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December 8, 2011

Darrell Nitschke
Executive Director
North Dakota Public Service Commission
State Capitol
600 E Blvd
Bismarck, ND 58505

RECEIVED

DEC 08 2011

PUBLIC SERVICE COMMISSION

**RE: Midcontinent Communications/Missouri Valley Communications, Inc.
ND PSC Case PU-11-543**

Dear Mr. Nitschke:

Enclosed for filing are an original and seven copies of Missouri Valley's Response to Midcontinent's Petition for Arbitration Statement of Issues. This document is also being transmitted electronically to your office.

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

Very truly yours,

David J. Hogue

DJH/klb

Enclosures

cc: Patrick W. Durick
Mike Kilgore

4 **PU-11-697** Filed: 12/8/2011 Pages: 6
**Missouri Valley's response to Midcontinent
Communication's petition for arbitration statement
of issues**

Missouri Valley Communications, Inc.

David Hogue

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Midcontinent Communications, a)	
South Dakota Partnership,)	
)	Case No. PU-11-543
Petitioner,)	
vs.)	
)	
Missouri Valley Communications, Inc.,)	
)	
Respondent.)	

STATE OF NORTH DAKOTA)	
)	<u>AFFIDAVIT OF MAILING</u>
COUNTY OF WARD)	

Kristi Bailie being first duly sworn, deposes and states:

That she is a citizen of the United States of America, of legal age and is not a party to nor interested in the above entitled action; that on the 8th day of December, 2011, this Affiant deposited in the mailing department of the United States Post Office at Minot, North Dakota, a sealed envelope with postage thereon duly prepaid, containing a true and correct copy of the following documents in this action:

1. *Missouri Valley's Response to Midcontinent's Petition for Arbitration Statement of Issues; and*
2. *Affidavit of Mailing.*

That said envelopes were addressed to the following persons at their known addresses by certified mail, restricted delivery, return receipt requested as follows:

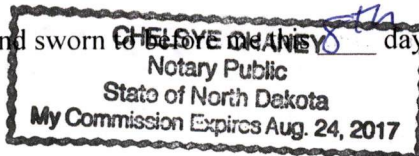
Patrick W. Durick
Pearce & Durick
Attorneys at Law
P.O. Box 400
Bismarck, ND 58502-0400

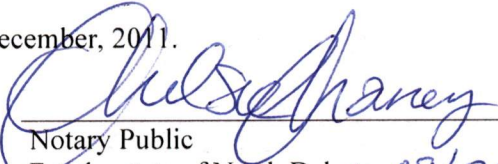
The above documents were duly mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.



Kristi Bailie

Subscribed and sworn to before me on this 8th day of December, 2011.





Notary Public
For the state of North Dakota 08/24/2017

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Midcontinent Communications, a)	
South Dakota Partnership,)	
)	Case No. PU-11-543
Petitioner,)	
vs.)	Missouri Valley’s
)	Response to
Missouri Valley Communications, Inc.,)	Midcontinent’s
)	Petition for Arbitration
Respondent.)	Statement of Issues

1. Missouri Valley Communications, Inc. (“Missouri Valley”) abides by its position that it is not obliged to interconnect as requested by Midcontinent Communications (“Midcontinent”), as stated in Missouri Valley’s July 6, 2011 letter responding to Midcontinent’s June 14 request for interconnection. The reasons for Missouri Valley’s position are further explained in its pending motion to dismiss Midcontinent’s petition.
2. If there is no obligation to interconnect, there are no particular terms and conditions of an interconnection agreement to be established by negotiation or by arbitration.
3. If Missouri Valley were obliged to interconnect for the purpose of exchanging local telecommunications traffic in the Williston exchange as requested by Midcontinent (for example, if Missouri Valley were a rural telephone company that provided video programming and therefore disqualified under section 251(f)(1)(C) from the section 251(f)(1)(A) rural exemption from section 251(c)(2) interconnection duties), Missouri Valley would respond to Midcontinent’s request for interconnection by negotiating the particular terms and conditions of a facilities based interconnection agreement, with the expectation agreement would be achieved without resort to arbitration procedures.
4. Missouri Valley’s response to Midcontinent’s petition for arbitration and statement of issues 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 any action of the North Dakota Public Service Commission with respect to Midcontinent’s petition for arbitration or with respect to Missouri Valley’s motion to dismiss the petition.
5. Under N.D. Admin. Code §§ 69-02-10-05 and -06, Midcontinent’s petition should have included a proposed interconnection agreement as relevant documentation. The petition does not include a proposed interconnection agreement and none was presented before the petition was filed.

6. In order to respond to Midcontinent's proposals that the agreements in PSC Cases PU-04-638 (the existing resale agreement between the parties) and PU-10-20 (Midcontinent's agreement with Turtle Mountain Communications) should be the basis of an interconnection agreement, Missouri Valley requests that Midcontinent furnish copies of those two agreements, marked to indicate the provisions that Midcontinent proposes for the Williston exchange.
7. Missouri Valley's positions with respect to the issues identified by Exhibit A of Midcontinent's November 14, 2011 petition are:

General Terms and Conditions

Missouri Valley agrees that the parties' existing resale agreement (PU-04-638) should be considered in negotiations to establish general terms and conditions of an interconnection agreement.

Terms and Conditions for Interconnection and Number Portability

Missouri Valley acknowledges that the interconnection agreement approved in PSC Case No. PU-10-20 includes terms and conditions acceptable to Midcontinent regarding interconnection and number portability. In the course of negotiating an interconnection agreement, Missouri Valley would consider whether the terms of that agreement are acceptable to Missouri Valley for the Williston exchange. Missouri Valley also notes that the existing resale agreement between the parties includes provisions for number portability that should be considered in negotiations for an interconnection agreement.

Technical Interconnection Requirements

Missouri Valley understands Midcontinent's statement of its position that Missouri Valley should choose whether interconnection be established by DS-1 or DS-3 electrical facilities or by optical facilities. If Missouri Valley were obliged to establish a facilities-based interconnection, it would choose DS1 electrical facilities.

Point of Interconnection

Missouri Valley understands Midcontinent's statement of its position that the point of interconnection should be at any agreeable point between Missouri Valley's central exchange switch and Midcontinent's head end or at the point of any existing interconnection with the Williston exchange. If Missouri Valley were obliged to establish a point of interconnection, Missouri Valley would choose the Williston Central office.

Reciprocal Compensation

Missouri Valley rejects Midcontinent's proposal that bill-and-keep methodology be adopted to compensate for the exchange of traffic if Missouri Valley were required to establish a facilities-based interconnection for the purpose of exchanging local telecommunications traffic in the Williston exchange.

Missouri Valley rejects bill-and-keep methodology because that method is appropriate only when the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of traffic flowing in the opposite direction and is likely to remain so. In the Williston exchange, Missouri Valley operates and maintains substantially more facilities than does Midcontinent. Missouri Valley presently serves 9134 access lines in the Williston exchange, 1790 of which are provided to Midcontinent at wholesale rates for resale under the existing resale arrangement. Presumably these customers would be served by Midcontinent's facilities after interconnection. The imbalance between the numbers of the parties' telephone customers and the extent of their facilities in the Williston exchange area make bill and keep methodology inappropriate.

Missouri Valley proposes a reciprocal compensation rate of \$ 0.030249 per terminating minute of use. Reciprocal compensation shall apply solely to the transport and termination of local exchange access traffic and shall not apply to any other traffic or service.

Number Portability

Missouri Valley rejects Midcontinent's proposal that number portability be provided with reference to Missouri Valley's arrangements with wireless carriers. If required to interconnect, Missouri Valley would support wire line to wire line portability in accordance with applicable state and federal law.

Compensation for Non-local Traffic

Missouri Valley rejects arrangements for exchange of non-local traffic and compensation. Missouri Valley believes Midcontinent should transport its own non-local traffic.

Date of Interconnection

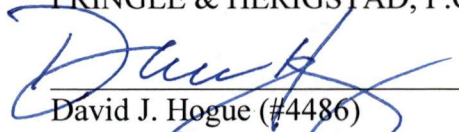
Missouri Valley agrees that interconnection should be completed within 180 days after an interconnection agreement is approved by the PSC under section 252 of the Telecommunications Act or 180 days after a later date as either party's action for judicial review of the PSC's action becomes final.

Transition from Current Resale Arrangements

- (1) If Missouri Valley is required to establish an interconnection agreement in the Williston Exchange, Missouri Valley agrees that transition of Midcontinent's resale customers should be accomplished within eighteen months after interconnection is accomplished. Missouri Valley's transition activities would be limited to disconnection of its service to Midcontinent's customers. Where work schedule conflicts occur, Missouri Valley will attend to its retail customers before attending to Midcontinent and its customers.
- (2) If Missouri Valley is required to establish and interconnection agreement in the Williston Exchange, Missouri Valley agrees that Midcontinent should pay transitional financial compensation to Missouri Valley. At this preliminary stage, Missouri Valley has no proposals as to rates or amounts of compensation.

Dated this 8th day of December, 2011.

PRINGLE & HERIGSTAD, P.C.



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