

**IN THE MATTER OF THE ARBITRATION OF MIDCONTINENT COMMUNICATIONS
AND MISSOURI VALLEY COMMUNICATIONS, INC.**

PU-11-697

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SCHEDULING ORDER

PUBLIC SERVICE COMMISSION

The parties participated in a telephone pretrial conference on **January 13, 2012**, for purposes of scheduling dates in which to complete the arbitration of the above matter. Midcontinent was represented by attorneys Patrick Durick, Zach Pelham, and JG Harrington. Missouri Valley Communications, Inc. was represented by David Hogue.

The following issues were agreed upon and a timetable was set:

1. Type of arbitration. The parties have agreed that the procedure for arbitration will be issue-by-issue modified final offer arbitration as outlined in Chapter 69-02-10 of the North Dakota Administrative Practices Act.

2. Proposed interconnection agreement. Midcontinent will submit a proposed interconnection agreement to Missouri Valley by _____, **2012**.

3. Written discovery requests. **January 30, 2012**, is the final date for each party to submit written discovery requests to the other without further permission from the arbitrator. Discovery requests are to be reasonable in scope and number.

4. Objections to discovery requests. The parties will file objections to discovery requests by **February 15, 2012**.

5. Discovery response. The parties will each disclose their expert witnesses by **February 27, 2012**, in the form to comply with Rule 26(c) of the Federal Rules of Civil Procedure.

6. Expert witness deposition. If either party determines the need to take deposition testimony of any expert witness identified by the other party, they will do so no later than **March 16, 2012**.

7. Direct testimony. Direct testimony of witnesses will be pre-filed in written form by **March 26, 2012**. The parties will be permitted to cross examine or perform redirect opening statements on subjects of cross examination at the time of the hearing.

8. Final pretrial conference. If any party deems a need for a final pretrial conference with the arbitrator, it is set for **April 3, 2012**, at **3:00 p.m.** by telephone conference.

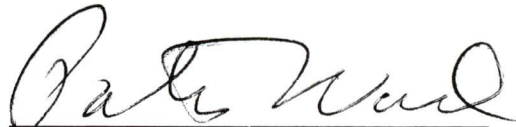
9. Hearing. The hearing of this matter, which will consist primarily of cross examination and redirect of witnesses whose testimony has been pre-filed, will take place commencing at **10:00 a.m.** on **April 5-6, 2012**, in Bismarck at the Commission Hearing Room at the State Capital Building. The hearing is expected to last one day, but two are reserved. The parties will agree on exhibits and numbering of exhibits prior to the final pretrial conference. A court reporter will be provided for the hearing by the parties.

10. Post hearing briefs. Each side will submit post hearing briefs no later than **April 20, 2012.**

11. Proposed award form. After the hearing and no later than **April 20, 2012**, each side shall submit a proposed arbitration award on each issue in sufficient form for the arbitrator to sign and use as his final opinion and recommendation to the Commission, if necessary.

12. Final decision. A final decision on each of the issues will be issued by the arbitrator on or before **May 1, 2012.**

Dated this 13th day of January, 2012.



Patrick J. Ward
Arbitrator
ZUGER KIRMIS & SMITH
PO Box 1695
Bismarck, ND 58502-1695
701-223-2711

IN THE MATTER OF THE ARBITRATION OF
MIDCONTINENT COMMUNICATIONS AND MISSOURI VALLEY
COMMUNICATIONS, INC. DISPUTE
PU-11-697

CONTRACT FOR VOLUNTARY BINDING ARBITRATION

The parties hereby agree and contract with one another that all of the disputes in the matter of Midcontinent Communications and Consolidated Telecom interconnection dispute will be resolved by binding arbitration rather than by litigation. It is agreed that issue-by-issue Modified Final Order arbitration will be the procedure.

The Arbitrator shall be Patrick J. Ward of Zuger Kirmis & Smith. The parties agree to pay to Zuger Kirmis & Smith a fee of \$200 per hour for all outside preparation time, deliberation time, and drafting time as well conduct of the arbitration hearing, \$120 per hour travel time, and reimbursement of actual expenses incurred plus mileage reimbursement for related automobile travel at the IRS approved rate. The fees and expenses of the Arbitrator will be borne equally, pro rata, by each of the parties, without regard to the outcome of the arbitration and will be billed quarterly. Each party waives any claim of conflict of interest or impropriety in Patrick Ward acting as Arbitrator herein.

Any pleadings and discovery proceedings from any pending civil action will pertain to this arbitration. At this time the parties anticipate further discovery only in the form approved in the scheduling order of January 13, 2012. Arbitrator Patrick Ward will resolve any disputes regarding further discovery.

Arbitrator Patrick Ward is hereby empowered to make a final and binding recommendation to the North Dakota Public Service Commission regarding all issues between the parties. The Arbitrator shall be the primary judge of all issues of law and fact. The parties have the right to request clarification from the Arbitrator of any perceived mathematical or clerical errors in the Award.

Arbitrator Patrick Ward shall use the Arbitration Rules in 69-01-10, N.D. Administrative Code; N.D. Administrative Practices Act, Chapter 28-32, N.D. Cent. Code; Uniform Arbitration Act 39-29.3, N.D. Cent Code; and N.D. Rules of Civil Procedure and Evidence as a basis for resolving any substantive or procedural issues which may arise during the proceeding.

The parties and Arbitrator anticipate that the final Arbitration Award will be rendered on or before **May 1, 2012**, based on adherence to the Scheduling Order.

The parties will exchange copies of any exhibits either intends to offer at the arbitration hearing and will attempt to work together in advance of the hearing to present the Arbitrator with a single jointly offered set of exhibits, subject to either party reserving the right to state on the arbitration hearing record objection to any of the exhibits.

There will be a final prehearing telephone conference at **3:00 p.m.** on **April 3, 2012**, to resolve any last minute issues prior to the arbitration hearing. The arbitration hearing will commence at **10:00 a.m.**, on **April 5, 2012**. The parties anticipate completing the hearing within one day but two days shall be reserved for that purpose.

Although this Stipulation for Binding Arbitration has been initially drafted by the Arbitrator at the request of the parties, each party represents that it has reviewed and now participated in the drafting of this Agreement by review and submission of any suggestions for a revision that party desires. Therefore, the scrivener rule shall not be applicable in the interpretation of this Agreement.

DATED: _____, 2012

Patrick Durick

Midcontinent Communications

DATED: _____, 2012

By: _____

Its: _____

DATED: _____, 2012

David Hogue

Missouri Valley Communications, Inc.

DATED: _____, 2012

By: _____

Its: _____