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**PATRICK W. DURICK**  
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November 14, 2011

RECEIVED

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PUBLIC SERVICE COMMISSION

Darrell Nitschke  
Executive Director  
North Dakota Public Service Commission  
Capitol  
600 East Boulevard, Twelfth Floor  
Bismarck, North Dakota 58505

Re: Midcontinent Communications/Missouri Valley Communications, Inc.  
PU-11-543

Dear Mr. Nitschke:

Enclosed for filing are the original and seven copies of Petition for Arbitration of Midcontinent Communications along with an Affidavit of Service.


This document is also being transmitted electronically to your office. Also enclosed is an extra copy of the Mediation Statement to be filed stamped and returned in the self-addressed, stamped envelope.

Thank you for your attention to this matter.

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

Sincerely,

PEARCE & DURICK

  
Patrick W. Durick

Counsel to Midcontinent Communications

PWD/ak

Enclosures

cc: David J. Hogue

Mike Kilgore

1 **PU-11-697** Filed: 11/14/2011 Pages: 15  
**Petition for arbitration of Midcontinent Communications**

Midcontinent Communications  
Patrick Durick, Pearce & Durick

10 **PU-11-543** Filed: 11/14/2011 Pages: 15  
**Petition for arbitration of Midcontinent Communications**

Midcontinent Communications  
Patrick Durick, Pearce & Durick



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

IN THE MATTER OF	)	Case No. PU-11-543
	)	
Midcontinent Communications, a	)	
South Dakota Partnership,	)	
	)	
Complainant,	)	
	)	
vs.	)	
	)	
Missouri Valley Communications, Inc.	)	
	)	
Respondent.	)	

**PETITION FOR ARBITRATION OF MIDCONTINENT COMMUNICATIONS**

Midcontinent Communications (“Midcontinent”), pursuant to Section 252(b)(1) of the federal Communications Act of 1934, 47 U.S.C. § 252(b) and Chapter 69-02-10 of the North Dakota Administrative Code, and consistent with the FCC’s *Section 251(a) Declaratory Ruling*, hereby petitions the North Dakota Public Service Commission to arbitrate the open issues in a facilities-based interconnection agreement between Midcontinent and Missouri Valley Communications, Inc. (“Missouri Valley”).<sup>1</sup> The open issues are listed on the attached Summary of Outstanding Issues for Arbitration marked as Exhibit A and attached hereto.

**BACKGROUND**

By letter dated June 14, 2011, Midcontinent requested facilities-based interconnection from Missouri Valley Communications. A copy of this letter is attached hereto as Exhibit B. As

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<sup>1</sup> Under the *Section 251(a) Declaratory Ruling*, a competitive local exchange carrier seeking interconnection pursuant to Section 251(a) of the federal Communications Act is entitled to arbitration of any issues that are unresolved by negotiation with a rural incumbent local exchange carrier. *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, 8286-70 (2011) (the “*Section 251(a) Declaratory Ruling*”).

described in the letter, Midcontinent sought to obtain facilities-based interconnection “for the purpose of exchanging local traffic” under Section 251(a) of the Communications Act and reciprocal compensation and number portability under Section 251(b) of the Communications Act. Midcontinent proposed to retain the companies’ current arrangements for the exchange of intrastate toll traffic. Midcontinent proposed to interconnect at Williston using two-way direct interconnection facilities, and indicated that it would be willing to interconnect at a mutually-agreed point between Missouri Valley’s Williston switch and Midcontinent’s headend, or at any other location in the Williston exchange where Missouri Valley interconnects with another carrier. Midcontinent also proposed that the parties adopt the terms of their existing resale agreement “for transfer of customers, directory listings and other related matters.”

Midcontinent needs to obtain interconnection because providing service in Williston via resale has become increasingly difficult. While it is considerably more expensive for Midcontinent to use resale than its own facilities, the more serious concern is that Midcontinent cannot meet its own customer service objectives by relying on Missouri Valley.<sup>2</sup>

First, as the population in Williston has grown over the last several years, Midcontinent has found that Missouri Valley no longer can install service in a timely fashion; that Missouri Valley often takes much longer to respond to service requests than Midcontinent would take in its other markets; and that in some cases Missouri Valley is unable to provide service at all in areas where Midcontinent has cable facilities and could provide facilities-based service if interconnection were in place. Based on Midcontinent’s experience, it appears that Missouri Valley simply cannot keep up with the demand that has been spurred by the burgeoning oil

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<sup>2</sup> Although Midcontinent’s expenses for providing service in Williston are much higher than in the rest of its service territory because it is forced to rely on resale, Midcontinent currently charges the same rates to customers in Williston as in the rest of North Dakota.

business in northern North Dakota even in those areas where Missouri Valley can provide service. For instance, one prospective Midcontinent customer ordered service on October 14 and Midcontinent installed cable and Internet service on October 19. Missouri Valley provided a firm order confirmation date of October 28, two weeks after the order, and installation did not actually occur until November 1, 18 days after the order was placed. This delay resulted in considerable damage to Midcontinent's relationship with the customer, as it is difficult for customers to understand why it takes so long to turn on telephone service when their neighbors have service already. Such installation issues are entirely out of Midcontinent's control under the current resale arrangement, but could be addressed (indeed, likely would not exist) if Midcontinent were providing facilities-based services and could set its own installation schedules.

In many cases, the installation delays are because Missouri Valley, despite its status as a carrier of last resort, has not built out facilities to the locations where customers need and want service. In those cases, Midcontinent has to wait for Missouri Valley to construct those facilities before it can provide service. Often, these customers already are passed by Midcontinent's facilities, so they could be served immediately if Midcontinent had interconnection. In fact, as of the date of this filing Midcontinent has eight customers waiting for Missouri Valley to extend facilities to locations that could be served by Midcontinent's existing plant. Given the housing growth projections in Williston, there is every indication that this situation will continue to escalate.

In addition, relying on Missouri Valley as a resale provider means that Midcontinent is unable to offer services available in other Midcontinent markets, such as caller ID on the customer's television screen, a service Midcontinent plans to introduce for its facilities-based

customers in 2012. Midcontinent makes every effort to offer all of its telephone customers the same services whenever possible, whether those customers are in Bismarck or in a small rural community, but today that is not possible in Williston. In other words, the lack of interconnection is now affecting Midcontinent's ability to serve its customers and in some cases is preventing customers from getting any landline telephone service when they want it.

Missouri Valley's initial response, in a letter dated July 6, 2011, was to reject Midcontinent's interconnection request.<sup>3</sup> Subsequent to the initial response, and after Midcontinent sought mediation from the Commission, Missouri Valley agreed to enter mediation. The mediation has not produced an agreement or, to this point, even a framework for interconnection.

#### BASIS FOR ARBITRATION PETITION

Section 252(b)(1) of the federal Communications Act, 47 U.S.C. § 251(b)(1), provides that between the 135<sup>th</sup> and 160<sup>th</sup> days after the date on which an incumbent local exchange carrier receives a bona fide request for interconnection, the party requesting those services may petition a State commission to arbitrate any open issues. In the *Section 251(a) Declaratory Ruling*, the FCC held that the arbitration rights granted under Section 252(b)(1) apply to requests for interconnection under Section 251(a) of the Communications Act, even when the incumbent local exchange carrier is a rural carrier subject to the rural exemption.<sup>4</sup> Based on the date of

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<sup>3</sup> Midcontinent notes that, under the *Section 251(a) Declaratory Ruling*, Missouri Valley is not obligated to negotiate in good faith. *Section 251(a) Declaratory Ruling*, 26 FCC Rcd at 8272. Thus, while Missouri Valley's decision not to provide a responsive proposal makes it impossible for Midcontinent to describe Missouri Valley's specific positions in Exhibit A, Midcontinent is not seeking a finding that Missouri Valley improperly failed to negotiate.

<sup>4</sup> *See id.* at 8273 ("Finally, we reject the contention of some commenters that, to enforce the section 251(a) and (b) obligations, an interconnecting carrier must first have the rural exemption lifted by the state commission.") (footnote omitted).

Midcontinent's request to Missouri Valley, the 135<sup>th</sup> day following the request was October 28 and the 160<sup>th</sup> day following the request will be November 22.<sup>5</sup>

#### CONTACT INFORMATION FOR MISSOURI VALLEY

The contact information for Mike Kilgore, General Manager and CEO of Missouri Valley, and David Hogue, outside counsel to Missouri Valley, is as follows:

Mike Kilgore  
General Manager and CEO  
Missouri Valley Communications, Inc.  
Highway 13 South  
Post Office Box 600  
Scobey, Montana 59263-0600  
(406) 783-5125  
Email: mike.kilgore@nemont.coop

David Hogue  
Pringle & Herigstad, P.C.  
225 Elk Drive  
Post Office Box 1000  
Minot, North Dakota 58702  
(701) 852-0381  
Email: dhogue@srt.com

#### PARTICIPANTS IN NEGOTIATIONS

It is anticipated that the following persons will participate as representatives of the parties:

*Midcontinent Communications*

Patrick W. Durick ND #03141  
Pearce & Durick  
314 E. Thayer Avenue  
Post Office Box 400  
Bismarck, North Dakota 58502-0400  
(701) 223-2890  
pwd@pearce-durick.com

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<sup>5</sup> Missouri Valley has not indicated the date on which it received the request. In an abundance of caution, however, Midcontinent is filing this petition 153 days after the request was mailed, which should be more than enough time to ensure that 135 days have elapsed since the request was received by Missouri Valley.

Zachary E. Pelham ND #05904  
Pearce & Durick  
314 E. Thayer Avenue  
Post Office Box 400  
Bismarck, North Dakota 58502-0400  
(701) 223-2890  
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J.G. Harrington  
Dow Lohnes PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036  
(202) 776-2818  
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Mary Lohnes  
Midcontinent Communications  
3901 N. Louise Avenue  
Sioux Falls, South Dakota 57107  
(605) 357-5459  
mary\_lohn@mmi.net

Nancy Vogel  
Midcontinent Communications  
3901 N. Louise Avenue  
Sioux Falls, South Dakota 57107  
(605) 357-5485  
nancy\_vogel@mmi.net

*Missouri Valley Communications, Inc.*

Midcontinent anticipates that the individuals named above as contacts will be Missouri Valley's representatives in this proceeding.

#### SUMMARY OF NEGOTIATIONS

As described above, Missouri Valley initially indicated that it did not intend to negotiate an agreement, but later agreed to mediation. The parties have held a mediation session and had follow-up contact, but have not reached agreement on any terms for interconnection.

## UNRESOLVED ISSUES AND POSITIONS OF THE PARTIES

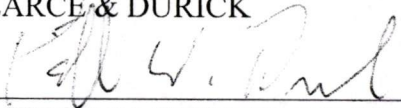
A summary of Midcontinent's positions and the presently unresolved issues for a facilities-based interconnection agreement between Midcontinent and Missouri Valley is attached hereto as Exhibit A. Midcontinent is not aware of any specific positions of Missouri Valley on the issues described in Exhibit A because Missouri Valley has not indicated its willingness to agree to any specific terms.

## RELEVANT DOCUMENTATION

Midcontinent and Missouri Valley currently are parties to a resale agreement dated November 29, 2004.<sup>6</sup> Midcontinent has proposed that the resale agreement serve as the basis for the basic terms and conditions of the parties' facilities-based interconnection agreement.

Dated: November 14, 2011.

PEARCE & DURICK



PATRICK W. DURICK, ND #03141  
Individually and as a Member of the Firm  
314 E. Thayer Avenue  
P. O. Box 400  
Bismarck, ND 58502-0400  
(701) 223-2890  
(701) 333-0126 - Fax  
[pwd@pearce-durick.com](mailto:pwd@pearce-durick.com)

*Attorneys for Midcontinent Communications*

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<sup>6</sup> The agreement was filed with the Commission on December 2, 2004 and approved under docket number PU-04-638.

## Exhibit A

### Summary of Outstanding Issues for Arbitration

The following is a summary of the outstanding issues for arbitration. It is based on Midcontinent's request for interconnection. It does not contain any specific information on Missouri Valley's positions because Missouri Valley has not provided any specific response to Midcontinent's request.

<b>Issue</b>	<b>Midcontinent Position</b>	<b>Missouri Valley Position</b>
General terms and conditions	Midcontinent proposes that the parties adopt the general terms and conditions in their current resale agreement.	Missouri Valley has not proposed any general terms and conditions.
Other terms and conditions of interconnection and number portability	Terms and conditions for interconnection and number portability can be based on existing facilities-based interconnection agreements between Midcontinent and other North Dakota rural incumbent local exchange carriers, such as Midcontinent's agreement with Turtle Mountain Communications, Inc. <i>See</i> Docket No. PU-10-20.	Missouri Valley has not proposed any terms and conditions for interconnection and number portability.
Technical interconnection requirements	Midcontinent proposes that the parties interconnect using either electrical facilities (DS-1 or DS-3) or optical facilities.	Missouri Valley has not proposed any technical interconnection requirements.
Point of interconnection	Midcontinent proposes that the parties interconnect within the Williston exchange at a mutually-agreed point between Missouri Valley's switch and Midcontinent's headend or at any point in the exchange where Missouri Valley interconnects with another carrier ( <i>i.e.</i> , wireless carriers or interexchange carriers).	Missouri Valley has not proposed any point of interconnection.
Reciprocal compensation	Midcontinent proposes that the parties adopt bill and keep	Missouri Valley has not proposed any rates or other terms for reciprocal

<b>Issue</b>	<b>Midcontinent Position</b>	<b>Missouri Valley Position</b>
	for reciprocal compensation for local traffic.	compensation.
Number portability	Midcontinent proposes that the parties provide service provider number portability to each other in accordance with the terms under which Missouri Valley provides number portability to wireless carriers or, alternatively, in accordance with the requirements of the FCC's rules.	Missouri Valley has not proposed any terms for the provision of service provider number portability.
Compensation for non-local traffic	Midcontinent proposes that arrangements for non-local traffic exchanged by the parties remain the same as today, to the extent those arrangements are consistent with the requirements of the FCC and the Commission. (For purposes of clarity, Midcontinent is not requesting any change in these arrangements, but recognizes that either the FCC or the Commission may change the relevant rules in the future, in which case the amounts or other terms of compensation would be changed.)	Missouri Valley has not proposed any terms for compensation for non-local traffic.
Date of interconnection	Midcontinent proposes that interconnection be completed within 60 days of the date that a final interconnection agreement is approved by the Commission.	Missouri Valley has not made a proposal on the timing of interconnection.
Transition from current resale arrangements	<p>(1) Midcontinent proposes a one year transition period, starting with date interconnection is put into effect. Over that time, Midcontinent resale customers would be switched to Midcontinent's facilities on a schedule that would switch an equal number of customers each week, subject to any mutually-agreed modifications.</p> <p>(2) Midcontinent proposes to provide transitional financial assistance to Missouri Valley. Under that arrangement, Midcontinent would pay 75% of the access charges attributable to each customer switched from resale to facilities-based service (based on average access charges</p>	Missouri Valley has not made any proposal for the transition from the parties' current resale arrangements.

Issue	Midcontinent Position	Missouri Valley Position
	<p>per customer) to Missouri Valley for a period of six months after the change occurs. To the extent that Missouri Valley's access charges are reduced by rules adopted by the FCC or the Commission during the transition period, those reductions would be reflected in the transitional financial assistance as well.</p>	

## **Exhibit B**

Midcontinent Request for Interconnection



3901 North Louise Avenue  
Sioux Falls, South Dakota 57107

June 14, 2011

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

Dear Mr. Kilgore:

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

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

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

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

*Over Fifty Years of Service*

Mr. Mike Kilgore  
June 14, 2011  
Page 2

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

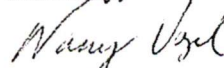
In connection with the exchange of traffic and interconnection, Midcontinent also will require number portability. It is our understanding that Missouri Valley already has implemented number portability, so please provide us with information on your procedures for port requests. Midcontinent anticipates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

In accordance with the Federal Communications Commission's May 25, 2011 *Declaratory Ruling* concerning Section 251(a) and (b) interconnection, this letter constitutes a formal request for interconnection under Sections 251(a), 251(b) and 252 of the Communications Act, and begins the period for negotiation and arbitration under Section 252.<sup>1</sup> If Midcontinent and Missouri Valley are unable to reach an agreement prior to the close of the period to initiate arbitration under Section 252, Midcontinent intends to seek arbitration for a final agreement on these matters.

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

Thank you for your attention to this matter.

Sincerely,



Nancy Vogel  
Director of Revenue Assurance

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