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RECEIVED

April 15, 2009

APR 15 2009

PUBLIC SERVICE COMMISSION

HAND DELIVERED

Darrell Nitschke
Executive Secretary/Director of Administration
North Dakota Public Service Commission
600 East Boulevard Ave., Dept. 408
Bismarck, ND 58505

RE: *Midcontinent Communications, a South Dakota partnership v. North Dakota Public Service Commission, Kevin Cramer, Tony Clark, and Brian Kalk, in their official capacities as Commissioners of the North Dakota Public Service Commission v. Missouri Valley Communications, Inc.*
Civ. A. No. 1:09-CV-017

Dear Mr. Nitschke:

Please find enclosed a Notice of a Lawsuit and Request to Waive Service of a Summons in the above-titled matter. It is requested that you waive formal service of the Summons by signing and returning the enclosed Waiver of the Service of Summons to my office within 30 days from the date of this letter.

Thank you for your attention to this matter. I look forward to receiving the signed waiver from you soon.

Sincerely,

John M. Olson
Attorney at Law

32 PU-08-176 Filed 04/15/2009 Pages: 41
Notice of Lawsuit Request to Waive Service of a Summons, along with attached Complaint
Midcontinent Communications
John M. Olson, P.C. Lawyer

JMO tbb

enclosures
cc: J.G. Harrington
Nancy Vogel
Mary Lohmes

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Midcontinent Communications, a South Dakota Ptshp

Plaintiff

v.

North Dakota Public Service Commission; Et al

Defendant

Civil Action No. 1:09-CV-017

Notice of a Lawsuit and Request to Waive Service of a Summons

To: Darrell Nitschke

(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days (*give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States*) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

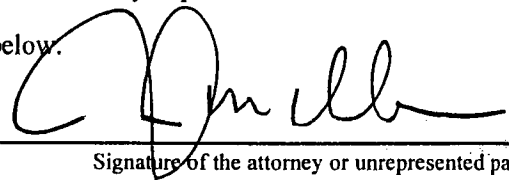
If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date

4/15/09



Signature of the attorney or unrepresented party

John M. Olson

Printed name

418 East Broadway Ave., Suite 9
Bismarck, ND 58501

Address

olsonpc@midconetwork.com

E-mail address

(701) 222-3485

Telephone number

UNITED STATES DISTRICT COURT

for the

District of North Dakota

Midcontinent Communications, a South Dakota Ptshp

Plaintiff

v.

North Dakota Public Service Commission; Et al

Defendant

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)

Civil Action No. 1:09-CV-017

Waiver of the Service of Summons

To: John M. Olson

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 04/15/2009, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date _____

Signature of the attorney or unrepresented party

Darrell Nitschke

Printed name

600 East Boulevard Ave., Dept. 408
Bismarck, ND 58505

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT

for the
District of North Dakota

Midcontinent Communications, a South Dakota Ptshp

Plaintiff

v.

North Dakota Public Service Commission; Et al

Defendant

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Civil Action No. 1:09-CV-017

Waiver of the Service of Summons

To: John M. Olson

(Name of the plaintiff's attorney or unrepresented plaintiff)

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I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 04/15/2009, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date _____

Signature of the attorney or unrepresented party

Darrell Nitschke

Printed name

600 East Boulevard Ave., Dept. 408.
Bismarck, ND 58505

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

MIDCONTINENT COMMUNICATIONS,)
A SOUTH DAKOTA PARTNERSHIP,)
))
5001 W 41st Street)
Sioux Falls, SD 57106,)
))
Plaintiff,)
))
v.)
))
NORTH DAKOTA PUBLIC SERVICE)
COMMISSION, KEVIN CRAMER,)
TONY CLARK, AND BRIAN KALK,)
in their official capacities as Commissioners)
of the North Dakota Public Service Commission)
))
600 E. Boulevard, Dept. 408)
Bismarck, ND 58505,)
))
and)
))
MISSOURI VALLEY COMMUNICATIONS)
INC.,)
))
Highway 13 S)
P.O. Box 600)
Scobey, MT 59263)
))
Defendants.)
_____)

Civ. A. No. 1:09-cv-017

COMPLAINT

NOW COMES plaintiff, Midcontinent Communications, a South Dakota partnership (“Midcontinent”), by and through counsel, with its complaint against defendants, the North Dakota Public Service Commission (the “NDPSC”), Kevin Cramer, Tony Clark, and Brian Kalk in their official capacities as Commissioners of the

North Dakota Public Service Commission, and Missouri Valley Communications, Inc. (“Missouri Valley”), and states as follows:

NATURE OF ACTION

1. This is an action to enforce the rights of Midcontinent, a competitive local telephone company, to obtain federally-mandated “interconnection” from the incumbent local telephone company, Missouri Valley, so it can compete fairly for customers. The NDPSC refused to enforce this right, instead allowing the incumbent telephone company to rely on a provision known as the “rural exemption” to avoid its federal obligation to interconnect. The NDPSC’s decision was erroneous as a matter of federal law and cannot stand.

2. Midcontinent provides telephone, high speed Internet, and cable television services in North Dakota, and it seeks to compete for customers in the telephone service area known as the Williston, North Dakota Exchange (the “Williston Exchange”).¹ Under the Telecommunications Act of 1996, 47 U.S.C. § 151, et seq. (the “Act”), incumbent telephone carriers like Missouri Valley have a duty to interconnect their networks with competitors like Midcontinent to ensure that competing telephone companies can serve all telephone customers connected to the incumbent’s network. 47 U.S.C. § 251.

3. Missouri Valley has refused interconnection with Midcontinent, even though Missouri Valley had obtained regulatory approval to serve the Williston

¹ The term “Local Exchange Area” denotes a unit established by the a local telephone company for the administration of communications services in a specified area which usually embraces a city, town, or village and its environs. *See* 47 U.S.C. § 153(47).

Exchange in the first place by promising to maintain existing interconnection agreements – like the one at issue here. Missouri Valley cannot be permitted to renege on that commitment, which was a pre-condition to its acquisition of the Williston Exchange. It has waived any right it might have had to avoid such interconnection obligations, for example, by relying on the rural exemption, and that alone is a sufficient basis for the Court to grant the relief requested in this action.

4. In addition, Missouri Valley has affirmatively undertaken the benefits and obligations of an incumbent carrier by executing a “resale agreement” with Midcontinent under the Act. As a matter of federal law, Missouri Valley cannot selectively avoid its interconnection obligations by claiming the “rural exemption” for certain obligations and not for others. This, too, provides an independent ground for the Court to find that Missouri Valley has waived any right to rely on the rural exemption and avoid its federal interconnection obligations.

5. Finally, even if Missouri Valley might otherwise have had the right to seek to invoke the rural exemption, Midcontinent has established that the exemption does not apply under the statutory test. A recent NDPSC ruling to the contrary (the “*Rural Exemption Order*”) is under challenge here, and it is erroneous as a matter of federal law. As an initial matter, the *Rural Exemption Order did not even to address* that Missouri Valley had no right to rely on the rural exemption based on: (a) its conduct in securing regulatory authority to serve the Williston Exchange; and (b) its subsequent conduct in executing a resale agreement under the Act. These provide independent grounds for invalidating the order below.

6. Moreover, the NDPSC misapplied federal law in several distinct and erroneous rulings on its way to upholding the rural exemption. These errors include misinterpretations of the NDPSC's authority under federal law, an incorrect application of the federal standard for evaluating "undue economic burden," and an erroneous interpretation of federal law in assessing whether lifting the exemption would "impair universal service." See 47 U.S.C. § 251(f)(1)(A). These legal errors (as well as others) render the NDPSC's *Rural Exemption Order* invalid and unenforceable under federal law.

7. Midcontinent respectfully asks the Court to rule that Missouri Valley has an obligation under federal law to provide interconnection to Midcontinent that cannot be avoided under the rural exemption and that the *Rural Exemption Order* is contrary to federal law and cannot be enforced. In addition, to the extent Midcontinent can establish damages as a result of Missouri Valley's refusal to provide federally-mandated interconnection, Missouri Valley should be ordered to compensate Midcontinent for the damages caused by its improper conduct.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 because this is a civil action arising under federal law. This Court also has jurisdiction under 28 U.S.C. § 1332 because that the amount in controversy exceeds the value of \$75,000, and there is complete diversity between the plaintiff and the defendants.

9. Venue is proper under 28 U.S.C. §§ 1391(b)(1) and (2) because all the defendants reside in this district, and the acts of the NDPSC, the individual Commissioners, and Missouri Valley giving rise to the claims asserted herein occurred in this District.

THE PARTIES

10. Plaintiff Midcontinent is a South Dakota general partnership with its principal place of business at 3901 N Louise Ave., Sioux Falls, SD 57107. Midcontinent provides cable television, high speed Internet, and competitive local and long distance telephone service to more than 200 communities in North Dakota, South Dakota, and Minnesota.

11. Defendant NDPSC is a governmental body organized under the laws of the State of North Dakota. NDPSC is sued in its capacity as the agency of the North Dakota state government authorized to carry out the duties assigned under Section 251 and 252 of the Act, 47 U.S.C. §§ 251, 252. The NDPSC is headquartered at 600 E. Boulevard, Dept. 408, Bismarck, ND 58505.

12. Defendant Commissioners Kevin Cramer, Tony Clark, and Brian Kalk are the three present commissioners of the NDPSC and are named as defendants in their official capacities. On information and belief, Messrs. Cramer, Clark and Kalk reside in North Dakota.

13. Defendant Missouri Valley is incorporated in North Dakota, with its principal place of business located at Highway 13 S, P.O. Box 600 Scobey, MT 59263. Missouri Valley is the operating subsidiary of Nemont Telephone Cooperative, Inc.

(“Nemont”) responsible for providing telephone and data service to the Williston Exchange. Missouri Valley is a “common carrier” as that term is defined in 47 U.S.C. § 153(10).

STATEMENT OF FACTS

A. The Telecommunications Act of 1996 and the FCC’s Rules.

14. Prior to Congress’s enactment of the Telecommunications Act of 1996, most telephone customers received service from a local monopoly service provider. One of the primary purposes of the Act was to open local markets to competition from new telephone service providers. Existing service providers typically controlled a ubiquitous network of telephone facilities capable of delivering service to all customers within a service territory. The Act refers to these existing providers as incumbent local exchange carriers (“incumbent LECs”). *See* 47 U.S.C. § 251(h). Congress adopted the Act to break the monopoly of incumbent LECs and introduce a regulatory environment conducive to market entry by competitive telephone providers (“competitive LECs”).

15. One of the keys to creating a competitive local telephone market is to ensure that new competitive LECs have the same opportunity as incumbent LECs to serve customers in every market. Congress recognized this as a difficult challenge because new competitive LECs would not have the financial resources necessary to construct ubiquitous networks in every market like those controlled by incumbent LECs, and even if they did, such duplicative construction would in most cases be inefficient. The regulatory framework Congress introduced was designed to ensure that competitive

LECs would have access to customers in each market without the need to build ubiquitous or inefficient network facilities.

16. The overriding intention of Congress was to stimulate a competitive market for local telephone services because it believed the crucible of competition would “bring new packages of services, lower prices and increased innovation to American consumers.” In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act Of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd. 15,499, ¶ 4 (1996). Congress recognized that it could expand competition and provide these benefits to consumers only if it could create a regulatory environment that encouraged competitive providers to make the large investments necessary to bring new services to market. The most important step was to ensure that providers would have access to customers in every market.

17. Congress sought to achieve these goals in two ways. First, it required all LECs, whether incumbent or competitive, to interconnect their facilities with all other LECs upon request. 47 U.S.C. § 251(a). This duty to interconnect is fundamental to facilitating competition. If an incumbent telecommunications services provider, like Missouri Valley, denies interconnection, customers of a competitive carrier cannot place or receive calls to and from customers of the incumbent. A denial of interconnection effectively forecloses competition.

18. Second, the Act imposes specific interconnection duties on incumbent LECs, like Missouri Valley, under Section 251(c), including the following: (1) the duty

to negotiate interconnection agreements in good faith; (2) the duty to provide interconnection at any technically feasible point on the incumbent's network that is equal in quality to that provided itself or its affiliates on rates, terms and conditions that are fair, reasonable, and nondiscriminatory; (3) the duty to offer competitors access to network elements on an unbundled basis; (4) the duty to allow competitors to purchase incumbent services for resale; (5) the duty to provide competitors notice of network changes; and (6) the duty to allow competitors to collocate their facilities on the incumbent carrier's premises on just, reasonable, and nondiscriminatory rates, terms and conditions. *See* 47 U.S.C. §§ 251(c).

19. As examples of these duties, Section 251(c) requires incumbent telephone companies to cooperate with new entrants as they deploy competitive services, regardless of the extent of the entrant's initial construction of competitive facilities. The Act requires incumbent LECs to permit competitors to resell incumbent LEC services purchased at wholesale prices pursuant to Section 251(c)(4) – a method of competitive entry that requires almost no facilities construction by the competitor. And, Section 251(c)(3) of the Act requires incumbent LECs to allow competitive LECs to purchase access to portions of incumbent LEC telephone networks – so called unbundled network elements, or “UNEs” – to supplement the network construction the competitive LEC does undertake. The Act places these obligations on incumbent carriers because their ubiquitous networks generally serve all or most locations in local markets, giving them potential bottleneck control over access to customers.

20. New entrants typically utilize a mixture of resale, the purchase of UNEs, and deployment of their own facilities, until competition in a market develops to a point that providing full, facilities-based service becomes efficient and economical.

21. The Act also creates a framework for negotiation and approval of interconnection agreements between incumbent LECs and competitive LECs that comply with the requirements of the Act. The process begins when a competitor presents an incumbent with a bona fide request for interconnection pursuant to Section 252(a)(1). Parties may voluntarily negotiate an agreement on their own or request mediation from the state public service commission under Section 252(a)(2). If voluntary negotiation and mediation fail to yield a completed agreement, either party may ask the state commission to arbitrate the issues upon which the parties cannot agree. *See* 47 U.S.C. § 252(b). The Act provides timelines and standards for state commissions to arbitrate agreements. *See id.* at § 252(b)-(c). Ultimately, all interconnection agreements must be submitted to and approved by the relevant state commission to become effective. *See* 47 U.S.C. § 252(e).

22. Incumbent LECs serving rural areas sometimes face special challenges due to their smaller and more dispersed populations. Accordingly, the Act creates an exemption from some of its requirements for qualified rural telephone companies. *See* 47 U.S.C. §§ 251(f).

23. The Act defines a rural telephone company as “a local exchange carrier operating entity to the extent that such entity--(A) provides common carrier service to any local exchange carrier study area that does not include either-- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently

available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.” 47 U.S.C. § 153(37).

24. Under 47 U.S.C. § 251(f)(1), rural telephone companies are exempt from the special incumbent duties described in Section 251(c)(3) until: (1) a competitor provides the rural carrier with a bona fide request for interconnection, services, or network elements; and (2) a state commission determines that the requested interconnection would not be unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions of 47 U.S.C. § 254. *See* 47 U.S.C. § 251(f)(1)(A).

25. When a competing carrier makes a bona fide request for interconnection to a rural incumbent that has claimed a rural exemption, and the competing carrier files that request with a state commission like the NDPSC, Section 251(f)(1)(B) requires the state commission to conduct an inquiry and terminate the rural exemption if it finds the elements of Section 251(f)(1)(A) are met.

26. Section 251(f)(1) does not permit selective application of the rural exemption to different obligations; either the exemption applies or it does not. As the NDPSC has recognized, “a bona fide request for any interconnection, service, or network

element...triggers a Commission determination concerning termination of the rural exemption with regard to the entire list of obligations under Section 251(c) for the rural carrier in its entire service area.” *Rural Exemption Order* at 4.

27. Separate from the rural exemption, the Act also permits rural telephone companies with less than two percent of the subscriber lines in the United States to petition a state commission for a suspension of the carrier’s responsibilities under 47 U.S.C. § 251(c). To suspend these carrier duties, the state commission must find that suspension is necessary to avoid (1) significant adverse economic impact on telecommunications users; (2) placing an undue economic burden on the rural telephone company; or (3) imposing a requirement that is technically infeasible. In addition, the state commission must find that suspending the carrier’s responsibilities under Section 251(c) is consistent with the public interest, convenience, and necessity. 47 U.S.C. § 251(f)(2).

28. Even if a state commission determines that the rural telephone company is not entitled to the rural exemption, it still may suspend some or all of that company’s Section 251(c) obligations if the statutory standards for suspension are satisfied.²

B. Missouri Valley’s Acquisition of the Williston Exchange and It’s Promise to Maintain the Interconnection Status Quo.

29. Missouri Valley is an incumbent LEC as defined in 47 U.S.C. § 251(h). It is authorized by the NDPSC to provide telecommunications services in the Williston

² The statutory standard for suspension differs from that used to determine whether the rural exemption applies in the first place.

Exchange. Missouri Valley also qualifies as a rural telephone company under the Act and the applicable rules of the Federal Communications Commission (“FCC”).

30. Missouri Valley is the third company to provide telephone service as an incumbent LEC in Williston. US West (now Qwest) was the incumbent LEC until October 31, 2000, when it sold the market to Citizens Communications (“Citizens”). Then, in 2002, Citizens sold the Williston market to Nemont Communications (“Nemont”), a Montana telephone company, which created Missouri Valley as a subsidiary to operate as the incumbent LEC in Williston.

31. Nemont organized its operating units so that Missouri Valley would offer only local telephone service in Williston; and all other services, including long distance and voice mail, are offered through other wholly-owned subsidiaries of Nemont.

32. In the fall of 2002, Missouri Valley acquired the facilities from Citizens and applied to the NDPSC for authority to serve the Williston Exchange. As part of its request for approval of the acquisition, Missouri Valley affirmatively represented to the NDPSC that it would continue to be bound by the then-existing interconnection arrangements.

33. The NDPSC approved the transaction by order dated December 4, 2002. In that order, the NDPSC noted that Missouri Valley “intends to honor existing interconnection agreements with exchange carriers[.]” Missouri Valley Communications, Inc., Designated Eligible Carrier Application and Local Exchange Public Convenience and Necessity, *Findings of Fact, Conclusions of Law and Order*, Case Nos. PU-2779-02-

451 and PU-2779-02-452, at 3 (¶ 5) (Dec. 4, 2002) (the “*Williston Approval Order*”). A copy of the *Williston Protection Order* is attached hereto as Exhibit A.

34. When Missouri Valley acquired the Williston Exchange, Midcontinent already was a party to an interconnection agreement with Citizens, which was one of the interconnection agreements Missouri Valley was committed to honor.

35. In February, 2003, Citizens formally notified Midcontinent that Missouri Valley would negotiate a new agreement with Midcontinent and, in the meantime, “provide interconnection under the existing agreement.” A copy of this letter is attached hereto as Exhibit B. In response to a Midcontinent inquiry, Missouri Valley acknowledged that it would continue to “honor the current Interconnection Agreement that is in place between Citizens and Midcontinent Communications until a new Agreement can be negotiated.” A copy of this letter is attached hereto as Exhibit C.

36. On November 4, 2003, Missouri Valley sent a letter purporting to terminate the existing agreement with Midcontinent and seeking negotiations for a new agreement. The reason for the purported termination was described as follows:

Missouri Valley did not acquire all of Citizens’ assets in North Dakota and is a smaller company than Citizens and therefore will not be conducting business in all respects like Citizens. Moreover, the terms of the underlying interconnection agreement between Midcontinent and Qwest allow for modification of that agreement in light of subsequent decisions by courts and regulatory agencies. Missouri Valley’s intention is, therefore, to negotiate an agreement with Midcontinent that takes into consideration the foregoing considerations.

A copy of the letter is attached as Exhibit D. Missouri Valley did not assert any right to terminate the existing agreement or to limit the terms of any new agreement based on the rural exemption.

37. In 2004, Midcontinent and Missouri Valley renegotiated a portion of their interconnection agreement. The renegotiated agreement required Missouri Valley to provide telecommunications services to Midcontinent for the purposes of “resale” pursuant to Section 251(c)(4) of the Act. In negotiating the resale agreement, Missouri Valley did not assert that it was immune from any Section 251 obligations under the rural exemption. Moreover, the new agreement did not foreclose Midcontinent from seeking additional interconnection services pursuant to Section 251.

C. Midcontinent’s Attempt’s to Negotiate Interconnection and Proceedings Before the NDPSC.

38. In 2007, Midcontinent prepared to improve its competitive business model from providing customers with the “resale” of Missouri Valley service to providing full facilities-based competition using its own telecommunications plant. Fulfillment of these plans required a significant investment by Midcontinent in the Williston Exchange. To make this improvement, Midcontinent needed interconnection with Missouri Valley to allow for the exchange of telephone traffic between their respective networks.

39. On November 14, 2007, Midcontinent made a bona fide request for facilities-based interconnection with Missouri Valley pursuant to Section 251(c) of the Act.

40. On January 30, 2008, Missouri Valley sent a letter to Midcontinent denying Midcontinent’s bona fide interconnection request and claiming that the rural exemption excused it from providing Midcontinent with the requested interconnection.

41. On February 8, 2008, Midcontinent sought NDPSC intervention to require Missouri Valley to negotiate an interconnection agreement as provided under federal law.

42. Specifically, Midcontinent filed with the NDPSC a petition to lift Missouri Valley's rural exemption, which included: (1) a notice that it had made a bona fide request for interconnection with Missouri Valley, and (2) a petition asking the NDPSC to find that Section 251(f) did not exempt Missouri Valley from providing facilities-based interconnection to Midcontinent (the "Petition to Lift Rural Exemption"). Midcontinent argued, *inter alia*, that Missouri Valley's promises to maintain interconnection with carriers in the Williston exchange and its later execution of the Section 251(c)(4) resale agreement with Midcontinent independently acted as waivers of any right Missouri Valley might have had to invoke the rural exemption. Missouri Valley had waived its right to claim the rural exemption with respect to Midcontinent.

43. In response to the Midcontinent petition, on April 9, 2008, Missouri Valley, pursuant to 47 U.S.C. § 251(f)(2), filed a separate Application for Suspension of any modification of its duties that would occur if the NDPSC rendered a decision that the rural exemption does not apply. Missouri Valley contended that if the NDPSC were to find (a) that Missouri Valley had waived its rural exemption or (b) that the exemption should be removed based on the standards established by Section 251(f)(1), the public interest allegedly supported a suspension of Missouri Valley's incumbent LEC interconnection obligations pursuant to Section 251(f)(2).

44. The NDPSC consolidated Midcontinent's Petition to Lift the Rural Exemption and Missouri Valley's Application for Suspension into a single proceeding. The NDPSC accepted testimony and briefing on the questions of whether Missouri Valley's rural exemption should be lifted, and, if so, whether Missouri Valley's

application for suspension was warranted. On July 9 and 10, 2008, the NDPSC held hearings on these matters.

45. In its Petition and briefing, Midcontinent demonstrated that Missouri Valley should not be permitted to rely upon the rural exemption for several reasons.

46. Midcontinent showed that Missouri Valley's conduct effected a waiver of any right it might have had to invoke the rural exemption. First, Midcontinent demonstrated that Missouri Valley's commitment to maintaining existing interconnection agreements (including an agreement with Midcontinent) when it acquired the Williston Exchange, and that the NDPSC relied on Missouri Valley's commitment when it approved the transfer of the Williston Exchange. Midcontinent showed that this was inconsistent with Missouri Valley's later attempt to invoke the rural exemption to limit its interconnection obligations in the Williston Exchange, and that, therefore, Missouri Valley was not entitled to invoke that exemption with respect to its interconnection obligation to Midcontinent.

47. Second, Midcontinent showed that Missouri Valley waived any right it might have to invoke the rural exemption by concluding in 2004 a resale agreement with Midcontinent pursuant to 47 U.S.C. § 251(c)(4). As Midcontinent showed, and as the law provides, Missouri Valley's acquiescence to the requirements of Section 251(c) in concluding the resale agreement foreclosed it from later claiming that the rural exemption would shield Missouri Valley from its other Section 251(c) interconnection obligations.

48. Midcontinent also demonstrated that even if Missouri Valley had not waived the rural exemption (which it had), the NDPSC should lift Missouri Valley's rural

exemption in the Williston Exchange because the three factors outlined in the statute were satisfied. Midcontinent showed that (1) lifting the exemption would not cause Missouri Valley undue economic burden, (2) the requested interconnection was technically feasible, and (3) lifting the exemption would have no negative effect on universal service.

49. Missouri Valley did not contest that the requested interconnection was technically feasible.

50. Midcontinent showed that lifting the rural exemption would not cause Missouri Valley undue economic burden. Midcontinent's undisputed evidence demonstrated that the facilities-based competition Midcontinent intended to introduce through Section 251(c) interconnection would be no more burdensome than facilities-based interconnection introduced through interconnection pursuant to section 251(a), which all carriers are required to provide. Moreover, Midcontinent provided evidence of its experience in numerous other rural exchanges in North Dakota and South Dakota where the introduction of facilities-based competition through Section 251(c) interconnection had not had a negative economic impact on incumbent Rural Telephone Companies.

51. Midcontinent further demonstrated that lifting the rural exemption would have no negative effect on universal service in the Williston Exchange. Midcontinent provided evidence that Missouri Valley would continue to have adequate funding to maintain the universal service activities in which it currently is engaged. In addition, Midcontinent demonstrated that to the extent Missouri Valley's per-line costs of

providing service increase after Midcontinent's introduction of facilities-based competition, Missouri Valley will be eligible to recoup much of that cost by obtaining "safety-valve" funding from the high-cost Universal Service Fund.

52. Midcontinent also refuted Missouri Valley's Application for Suspension of its Section 251(c) obligations under Section 251(f)(2). Midcontinent showed that suspension of Missouri Valley's Section 251(c) obligations was not warranted under the statutory standards because (1) there would be no adverse impact on users of telecommunications services in the Williston Exchange – indeed Midcontinent showed customers would benefit; (2) Missouri Valley would not suffer any undue economic burden; (3) the requested interconnection was not technically infeasible; and (4) the public interest did not require suspension.

D. The NDPSC's Rural Exemption Order

53. On October 8, 2008, the NDPSC issued the *Rural Exemption Order*, denying Midcontinent's Petition to Lift the Rural Exemption. The *Rural Exemption Order* erroneously concluded that lifting the rural exemption would unduly economically burden Missouri Valley and impair its universal service efforts. Because it concluded that Midcontinent's Petition to Lift the Rural Exemption should be denied, it dismissed as moot Missouri Valley's Application for Suspension of its obligations under Section 251(c).

54. The *Rural Exemption Order* is contrary to law and cannot stand.

55. The *Rural Exemption Order* failed to address Midcontinent's claim that Missouri Valley had waived its rural exemption with respect to Midcontinent through its

representations to the NDPSC during its acquisition of the Williston Exchange and through its conclusion of a resale agreement pursuant to Section 251(c)(4) of the Act. Although the NDPSC identified Midcontinent's waiver arguments in the introduction to the *Rural Exemption Order*, the NDPSC did not discuss or resolve those claims at any point in the *Rural Exemption Order*.

56. The NDPSC erred in ruling that lifting the rural exemption would place an undue economic burden on Missouri Valley. The NDPSC ignored the undisputed evidence that the interconnection requested by Midcontinent would be no more economically burdensome than interconnection pursuant to Section 251(a) of the Act, an obligation that Missouri Valley never contested. The NDPSC's failure properly to address undue economic burden resulted in an order that is defective as a matter of law.

57. The NDPSC's economic burden analysis was further flawed because it refused to review the actual economic burden on Missouri Valley in light of Nemont's peculiar corporate structure and its unusual and misleading accounting practices. This structure provided for common management but separate operations, resulting in Missouri Valley shouldering most expenses while Nemont received most revenues. This improper cross-subsidization artificially inflated the apparent economic burden on Missouri Valley. Consequently, the NDPSC's economic burden analysis was flawed and inconsistent with Section 251(f)(1).

58. The *Rural Exemption Order* also erroneously determined that Missouri Valley's universal service activities would be impaired if the NDPSC lifted the rural exemption. The NDPSC ignored evidence presented by both Midcontinent and Missouri

Valley that Missouri Valley would have sufficient funds to maintain Universal Service investments. The NDPSC also relied on a witness opinion that Missouri Valley would be ineligible for additional “safety valve” universal service funds. Both of these decisions were in error. Whether Missouri Valley is eligible for safety valve funding is a question of law, not a question of fact, and Missouri Valley is entitled to such funding as a matter of law. This constituted error and resulted in a decision that violates federal law.

59. Because the *Rural Exemption Order* rests on fundamental misinterpretations of Section 251(f) of the Act and the FCC’s rules and provides relief that is not permitted under the Act, the NDPSC’s decision violates federal law.

60. On November 4, 2008, Midcontinent timely filed a Petition for Reconsideration, or, in the Alternative, Rehearing, identifying the numerous legal errors in the *Rural Exemption Order*. On November 17, 2008 Missouri Valley filed an opposition to Midcontinent’s Petition for Reconsideration.

61. On December 4, 2008, the NDPSC held a public meeting at which it rejected Midcontinent’s Petition for Reconsideration and upheld the decision announced in the *Rural Exemption Order*. The NDPSC did not issue a written decision memorializing its rejection of Midcontinent’s Petition for Reconsideration.

E. Missouri Valley’s Violation of Section 251 Has Damaged Midcontinent.

62. By making a request for interconnection with Missouri Valley in November 2007, Midcontinent sought to become a competitive facilities-based provider of telecommunications services in the Williston Exchange.

63. As a facilities-based competitive LEC in the Williston Exchange, Midcontinent would have been able to reduce the long-term cost of servicing its existing customers, which Midcontinent was serving by reselling Missouri Valley's telephone service.

64. As a facilities-based competitive LEC, had Missouri Valley complied with its federal interconnection obligations, Midcontinent also would have been able to compete for and ultimately acquire additional customers in the Williston Exchange.

65. By, among other things, refusing to negotiate an interconnection agreement and invoking the rural exemption inconsistent with its own obligations and federal law, Missouri Valley has denied Midcontinent the opportunity to become a facilities-based competitive LEC in the Williston Exchange.

66. As a direct and proximate result of Missouri Valley's illegal actions, Midcontinent has been damaged in an amount to be proven at trial.

67. Among other things, Midcontinent has incurred the additional costs of continuing to serve Midcontinent's existing customers by reselling Missouri Valley's service rather than by employing a more efficient facilities-based service. Midcontinent also has lost revenue and profits that it would have earned when additional customers subscribed to Midcontinent's facilities-based telephone and other services. These damages amount to at least \$1 million.

CAUSES OF ACTION

**COUNT I
Violation of 47 U.S.C. § 251**

68. Midcontinent hereby incorporates the allegation made in paragraphs 1 through 67 as if fully set forth herein.

69. Missouri Valley is the incumbent LEC in the Williston Exchange and is subject to the requirements of the Act, including (among other things) the legal obligation to interconnect its network physically with a competitive LEC requesting such interconnection.

70. Midcontinent is a competitive LEC that provides telecommunications services in the Williston Exchange and made a bona fide request for physical interconnection with Missouri Valley's local exchange network in order to bring facilities-based competition to the Williston Exchange.

71. Missouri Valley denied Midcontinent's request for physical interconnection, claiming that it was excused from its legal obligation to interconnect under the Rural Exemption in Section 251(f) of the Act.

72. Midcontinent filed with the NDPS (1) a notice that it had made a bona fide request for interconnection with Missouri Valley, and (2) a petition asking the NDPS to find that Section 251(f) did not exempt Missouri Valley from providing facilities-based interconnection to Midcontinent.

73. Midcontinent demonstrated to the NDPS that Missouri Valley was not legally entitled to assert the Rural Exemption because Missouri Valley's conduct, on at least two separate occasions, constituted a waiver of any right Missouri Valley might

have had to assert the rural exemption and because Midcontinent satisfied the statutory requirements in section 251(f) for lifting the rural exemption.

74. The NDPSC nonetheless issued the *Rural Exemption Order*, which made numerous erroneous legal determinations regarding the application of federal law, including (among other things) Section 251 of the Act, thereby improperly denying Midcontinent its federally guaranteed right to interconnect with the incumbent LEC's network.

75. The *Rural Exemption Order* made numerous and specific legal errors with respect to the application of the Section 251 criteria, including (among other things) the following:

- a. The NDPSC erroneously failed to address whether the interconnection requested by Midcontinent that required lifting the rural exemption would be any more economically burdensome than interconnection pursuant to Section 251(a) of the Act, which Missouri Valley never denied it was required to provide.
- b. The NDPSC erroneously failed to review the actual economic burden on Missouri Valley in light of its peculiar corporate relationship with its parent Nemont and its unusual and misleading accounting practices.
- c. The NDPSC made the erroneous legal conclusion that Missouri Valley would not be eligible for safety valve funding under the federal Universal Service Program.

- d. The NDPSC erroneously determined that Missouri Valley's universal service activities would be impaired if the NDPSC lifted the rural exemption by ignoring evidence presented by Midcontinent and Missouri Valley that Missouri Valley would have sufficient funds to maintain high-cost investment.

76. The *Rural Exemption Order* which purports to excuse certain of Missouri Valley's obligations under the Act, is erroneous, contrary to federal law and unenforceable.

77. The *Rural Exemption Order* is void as a matter of law and does not excuse Missouri Valley's compliance with its obligations under federal law to interconnect with Midcontinent.

78. As a direct, foreseeable, and proximate result of Missouri Valley's failure to comply with its obligations under Section 251 of the Act, Midcontinent has suffered damages in an amount to be proven at trial.

79. Accordingly, pursuant to 47 U.S.C. §§ 206, 207 and 251, this Court should enter a judgment that the *Rural Exemption Order* is void and award Midcontinent damages, including costs and reasonable attorneys' fees, as a result of Missouri Valley's failure to comply with its obligations under Section 251.

80. Accordingly, pursuant to 47 U.S.C. §§ 251 and 252, this Court should enter a judgment that the *Rural Exemption Order* is void and that the NDPSC and the individual Commissioners acting in their official capacities must suspend Missouri Valley's rural exemption as to Midcontinent; enjoin the Defendants from taking any

action to enforce the *Rural Exemption Order*; and order Missouri Valley to conclude an interconnection agreement with Midcontinent consistent with Section 251 of the Act.

COUNT II
Declaratory Judgment

81. Midcontinent hereby incorporates the allegation made in paragraphs 1 through 80 as if fully set forth herein.

82. The NDPSC's *Rural Exemption Order* contains numerous legal errors, and the NDPSC has denied Midcontinent's request for reconsideration of the *Rural Exemption Order*.

83. Missouri Valley has relied on the *Rural Exemption Order* as a basis for denying Midcontinent its right to interconnect with Missouri Valley's incumbent LEC network.

84. An actual controversy exists between interested parties with respect to whether the *Rural Exemption Order* is valid under applicable federal law.

85. Accordingly, pursuant to 28 U.S.C. Sections 2201 and 2202, Midcontinent respectfully requests that this Court enter a declaratory judgment that the *Rural Exemption Order* is invalid under federal law and therefore without force or effect and to grant further relief that may be necessary or proper to enforce the rights determined in such declaratory ruling.

PRAYER FOR RELIEF

WHEREFORE, pursuant to 28 U.S.C. §§ 1331, 1332, 2201, and 2202, and 47 U.S.C. §§ 206, 207, 251, and 252, Midcontinent respectfully requests that this Court grant the following relief:

1. Enter a ruling and judgment declaring that the *Rural Exemption Order* is invalid and unenforceable as a matter of federal law. Specifically, the Court should rule that:

a. Missouri Valley's conduct when it obtained regulatory approval to acquire the Williston Exchange constituted a waiver of any right Missouri Valley might have had to invoke the rural exemption by committing to honor existing interconnection agreements;

b. Missouri Valley's conduct in executing a resale agreement with Midcontinent constituted a waiver of any right Missouri Valley might have had to invoke the rural exemption as to Midcontinent;

c. The *Rural Exemption Order* contains erroneous legal determinations in the interpretation of federal law under 47 U.S.C. § 251(f) for applying the rural exemption.

2. Order the NDPSC and the individual Commissioners acting in their official capacities to suspend immediately Missouri Valley's rural exemption as to Midcontinent;

3. Issue an immediate permanent injunction to prohibit Defendants from taking any action to enforce the *Rural Exemption Order*.

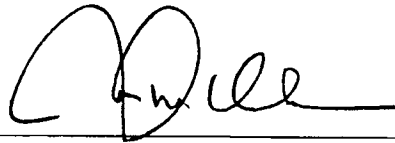
4. Order Missouri Valley to conclude an interconnection agreement with Midcontinent for the physical interconnection of Midcontinent's and Missouri Valley's LEC networks in the Williston Exchange consistent with the requirements of an incumbent LEC under Section 251 of the Act.

5. Award Midcontinent damages from Missouri Valley, including costs and reasonable attorneys' fees, caused by Missouri Valley's denial of Midcontinent's right to physically interconnect with Missouri Valley's incumbent LEC network and compete as a facilities-based competitive LEC in the market for telephone services in the Williston Exchange. Midcontinent does not seek damages from the NDPSC.
6. Award Midcontinent pre- and post-judgment interest.
7. Enter any other orders or judgments as justice may require.

Respectfully submitted,

MIDCONTINENT COMMUNICATIONS

By:



John M. Olson ID# 03053
John M. Olson, PC
418 East Broadway, Suite 9
Bismarck, North Dakota 58501

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

Its Attorneys

April 8, 2009

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Missouri Valley Communications, Inc.
Designated Eligible Carrier
Application**

Case No. PU-2779-02-451

**Missouri Valley Communications, Inc.
Local Exchange
Public Convenience and Necessity**

Case No. PU-2779-02-452

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

December 4, 2002

Appearances

Commissioners Susan E. Wefald and Anthony T. Clark.

**Patrick W. Durick, Attorney At Law, 314 E. Thayer Ave., P.O. Box 400,
Bismarck, ND 58502-0400 on behalf of Missouri Valley Communications, Inc.**

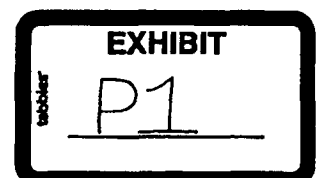
**William W. Binek, Chief Counsel, Public Service Commission, State Capitol,
600 East Boulevard Avenue, Bismarck, ND 58505-0480 as hearing officer.**

**Jerry Lein and Mike Diller, Staff Analysts, Public Service Commission, State
Capitol, Bismarck, ND 58505-0480, on behalf of the Public Service Commission.**

Preliminary Statement

On August 23, 2002 Missouri Valley Communications, Inc. (MVCI), a subsidiary of Nemont Telephone Cooperative, Inc. of Scobey, Montana (Nemont) filed an application for a certificate of public convenience and necessity to provide facilities-based incumbent local exchange telecommunications services in the Williston, North Dakota exchange, Case No. PU-2779-02-452. MVCI also requests designation as an Eligible Telecommunications Carrier (ETC) for receiving federal universal service support for the Williston Exchange, Case No. PU-2779-02-451. Incumbent local exchange telecommunications services for the Williston exchange are currently provided by Citizens Telecommunications Company of North Dakota (CTC).

On September 25, 2002 the Commission issued a Notice of Hearing, scheduling a public hearing for October 22, 2002 at 2:00 p.m. CDT in the Williams County



Courthouse, Memorial Room, 205 East Broadway, Williston, North Dakota. The notice identified the following issues to be considered:

1. Fitness and ability of MVCI to provide service.
2. Adequacy of the proposed service.
3. The technical, financial and managerial ability of MVCI to provide service.
4. Qualification of MVCI under the Telecommunications Act of 1996, Section 214 (e) for designation as an ETC eligible to receive federal universal service funding.
5. What ETC universal service support area should be designated for MVCI.

N.D.C.C. section 49-03.1-04 includes two issues not indicated above. They are need for service and the effect on other public utilities providing similar service. N.D. Admin. Code section 69-09-05-11(3) provides:

"In order to implement North Dakota Century Code chapter 49-03.1 consistent with the Telecommunications Act of 1996, issues to be considered in an application for a certificate of public convenience and necessity for a facilities-based provider of telecommunications services are:

- a. Fitness and ability of the applicant to provide service.*
- b. Adequacy of the proposed service.*
- c. The technical, financial, and managerial ability of the applicant to provide service."*

On October 22, 2002 a public hearing was held as scheduled in the Williams County Courthouse. Several members of the public made public interest comments.

On October 31, 2002 MVCI filed late exhibits 2, 3, 4 and 5.

Having heard and considered this matter, the Commission makes the following:

Findings of Fact

1. MVCI is a subsidiary of Nemont Telephone Cooperative, Inc. of Scobey, Montana. MVCI is authorized to do business in the State of North Dakota.
2. On July 26, 2002 MVCI entered into an agreement with CTC for the purchase of assets relating to the provision of facilities-based incumbent local exchange telecommunications services in the Williston exchange. Upon closing, CTC intends to

cease providing service and MVCI intends to begin providing service in the Williston exchange.

3. All subscribers currently served by CTC in the Williston exchange will be served by MVCI on the closing date of the transaction. CTC presently serves approximately 9,400 access lines in the Williston Exchange. CTC intends to relinquish its ETC designation and certificate of public convenience and necessity for the Williston exchange effective as of the closing date of the transaction.

4. MVCI is a subsidiary of Nemont. Nemont and its subsidiaries, Valley Telecommunications, Inc. and Project Telephone Company, presently provide incumbent local exchange service for approximately 19,000 access lines in forty-seven exchanges in northeast and south-central Montana, northwest North Dakota and north-central Wyoming. Nemont has been in the telecommunications business since 1950 and has an experienced managerial staff. Nemont or its subsidiaries provide a variety of technologically advanced telecommunications services including business and residential access, dial up Internet, ADSL high speed Internet, long distance, cellular service, voice mail, Lifeline/Linkup, enhanced Lifeline, assistance in obtaining E-rate funding for schools, libraries and medical facilities, enhanced 911 and interactive television. We find that MVCI has the fitness and ability to provide adequate service to the Williston exchange.

5. MVCI intends to continue existing services while honoring the existing local rates and extended calling area for the Williston exchange. MVCI intends to honor existing interconnection agreements with exchange carriers and to adopt the intrastate access rates currently used by Nemont for its exchanges in North Dakota.

6. The Rural Telephone Finance Cooperative has issued a conditional commitment to MVCI for a 15-year secured long-term loan of \$20 million and Nemont has agreed to provide \$8.2 million of capital to MVCI for the purchase of the Williston exchange. We find that MVCI is fit, able, and has the technical, financial and managerial ability to provide service for the Williston exchange.

7. The Williston exchange that is the subject of this sale is currently part of CTC's study area for purposes of determining universal service obligations. Both MVCI and CTC request that the Commission notify the FCC that the Commission does not object to the study area changes necessary to remove the Williston exchange from CTC's study area and add it to MVCI's study area.

8. To be designated as an eligible telecommunications carrier, a carrier must: (1) offer the services that are supported by federal universal service support mechanisms, and offer the services designated by the FCC for such federal support mechanisms for schools, libraries, and health care providers; and (2) advertise the availability of such services and the charges therefore using medial of general distribution.

9. For telecommunications customers, the services designated by the FCC for support by Universal service support mechanisms include voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll limitation for qualifying low-income consumers.

10 For schools and libraries, the service designated by the FCC for support by universal support mechanisms include all items listed on the Eligible Services List of the Schools and Libraries Support Mechanism of the Universal Service Administrative Company dated October 18, 2002. For health care providers, the services supported by universal service support mechanisms include any telecommunications service used primarily for the provision of health care.

11. MVCI will offer all services that are supported by the federal universal service support mechanisms and will advertise the availability of and charges for those services using media of general distribution throughout the Williston exchange.

12. MVCI's Lifeline and Link Up offerings will continue to meet the requirements established by the FCC and the North Dakota Lifeline Plan and Link Up Plan in the Williston Exchange.

13. We find that that MVCI is qualified under the Telecommunications Act of 1996, Section 214 (e) for designation as an ETC eligible to receive federal universal service funding.

From the foregoing Findings of Fact, the Commission makes the following:

Conclusions of Law

1. The Commission has jurisdiction over the applicant and over the subject matter of these applications under Title 49 of the North Dakota Century Code.

2. MVCI is fit, able, and has the technical, financial and managerial ability to provide service for the Williston exchange.

3. MVCI's proposed service is adequate.

4. MVCI meets the federal requirements for designation as an eligible telecommunications carrier in the Williston exchange.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

Order

The Commission Orders:

1. The application of Missouri Valley Communications, Inc. for a certificate of public convenience and necessity to provide incumbent local exchange telecommunications services in the Williston exchange area is approved, effective with the date that the asset acquisition transaction is complete. A certificate of public convenience and necessity will be issued upon notification by the applicants that the transaction is complete.
2. Missouri Valley Communications, Inc.'s application to be designated as an eligible telecommunications carrier is granted, and MVCI is designated as an eligible telecommunications carrier in the Williston exchange area, effective with the issuance of a certificate of public convenience and necessity and receipt of any required Part 36 study area waivers from the FCC.
3. Citizens Telecommunications Company of North Dakota's certificates of public convenience and necessity for the Williston exchange shall be relinquished and cancelled effective with the issuance to MVCI of a new certificate of public convenience and necessity for the Williston exchange.
4. Citizens Telecommunications Company of North Dakota will no longer be designated as an ETC for the Williston exchange effective upon Citizen's relinquishing its certificate of public convenience and necessity for the Williston exchange and receipt of any required Part 36 study area waivers from the FCC.

PUBLIC SERVICE COMMISSION

Anthony T. Clark
Commissioner

Susan E. Wefald
President

Leo M. Reinbold
Commissioner



P.O. Box 340
Elk Grove, CA 95759

Dear CLEC/Wireless Carrier,

2nd & Final Notice

Frontier, a Citizens Communications Company d/b/a Citizens Telecommunications Company of North Dakota has entered into a series of Asset Purchase Agreements to sell the exchanges in Western North Dakota listed below. This transaction has been approved by state regulators and the FCC. Accordingly, the transfer of these exchanges to the Buyer(s) is scheduled for April 1, 2003 at 12:01am.

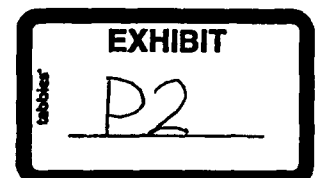
<u>Exchange</u>	<u>NPA/NXX</u>	<u>Buyer</u>
Alexander, ND	701, 828	Reservation Telephone Cooperative
Watford City, ND	701, 842	Reservation Telephone Cooperative
Williston, ND	701, 774 701, 572	Missouri Valley Communications

The Buyer(s) have been made aware of existing Interconnection Agreement(s) and have agreed to negotiate new agreements with carriers that have ongoing interconnection activities related to the exchanges they purchase. If the Buyer(s) have not completed negotiations or the North Dakota Public Service Commission has not approved the new negotiated agreement at the time of purchase, the Buyer(s) will offer to provide interconnection under the existing agreement until new agreements can be completed.

If you have any questions, please contact:

Jenny Smith
Manager, Interconnection Services
9260 E. Stockton Blvd.
Elk Grove, CA. 95624
916-686-3533 voice
916-686-2236 fax
jesmith@czn.com

(Aquisition notice)
2/3/03





Missouri Valley
Communications, INC.
TOTAL TELECOMMUNICATIONS

March 27, 2003

Ms. Mary Lohnes
Midcontinent Communications
5001 West 41st Street
Sioux Falls, South Dakota 57106

Re: Interconnection Agreement

Dear Ms. Lohnes:

Missouri Valley Communications, Inc. (MVCI) of Scobey, Montana, has received the necessary State and Federal approvals to complete the purchase of the Williston, North Dakota exchange from Frontier, a Citizens Communications Company (d/b/a Citizens Telecommunications Company of North Dakota). **The closing and change of control will take place as of 12:01 am on April 1, 2003.**

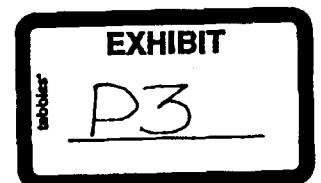
MVCI will honor the current Interconnection Agreement that is in place between Citizens and Midcontinent Communications until a new Agreement can be negotiated. The NPA/NXX numbers included in the Williston exchange are 701-774 and 701-572.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kathy P. Greenwood
Finance and Accounting Manager
Missouri Valley Communications, Inc.
P.O. Box 600
Scobey, Montana 59263
Phone 1-406-783-5654

Cc: Jon Mielke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard
Bismarck, North Dakota 58505





November 4, 2003

Ms. Mary Lohnes
Regulatory Affairs Manager
Midcontinent Communications
5001 West 41st Street
Sioux Falls, SD 57106

MIDCO Communications, Inc.
Attention: W. Tom Simmons
Vice President and General Manager
410 South Phillips Avenue
Sioux Falls, SD 57104

RE: Termination of Interconnection Agreement between Missouri Valley
Communications, Inc., and Midcontinent Communications, Inc.

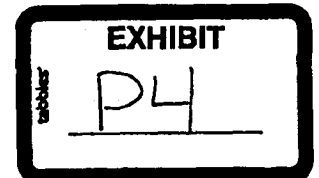
Dear Ms. Lohnes:

This letter constitutes formal notice of the exercise of Missouri Valley Communications, Inc. (Missouri Valley) of Section 3.1 termination provisions of the interconnection agreement between Citizens and Midcontinent Communications, Inc. (Midcontinent). Missouri Valley agreed to honor the terms of this agreement in correspondence to you dated March 27, 2003.

The terms of Section 3.1 provide that either Party to the agreement may provide written notice to the other Party at least 90 days in advance of the specified date of termination. Missouri Valley hereby specifies a date of termination of February 6, 2004.

The reasons for such termination are similar in nature to the reasons set forth in the agreement between Mid-Continent and Citizens to modify Midcontinent's original interconnection agreement with Qwest. In that modification agreement, Citizens and Midcontinent mutually agreed, among other things, that modification was appropriate because Citizens was purchasing less than all of Qwest's North Dakota assets and that Citizens was a smaller company than Qwest and therefore would not be conducting business in all respects like Qwest (SEE recital "E" on the first page of the Agreement to Modify).

MITS, P.O. Box 5237, 2021 11th Avenue, Suite 12, Helena, MT 59604-5237
PHONE: 406-443-1940 / FAX: 406-443-8880



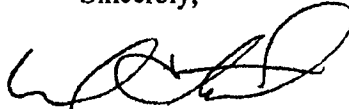
Ms. Mary Lohnes & MIDCO Communications, Inc.
Termination of Interconnection Agreement
November 4, 2003
Page 2

Likewise, Missouri Valley did not acquire all of Citizens' assets in North Dakota and is a smaller company than Citizens and therefore will not be conducting business in all respects like Citizens. Moreover, the terms of the underlying interconnection agreement between Midcontinent and Qwest allow for modification of that agreement in light of subsequent decisions by courts and regulatory agencies. Missouri Valley's intention is, therefore, to negotiate an agreement with Midcontinent that takes into consideration the foregoing considerations.

Missouri Valley will be preparing a standard interconnection agreement as soon as practicable and will forward that agreement to Midcontinent to serve as a starting point for negotiations.

Please feel free to call upon me with questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Strand", written in a cursive style.

Mike Strand
Counsel for Missouri Valley Communications

Cc: Richard Thronson, General Manager, Missouri Valley Communications

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>(b) County of Residence of First Listed Plaintiff <u>Minnehaha, SD</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) John M. Olson, John M. Olson, PC, 418 East Broadway Ave., Suite 9 Bismarck, ND 58501 Phone: 701-222-3485</p>	<p>DEFENDANTS</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:40%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) _____ 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

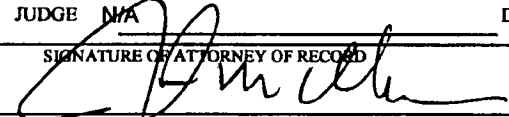
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. 251

Brief description of cause:
Failure to comply with the interconnection and rural exemption provision of the Communications Act of 1934.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE N/A DOCKET NUMBER _____

DATE 4/13/2009 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____