



OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA
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July 14, 2008

RECEIVED

JUL 18 2008

PUBLIC SERVICE COMMISSION

Ms. Annette M. Bendish
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Re: Midcontinent Communications/Missouri Valley Communications
Rural Exemption Investigation PU-08-61
OAH File No. 20080112

Missouri Valley Communications, Inc.
Suspend/Modify Interconnection Requirements Application PU-08-176
OAH File No. 20080079

Dear Ms. Bendish:

On April 2, 2008, Mr. Binek requested the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of the Midcontinent (Missouri Valley) Rural Exemption Investigation (PU-08-61). On May 8, 2008, Mr. Binek requested the designation of an administrative law judge from the Office of Administrative Hearings to conduct a hearing in the matter of the Missouri Valley Communications, Inc. application to suspend or modify interconnection requirements. For both matters, I was designated as a procedural administrative law judge to conduct the hearing, but not to make recommended findings of fact and conclusions of law, or to issue a recommended order. These two matters were consolidated and the hearing on these matters was held on July 9 and 10, 2008.

Pursuant to motion made by Missouri Valley, enclosed for the Commission's consideration is a "Recommended Consolidated Order Denying Motion." Please bring the order to the Commissioner's attention. If the Commission agrees with this order, it may adopt it and issue a final order. If it does not agree with this order, but, wishes to modify it, still denying a dismissal, it must also issue its own final order, explaining the modifications. Of course, if it disagrees with the order, and believes that the motion should be granted dismissing these two matters, it must issue its own separate order dismissing these matters.

11 **PU-08-176** Filed: 7/15/2008 Pages: 19
Recommended Consolidated Order Denying Motion to Dismiss

Office of Administrative Hearings
ALJ, Allen Hoberg

26 **PU-08-61** Filed: 7/15/2008 Pages: 19
Recommended Consolidated Order Denying Motion to Dismiss

Office of Administrative Hearings
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Ms. Bendish
July 14, 2008
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If an order for dismissal is not issued, I understand that the Commission will issue the appropriate final order in these matters.

I am closing our file on this matter and returning that portion of the record I have in my possession to you for filing with the official agency record of this matter. I am also providing an exhibit list. Some of the exhibits on that list are already on file with the commission as pre-filed testimony and should be marked according to the numbering on the exhibit list. Others were offered at the hearing and should be placed in the Commission's file. Some will be late-filed, as noted on the exhibit list, and should be placed in the Commission's file, marked according to the numbers on the exhibit list.

Finally, counsel for the parties provided me with a Protective Order for my signature at the hearing. I did not sign it and I am enclosing it with the record for this matter. The parties said that they will be filing an application for trade secret protection. If they do, and the Commission approves it, the Commission should issue its own order.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen C. Hoberg". The signature is fluid and cursive, with a large initial "A" and "H".

Allen C. Hoberg
Administrative Law Judge

ACH/lmw

Encl.

Cc: John M. Olson
Counsel for Midcontinent Communications
David J. Hogue
Counsel for Missouri Valley Communications, Inc.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/ Missouri
Valley Communications, Inc.
Rural Exemption Investigation

Case No. PU-08-61

Missouri Valley Communications, Inc.
Suspend/Modify Interconnection Requirements
Application

Case No. PU-08-176

RECOMMENDED CONSOLIDATED ORDER DENYING MOTION

July 2008

OAH File Nos. 20080079 and 20080112

On November 14, 2007, Midcontinent Communications (“Midcontinent”) made a bona fide request for facilities based interconnection agreement, with local number portability (LPN) services for the Williston, North Dakota exchange from Missouri Valley Communications, Inc. d/b/a Nemont (“Missouri Valley”). On February 8, 2008, Midcontinent filed with the Commission its Notice of Bona Fide Request for Services and Interconnection and Petition to Find Rural Exemption Waived.

Midcontinent requests that the Commission determine that Missouri Valley has waived its rural exemption or, in the alternative, that the Commission conduct an inquiry under the provisions of 47 U.S.C. §251 (f)(1)(A) for the purpose of determining whether to terminate Missouri Valley’s exemption from providing its services as requested by Midcontinent.

On April 9, 2008, Missouri Valley filed an Application for Suspension Pursuant to 47 U.S.C. § 251 (f)(2). Missouri Valley requests that the Commission grant Missouri Valley a suspension of the requirements of 47 U.S.C. § 251 (b) and (c) for Missouri Valley's telephone exchange service facilities in the Williston exchange area, for such duration as the Commission determines.

On April 19, 2008, the designated Administrative Law Judge ("ALJ") issued a Prehearing Conference Summary and Scheduling Order. On May 1, 2008, the designated ALJ issued an Order for Consolidation and Scheduling pursuant to Stipulation for Consolidation filed by the parties, consolidating these two cases for hearing. On May 7, 2008, the Commission issued a Notice of Consolidated Hearing in regard to these matters, scheduling a public hearing for July 9 and 10, 2008, beginning at 9:00 a.m. on July 9, in the Commission Hearing Room at the State Capitol in Bismarck. The Notice stated the issues for the hearing. See Notice of Consolidated Hearing.

On June 26, 2008, Missouri Valley filed a "Motion for Immediate Order Compelling Discovery or, in the alternative, Motion to dismiss Petition of Midcontinent Communications, Inc. for removal of rural exemption." In light of the fact that the hearing has been held and Missouri Valley made no request for additional discovery or a motion for a continuance for further time to prepare, this motion will be referred to as Missouri Valley's "Motion to Dismiss" because, essentially, now, it is a motion to dismiss Midcontinent's case, the rural exemption investigation, for failure to comply with discovery, and a motion to dismiss Missouri Valley's case, the suspension/modification application, because its case is no longer necessary if the motion to dismiss Midcontinent's case is granted.

On July 2, 2008, Midcontinent filed its “Opposition...” to Missouri Valley’s Motion to Dismiss (referred to as Midcontinent’s “Opposition”).

Missouri Valley subsequently requested oral argument. The ALJ scheduled oral argument for July 9, 2008, from 8:30 to 9:00 a.m. on the day of the scheduled public hearing. Counsel for Midcontinent and Missouri Valley argued. The ALJ took the motion under advisement, stating at the close of the hearing that he would issue a recommended order to the Commission within a week, at the latest.

Based on the motion, the briefs and oral argument of counsel for the parties, the ALJ recommends to the Commission that the Motion to dismiss be **denied**.

Although Midcontinent has challenged the rural exemption with a rural telephone company previously, this is the first time Midcontinent has challenged the rural exemption with a rural telephone company that has no plans to offer video services; thus it is a case when the issue of economic burden has been squarely presented.

Essentially, Missouri Valley argues that Midcontinent bears the burden of proof on the issue of whether its request for interconnection and to find Missouri Valley’s rural exemption waived is unduly economically burdensome to Missouri Valley. Because Midcontinent bears that burden, Missouri Valley asked in discovery for Midcontinent to produce Midcontinent’s analysis of the economic burden Missouri Valley will sustain from the proposed interconnection. Missouri Valley has provided its own analysis of the economic burden it believes it will sustain from the proposed interconnection. Missouri Valley initially asserts that because Midcontinent has failed to produce its own analysis, it should be compelled to do so (the first part of its motion). Missouri Valley then asserts that lacking an analysis prepared by Midcontinent (because it has the burden of proof) or any other evidence regarding the economically

burdensome issue, Midcontinent's case should be dismissed because it failed to properly respond to a discovery request, or, if Midcontinent can not or will not produce an analysis or other evidence on the economically burdensome issue, its case should be dismissed for failure to meet its burden of proof. It may be that Midcontinent is not required to provide any proof with regard to the issues in these matters until the hearing, but Missouri Valley asserts that Midcontinent is required to comply with the rules of civil procedure regarding discovery.

Midcontinent essentially argues that it has filed the pre-filed testimony of its witnesses on the dates agreed upon between the parties, that some of that pre-filed testimony contains evidence regarding its burden of proof on the economically burdensome issue and could not be filed earlier, that it does not have and it does not plan to have prepared its own analysis of the economic burden Missouri Valley will sustain from the proposed interconnection, and that it can meet its burden of proof in other ways, by other evidence, at the hearing. Moreover, Midcontinent asserts that it may be that the evidence at hearing will show that Missouri Valley has waived its rural exemption by previous action.

The ALJ believes that Missouri Valley is mistaken in its belief that Midcontinent must have and, therefore, should have provided, an analysis on the economic burden issue; and, that lacking such an analysis or other similar evidence prior to the hearing, it can not meet its burden of proof. This order does not conclude that Midcontinent has met its burden of proof at hearing but it does acknowledge that Midcontinent does not, necessarily, have to meet its burden in the way Missouri Valley anticipated.

Missouri Valley had all or most of the information necessary for Midcontinent to complete an analysis. Midcontinent was in possession of Missouri Valley's financial impact statement or analysis and other financial information from Missouri Valley since April 25, 2008.

But, Midcontinent asserts that it did not have all the information necessary to complete an analysis until the date of the deposition of Missouri Valley's witness, two weeks before Midcontinent's discovery responses were due. Midcontinent claims that its analysis of the data it received from Missouri Valley showed that additional discovery was necessary, and the responses to that discovery were not due until July 1, 2008, after Missouri Valley's motion had been made.

But as we have seen, Midcontinent produced no written analysis, *per se*. Midcontinent provided the pre-filed written testimony of two experts who analyzed and critiqued the analysis prepared by Missouri. Midcontinent could not have provided that pre-filed written testimony any sooner than it did, until after it obtained certain information from Missouri Valley. Again, whether Midcontinent has met its burden of proof in its case is not the subject of this order. The subject of this order is whether a motion to dismiss should be granted considering Midcontinent's actions in regard to discovery and production of evidence prior to the hearing. Midcontinent's theory of how it was going to proceed in its case did not contemplate an analysis, as Missouri Valley believed it might have, and should have. That does not mean that Midcontinent's case should be dismissed without considering the evidence presented at the hearing.

The affidavit of Nancy Vogel, Director of Revenue Assurance at Midcontinent, affirms that Midcontinent had not produced any analysis at the time it sought interconnection, at the time the initial discovery was due in May, or before filing its pre-filed testimony, which occurred on July 2, 2008. Any analysis Midcontinent made was in its pre-filed testimony. In other words, no analysis by Midcontinent was completed until the pre-filed testimony was filed (if, indeed, one can even say that an analysis was ever prepared). Thus, there was nothing to produce.

Midcontinent's actions with regard to discovery and production of evidence appear to be truthful and in compliance with the rules of civil procedure and the deadlines as agreed upon by counsel for the parties. Because Midcontinent's theory of how it was going to proceed was different than Missouri Valley's does not mean that Midcontinent violated the rules of civil procedure with regard to discovery and should have its case dismissed as a result. Perhaps Midcontinent's case should be dismissed on the merits for a failure to meet their burden of proof at hearing, but, again, that is not the subject of this order.

It may be that Missouri Valley would have been better served had it not prepared its own analysis; rather, relying on Midcontinent to produce an analysis to meet its burden of proof, i.e. not providing an analysis for Midcontinent to critique. Then, perhaps, Missouri Valley's arguments regarding discovery or its arguments about failure to meet its burden of proof may have been fatal to Midcontinent's case, there being no analysis of any kind for the Commission to consider. Again, it may be fatal to Midcontinent's case, in any event, that it did not prepare its own analysis, but that is not Midcontinent's theory of the case, and its theory should at least survive a motion to dismiss based on discovery failures.

It is interesting to note that at the hearing, Mr. Hanson, testifying for Missouri Valley, admitted that when he worked for a CLEC (McCleod) it also did not do an analysis of the economic burden on ILECs when they sought to enter that market by interconnection.

Missouri Valley claims that it did not have enough time to evaluate Midcontinent's analysis, such as it was, before the hearing. Missouri Valley had from July 2, 2008, until July 8, 2008, to evaluate Midcontinent's analysis in its pre-filed testimony (and, again, Missouri Valley and Midcontinent had agreed to the July 2 date to file pre-filed testimony). Missouri Valley did not ask, either at the oral argument or at the hearing, for more time to evaluate Midcontinent's

pre-filed testimony or for more time to prepare for the hearing; it asked for no continuance at the hearing.

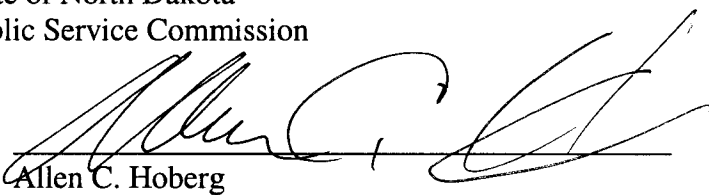
These matters should be decided upon their merits, based on the evidence presented at the hearing, the late-filed evidence, and the briefs of the parties.

Finally, the testimony of Scott Lundquist and that part of the testimony of Timothy J. Gates based on the testimony of Scott Lundquist should not be stricken and may be considered by the Commission.

Dated at Bismarck, North Dakota, this 14th day of July, 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

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications/ Missouri
Valley Communications, Inc.
Rural Exemption Investigation

Case No. PU-08-61

Missouri Valley Communications, Inc.
Suspend/Modify Interconnection Requirements
Application

Case No. PU-08-176

CERTIFICATE OF SERVICE
OAH File Nos. 20080079 and 20080112

The undersigned certifies that the original of the **RECOMMEND CONSOLIDATED ORDER DENYING MOTION** was mailed, inside mail, at the State Capitol, on the 14th day of July, 2008, to:

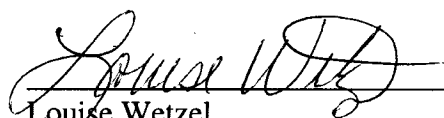
Annette M. Bendish
Public Service Commission
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0480

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

John M. Olson
John M. Olson, P.C.
418 East Broadway – Suite 9
Bismarck, ND 58501

David J. Hogue
Pringle & Herigstad, P.C.
P.O. Box 1000
Minot, ND 58702-1000

OFFICE OF ADMINISTRATIVE HEARINGS
Allen C. Hoberg, Administrative Law Judge



Louise Wetzel

EXHIBIT LIST

Matter	Midcontinent/Missouri Valley Communications Rural Exemption Investigation PU-08-61 Missouri Valley Communications Suspend/Modify Interconnection Requirements Application PU-08-176						
Hearing	July 9 and 10, 2008						
No.	Description	Mkd	Idd	Ofd	W/D	Adm	Note
M1	Testimony of Thomas Simmons			Midco		X	Pre-filed
C8	Date of resale agreement – initial			Comm. Wefald		X	(Missouri Valley) Late-filed
C9	Customers of MV outside Williston & distance			Comm. Wefald		X	(Missouri Valley) Late-filed
M2	Testimony of Scott Lundquist			Midco		X	(Conditional) Pre-filed
M3	Testimony of Timothy J. Gates			Midco		X	(Conditional) Pre-filed
MV2	Continuum – Gates drawing – elements			Hearing Officer		X	White board drawing
MV1	Testimony of Shawn Hanson			Missouri Valley		X	Pre-filed
MV3	Hanson continuum			Missouri Valley		X	White board drawing
C1	Missouri Valley Communications Financial Statements			Midco		X	2005 and 2006
C4	Nemont Today newsletters			Midco		X	Multiple documents
C2	Interrogatory #5			Midco		X	2 pages
C10	Affiliate transactions to			Comm.		X	(Missouri Valley)

	MV1 (Exhibit 1) categories			Wefald			Late-filed
C5	Interrogatory #14			Midco		X	4 pages
C3	Interrogatory #19			Midco		X	1 page
C6	Interrogatory #20			Midco		X	5 pages
C7	Response to Demand for Production #2			Midco			Withdrawn

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

MIDCONTINENT COMMUNICATIONS,)	
A SOUTH DAKOTA PARTNERSHIP,)	
COMPLAINANT)	
)	
VS.)	Case No. PU-08-61
)	OAH No. 20080079
MISSOURI VALLEY COMMUNICATIONS)	
INC.,)	
RESPONDENT)	

MISSOURI VALLEY COMMUNICATIONS)	
INC.)	
)	Case No. PU-08-176
APPLICATION FOR SUSPENSION OR)	OAH No. 20080079
MODIFICATION PURSUANT TO)	
47 U.S.C. § 251(F)(2))	

PROTECTIVE ORDER

To facilitate the disclosure of documents and information during the course of this proceeding and to protect confidential information, the North Dakota Public Service Commission (Commission) now issues this Protective Order (Order) to govern these proceedings.

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this order. Materials provided prior to the adoption of this order may be designated as Confidential Information within ten (10) days of the adoption of this order.

- (b) Use of Confidential Information -- Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket, and shall keep the Confidential Information

secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this order.

- (c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in these proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in these proceedings; (3) only those employees of the party who are directly involved in these proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to Commissioners and all Commission staff members and employees of the Commission to whom disclosure is necessary.
- (d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters also shall be required to sign an Exhibit "A" and comply with the terms of this order.

The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Exhibit "A" and a copy of all such signed Exhibit "A"s shall be circulated to all other counsel of record promptly after execution and filed with the Commission. All individuals who have had access to Confidential Information provided prior to the time this order is adopted shall execute an original of Exhibit "A" within ten (10) days of the adoption of this order.

- 2.(a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this order, and shall be destroyed after the final settlement or conclusion of these proceedings in accordance with subsection 2(b) below.
- (b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney client privilege or the work product doctrine, shall be destroyed within thirty (30) days after the final settlement or conclusion of these proceedings. The party

destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

- (c) Copies. All copies of any documents containing Confidential Information shall be subject to the provisions of this agreement as if they were originals.
- 3. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.
- 4. Challenge to Confidentiality. This order establishes a procedure for the expeditious handling of information that a party claims is Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:
 - (a) A party seeking to challenge the confidentiality of any materials pursuant to this order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
 - (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
 - (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
 - (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.
 - (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by a Hearing Officer after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 4(b) above.
 - (d) The record of said in camera hearing shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN CASE NOS. PU-08-61 and PU-08-176." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or order of the Hearing Officer and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this order.
 - (e) In the event that the Hearing Officer should rule that any information, document, data or study should be removed from the restrictions imposed by this order, no party shall

disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this order from materials claimed by the providing party to be confidential.

- 5.(a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:
- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party, provided that such information has been designated as Confidential Information prior to the use or substantive reference thereto.
 - (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner, which will not reveal its confidential or proprietary nature.
 - (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
 - (4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.
 - (5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this order.
- (b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked ““CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN CASE NOS. PU-08-61 and PU-08-176” and shall not be examined by any person except under the conditions set forth in this order.
- (c) In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this order.
- (d) Similarly, any cross-examination on or substantive reference to Confidential Information (or that portion of the record containing Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.
- (e) Access to Record. Access to sealed testimony, records and information shall be limited to the Hearing Officer and persons who are entitled to review Confidential Information pursuant to subsection 1(c) above and have signed Exhibit “A,” unless such information

is released from the restrictions of this order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a Hearing Officer, the order of the Commission and/or final order of a court having final jurisdiction.

- (f) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal of any decision in this proceeding, but under seal as designated herein for the information and use of the court. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal. Nothing in this section authorizes the use of any Confidential Information or in any proceeding other than these proceedings and any related appeals to a court of competent jurisdiction.
 - (g) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this order, and shall, at the receiving party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty (30) days after final settlement or conclusion of these proceedings. If the receiving party elects to have Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.
6. Use in Pleadings. Where references to Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information contained therein. Any use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" All of the restrictions afforded by this order apply to materials prepared and distributed under this section.
 7. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the order to be placed on the public record.
 8. The provisions of this order are specifically intended to apply to all data, documents, studies, and other material designated as confidential by any party to these proceedings.
 9. This Protective Order shall continue in force and effect after this docket is closed.

O R D E R

IT IS THEREFORE ORDERED by the North Dakota Public Service Commission that the Protective Agreement set forth herein is hereby adopted.

MADE AND ENTERED at Bismarck, North Dakota, this ___th day of July, 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

EXHIBIT "A"
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated July, ___, 2008, in Case Nos. PU-08-61 and PU-08-176." and agree to be bound by the terms and conditions of this order.

Midcontinent Communications, a South Dakota Partnership

By: 

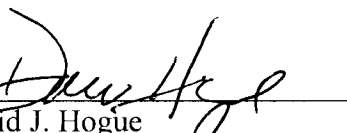
John M. Olson ID# 03053
John M. Olson, PC
418 East Broadway, Suite 9
Bismarck, North Dakota 58501
(701) 222-3485 - Phone
(701) 222-3091 - Fax

J.G. Harrington
Dow Lohnes, PLLC
1200 New Hampshire Ave., NW
Suite 800
Washington, DC 20036

Its Attorneys

I have read the foregoing Protective Order dated July, 9, 2008, in Case Nos. PU-08-61 and PU-08-176." and agree to be bound by the terms and conditions of this order.

Missouri Valley Communications, Inc.

By: 

David J. Hogue
Pringle and Herigstad, P.C.
Attorney at Law
2525 Elk Drive
P.O. Box 1000
Minot, ND 58702-1000
(701) 852-0381