitrator without addition thereto, should the Arbitrator choose to do so.

Although this Stipulation for Binding Arbitration has been initially drafted by the Arbitrator at the request of the parties, each party represents that it has now participated in the drafting of this Agreement by review and submission of any suggestions for a revision that party desires. Therefore, the scrivener rule shall not be applicable in the interpretation of this Agreement.

The parties agree that this document and the attached Scheduling Order represents the entire agreement between them and that these terms are contractual and not a mere recital. No promise, inducement or representation other than as set forth in this Agreement has been made, offered or agreed upon between them. The parties and their attorneys have fully read the foregoing Agreement in its entirety. The parties have been fully advised by their counsel, know and understand the contents and sign this Agreement as their free act and deed.

DATED: _____, 2008

Patrick Durick
J.G. Harrington

Midcontinent Communications

DATED: _____, 2008

By: _____
Its: _____

DATED: _____, 2008

Michael J. Maus

Consolidated Telecom

DATED: _____, 2008

By: _____
Its: _____

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