

United States District Court
District of North Dakota

Midcontinent Communications,)
A South Dakota Partnership,)

Plaintiff,)
vs.)

**ANSWER OF DEFENDANT MISSOURI
VALLEY COMMUNICATIONS, INC.**

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)

and)

Case No: 1:09-cv-00017-DLH-CSM

Missouri Valley Communications, Inc.,)

Defendants.)

General Denial

1. All allegations of the complaint - including the jurisdictional grounds - are denied except as herein admitted, qualified or explained.

2. The complaint fails to state a claim on which relief can be granted.

Affirmative Defenses

3. The claims stated in the complaint are barred by *res judicata*, estoppel, waiver and laches.

Arguments

4. Arguments in the complaint are not appropriate in a pleading and are generally denied. Without limitation, these include the arguments stated in complaint paragraphs 1 through 7, 14 through 28, 31, 32, 34, 37, 38, 45 through 48, 50 through 59, 61 through 71, 73 through 85, and in parts of paragraphs 36 and 53.

Admissions

5. The allegation of Complaint paragraph 9 as to venue is admitted.

6. The allegations of Complaint paragraphs 10, 11, 12, 13 and 29 describing the parties are admitted.

7. The allegations of Complaint paragraphs 30, 33, and 35 are admitted.

8. Responding to the allegations of Complaint paragraph 36, Missouri Valley admits that it sent to Midcontinent the letter identified as Exhibit D. Missouri Valley denies the remainder of paragraph 36 where Midcontinent argumentatively describes Exhibit D.

9. Responding to the allegations of Complaint paragraph 37, Missouri Valley admits that in 2004 Midcontinent and Missouri Valley made an agreement for purposes of "resale" pursuant to 47 U.S.C. section 251(c)(4).

Missouri Valley denies argumentative verbiage in Complaint paragraph 37.

Further responding to Complaint paragraph 37:

A) The 2004 resale agreement does not include any reference to the rural exemption under 47 U.S.C. section 251(f)(1).

B) The 2004 resale agreement does not include any reference to an interconnection under section 251.

C) The 2004 resale agreement includes a provision (section 2.26) that the document records the parties' entire agreement.

10. The allegations of paragraphs 39, 40, 41, 42, 43, 44, 49, 60, 72 and the first and third sentences of paragraph 53, all regarding prior proceedings in North Dakota Public Service Commission Case No. PU-08-61 are admitted. The argumentative second sentence of paragraph 53 is denied.

Wherefore, the Complaint should be dismissed and this defendant awarded costs, disbursements, and other appropriate relief.

Dated this 31st day of August, 2009.

PRINGLE & HERIGSTAD, P.C.

By: /s/ David J. Hogue

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