

Fahn, Patrick J.

From: Binek, William W.
Sent: Monday, June 02, 2008 11:02 AM
To: Fahn, Patrick J.
Cc: Binek, William W.
Subject: FW: List of issues
Attachments: MidcontinentConsolidatedIssuesDescription052908v1.doc

RECEIVED

MAY 29 2008

PUBLIC SERVICE COMMISSION

William W. Binek
Chief Counsel
ND Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck ND 58505-0480
Phone: 701-328-4088
Fax: 701-328-2410
wbinek@nd.gov

From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Thursday, May 29, 2008 1:51 PM
To: Binek, William W.
Cc: Harrington, J.G.; Patrick Ward; Valerie Wimer; Nancy Vogel; Mary Lohnes; Michael Maus
Subject: FW: List of issues

Bill:

The attached list of issues has been circulated and approved by all concerned.

Please let me know if you have questions or comments.

9 **PU-08-97** Filed: 5/29/2008 Pages: 5
Email re Arbitration Issues

Pat Durick

Midcontinent Communications
Patrick Durick

From: Harrington, J.G. [mailto:JHarrington@dowlohn.com]
Sent: Thursday, May 29, 2008 11:29 AM
To: Patrick W. Durick; Michael Maus; vwimer@jsitel.com; ZZLohnes, Mary; ZZVogel, Nancy
Subject: RE: List of issues

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All -

I've attached a draft description of the issues in the arbitration. In the interests of time, I am circulating this to everyone at once. Consequently, this draft is subject to any comments that I may receive from Midcontinent.

Please let me know if you have any comments, questions or changes.

Thanks.

J.G.

From: Patrick Ward [mailto:pward@zkslaw.com]
Sent: Thursday, May 29, 2008 12:26 PM
To: Harrington, J.G.; Binek, William W.; Patrick W. Durick; Michael Maus
Cc: vwimer@jsitel.com; ZZLohnes, Mary; Fahn, Patrick J.
Subject: RE: List of issues

Thanks.

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

From: Harrington, J.G. [mailto:JHarrington@dowlohn.com]
Sent: Thursday, May 29, 2008 10:19 AM
To: Patrick Ward; Binek, William W.; Patrick W. Durick; Michael Maus
Cc: vwimer@jsitel.com; ZZLohnes, Mary; Fahn, Patrick J.
Subject: RE: List of issues

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I can do it.

J.G. Harrington

From: Patrick Ward [mailto:pward@zkslaw.com]
Sent: Thursday, May 29, 2008 11:18 AM
To: Binek, William W.; Patrick W. Durick; Michael Maus
Cc: Harrington, J.G.; vwimer@jsitel.com; Mary Lohnes (Business Fax); Fahn, Patrick J.
Subject: RE: List of issues

Thanks, Bill. Pat and Mike, does one of the attorneys want to take first stab at this or should I? Let me know.

Patrick Ward
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FAX 701-223-9619

From: Binek, William W. [mailto:wbinek@nd.gov]
Sent: Thursday, May 29, 2008 8:27 AM
To: Patrick W. Durick; Michael Maus; Patrick Ward
Cc: jgharrington@dowlohnes.com; vwimer@jsitel.com; Mary Lohnes (Business Fax); Fahn, Patrick J.; Binek, William W.
Subject: RE: List of issues

What we need is a concise list of the issues to put in the Notice of Hearing. I am attaching a copy of the Notice of Hearing in a recent arbitration case that sets forth issues as provided to us. We want to be certain that we correctly identify the issues in the proceeding. Please provide the information as soon as possible because we would like to have the Commission issue the Notice of Hearing at its meeting next week.

Thank you.

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From: Patrick W. Durick [mailto:pwd@pearce-durick.com]
Sent: Wednesday, May 28, 2008 5:25 PM
To: Michael Maus; Patrick Ward
Cc: Binek, William W.; jgharrington@dowlohnes.com; vwimer@jsitel.com; Mary Lohnes (Business Fax)
Subject: RE: List of issues

I have attached a list of issues. It is my understanding that the list has been developed through discussions between the parties over the last week and has been reviewed and approved by both J.G. Harrington Valerie Wimer.

Pat

From: Michael Maus [mailto:maus@hmnattys.com]
Sent: Wednesday, May 28, 2008 5:11 PM
To: Patrick Ward; Patrick W. Durick
Cc: wbinek@nd.gov
Subject: Re: List of issues

I think they have that ready to send to you. mjm

----- Original Message -----

From: Patrick Ward

To: Patrick W. Durick ; Michael Maus
Cc: wbinek@nd.gov
Sent: Wednesday, May 28, 2008 1:49 PM
Subject: List of issues

Pat and Mike:

I just spoke to Bill Binek. He will need the list of issues before issuing the notice of hearing. The August 1 hearing will be in a room at the PSC and they will arrange for a court reporter.

Patrick Ward
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MIDCONTINENT-CONSOLIDATED ARBITRATION ISSUES

MAY 29, 2008

1. **Last Mile Providers** – Consolidated and Midcontinent cannot agree on whether exchange of traffic generated by Last Mile Providers that are not under common control with Midcontinent should be addressed in various sections of the interconnection agreement or should not be prohibited under this agreement and addressed, if at all, in a separately negotiated agreement.
2. **Pricing** – Consolidated and Midcontinent have not agreed on the prices or rates that Consolidated will charge Midcontinent for providing various services and the use of Consolidated's facilities.
3. **Common Carrier Representations** – Consolidated and Midcontinent have not agreed on whether the agreement should contain terms relating to Midcontinent's operations as a common carrier.
4. **Intellectual Property** – Consolidated and Midcontinent have not agreed on (a) the extent to which Midcontinent will indemnify Consolidated for intellectual property claims relating to facilities and services provided by Consolidated to Midcontinent; and (b) the terms under which each party may use trademarks and similar rights granted to the other party.
5. **Franchise Reporting and Fees** – Consolidated and Midcontinent have not agreed on language concerning franchise-related obligations of the parties.
6. **Operations Handbooks** – Consolidated and Midcontinent have not agreed on the terms governing the use of each party's operations handbook under the agreement.
7. **Network Interface Devices** – Consolidated and Midcontinent have not agreed on the terms governing devices that connect customer wiring and the provider's network where fiber to the home has been installed.
8. **Service Orders** – Consolidated and Midcontinent have not agreed on (a) the standards that will govern the formats for service orders; (b) the procedures governing unauthorized changes in service; and (c) the procedures governing local service freezes.
9. **Coordinated Cutovers** – Consolidated and Midcontinent have not agreed on the terms governing confirmation and failure to complete coordinated cutovers from one carrier to another.
10. **911 Trunks** – Consolidated and Midcontinent have not agreed on the terms governing purchase of 911 trunks by Midcontinent.
11. **Foreign Exchange Service** – Consolidated and Midcontinent have not agreed on the requirements governing foreign exchange service.
12. **Collocation** – Consolidated and Midcontinent have not agreed on the safety requirements for equipment placed in collocation cages.