

Fahn, Patrick J.

From: Nancy Vogel [Nancy_Vogel@mmi.net]
Sent: Friday, August 05, 2011 2:15 PM
To: Jeffcoat-Sacco, Ilona
Cc: Fahn, Patrick J.; 'mike.kilgore@nemont.coop'
Subject: Request for mediation
Attachments: Missouri Valley response 070611.pdf; MC response 071211.pdf; MC request 251ab 061411.pdf

Follow Up Flag: Follow up
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Categories: Red Category

Ms. Jeffcoat-Sacco –

I am writing to request that the Public Service Commission, consistent with Section 252(a)(2) of the federal Communications Act, act as a mediator in connection with Midcontinent's request for interconnection with Missouri Valley Communications.

As described in our June 14 and July 12 letters to Missouri Valley, Midcontinent is requesting interconnection under number portability from Missouri Valley under Sections 251(a) and 251(b) of the Communications Act. In those letters, Midcontinent suggested interconnection at a mutually agreeable meet point, but also invited Missouri Valley to propose an alternative location or make an alternative technical proposal if a meet point was not acceptable. (I have attached both of those letters, as well as Missouri Valley's July 6 letter in response to our initial request. As of today, we have not received any response to our July 12 letter.)

Despite Midcontinent's flexibility, to date Missouri Valley has been unwilling to negotiate the terms of interconnection, or even to propose its own terms. While we recognize that, under a recent interpretation of Section 251 by the Federal Communications Commission, Missouri Valley is not required to negotiate in good faith (although it is obligated to provide interconnection and number portability), we are hopeful that the Commission's involvement can help Midcontinent and Missouri Valley avoid the need for Section 252 arbitration of Midcontinent's interconnection request.

I want to emphasize that this request was made under Section 251(a) of the Communications Act, which requires all carriers – whether or not they have rural exemptions – to interconnect with requesting carriers, and under the number portability provisions of Section 251(b), which also are not subject to Missouri Valley's rural exemption. The FCC recently affirmed that rural exemptions do not affect interconnection rights under either of these provisions.

I will be serving as Midcontinent's principal contact for the mediation. I can provide you (or anyone else on the Commission staff who may be designated to participate in the mediation) with additional information on Midcontinent's request and its interconnection needs if you desire. Also please contact me to schedule any mediation meetings or calls.

Please let me know if the Commission will be able to mediate this matter.

Thank you for your assistance.

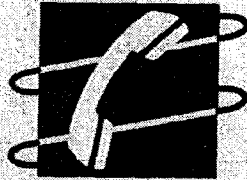
Nancy Vogel

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1

PU-11-543 Filed: 8/5/2011
Mediation request of Midcontinent

Pages: 6



Missouri Valley
Communications, INC.

TOTAL TELECOMMUNICATIONS

July 6, 2011

Dear Ms. Vogel:

Missouri Valley declines Midcontinent's June 14, 2011 request for a direct interconnection to exchange local telecommunications traffic. Missouri Valley does not agree that Midcontinent's request is in accordance with the Communications Act.

Your letter requests a "two-way direct interconnection between Missouri Valley's Williston End Office Switch (WLSTNDBCDSO) and the Midcontinent head end, with a point of interconnection at a mutually-agreed meet point . . . for the purpose of exchanging local telecommunications traffic." Missouri Valley recognizes this requested interconnection is substantially the same 251(c)(2) request as Midcontinent made in November 2007 and its related petition filed with the North Dakota Public Service Commission in February 2008, PSC case PU-08-61. That case was resolved in Missouri Valley's favor, not only by the PSC but also by the Federal District Court when Midcontinent requested judicial review of the PSC's decision.

In 2011, as in 2008, Missouri Valley asserts its "rural exemption" under section 251(f)(1) of the Act, particularly the exemption from the duty of interconnection under section 251(c)(2) that would oblige Missouri Valley if it were not exempt under section 251(f)(1). In 2011, Missouri Valley's assertion of its rural exemption is supported by the decision in the 2008 case.

The negotiation exemption applies where the subject of Midcontinent's request is the rigorous section 251(c)(2) obligation to provide interconnection at a technically feasible point of interconnection and the transmission and routing of telephone exchange service from which Missouri Valley is also exempt. Similarly, we do not regard direct interconnection to be a subject of arbitration under Act section 252. Because Missouri Valley is exempt from direct interconnection, there is nothing to negotiate or to arbitrate.

Regards,

Mike Kilgore
General Manager/CEO



3901 North Louise Avenue
Sioux Falls, South Dakota 57107

July 12, 2011

Mike Kilgore
General Manager
Missouri Valley Communications, Inc.
Highway 13 South
P.O. Box 600
Scobey, Montana 59623-0600

Dear Mr. Kilgore:

I am writing on behalf of Midcontinent Communications ("Midcontinent"), and in response to your July 6 letter (received yesterday) concerning Midcontinent's request for interconnection with Missouri Valley in accordance with Sections 251(a), 251(b) and 252 of the federal Communications Act of 1934, as amended, 47 U.S.C. § 251(a) (b), 252. It appears from your letter that Missouri Valley may have misunderstood Midcontinent's request.

First, my June 14 letter specified that Midcontinent's request was made under Sections 251(a) and Section 251(b) of the federal Communications Act of 1934, not under Section 251(c). As the FCC has held, Missouri Valley's rural exemption affects only requests made under Section 251(c), and has no effect on requests made under Sections 251(a) and 251(b). Consequently, the North Dakota Public Service Commission's earlier decision, which addressed only the rural exemption, is not relevant to this request.

Second, as a factual matter, Midcontinent is not seeking Section 251(c)(2) interconnection. In particular, Midcontinent is not demanding interconnection at any technically feasible point of Midcontinent's choosing within Missouri Valley's service area. As my June 14 letter explained, Midcontinent's suggestion of interconnection at a meet point was simply a proposal, and Midcontinent was and remains open to other interconnection arrangements. For instance, the June 14 letter stated that "Midcontinent also is willing to interconnect at any other location in the Williston exchange where Missouri Valley interconnects with other carriers, if such a location would be more convenient for Missouri Valley." The letter also specifically invited Missouri Valley to propose "an alternative location" and to make "an alternative proposal" if it did not wish to agree to any of Midcontinent's suggestions. That invitation remains open.

Midcontinent recognizes that Missouri Valley is not subject to the Section 251(c)(1) obligation to negotiate in good faith following a bona fide request for interconnection. However, even if Missouri Valley chooses not to negotiate,

Over Fifty Years of Service

Mr. Mike Kilgore
July 12, 2011
Page 2

Midcontinent will retain its rights to obtain an interconnection agreement through arbitration, as outlined by the FCC in its May 25 *Declaratory Ruling* on Section 251(a) interconnection.¹ Midcontinent also intends to request mediation from the North Dakota Public Service Commission pursuant to Section 252(a)(2) if it does not appear that the parties can negotiate an agreement.² While we believe that a negotiated agreement is a better alternative for both parties, Midcontinent will exercise its mediation and arbitration rights if necessary.

So that we may make arrangements for negotiations or consider the appropriate next steps, Midcontinent requests that you provide a response to this letter no later than July 26, 2011.

Thank you for your attention to this matter.

Sincerely,

Nancy A. Vogel
Director of Revenue Assurance

cc: Patrick Fahn

¹ As described in my June 14 letter, the beginning of the period for negotiation and arbitration under Section 252 of the Communications Act was triggered by Midcontinent's initial request.

² I am providing a copy of this letter to Patrick Fahn of the North Dakota Public Service Commission staff to alert the Commission to the possibility that Midcontinent may request mediation.



3901 North Louise Avenue
Sioux Falls, South Dakota 57107

June 14, 2011

Mr. Mike Kilgore, General Manager
Missouri Valley Communications, Inc.
PO Box 600
61 Hwy 13 S
Scobey, MT 59263-0600

Dear Mr. Kilgore:

I am writing on behalf of Midcontinent Communications ("Midcontinent"), and in accordance with Sections 251(a), 251(b) and 252 of the federal Communications Act of 1934, as amended, 47 U.S.C. § § 251(a) (b), 252, to request interconnection between Missouri Valley Communications (doing business as Nemont) and Midcontinent in Williston, ND.

Section 251(a) requires all telecommunications carriers to provide direct or indirect interconnection to all other telecommunications carriers, and Section 251(b) imposes other obligations related to reciprocal compensation, number portability and other interconnection-related issues. These obligations apply regardless of whether a carrier is subject to the Section 251(f)(1) rural exemption.

Midcontinent makes this request, in part, because we have determined that we are unable to provide our customers the level of service they expect under the current resale arrangements, both as a matter of the quality of service received and our ability to respond to customer inquiries and complaints. For instance, while Midcontinent's goal is to respond to all customer requests for service within one business day, in recent months it has been our experience that it can take three business days or more for Missouri Valley to respond to a service request from Midcontinent.

Midcontinent proposes that the parties interconnect at Williston using two-way direct interconnection between Missouri Valley's Williston End Office Switch (WLSTNDBCDSO) and the Midcontinent head end, with a point of interconnection at a mutually-agreed meet point between the two locations. Midcontinent is willing to interconnect using either electrical facilities (at a DS1 or DS3 level) or via optical facilities. Midcontinent also is willing to interconnect at any other location in the Williston exchange where Missouri Valley interconnects with other carriers, if such a location would be more convenient for Missouri Valley.

Over Fifty Years of Service

Mr. Mike Kilgore
June 14, 2011
Page 2

The interconnection will be for the purpose of exchanging local telecommunications traffic. The local traffic would be exchanged under the terms of Section 251(b)(5), which governs reciprocal compensation for local traffic. Midcontinent proposes that the parties exchange local traffic using bill and keep, which we understand is the same compensation methodology used by Missouri Valley when it exchanges traffic with wireless providers. Midcontinent proposes that the parties continue to exchange intrastate toll traffic under the same arrangements they use today.

In connection with the exchange of traffic and interconnection, Midcontinent also will require number portability. It is our understanding that Missouri Valley already has implemented number portability, so please provide us with information on your procedures for port requests. Midcontinent anticipates that the parties would follow the procedures and practices set forth in their resale agreement for transfer of customers, directory listings and other related matters.

In accordance with the Federal Communications Commission's May 25, 2011 *Declaratory Ruling* concerning Section 251(a) and (b) interconnection, this letter constitutes a formal request for interconnection under Sections 251(a), 251(b) and 252 of the Communications Act, and begins the period for negotiation and arbitration under Section 252.¹ If Midcontinent and Missouri Valley are unable to reach an agreement prior to the close of the period to initiate arbitration under Section 252, Midcontinent intends to seek arbitration for a final agreement on these matters.

Please inform me by June 30, 2011 if Missouri Valley will agree to interconnect at the location described above or if it prefers an alternative location. A response by this date will assist Midcontinent in planning our deployment of fiber facilities to serve the Williston area. Also please inform me if Missouri Valley accepts the financial terms described above or has an alternative proposal. If you have any questions about Midcontinent's technical proposal, please contact me at (605) 357-5485 or email nancy_vogel@mmi.net.

Thank you for your attention to this matter.

Sincerely,

Nancy Vogel
Director of Revenue Assurance

¹ See Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, *Declaratory Ruling*, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-92 (rel. May 25, 2011), ¶¶ 18-24.