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April 20, 2012

North Dakota Public Service Commission  
ATTN: Mr. Darrell Nitschke  
600 East Boulevard Ave., Twelfth Floor  
Bismarck, ND 58505

RECEIVED

APR 23 2012

PUBLIC SERVICE COMMISSION

**RE: Midcontinent Communications vs. Missouri Valley Communications, Inc.  
PU-11-543**

Dear Mr. Nitschke:

Enclosed please find one (1) original and eight (8) copies of the following document in the above-referenced matter:

***1. Missouri Valley Communications' Post Arbitration Brief and Proposed Arbitration Agreement.***

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

Very truly yours,

David J. Hogue

DJH/klb

cc: Patrick Durick  
Zachary Pelham  
J.G. Harrington  
Pat Ward  
Mike Kilgore

Enclosures

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

Midcontinent Communications, a	)	
South Dakota Partnership,	)	Case No. PU-11-697
	)	
Petitioner,	)	<b>Missouri Valley Communications'</b>
vs.	)	<b>Post Arbitration Brief</b>
	)	<b>and Proposed</b>
Missouri Valley Communications, Inc.,	)	<b>Interconnection Agreement</b>
	)	
Respondent.	)	

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**MISSOURI VALLEY COMMUNICATIONS'  
POST ARBITRATION BRIEF  
AND  
PROPOSED INTERCONNECTION AGREEMENT**

*Pringle & Herigstad P.C.*

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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

Midcontinent Communications, a	)	
South Dakota Partnership,	)	Case No. PU-11-697
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Petitioner,	)	<b>Missouri Valley Communications'</b>
vs.	)	<b>Post Arbitration Brief</b>
	)	<b>and Proposed</b>
Missouri Valley Communications, Inc.,	)	<b>Interconnection Agreement</b>
	)	
Respondent.	)	

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**I. INTRODUCTION**

Respondent Missouri Valley Communications (“Missouri Valley” or “MVC”) submits this post arbitration brief and proposed interconnection agreement (the “Agreement”) pursuant to the scheduling order in this proceeding and Arbitrator Patrick J. Ward’s (the “Arbitrator”) post arbitration instructions. At the conclusion of the April 4-5, 2012 arbitration hearing in Bismarck, the Arbitrator directed the parties to submit briefing on the following issues:

1. Does the Arbitrator have the authority to recommend a stay of the implementation of the Agreement?; and, if so, does the North Dakota Public Service Commission (“PSC” or “Commission”) have the legal authority to impose a stay of the implementation of the Agreement?
2. Should the Agreement contain a provision requiring binding arbitration for resolving disputes that arise during the term of the Agreement?
3. What are the fair and reasonable material economic terms to incorporate into the Agreement with regard to: (A) reciprocal compensation; (B) transitional compensation for lost access revenue; (C) the per customer charge for transitioning each Midcontinent Communications (“Midcontinent”) resale customer to Midcontinent’s network?

4. Is the financial impact to Missouri Valley that arises from transitioning Midcontinent's customers from a wholesale resale basis to facilities based interconnection a relevant inquiry for the Arbitrator to consider and, if so, how should a financial impact affect the specific open issues under the Agreement?
5. Should the Arbitrator and Commission consider Missouri Valley's decline in revenues arising from Missouri Valley's involuntary participation in the Agreement?
6. Does the Commission have an obligation to make Missouri Valley whole with regard to the anticipated decline in its revenues arising from its involuntary participation in the Agreement?

Missouri Valley answers the questions below in the order presented by the Arbitrator.

The Arbitrator's requested issues were not made a part of the arbitration hearing transcript.

Missouri Valley understands from the Arbitrator that he does not regard ISP traffic as an open issue so Missouri Valley does not brief the issue of ISP traffic. Missouri Valley also understands that Midcontinent is not seeking to use Missouri Valley's EAS trunks, so Missouri Valley does not brief whether Missouri Valley will be responsible for providing Midcontinent's customers with the same EAS trunks as Missouri Valley's customers. Missouri Valley also attaches its proposed Agreement to this post arbitration brief along with explanation of the material terms in dispute.

**Issue 1. The Arbitrator and the PSC have discretionary authority regarding the effective date of the Agreement. The PSC and the Arbitrator have discretion to decide, as a threshold issue, whether the Agreement should be implemented in any case. The Arbitrator and PSC should exercise their discretionary authority and decline to implement the Agreement. If the PSC and Arbitrator conclude the Agreement should be implemented, they should exercise their discretionary authority to provide an effective date that is either 60 days from the date the Commission approves the Agreement or thirty (30) days after judicial review, whichever is later.**

**A. The Commission and Arbitrator should decline to implement the Agreement.**

Missouri Valley understands that the Commission has concluded Midcontinent may assert a right to facilities based interconnection from Missouri Valley under § 251(a) the federal Telecommunications Act (the “Act”). *Order denying motion to dismiss at 6, Docket No. 35, PU-11-697*. Relying principally on the FCC’s Section 251(a) Declaratory Ruling<sup>1</sup>, the Commission found that Midcontinent’s request that Midcontinent characterized as a § 251(a) request is not subject to the “rural exemption” contained in § 251(f)(1) of the Act. The Commission concluded that Midcontinent is entitled to facilities based interconnection for the express purpose of exchanging *local* traffic under § 251(a) of the Act. The Commission’s conclusion was based on the observation of the FCC in its Section 251(a) Declaratory Ruling that: “We clarify the LECs are obligated to fulfill all of the duties set forth in sections Act § 251(a) and (b) of the [1996 Telecommunications] Act, including the duty to interconnect and exchange traffic, even if the LEC has a rural exemption from the obligations set forth in section 251(c).” *Id. at ¶ 25, citing FCC § 251(a) Declaratory Ruling*.

The FCC Declaratory Ruling did not discuss granting a CLEC access to a rural company’s local exchange, nor did the Commission decision. But the right to access a rural company’s local exchange, for the purpose of exchanging local traffic and securing local customers is authorized explicitly only in the second enumerated duty of ILECs like Missouri Valley under § 251(c)(2) of the Act,

**(2) Interconnection**

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

**(A) for the transmission and routing of telephone exchange service and exchange access;**

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<sup>1</sup> Petition of CRC Communications of Maine, Inc. and Time Warner Cable for Preemption Pursuant to Section 253 of the Communications Act, as Amended, Declaratory Ruling, 26 FCC Rcd 8259 (2011).

47 U.S.C. § 251(c)(2) [Underlining added.] The specific obligation of the ILECs is to provide a direct connection and permit exchange of traffic and exchange access. That distinct obligation—granting a CLEC like Midcontinent access to the ILEC’s exchange—is referenced only in § 251(c).

Missouri Valley respectfully disagrees with the Commission conclusion in its order and is compelled to explain why. Midcontinent has claimed in this case that its request for facilities based interconnection for the purpose of exchanging local traffic is a § 251(a) request and not a § 251(c) request because Midcontinent is not demanding interconnection at any technical feasible point in Missouri Valley’s network, and merely seeks interconnection at a “mutually agreed meet point.” *Exhibit B, Midcontinent petition for arbitration; Docket No. 1, PU-11-697. See also Midcontinent brief in opposition to motion to dismiss at 13; Docket No. 9* (“The central difference between Section 251(a) interconnection and Section 251(c) interconnection is that, under Section 251(c) the competitive carrier effectively controls all technical decisions about how interconnection will be accomplished, while Section 251(a) interconnection does not give a competitive carrier that power.”).

Midcontinent has created this artificial dichotomy—that a facilities based interconnection at any technical point demanded by the CLEC is a § 251(c) request, while an accommodating, “mutually convenient” meet point is only a § 251(a) request— that is without any basis in law, and its dichotomy ignores the controlling precedent in the Eighth Circuit Court of Appeals.

Missouri Valley’s fundamental disagreement relates to the purpose of the rural exemption under § 251(f)(1), as described by the Eighth Circuit in *Iowa Utilities Bd. V. FCC, 219 F.3d 744, 761 (8<sup>th</sup> Cir. 2000)*.

There can be no doubt that it is an economic burden on an ILEC to provide what Congress has directed it to provide to new competitors in § 251(b) or § 251(c). Because the small and rural ILECs, while they may be entrenched in their markets, have less of a financial capacity than larger and more urban ILECs to meet such a request, the Congress declared that their statutorily-granted exemption from doing so should continue unless the state commission found all

three prerequisites for terminating the exemption, or determined that all prerequisites for suspension or modification were met in order to grant an ILEC affirmative relief. It is the full economic burden on the ILEC of meeting the request that must be assessed by the state commission.

*Iowa v FCC, at 761.*

Regardless of whether Midcontinent requests facilities based interconnection at any technically feasible point, or facilities based interconnection at a “mutually convenient” point, the economic devastation to the 393 square mile Williston exchange is the same. In either facilities based interconnection scenario, Missouri Valley and the Williston exchange will be deprived of the local customer revenue that Midcontinent pays Missouri Valley, the revenue that Missouri Valley uses to serve the entire 393 square mile exchange area. That amount is approximately \$817,300 per year and will exceed \$2.51 million over the duration of the proposed Agreement. *Kilgore, 247, ll. 1-8.* Of that \$ 817,000 figure, \$676,900 is the local customer revenue that Midcontinent pays Missouri Valley for resale of Missouri Valley’s access lines. *Id.*

That is the “full economic burden” that *Iowa v. FCC* directs “be assessed” by the Commission. *Iowa at 671.* That assessment cannot happen if the Commission continues to accept Midcontinent’s baseless characterization of its facilities based interconnection “for the purpose of exchanging local telecommunications traffic” as a § 251(a) request. *Exhibit B, 2, Midcontinent petition for arbitration; Docket No. 1, PU-11-697.* The rural exemption of § 251(f)(1) protects Missouri Valley from the “economic burden[s]” *Iowa at 761,* associated with § 251(c) requests, including requests for the “transmission and routing of telephone exchange service and exchange access.” Act § 251(c)(2)(A). Midcontinent’s clever, artificial dichotomy between demanding interconnection at any technical feasible point vs. acquiescing to interconnection at a mutually convenient point seeks to avoid the fundamental purpose of the rural exemption. Midcontinent’s willingness to

accommodate a meet point at a convenient location does not transform its request for facilities based interconnection “for the purpose of exchanging local traffic” into a § 251(a) request.

When it passed the Act, the Congress held dual goals of promoting competition while protecting rural companies against competition that is not in the public interest: “Congress sought both to promote competition and to protect rural telephone companies” from opportunistic, cream skimming that deprives the rural company of its financial capacity to maintain and upgrade its rural network. *Iowa at 761*. The Eighth Circuit, as well as other circuit courts of appeal, has recognized that the Act is not intended to pave the way for unfettered competition, in which CLECs have blanket access to all of the ILECs network elements. The Eighth Circuit described other courts of appeal decisions to reign in the FCC’s attempts to impose competition beyond the scope of the Act in *Sw. Bell Tel., L.P. v. Missouri Pub. Serv. Comm’n*, 530 F.3d 676, 680-81 (8th Cir. 2008). The *Sw. Bell* Court noted other courts reviewing the FCC’s orders have disagreed when certain FCC practices caused the “competition pendulum to swing too far in favor of CLECs.” *See, e.g., AT & T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 390, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999) (“[I]f Congress had wanted to give blanket access to incumbents’ networks on a basis as unrestricted as the scheme the Commission has come up with.... It would simply have said ... whatever requested element can be provided must be provided.”); *U.S. Telecom Ass’n v. FCC*, 290 F.3d 415, 424 (D.C.Cir.2002) (“If parties who have not shared the risks are able to come in as equal partners on the successes, and avoid payment for the losers, the incentive to invest plainly declines.”); *Verizon New England, Inc. v. Maine Pub. Utils. Comm’n*, 509 F.3d 1, 9 (1st Cir.2007) (“[M]aking a

monopolist share ... 'essential facilities' can promote competition; but it can also retard investment, handicap competition detrimentally, and discourage alternative means of achieving the same result that could conceivably enhance competition....”) *quoting from Sw. Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 530 F.3d 676, 680-81 (8th Cir. 2008).

As the Commission is no doubt aware, the manner and location of a physical interconnection is ordinarily a one time expense for both interconnecting carriers. That one time, modest expense, is not the “full economic burden” the rural exemption of § 251(a) seeks to require the Commission to evaluate. *Iowa v. FCC at 761*. The rural exemption relates to the CLEC’s selective entry into a market, and the full economic consequences from the ILEC and CLEC dividing recurring revenues from the low cost, high density customers within an exchange.

Missouri Valley understands the Commission’s decision to deny Missouri Valley’s motion to dismiss on the grounds Midcontinent’s interconnection request is a bona fide § 251(a) request. The Commission relied on the FCC § 251(a) Declaratory Ruling. But the FCC Declaratory Ruling did not redefine the distinct escalating duties of ILECs under §§ 251(a), 251(b), and 251(c).

The Ruling clarified that all LECs, including rural companies<sup>2</sup>, have a duty to comply with the provisions of §§ 251(a) and 251(b). There is no discussion in any part of the FCC Declaratory Ruling that describes the difference between a § 251(a) request, a § 251(b) request, and a § 251(c) request. However, the differences are evident in the

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<sup>2</sup> A “rural telephone company” is defined under the Act as an entity that provides telephone exchange service, including exchange access, to fewer than 50,000 access lines. 47 U.S.C. § 152(37). Including the access lines that Missouri Valley resells to Midcontinent, Missouri Valley provides service to 9,418 access lines. *Kilgore live testimony*, 197, 14-24.

words of the each section of the Act, and the FCC Declaratory Ruling makes clear that each section imposes separate, escalating obligations. *FCC Declaratory Ruling*, ¶ 4. *See also, Exhibit 2, PU-11-697, Gates pre-filed testimony, 9-10 (description of FCC's explanation of "escalating duties" contained § 251(a), (b), and (c)).*

As the Commission has acknowledged, Midcontinent and Missouri Valley's facilities are presently indirectly connected under the resale agreement. *Order at 2, Docket No. 35, PU-11-697*. That indirect connection permits a Midcontinent voice customer in Williston to originate and receive long distance calls from outside the Williston exchange.

Section 251(c) of the Act is the only section that refers to or alludes to a duty to interconnect for the purpose of exchanging traffic and granting "exchange access". The FCC Declaratory Ruling did not alter the text of § 251(c), nor could it. The United States Courts of Appeals have exclusive jurisdiction to review final orders of the FCC pursuant to 28 U.S.C. § 2342(1) and 47 U.S.C. § 402(a). In reviewing an agency's interpretation of a statute, the circuit courts of appeal must defer to the agency only if its interpretation is consistent with the plain meaning of the statute or is a reasonable construction of an ambiguous statute. *See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 842-43, 104 S.Ct. 2278, 81 L.Ed. 2d 694 (1984). The Court will overturn an agency interpretation that conflicts with the plain meaning of the statute, *see id.*, or is an unreasonable construction of an ambiguous statute, *see id. at 844-45, 104 S.Ct. 2278*. The circuit courts owe no deference to the FCC's interpretations of federal law, however, and a court's review of an interconnection agreement for compliance with the Act is de novo. *Id.*; *see also Atlas*, 400 F.3d at 1262 (applying de novo review to a state commission's interpretation of the Act); *MCImetro*, 352 F.3d at 876 (same); *Mich. Bell Tel. Co. v. MFS Intelenet of Mich., Inc.*, 339 F.3d 428,

433 (6th Cir.2003) (setting forth a dual standard of review: review of interconnection agreements for compliance with the Act is de novo while review of further issues regarding state commission analysis of interconnection agreements is under a deferential standard). *WWC License, L.L.C. v. Boyle*, 459 F.3d 880, 889-90 (8th Cir. 2006).

The FCC's adjudicatory orders, and duly promulgated administrative regulations related to the Act, cannot change the plain text of § 251(c) and § 251(f)(1).

The FCC Declaratory Order did not limit a rural company's § 251(f) exemption from a request for interconnection for the "transmission and routing of telephone exchange service and exchange access" under Act § 251(c)(2)(A). A request for exchange access is an interconnection that creates a potential "economic burden" that Congress wanted state commissions to examine under § 251(f)(1), before they required such a request be implemented. The examination Congress contemplated was conducted in the previous case, PU-08-176, but not in the present case. Midcontinent's current request for exchange access<sup>3</sup> from Missouri Valley should trigger the assessment contemplated by § 251(f)(1). Missouri Valley requests that, in the absence of dismissing the petition of Midcontinent, that Commission permit and order the parties to participate in a deliberate, evidence-based examination of the economic criteria in § 251(f)(1).

Implementation of an interconnection agreement that promotes selective entry in the exchange area served by Missouri Valley will be contrary to the public interest and violate the principles of advancing and maintaining universal service, as set forth in Section 251, 252, 253 and 254 of the Act. Missouri Valley recognizes that it is the

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<sup>3</sup> It is undisputed that Midcontinent does not wish to serve the entire 393 square mile Williston Exchange. Indeed, Midcontinent does not even commit to serving the entire city limits of Williston, absent a complaint from a customer. *Simmons*, 37, 21-25; 38, 1-3.

responsibility of Arbitrator pursuant to authority delegated to the Commission under the Act and Chapter 49-21, NDCC, to establish interconnection terms and conditions with respect to the open issues submitted for arbitration. The responsibility of the Arbitrator and the Commission, however, do not end with the resolution of the open interconnection issues. Pursuant to Section 252(e)(1) of the Act:

“Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.”

In fact, this provision of the Act specifically provides for the rejection of a negotiated agreement if “the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.”<sup>4</sup> With respect to an arbitrated agreement, the Act provides more generally that a State Commission may reject “an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title.”<sup>5</sup>

**B. If the Commission and Arbitrator Implement the Agreement, the Effective Date of the Agreement Should be Deferred Pending Judicial Review.**

By seeking a delayed effective date pending judicial review as an alternative remedy to rejection of the Agreement as contrary to the public interest, Missouri Valley seeks to avoid an unnecessary expenditure of financial resources and a duplicative expenditure of labor resources on the conversion process from resale to facilities based interconnection. If there is no delay in the effective date and the parties proceed to interconnection, there is a reasonable likelihood the interconnection and physical link up will need to be reversed if judicial review concludes Missouri Valley’s rural exemption protects it from the interconnection Midcontinent seeks in this

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<sup>4</sup> 47 USC § 252(e)(2)(A)(ii)

<sup>5</sup> 47 USC § 252(e)(2)(B)

case. Because the expenditure of labor resources for the transition falls squarely on Missouri Valley's personnel, it has a strong interest in avoiding an unnecessary expenditure of labor resources, especially in the current business environment, where scarce labor resources are a continuing challenge.

Providing customers' with continuous dial tone, avoidance of customer confusion, and unnecessary intrusion into the customers' homes are important policy reasons supporting a brief delay in the implementation process. Switching customers to facilities based interconnection will involve a "lift and lay" process in which customers will lose dial tone. *Kilgore, 203, ll. 13-14*. In each case that process must be coordinated with the homeowner, Midcontinent, and Missouri Valley, in order to avoid a prolonged loss of dial tone. *Id., 204, 4-5*. The amount of time necessary to convert Midcontinent's approximately 2,100 resale customers is unknown to Missouri Valley because there is no evidence in the record about the number of employees Midcontinent has employed in the Williston market to execute the lift and lay process. *Id., 205, 1-6*. The process will need to be reversed, i.e., repeated, if judicial review concludes Midcontinent is not entitled to a facilities based interconnection for the purpose of exchanging local traffic under § 251(a) of the Act. *Id., 204, 8-14*. The potential loss of dial tone twice instead of once for approximately 2100 customers, and the concomitant loss of emergency 911 service, is an adequate basis to grant a temporary stay pending judicial review.

If granted a temporary stay, Missouri Valley is committed to prompt judicial review within 30 days of the Commission order. *Kilgore, 210, 17-25*. Under Section 252(e)(1) of the Communications Act, interconnection agreements produced by negotiation or arbitration must be approved by the Commission. 47 U.S.C. § 252(e)(1). Of course, the Commission is a state agency which does not receive jurisdictional authority from federal statutory law, but the Commission is empowered to resolve and adjudicate interconnection disputes between telecommunications companies by virtue of state authorization. § 49-21-01.7(8), NDCC. The Commission's process for arbitrating interconnection disputes is codified in Chapter 69-02-10 of

the North Dakota Administrative Code. Section 69-02-10-33, NDAC specifies that the arbitration process “must be governed” by, among other law, the North Dakota Administrative Agencies Practices Act, Ch. 28-32, NDCC (the “Administrative Act”). § 69-02-10-33, NDAC.

The Commission’s legal authority in the interconnection dispute resolution process is thus a mixture of federal statutory law, state statutory law, and regulations adopted by the Commission. For adjudicatory disputes (as opposed to rule making) under the Administrative Act, the Commission has the discretion to decide when its orders shall be effective. That agency discretionary authority was made explicit in 2001, with the adoption of § 28-32-41, NDCC. Section 28-32-41, NDCC sets a default date for the effective date of administrative agency orders, but recognizes the agency may select a different date. § 28-32-41, NDCC.

There is no limitation on the Commission or other agencies with regard to the duration of deferring an effective date of an order. When the duration of specific administrative action is not specified in statute or agency rule, the agency possesses discretion to operate within a range of reasonableness, and the agency’s reasonable exercise of discretion will not be interfered with by the judiciary. *Sample v. North Dakota Dept. of Transp.*, 2009 ND 198, ¶ 11, 775 N.W.2d 707 citing *State v. Hagerty*, 1998 ND 122, ¶ 26, 580 N.W.2d 139 ( calculating duration of auto dealer suspension within discretion of agency when no specific statutory or administrative law applies).

The Commission and Arbitrator possess ample legal authority to decline to implement the Agreement or delay implementation of the Agreement pending judicial review. The Commission should exercise its discretion to decline implementation of the Agreement as contrary to the public interest. In the alternative, the Commission and Arbitrator should delay implementation of the Agreement to a date that abides the judicial review process.

**Issue 2. Missouri Valley has no objection to a binding arbitration provision in the Agreement and the Agreement should contain a provision requiring binding arbitration for resolving disputes that arise during the term of the Agreement?**

Missouri Valley has no objection to the Agreement containing a provision that the parties resolve disputes by binding arbitration during the term of the Agreement. Both Mr. Gates and Mr. Kilgore testified that binding arbitration was an acceptable method of resolving disputes between the parties to the Agreement during the term of the Agreement. *Kilgore, 217, 18-22; Gates, 187, 7-25.*

Missouri Valley's acceptance of binding arbitration as an acceptable dispute resolution process is not a waiver of its legal position that Midcontinent is not entitled to bind Missouri Valley to the Agreement because Midcontinent has circumvented the § 251(f)(1) economic review process that the Act requires.

**Issue 3. What are the fair and reasonable material economic terms to incorporate into the Agreement with regard to: (A) reciprocal compensation; (B) transitional compensation for lost access revenue; (C) the per customer charge for transitioning each Midcontinent Communications ("Midcontinent") resale customer to Midcontinent's network?**

**A. Reciprocal Compensation**

**The Arbitrator and Commission should require Midcontinent to pay the prevailing market rate for reciprocal compensation in the Williston market until a jointly funded traffic study details the extent of the traffic imbalance. Reciprocal compensation should be paid for an imbalance greater than 55%-45%.**

The parties differ over the rate of reciprocal compensation for the transport and terminating one another's traffic. Missouri Valley proposes a three cent rate per minute while Midcontinent proposes a rate of zero cents per minute. Mr. Gates, the hired expert for Midcontinent, insists Missouri Valley's proposed rate of \$0.030249 per minute is exorbitant. *Gates, 78, 11-12.* He prefers that Midcontinent pay no reciprocal compensation under the "efficient, administratively simple" "bill and keep method." *Id. at ll. 16-21; Gates pre-filed testimony at 37, 1-3; 42, 18-19.* Missouri Valley concedes that paying nothing to use its network is "administratively simple." It's also confiscatory. "Bill and keep" means that neither party to the interconnection agreement would pay the other party for

the use of each other's network, but recover such cost from the end user customer. FCC *ICC/USF Transformation Order*, ¶ 775.

On the one hand, Mr. Gates looks to important economic indicators and anecdotal national media reports to support his completely irrelevant ideological belief, proffered as sworn testimony in this proceeding, that the Williston market<sup>6</sup> would benefit from the competition Midcontinent proposes to introduce. *See e.g. Gates pre-filed testimony at 21, 11-17; 4, 17-20; 8, 20-23; 19, 15-22.* When the evidence turns to the market rate for reciprocal compensation within the Williston market, however, Midcontinent and Mr. Gates prefer to look outside Williston, and calculate an appropriate rate of reciprocal compensation based on nationwide and state to state averages for reciprocal compensation. *Gates pre-filed testimony, 35-36.*

Missouri Valley's position is "administratively simple" in that it proposes Midcontinent pay the same rate of reciprocal compensation as everyone else in the Williston market, including Verizon Wireless and Sagebrush Cellular. *Gates, 106, 1-9.* The rate proposed by Missouri Valley is the rate in the market approved by the Commission. *PU-08-521, interconnection agreement between Missouri Valley and Verizon Wireless.* Missouri Valley's proposed rate is less than the rate negotiated between Midcontinent and another rural North Dakota telephone company. *Gates, 151, 19-24.*

If Midcontinent is required to pay the market rates, it proposes that the rate never go into effect by asking the Arbitrator and Commission to place a "collar" of 60% to 40%

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<sup>6</sup> The Williston "market" for purposes of understanding the testimony of Mr. Gates and Mr. Simmons, is the approximate seven square miles served by Midcontinent within the city limits of Williston.

traffic imbalance before the reciprocal compensation would be due from one company to another. *Docket No. 33, PU-11-697, Midcontinent list of open issues.* As described in the testimony of Mr. Chad Duval and Mr. Kilgore, the Arbitrator can reasonably assume there will be at least a 55%-45% imbalance of traffic based on, among other factors, the greater number of business customers Missouri Valley currently serves compared to Midcontinent. *Exhibit 13, Duval pre-filed testimony at 6, 5-11.* Without a traffic study and making simple assumptions about the number of business and residential access lines, Mr. Duval estimates Midcontinent would owe Missouri Valley reciprocal compensation of \$3,709 per month for the estimated imbalance of traffic at the existing market rate of \$0.030249 cents per minute of use. *Id.* 7, 3-10.

In the absence of a traffic study, Missouri Valley should be paid by Midcontinent for the disproportionate use of Missouri Valley's facilities that is outside the proposed 55%-45% collar. The Commission has previously approved the 55%-45% traffic collar. *PU-08-521; Kilgore pre-filed testimony at 4, 21-23.* As noted, the Commission has also approved the \$0.030249 cent per minute reciprocal compensation rate as well. A requesting CLEC may choose to adopt all of the terms and conditions of an existing state commission-approved interconnection agreement that the ILEC has with another CLEC. Act § 252(i); *Budget Prepay, Inc. v. AT&T Corp.*, 605 F.3d 273, 275-76 (5th Cir. 2010). If Midcontinent declines to adopt previously approved rates, it bears the burden of proof to persuade the Commission such rates are unreasonable. Midcontinent has not considered or proposed a transitional, "glide path" reciprocal compensation rate pending a traffic study. *Gates live testimony at 168, 3-16.* The Commission should adopt the established market rate previously approved by the Commission on two separate agreements.

**B. Transitional Financial Assistance**

Midcontinent proposes to provide “transitional financial assistance” to Missouri Valley, as an aspect of the issue raised by Midcontinent under the heading “Transition from current resale arrangements.” Under Midcontinent’s proposal, the assistance would be an amount calculated *as 75% of access revenues attributable to resale customers to be switched from resale to facilities based service. See Docket No. 33, PU-11-697, Midcontinent list of open issues.*

As everyone agrees, Midcontinent is not obliged to pay Missouri Valley “transitional financial assistance” as an aspect of transition from wholesale/resale arrangements to facilities based interconnection between a CLEC and a ILEC. Midcontinent’s expert Mr. Gates, who has given testimony in over two hundred cases, says he has never seen such an offer. *Gates, 145-46.* The arbitrator might reasonably wonder why Midcontinent is offering to pay transitional financial assistance. Mr. Gates answered the question. Midcontinent regarded it as a settlement offer, though not designated as such. *Gates at 145, 13-17.* According to Mr. Gates’ testimony, Midcontinent’s offer for “financial assistance” is a one time offer between \$60,000-\$80,000. *Id 149, 25.*

As Mr. Kilgore testified, the amount of “transitional financial assistance” proposed by Midcontinent is a small fraction of Missouri Valley’s total lost revenues from a potential facilities based interconnection with Midcontinent. *See Kilgore live testimony, 247, ll 1-8 (Missouri Valley sustains annual loss of \$ 817,000 per year; more than \$ 2.51 million over duration of Agreement).*

Missouri Valley accepts Mr. Gates’ estimate and recommends the arbitrator award \$70,000, the amount in the middle of Mr. Gates’ range estimate. Selecting a fixed amount would eliminate the need for the administrative burden of calculating an amount of “transitional

financial assistance” based on access revenues for Midcontinent’s resale customers who are transitioned to Midcontinent’s network.

There is no quid pro quo in Missouri Valley’s acceptance of Midcontinent’s gratuitous offer of “transitional financial assistance.” Midcontinent asked for nothing in exchange for this assistance. It was not proposed as compensation for any service that Missouri Valley would render to Midcontinent in the transition process. It was not proposed as compensation for any financial injury suffered by Missouri Valley for which Midcontinent might arguably have some legal liability. Midcontinent did not propose “transitional financial assistance” as compensation for Missouri Valley’s surrender of any rights to oppose Midcontinent’s petition for arbitration under § 252 of its request for interconnection under § 251(a). Finally, it was not proposed as compensation for Missouri Valley’s surrender of its rural exemption (Act § 251(f)(1) from section 251 (c) facilities based interconnection. Missouri Valley has not waived its rural exemption, nor has the Commission terminated Missouri Valley’s rural exemption.

If a simple gift horse, Missouri Valley accepts the offer of free money. The offer is ostensibly not a Trojan horse where Midcontinent has secretly concealed contents. If Midcontinent expects something in exchange for its offer of “transitional financial assistance,” Missouri Valley cannot accept the offer without some explanation from Midcontinent what it wants.

**C. Per Customer Charge for Transitioning each Midcontinent Resale Customer to Facilities Based.**

Missouri Valley has calculated its labor cost for all Missouri Valley employees who must participate in the process of transitioning Midcontinent’s resale customers to facilities based customer. Missouri Valley’s estimated cost is based on its actual labor rates that it pays its

existing employees. Missouri Valley's estimated cost is \$38.50 per customer. *Kilgore pre filed testimony* 5, 7; *Kilgore live testimony*, 245, 16-17; 319, 7-17. On Missouri Valley's side of the transition process, each customer will involve work by a customer service representative on the front end and back end of the process, plant records, and central office. *Id.*, 242-43.

There is no dispute between the parties that transitioning Midcontinent customers adds incrementally to the workload of Missouri Valley staff. Missouri Valley cannot simply hire more staff in the present economic environment. *Id.*, 244, 7-18. Missouri Valley's legacy Nortel switch makes retaining another central office technician especially challenging. *Kilgore*, 207-08.

Midcontinent objects to the \$38.50 rate on the grounds it is higher than other rural telecommunications companies in North Dakota and higher than rates currently charged by Missouri Valley under the existing resale agreement between Missouri Valley and Midcontinent. But Missouri Valley has never ported wireline to wireline numbers, and that process is vastly different than the current process of converting one of Missouri Valley's customers to a Midcontinent resale customer. Mr. Gates made this apple to orange comparison when he noted that Missouri Valley did "up to" 15 Midcontinent customers in a day. *Gates live testimony*, 136, 12-15. *See also, exhibit 20, PU-11-697*. However, the facilities based transition is more labor intensive. *Kilgore live testimony*, 240, 13-18. Conversion of a Missouri Valley customer to a Midcontinent resale customer is a billing entry; it does not involve the coordinated "lift and lay" process described by Mr. Kilgore, nor does it involve central office personnel.

The Arbitrator and the Commission should understand Missouri Valley accepts the \$38.50 on a reciprocal basis, as provided in the Agreement. If the Agreement is implemented, customers of Midcontinent will choose to transition back to Missouri Valley. Missouri Valley accepts the same rate that it asks Midcontinent to pay.

This arbitration proceeding is governed by Chapter 28-32, NDCC. Section 69-02-10-33, NDAC. The customary common law rule that the moving party has the burden of proof is generally observed in administrative hearings. *Kobilansky v. Liffrig*, 358 N.W.2d 781, 790 (N.D. 1984). Midcontinent has not met its evidentiary burden of establishing that \$38.50 charge per customer is unreasonable. Midcontinent has not discovered Missouri Valley's labor rates, calculated the amount of time necessary for each Missouri Valley employee to execute the necessary tasks to transition the customer, or the amount of time necessary for Missouri Valley's employees to interact with the customer and Midcontinent employees in a coordinated cut over. The per customer rate of \$38.50 is a product of composite labor rates and the amount of time for each Missouri Valley's employees that must participate in the process. Missouri Valley presents the better evidence on this issue because Missouri Valley is in the best position to evaluate the cost of its labor expense for executing the transition. Therefore, Missouri Valley should be compensated \$38.50 for each customer conversion during the conversion process.

**Issue 4. Is the financial impact to Missouri Valley that arises from transitioning Midcontinent's customers from a wholesale resale basis to facilities based interconnection a relevant inquiry for the Arbitrator to consider and, if so, how should a financial impact affect the specific open issues under the Agreement?**

**Issue 5. Should the Arbitrator and Commission consider Missouri Valley's decline in revenues arising from Missouri Valley's involuntary participation in the Agreement?**

Question 4 and 5 are related and Missouri Valley provides the same response to both questions. Missouri Valley understands that the Commission has presently concluded Midcontinent may assert a right to facilities based interconnection from Missouri Valley under § 251(a) the Act. *March 21, 2012 Order denying motion to dismiss at 6, Docket No. 35, PU-11-697*. For the reasons described in answer to issue 1, Missouri Valley respectfully disagrees with the Commission's conclusion and urges its reconsideration, and, upon reconsideration, that the Agreement not be implemented.

Under the Commission's March 21, 2012 decision, *Docket no. 35, PU-11-697*, the financial impact to Missouri Valley that arises from transitioning Midcontinent's customers from a wholesale resale basis to facilities based interconnection is not a relevant inquiry for the Arbitrator to consider regarding specific open issues under the Agreement.

**Issue 6. Does the Commission have an obligation to make Missouri Valley whole with regard to the decline in its revenues arising from its involuntary participation in the Agreement?**

**No, strictly speaking, the Commission has no obligation to make Missouri Valley whole. The Commission's role is to focus on the public interest and decide whether the consequences of a particular interconnection agreement are in the public interest. For the reasons described below, the Commission should reject the Agreement as not in the public interest. In the alternative, the Commission should defer a decision on the Agreement pending a review of Midcontinent's Certificate of Public Convenience and Necessity to evaluate the appropriate area within the Williston exchange to which Midcontinent must serve. The Commission should open a proceeding on the scope of Midcontinent's Certificate of Convenience and Necessity immediately.**

As the Commission is aware from Missouri Valley's motion to dismiss, *docket no. 2, PU-11-697*, Missouri Valley believes the petition of Midcontinent which seeks facilities based interconnection for the purpose of exchanging local traffic and providing local access should have been dismissed as a transparent attempt to circumvent the rural exemption in § 251(f) of the Act. The Commission has so far rejected Missouri Valley's argument.

Missouri Valley and Midcontinent conducted the scheduled arbitration hearing on April 4-5, 2012, submitted these post-arbitration briefs (due April 20, 2012), and on May 1, the Commission is likely to have a recommendation from the Arbitrator. The Commission's duty to review includes more than the duty to review the specific proposed terms of the Agreement, however.

Midcontinent has been granted a certificate of public convenience and necessity (the "Certificate") to offer telecommunications services in North Dakota. *See Order, Docket No. 25, PU-04-546*. The Commission may condition implementation of the Agreement on any change in

the scope of Midcontinent's Certificate and Midcontinent's willingness to offer services where the Commission deems it in the public interest.

The federal Act provides guidance. Sections 253(b) and § 253(f) address the issue of selective entry into a rural market by a CLEC:

(b) State regulatory authority.--

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

253(f)

(f) Rural markets.--

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) of this title for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) of this title that effectively prevents a competitor from meeting the requirements of section 214(e)(1) of this title; and

(2) to a provider of commercial mobile services.

Act § 253(b) provides the Commission discretion to "impose" such "requirements" that are "necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." Act § 253(b). North Dakota law directs the Commission to act upon Midcontinent's Certificate "under chapter 49-03.1 consistent with [Act] section 253 of the federal act, . . ." § 49-21-01.7(7), NDCC.

Neither of the exceptions in § 253(f) apply to Midcontinent. The first exception of § 253(f) relates to a rural carrier that receives an exemption from the duty of offering resale access lines to the CLEC under § 251(c)(4). In the present case, it is undisputed that Missouri Valley and Midcontinent operate under an existing resale agreement that permits Midcontinent to

compete directly against Missouri Valley by reselling Missouri Valley's own dial tone service. The second exception does not apply because it is also undisputed the Midcontinent is not a provider of "commercial radio services."

The Commission should recognize that a diversion of revenue from Missouri Valley will necessarily affect Missouri Valley's ability, as the carrier of last resort, to "ensure the continued quality of telecommunications services" in the 387 square mile area of the Williston exchange that Midcontinent is unwilling to serve. Act § 253(b). The Commission needs to ensure certainty to the important question that Midcontinent is unsure about:

Q. [Hogue]. What if they [Missouri Valley] said, Public Service Commission, we don't want this ETC status, we cannot afford to go on and serve this entire 393-square-mile area, we're getting out. Would Midcontinent step in at that point and say we'll serve that area?

A. [Simmons] I don't believe so.

Q. Who would serve them?

A. I'm not sure I could answer that question. I don't know.  
*Simmons, 53, 1-7.*

The Commission can have no confidence that Midcontinent would serve the entire Williston exchange because that is simply not the Midcontinent business model. Mr. W. Tom Simmons, Midcontinent's corporate representative, candidly explained the Midcontinent position in his cross-examination:

Q. [Hogue] Is it your testimony that if you got a request from somebody up here in what I'm pointing to as number 1, which is within the Williston city limits, if you got a request from somebody up there, did I understand your previous testimony that you would serve them?

A. [Simmons] If we had one request from one person in that particular area, I'm not sure that we would work to provide service to that one customer.

Q. Okay.

A. Unless, of course, that one customer would then make a complaint to the city council, who is the grantor of our franchise, and we would have to deal with it at that level.  
*Simmons live testimony at 37, 15-25; 38, 1-3.*

Under §§ 253(b) and (f) it is in the public interest for Commission require Midcontinent to assume greater service obligations than what Midcontinent proposes to serve. Midcontinent has been granted its Certificate and does not presently commit to serve the entire city limits of Williston, let alone the entire Williston exchange boundary. *Id.*

Midcontinent's present petition directly implicates the Commission's § 254 state federal shared responsibilities. Under § 254(b)(5), the FCC and the states share a responsibility to provide "specific, predictable and sufficient" tools to "preserve and advance universal service." Act § 254(b)(5). The Commission must consider the combination of the FCC USF/ICC reform order and Midcontinent's request as part of "perfect storm" that jeopardizes universal service throughout the 393 square mile Williston exchange<sup>7</sup>.

There is no dispute between the expert testimony from either side that:

1. As a result of the FCC's recent USF/ICC reform, Missouri Valley's intercarrier access revenues will go down even though Missouri Valley will be eligible for some access recovery revenue. *Gates pre-filed testimony at 55, 7-17.*
2. Missouri Valley, unlike many other rural North Dakota telecommunications companies, does not receive high cost loop support. *Duval live testimony at 332, 6-19 ( 19 of 22 rural telecommunications companies in North Dakota receive high cost loop support; Missouri Valley is one of the three ND companies that does not receive high cost loop support due to the "parent trap" rule).*
3. If interconnection is ordered, Missouri Valley will lose the resale revenue it currently receives from Midcontinent under the parties existing agreement in an amount not less than \$817,000 per year.

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<sup>7</sup> Some densely populated states, at the behest of RBOCs, have already succumbed to the storm, authorizing carriers of last resort to discontinue land line service. *See attached Washington Post article.*

4. Midcontinent can and does offer the industry favored “triple play” by bundling cable tv, high speed internet, and voice (reselling Missouri Valley’s lines”); Missouri Valley cannot offer the “triple play” because it does not offer video services.
5. Many of North Dakota’s rural areas continue to rely heavily on landline service as the exclusive or preferred voice application.

Under these economic realities, the Commission’s responsibility to advance and protect the public interest requires that it either reject the Agreement as not in the public interest or compel Midcontinent to accept a responsibility to provide facilities based service beyond its selective, profitability zone within the city limits of Williston. Act § 253(f) contemplates the Commission compel facilities based territorial coverage that is commensurate with the public interest.

Requiring Midcontinent to provide expanded territorial service is not a novel Commission issue. In the last proceeding, PU-08-176, former Commissioner Susan E. Wefald would have voted to terminate Missouri Valley’s rural exemption but suspend the termination until,

Midcontinent met the requirements in 47 USC Section 214 E 1 to be a designated eligible communication carrier. This would require Midcontinent to serve the entire service area (not just the City of Williston) as an eligible communication carrier, just as Missouri Valley does now.

Docket No. 18, Findings of Fact, Conclusion of Law, Order, PU-08-176 at 11 (dissent).

Missouri Valley does not deem it in the public interest for Missouri Valley and Midcontinent to build out duplicate physical facilities in the entire 393 square mile service area of the Williston exchange as former Commissioner Wefald suggested in 2009. However, given the significant, undisputed future loss of Missouri Valley’s operating revenues, the Commission should immediately open a proceeding related to Midcontinent’s Certificate to ascertain what service area that is in the public interest for all of consumers in the Williston exchange.

## **THE DRAFT INTERCONNECTION AGREEMENT**

In addition to briefing on issues requested by the Arbitrator, the parties were directed to submit a proposed interconnection agreement. In the event the Commission concludes the Agreement should be implemented, Missouri Valley attaches its Agreement. An electronic version of the Missouri Valley's proposal is sent in Microsoft Word to the Arbitrator and the Commission. In separate attachment to this brief, Missouri Valley explains the changes to the proposed agreement.

**Pringle & Herigstad P.C.**

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*Attorneys for Respondent***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of April, 2012, I did mail a true and correct copy of the above and foregoing *Missouri Valley Communications' Post Arbitration Brief and Interconnection Agreement* to the following:

Patrick W. Durick  
Zachary E. Pelham  
Pearce & Durick  
P.O. Box 400  
Bismarck, ND 58502-0400

J.G. Harrington  
Dow Lohnes, PLLC  
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/s/ Kristi L. Bailie  
Kristi Bailie

(MVC-Midco interconnection agreement MVC Complete Proposal to Arbitrator.doc)

# INTERCONNECTION AGREEMENT

Between

MISSOURI VALLEY COMMUNICATIONS, INC.

AND

MIDCONTINENT COMMUNICATIONS

IN THE STATE OF

NORTH DAKOTA

\_\_\_\_\_, 2012

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**ATTACHMENT 1 – INTERCONNECTION**  
**ATTACHMENT 2 – PRE-ORDERING AND ORDERING**  
**ATTACHMENT 3 – LOCAL NUMBER PORTABILITY**  
**ATTACHMENT 4 – ANCILLARY SERVICES**  
**ATTACHMENT 5 – PRICING**

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## Section 1.0 - GENERAL TERMS

- 1.1 This Agreement must be filed with the North Dakota Public Service Commission (Commission). If the Commission does not act to approve or reject the Agreement within 30 days after submission, the Agreement shall be deemed approved, subject to the parties' respective rights to bring an action in an appropriate Federal district court to determine whether the agreement meets the requirements of sections 251 and 252 of the Act. The Agreement is between Missouri Valley Communications, Inc. (MVC), a North Dakota corporation and Midcontinent Communications, a South Dakota General Partnership (Midcontinent).
- 1.2 This Agreement sets forth the terms, conditions and pricing for interconnection between MVC and Midcontinent for the purpose of exchanging local telecommunications traffic within the Williston, ND exchange in which both Parties are providing local exchange service at that time, and for which MVC is the incumbent local exchange carrier with the State of North Dakota for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.

## Section 2.0 - TERMS AND CONDITIONS

### 2.1 General Provisions

2.1.1 Each Party is solely responsible for the services it provides to its end users and to other telecommunications carriers. This provision does not limit the liability of either Party for its failure to perform under this agreement.

2.1.2 The Parties shall work cooperatively to minimize third party fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement. Blocking of these services may be necessary to minimize fraud.

### 2.2 Term of Agreement

2.2.1 This Agreement shall become effective upon approval under section 1.1, subject to the parties' respective rights to bring an action in an appropriate Federal district court to determine whether the agreement meets the requirements of sections 251 and 252 of the Act. In the case of such action, this agreement shall become effective become or shall not become effective as finally determined in such action. If an action is commenced, the effective date of the arbitrated interconnection agreement will be suspended until the judicial review process is final. If neither party commences such an action within 60 days of approval of the Agreement under Section 1.1, the opportunity for judicial review will be deemed waived. This Agreement shall be binding upon the Parties for a term of three (3) years unless terminated earlier pursuant to Section 2.2.3. It shall remain

effective following the initial term on a month-to-month basis until the Parties enter into a successor agreement or the Agreement is terminated pursuant to Section 2.2.3.

2.2.2 Any Party may request negotiation for a successor Agreement by written notice to the other Party no earlier than one hundred sixty (160) Days prior to the expiration of the initial term and at any time thereafter.

2.2.3 This Agreement shall terminate:

2.2.3.1 Following the expiration of the initial term upon one hundred sixty (160) days prior notice from one Party to the other, provided that the Agreement shall continue in effect until a successor agreement becomes effective.

2.2.3.2 Pursuant to the terms of Section 2.4.2 hereof.

2.2.3.3 Except as otherwise provided in this Agreement, upon fifteen (15) days written notice from one Party, if that Party previously notified the other Party in writing that the other Party was in breach of a material provision of this Agreements, and the other Party failed to correct the breach within thirty (30) days from receipt of written notice and to notify the first Party in writing that the breach has been corrected. If a Party fails to exercise its right to terminate the agreement pursuant to this Section 2.2.3.3 within sixty (60) days of a notice of breach, it shall be required to provide a new notice of breach in accordance with this section 2.2.3.3 before it can terminate the Agreement.

2.3 Proof of Authorization (POA)

2.3.1 Each Party shall be responsible of obtaining and maintaining Proof of Authorization (POA) as required by applicable federal and state law, as amended from time to time.

2.4 Performance

2.4.1 Amounts payable under this Agreement are due and payable within twenty (20) calendar days after bill date. If the payment due date is not a business day, the payment shall be due the next business day.

2.4.2 Except for amounts disputed pursuant to Section 2.4.5 herein, the following shall apply:

2.4.2.1 If payment is not received thirty (30) days from the bill date, the billing Party may provide written notice to the billed Party that additional applications for service will be refused, and that any pending orders for service will not be completed if payment is not received by the fifteenth (15th) day following the date of the notice. If the billing Party does not refuse additional applications for service on the date specified in the notice, and the billed Party's noncompliance

continues, nothing contained herein shall preclude the billing Party's right to refuse additional applications for service without further notice.

2.4.2.2 If the billed Party fails to make any payment following the notice under Section 2.4.2.1, the billing Party may, on thirty (30) days written notice to the billed Party's designated representative, discontinue the provision of existing services to the billed Party at any time thereafter. Such notice will be sent by certified mail, return receipt requested. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If the billing Party does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the billing Party's right to discontinue the provision of the services to the billed Party without further notice.

2.4.2.3 If payment is not received within sixty (60) days of the notice under Section 2.4.2.1, the billing Party may terminate this Agreement.

2.4.3 After disconnect procedures have begun, the billing Party shall not accept service orders from the billed Party until all unpaid charges are paid in full in immediately available funds. The billing Party shall have the right to require a deposit equal to two month's charges (based on the highest previous month of service from the billed Party) prior to resuming service to the billing Party after disconnect for nonpayment has occurred.

2.4.4 In the event the billing Party properly terminates the provisioning of any services to the billed Party for any reason, and subject to the requirements of the Commission and the FCC, the billed Party shall be responsible for providing any and all necessary notice to its end users of the termination. The billing Party shall not be responsible for providing such notice to the billed Party's end users unless required by the Commission or the FCC.

2.4.5 Disputes: The billed Party shall, in writing, advise the billing Party of any disputes with respect to billing within forty-five (45) calendar days of the receipt of the invoice and include the specific amount (the "Disputed Amount"), details and reasons for disputing each item. If the billed Party provides written notice of such dispute within thirty (30) days of receipt of an invoice, it shall not be required to pay the Disputed Amount and the provisions of Sections 2.4.2 shall not apply to the Disputed Amount during the pendency of this dispute. The Parties agree to expedite the investigation of any Disputed Amount in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be resolved in favor of the billing Party, the billed Party shall thereafter pay to the billing Party any unpaid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute. Should the dispute be resolved in favor of the billed Party, the billing Party shall pay to the billed Party any paid Disputed Amount plus interest at the rate of 1.5 percent per month or the maximum amount allowed by law, whichever is less, upon final resolution of such dispute, and shall remove any unpaid Disputed Amount resolved in favor of the billed Party from the billed

Party's invoices. If a Disputed Amount remains unpaid thirty (30) days after final resolution of such dispute, the billing Party may disconnect service to the billed Party upon providing ten (10) days' written notice.

## 2.5 Taxes

2.5.1 Any federal, state or local taxes including but not limited to sales, use, excise, franchise, gross receipts, transaction or similar taxes, fees or surcharges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under Applicable Law, even if the obligation to collect and remit such taxes is placed upon the other Party. However, where the selling Party is permitted by law to collect such taxes, fees or surcharges, from the purchasing Party, such taxes, fees or surcharges shall be borne by the Party purchasing the services. Each Party is responsible for any tax on its corporate existence, status or income. Whenever required by law, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to qualify for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied. If either Party (the Contesting Party) contests the application of any tax collected by the other Party (the Collecting Party), the Collecting Party shall reasonably cooperate in good faith with the Contesting Party's challenge, provided that the Contesting Party pays any costs incurred by the Collecting Party. The Contesting Party is entitled to the benefit of any refund or recovery resulting from the contest, provided that the Contesting Party is liable for and has paid the tax contested.

## 2.6 Insurance

2.6.1 Each Party shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain all insurance required by law and Commercial General Liability insurance covering claims for bodily injury, death, personal injury or property damage and contractual liability with respect to the liability assumed by that Party hereunder. The limits of insurance shall not be less than \$1,000,000 each occurrence and \$2,000,000 general aggregate limit. Each Party will provide a certificate of insurance evidencing coverage within 90 days of execution of this Agreement and every year thereafter that this Agreement is in effect.

## 2.7 Force Majeure

2.7.1 Neither party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather

conditions (collectively, a Force Majeure Event). Inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers shall be considered Force Majeure Events to the extent any delay or failure in performance caused by these circumstances is beyond the Party's control and without the Party's fault or negligence. If affected by a Force Majeure Event, a Party shall give prompt notice to the other Party, and shall be excused from performance of its obligations hereunder on a Day to Day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the affected Party agrees to provide service to the other Party at a level equivalent to the level the affected Party provides itself.

## 2.8 Limitation of Liability

2.8.1 Each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance under this Agreement, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind, shall be limited to the total amount that is or would have been charged to the other Party by such breaching Party for the service(s) or function(s) not performed or improperly performed. Each Party's liability to the other Party for any other losses shall be limited to the total amounts charged to the other Party under this Agreement during the contract year in which the cause accrues or arises.

2.8.2 Neither Party shall be liable to the other for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

2.8.3 Nothing contained in this Section shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused solely by such Party's negligent act or omission or that of a Party's respective agents, subcontractors, or employees.

2.8.4 Nothing contained in this Section shall limit either Party's indemnification obligations pursuant to Section 2.9 of this Agreement, nor shall this Section limit a Party's liability for failing to make any payment due under this Agreement.

## 2.9 Indemnity

2.9.1 Each Party (the Indemnifying Party) agrees to release, indemnify, defend and hold harmless the other Party (the Indemnified Party) and each of its officers, directors, employees and agents (each an Indemnitee) from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to,

reasonable costs and expenses (including attorneys' fees), whether suffered, made, instituted, or asserted by any person or entity, for invasion of privacy, bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, resulting from the Indemnifying Party's breach of or failure to perform under this Agreement, regardless of the form of action, whether in contract, warranty, strict liability, or tort including (without limitation) negligence of any kind.

2.9.2 The Indemnified Party shall promptly notify the Indemnifying Party of any action taken against the Indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

2.9.3 If the Indemnifying Party wishes to defend against such action, it shall give written notice to the Indemnified Party of acceptance of the defense of such action. In such event, the Indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event that the Indemnifying Party does not accept the defense of the action, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate with the other Party in the defense of any such action and the relevant records of each Party shall be available to the other Party with respect to any such defense.

2.9.4 In no event shall the Indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the Indemnified Party.

## 2.10 Warranties

EACH PARTY HEREBY STATES AND THE OTHER PARTY HEREBY ACKNOWLEDGES THERE DOES NOT EXIST ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THAT ALL PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS," WITH ALL FAULTS.

## 2.11 Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other party, except that either Party may assign or transfer this agreement in connection with the acquisition of all or substantially all of the Party by another entity with sixty (60) days written notice to the other Party. Any attempted assignment or transfer that is not permitted is void ab initio.

## 2.12 Disclaimer of Agency

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute designation of either Party as a legal representative or agent of the other Party, nor shall either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted in writing by other Party. Except as otherwise expressly provided in this Agreement, neither Party undertakes to perform any obligation of the other Party, whether regulatory or contractual.

## 2.13 Severability

In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable or invalid in any respect under law or regulation, the Parties will negotiate in good faith for replacement language as set forth herein. If any part of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will affect only the portion of this Agreement which is invalid or unenforceable. In all other respects, this Agreement will stand as if such invalid or unenforceable provision had not been a part hereof, and the remainder of this Agreement shall remain in full force and effect.

## 2.14 Nondisclosure

2.14.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with business or marketing plans and user customer specific, facility specific, or usage specific information, other than end user customer information communicated for the purpose of providing Directory Assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the other Party at the time of delivery, or by written within ten (10) calendar Days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Confidential Information"), shall remain the property of disclosing Party.

2.14.2 Upon termination of this agreement or any time during this Agreement upon request by the disclosing Party, the other Party shall return all tangible copies of Confidential Information, whether written graphic or otherwise.

2.14.3 The receiving Party shall keep the disclosing Party's Confidential Information confidential. In no case shall retail marketing, sales personnel, or strategic planning have

access to such Confidential Information. Each Party shall use the other Party's Confidential Information only in connection with this Agreement.

2.14.4 Each Party agrees that the other Party could be irreparably injured by a breach of the confidentiality obligations of this Agreement and that a disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance in the event of any breach of the confidentiality provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of the confidentiality provisions of this Agreement, but shall be in addition to all other remedies available at law or in equity.

2.15 Survival

Any liabilities or obligations by a Party for acts or omissions prior to the termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

2.16 Controlling Law

This Agreement is made in accordance with applicable federal law and the state law of North Dakota. It shall be interpreted solely in accordance with applicable federal law and the state law of North Dakota.

2.17 Notices

Any notices required by or concerning this Agreement shall be in writing sent by certified mail, return receipt requested to MVC, MITS, and Midcontinent at the addresses shown below:

Missouri Valley Communications, Inc.  
CEO  
P.O. Box 600  
Hwy 13 South  
Scobey, MT 59263  
Phone: 406-783-2200  
Fax: 406-783-5283

With copy to:

David Hogue  
P.O. Box 1000  
Pringle & Herigstad, PC  
Minot, North Dakota 58702-1000

And to Midcontinent at the address shown below:

Midcontinent Communications  
Mary Lohnes, Regulatory Affairs Manager  
3901 N. Louise Avenue  
Sioux Falls, SD 57107  
Phone (605) 357-5459  
Fax (605) 339-4419

With copy to:

J.G. Harrington  
Dow Lohnes, PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
Phone (202) 776-2818  
Fax (202) 776-2222

Each Party shall inform the other of any change in the above contact person and/or address using the method of notice called for in this Section.

#### 2.18 Responsibility of Each Party

Each Party is an independent contractor with respect to the other party, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations, and (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal, and (ii) the acts of its own Affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

#### 2.19 No Third Party Beneficiaries

The provisions of this Agreement are for the benefit of the Parties and not for any other person. This Agreement will not provide any person not a Party to this Agreement with

any remedy, claim, liability, reimbursement, claim of action, or other right in excess of those existing by reference in this Agreement.

2.20 Publicity

Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party. Neither Party may use the other Party's logo or any other symbol or language for which the other Party has trademark or copyright protection.

2.21 Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

2.22 Compliance

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, each Party agrees to keep and maintain in full force and in effect all permits, licenses, certificates, and other authorizations needed to perform obligations hereunder.

2.23 Compliance with the Communications Assistance Law Enforcement Act of 1994

Each Party represents and warrants that any equipment, facilities or services provided under this Agreement comply with the CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance.

2.24 Cooperation

The Parties agree that this Agreement involves the provision of MVC services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, and provisioning.

2.25 Amendments

Either Party may request an amendment to this Agreement at any time by providing to the other Party in writing the desired amendment and proposed language changes. This Agreement can only be amended in writing, executed by duly authorized representatives of the Parties.

## 2.26 Entire Agreement

This Agreement constitutes the entire agreement between MVC and Midcontinent and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

## 2.27 Dispute Resolution

2.27.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith. Dispute resolution under the procedures provided in this Section 2.27 shall be the preferred, but not the exclusive remedy for all disputes between MVC and Midcontinent arising out of this Agreement or its breach. Each Party reserves its rights to resort to the Commission or to a court, agency, or regulatory authority of competent jurisdiction. Nothing in this Section 2.27 shall limit the right of either Party, upon meeting the requisite showing, to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Section 2.27. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

2.27.2 At the written request of either Party (the Resolution Request), and prior to any other formal dispute resolution proceedings, each Party shall within seven (7) calendar Days after such Resolution Request designate a vice-presidential level employee or a representative with authority to make commitments to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted on an informal basis. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.

2.27.3 If the vice-presidential level representatives or the designated representative with authority to make commitments have not reached a resolution of the Dispute within fifteen (15) calendar Days after the Resolution Request (or such longer period as agreed to in writing by the Parties), or if either Party fails to designate such vice-presidential level representative or their representative with authority to make commitments within seven (7) calendar Days after the date of the Resolution Request, then either Party may request that the Dispute be settled by arbitration. Notwithstanding the foregoing, a Party may request that the Dispute be settled by arbitration two (2) calendar Days after the Resolution Request pursuant to the terms of Section 2.27.3.1. In any case, the arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry unless the Dispute involves amounts exceeding five million (\$5,000,000) in which case the proceeding shall be conducted by a panel of three (3)

arbitrators, knowledgeable about the Telecommunications industry. The arbitration proceedings shall be conducted under the then-current rules for commercial disputes of the American Arbitration Association (AAA) or J.A.M.S./Endispute, at the election of the Party that initiates dispute resolution under this Section 2.27. Such rules and procedures shall apply notwithstanding any part of such rules that may limit their availability for resolution of a Dispute.

The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. The arbitrator shall not have authority to award punitive damages. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in a mutually agreeable location. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).

2.27.3.1 All expedited procedures prescribed by the AAA or J.A.M.S./Endispute rules, as the case may be, shall apply to Disputes affecting the ability of a Party to provide uninterrupted, high quality services to its end user customers, or as otherwise called for in this Agreement. A Party may seek expedited resolution of a Dispute if the vice-presidential level representative, or other representative with authority to make commitments, have not reached a resolution of the Dispute within two (2) calendar Days after the Resolution Request. In the event the Parties do not agree that a service affecting Dispute exists, the Dispute resolution shall commence under the expedited process set forth in this Section 2.27.3.1, however, the first matter to be addressed by the Arbitrator shall be the applicability of such process to such Dispute.

2.27.3.2 There shall be no discovery except for the exchange of documents deemed necessary by the Arbitrator to an understanding and determination of the dispute. MVC and Midcontinent shall attempt, in good faith, to agree on a plan for such document discovery. Should they fail to agree, either MVC or Midcontinent may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between MVC and Midcontinent, and such resolution with respect to the need, scope, manner, and timing of discovery shall be final and binding.

2.27.4 The Arbitrator's decision and award shall be in writing and shall state concisely the reasons for the award, including the Arbitrator's findings of fact and conclusions of law.

2.27.5 An interlocutory decision and award of the Arbitrator granting or denying an application for preliminary injunctive relief may be challenged in a forum of competent jurisdiction immediately, but no later than ten (10) business days after the appellant's receipt of the decision challenged. During the pendency of any such challenge, any

injunction ordered by the Arbitrator shall remain in effect, but the enjoined Party may make an application to the Arbitrator for appropriate security for the payment of such costs and damages as may be incurred or suffered by it if it is found to have been wrongfully enjoined, if such security has not previously been ordered. If the authority of competent jurisdiction determines that it will review, a decision granting or denying an application for preliminary injunctive relief, such review shall be conducted on an expedited basis.

2.27.6 To the extent that any information or materials disclosed in the course of an arbitration proceeding contain proprietary, trade secret or Confidential Information of either Party, it shall be safeguarded in accordance with Section 2.14 of this Agreement, or if the Parties mutually agree, such other appropriate agreement for the protection of proprietary, trade secret or Confidential Information that the Parties negotiate. However, nothing in such negotiated agreement shall be construed to prevent either Party from disclosing the other Party's information to the Arbitrator in connection with or in anticipation of an arbitration proceeding, provided, however, that the Party seeking to disclose the information shall first provide prior written notice to the disclosing Party so that that Party, with the cooperation of the other Party, may seek a protective order from the arbitrator. Except as the Parties otherwise agree, or as the Arbitrator for good cause orders, the arbitration proceedings, including hearings, briefs, orders, pleadings and discovery shall not be deemed confidential and may be disclosed at the discretion of either Party, unless it is subject to being safeguarded as proprietary, trade secret or Confidential Information, in which event the procedures for disclosure of such information shall apply.

2.27.7 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

2.27.8 No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

2.27.9 Nothing in this Section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law.

2.27.10 In the event of a conflict between this Agreement and the rules prescribed by the AAA or J.A.M.S./Endispute, this Agreement shall be controlling.

2.27.11 This Section does not apply to any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents concerning the misappropriation of use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, trade name, trade dress or service mark of a Party.

#### Section 2.28 Effect on Resale Agreement

The Resale Agreement between the Parties dated November 29, 2004 remains in effect according to its terms.

### Section 3.0 - SERVICES PROVIDED UNDER THIS AGREEMENT

#### 3.1 Interconnection

Interconnection shall be governed by Attachment 1 to this Agreement.

#### 3.2 Pre-Ordering and Ordering

Pre-ordering and ordering shall be governed by the terms of Attachment 2 to this Agreement.

#### 3.3 Local Number Portability

Local number portability shall be governed by the terms of Attachment 3 to this Agreement.

#### 3.4 Ancillary Services

Ancillary services shall be governed by the terms of Attachment 4 to this Agreement.

#### 3.5 Pricing

Pricing shall be governed by the terms of Attachment 5 to this Agreement.

### Section 4.0 - DEFINITIONS

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms maybe defined elsewhere in this Agreement, as well as terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the Effective Date of this Agreement.

**“Agreement”** refers to this agreement.

**“Commission”** means the North Dakota Public Service Commission.

**“Confidential Information”** has the meaning set forth in Section 2.14 of this Agreement.

**“Parties”** means MVC or Midcontinent collectively.

**“Party”** means either MVC or Midcontinent as applicable.

**“Tariff”** as used throughout this Agreement refers to the MVC North Dakota tariff filed with the Commission.

**“Telecommunications Service(s)”** means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. As used in this definition, “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information sent and received.

**“Work Locations”** means any real estate that MVC or Midcontinent owns, leases or licenses or in which it holds easements or other rights to use, or does use, in connection with this Agreement.

Section 5.0 - SIGNATURE PAGE

By Signing below, and in consideration of the mutual promises set forth herein, and other good and valuable consideration, the Parties agree to abide by the terms and conditions set forth in this Agreement.

Midcontinent Communications  
Investor, LLC, Managing Partner  
Midcontinent Communications

Missouri Valley Communications, Inc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## GLOSSARY

### 1. General Rule

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this agreement are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

### 2. Definitions

#### 2.1 ACCESS SERVICE REQUEST (ASR).

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of interconnection.

#### 2.2 ACT.

The Communications Act of 1934 (47 U.S.C. §151 et. seq.), as from time to time amended (including, without limitation by the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996), and as further interpreted in the duly authorized and effective rules and regulations of the FCC or the Commission.

#### 2.3 AFFILIATE.

Shall have the meaning set forth in the Act.

#### 2.4 APPLICABLE LAW.

All effective laws, government regulations and orders, applicable to each Party's performance of its obligations under this Agreement.

#### 2.5 AUTOMATIC NUMBER IDENTIFICATION (ANI).

The signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.

#### 2.6 CALLING PARTY NUMBER (CPN).

A Signaling System 7 (SS7) parameter that identifies the calling party's telephone number.

2.7 CENTRAL OFFICE.

A local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.8 CENTRAL OFFICE SWITCH.

A switch used to provide Telecommunications Services including but not limited to an End Office Switch or a Tandem Switch. A Central Office Switch may also be employed as combination End Office/Tandem Office Switch.

2.9 COMMON CHANNEL SIGNALING (CCS).

A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.

2.10 COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC).

Any corporation or other person legally able to provide Local Exchange Service in competition with MVC.

2.11 CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI).

Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. § 222.

2.12 DIGITAL SIGNAL LEVEL 1 (DS1).

The 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

2.13 DIGITAL SIGNAL LEVEL 3 (DS3).

The 44.736 Mbps third-level signal in the time-division multiplex hierarchy.

2.14 DIRECT INTERCONNECTION FACILITIES.

Dedicated one-way or two-way transport facilities installed between Midcontinent's switch and MVC's switch.

2.15 END OFFICE SWITCH OR END OFFICE.

End Office Switch is a switch in which the End User Customer station loops are terminated for connection to trunks. The End User Customer receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an End Office Switch.

2.16 END USER CUSTOMER.

A retail business or residential end-user subscriber to Telephone Exchange Service provided by either of the Parties.

2.17 END USER CUSTOMER LOCATION

The physical location of the premise where an End User Customer makes use of Telephone Exchange Service.

2.18 EXCHANGE AREA.

Means the geographic area that has been identified by MVC for its provision of Telephone Exchange Service.

2.19 FCC.

The Federal Communications Commission.

2.20 INCUMBENT LOCAL EXCHANGE CARRIER (ILEC).

Shall have the meaning stated in the Act. For purposes of this Agreement, MVC is an ILEC .

2.21 INTEREXCHANGE CARRIER (IXC).

A Telecommunications Carrier that provides, directly or indirectly, InterLATA or IntraLATA telephone toll services.

2.22 INTERLATA TRAFFIC.

Telecommunications traffic that originates in one LATA and terminates in another LATA.

2.23 INTERCEPT MESSAGE

An Intercept Message is an announcement on the abandoned telephone number which provides the Customer's new number or other appropriate information.

2.24 INTRALATA TRAFFIC

Telecommunications traffic that originates and terminates in the same LATA.

2.25 ISDN USER PART (ISUP).

A part of the SS7 protocol that defines call setup messages and call takedown messages.

2.26 JURISDICTIONAL INDICATOR PARAMETER (JIP).

JIP is a six-digit number that provides a unique identifier representing the originating carrier. JIP is defined in the Alliance for Telecommunications Industry Solutions Reference Document ATIS-0300011.

2.27 LOCAL ACCESS AND TRANSPORT AREA (LATA).

Shall have the meaning set forth in the Act.

2.28 LOCAL NUMBER PORTABILITY (LNP)

LNP is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

2.29 LINE INFORMATION DATABASE (LIDB).

One or all, as the context may require, of the Line Information databases used by MVC and owned by other entities which provide, among other things, calling card validation functionality for telephone line number cards issued by MVC and other entities. A LIDB also contains validation data for collect and third number-billed calls; i.e., Billed Number Screening.

2.30 LOCAL EXCHANGE CARRIER (LEC).

The term "local exchange carrier" means any company that is authorized by the state public utility commission to provide local exchange and exchange access services. Such term does not include a company engaged in the provision of a commercial mobile service.

2.31 LOCAL EXCHANGE ROUTING GUIDE (LERG).

The Telcordia Technologies reference customarily used to identify NPA/NXX routing and homing information, as well as network element and equipment designation.

2.32 LOCAL TRAFFIC.

Any call dialed on a local basis that originates from an End User Customer in one exchange and terminates to an End User Customer in the same exchange. The exchanges and NPA-NXX of each Party in the MVC tariff are listed in Exhibit 1.

2.33 NEW SERVICE PROVIDER (NSP).

When an End-User Customer is changing its local exchange service from one provider to another, the NSP is the provider with whom the customer will reside at the completion of the change.

2.34 NORTH AMERICAN NUMBERING PLAN (NANP).

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as area code), followed by a 3-digit NXX code and 4 digit line number.

2.35 NUMBERING PLAN AREA (NPA).

Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized Telecommunications Service that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.

2.36 NXX, NXX CODE, CENTRAL OFFICE CODE OR CO CODE.

The three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number). Each NXX Code contains 10,000 station numbers.

2.37 OLD SERVICE PROVIDER (OSP).

When an End-User Customer is changing its local exchange service from one provider to another, the OSP is the provider from whom the End-User Customer is disconnecting.

2.38 POINT OF INTERCONNECTION (POI).

The physical location(s) within MVC's network, at which the Parties' networks meet for the purpose of exchanging Local Traffic. (Missouri Valley's central office in Williston, North Dakota.)

2.39 RATE CENTER AREA.

A Rate Center Area is a geographic location, which has been designated by MVC as being associated with a particular NPA-NXX code, which has been assigned to MVC for its provision of Telephone Exchange Service. Rate Center Area is

normally the same as the boundary of the MVC Exchange Area as defined by the Commission.

#### 2.40 RATE CENTER

A Rate Center is the finite geographic point identified by a specific V&H coordinate which is used by MVC to measure, for billing purposes, distance sensitive transmission services associated with the specific rate center; provided that a Rate Center cannot exceed the boundaries of the MVC Exchange Area as defined by the Commission.

#### 2.41 SIGNALING SYSTEM 7 (SS7).

The common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). MVC and Midcontinent currently utilize this out-of-band signaling protocol.

#### 2.42 TANDEM SWITCH.

A switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among end office switches and between and among end office switches and carriers' aggregation points, points of termination, or point of presence, and to provide Switched Exchange Access Services.

#### 2.43 TANDEM TRANSIT TRAFFIC OR TRANSIT TRAFFIC.

Telephone Exchange Service traffic that originates on Midcontinent's network, and is transported through an MVC Tandem to the Central Office of a Midcontinent, Interexchange Carrier, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant MVC Tandem to which Midcontinent delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide ("LERG"). Switched Exchange Access Service traffic is not Tandem Transit Traffic.

#### 2.44 TELCORDIA TECHNOLOGIES.

Formerly known as Bell Communications Research. The organization conducts research and development projects for its owners, including development of new Telecommunications Services. Telcordia Technologies also provides generic requirements for the telecommunications industry for products, services and technologies.

#### 2.45 TELECOMMUNICATIONS CARRIER.

The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators

of telecommunications services. A telecommunications carrier shall be treated as a common carrier under the Telecommunications Act only to the extent that it is engaged in providing telecommunications services.

2.46 TELECOMMUNICATIONS SERVICE.

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

2.47 TELECOMMUNICATIONS TRAFFIC.

"Telecommunications Traffic" means Telecommunications Service traffic exchanged between an ILEC and a Telecommunications Carrier other than a CMRS provider, except for Telecommunications Service traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.

2.48 TELEPHONE EXCHANGE SERVICE.

The term "telephone exchange service" means shall have the meaning set forth in 47 U.S.C. Section 3 (47) of the Act.

2.49 VOIP or IP-ENABLED TRAFFIC.

VoIP means voice over Internet Protocol, which includes any IP-enabled, real-time, multidirectional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes:

- (i) Voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and
- (ii) Voice traffic originated on the PSTN, and which terminates on IPC.

# **Interconnection Attachment**

## 1. General

- 1.1 This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between MVC and Midcontinent for the purpose of exchanging local telecommunications traffic within the Williston, ND that is originated by an End-User Customer of one Party and is terminated to an End-User Customer of the other Party, where each Party directly provides Telephone Exchange Service to its End-User Customers physically located in the Exchange Area. This Interconnection Attachment shall apply only to the transport and termination of local traffic and shall not apply to any other traffic or service.
- 1.2 This Attachment also describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telecommunications Traffic between the respective End-User Customers of the Parties pursuant to Section 251 (a) and (b) of the Act and the compensation for such facilities and traffic exchanged.
- 1.3 Rate Arbitrage
  - 1.3.1 Each Party agrees that it will not knowingly provision any of its services or the services of a third party in a manner that permits the circumvention of applicable switched access charges by the other Party ("Rate Arbitrage") and/or the utilization of the physical connecting arrangements described in this Agreement to permit the delivery to the other Party of traffic not covered under this Agreement through the POI on Local Interconnection Trunks. This Rate Arbitrage includes, but is not limited to, third-party carriers, traffic aggregators, and resellers.
  - 1.3.2 If any Rate Arbitrage and/or delivery of traffic not covered under this Agreement through the local interconnection trunks is identified, the Party causing such Rate Arbitrage also agrees to take all reasonable steps to terminate and/or reroute any service that is permitting any of that Party's End-User Customers or any entity to conduct Rate Arbitrage or that permits the End-User Customer or any entity to utilize the POI for the delivery or receipt of such excluded traffic through the local interconnection trunks. Notwithstanding the foregoing, if any Party is found to be in violation of this Section, until such time as the Rate Arbitrage or incorrect routing of traffic is resolved, that Party shall pay applicable access charges to the other Party for traffic subject to Rate Arbitrage or that is incorrectly routed.
  - 1.3.3 If either Party suspects Rate Arbitrage from the other Party, the Party suspecting arbitrage ("Initiating Party") shall have the right to audit the other Party's records to ensure that no Rate Arbitrage and/or the delivery of traffic not covered under this Agreement is taking place. Both Parties shall cooperate in providing records required to conduct such audits. Upon

request by MVC, Midcontinent shall be required to obtain any applicable records of any customer or other third party utilizing Midcontinent's interconnection with MVC. The Initiating Party shall have the right to conduct additional audit(s) if the preceding audit disclosed such Rate Arbitrage provided, however, that neither Party shall request an audit more frequently than is commercially reasonable once per calendar year.

- 1.3.4 The parties shall work cooperatively to identify and minimize phantom traffic, calls for which identifying information is missing or masked in ways that frustrate intercarrier billing, or other unclassified traffic, and to ensure proper billing information for all traffic exchanged between the Parties consistent with industry standards.

## 2. Physical Connection

- 2.1 The Parties shall exchange Local Traffic over Direct Interconnection Facilities between their networks. The Parties agree to physically connect their respective networks so as to exchange such Local Traffic, with the Point of Interconnection (POI) designated at MVC's switch (WLSTNDBCDS0).
- 2.2 Direct Interconnection Facilities between the Parties' networks shall be provisioned as two-way interconnection trunks. The dedicated interconnection facilities shall meet the Telcordia BOC Notes on LEC Network Practice No. SR – TSV – 002275. The parties may connect using Internet Protocol if they mutually agree to do so.
- 2.3 MVC and Midcontinent may utilize existing and new wireline Direct Interconnection Facilities for the mutual exchange of Local Traffic. The charges for usage and underlying trunks shall be subject to the appropriate compensation based on jurisdiction.
- 2.4 Physical Interconnection
- 2.4.1 Trunk Types
- 2.4.1.1 Local Interconnection Trunks
- 2.4.1.1.1 The Parties will establish local trunk groups for the exchange of Local Traffic ("Local Interconnection Trunks") on the Direct Interconnection Facility. The Parties agree that all Local Traffic exchanged between them will be on trunks exclusively dedicated to such traffic. Neither Party will terminate toll traffic or originate untranslated traffic to service codes (e.g. 800, 888) over Local Interconnection Trunks.
- 2.4.1.1.2 If the Parties' originated Local Traffic is exchanged utilizing the same two-way Local Interconnection

Trunk, both Parties will mutually coordinate the provisioning and quantity of trunks to be utilized in this arrangement

#### 2.4.1.2 Access Trunks

2.4.1.2.1 Access traffic shall not be routed on the Local Interconnection Trunks. Separate trunk groups for such Access Traffic must be established on the Direct Interconnection Facility. Standard access compensation arrangements from MVC's respective tariffs will apply to Access Traffic terminated over the Access Trunks.

#### 2.5 Facility Sizing

The Parties will mutually agree on the appropriate sizing of the interconnection and transport facilities. The capacity of facilities provided by each Party will be based on mutual forecasts and sound engineering practice, as mutually agreed to by the Parties. Midcontinent will order trunks in the agreed-upon quantities via an Access Service Request ("ASR").

2.6 If Midcontinent's request requires MVC to build new facilities (e.g. installing additional electrical trunks) to be used by Midcontinent, Midcontinent will bear the cost of construction. Payment terms for such costs will be negotiated between the Parties on an individual case basis. No Party will construct facilities that require the other Party to build unnecessary facilities.

2.7 Midcontinent shall be responsible for establishing 911 trunks with the designated 911 vendor. Midcontinent may purchase transport for such 911 trunks from MVC subject to applicable MVC tariff rates.

#### 2.8 Interface Types:

The physical interface will be electrical and at the DS1 level. Any changes to the interface type will be mutually agreed upon by the Parties.

#### 2.9 Programming:

It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the LERG. Each Party will program the numbers of the other Party in accordance with industry standard intervals, including without limitation the requirements of the Central Office Code Assignment Guidelines adopted by the Industry Numbering Committee of the Alliance for Telecommunications Industry Solutions, document number INC-95-0407-008, as revised.

#### 2.10 Equipment Additions:

Where additional equipment is required, such equipment will be obtained, engineered, and installed on the same basis and with the same intervals as any similar growth job for the Parties' internal customer demand.

### **3. Compensation**

#### **3.1 Facilities Compensation**

3.1.1 Each Party shall be responsible for the cost of Direct Interconnection Facilities on its side of the POI. Each party is responsible for any transport, transiting, or switching charges assessed by any third party on its respective side of the POI. Neither Party shall have any obligation to bear any charges, expenses or other costs assessed in connection with transporting, transiting or switching traffic on the other Party's side of the POI.

3.1.2 If Midcontinent chooses to lease Direct Interconnection Facilities from the MVC to reach the POI, Midcontinent shall compensate MVC for such leased Direct Interconnection Facilities used for the transmission and routing of telephone exchange service and exchange access service between the Parties and to interconnect with MVC's network at the rates contained in the applicable MVC tariff.

3.1.3 If Midcontinent utilizes a switch outside the Williston Exchange area for the exchange of local telecommunications traffic under this agreement, Midcontinent agrees to provide the interconnection facility for and transport of both Parties' traffic outside the Williston Exchange area at no charge to MVC. MVC will not compensate Midcontinent for the shared interconnection facility or transport beyond the POI in the Williston Exchange area.

3.1.4 In the event MVC is required to modify its network to accommodate the interconnection request made by Midcontinent, Midcontinent agrees to pay MVC reasonable cost-based charges for modifications, provided that rates under an accepted tariff shall be deemed cost based and that MVC shall not be required to perform a cost study. In accordance with Section 3.1.2, if Midcontinent uses a third party network provider to reach the POI, Midcontinent will bear all third party carrier charges for facilities and traffic in both directions.

#### **3.2 Traffic Termination Reciprocal Compensation**

3.2.1 This Section 3.2 establishes reciprocal compensation arrangements for the transport and termination of telecommunications and is expressly limited to the transport and termination of Local Traffic originated by and terminated to End-User Customers of the Parties in this Agreement. Reciprocal compensation shall apply only to the transport and termination

of Local Traffic and shall not apply to any other traffic or service. The reciprocal compensation rate for the transport and termination of Local traffic is \$0.030249 per minute. The parties agree to bill and to pay each other monthly for Local Traffic exchanged under this Agreement unless the Local Traffic exchanged is balanced and falls within an agreed upon threshold ("Traffic Balance Threshold"). The Parties agree that for purposes of this Agreement, the Traffic Balance Threshold is reached when the Local Traffic exchanged falls between 55%/45% in either direction. When the actual usage data for three (3) consecutive months indicates that the Local Traffic exchanged falls within the Traffic Balance Threshold, then either Party may provide the other Party a written request, along with verifiable information supporting such request, to eliminate per minute billing for Reciprocal Compensation. Upon written consent by the Party receiving the request, which shall not be withheld unreasonably, there will be no billing for reciprocal compensation on a going forward basis unless Local Traffic falls outside the Traffic Balance Threshold for six (6) consecutive months. When the actual usage data for six (6) consecutive months indicates that the Local Traffic exchanged falls outside the Traffic Balance Threshold, then either Party may provide the other Party a written request, along with verifiable information supporting such request, to reinstate per minute billing for reciprocal compensation per minute. Upon written consent by the Party receiving the request, which shall not be withheld unreasonably, per minute billing for reciprocal compensation will be reinstated on a going forward basis. If per minute billing for reciprocal compensation is reinstated, it shall be subject to termination if the Traffic Balance Threshold is achieved a second time for three (3) consecutive months and shall not thereafter be subject to reinstatement.

3.2.2 Compensation under this Section 3.2 shall be adjusted to conform with the requirements of the rules of the FCC concerning intercarrier compensation. For avoidance of doubt, this Agreement is not intended to supersede any requirements concerning rates for intercarrier compensation that would be applicable in the absence of an interconnection agreement between the Parties.

3.3 For the purposes of this Agreement, Jurisdiction of IP-Enabled Traffic is determined by the physical location of the End-User Customer originating IP-Enabled Traffic. Signaling information associated with IP-Enabled Voice Traffic must comply with Section 5 of this Interconnection Attachment. IP-Enabled Traffic will be treated as either Local Traffic or Switched Access Traffic in accordance with the location of the End-User Customer as determined pursuant to this Section 3.3 and Section 4.2.

3.4 Nothing in this Section shall be interpreted to (i) change compensation set forth in this Agreement for traffic or services other than Local Traffic, including but not limited to inter-office facilities, access traffic, wireless traffic, and IP-PSTN

Traffic or (ii) allow either Party to aggregate traffic other than Local Traffic for the purpose of compensation under the billing arrangement described in this Section.

### 3.5 Transitional Compensation

Midcontinent agrees to pay to MVC Seventy Thousand Dollars (\$70,000.00) as transitional financial assistance on the date interconnection is completed. Midcontinent agrees to pay to MVC \$38.50 as a per customer charge for transitioning each Midcontinent resale customer to Midcontinent's network, payable monthly after the date interconnection is completed.

## 4. Routing

4.1 Both Parties acknowledge that traffic will be routed in accordance with Telcordia Traffic Routing Administration (TRA) instructions.

4.2 Both Parties shall adhere to the North American Numbering Plan (NANP) guidelines. The Parties agree that if a Party assigns telephone numbers from an NPA/NXX to an End-User Customer outside the Rate Center Area with which the NPA/NXX is associated, the location of the calling and called End-User Customers shall be used to determine the jurisdiction of the Telecommunications Traffic for purposes of determining the appropriate compensation mechanism. Further, for End-User Customers to be considered physically located in the Rate Center such End-User Customers must have valid E911 service with a corresponding record in the serving ALI Database.

4.3 Once Direct Interconnection Facilities are established, both Parties shall route all traffic to the other Party utilizing the Direct Interconnection Facilities except in the case of an emergency or temporary equipment failure. Should either Party determine that the other Party is routing its originated traffic indirectly via a third party tandem, the originating Party agrees to update its routing and translations tables to move such traffic to the Direct Interconnection Facilities within five (5) business days.

4.4 Neither Party shall route un-translated traffic to service codes (e.g. 800, 888, 900) over the Local Interconnection Trunks.

4.5 N11 Codes: Neither Party shall route N11 codes (e.g., 411, 611, 711, and 911) over dedicated facilities.

## 5. Signaling

5.1 Accurate Calling Party Number ("CPN") associated with the End-User Customer originating the call must be provided. Accurate CPN is:

- 5.1.1 CPN that is a dialable working telephone number, that when dialed, will reach the End-User Customer to whom it is assigned, at that End-User Customer's Location.
- 5.1.2 CPN that has not been altered.
- 5.1.3 CPN that is not a charged party number.
- 5.1.4 CPN that follows the North American Numbering Plan Standards and can be identified in numbering databases and the LERG as an active number.
- 5.1.5 CPN that is assigned to an active End-User Customer.
- 5.1.6 CPN that is associated with the Rate Center of the specific End-User Customer Location.

5.2 Signaling:

The Parties will connect their networks using SS7 signaling as defined in applicable industry standards including ISDN User Part ("ISUP") for trunk signaling and Transaction Capabilities Application Part ("TCAP") for common channel signaling-based features in the connection of their networks. CPN shall be available for at least 95% of the local calls. Signaling information shall be shared between the Parties at no charge to either Party.

5.3 Signaling Parameters:

MVC and Midcontinent are required to provide each other with the proper signaling information (e.g. originating accurate CPN, JIP, and destination called party number, etc.) to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be provided including CPN, JIP, and Originating Line Information Parameter (OLIP) on calls to 8XX telephone numbers, Calling Party Category, Charge Number, etc. All privacy indicators will be honored. Both Parties will use the location routing number (LRN) associated with the originating number to populate the JIP field. In addition, each Party agrees that it is responsible for ensuring that all CCS signaling parameters are accurate and it shall not strip, alter, modify, add, delete, change, or incorrectly assign any CPN or JIP. CPN shall, at a minimum, include information that accurately reflects the physical location of the End-User Customer that originated and/or dialed the call, in accordance with Section 4.2 and 5.1.6.

5.4 Grade of Service:

Each Party will provision its network to provide a designed blocking objective of a P.01.

**6. Network Management:**

6.1 Protective Controls:

Either Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic towards each Party's network, when required to protect the public switched network from congestion or failure, or focused overload. Midcontinent and MVC will immediately notify each other of any protective control action planned or executed.

6.2 Mass Calling:

Both Parties will cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes. The Parties agree that the promotion of mass calling services is not in the best interest of either Party. If one Party's network is burdened repeatedly more than the other Party's network, the Parties will meet and discuss the cause and impact of such calling and will agree on how to equitably share the costs and revenues associated with the calls and on methods for managing the call volume.

6.3 Network Harm:

Neither Party will use any service related to or provided in this Agreement in any manner that interferes with third parties in the use of their service, prevents third parties from using their service, impairs the quality of service to other carriers or to either Party's Customers; causes electrical hazards to either Party's personnel, damage to either Party's equipment or malfunction of either Party's billing equipment (individually and collectively, "Network Harm"). If a Network Harm will occur, or if a Party reasonably determines that a Network Harm is imminent, such Party will, where practicable, notify the other Party that temporary discontinuance or refusal of service may be required, provided, however, wherever prior notice is not practicable, such Party may temporarily discontinue or refuse service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance or refusal, such Party will:

6.3.1 Promptly notify the other Party of such temporary discontinuance or refusal;

6.3.2 Afford the other Party the opportunity to correct the situation which gave rise to such temporary discontinuance or refusal; and

6.3.3 Inform the other Party of its right to bring a complaint to the Commission, FCC, or a court of competent jurisdiction.

**7. Proper Classification of Traffic**

7.1 Nothing herein shall in any manner reduce or otherwise limit or discharge the Parties' obligations under the Agreement to properly classify traffic delivered under the Agreement in accordance with the terms of this Agreement and its

Attachments, including but not limited to Section 1.3 of this Interconnection Attachment.

- 7.2 If the terminating Party determines in good faith in any month that any traffic originated by the other Party is classified by the other Party as traffic subject to the compensation rate for Local Traffic by the terms of this Agreement, when in reality the traffic is subject to the terminating Party's or state or federal switched access tariff the Parties agree:
- 7.2.1 The terminating party will notify the originating Party as soon as traffic has been incorrectly classified has been identified. Within one hundred eighty days (180) days of the end of the billing period for the affected traffic, the terminating Party will provide sufficient call detail records or other information (including the reasons that the terminating Party believes the traffic is misidentified) to permit the originating Party to investigate and identify the traffic the terminating Party has determined is misidentified;
- 7.2.2 The originating Party shall correct the classification for any traffic that was misidentified or unidentified and pay the appropriate tariffed switched access rates for the applicable traffic going forward, including for traffic terminated but not yet billed, and/or a true-up amounts for the previous 12 months for traffic already billed and paid; and
- 7.2.3 Where the appropriate classification of such traffic is indeterminable, such traffic will be rated in accordance with Section 8 or 9 of this Attachment, as appropriate.
- 7.2.4 In the event the originating Party disagrees with the terminating Party's determination that traffic has been misidentified, the originating Party will provide written notice of its dispute within sixty (60) days of notification under 7.1.1 and providing all documentation that is the basis for originating Party's challenge of the terminating Party's claim. If the parties are not able to mutually agree as to the proper treatment of the traffic based upon the documentation produced, the dispute resolution procedures of this Agreement shall apply.

## **8. Unclassified Traffic**

- 8.1 The Parties acknowledge that certain traffic, due to the technical nature of its origination, may be properly transmitted without all Traffic Identifiers. In such instances, the Parties agree that such traffic shall be considered "Unclassified Traffic" if it can be affirmatively demonstrated that the missing Traffic Identifiers were not stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned by the Party transmitting the traffic or with that Party's knowledge or consent. Otherwise, the traffic shall be considered Misclassified Traffic as described below.

- 8.2 If the percentage of traffic transmitted over Direct Interconnection Facilities under this Agreement with accurate Traffic Identifiers including CPN and JIP in a given month is greater than or equal to 95%, any remaining calls (those transmitted without accurate Traffic Identifiers) transmitted over those Facilities will be billed at rates calculated consistent with, and in proportion to the identified traffic exchanged under this Agreement. If, however, the percentage of Local Termination Traffic transmitted with accurate Traffic Identifiers (including for this purpose any Misclassified Traffic) in a given month falls below 95%, the Originating Party agrees to pay the terminating Party's intrastate access rates for all Unclassified Traffic transmitted over Direct Interconnection Facilities for the applicable month.
- 8.3 Subject to Section 4.3, the following provisions shall apply traffic transmitted from one Party to the other Party via facilities of other carriers:
- 8.3.1 Traffic that is transmitted in a given month with accurate Traffic Identifiers including CPN and JIP shall be billed at rates consistent with the classification of that traffic.
- 8.3.2 If the total of the percentage of the Party's traffic to the other Party transmitted via the facilities of other carriers is less than 5% in a given month, all traffic transmitted via such facilities that is not subject to Section 8.3.1 will be billed at rates calculated consistent with, and in proportion to the identified traffic exchanged under this Agreement during that month.
- 8.3.3 If the total of the percentage of the Party's traffic to the other Party transmitted via the facilities of other carriers is greater than or equal to 5% in a given month, all traffic transmitted via such facilities that is not subject to Section 8.3.1 shall be billed at the terminating Party's intrastate access rates.
- 8.3.3.1 This Section 8.3.3 shall not apply to traffic not subject to Section 8.3.1 if the transmitting Party uses the facilities of other carriers to transmit traffic because the direct interconnection facilities dedicated to the transmitting Party's traffic by the receiving Party experienced blocking greater than that permitted in Section 5.4 of this attachment due to lack of sufficient capacity and/or trunks to accept all of the transmitting Party's traffic, and in such cases Section 8.3.2 shall apply to all traffic transmitted via the facilities of other carriers.
- 8.3.3.2 Section 8.3.3.1 shall not apply if the transmitting Party is responsible for ordering affected facilities from the receiving Party and failed to order sufficient capacity to accommodate its traffic requirements.

8.3.4 For avoidance of doubt, traffic carried by an end user's preferred interexchange carrier shall not be considered traffic transmitted via the facilities of other carriers. Such traffic shall be subject to access charges to be paid by the interexchange carrier in accordance with applicable regulatory requirements.

**9. Misclassified Traffic**

- 9.1 As used in this Agreement, "Misclassified Traffic" shall mean Termination Traffic that has Traffic Identifiers stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned.
- 9.2 In addition to the terminating Party's other rights and remedies with respect to Misclassified Traffic, the originating Party agrees to pay the terminating Party's intrastate access rates with respect to all Misclassified Traffic.
- 9.3 Notwithstanding anything herein to the contrary, the Parties agree that if more than two percent (2%) of the total Termination Traffic exchanged by the originating Party under this Agreement in any month is Misclassified Traffic, the originating Party shall be in Default of this Agreement, subject to Section 3 of the General Terms and Conditions.

**Pre-Ordering, Ordering, Provisioning,  
Maintenance and Repair**

## **Pre-Ordering, Ordering, Provisioning, Maintenance and Repair**

### **1. Pre-Ordering**

- 1.1 The Parties will provide access to pre-order functions to support the requesting Party's transfer of customers. The Parties acknowledge that ordering requirements necessitate the use of current pre-order information to accurately build service orders. The following lists represent pre-order functions that are available.
- 1.2 Release of retail Customer Proprietary Network Information (CPNI) and account information for pre-ordering will include: billing name, service address, billing address, service and feature subscription, directory listing information, long distance carrier identity, and PIC freeze indication. Parties agree that the Parties' representatives will not access the information specified in this subsection until after the End User Customer requests that his or her Local Service Provider be changed to that Party, and a Letter of Authorization (LOA) for release of CPNI complies with conditions as described in Section 3.3 of this Attachment.
- 1.3 The Parties will provide the information on the following pre-ordering functions: service address validation, telephone number selection, service and feature availability, due date information, and customer record information. MVC and Midcontinent will include the development and introduction of the new change management process. The Parties shall provide such information in accordance with industry standards as set by the Alliance for Telecommunications Industry Solutions via paper copies of End User Customer record information.
- 1.4 Each Party will obtain access to End User Customer record information only in strict compliance with applicable laws, rules, or regulations of the state in which the service is provided or FCC, including without limitation Section 222 of the Act and the FCC's rules in 47 C.F.R. Part 64, subpart U and any successor provisions. Each Party reserves the right to audit the other Party's access to End User Customer record information for customers of the auditing Party. If an audit of access to End User Customer record information reveals that the audited Party is accessing End User Customer record information without having obtained the proper LOA, the auditing Party, upon reasonable notice to the audited Party, may take corrective action. All such information obtained through an audit shall be deemed Information covered by the Proprietary and Confidential Information Section 11 in the General Terms and Conditions of this Agreement.

### **2. Ordering**

- 2.1 Midcontinent agrees to comply with industry standards as set by the Alliance for Telecommunications Industry Solutions, which are incorporated by reference in this Agreement, and as amended from time to time.

## 2.2 Ordering

Each Party shall place orders for services by submitting a local service request (“LSR”) to the other Party. The Party that receives the order shall bill the ordering Party a service order charge as specified in this Attachment for each LSR submitted. An individual LSR will be identified for billing purposes by its Purchase Order Number (“PON”).

2.2.1 The Party that receives the order will bill the service order charge, as applicable, for an LSR, regardless of whether that LSR is later supplemented, clarified or cancelled.

## 2.3 Provisioning

2.3.1 Each Party shall provision services during its regular working hours. To the extent a Party requests provisioning of service to be performed outside of regular working hours, or the work so requested requires the provisioning Party’s technicians or project managers to work outside of regular working hours, overtime charges shall apply.

2.3.2 Cancellation Charges. If the ordering Party cancels an LSR any costs incurred by the Party that receives in the order in conjunction with the provisioning of that request will be recovered in accordance with the Pricing Attachment.

2.3.3 Expedited Service Date Charges. For Expedited Service Date Advancement requests by a Party, expedited charges will apply for intervals less than the standard interval. The charges as outlined in the Pricing Attachment will apply as applicable.

2.3.4 Order Change Charges. If the ordering Party modifies an order after being sent a Firm Order Confirmation (FOC) from the other party, the Order Change Charge will be paid by the ordering Party in accordance with the Pricing Attachment.

2.3.5 Access to Inside Wire. Each Party is responsible for accessing customer premise wiring without disturbing the other Party’s plant. Unless authorized, in no case shall one Party remove or disconnect the loop facilities or ground wires from the other Party’s NIDs, enclosures, or protectors. If one Party removes a loop in violation of this Agreement, that Party will hold the other Party harmless for any liability associated with the removal of the loop or ground wire from the NID. Furthermore, neither Party shall remove or disconnect NID modules, protectors, or terminals from the other Party’s NID enclosures.

## 2.4 Maintenance and Repair

2.4.1 Requests for trouble repair are billed in accordance with the provisions of this Agreement. MVC and Midcontinent agree to adhere to standard industry procedures for maintenance and repair.

- 2.4.2 If one Party reports a trouble and no trouble actually exists on the other Party's portion, the other Party will charge the reporting Party for any dispatching and testing (both inside and outside the Central Office (CO)) required by the other Party to confirm the working status.

## 2.5 Rates

Unless otherwise specified herein, charges applicable to pre-ordering, ordering, provisioning and maintenance and repair, shall be as set forth in the Pricing Attachment.

## 3. Miscellaneous

### 3.1 Customer Transfer.

- 3.1.1 Service orders will be in a standard format designated by MVC.
- 3.1.2 When notification is received from Midcontinent that a current End User Customer of MVC will subscribe to Midcontinent's service, standard service order intervals for the appropriate class of service will apply.
- 3.1.3 Midcontinent will be the single point of contact with MVC for all subsequent ordering activity resulting in additions or changes to services except that MVC will accept a request directly from the End User for conversion of the End User Customer's service from Midcontinent to MVC.
- 3.1.4 If the Old Service Provider ("OSP") determines that an unauthorized change in local service to the New Service Provider ("NSP") has occurred, the OSP will reestablish service with the appropriate local service provider and will assess the NSP as the carrier initiating the unauthorized change, any charges allowed under the FCC and State rules. Appropriate nonrecurring charges, as set forth in the applicable MVC tariff will also be assessed to the NSP. These charges can be adjusted if the NSP provides satisfactory proof of authorization.

### 3.2 Misdirected Calls.

- 3.2.1 The Parties will employ the following procedures for handling any misdirected calls (e.g., Business office, repair bureau, etc.):
- 3.2.2 To the extent the correct provider can be determined; each Party will refer misdirected calls to the proper provider of local exchange service. When referring such calls, both Parties agree to do so in a courteous manner at no charge.
- 3.2.3 For misdirected repair calls, the Parties will provide their respective repair bureau contact number to each other on a reciprocal basis and provide the End User Customer the correct contact number.
- 3.2.4 In responding to misdirected calls, neither Party shall make disparaging remarks about each other, nor shall they use these calls as a basis for internal referrals or to solicit End User Customers or to market services.

### 3.3 Letter of Authorization.

- 3.3.1 MVC will not release the Customer Service Record (CSR) containing CPNI to Midcontinent on MVC's End User Customer accounts unless Midcontinent first provides to MVC a written Letter of Authorization (LOA). MVC shall accept a LOA or any other form agreed upon between MVC and Midcontinent authorizing the release of such information to Midcontinent.
- 3.3.2 An LOA will be required before MVC will process an order for services provided in cases in which the End User Customer currently receives Exchange Service from MVC or from a local service provider other than Midcontinent.

### 3.4 Pending Orders.

Orders placed in the hold or pending status by Midcontinent will be held for a maximum of thirty (30) calendar days from the date the order is placed on hold. After such time, Midcontinent shall be required to submit a new service request. Incorrect or invalid requests returned to Midcontinent for correction or clarification will be held for thirty (30) calendar days. If Midcontinent does not return a corrected request within thirty (30) calendar days, MVC will cancel the request.

- 3.5 Neither MVC nor Midcontinent shall prevent or delay an End User Customer from migrating to another carrier because of unpaid bills, denied service, or contract terms.
- 3.6 The Parties shall return a Firm Order Confirmation (FOC) and Local Service Request (LSR) rejection/clarification in accordance with industry-standard intervals and applicable rules of the FCC.

### 3.7 Contact Numbers.

The Parties agree to provide one another with contact numbers for the purpose of ordering, provisioning and maintenance of services. Contact numbers for maintenance/repair of services shall be answered in accordance with each Party's standard procedures. Each Party will make a reasonable effort to notify the other Party when a trouble ticket has been closed. After making a reasonable effort to contact the Party reporting trouble to request additional information or to request authorization for additional work deemed necessary, if the other Party is unsuccessful in obtaining information or authorization, the other Party will place trouble tickets in delayed maintenance status.

## **Local Number Portability (LNP) Attachment**

## Local Number Portability

### 1. General

- 1.1 The Parties will offer service provider local number portability (LNP) in accordance with FCC rules and regulations. Service provider portability is the ability of users of Telecommunications Services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. Under this arrangement, the new Telecommunications Carrier must directly provide Telephone Exchange Service to the End User Customer porting the telephone number. For a port request to be valid, the End User Customer must retain his or her original number; be located either at the same location or at a location within the same Rate Center Area before and after the port; and be served directly by the Telecommunications Carrier requesting the port with a Telecommunications Service.
- 1.2 The Parties agree that the industry has established Local Routing Number (LRN) technology as the method by which LNP will be provided in accordance with such rules, regulations and guidelines. As such, the Parties agree to provide to each other number portability via LRN.
- 1.3 This Agreement does not govern geographic portability where the End User Customer moves outside the rate center. Geographic portability is not allowed under this Agreement.
- 1.4 The Parties agree to comply with finalized FCC rules and orders, North American Numbering Council (NANC) procedures and guidelines concerning numbering and other industry guidelines related to network architecture, including but not limited to, North American Numbering Council Local Number Portability Architecture and Administrative Plan report, which was adopted by the FCC, Second Report and Order, CC Docket 95-116, released August 18, 1997, and the Central Office Code Assignment Guidelines; the rules and procedures adopted in Local Number Portability Porting Interval and Validation Requirements, Report and Order and Further Notice of Proposed Rulemaking, FCC 09-41, released May 13, 2009; and the rules and procedures adopted in Local Number Portability Porting Interval and Validation Requirements, Report and Order, FCC 10-85, released May 20, 2010.

### 2.3 Service Management System (SMS) Administration.

The Parties will work cooperatively with other local service providers to establish and maintain contracts with the Number Portability Administration Center (NPAC) Service Management System (SMS).

1.6 Signaling.

In connection with LNP, each Party agrees to use SS7 signaling in accordance with applicable FCC rules and orders.

1.7 N-1 Query.

Neither Party offers default query service so non-queried calls will be returned to the N-1 carrier.

1.8 Porting of Reserved Numbers.

End User Customers of each Party may port reserved numbers, as defined in 47 C.F.R. Section 52.15(f)(1)(vi), that the End User Customer has paid to reserve, only if there is at least one working telephone number in the group. Portable reserved numbers are identified on the Customer Service Record (CSR).

1.9 Splitting of Number Groups.

The Parties shall permit blocks of subscriber numbers (including, but not limited to, Direct Inward Dial (DID) numbers and MultiServ groups) to be split in connection with an LNP request. MVC and Midcontinent shall permit End User Customers who port a portion of the DID numbers assigned to such customers to retain DID service on the remaining numbers. If a Party requests porting of a range of DID numbers smaller than a whole block, that Party shall pay the applicable labor charges as listed in the Pricing Attachment to this Agreement for reconfiguring the existing DID numbers. In the event no rate is set forth in this Attachment, then the Parties shall negotiate a rate for such services.

1.10 The Parties will set LRN unconditional or 10-digit triggers where applicable. Where triggers are set, the porting Party will remove the ported number at the same time the trigger is removed.

1.11 A trigger order is a service order issued in advance of the porting of a number. A trigger order 1) initiates call queries to the AIN SS7 network in advance of the number being ported; and 2) provides for the New Service Provider to be in control of when a number ports.

**2. Coordinated Cutovers.**

2.1 For LNP Coordinated Hot Cuts ("CHC"), the New Service Provider (NSP) may request a desired due date and time. These will be considered coordinated orders. NSP must indicate a request for CHC on the LNP request form to request a coordinated order. The Old Service Provider (OSP) will not apply a 10-digit trigger upon porting telephone numbers to NSP network. Labor charges for CHCs are listed in Pricing Attachment to this Agreement. OSP offers two types of coordination:

2.1.1 Any Time:

Order to be worked any time during the day on the due date but OSP must notify NSP when completed.

2.1.2 Specific Time:

Order is to be worked at a specific time on the due date.

- 2.2 If coordination is requested, NSP will be required to call the OSP forty-eight (48) hours prior to the requested coordination date and time. This call is to confirm or reschedule the date and time. OSP reserves the right to change the date and time if other demands require such a change, subject to Section 3.1.2 below. Every reasonable attempt will be made to commit to the requested date and time. Prior to the forty-eight (48) hour Coordination Call, OSP will confirm with the various work groups involved with the coordination, as to their ability to complete the work on the desired date and time. If no call is received from the NSP, it will be assumed that the NSP is not ready and the order will not be completed on the requested due date and time. If NSP does not contact OSP within forty-eight (48) hours from the original due date to reschedule, the order will be canceled.

**3. Late Notification Changes - Due Date, Coordination.**

- 3.1 OSP will proceed with the conversion based on the agreement at the forty-eight (48) hour call. Policy for late notification of changes in due date and/or coordination time is as follows:

- 3.1.1 If OSP personnel have to wait more than fifteen (15) minutes for NSP to join the scheduled call for the CHC, then NSP shall be responsible to reimburse OSP for all personnel costs incurred. The charge will be calculated, in half-hour increments, times the loaded hourly compensation rate for each person involved in the call.
- 3.1.2 If NSP contacts OSP to reschedule the CHC call less than forty-eight (48) hours prior to the scheduled CHC call time, NSP will be responsible to reimburse OSP for all costs incurred to date on the CHC order.
- 3.1.3 Once the scheduled call is underway, and personnel from both NSP and OSP are present on the call, should NSP incur a problem that would delay the conversion, OSP will provide NSP reasonable time (20 minutes or less) to cure the problem. However, any delay longer than 20 minutes will result in OSP charging NSP for personnel costs incurred. The charge will be calculated based on the delay time, in half-hour increments, times the loaded hourly compensation rate for each person involved in the call.

**4. Obligations of Both Parties.**

- 4.1 Midcontinent is responsible for advising the NPAC of telephone numbers that it ports in and the associated data as identified in industry forums as being required for number portability.
- 4.2 When a ported telephone number becomes vacant, e.g., the telephone number is no longer in service by the original End User Customer; the ported telephone number will be released back to the carrier that is the code holder or block holder.
- 4.3 Each Party has the right to block default routed calls entering a network in order to protect the public switched telephone network from overload, congestion, or failure propagation.
- 4.4 Both Parties are currently certified by the Regional NPAC.
- 4.5 Each Party will designate a Single Point of Contact (SPOC) to schedule and perform required testing. These tests will be performed during a mutually agreed upon time frame and must meet the criteria set forth by the Inter-Industry LNP Regional Team for porting.
- 4.6 Each Party shall abide by NANC and the Inter-Industry LNP Regional Team provisioning and implementation processes, including without limitation the SOA concurrence process
- 4.7 Each Party shall become responsible for the End User Customer's other telecommunications related items, e.g. E911, Directory Listings, Operator Services, Line Information Database (LIDB), when it ports the end-user's telephone number to its switch.
- 4.8 The LRN associated with the ported number associated with MVC's Local area shall be derived from an NPA- NXX within the same Local areas.

## **Ancillary Services Attachment**

## **1. 911/E-911 Arrangements**

- 1.1 MVC utilizes [the Williston Police Department for the provision of 911/E-911 services. Midcontinent is responsible for connecting to the Williston Police Department and populating the Williston Police Department's database. All relations between the Williston Police Department and Midcontinent are totally separate from this Agreement and MVC makes no representations on behalf of the Williston Police Department.
- 1.2 Neither Party will be liable for errors with respect to the other Party's provision of 911/E-911 services to the other Party's End-User Customers.

## **2. Directory Listings and Directory Distribution**

### **[Subject to review of directory requirements in Williston]**

- 2.1 Midcontinent will be required to negotiate a separate agreement for directory listings and directory distribution, except as set forth in Sections 2.2 and 2.3 below, with MVC's vendor for directory publications.

#### 2.2 Listings

Midcontinent agrees to supply MVC on a regularly scheduled basis, and in a format prescribed by MVC, all listing information for Midcontinent's subscribers who wish to be listed in any MVC published directory or MVC's Directory Assistance Database for the relevant operating area. It is the responsibility of Midcontinent to submit such listing information in the prescribed manner to MVC prior to the directory listing publication cut-off date. Listing information will consist of names, addresses (including city, state and zip code) and telephone numbers. Nothing in this Agreement shall require MVC to publish a directory where it would not otherwise do so. Listing inclusion in a given directory will be in accordance with MVC's solely determined directory configuration, scope, and schedules and listings will be treated in the same manner as MVC's listings.

#### 2.3 Distribution

Upon directory publication, MVC will arrange for the initial distribution of the directory to service subscribers in the directory coverage area. Midcontinent will supply MVC, in a timely manner, with all required subscriber mailing information including non-listed and non-published subscriber mailing information, to enable MVC to perform its directory distribution to Midcontinent customers. Midcontinent, at the discretion of MVC, will pay MVC for the reasonable and direct cost for directory mailings to Midcontinent subscribers but will not charge for the cost of the actual directory when delivered with the annual distribution.

2.4 Purchase of Directories

Midcontinent at its discretion may purchase a stock of directories for the Midcontinent to distribute directly to the Midcontinent end users. MVC will charge a reasonable price for such directories.

## **Pricing Attachment**

## Pricing Attachment

### General.

The rates contained in this Pricing Attachment are the rates as referenced in the various sections on the Interconnection Agreement and are subject to change. MVC shall provide updated versions of the Tariff prior to the effective date of such change.

#### A. Service Order Charges

- |   |                    |
|---|--------------------|
| 1. Service Order Charge (LSR)               | \$ 38.50/per line  |
| 2. Service Order Cancellation/Change Charge | \$ 12.00/ per line |
| 3. Expedited Service Based Charge           | \$ 32.00/ per line |
| 4. Order Change Charge                      | \$ 12.00/per line  |

#### B. General Charges:

##### 1. Technical Labor

###### Install & Repair Technician:

Basic Time (normally scheduled hours)	\$TBA/hr
Overtime (outside normally schld hrs on schld work day)	\$TBA/hr
Trip Charge	\$TBA
Call out	Min 2 hours

###### Central Office Technician:

Basic Time (normally scheduled hours)	\$TBA/hr
Overtime (outside normally schld hrs on schld work day)	\$TBA/hr
Call out	Min 2 hours

###### Customer Service Representative:

Basic Time (Normal Scheduled)	\$TBA/hr
Overtime (outside normally schld hrs on schld work day)	\$TBA/hr
Call out	Min 2 hours

#### C. Transport Charges

Per Tariff

# Exhibit 1

## INTERCONNECTION NETWORK ARRANGEMENTS TABLE

### LOCAL CALLING SCOPE AND NPA/NXXS

<u>Exchanges in Local Calling Area</u>	<u>Midcontinent NPA/NXX</u>	<u>Missouri Valley NPA/NXX</u>
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Williston	[Midcontinent to provide] [within 30 days of effective date]	701 -572, 577, 774
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INTERCONNECTION AGREEMENT

Between

MISSOURI VALLEY COMMUNICATIONS, INC.

AND

MIDCONTINENT COMMUNICATIONS

IN THE STATE OF

NORTH DAKOTA

\_\_\_\_\_, 2012

This document presents Missouri Valley's proposed changes to February 3, 2012 form of agreement presented by Midcontinent.

Proposed changes are marked to show verbiage ~~deleted~~ and proposed new verbiage. Each proposal is also presented in "clean" form.

Each is briefly explained with reference to information in the record.

## Section 1.0 - GENERAL TERMS

- 1.1 This Agreement must be filed with the North Dakota Public Service Commission (Commission). ~~Absent Commission action within 30 days of the filing the Agreement will~~ If the Commission does not act to approve or reject the Agreement within 30 days after submission, the Agreement shall be deemed approved, subject to the parties' respective rights to bring an action in an appropriate Federal district court to determine whether the agreement meets the requirements of sections 251 and 252 of the Act. The Agreement is between Missouri Valley Communications, Inc. (MVC), a North Dakota corporation and Midcontinent Communications, a South Dakota General Partnership (Midcontinent).
- 1.1 This Agreement must be filed with the North Dakota Public Service Commission (Commission). If the Commission does not act to approve or reject the Agreement within 30 days after submission, the Agreement shall be deemed approved, subject to the parties' respective rights to bring an action in an appropriate Federal district court to determine whether the agreement meets the requirements of sections 251 and 252 of the Act. The Agreement is between Missouri Valley Communications, Inc. (MVC), a North Dakota corporation and Midcontinent Communications, a South Dakota General Partnership (Midcontinent).

### EXPLANATION

This is an open issue under the heading General terms and conditions that also affects the effective date open issue and the open issue under the heading Date of interconnection.

Section 1.1 should be amended to be consistent with Act § 252(b)(4) and to provide for judicial review of Commission action under Act § 252(e)(6).

The effective date and Date of interconnection issues are addressed below, under section 2.2.1.

1.2 This Agreement sets forth the terms, conditions and pricing for interconnection between MVC and Midcontinent for the purpose of exchanging local telecommunications traffic within the Williston, ND exchange in which both Parties are providing local exchange service at that time, and for which MVC is the incumbent local exchange carrier with the State of North Dakota for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.

1.2 This Agreement sets forth the terms, conditions and pricing for interconnection between MVC and Midcontinent for the purpose of exchanging local telecommunications traffic within the Williston, ND exchange in which both Parties are providing local exchange service at that time, and for which MVC is the incumbent local exchange carrier with the State of North Dakota for purposes of providing local Telecommunications Services. This Agreement is available for the term set forth herein.

#### EXPLANATION

This is an open issue under the heading General terms and conditions that also affects issues under the heading Other terms and conditions of interconnection and number portability

Section 1.2 should be amended to clarify the agreement affects only the exchange of local telecommunications traffic as requested by Midcontinent in its petition for arbitration.

## Section 2.0 - TERMS AND CONDITIONS

### 2.2 Term of Agreement

2.2.1 This Agreement shall become effective ~~in accordance~~ upon approval under section 1.1, subject to the parties' respective rights to bring an action in an appropriate Federal district court to determine whether the agreement meets the requirements of sections 251 and 252 of the Act. In the case of such action, this agreement shall become effective or shall not become effective as finally determined in such action. If an action is commenced, the effective date of the arbitrated interconnection agreement will be suspended until the judicial review process is final. If neither party commences such an action within 60 days of approval of the Agreement under Section 1.1, the opportunity for judicial review will be deemed waived. This Agreement shall be binding upon the Parties for a term of three (3) years unless terminated earlier pursuant to Section 2.2.3. It shall remain effective following the initial term on a month-to-month basis until the Parties enter into a successor agreement or the Agreement is terminated pursuant to Section 2.2.3.

2.2.1 This Agreement shall become effective upon approval under section 1.1, subject to the parties' respective rights to bring an action in an appropriate Federal district court to determine whether the agreement meets the requirements of sections 251 and 252 of the Act. In the case of such action, this agreement shall become effective become or shall not become effective as finally determined in such action. If an action is commenced, the effective date of the arbitrated interconnection agreement will be suspended until the judicial review process is final. If neither party commences such an action within 60 days of approval of the Agreement under Section 1.1, the opportunity for judicial review will be deemed waived. This Agreement shall be binding upon the Parties for a term of three (3) years unless terminated earlier pursuant to Section 2.2.3. It shall remain effective following the initial term on a month-to-month basis until the Parties enter into a successor agreement or the Agreement is terminated pursuant to Section 2.2.3.

### EXPLANATION

The effective date is an open issue under the heading General terms and conditions that also affects the open issue under the heading Date of interconnection.

Midcontinent proposed that the interconnection agreement would be effective on approval by the Commission. Missouri Valley proposes that section 2.2.1 should be amended to be consistent with agreement section 1.1 and Act § 252(b)(4) and to provide for judicial review of Commission action under Act § 252(e)(6). The agreement would not be effective until such an action were final.

The Date of interconnection issue is not addressed in Midcontinent's February 3 proposed interconnection agreement. The issue is addressed in Midcontinent's November 14, 2011 petition and statement of issues and in Missouri Valley's December 8 response. The issue is also addressed in Missouri Valley's February 28 letter responding to Midcontinent's February 3 proposed agreement.

Midcontinent proposed that interconnection should be completed within 60 days after an interconnection agreement is approved by the Commission. Missouri Valley agreed to interconnection being implemented 60 days after approval, subject to a later date as either party's action for judicial review under of the Commission's action becomes final. The effective date and date of interconnection issues are intertwined, as the date of interconnection would be 60 days after the effective date. If the effective date is postponed so is the date of interconnection postponed. If neither party commences an action for judicial review, then neither the effective date nor the date of interconnection is postponed.

See also proposal re general terms section 1.1.

## Interconnection Attachment

### 1. General

1.1 This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between MVC and Midcontinent for the purpose of exchanging local telecommunications traffic within the Williston, ND exchange ~~the exchange of Local/EAS Traffic and ISP Bound Traffic~~ that is originated by an End-User Customer of one Party and is terminated to an End-User Customer of the other Party, where each Party directly provides Telephone Exchange Service to its End-User Customers physically located in the Exchange Area. This Interconnection Attachment shall apply only to the transport and termination of local traffic and shall not apply to any other traffic or service.

1.1 This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between MVC and Midcontinent for the purpose of exchanging local telecommunications traffic within the Williston, ND that is originated by an End-User Customer of one Party and is terminated to an End-User Customer of the other Party, where each Party directly provides Telephone Exchange Service to its End-User Customers physically located in the Exchange Area. This Interconnection Attachment shall apply only to the transport and termination of local traffic and shall not apply to any other traffic or service.

### EXPLANATION

This is a resolved issue under the heading Other terms and conditions of interconnection and number portability that also affects issues under the heading General terms and conditions.

Attachment Section 1.1 should be amended to clarify the agreement affects only the exchange of local telecommunications traffic as originally requested by Midcontinent, excluding ISP Bound Traffic and EAS Traffic, as agreed at the hearing.

References to ISP Bound Traffic and EAS Traffic must also be deleted from other sections of the Interconnection Agreement and Attachments.

### 3. Compensation

- 3.1.4 ~~If Midcontinent utilizes a switch outside the MVC's territory and MVC chooses to purchase dedicated or common (shared) transport from Midcontinent for transport and termination of MVC originated traffic, MVC will pay Midcontinent for no more than the airline miles between the V & H coordinates of the POI within or at the border of the MVC's serving area boundary where Midcontinent receives the MVC originated traffic and the V & H coordinates of the MVC Exchange rate center area that the Midcontinent terminating NPA/NXX is associated within the same LATA. For these situations, MVC will compensate Midcontinent at dedicated transport rates specified in the MVC applicable tariff and based upon the functions provided by Midcontinent as defined in this Attachment.~~
- 3.1.5 ~~In the event that Midcontinent elects to offer service within MVC's serving area using a switch located outside MVC's serving area, Williston Exchange area for the exchange of local telecommunications traffic under this agreement, Midcontinent agrees to provide the interconnection facility for and transport of both Parties' traffic outside the Williston Exchange area ~~MVC's contiguous serving area in which Midcontinent offers service~~, at no charge to MVC. Consistent with the requirements of Section 3.1.4, MVC will not compensate Midcontinent for the shared interconnection facility or transport beyond the POI in the Williston Exchange area. ~~MVC's contiguous serving area in which Midcontinent offers service.~~~~
- 3.1.4 If Midcontinent utilizes a switch outside the Williston Exchange area for the exchange of local telecommunications traffic under this agreement, Midcontinent agrees to provide the interconnection facility for and transport of both Parties' traffic outside the Williston Exchange area at no charge to MVC. MVC will not compensate Midcontinent for the shared interconnection facility or transport beyond the POI in the Williston Exchange area.

#### EXPLANATION

This is a resolved issue under the heading Reciprocal compensation..

As proposed by Midcontinent, the agreed point of interconnection (POI) under section 2.1 is Missouri Valley's switch. Midcontinent's decision to utilize a switch outside the Williston exchange area to accomplish the exchange of local traffic should not impose additional costs on Missouri Valley. Midcontinent's March 14 list of issues accepted this change.

(Section 3.1.5 of Midcontinent's February 3 proposal is deleted and the following section would be renumbered.)

#### 3.2 Traffic Termination Reciprocal Compensation

- 3.2.1 This Section 3.2 establishes reciprocal compensation arrangements for the transport and termination of telecommunications and is expressly limited to the transport and termination of Local/EAS Traffic and ISP Bound Traffic originated

by and terminated to End-User Customers of the Parties in this Agreement. ~~[Both Parties agree that the traffic is roughly in balance and compensation for Local/EAS Traffic and ISP-Bound Traffic shall be in the form of the mutual exchange of services provided by the other Party with no minute of use billing related to exchange of such traffic issued by either Party.]~~ Reciprocal compensation shall apply only to the transport and termination of Local Traffic and shall not apply to any other traffic or service. The reciprocal compensation rate for the transport and termination of Local/EAS traffic is \$0.030249 per minute. The parties agree to bill and to pay each other monthly for Local Traffic exchanged under this Agreement unless the Local Traffic exchanged is balanced and falls within an agreed upon threshold ("Traffic Balance Threshold"). The Parties agree that for purposes of this Agreement, the Traffic Balance Threshold is reached when the Local Traffic exchanged falls between 55%/45% in either direction. When the actual usage data for three (3) consecutive months indicates that the Local Traffic exchanged falls within the Traffic Balance Threshold, then either Party may provide the other Party a written request, along with verifiable information supporting such request, to eliminate per minute billing for reciprocal compensation. Upon written consent by the Party receiving the request, which shall not be withheld unreasonably, there will be no billing for reciprocal compensation on a going forward basis unless Local Traffic falls outside the Traffic Balance Threshold for six (6) consecutive months. When the actual usage data for six (6) consecutive months indicates that the Local Traffic exchanged falls outside the Traffic Balance Threshold, then either Party may provide the other Party a written request, along with verifiable information supporting such request, to reinstate per minute billing for reciprocal compensation per minute. Upon written consent by the Party receiving the request, which shall not be withheld unreasonably, per minute billing for reciprocal compensation will be reinstated on a going forward basis. If per minute billing for reciprocal compensation is reinstated, it shall be subject to termination if the Traffic Balance Threshold is achieved a second time for three (3) consecutive months and shall not thereafter be subject to reinstatement.

## 3.2 Traffic Termination Reciprocal Compensation

3.2.1 This Section 3.2 establishes reciprocal compensation arrangements for the transport and termination of telecommunications and is expressly limited to the transport and termination of Local Traffic originated by and terminated to End-User Customers of the Parties in this Agreement. Reciprocal compensation shall apply only to the transport and termination of Local Traffic and shall not apply to any other traffic or service. The reciprocal compensation rate for the transport and termination of Local traffic is \$0.030249 per minute. The parties agree to bill and to pay each other monthly for Local Traffic exchanged under this Agreement unless the Local Traffic exchanged is balanced and falls within an agreed upon threshold ("Traffic Balance Threshold"). The Parties agree that for purposes of this Agreement, the Traffic Balance Threshold is reached when the Local Traffic exchanged falls between 55%/45% in either direction. When the actual usage data for three (3) consecutive months indicates that the Local Traffic exchanged falls within the Traffic Balance Threshold, then either Party may provide the other Party a written request, along with verifiable information supporting such request, to eliminate per minute billing for Reciprocal Compensation. Upon written consent by the Party receiving the request, which shall not be withheld unreasonably, there will be no billing for reciprocal compensation on a going forward basis unless Local Traffic falls outside the Traffic Balance Threshold for six (6) consecutive months. When the actual usage data for six (6) consecutive months indicates that the Local Traffic exchanged falls outside the Traffic Balance Threshold, then either Party may provide the other Party a written request, along with verifiable information supporting such request, to reinstate per minute billing for reciprocal compensation per minute. Upon written consent by the Party receiving the request, which shall not be withheld unreasonably, per minute billing for reciprocal compensation will be reinstated on a going forward basis. If per minute billing for reciprocal compensation is reinstated, it shall be subject to termination if the Traffic Balance Threshold is achieved a second time for three (3) consecutive months and shall not thereafter be subject to reinstatement.

### EXPLANATION

This is an issue under the heading Reciprocal compensation, partly resolved and partly unresolved.

This proposal reflects the parties' agreement that traffic is not "roughly in balance" so "bill and keep" reciprocal compensation is not appropriate, subject to conversion to "bill and keep" if verifiable actual usage data traffic were to show traffic is roughly in balance. Missouri Valley proposed a 55/45 Traffic Balance Threshold. Midcontinent proposed a 60/40 "collar" (Midcontinent's term for a traffic balance threshold.) (See Midcontinent's March 14 list of issues.)

The parties agree to minute of use billing for termination of local traffic exchanged until a traffic study were to show traffic exchanged is roughly in balance, but disagree as to the appropriate rate. Missouri Valley's proposed rate, \$0.030249 per minute subject to a 55/45 threshold, is based on an interconnection agreement in the Williston exchange approved by the PSC.

~~3.2.2 Compensation for access traffic will be in accordance with each Party's access tariffs. In the event that Midcontinent does not have a filed access tariff for access service, Midcontinent agrees to utilize rates that do not exceed MVC's tariffed access rates.~~

#### EXPLANATION

This is a resolved issue under the heading Compensation for non-local traffic.

Attachment 1, section 3.2.2 should be deleted because the interconnection agreement affects only the exchange of local telecommunications traffic and does not provide for access traffic.

See Midcontinent's March 14 list of issues.

Attachment 1, Section 3.2.3 should be renumbered accordingly.

### 3.5 Transitional Compensation

Midcontinent agrees to pay to MVC Seventy Thousand Dollars (\$70,000.00) as transitional financial assistance on the date interconnection is completed. Midcontinent agrees to pay to MVC \$38.50 as a per customer charge for transitioning each Midcontinent resale customer to Midcontinent's network, payable monthly after the date interconnection is completed.

### 3.5 Transitional Compensation

Midcontinent agrees to pay to MVC Seventy Thousand Dollars (\$70,000.00) as transitional financial assistance on the date interconnection is completed. Midcontinent agrees to pay to MVC \$38.50 as a per customer charge for transitioning each Midcontinent resale customer to Midcontinent's network, payable monthly after the date interconnection is completed.

### Explanation

This is an issue under the heading Transition from current resale arrangements.

This proposed Section 3.5 to Attachment 1 records details of Missouri Valley's acceptance of Midcontinent's proposal for "transitional financial assistance," a subject not addressed in Midcontinent's February 3 proposed interconnection agreement. The subject was addressed in Midcontinent's November 14, 2011 petition and at the arbitration hearing on April 4 and 5, 2012, in terms of a percentage of access revenues attributable to customers switched from resale to facilities based service. At the hearing, the parties agreed to a fixed sum in lieu of a complex formula.

This proposed section 3.5 to Attachment 1 also records Missouri Valley's response to the arbitrator's request the parties propose a per customer charge for transitioning each Midcontinent resale customer to Midcontinent's network.

If the effective date and the date of interconnection are postponed under general terms and conditions sections 1.1 and 2.2.1, the payment of transitional compensation would also be postponed.

This proposed section 3.5, like all provisions under an interconnection agreement adopted in these arbitration proceedings, is subject to Missouri Valley's position the agreement is appropriate IF Missouri Valley is obliged under Act section 251(a) to interconnect with Midcontinent for the exchange of local telecommunications traffic. Whether Missouri Valley is obliged to interconnect under Act section 251(a) is not an issue before the arbitrator. Missouri Valley's acceptance of Midcontinent's proposal for "transitional financial assistance" is not a waiver of any of Missouri Valley's rights under the Telecommunications Act, including but not limited to rights to judicial review of the North Dakota Public Service Commission's action in this Case No. PU-11-697.

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## Landline rules frustrate telecoms



Rich Lipski/The Washington Post - Telecom companies are pressing to be freed from the obligation of providing low-cost fixed-line telephone service to homes, a move critics say will leave Americans with less reliable or more expensive options.

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By Cecilia Kang, Published: April 12

More than 130 years after the first residential phone line was installed, telecom companies are pressing to be freed from the obligation of providing low-cost fixed-line telephone service to homes, a move critics say will leave Americans with less reliable or more expensive options.

Four states have passed laws that release the telephone companies from this requirement, as consumers flock to mobile phone and Internet devices. Several other state governments, facing vigorous lobbying by phone companies, are considering similar measures.

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### Comments

Weigh In | Corrections?

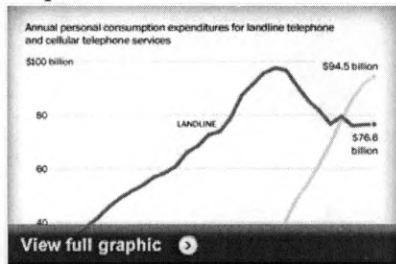
The push from the telecom industry is forcing policymakers to re-examine what has long been a basic guarantee of the government — that every American home should have access to a phone, along with

Gallery



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Graphic



Landline use is down while wireless use is up.



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other utilities such as water or electricity.

Industry executives and state lawmakers who support this effort want to expand the definition of the phone utility beyond the century-old icon of the American home to include Web-based devices or mobile phones.

They add that the companies are saddled with arcane rules that are on the wrong side of a clear consumer trend: One-third of homes have replaced their landlines with wireless phones.

The question, critics say, is whether the effort will leave behind rural residents, the elderly and others. They also worry whether the nation's broadband networks could handle a massive emergency such as a terrorist attack.

"For many, landlines are their lifeline," said Coralette Hannon, a senior legislative staffer at AARP, which has been fighting the legislative proposals. "In rural areas, wireless service can be spotty or expensive and not at all a real option."

That was the concern in Kentucky, which ended its state legislative session Thursday without lawmakers having approved a controversial landline bill. Despite the efforts of dozens of lobbyists working on behalf of AT&T, the bill stalled when the House speaker expressed his opposition to the legislation.

"We are the third-poorest state in the nation, a state with significant rural areas," said Tom FitzGerald, director of the Kentucky Resources Council, a nonprofit

organization focused on environmental, energy and utility matters, which opposed the bill. He added that the state couldn't ensure essential services to residents if landline service ended.

The universal landline requirement has been repealed in Florida, North Carolina, Texas, and Wisconsin. There, new homeowners have no guarantee that they could order phone service at affordable rates, consumer advocates say. Those with landline phones could lose their service and have to get wireless phones or Internet-based services, such as Skype or Vonage.

Those aren't affordable options for Susan Shaw, a resident of Xenia, Ohio. The 53-year-old grandmother could see her landline service from AT&T end if the state passes a law that would free the phone giant from its landline requirement.

But she's not interested in paying for cellular service, which would probably be costlier than the \$12 a month she pays for her plain old phone.

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Gold Jun12	1,642.70 USD/T Oz.	0.08%
Corn Jul12	601.25 USd/Bu.	1.76%
Soybeans Jul12	1,441.50 USd/Bu.	1.44%

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